

Minutes of special meeting 19 september 2023

Attendance list:

- Paul Erasmus – Managing agent SPM
- Rob & Fran Pallett house number 2
- Henk Drost: house number 4 & 8
- Shaylock & Katrin Khoza: house number 5
- Guido & Mireille Bos house number 7
- Irene and Tjeerd (Maintenance Trustee) Adema: house number 6
- Chantal & Serge (Finance Trustee and chairperson) Settels : house number 9
- Zintle Ngodogodo (lawyer)

AGENDA

1. To confirm Proxies :
 - ➔ Zintle Ngodogodo : *representing Mr Ruitenberg, on behalf of Silonque Bush Estate PTY Ltd, as per the deed's office: section 3, SBE PTY Ltd (house nr 3), section 11 (house nr 11) , section 17- the Phomolong, and section 18 (house nr 10),*
2. To confirm Apologies:
 - ➔ No apology / proxy received by Mrs Leroux
3. To determine that a Quorum is present :
 - ➔ Quorum is confirmed
4. Election of a Person to chair the Meeting, if necessary
5. Present the proof of Notice of the Meeting
6. Approve the Agenda
 - ➔ approved
7. Special Business –
Points for Discussion
 - 7.1 Agenda points as per the request received from the members:
 - 7.1.1 The annual election of the board members
 - 7.1.2 Confidence of faith between the Trustees and the Chairman
 - 7.1.3 Answer of the Trustees to call for AGM by Mr Pallett on 20th of March 2023
 - 7.1.4 Why was there no yearly AGM
 - 7.1.5 Gate Fees
 - 7.1.6 Explanation of SPM Community report, dated 31st of July 2023
 - 7.1.7 How do we handle the situation with the homeowners who did not agree with the installation of the SPM Company

Follow of Agenda :

4. **Election chairperson:** Family Bos object to the Chairman of the BC chairing the meeting for lack of confidence in his ability to chair. None of the other members support this objection. Therefore Serge is elected to chair the meeting but Paul to facilitate.
5. **Proof of notice** of the meeting is presented and found to be done correctly. Members are informed that all have the right to inspect documentation. SPM confirms to be a neutral party, and act according to the provisions as set by the Sectional Titles Scheme Management Act (STSMA).
 - 7.1.1 & 7.1.3 & 7.1.4 **The annual election of the board members/when yearly AGM** (question raised by Mr Drost)
Paul confirms the election takes place at the AGM but also points out what should have happened at the inaugural meeting of the BC: *"taking over policies of insurance from the developers, budgeting, a motion to approve with or without amendment the developers' evidence of revenue, expenditure, financial statements, a motion to ratify or not, to react in the terms of any contract entered into by the developers on behalf of the BC, a motion confirming the develop has furnished the meeting with copies of documents as referred to in section 2.8 of the act, paid over any residues as referred to in section 2.9, a motion appointing an auditor to audit the evidence of the financial statements, motions determining the number of trustees."* He informs Mr Drost that the yearly AGM was not held yet as in terms of the STSMA, it can only be held once *"audited financial statements can be presented to the members of the AGM"* and those are not done yet due to lack of finances and financial audits dating prior to September 2022. Zintle informs Paul that Mr Ruitenberg's question is related to voting rights upon which Paul informs her that they are related to the PQ of each member.

7.1.2 Lack of confidence and faith between Chairman and Trustees. (by Mr Bos)

Paul explains to Mr Bos that he has resigned himself in December 2022 and thus is not the chairman. He explains that a difference of views is one of the most common things for a trustee to resign and furthermore confirms that it is within the right of the trustees according to the STSMA to continue with the remaining trustees. *Side note: Mr Settels has informed everybody in an earlier stage that upon the resignation of Mr Bos, both Mrs Khoza as well as Mr Drost were approached to fill in a vacancy and both declined. Mr Pallett had already indicated in the AGM of 2022 not to be interested in any vacancy.*

Paul further explains what are the legal duties and mandates of a trustee according to the act: *"the trustee must act honestly and in good faith, exercise his/her powers in terms of provisions of the act, not act without or exceed those powers, must avoid any material conflict between him/her own interest; not receive any personal or economic benefit direct or indirect; notify every other trustee of the nature and extend of any direct or indirect material or economic interest. A trustee of a BC who acts in breach of his/her fiduciary relationship is liable to the BC for any loss suffered as a result thereof by the BC or any economic benefit received by the trustee by reason thereof. Except as regards to the duty referred to in subject to (a) any particular conduct of a trustee does not constitute a breach of a duty arising from his/her fiduciary relationship to the body corporate if such conduct was preceded or followed by the written approval of all of the members of the BC where such members were are cognisant of".* He explains that the trustees have acted within their mandate and in good faith.

The discussion shifts towards the legality of the appointment of a managing agent without prior consent of all members. Mr Drost, Mr Bos and Mrs Ngodogodo on behalf of Mr Ruiterberg/SBE PTY Ltd, each specifically confirm not having any issue with the appointment of the managing agent, Mrs Ngodogodo states that the developer has an issue believing that the process was not followed. Mr Drost and family Bos complain that no permission was asked from them nor any was communicated to them specifically prior to informing all members at the same time, referring to a meeting in June in the Netherlands organised by them for owners that rent out (rental owners) where Mr Settels was invited to as co-rental-house owner.

Mr Settels explains that he was at that meeting where he had clearly stated beforehand to Mr Drost that he requested a discussion with the developer in his role as trustee regarding the ongoing dispute about the hand over or cross invoicing of the water & electricity accounts and found himself ambushed in a discussion of a private matter between Settels & the developer where Mr Drost had no issue in. When being pressured to first deal with that, to the point he could not even fulfil his job as Trustee and his professional goal of the meeting, he chose to leave. He therefore felt it not to be an environment to share this knowledge with them before sharing it with all members.

Mr Pallett comments that he feels it's not needed for a Trustee to inform a separate group of members prior to others during their informal meeting.

Mr Settels then informs the members again that due to the numerous issues encountered after stepping in as finance trustee with hand-over of faulty administration, lack of separate bankaccount or access to it, non-compliance of the developers to hand over accounts or audits; the finding R20.000 taken from the developers SBE bankaccount that was supposed to be used to make BC payments from without consent from any of the chosen trustees lead to liability issues. He would not be able to give satisfying answer to an auditor or protect the liability of some owners if he would not seek for professional help. He therefore did not want to have an open discussion or meeting beforehand as it would have lead to publicizing a lot of personal information of each member as there were many issues with many owners. He did feel however, after the personal attack on his integrity that he had to put in writing what these issues were and why; to protect the liability of each member and that his optic was at all times to act in good faith and fulfil the pledge to the BC in any way possible and move forward to enable CSOS registration which now has been done by SPM.

Paul confirms that trustees acted within their mandate and fiduciary duty and it was a necessary step towards getting the body corporate legalized thus protecting the members of possible fines. He also explains that according to the provisions of the act the trustees are allowed to appoint a managing agent and that the funds of a Body Corporate should be put on a trust account, to be accessible only by someone with a valid fidelity funds certificate in order to protect the funds which now is the case. He also explains that it is a positive move forward as a trust account opens options to granting bonds or taking out loans as well as making the property more attractive to prospective buyers

Mrs Bos expresses her feeling of being accused of having stolen money from the old account reading a letter sent by Mr Settels end of July explaining the trustees decision to hire a managing agent after multiple very harsh and personal attacks from above three members.

Mrs Khoza replies that in no way this was implied nor said that the money disappearing was done by Mrs Bos. Mr Settels also informs Mrs Bos again that the letter sent to all owners contained 10 issues and that money disappearing from the account was an absolute separate item, not in any way referring to her as well that he wanted to protect her liability seen that she was the only person designated to check invoices on that financial administration that year. Mrs Bos states she had no insight of financial administration, however Mr Settels rebuttals, referring to multiple prior mails from the developer, herself and her husband confirming this. He does

however apologize for any misconception by her part that may have led to her current feelings. Mrs Bos thanks Mr Settels for wanting to protect her against any liability.

Paul reverts to the said rental-owner meeting apparently organised in the Netherlands. Mr Drost informs him it was a.o. to see if rental owners would contribute R40.000 p/y to hire management for the estate. Paul informs him that payment of levies is based on the PQ and must be agreed upon by all members unless those members all consent willingly and present it as a special resolution in a meeting and other members agree to such.

7.1.6 Explanation of SPM Community report, dated 31st of July 2023

→ not discussed as was not supposed to be sent out to all members.

7.1.5 Gate Fees

There seemed to be some confusion with Mr Drost about the gate fund contribution. Mr Settels explains that a one-time donation of R 2400 (equalling half of total costs) out of the levy fund was done towards the new phone system of Silonque East in order to be able to keep opening the gate remotely. Mr Drost is under the impression that there is a need for a higher contribution towards the East gate fund.

Mrs Khoza explains to him that is not needed and the issue lies with other farmers on East not contributing. Mr Drost arguments that rental owners could contribute more, e.g. per entrance/rental day/total booking days. Both Mr and Mrs Khoza react saying they see no fair calculation or need in this. Mrs Khoza suggests that a home owner can always voluntarily contribute extra on a private note. Both Mrs Khoza and Mrs Settels confirm to having donated as well privately on several occasions. Paul also confirms it is out of the reach of the BC and a general increase of the levy amount set aside towards the gate fund can be discussed during budgeting on the AGM.

Conclusion of the meeting is

1. that all members have confirmed not to have any problem with SPM as managing agent.
2. The trustees have acted within their mandate
3. There are some aggrieved parties. However it is also decided that interference of CSOS will not be necessary and where needed work towards a resolution amongst the aggrieved parties. Mr Settels answers that he is willing to sit down to try to resolve matters if still needed. Pallett Family see no need to join such meeting and establishes that the estate is run professional and legally and to their satisfaction. Family Adema agrees to this point as well as Mrs Khoza who also confirms to agree with Serge that personal and professional matters should be kept separate. Mr Drost is of the opinion any resolution meeting is a waste of time and move forward to the AGM and family Bos tells Paul that they are not willing to sit down with Mr Settels at any given point in the future. All owners further confirm no CSOS interference is needed.
4. The AGM will follow as soon as auditing can be finalized but is still pending awaiting information from other parties

Rob Asks the floor to add a last comment to the meeting: : “I would like to thank from my personal self and I’m sure I’ll be joined by others I would like to thank our trustees who managed this estate perfectly. In September last year there was a lot of confusion about how we were going to go forward. Since then the estate has been managed very well I am very pleased by that way. I would like to thank our trustees for that. I look forward to the AGM where we have proper financial statements as those formalities are important so thank you to the trustees.

Zintle Thanks Paul for facilitating the meeting.