

(From: "Melissa M. Garcia" January 3, 2020)

RESPONSES TO QUESTIONS ASKED AT FIRST COMMUNITY MEETING REGARDING DRAFT GOVERNING DOCUMENTS

- Request to increase quorum

Response: Currently quorum is very low (only 10 Members have to show up per Article VI, Section 6 of current Bylaws). Under the new Amended and Restated (“A&R”) Bylaws (Section 4.5) we already increased quorum to 5% of membership. There was a request to increase it even more, but no specific % was provided.

Keep in mind that if no quorum is listed in the Bylaws, then the default quorum under requirement under the Nonprofit Corporation Act (“Nonprofit Code”) is 25%. The Nonprofit Code applies to Gunbarrel, whether it is a CCIOA community or not. If you still wish to be under CCIOA, then the default quorum requirement under CCIOA is 20%.

Comment that the Declaration gave the Board more power

Response: Except for as discussed below, there are no new powers given to the Board that aren’t already permitted under either the current governing documents or the Nonprofit Code (i.e., even if the governing documents were not updated then the Board would still have the same powers under the Nonprofit Code).

The powers of the Board listed in Section 7.1 of the A&R Bylaws are all already available under Article VI of the Articles of Incorporation, and under CRS 7-123-102 of Nonprofit Code except for the following:

(b) Adopt and amend Rules and Regulations, including responsible governance policies, procedures and rules, and regulations as required by the Act, and including penalties for infraction thereof;

(h) Provide Association disclosures required by, and pursuant to, the Act;

(p) Provide education to Owners on an annual basis; and

The three exceptions listed above *would be permitted under CCIOA*, if you chose to be a CCIOA community.

Subsection (h) and (p), and the responsible governance policies requirement under Subsection (b), would actually be *required* under CCIOA, as legislation intended to make the boards act in a more transparent manner.

One other change is that the power to borrow money, listed as Section 7.1(k) of the A&R Bylaws, lowered the owner approval requirement for borrowing money from 60% of the owners to a majority, assuming at least a quorum of members is voting.

- Comment that the Attorneys' Fees provision should not be included:

Response: As requested we drafted the A&R Declaration *to be consistent with CCIOA*. The attorney fees provision in Section 8.3 of the A&R Declaration is taken from CRS 38-33.3-123. If you did not wish to be a CCIOA community then there is no similar right to attorney fees under the Nonprofit Code.

So, if Gunbarrel was a CCIOA community and sued an owner for violation of the governing documents, or if an owner sued Gunbarrel for violation of the governing documents, then the prevailing party would be awarded their attorney fees. If you were not a CCIOA community, then the court would not be required to award attorney fees to the prevailing party.

- Comment that the new A&R Declaration provisions were more restrictive and more burdensome and question of why the Board removed the requirement in Section 23 of the current Declaration which pertains to adding restrictions that are more severe or that make the Declaration more difficult to comply with?

Response: Section 23 of the current Declaration states the 60% Owner approval requirement for amendments to the Declaration, but adds that:

...the Architectural Committee and its functions shall not be eliminated and *any such amendment shall not have the effect of rendering said restrictions, covenants and conditions more difficult to comply with or of imposing more severe restrictions.*

The question was why did the Board remove this restriction?

First, I do not believe anything was added to make the existing restrictions, covenants, conditions “more difficult to comply with” or impose restrictions that were “more severe” than the current restrictions. By *adding new* restrictions, or *clarifying existing restrictions*, or *adding new enforcement* remedies, the

Association is not making the existing restrictions “more difficult to comply with”. I believe any revisions to the existing restrictions were to either clarify them or bring them into compliance with CO law, and some actually made the current restriction less difficult to comply with. Also, the new restrictions seem similar in strictness and severity than the current restrictions.

If, on the other hand, the community does not want any of the new restrictions, or dislikes the clarification of the current restrictions, or doesn't like the new enforcement remedies, then they can certainly be taken out. That was the purpose of the informational meeting. The letter with the summary of revisions already listed what was new, what was clarified, and what was revised, but we thought it might be helpful to pull out the new restrictions and new remedies, just so you could see what was actually brand new:

New Restrictions

- New standard leasing regulations (Section 5.4) – Actually, this is more of a clarification of the current leasing restriction in Section 2 of your current Declaration, which already prohibits leasing anything “other than an entire residence as a single unit to a single family” and already prohibits subleasing.
- New nuisance provision (Section 5.8)
- New rain barrel provision (Section 5.20) – This was added per updates to CCIOA. However, if you do not want to be a CCIOA community you should remove this provision.
- New prohibition against using Lot for growing or distributing marijuana (Section 5.21). Current CO law allows growth and use of marijuana subject to certain restrictions. If this still a desirable restriction then you should consider simply restriction marijuana *except as currently permitted under CO law*.
- New limitation on use of association's name/logo in connection with services of Owner (Section 5.25)

New Enforcement Remedies Added

- New authority to levy fines (Section 5.2). If you still wish to be a CCIOA community, then this would already be permitted under CCIOA.

- New self-help provision (Section 5.5). The discussion at the meeting was to keep this authority, but only permit it during limited circumstances (i.e., when property is abandoned, or bank-owned property after a foreclosure, or only pursuant to a court order if property is not abandoned).
- New right to adopt rules/regs (Section 5.23). If you still wish to be a CCIOA community, then this would already be permitted under CCIOA. As discussed at the meeting, rules and regulations are only clarifications of current restrictions under the Declaration but cannot be contrary to the Declaration. For example, your current Declaration (Section 4) and the A&R Declaration (Section 5.6) both allow “bone fide household pets”. The rules and regulations can clarify this term.

Also, here are the revisions to the current Declaration restrictions, for compliance with CO law:

- Revises satellite dish provision in Section 11 to comply with federal law. (Sections 5.7) – Actually makes the current restriction *easier to comply with* as owners are no longer required to obtain prior written approval before installing satellite dishes that are protected under federal law.
- Revises signs provision in Section 11 to comply with CCIOA. (Section 5.16) - Actually makes the current restriction *easier to comply with* as it allows owners to install political signs, whereas currently they are not allowed. However, this is a requirement of CCIOA. If you do not want to be a CCIOA community you should remove the new language permitting political signs.

Second, as to the question of why we removed Section 23, as requested we drafted the A&R Declaration *to be consistent with CCIOA*, which prohibits any amendment requirement that is outside of the range of a majority membership approval to 67% membership approval. In other words, we removed Section 23 of the current Declaration because *such provision would be contrary to CCIOA*.

Finally, although we’re only discussing the new/revised restriction in the Declaration, note that most of the changes necessary to comply with current applicable CO law (i.e., the Nonprofit Code) *are set forth in the Bylaws*. And, as you know a number of revisions were simply to place the right language in the right document. For example, the assessment language was shifted from the Articles to the Declaration in order to be consistent with CCIOA. If you no longer want to be a CCIOA community, then this shift is not necessary.

- Question of why do this at all?

Response: This is for Board response; however, as I recall from our earliest discussions the Board wanted to comply with updates to Colorado law (including CCIOA and the Nonprofit Code) to ensure the appropriate provisions were placed in the correct documents and to remove duplicative and obsolete provisions, to add more enforcement teeth, and to reflect what the Board/Doc Amend Committee determined to be the current practice and needs (this is where the new restrictions came in) of the Community. And, I do recall that both Mike Dorsey and myself went over some of these reasons at the informational meeting.

- Request to remove all covenants and simply defer to Boulder ordinances. The specific ordinance in question that came up related to lighting (but I don't seem to have any details on this item). The request was to change the approach so that instead of having any covenants can the Association simply rely on Boulder ordinances and have Boulder enforce its own ordinances?

Response: You can certainly move forward with that approach, but some important factors to consider:

- o Boulder's ordinances do not cover all the same restrictions as in your current Declaration. So review the current Declaration for any gaps and determine whether to keep the current language or delete it
 - o Boulder's ordinances may also cover similar restrictions as your Declaration but might be less strict than you would like (potential examples – home businesses, short term-rentals, marijuana, etc.). So if you want something *stricter* than Boulder's ordinances, then you will need to add the stricter language to your Declaration.
 - o Boulder ordinances could change. So if you simply defer to Boulder, then you are also deferring to any changes in Boulder's ordinances.
- Request to dissolve the Association

Response: The Association may consider this. However, keep in mind that dissolving the Association simply removes the entity that takes action on behalf of

the Members; the current covenants still stay in place unless you terminate the covenants. So if, for example, an owner is violating the current covenants regarding rentals, and the Association had been dissolved, then there will be no entity to enforce that covenant. A complaining owner would have to file a private lawsuit against the violating owner.

Dissolution requires approval by 60% of the entire membership.

- There were several general comments against the changes for your consideration and response:
 - Comment that the covenants were narrowly drawn and have worked thus far, why change it?
 - Comment that the HOA doesn't bring value to the community
 - Comment that homes have not gone down in value over time, in fact they've gone up, why change anything?

Comment that certain elements have been brought in over time (certain paint colors, multiple outbuildings, etc.) Would these be grandfathered in?

Response: Yes. You cannot apply building restrictions retroactively. Any new restrictions would apply moving forward. You would catalogue those current noncompliant buildings, and not enforce them moving forward; however, you would enforce any new violations.

There was some comment about the front light posts

Response: I apologize but I don't have any additional notes on that.

There was a comment that the nuisance provision in Section 5.8 was too ambiguous.

Response: Ambiguity is needed in some places as you would never be able to clarify all the actions or behaviors that would qualify under a particular provision, such as a nuisance clause. My recommendation would be to list some examples in the Declaration, and then clarify further in the rules/regulations.

- There was a comment about Airbnbs.

Response: Currently there is no prohibition against airbnbs, so this should be added if desired.

There was a comment about a certain number of Lots that seem to “have been left off as part of the community”. There was a question of whether they could be removed from the Gunbarrel community?

Response: Property can be removed from the Gunbarrel community in the same manner, and according to the same processes, as an amendment to the Declaration.

There was a request for a different approach to the document amendment project: To redline the current governing documents and add in only certain new provisions that are either required by current applicable Colorado law, or are desirable by the community after meetings with the community.

Response: You can certainly move forward with that approach. As you know I had recommended a document amendment committee be created to discuss such “desirable” additions, and as I understand it the Board had solicited membership for such committee and based its decision on the committee’s recommendation after discussing with the community. So, that piece wouldn’t necessarily be a new approach, but perhaps there would now be new membership on the current document amendment committees. The redlined approach is new and can certainly be done.

The above were all the comments I had. As you know several homeowners submitted comments before the meeting (and possibly after?) directly to either Mike or the Board, so those comments, plus the ones I’ve listed above, should be considered at the next Board/Doc Amend committee meeting.