



## AGENDA

### BOARD OF DIRECTORS SPECIAL MEETING

Monday, December 6, 2021 - 1pm, MST

Zoom

**Directors:** Mike Zelenak (President), Nina Campfield (Vice President), Ted Boyett (Secretary), Donna Coon (Treasurer), Mark McIntosh (Assistant Secretary), Randy Howard (Assistant Treasurer), Kathi Bachelor, Carol Crothers, Christine Gallegos, Connie Griffin, Bart Hillyer, Bev Lawless, Scott Somers (non-voting)

<u>AGENDA TOPIC</u>	<u>PRESENTER</u>	<u>EXHIBIT</u>	<u>ACTION</u>
<b>1. Call to Order / Roll Call – Establish Quorum</b>	Zelenak		
<b>2. Adopt Agenda</b>	Zelenak	Y	Y
<b>3. New Business</b>			
A. Preparation and Presentation of the pros and cons of adopting the Proposed Bylaws Changes	Crothers	Y	Y
B. No GVR funds be expended in 2021 for the services of GVR attorney, Wendy Ehrlich, if said services relate to the preparation or exposition of the changes to GVR’s bylaws currently pending.	Crothers	Y	Y
C. Correct CPM Language regarding the payment of new member fees when changing a member’s primary residence.	Crothers	Y	Y
D. Staff provide an accounting of the legal fees paid to Wendy Ehrlich’s legal firm for the period of the years 2020 and 2021 to date.	Bachelor	Y	Y
E. CEO Single Point of Contact for GVR legal matters	Crothers	Y	Y
F. Add Director Crothers’ statement to the October Board minutes for the public censure.	Crothers	Y	Y
<b>4. Member Comments</b>			
<b>5. Adjournment</b>			

## **New Business A:**

I move that the board task the GVR CEO with taking primary responsibility for preparing and presenting to GVR members the pros and cons of adopting the proposed bylaws changes.

### **Rationale:**

Our Corporate Policy Manual (CPM) requires that the Board Affairs Committee “Develop pro and/or con statements for ballot proposals being submitted to the membership for a vote. GVR members are strongly encouraged to present their positions to the committee for consideration, and possible inclusion, in the pro and con statements.”

To date the Chair of Board Affairs has not invited GVR members to submit their opinions, and she appears to be advocating that the board and other GVR members accept the attorney written proposed changes. The Bylaws Subcommittee meetings have been closed so there has been no opportunity for members to provide their input. The Board Affairs Chair and her committee have demonstrated, through the acts described, an inability or unwillingness to comply with the CPM provisions cited above.

The Bylaws subcommittee and the Board Affairs Committee—not the GVR attorney—should present their recommendations to the board and membership. All Board members should be given an opportunity to present their opinions, and members should be encouraged to present their views in an open GVR-sponsored forum on the proposed bylaws changes. Since the Board Affairs Committee has failed to take any meaningful steps to comply with the cited CPM provisions, it falls to the CEO to do so.

The Bylaws are the contract between the members and GVR. This is an important vote for GVR members so all the issues should be presented, debated, and carefully considered.

**New Business B:**

I move that no more GVR funds be expended in 2021 for the services of GVR attorney, Wendy Ehrlich, if said services relate to the preparation or exposition of the changes to GVR's bylaws currently pending.

Rationale:

Instead of trying to clarify the bylaws and getting member input, the Bylaws Subcommittee, in closed meetings, hired the attorney to do a re-write. That re-write is done. It is now up to the Bylaws Subcommittee, not the GVR attorney, to explain and justify the changes.

## New Business C:

Motion to correct CPM language regarding the payment of new member fees when changing a member's primary residence.

During the August 2019 Board meeting directors approved the following:

"Amended Motion: GVR Board of Directors approve updates to the Corporate Policy Manual (CPM) under Section II – Membership, Subsection 3. Annual Dues, Annual Dues Installment Payment Plan, Initial Fees, Fees for Services, E. New Member Capital Fee to add #2 and to change the name New Member Capital Fee to Property Acquisition Capital Fee, effective date October 1, 2019. (see Exhibit 3)"

The following is Exhibit 3 with my highlights:

SUGGESTED: E. New Member Capital Fee – adopted 12/17/2015 1. **Upon transfer of title to a GVR membership property, the new owner thereof shall pay a New Member Capital Fee unless such owner was a GVR membership property owner at the time of the transfer or within twelve months prior thereto.** 2. When purchasing 1 or more additional GVR membership properties, the new owner shall pay the New Member Capital Fee for each such additional property, **except for transfer of title, as described in #1 of this section** E. 3. Revenue from the New Member Capital Fees may be used as will most effectively further the general purpose of the Corporation to provide for current and future needs.

During the September 2019 Board meeting the CEO included the following update on this change:

"Update on Implementation of Property Acquisition Capital Fee. At the August 28, 2019 Board meeting, Directors approved a major change to the New Member Capital Fee (NMCF). A portion of the NMCF is contributed to GVR Initiatives Reserves. Beginning October 1, the name of the fee changes to 'Property Acquisition Capital Fee' (PACF) and will be applied to the purchase of all GVR member properties, except when a member moves from a primary GVR residence to another primary GVR residence within 12-months, resulting in the following: o A GVR member may relocate between member properties without the burden of paying the fee multiple times. o GVR members who use GVR member properties as investments must pay the PACF. PACF implementation guidelines are published and available in the West Center lobby at this meeting and at all staffed GVR Centers beginning this Friday. Staff colleagues and I will present information about the Property Acquisition Capital Fee to local realtors at the monthly MLS meeting of the Green Valley/Sahuarita Association of Realtors on Tuesday, October 8."

At some point the CPM was updated with the following language (highlights are mine showing that this language does not reflect what was voted on by the board or explained by the CEO):

### **A. Property Acquisition Capital Fee (updated 8/28/2019)**

1. Upon transfer of title to a GVR membership property, the new owners shall pay a Property Acquisition Capital Fee.
2. ***The GVR Member is entitled to a refund of the Property Acquisition Capital Fee if the titleholder(s) own a single GVR membership property and held title to a single GVR membership property within 365 days prior.***

3. When acquiring one or more additional GVR membership properties, the new owner shall pay the Property Acquisition Capital Fee for each such additional property, except for transfer of title, as described in #2 of this section E.
4. Revenue from the Property Acquisition Capital Fees may be used as will most effectively further the general purpose of the Corporation to provide for current and future needs.

It is unknown who came up with this language since it doesn't represent what was voted on by the board or explained by the CEO. Practice at that time was for the CEO to contact the corporate attorney to review the language for compliance with AZ law, but she claims she didn't approve this.

I move that the present board endorse the long-standing practice that a member should only have to pay a new member fee once even though they change their primary residence (within a 12 month period). The CPM language and administrative procedures should be corrected immediately to reflect the board and previous CEO's understanding that a member should have to pay only one new member fee (or property acquisition fee) for their primary residence if they changed homes within a 12 month period. Owning additional properties should not make a difference.

An example: Bob and his wife moved to Green Valley. They bought a home and paid the new member fee. His brother was ill and Bob wanted to spend more time with him. He found a small townhouse in GV and decided to buy it so his brother could visit. Bob paid a second new member fee for the townhouse. After a while Bob's wife died and he decided he wanted to move into a smaller home. He sold his house and bought another townhouse close to the one his brother stayed in. He moved into the second townhouse (within 12 months of selling his original home). Should Bob have to pay a third new member fee? In 2019 the board and administration decided no.

**New Business D:**

I request that this motion be placed on the next Special Board Meeting and/or next Regular Board Meeting:

**Action Requested:** That the Staff provide an accounting of the legal fees paid to Wendy Ehrlich's legal firm for the period of the years 2020 and 2021 to date. Said fees to be separated by requesting persons, ie: President, Vice President, CEO and Committee Chairperson(s), with combined amounts for each title, by year.

**Background Justification:** I believe it is the sense of the Board and the membership, who are writing to the board, and members who are making their opinions known to individuals, that GVR is spending too much money on legal fees that seems to require our CEO to ask legal opinions that are within his duties specified in the CPM and his job description/contract. There is a general understanding that the Attorney is writing the By-laws and the CPM where the CPM calls for each to be written by committees with just a review by said attorney.

Kathi Bachelor, Board Member

## **New Business E:**

It is the sense of the Board that there needs to be one point of contact for GVR legal matters. The CEO is responsible “to monitor and ensure compliance with federal and state laws, Pima County regulations and ordinances, and GVR’s Articles of Incorporation, Bylaws, Corporate Policy Manual, and Corporate Operations Manual” (From P.53 of the CPM). As the responsible party and to provide continuity across ever changing boards, the CEO should be the single point of contact with the corporate attorney. The president or VP of the board may contact the corporate attorney to gain clarification of board policy decisions or when the CEO is incapacitated. The Board President is the authorized contact with a GVR attorney when the board is dealing with contractual arrangements with the CEO.

Background: Without a single point of contact and responsibility, legal items can fall through the cracks and/or excess money can be spent on attorneys. For example, there has been an uneven requirement for legal review of committee recommendations. FAC recommendations went through extensive review and yet the N&E recommended change to telephone balloting had no legal review until after a GVR member noticed that the recommended change was counter to AZ law. Rather than making recommended changes to policy documents and having them reviewed for legal compliance, the BAC and its bylaws subcommittee hired the attorney to write policy instead of providing legal review.

As a past GVR President, the only time I contacted the attorney was when our CEO was injured in a motorcycle accident. When the Board was moving towards Policy Governance and the corporate attorney had no experience in this area, there was consideration given to finding a board attorney who had this level of experience. However, I believe the Board used an experienced PG consultant instead. Also, when the Board requested a GVR legal opinion on the relationship with the GVR Foundation and the existing attorney refused to get involved, I offered to help find an attorney knowledgeable in both non-profits and IRS dealings. Several attorneys were identified, and the CEO hired the attorney who advised the CEO and several board members on that issue. Since the new Board decided to drop Policy Governance, there is no reason for the board officers to be the primary contact with the corporate attorney. Going forward, our CEO should have the customary responsibility to hire and deal with the legal support he needs to do his job.

## **New Business F:**

Motion regarding public censure:

I move that my statement regarding President Zelenak's announcement of my public censure be added to the October board minutes. I was not allowed to respond during the regular meeting but did read my statement during member comments. Since member statements are not normally included in the minutes, I ask that my statement, as a duly elected director, be added to the minutes.

The following was read by Carol Crothers at the October Board meeting:

I'd like to make a short statement regarding my "public censure."

I've never received written notice of what I've been accused of. I've never seen or heard the statement by Mike Zelenak until just now and have never been given the opportunity to rebut or respond to anything in that statement, before it was read in a public meeting.

I acknowledge that I was upset when a majority of the board in an executive session took the side of the GVR counsel over that of our current, very experienced CEO. That action prompted me to speak out forcefully during that closed, executive session.

The GVR counsel sent an embarrassingly condescending e-mail to CEO Scott Somers and made critical comments about some of his actions. Several board members asked for legal citations or examples to back up her advice and the GVR counsel could provide absolutely none.

I stated that I would not accept her position without additional support. On multiple occasions, the GVR counsel has made errors that later had to be corrected. Often her advice seems to serve no purpose except to generate division on this board and limit directors from serving the GVR membership.

The board president asked me to apologize to this counsel and I declined to do so. I did apologize to our CEO for what I believe is an unconscionable lack of support from a majority of his board as they try to impair his ability to do a professional job for GVR members.

I want to assure the GVR members who voted for me, and the entire GVR membership, that I will not be bullied by certain factions of this board, and I will continue to do everything I can for the betterment of GVR. I also call on this board to let our CEO do his job. Stop trying to micromanage everything he does. We should measure him on results, not whether he bows to personal preferences.