Before I begin. Let me say that I don't think any of what I'm about to say will change the way we live and exist here at DBR nor will it cost you much, if any, money. I think it's gonna be okay. Even if you aren't interested in the minutia of our corporate governance (ZZZZzzzzzzz…) this is probably something you should all be familiar with. It effects the corporate structure of DBR. This reads in approximately 15 minutes out loud or 8 minutes silently. I know it's loooooonnnnggg. Even longer than my usual tomes and I'm sorry, but these aren't simple "bumper sticker" issues. (This is possibly the most boring thing I've written since a grad school paper on the history of shoelaces.) The subject is so dense, boring and unfunny, I just don't know how to capture it in fewer words, still be informative and give you the information you deserve to know. I couldn't bear to read this to you, but I couldn't figure out a way to outline it and make it understandable without a bunch of explanation. (Tenna disclaimer over.)

A refresher on how we got here:

It appears that DBR had the same attorney from its inception in 1996 through early 2020. It became clear to us, some of you may recall, in a courtroom in late 2019 that DBR's attorney was, shall we say "past his prime", and that we needed to find a new one to advise us. Subsequently, the BOD hired Marlyn Hawkins, a partner at Barker-Martin in the spring of 2020. Her firm specializes in HOA matters and she has been a great fit for us. Any of us that have dealt with her have been pleased. She understands the unique nature of our community and honors our commitment to keep the culture.

As you may recall, there was much discussion in both Work Sessions and Board Meetings re: the 99-year leases throughout last summer and early fall. Those discussions came from questions we asked Marlyn (our new attorney) regarding the structure of our leases and potentially charging a “membership fee” to new leaseholders to help solve the septic deficit in the reserve fund. The Finance Committee and BOD felt it was a good idea to have Marlyn look at our current lease and weigh in on it. She responded with a (five page!) letter dated August 12, 2020. If you recall, there was lively discussion amongst leaseholders both in meetings and email re: changing the way leases are dealt with, so I sent all LHs a portion of her response regarding lease transfers, assignments, base lease amounts and the 99 year option. (Boring, dense, lawyerly stuff.) The BOD began the process of moving to treat lease assignments in a different manner on her advice.

At that time we also learned that DBLA doesn’t technically fit the definition of an HOA (a.k.a. “residential real estate association” or a “common interest community”) even though we have been behaving as one since our inception in 1996. WTH? What does that really mean for us as an organization? Legally, fiscally, structurally, tax codes, day to day operations, etc. What (and how much!) will it take to fix that? That seemed like a potentially expensive (and expansive) bite of the apple to take, so I put it down the “To Do” list until we managed to get through the septic redo, it’s financial repercussions and the !@#$ pandemic. I had a million questions, but we had been existing this way since 1996. It seemed important, but not pressing. I named this problem “IT”. All CAPS. (The “SH” is silent.)

Enter our new CPA, John Caughell of CORE Services. Like our former attorney, we had the same CPA for many years. (perhaps since inception, but I’m not positive) The BOD thought it would be a good time to modernize

CPAs as well, since we had just freshened up our attorney. CORE primarily serves HOAs and we felt that expertise would serve us well. We sent John our governing documents as part of our documentation to get him up to speed on our organization. In a letter dated October 30, 2020 he, too, states that we likely don't qualify as an HOA and that it has multiple tax implications.

Hmmm. We just heard the same thing (we didn't want to hear) from two different perspectives. We were at a point where I felt that this should move up the list to the "Deal With Now" section. We were working on trying to buy Eastland at about this same time and we had questions about how to receive donations, etc and the CPA had questions about that as well. What to do?

There was a conversation with both Marlyn and John in November to talk about HOA status and how to get Eastland bought and gifted to DBLA. They both felt that A) not qualifying as an HOA exposed us in a number of areas and that we should consult with a tax attorney that specializes in nonprofits to strategize a path forward and B) if the Eastland group wanted to move forward in a timely manner they should form their own legal entity and buy the land (Check. Way to go, Eastland!) and we would figure out how to get it to DBLA once we got the non-HOA issue resolved. (FYI, for you new LHs, Eastland is 11 acres of beautiful forest at the NE corner of DBR. It was listed for sale and a group of LHs pooled their money and bought it as a buffer area for DBR. Cool, huh?)

Turns out, tax attorneys that specialize in nonprofits don't exactly grow on trees. (There are four in the state, two of which are retirement age. Who knew?) Enter Lisa Schaures of Schwabe in late January. We sent her both Marlyn's and John's letter outlining our problems as they see them and all of our organizing documents. Alas, she too, agreed that we have a structural problem that needs to be addressed. Sigh…

So we don't qualify as an HOA. What's the big deal? Why am I wasting your life minutes listening to this? Why don't we qualify? We look like any HOA you've ever seen, just smaller, right?

DBLA was chartered as a nonprofit corporation back in the 90's. It was based on the organizational structure of our "sister parks" in AZ. To the best I can tell, when the organization was being created, Jefferson County denied the original application because we were trying to set up the park as an HOA so that people could actually buy the individual lots. It appears that JeffCo denied the request because the lots didn't meet the minimum residential lot size requirement of JeffCo code. The workaround was the 99 year leases and we incorporated as a leaseholder's association rather than a homeowner's association. We are zoned in JeffCo documents as seasonal RV park, a private business, not as a residential area. (I assume this was worked out somehow between our old attorney and JeffCo, but I haven't been able to find out how it went down.)

DBLA was born and we have been functioning as a homeowners association ever since, even though we aren't one. Unfortunately, you just can't be an HOA by simply saying you are a HOA and behaving as one. Two of the reasons we don't qualify as an HOA are because we don't own our lots individually and we aren't part of a residential area. (IRS Code 528) We are an RV Park.

Speaking of the IRS… HOA's don't have to pay taxes on the monies that they receive from members for their reserve accounts. Those monies don't count as part of an HOA gross income. HOAs do pay taxes on any money that is in operating accounts at the end of the year. We spend that down and we file Federal Tax Form 1120, but we never owe much because most of our money goes toward the expenses of running DBR or sits in our nontaxable reserve accounts. Same thing for WA B&O tax, except B&O tax is based on gross receipts. Our monthly fees could, in the worst possible light, be construed as retail sales instead of being tax exempt. A license instead of a lease, if you will. Fees and donations could be considered taxable income. I could go on with the parade of horribles, but you get the drift. Not good.

We think we are a tax exempt HOA under IRS 528, but we don't qualify and as far as I can tell, never applied. *Jefferson County* thinks we are seasonal RV park business. The *State of WA* views us as a nonprofit corp, but the *IRS* thinks we are a corporation that files an 1120 for business income tax. Our status is lacking harmony on how we are perceived by various entities and by ourselves. (Our IT is, most definitely, not together.)

To recap… Unknowingly, on advice of former counsel, we have been behaving as a tax exempt HOA organization when we haven't qualified as one. We have been operating in good faith, doing exactly what our attorney and CPA have (ill)advised all these years, but in reality we weren't in compliance with state and federal guidelines for tax exempt status. We believe that at inception, counsel should have taken further steps to acquire said status for DBLA, but for whatever reason, he did not. It's great that no one has noticed all these years, but once you know a thing you can't un-know it. The BOD feels that we are obligated to rectify this compliance issue and I hope that most of you will agree.

Lisa and Marlyn have been working on figuring out the best possible way to solve these problems. The direction the BOD provided to them was that they try to find the most simple and cost effective solution that addressed our compliance problems and allowed the community to continue to function as it does currently. Basically, that the solution have as small of a footprint as possible, fiscally of course, but mostly for the everyday life of the LHs. We like who and what we are.

IT has taken longer than I expected but we (finally) had a conversation with them last week. Lisa's research has led her to advise that we apply for federal tax status as a 501-C7 which is a social club. (https://www.irs.gov/pub/irs-tege/eotopicc96.pdf if you are interested) We don't fit perfectly in to any one of the 29 types of tax exempt 501C organizations, but Lisa feels this is our best shot and that she could make a case for it. If a country club can qualify, why can't we?

A byproduct of this change could solve a problem that we have and don't talk much about. The awesome fact that, at present, DBLA's membership is comprised of only women. I have always felt that left us exposed in some areas. (Think HUD.) 501c7 organizations must limit membership, but can't discriminate based on race or color. No mention of gender. (Think fraternities and sororities.) That solves a problem.

Lisa will present a couple of different potential packages to us with a cost and risk assessment for each. (fyi- We may have to get a different CPA as CORE only does HOAs. She will ask them.) I think these changes will still allow us to continue to operate, for the most part, as we have in the past. We may need to form a second entity to just deal with the leases and real estate functions. (Ugh. Another BOD.) DBLA would still run the park, of course. Lisa and Marlyn are sorting that out as I write. I don’t have all the precise answers that will solve our problems yet, but I didn’t want to wait any longer to share this information with the membership (it was killing me) and there is some preliminary work that we can begin doing.

I think the solution, at the very least, will require some modifications to our governing documents that will need to be voted on by the membership. The application to apply for 501C7 status (IRS Form 1024) has some verbiage that we will definitely need to write. I was shooting for the Annual Meeting in August as a target date for a vote, but the pace of this has been glacial to say the least. It would be awesome if we could get this done by then.

As far as costs go ... I'm sure it won't be cheap. I feel hopeful that we can keep it under the amount of our legal budget plus $25,000. We don’t have this in our budget and I don’t want to go over budget or have an assessment. I am hoping that we can fundraise, much like we did for Eastland, and come up with the amount that is over and above the legal budget.

To plan ahead, I think we need an exploratory task force to research 501c7s, the requirements to qualify, etc. and what our membership requirements will be. Being a leaseholder and what, if anything, else? I know at the very least we will need to decide what kind of club we are and write a statement of purpose. Are we a RV club, a women’s outdoor rec club, blah, blah. Do we need/want a name change? What could that “L” in DBLA possibly stand for in the future? It seems that this is sort of a chance to reinvent ourselves? On paper, anyway. I know we have a recovering attorney amongst us. Perhaps she could be involved in this? Now that we have an idea of at least one possible solution, I think we are far enough along in this that we can get LHs involved and I don’t think we will be wasting peoples time on something that will never happen.

Thank you, in advance, for your help.
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