

Special Meeting
February 13, 2007

Meeting location: Maple Grove Community Center

Time: 6:30 p.m.

Directors: Tim Bonham, Dan Dolan, Glen Eaton, Teresa Hanson,
Trina Joyce, Sue McDonough, Darrell Mead, Marian Robinson,
Missie Schwartz, Laurie Slater, Miriam Tschida, Tracy Turner,
Tom Tweeten, Jesse Vouk

Absent: Christie Ward (excused), Dawn Moore

Members/Visitors: Cherie McKenzie, Carol Dobbelaire, Rick Dobbelaire,
Ronda Danielson, Keith Payden, Katherine Bloomquist

NOTE: The meeting has been recorded. These minutes serve as a summary of the meeting.

- I. Meeting called to order – Tom Tweeten, President
- II. Introduction – Meeting Purpose
Special meeting to resolve issues raised regarding the January 2007 election.
- III. Turn-over meeting to the MHC Attorney, Katherine Bloomquist.

Attorney: The first thing that the BOARD has to determine with regards to this meeting, is whether or not this meeting is going to be a closed meeting. There is something called the attorney/client privilege. I will be giving an opinion tonight based on the questions that were posed to me. I have been hired not by individual directors but by the Board on behalf of the Minnesota Horse Council. The Minnesota Horse Council is a separate legal corporation under the law. My obligation is to represent the Horse Council and to give an opinion and recommendation. The Directors that were the 2006 Directors are still the people that represent the Horse Council. As such if you choose to have an open meeting and have any guests or potential future board members present you will waive that privilege. What that means is that if I give you an opinion and it is not a positive opinion and it later results in a action by say the Attorney General or action by a third party you will no longer be able to keep the opinion that I have given you confidential. That will be an intentional wavier of that opinion and then that will be something that is not confidential any longer. It will be in the minutes for everybody to see it will be for anyone to question, discuss, etc. It can be used for you or

against you if litigation were to result. As a member of the horse community and as a member who has participated in a lot of Boards in the past that the most frustrating thing of all when you are trying to deal with a controversy or questions, is why would they possibly want to have a closed meeting. We all want to talk about this. I understand that. But, you as a Board, and I don't even know who of you are on the Board from this last year, because I don't know all of you, have to decide and vote whether or not it is going to be a closed meeting. My recommendation would be that you have the guests and visitors leave the room right now, you have that discussion on whether it is going to be a closed or open meeting and once you have finished that discussion then you will advise them whether they can come in or not. There are other considerations on why you might want a closed or open meeting. If there are issues that are raised that you could be faced with some liability or that could embarrass some individuals. Some Boards will have closed meeting just for that purpose. There are also some advantages to deciding to waive the privilege and having an open meeting, so there is not any appearance that people are doing things closed doors. So I can see advantages and disadvantages both ways, but it is your responsibility as Board members to make that decision. If you go forward with an open meeting you are waiving the privilege by doing that. It is critical that you first decide and make a decision on what you want to do on that issue. The second part after you decide that, is that I will be providing you with the laws that relate to this, your bylaws that relate to this, and what the order is of how you sort out through them. I will then give you the facts that I have been given by way of summary and what my opinion is. You then as a Board need to make a decision. My job as an attorney is not to make a decision for you. My job will be to review the law for you, read the facts as I know them, and then you will have to make a decision about what the appropriate course of action is at that point.

At this point Carol Dobbelaire, member, noted that she had sent by email her Protest of the way the election was handled. She asked the Attorney if she could have it read into the minutes, if it is a closed meeting. The Attorney stated that as a member you are entitled to have your thoughts read into the minutes. The protest is attached to these minutes.

Motion by Jesse Vouk, seconded by Glen Eaton, to ask the guests to leave the Conference room so that the Board can have a discussion on whether the Board is Going to hold a closed meeting. Tom Tweeten asked if there was any discussion. Tim Bonham asked why would the discussion of whether we are going to have a closed meeting or not be held in secret?

Attorney: If you want to ask a question and if you're going to be looking at the issue of whether you are going to waive the attorney/client privilege, you will waive it anyway by having non Board members or guests present.

At this point Sue McDonough asked if she could make a motion that they stay.

Attorney: There is already a motion on the table and that would be inappropriate. You have to wait and see how this motion goes.

Tom Tweeten asked if there was any additional discussion on the motion (three times). Motion carried by a majority show of hands.

Attorney: This should not take too long, so those of you who are guests or the Potential future Board members etc. just step out. Don't go too far, we don't know yet what is going to happen.

Guests and non Board members left the conference room.

Attorney: OK, this is a very simple thing; you decide whether or not you are going to have an open meeting or closed meeting. If it is an open meeting, there is no problem with that. There are a lot of advantages to that and a lot of Boards choose to do that. You just need to know that I am going to give an opinion tonight on my review of all of this, and you may or may not like that opinion and you may or may not agree with it but I will tell you that I put in research, I looked at the stuff, I use to be in-house with a cooperation, I have represented and I have sued nonprofits and I have studied nonprofits and I have represented nonprofits. So I am fairly certain that I am going to give you a pretty darn good opinion on what the lay of the land is. So whether you like it or not it really doesn't matter to me but I am going to give you the opinion. I would recommend after you have had the discussion, vote on it and decide whether it is going to be an open or closed meeting, knowing that if you vote for an open meeting with the advantages associated with that you will waive the privilege, because there is no way around that, it is black and white under the law.

Motion by Miriam Tschida, seconded by Marian Robinson, to hold an open meeting as described in the bylaws. There was a request for show of hands. (11 votes for open and 3 votes for closed) Motion carried.

Visitors and Guests were invited back into the meeting.

Attorney: My obligation is to look at the situation, as much facts as possible and the law and then advise on the questions that have been raised. There were four questions raised to be.

1. Are the proxy ballots valid?
2. Were all members given the opportunity to give a proxy ballot?
If so, what impact on the validity?
3. What is the legal exposure of the Board?

4. What would the potential implications with the ethical behavior be on the nonprofit status?

The attorney provided handout from the Attorney General's office regarding Charities (nonprofit organizations) Fiduciary Duties of Directors. Attached to these minutes.

As Board members, as Directors of the Board, you owe a fiduciary duty to the corporation. There are three duties that the Board of Directors owes:

1. To exercise good faith in the day to day activities.
2. To exercise loyalty to the entity. To do what is best for the entity, not what is best for you.
3. Duty to follow all of the statutes, duty of obedience.

What Tracy Turner did, to stand up at the meeting and say, wait we have a problem, you may or may not agree with, in my legal judgment he was exercising his duty as a Director and a participant on that nominating committee. Whether you as a Board decide that you agree or disagree with what his concerns were, if he hadn't raised it and someone from the outside had later raised it, all of you as Board members would have been caught looking pretty bad with the question of why didn't somebody raise this. It just so happens that you will hear from my opinion that there were problems with the election. It was good that he raised them. It is one of the hardest things that a Board member has to do.

Proxy Ballots – what do the bylaws say? It is good to see how many of you know your bylaws. There were some parts of your analysis that you missed. The statutes of Minnesota are real clear in that they require that the notice that goes out to the membership states that everybody has the opportunity to vote by proxy. That was a problem in this election. There was also a problem in several of the proxies in how they were done. A lot of the proxies were not provided to an officer. "Are the proxy ballots valid?" No. The statutes of Minnesota clearly provide that it has to be explained in the notice to the membership for the Annual Meeting that everybody can participate.

The reason behind this statute is that you could have a situation where somebody goes out and solicits proxies and not all the members know that they have the opportunity to use a proxy and some of those members wanted to attend the meeting and couldn't attend, they didn't get an opportunity to express their desire to vote.

What do you do about this election? My opinion is that you have to do the election over. You could do this by mail within 60 days of the annual meeting. The proxies were not valid; you had a substantial amount of

votes that were given by proxy, you had membership that did not know that they could exercise the proxy. I recommend that you have to do the election over.

Part II – Appearance of improprieties

Tracy Turner was asked to provide an account of his concerns. Please find attached his report.

Amendment to Minutes – Voted on by Board and carried.

Sue McDonough asked Katy Bloomquist if she had been in contact with Board Members concerning the Election. Katy responded yes, she was in contact with Tracy Turner, Tom Tweeten and Darrell Mead, prior to our Special Meeting on February 13, 2007.

Sue McDonough asked Tracy Turner if the ballots had not had “Proxy and Member names” written on the ballots would he have challenged the election? Tracy Turner responded "No".

Katy shared with the Board that prior to the Annual Meeting on January 12, 2007 she had informed the President of the Horse Council that there could be problems or concerns with the proxies.

Attorney: The issue raised, whether it is true or false, it gives the appearance that somebody went out and solicited new members and gave only them proxies (the whole membership did not know of the right to proxy) and so it looked like someone tried to manipulate the election. This raises an appearance issue which triggers all those other duties of a director. It was appropriate that this investigation was done. It is appropriate that you look into this.

Cherie McKenzie requested that the following statement be added to the minutes.

As a new member I wanted to know the whole process of voting. I asked several people on this Board, I emailed, I had them return phone calls, I asked and asked and asked, are there going to be ballots sent out? How does this work, are there proxies and do only the members that come to the annual meetings get to vote? The answers that I understood were that these proxies are legal, they are valid. I asked Mary, did they have to be in an envelope, I brought one into her and asked how does this get done? I want this in the minutes so that all members know, we asked. We tried to find this out and do this all upfront and above board. All that was done here is that we are trying to get new members involved and active on this committee and volunteers. I don't like the idea that anything has been done inappropriately at all. I resent it.

Attorney: I am not saying personally that any of you were trying to manipulate anything. I am just saying that when you look at the papers and look at the whole thing, someone looking at that can see that there was an appearance of a manipulation.

The red flag regarding the proxies was noted the day before the Annual Meeting. It would have been impossible to have notified the entire membership of the proxy issue.

Tom Tweeten as a member and participant wanted noted that both in November and December we had the nomination procedure before this entire body and the best, the best, he could get from anybody was fifteen minutes of spelling corrections. No one went through to look at anything other than spelling corrections, and as of yet, I have not even gotten back to me a copy of that nomination procedure with at best spelling corrections let alone raising the question by Board members of the validity of those procedures. Those have been out here for over a year. So yes, Katy did raise the question to me about proxies, but it was after a period of time when I had approached the Nomination committee and said why are we not sending a ballot out and I was told that we haven't sent one out before.

Attorney: It is so easy after the fact to point and shoot at everybody around the room. One of the things that the Attorney General and other attorneys will advise you, is it is good to have someone to overlook that for you. It is better to have an account or attorney sitting on the Board or someone to pay attention to those things for you. Because all of you as Board members, you have a responsibility to the organization, fiduciary duty, the duty of good faith, duty of care and duty of loyalty.

It is the duty of obedience to know what the rules are that apply to you organization, and that is not just Tom, that is each of you as Board members.

What is the penalty?

If the Attorney General were to take a look at you, yes, you could lose your nonprofit status. If the IRS were to look at you, yes, you could lose your nonprofit status. If there was an individual on the outside, they could sue you. They could sue you all as Board members individually as well as an entity. I hope you have officer/directory liability insurance. Usually you see it if there is financial impropriety, contracts.

Until the new election is held, the 2006 Board of Directors is still in charge.

Motion by Dan Dolan, seconded by Sue McDonough, to read election results. Discussion. Motion carried.

Darrell Mead, Nomination Committee, read the results:

Glen Eaton – 81
Trina Joyce – 23
Tom Tweeten – 36
Miriam Tschida – 70
Laurie Slater – 60
Carol Dobbelaire – 51
Rick Dobbelaire – 10
Cherie McKenzie – 60
Brenda Miller – 24
Mark Ward – 62
Judy Jensen – 75

Action: Recommendation by the Attorney is to have a new election.

Motion by Miriam Tschida, seconded by Sue McDonough, to conduct a new election in as timely a fashion as possible to be conducted by an outside accounting firm that does not have any conflict of interest.

Discussion.

Glen Eaton feels that the accounting firms will be busy with taxes and will not be interested in doing it.

Tracy Turner suggested having the attorney count them. The ballots should be written ballots put inside an envelope with their names printed on them and they should sign them. That way you know no one is stacking the vote. The names can be verified with the membership list.

Tim Bonham pointed out that it will be a vote by mail. There will be no proxies, only a ballot with the candidates.

The packets will contain: cover letter, election meeting minutes, ballot, self-addressed envelop and biographies.

Timeline – when do the ballots have to be received by? Should go by the post-mark.

Jesse Vouk suggested to amend the motion to “or other qualified firm approved by Council at the next meeting.

Amended motion:

To conduct a new election in as timely a fashion as possible to be conducted by an outside accounting firm or other qualified firm approved by Council.

Discussion. Motion carried.

Motion by Dan Dolan, seconded by Sue McDonough, that the final minutes of

this meeting be distributed to the members of the Minnesota Horse Council along with the ballot.

Motion carried

Katy to get (or recommend for board approval) firm to do the ballot count. Process for mail in voting is covered in the bylaws. One organization to check on would be the Minnesota Council of Nonprofits.

Summary:

Attorney to find firm and report back with a recommendation

- Recommendation of what should be included with the ballot
- Based on the discussion tonight and the motion

Next meeting: February 20th
Maple Grove Community Center
6:30 p.m.

ADJOURN