



TO: CA BOARD OPERATIONS COMMITTEE
CC: CA BOARD OF DIRECTORS
FROM: SHERI FANAROFF
RE: GUIDELINES FOR CA BOARD MEMBERS SERVING AS REPRESENTATIVES TO THE IAT BOARD
DATE: NOVEMBER 24, 2015

This memo provides information regarding the role of Columbia Association ("CA") Board members who also serve as directors of the Inner Arbor Trust ("IAT"). CA's Internal Auditor has previously provided a memo addressing their fiduciary responsibilities to IAT as related to internal controls and financial oversight. This memo is intended to provide additional guidance as regards balancing their roles as directors of both corporations.

Background

When CA created IAT, it originally planned for IAT to have a 5-member board of directors, with CA's President and two CA directors serving as a majority of the IAT board. It became clear, however, that in order for IAT to obtain 501(c)(3) status, it must be independent of CA and thus its board could not be controlled by CA. As a result, the size of the IAT board was increased to 7 members, of whom three would be the CA President and two CA directors. This ratio would allow CA to have a substantial, but not majority, voice in IAT's affairs. The easement agreement between CA and IAT assured that CA would continue to have a significant voice in IAT's governance by providing: "In the event [IAT] increases the number of members on its board of directors, each time [IAT] adds a director, [IAT] shall also add another director who is a member of [CA's] board of directors selected by [CA] to serve on [IAT's] board." (Section 5(b)(xiii), p.11)

The easement agreement also assured CA oversight by requiring that IAT make regular reports to CA. IAT must provide CA quarterly written reports on "progress planned and made on the development and operation of each phase within the Easement Area", as well as copies of IAT's annual independent auditor's report and its annual IRS Form 990. (Section 3, pp. 7-8)

Duties of Directors

As a matter of law, directors have certain fiduciary duties - the duty of care and the duty of loyalty. The duty of care, which is codified in section 2-405.1 of the Corporations and Associations article of the Maryland Code, requires that a director be reasonably informed

(by reading the information, reports and data provided to them and attending board meetings) and act in good faith in making decisions that are in the best interests of the corporation. The duty of loyalty, which relates to conflicts of interest and confidentiality, requires that a director act in the interests of the corporation rather than in his/her personal interest or the interest of another organization or person.

When a CA director is voting as a member of the CA board, he/she should be making decisions in the best interests of CA. The corresponding obligation is true, however, when that person is voting as a member of the IAT board - he/she should be making decisions in the best interests of IAT. It is expected that generally the interests of CA and IAT will coincide. Indeed, CA's governing documents were amended after the creation of IAT to specifically provide that mere service of a CA director on the board of another non-profit organization (like IAT or the 50th Birthday Celebration) does not in and of itself create a conflict of interest. If, however, there were a circumstance in which the interests of the two entities conflicted, a director might have to recuse himself or herself from a vote.

CA directors when serving on the IAT board certainly should voice CA's views as expressed by a majority of the CA board in discussion at CA board meetings. Indeed, that is the reason why they were given a substantial voice on IAT's board. In essence, they serve as a communication conduit between CA and IAT, providing insights to IAT on CA's views with respect to IAT's plans and likewise, providing updates to CA on IAT's progress. However, when sitting as an IAT board member voting on an IAT matter, the director ultimately must make a decision based on the best interests of IAT, just as he or she must make a decision based on the best interests of CA when voting as a CA board member.

CA directors should also be mindful of the fact that CA and IAT are different types of entities. While CA is subject to the open meetings and document inspection requirements of the Maryland Homeowners Association Act, IAT is not. Consequently, while the CA board is accustomed, in general, to the openness of its meetings and minutes, IAT meetings and minutes are not open to the public. It is for this reason that the easement agreement requires that IAT provide CA with quarterly reports.

If a specific matter arises as to which a director believes they need additional guidance, the director should feel free to consult me if the matter relates to a vote as a CA board member or consult IAT's General Counsel if the matter relates to a vote as an IAT board member.