

RADBURN UNITED COMPLAINT TO DCA

Concise Statement of Complaint and Request for Relief

On May 17, 2017, in order to forestall this past summer's Planned Real Estate Development Full Disclosure Act ("PREDFDA") amendments from bringing effective self-government to the Radburn planned community, a small group of Radburn homeowners (about three dozen people out of a community of some 3,000, who then had the power to amend the Radburn By-Laws) met to adopt sweeping amendments limiting the future rights of Radburn homeowners. All of these amendments (the "May Amendments") to the Radburn By-Laws remain in effect to date, and are, in many respects, in violation of current state law. The May Amendments deny Radburn homeowners in good standing the right to nominate themselves and run for the Board of Trustees. They give two outside commercial entities -- the developers now in the first stages of building an addition to the Radburn community -- overwhelming and, we believe, illegal power to control Radburn elections and block Radburn By-Laws amendments. The May Amendments additionally reduce the number of seats the community will be allowed to fill in its first election since the PREDFDA amendments were signed into law.

Senate S.2492 was unanimously adopted by the New Jersey Legislature and signed into law by the Governor. It is codified in N.J.S.A.45:22A-43 et al., and DCA has jurisdiction to ensure that common interest associations, such as Radburn, abide by its provisions. *Radburn United*, an unincorporated group of homeowners in Radburn, file this complaint requesting that DCA declare certain provisions of Radburn's By-Laws inconsistent with PREDFDA, as amended, and that DCA compel the Association to hold immediate Board elections in accord with the law. (Elections are overdue under Radburn's By-Laws.) Those provisions that we assert are inconsistent with the law include, but are not limited to 1) a definition of unit that gives the developer of 165 unbuilt units representing 22.7% of the total units to exist in Radburn, 165 votes; 2) provisions that restrict the Board nomination procedure; 3) a provision that purports to give the current Chair the authority to extend Board members' terms, limiting the seats to be filled by open nominations and elections; 4) provisions that give former Radburn members exclusive access to working sessions of the Board and an exclusive advisory role, and 5) provisions regarding amendment of the By-Laws.

In this complaint, we also assert additional complaints regarding the Association's lack of financial transparency and the manner in which it operates its Board meetings.

I. Introduction

New Jersey P. L. 2017 c.106, which enhances owner voting participation rights in common interest communities, was signed into law on July 13, 2017. The law, written by New Jersey Senator Robert Gordon and co-sponsored by a bipartisan group of 18 other state legislators, passed both houses unanimously. The intent of the law is to: (1) establish that all unit owners are members of the association and provide basic election participation rights for certain residents of common interest communities, including the right of owners in good standing to nominate any unit owner in good standing as a candidate for any position on the executive board, run, appear on the ballot, and be elected to any executive board position, in every executive

board election, and for those rights to apply regardless of the date of a community's establishment; and (2) establish that, except under the very limited exceptions provided, a person may not serve on an executive board unless elected through a process consistent with the provisions of PREDFDA.

The Radburn Association is a PREDFDA planned unit development of approximately 557 individually assessed units, four commercial properties, several parks, and a school in Fair Lawn (Bergen County), New Jersey. It is governed by a nine-member Board of Trustees, which historically was selected on a rotating schedule. The Board hires a Manager for day-to-day operations. Before the enactment of P.L. 2017, c. 106, four candidates for trustee were nominated by the sitting Board for two open slots, each year, and placed on the annual ballot for election by all owners, tenants, and other residents. Two additional Trustees were elected solely by current and prior Trustees, whom the old By-Laws had defined as "Voting Members" (the "Original Members"). Write-in candidates were not honored for any one of these eight trustee positions. A ninth trustee served in his or her *ex officio* capacity as a representative of the Radburn Citizen's Association and was nominated and elected by all residents of the community. The Original Members represented only about 3% of Radburn homeowners.

On May 17, 2017, just prior to the Senate's vote on S.2492, a Membership meeting was called specifically to amend the Radburn By-Laws. The Original Members adopted new bylaws by a vote of 26 of the approximately 36 Original Members, with the use of proxy ballots. These May By-Law Amendments are currently in place. Based on statements made during the Membership meeting, these By-Laws were adopted explicitly to preserve the power of the Original Members, **and to slow down the democratic and legally required transition to a board that would be elected under the provisions of the new legislation.** It is important to note that five of the current nine sitting trustees did not vote in favor of these May By-Law changes. We assert that the changes made to Radburn's By-Laws were not intended to satisfy the requirements of the then pending PREDFDA amendments; rather, they were intended to thwart the democratic impact of those amendments by:

- making numerous changes to the nomination and election of Trustees, including the creation of a new class of "Advisors" to the Board, consisting of the Original Members, giving them executive powers normally reserved for the Board, such as control of nominations, access to closed work sessions and replacement of vacated Board seats;
- granting 165 votes, comprising of one vote for each planned unit, to Landmark Developers (and/ or Pulte Homes), who are responsible for developing a new condominium project for which approvals have been granted and limited assessments paid to Radburn, but for which no master deed has yet been filed and for which no units have been built or sold;
- eliminating 93 votes from an apartment complex by granting that owner of that complex only one vote; prohibiting proxy voting; and restricting member voting to a single vote per separately owned residence, which had previously been two votes per household;

- adopting the extreme position of requiring a positive vote of a full two-thirds of all homeowners (which includes the bloc of votes given to the developers) to amend the By-Laws. By having granted nearly 23% of all votes to the developers, this imbalance in opposition of homeowner control has set an unreasonably high bar for any change emerging from the community; and
- reducing the prior rotation of four Trustees seats annually to just two, while granting the current Board president exclusive power to extend the terms of other currently seated Trustees.

In addition to these By-Law Amendments, we believe that the Board President continues to operate the Board in a manner that is intended to evade accountability as PREDFDA requires by:

- continuing to conduct business on a regular basis, in closed work sessions or in committees without votes of the full Board, claiming “consensus” or “executive decision” as an exempt alternative to formal voting;
- failing to call the annual Members’ meeting, as per bylaws, instead claiming to have substituted the annual budget summary hearing in its place;
- failing, with the Manager, to announce the annual election for officers who were to have assumed office in January 2018;
- authorizing the Manager to restrict homeowners’ rights and access to make copies of financial records as required under N.J.S.A. 46B-14g, claiming that an Association policy adopted in 2008 limits that access; and
- providing to homeowners documentation of receipts, bills, expenditures and unit assessments only in summary or redacted form.

As a result of the afore-mentioned by-law changes and unlawful operating practices, we assert that the Radburn Association is failing to properly implement PREDFDA, as amended, and is subverting both the intent and the letter of the law. We, accordingly request declaratory and injunctive relief as further specified below to compel the Association to permit this planned community to go forward with the full participation of all its owners.

II. Chronology

A. The May 17, 2017 Amendments to the Radburn By-Laws

The recent amendments to PREDFDA were adopted unanimously last summer by the New Jersey Legislature, in part, to address the fact that Radburn was governed by a group of nine trustees, with only one of the nine trustees freely nominated and elected by the Radburn community. For decades, Radburn was governed by about three dozen people, the Original Members, who, together with the sitting trustees, controlled the selection of eight out of nine seats on the board. This relatively small oligarchy had picked its own successors for generations. Decade after decade, the Original Members refused all requests for reform that would enfranchise the members of the Radburn community. As a direct consequence, advocates of the right of basic self-government in Radburn resorted to the state courts unsuccessfully in 2006. Without the permission of the general community, many hundreds of thousands of dollars of the community’s money was spent in order to oppose efforts by the community to establish self-government. Then, in the summer of 2017, the state legislature moved decisively on behalf

of Radburn and other homeowners whose common interest associations were not following principles of democratic elections or governance.

Shortly before this summer's amendments were to be considered by the New Jersey Assembly, the Original Members were called to a meeting on the evening of May 17, 2017, at which time they were told that they were to consider amendments to the Radburn By-Laws that were alleged to be necessary to make those By-Laws consistent with the upcoming amendments to PREDFDA that were about to go into effect. However, a review of the by-law amendments proposed and how such amendments were presented and developed reveals that the entire point of the May By-Law Amendments was to thwart and/or delay fair and open elections. It appears that a plan was put together by a small group of trustees (in consultation with the Board's attorney) to fraudulently push through the revised Radburn By-Laws so as to put off, as long as possible, the day that the Radburn community would have the power to choose its own trustees and operate the Board in an open and transparent manner. The proposed amendments were not disclosed to the full Radburn Board prior to the May Original Members Meeting, and the amendments were not fully and accurately discussed with the Original Members at that meeting before the Original Members voted. This included no disclosure to the Original Members that the amendments would provide the developer of a new portion of Radburn with 165 votes, and accordingly unprecedented influence. As one Radburn homeowner had previously told Senator Bob Gordon, the chief sponsor of PREDFDA's amendments, the Radburn oligarchy was going to do everything it could to "get around" the law.

Objectionable Elements of the By-Law Amendments

First, while PREDFDA, as it was to be amended, provided that developers of unbuilt or unsold units were "association members," it stated specifically that nothing in the law should be interpreted to impact such developer's transition obligations under N.J.S.A. 45:22A-47(a)(3), nor require such developers to vote in board elections. Nonetheless, the two developers that were currently beginning the work of adding a new development to the Radburn community were given a total of 165 votes for the 165 units they intended to build (though they were paying assessments to Radburn on only a handful of tax lots). The developers thus suddenly received almost 23% of the total possible Radburn electorate (*i.e.*, 165 of 726 units), commanding substantially more votes than were typically cast to elect a trustee. Those currently in control of the Radburn Board and their counsel had worked closely with one of the developers for years to push through the development in the face of concerns from the general community. Accordingly, upon information and belief, those Board members and/or their counsel have confirmed, or have been given reason to believe, that the developers would vote for their candidates, thus giving those candidates an overwhelming start in any contested election.

Second, the developers' 165 votes were also to be available to stop any attempt to amend the by-laws so as to take those 165 votes away. Under PREDFDA, unless a by-law amendment is necessary to conform the by-laws to law, when a board of trustees passes such an amendment, it may be vetoed by 10% of the community's homeowners. As a result of the May By-Laws, the developers were suddenly granted approximately 23% of the community's votes and thus, an exclusive right to independently veto any future by-law amendments. Therefore, unless it could be established that giving these developers these votes was a violation of Sec. 47 of PREDFDA,

which Radburn United believes is the case, the developers themselves could veto any Board attempt to take away their votes.

In addition, although the alternative amendment process, under PREDFDA, would be for the community to amend its own by-laws, the proposed May amendments intended to make that alternative virtually impossible. Under the Radburn By-Laws as they existed prior to May 2017, the Original Members were able to amend the By-Laws by a two-thirds vote of whatever Members attended a By-Laws amendment meeting (and proxy votes were allowed). Under the proposed amendments, after May, when state law would mandate that all Radburn homeowners were to be Members, the two-thirds vote required was to be a two-thirds vote of all Radburn units, regardless of who came to the actual voting meeting. The By-Laws additionally eliminated proxy votes, although mail-in ballots would be available under conditions set by the Manager). Thus, if the community tried to take the developers' votes away by calling a Members Voting meeting, with the developers continuing to support their own power, the rest of the community would have to reach, not 66% of the vote, but approximately 87% of the votes of actual residents in order to prevail. The same harsh truth would apply to any by-law amendment that the developer would decide to oppose on behalf of Original Members or the even smaller group that has always run Radburn.

In order to make these anti-democratic May Amendments harder for a newly elected board to take back, the By-Laws were altered so as to require that in all cases -- even when the Board was merely seeking to conform the Radburn By-Laws to state law -- a supermajority of seven Board votes was now required, instead of a simple majority of five.

Furthermore, in order to make the 165 votes awarded to the developers loom even larger in Radburn's affairs, each home owned in Radburn was reduced from having two votes to having one; and, for the first time in the 90-year history of Radburn, the 93 rental units in Radburn were barred from voting with the owner of the building containing the rental units being granted only one vote.

The proposed May Amendments did not consist merely of rigging the voting process and the process for amending the by-laws so as to hold off self-government; they went further in brazen defiance of PREDFDA's amendments to refuse the Radburn community the open nomination process specifically and clearly commanded by S.2492. First, members of the tiny minority who had always been in charge would be remodeled as a "Nominating Committee." If you were not selected to run for the Board by that Committee, you could not nominate yourself, as state law now requires. You would have to submit a nominating petition signed by the owners of 50 different Radburn homes.¹ And, if you were currently in litigation with Radburn -- over any issue whatsoever -- you were not entitled to run at all. This would, of course, allow frivolous lawsuits by the current Radburn leadership to bar pro-democracy candidates from running. Second, under the May Amendments, if any trustee failed to complete his term, that trustee would be replaced, not by the current Board, as PREDFDA, as amended, requires, but by an Advisory Committee again consisting only of members of the tiny group of those who had

¹ While the Radburn Association has promised to allow self-nomination in the next election, the actual By-Laws illegally prohibiting self-nomination remain unchanged.

previously been in power, who would additionally be limited to choose one replacement from members of that particular group. Finally, the May Amendments provided that the current Radburn Association president, a long-term opponent of self-government in Radburn, would pick two trustees, and extend their terms, so they wouldn't have to stand for re-election in 2017. Under the new By-Laws, the number of seats open to the community to fill under the amended state law was thus reduced from four to two.

(There were still other elements in the amendments intended to prolong the influence of the Original Members, but the specifics listed above are more than sufficient to indicate both the purpose of the "May By-Law Amendment Plan" and its intent to defy what was anticipated to become state law.)

Concrete Steps to Ensure Adoption

Given that the proposed May Amendments would give the developers an overwhelming influence over Radburn's affairs and would treat them for voting purposes differently than the other commercial property owners in Radburn (including the owner of 93 rental units), it appears that a small group of the Original Members thought it necessary to make sure that the whole group of the Original Members not understand what they were being asked to vote on. A review of the events that happened prior to and during the May 17, 2017 Members meeting indicates that this behind-the-scenes group took a number of concrete steps to ensure that the entire By-Law Amendment Plan would be put to a vote without ever being properly explained to all those voting. Such actions include:

1. When the issue of forming a Board committee to bring Radburn's By-Laws into consistency with the anticipated new state law was raised by a trustee at a Board of Trustees meeting, the Board President informed the Board that forming such a committee would be premature.

2. Meanwhile, without informing the Board as a whole, the Board President secretly appointed a By-Laws Amendment Committee, whose existence, membership, and decisions were kept hidden from those members of the Board of Trustees who were not appointed to the Committee.

3. This Committee employed the Radburn counsel to draft a set of By-Laws revisions, without the Board as a whole knowing what the counsel was doing, or authorizing him to be paid for doing it. What the Counsel and the Committee agreed upon was kept secret from the Board by the Board President and the other members of the Committee.

4. A Members' meeting was called for May 17, allegedly on the request of 1/3 of the Members, but those who had called and were managing the meeting refused to state at the meeting the names of those Members who had allegedly requested the meeting. When the Original Members met, on the evening of May 17, the Board of Trustees, and the other Original Members, were suddenly shown the work of the Committee for the first time. The Original Members were told they had to vote on the Committee's proposals that very night. The Radburn attorney repeatedly misinformed all persons in the room that, as soon as the PREDFDA

amendments became law, it would be impossible to pass any amendments to the Radburn By-Laws, even amendments necessary to bring Radburn By-Laws into consistency with state law. In order to make this inaccurate claim, Radburn counsel mischaracterized both the statute being considered by the Legislature and Radburn's current By-Laws. He further misinformed the Original Members that the bill was going to be brought to the governor's desk May 21. A copy of the transcript of portions of this May 17 meeting is attached to this Complaint as Exhibit A.

5. Radburn's attorney made a prepared presentation that allegedly explained the proposed By-Laws changes to the Original Members. Counsel's prepared "explanation," however, did not even refer to the fact that the developers would hold 165 votes. It was further explained that tenants would not be permitted to vote, but it was not explicitly noted that the owner of the 93 rental units would be limited to one vote.

6. The Original Members were given two hours or less to review scores of pages of proposed amendments. They were not allowed to take them home or discuss them with anyone outside the room. They were not allowed to seek advice from an attorney of their own choosing. They were told that, whatever they wished, they were not allowed to modify the amendments, but had to vote on them as the amendments had been presented. (There was, of course, no Radburn By-Law denying Members the right to amend what they were voting on. That rule was just made up on the spot for the advantage of those running the meeting.) The Original Members were then bullied into voting on the spot. (Significantly, a majority of the sitting Board declined to vote in favor of the amendments under such conditions.) The deception practiced upon the Original Members in May is made clear by the public admission, at the December 11, 2017 Radburn Association open Board meeting, by one Original Member who had voted for the May amendments, that he would never have done so had he known the developers were to receive 165 votes.

By the use of these six concrete steps, the Original Members were pressured into passing the amendments on the basis of misinformation and incomplete information. The amendments as proposed were passed on May 17, 2017, and remain in effect. A great many of their provisions are in obvious violation of PREDFDA as amended.

B. The Good Faith Attempts Made by the Broader Radburn Community to Secure Appropriate Amendments to the By-Laws.

Radburn United had been the representative of the Radburn community in seeking the recent amendments to PREDFDA. Radburn United (an affiliation of Radburn residents who are advocating for full democracy in governing Radburn) had sought and won the crucial support of the bill's key sponsor, N.J. State Senator Bob Gordon, and had hired one of the state's most prominent lobbyists to help steer the bill through both houses. As the bill was modified and amended over many months, Radburn United worked closely with Senator Gordon to ensure that any changes in the bill would not limit the benefit it would give to the Radburn community.

Once the 2017 PREDFDA amendments became law, Radburn United organized a series of newsletters and educational meetings, keeping the community informed as to the illegal nature of the May 2017 Radburn By-Law Amendments. See Memorandum to Radburn United from

New Jersey Appleseed, dated August 7, 2017, attached hereto as Exhibit B, which was distributed through Radburn United's website. The Radburn Association and its attorney have, for example, repeatedly misinformed the community that PREDFDA requires developers of unbuilt units to vote in Board elections. Radburn United drew the community's attention both to the language in the statute that contradicted this misinformation, and to a letter by Sen. Bob Gordon to the Radburn Board of Trustees confirming that no such requirement existed. See Letter dated December 15, 2017 from Senator Gordon to President of Radburn, attached hereto as Exhibit C.

Radburn United considers it to be significant that the same lawyer who appears to be providing the Radburn Association with so much misinformation about the PREDFDA amendments, and has approved so many by-law amendments that are fundamentally inconsistent with that law is the same lawyer who claimed at one time that none of the 1993 PREDFDA's provisions applied to Radburn. Moreover, this attorney is the same lawyer who charges the Radburn community about a quarter of a million dollars per year, regardless of what is or is not occurring in Radburn. This amounts to something like ten times what Fair Lawn pays for legal services, on a per capita basis. To the best of our knowledge, these legal bills have never been questioned by the Radburn Board of Trustees in an open Board meeting. Certainly, there is no evidence that the Board has ever taken any steps to lower Radburn's legal expenditures.

Notwithstanding the fact that dialogue among lawyers generates additional legal bills for Radburn residents, Radburn United has done its best, through its attorney, New Jersey Appleseed Public Interest Law Center, to reach out to Radburn's attorney to settle our differences. Despite numerous phone conversations and at least one meeting, it appears that the Radburn Association is not willing to budge on two issues: the 165 votes given to the developers and the number of open Board seats for the next election. We have also sought the assistance of the two relevant developers in modifying the By-Laws so as to take back the grant of 165 votes. The developers in question are Landmark (a/k/a Bergen Development Group), the current owner of the relevant properties on Plaza Road in Fair Lawn, and Pulte Homes, which will be responsible for construction of the condominium units. We understand that portions of the property will be transferred over to the Pulte Homes over time as it builds and sells units in sections; one portion of the property may have already been transferred.

In any case, Radburn United's counsel contacted the Pulte Homes first. It appeared that Pulte Homes did not know that it had or would have any voting rights in Radburn elections. Radburn United asked Pulte Homes to agree to a change in its voting rights -- to either be treated like a commercial owner and to receive one vote per lot (prior to its subdivision) or retain a seat on the board with no voting rights as to other trustees, as allowed under N.J.S.A. 45:22A-47(a)(3) (which contemplates owner control when a developer has less than 25% of the units in the Association to sell); and if there was an election prior to either such change to refrain from voting except for quorum purposes. It was left that Pulte would have further discussions among its personnel and would get back New Jersey Appleseed. It has not done so.

Shortly thereafter, a member of Radburn United and its counsel met with Landmark. Counsel for Radburn was present and insisted that this discussion was a formal settlement negotiation, and therefore confidential, though Radburn United does not and did not

have any adversarial role with respect to Landmark. The conversation that followed was very similar to the one Radburn United's counsel had had with Pulte. Once again, in spite of promises of a prompt response to Radburn United's good faith proposals, no such response has been received from Landmark.

Continuing to work in consultation with its counsel, Radburn United prepared two proposals for revising Radburn's By-Laws. The first proposal entails throwing out the May 2017 Amendments in their entirety, and replacing them with those amendments necessary to bring the Radburn By-Laws into consistency with PREDFDA as amended. See Exhibit D. The second proposal, to be used if it was impossible to invalidate the May 2017 amendments, starts with the By-Laws as they were amended in May, and moved on from there. See Exhibit E. Sympathetic members of the Radburn Board of Trustees, including the freely nominated and elected president of the Radburn Citizens' Association, arranged, under the Radburn By-Laws, for four of the nine trustees to compel the Radburn Association Board to meet and vote on its By-Law proposals. See Exhibit F. The proposal to scrap and replace the May 2017 amendments was defeated 5-4. The proposal to adopt a comprehensive set of amendments to the current By-Laws was then also defeated 5-4. But when the group of four trustees compelled the Board to vote, on a straight up-or-down basis, whether the developers should have 165 votes, the Board voted 5-4 to change the By-Laws and take back the votes given to the developers. Prior to May 2017, that 5-4 vote would have modified the By-Laws. Because of the May 2017 Amendments, a supermajority of seven is now required, so the will of the majority of the Board was thwarted as to this very significant issue.

It should be noted that the 5-4 vote in favor of taking back the developers' votes came after a packed three-hour meeting of the Radburn Association, in which homeowner after homeowner, many of them previous supporters of the anti-democratic efforts of the Original Members, spoke out against the overwhelming power that had been granted the developers. No one in the audience spoke in favor of the developers having such significant bloc of votes. No one on the Board attempted to explain why giving the developers the votes had been a good idea in the first place. At the end of the meeting, the President of the Board closed the meeting with the promise of further action on the issue. No, such further action has materialized.

For Radburn United, the next logical step was to call a Members' Meeting at which Radburn United would seek to meet the enormous burden placed by the May 2017 amendments upon anyone seeking to amend the Radburn By-Laws by member votes only. Radburn homeowners were approached to sign a petition mandating the calling of Members' Meeting in order to take back the developers' 165 votes. Several Radburn homeowners told the petition collectors that they were afraid to sign the petition, because of the record of the Radburn Association in inflicting reprisals on those who oppose those currently in power. Despite the history of such intimidation tactics by the Radburn Association, Radburn United secured, in a single weekend, sufficient petition signatures to mandate the calling of a Members' Meeting. Under Radburn's By-Laws, 25% of households have to sign the petition -- a total of 182 units. A total of 263 households have already joined the petition. A copy of the petition is attached hereto as Exhibit G. As noted above, however, under current rules, the community will be forced to muster a positive vote of about 87% from all actual Radburn households in order successfully to amend the By-Laws -- a task that was intended to be, and is, virtually impossible considering non-resident owners and other realities.

During the last week of November, Radburn United through its counsel, had approached both Landmark and Pulte via email to support its call for a Members' meeting. No response was received. Similarly, prior to filing this complaint, on January 22, 2018, counsel sent a second email asking both developers to support Radburn United's proposals when the meeting takes place. At this time, no response has been forthcoming from either developer. See Exhibit H.

III. Legal Analysis

Radburn United's legal position is explained in Exhibit B, *supra*. As to the two issues not discussed therein, we say the following:

On the issue of the 165 votes for the developers, we note that PREDFDA as amended does now define a developer of unbuilt units as an association member. However, the law is clear that there is nothing in the law that requires such developer to have any voting rights with respect to the election of the Board; and the statute itself specifically states that it does not modify such developer's transition obligations as outlined in N.J.S.A. 45:22A-47. Accordingly, the current developers, as owners of less than 25% of the units that will constitute the Radburn Association, are not permitted to vote for or control the Radburn Board. At best, they may retain one seat on the Radburn Board, if they so desire, or, in the alternative, they may be given the same voting rights as other commercial owners in Radburn (i.e., one vote per taxable lot on which that commercial developer is paying a Radburn assessment). Though we understand that Sec. 47 also applies to Pulte Homes with respect to the condominium association it will establish once the master deed creating that association will be filed, PREDFDA, as amended, cannot be interpreted to transform an owner-controlled association, such as Radburn, into one dominated by a developer, simply because the association has decided to authorize the development of additional condominium units -- especially when the addition amounts to only 23% of the total development. Such an interpretation would turn the statute on its head.

On the issue of cutting down the number of open trustee seats from four to two, Radburn United asserts that the May 17, 2017 By-Law Amendments were explicitly enacted to slow the transition of the Radburn Board and to retain as much control by the Original Members as possible. By adopting these By-Law Amendments, the Original Members of Radburn violated their fiduciary duties to all the homeowners of Radburn. Under PREDFDA as amended, all current Radburn homeowners are unquestionably entitled to nominate and elect their governing Board -- it is the entire membership of Radburn that gets to elect the Board, not the president of the old Board, who, in accord with the amended By-Laws, by-passed the community when she effectively elected three Board members by extending their terms.

IV. Conclusion

We, the undersigned, on behalf of Radburn United, request that DCA declare certain provisions of Radburn's By-Laws inconsistent with PREDFDA, as amended, and that DCA compel the Association to hold immediate Board elections in accord with the law. Specifically,

1. The definition of “unit” should be revised so as not to require the developer of 165 unbuilt units to have 165 votes;
2. The Board nomination provisions of the Radburn By-Laws should be revised to eliminate the Nominating Committee and allow for self-nomination by all homeowners in good standing;
3. The provision that purports to give the current Board president the authority to extend Board members’ terms, and thus limit the seats to be filled by open nominations and elections, should be declared null and void; and all four seats should promptly be filled by an open nomination and election process involving all Radburn owners;
4. The provisions that purport to give former Radburn members exclusive access to working sessions of the Board and to give them an exclusive advisory role should be declared null and void;
5. The provisions regarding amendment of the By-Laws should be revised to reflect the specific requirements of state law that Members have the right to be notified of all Board amendments to the By-Laws and their right to veto, by a 10% vote, any Board amendment not necessary to bring those By-Laws into consistency with state law.
6. The provisions governing replacement of trustees who fail to complete their terms should be revised to declare that the replacements will be selected by the current Board from the entire group of Radburn homeowners in good standing, not just the Advisory Committee.

In addition, we request that DCA further advise the Radburn Association that the presentation to Members of Association financial records such as receipts, bills, and expenditures in summary or redacted form is not sufficient to meet the financial disclosure requirements of PREDFDA; that all Member must be allowed full access to the Association’s financial records; and all Members must be allowed to make and retain copies of them. Furthermore, we request that the DCA advise the Radburn Association to end the process of avoiding public Board votes, and governing instead by closed sessions in which a quorum of the Board is present and it is alleged that “consensus decisions,” not votes, have been reached. It is our position that even a so-called “consensus decision” is required under PREDFDA to occur at a public meeting and to involve an actual vote by the Board.

It is also our position that Radburn’s By-Laws may be brought into consistency with state law either by declaring the May 2017 amendments null and void, and substituting those amendments attached as Exhibit D, or by simply amending the current By-Laws as proposed in Exhibit E. Radburn United would prefer the first more simple alternative, especially if DCA agrees with Radburn United that the May amendments were a violation of the Original Members’, including the Board of Trustees’, fiduciary duties to all Radburn unit owners and therefore should be regarded as null and void. Therefore, we respectfully request that DCA rescind the May By-Law Amendments and monitor Radburn’s first full democratic election to ensure that it occurs in accordance with PREDFDA, as amended in July 2017.

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