



Dear Chris,

Thank you for your email dated May 27, 2022 (attached below). The Keswick on the River ("KOTR") Homeowners Association ("HOA") Board is pleased to respond as follows.

Observations You Have Identified as Important

1) Preparation of KOTR ByLaws

The HOA Board was not in existence until November 29, 2021, being the date of the first Annual General Meeting ("AGM") for KOTR. It is at this meeting that the current, and first, HOA Board for KOTR was established. In other words, the AGM was organized by the developer of KOTR, MLC Group Inc. ("MLC"), and the current HOA Board members were not elected until November 29, 2021.

The Bylaws governing the HOA are dated October 18, 2021. As such, the Bylaws were created by MLC and MLC's lawyers, Oshry & Company, not by the current HOA Board. In fall 2021, prior to the AGM, MLC reached out to residents to request volunteers to join a bylaws subcommittee. As a member of the KOTR community, you may have received this invitation from MLC and would have had an opportunity to provide your input in the development of the Bylaws. A number of residents did volunteer and the Bylaws were finalized by MLC with input from these residents, prior to the formation of the current HOA Board.

The HOA Board is open to the idea of revising the current Bylaws. However, in order to be accountable to the whole of the KOTR community, revision of the Bylaws will require legal advice from Field Law, the lawyers for the HOA. Please be advised that this additional cost will eat into the legal fees budgeted for 2022.

Furthermore, Section 17.1 of the Bylaws states that the Bylaws may be rescinded, altered or added to by a Special Resolution of the HOA at an AGM or a Special Meeting, upon a minimum of 21 days written notice. As such, on top of the legal fees, there will be additional expenses incurred in order to mail the required written notices to all residents of the community, since all homeowners in KOTR are entitled to vote on this issue. Mail out costs are addressed in greater detail below.

2) Conflict of Interest Policy

Section 7.3 of the Bylaws sets out the conflict of interest drafted by MLC, Oshry & Company, and KOTR residents who were willing to volunteer for the bylaws subcommittee in fall 2021.

If a different or more fulsome conflict of interest policy is requested by the majority of the KOTR community, we would be happy to have Field Law prepare one. Please be advised that these are also additional costs that will eat into the legal fees budgeted for 2022. Assuming this new conflict of interest policy is intended to replace or supplement Section 7.3 of the Bylaws, we will be similarly required under Section 17.1 of the Bylaws to issue written notice to all residents of a Special Meeting to vote on this issue.

In the event the budgeted legal fees are exceeded due to revision of the Bylaws and/or Conflict of Interest (or any other legal issue that may arise in the future), these costs will have to be taken out of the reserve funds, which is discussed below.

3) Purchasing Policy

HOA Board's priority is to ensure that every vendor and contractor is vetted. We trust that the community has no objection to ensuring that qualified, productive and cost effective contractors are chosen to perform work in our community. The HOA Board members value the trust placed in them by the residents when they were elected on November 29, 2021 to fulfil this mandate.

53% of the residents who attended the November 29, 2021 AGM voted that community beautification and landscaping was the most important issue to be addressed by the HOA Board. The results of the survey can be found on the KOTR HOA website under the AGM section. Therefore, over the past few months, the HOA Board went through a rigorous tender/bid and negotiation process for selecting a landscaping contractor in order to determine the scope of work that best maximizes the value of every dollar spent. The HOA Board does not currently have a procurement policy document in place but it is on our to-do list.

We welcome any and all members of the KOTR community to provide a draft procurement policy for the HOA Board to review.

4) Investment Policy for Surplus

The issue of an investment policy has already been discussed by the HOA Board. As you have noted, the HOA Board's authority and discretion to do so is set out in Section 7.2 of the Bylaws. The HOA Board has decided to explore low-risk investment opportunities with our financial institution (ATB Bank) when the HOA incurs a surplus/reserve fund. As the majority of residents have not yet paid their HOA fees, the HOA does not currently have a surplus/reserve fund.

As residents are aware, the HOA is currently in the process of collecting first year HOA fees and must ensure that all expenses are paid in a timely manner before exploring this initiative. HOA fees are due July 1, 2022 and after that, the HOA Board's focus will turn to identifying all non-payers and commencing collections proceedings with Field Law. It is our hope that all residents will pay their HOA fees on time so that we can pay expenses and proceed with the investment initiative, at which time an investment policy will be created.

5) Articles of Incorporation

The majority of non-profit boards (especially HOA boards) do not provide legal documents online as these are board internal documents. To ensure that your request can be fulfilled and is in the best interests of the entire KOTR community, we will seek legal advice as to whether the Articles

of Incorporation can be posted on the HOA website. Please be advised that this cost will come out of the budget for legal fees.

Observations You Have Identified as Less Critical

1) Collection of 18% Additional Funds

Sections 7.1 and 7.2 of the Bylaws set out the non-exhaustive responsibilities and powers of the HOA Board. One such responsibility is to “*prepare and approve an annual budget consistent with the good management of the Association*”. Another responsibility is to “*maintain and properly protect the assets and properties of the Association*”.

In order to ensure that the HOA has sufficient funds to address any unexpected expenses that may arise, as required under the Bylaws, it is a matter of good fiscal responsibility to have excess funds set aside every year (the “**Reserve**”). As this is the first year of the HOA, and based on the collective experience of the HOA Board, we have budgeted for a Reserve of approximately 15%. The current Reserve is actually 15.5%, not 18%.

This Reserve will be used for expenses that are not contemplated in the Budget. Examples include, but are not limited to, excess legal fees, fountain repair if we get soaped again this year, and masonry repairs. If we are required to revise the Bylaws and the legal fees and mail out costs associated with this action item exceeds the amounts budgeted in the 2022 Budget, those excess costs will have to be taken from the Reserve.

Having a Reserve avoids a situation in which a special assessment may need to be requested of the KOTR community. In the event the Reserve is not utilized in 2022, then those funds roll over into 2023, which should help minimize future HOA fee increases.

2) Budgeted Expense for Community Activities

Sections 7.1 and 7.2 of the Bylaws set out the non-exhaustive responsibilities and powers of the HOA Board. One such responsibility is to “*facilitate and promote the objects of the Association*”.

HOA community management is about more than just landscaping beautification and collection of HOA fees. We have received requests from many KOTR residents for community activities and we trust that all residents wish to live in a community that is welcoming and has vibrant community spirit. 2022 is the first launch of HOA and it is a great opportunity for community members to get to know one another and celebrate the success of a neighbourhood that is close to completion. Setting aside a portion of the 2022 Budget for community events serves and promotes this goal of the HOA, in accordance with Section 7.1(a) of the Bylaws.

The budgeted cost of \$5,000 divided by the 616 houses that are paying HOA fees in 2022 works out to approximately \$8.12 per house. We trust that residents who do not wish to attend these events will not begrudge the use of \$8.12 out of their 2022 HOA fee for the benefit of community collegiality.

Future elected boards will have the opportunity to not continue with this initiative. The current elected HOA Board believes that holding events that promote and encourage community camaraderie is an important object for the HOA and can only serve to enhance the desirability of our neighbourhood.

3) *\$10,000 Mail Out Fees*

The HOA Board absolutely agrees with utilizing email to avoid paper mail out costs for communication as much as possible. The unfortunate reality however is that only 53% of KOTR residents have provided the HOA Board with their email addresses.

Over the past few months, you may recall seeing posts on the KOTR Facebook page, billboards located at the community entrances, and a message posted on the HOA website homepage asking for residents to provide their email contacts. We have tried to encourage as many residents as possible to provide their email contacts so that we can avoid paper mail outs. Despite our best efforts, as of May 23, 2022, only 326 out of 616 households in the community have provided us with their email addresses.

Moreover, we are unable to easily communicate with residents via the KOTR Facebook community as this page is not actually managed by the HOA Board. It is, instead, managed by individual residents and they have advised us that they have a policy of not permitting groups (such as the HOA) to join. As such, every HOA post that you see on the KOTR Facebook community has to be specifically requested of the moderators and we are unable to answer questions/comments posted by residents. This does not take into account the additional fact that not all residents are members of the KOTR Facebook community.

As such, we have been, and continue to be, unable to communicate solely by electronic methods as doing so would mean that we would not reach approximately half of the residents, which obviously is not acceptable. This HOA Board has laid the foundation to go green by continually being active in using various communication channels. It is a work in progress for current and future HOA Boards, with the goal of eliminating this cost from future budgets.

We urge you and all residents reading this to encourage your neighbours to provide their email addresses to the HOA Board at board@kotrhoa.ca as soon as possible.

With respect to the budgeted \$10,000, that is to cover both the 2022 HOA fee mail out and the upcoming 2023 HOA fee mail out. As residents may be aware, HOA fees are typically collected at the beginning of the calendar year, i.e. January 1. Because MLC did not set up the AGM until November 2021, the current HOA Board was unable to develop the budget, set the HOA fee, set up the online payment program, set up the banking infrastructure, and send out the HOA fee letter with sufficient notice as required under the Encumbrance until May 2022. It is the HOA Board's hope that the 2023 HOA fee notice can be mailed out this fall so that future HOA fee payments fall on the typical January 1 date. As such, the \$10,000 estimate covers the anticipated 2023 mail out costs as well.

4) *Fiscal Year End*

Fiscal Year End is December 31st and the 2021 audited financial statements will be posted on the website upon sign-off from the President and Treasurer. Later this year the HOA Board will engage an independent accounting firm to conduct an audit of the 2022 financial books and records and produce audited financial statements. This document will be posted on our website early 2023.

General Comments and Closing

Since the current HOA Board was elected on November 29, 2021, all Board members have put in an extensive amount of time and effort in serving the KOTR community, varying from 5-20 hours a week depending on the task performed. Unlike other non-profit organizations that have larger staffing resources and spending budgets, the HOA Board only has 7 members, each of whom are volunteering their personal time on a daily basis to address the concerns of residents while actioning tasks to ensure the execution of operations. Each of us have taken hours out of our time this weekend, away from our families, to prepare this letter in order to provide you with a timely and fulsome response.

Some Board members have had to take time off work in order to meet with landscapers, Stantec and MLC. Other Board members have had to **personally** front the cost of many of the expenses set out in the 2022 Budget since the HOA Board had no money until recently. As residents are aware, no one has paid any HOA fees prior to 2022. MLC had collected developer fees from lot sales but did not transfer that money to us until March 23, 2022. So from November 29, 2021 to March 23, 2022, the HOA Board members have had to personally pay out-of-pocket for various expenses relating to the HOA. As with all other expenses, these costs will be reviewed and confirmed by an independent auditor.

For example, Section 7.2(i) of the Bylaws requires the HOA Board to place and maintain third party liability insurance – one of our Board members personally paid for, and carried, the cost of the insurance premium. Another Board member personally paid for, and carried, the hosting cost for the HOA website. Yet another Board member personally paid for, and carried, the EPCOR costs relating to lighting around the neighbourhood. These are just some of many *thousands* of dollars in expenses that we have had to cover for the community up until March 23, 2022.

We have done so while balancing professional, personal and family commitments in order to ensure that HOA operations are properly set up so that future HOA Boards will have a solid, and hopefully much easier, foundation to work off of. The current HOA Board has extensive governance, compliance, legal and operational experience. We understand the importance of having proper board governance policies implemented but this takes time to establish.

The extent of the time commitment, and the need to incur personal expenses, was not anticipated by the HOA Board members at the time of the election. Nonetheless, we have done our best and we bring this up only to make the community aware of the significant amount of behind-the-scenes work that has been done in getting the HOA up and running this first year. If there are steps that have not yet been taken, such as the development of a procurement policy, it is because the HOA Board has had to prioritize the limited time we each have available.

KOTR is fortunate to have members that are passionate about our community. The HOA Board welcomes any and all residents to volunteer to assist with the many duties, resident inquiries, and third party communications that occur *literally on a daily basis*. We currently have two volunteer residents assisting with the software programming aspect of the HOA operations, both of whom have generously donated many hours each week over the past month, and continue to do so.

Chris, the HOA Board therefore hopes that you will also volunteer to assist the Board with some of your suggestions. We will be reaching out to you directly by email to discuss.

We hope the above detailed response is of assistance to the community and again, ask for your patience and understanding in navigating this first year of HOA. To enable effective communication and avoid misunderstandings, please send all suggestions and issues directly to board@kotrhoa.ca. We hope that KOTR community members continue supporting us as we all go through this journey together. Thank you.

The KOTR HOA Board

Community Member Inquiry

Note: The following email was sent to the KOTR HOA Board and posted on the Facebook 'Keswick (On The River) Edmonton Community Group' by Chris Lumb. The below email has not been altered in any way.

From: Lumb, Chris [REDACTED]
Sent: Friday, May 27, 2022 9:29 PM
To: Keswick on the River Home Owners Association <board@kotrhoa.ca>
Cc: [REDACTED]
Subject: Association budget, by-laws and policies: some observations and questions

KOTR Home Owner Association Directors:

Thank you to each of you for volunteering for the KOTR HOA board, and also for supplying a budget for the members. I am a member of the association and I have a few questions and suggestions. I will also post this letter to the KOTR facebook group to ensure other members have an opportunity to comment.

By way of background, I have extensive experience as a board director in many organizations, including associations, mature and startup for-profit companies, and large and small not-for-profits. I have also served as a director through the startup phase of several companies and organizations, and I have served as a HOA director in the past (in Brookview). I have seen through this that implementing strong governance practices early in a new organization is critical to creating a successful culture and setting it on the right path.

My most important observation is that we should tighten by-laws and/or policies in several areas, including member rights, conflict management, and purchasing practices. Specifically:

2. Upon review of the rights of the members, I am somewhat surprised that members do not either a) approve the budget or b) approve the annual fees. Did the board consider this in preparing the by-laws and if so, why did it so decide?
3. The board should have stronger conflict of interest policies. At a minimum, I would like to see disclosure of conflicts to the members in the event that a director or member is awarded a supply contract. I don't believe Section 7.3 currently provides members with sufficient assurance that their interests are effectively represented. Section 7.3, as you know, states that a director who proposes a contract should not be present in a board meeting where the potential business is being discussed. We will have a stronger association if we start with more rigorous conflict management practices.
4. Further to point 2, I also suggest that we have a defined purchasing policy, whether purchasing from independent suppliers or from members. This would ensure that the members are receiving best value for purchases and may include things like competitive bidding requirements, vendor quality verification and other items normally considered in purchasing.
5. Because the by-laws grant authority to the board to invest surplus funds, the organization should also have an investment policy. It does not need to be

complex, but it should serve to protect surplus contributions members may make.

6. We do not have a copy of any policies (if they exist) or of the Articles of Incorporation.

My other observations/recommendations are less critical, mostly because they would all be addressed if the above were in place:

1. Why are we collecting 18% more funds than the organization is expecting to spend? I understand that expenses might be higher than budget but 18% might suggest that the budgeting process has not been as precise as possible. This is likely not true but it might create that impression.
2. Why do we have a budgeted expense for community activities? I don't believe this is within the association's mandate.
3. We can avoid \$10,000 in fees if we don't use paper mailouts to communicate. This seems like a redundant expense.
4. When is the fiscal year end?

To be clear, I am not expressing lack of support for the board. I appreciate the effort the directors are putting in and I am confident your work will help ensure KOTR remains a premier neighbourhood in the city. However, as I said above, I also believe that open and rigorous governance is a vital part of all successful organizations.

Thanks for your consideration and I look forward to hearing your response.

Chris Lumb, P.Eng, ICD.D

