

Bauer Crest Homeowners Association
ANNUAL Board Meeting
January 31, 2019

Attendees:

Board members: Bill McConnell, Katie Fairhart, Tessa Hanover, Frank Raimondi

Homeowners: Ron Coulam, Sharon Helms, Jane Rhomberg, John Eichelberger, Rich Reed, Jon Schaeffer, Cathy Raimondi, Sue McConnell

(Total households represented = 9)

Called to order: 7:00 pm

2018 Accomplishments

- Landscaping, including arborist to minimize danger
- Board membership up to minimum (5 members)
- Improved communications, new directory distributed
- Upgraded insurance coverage for board members, and common ground and entry wall/signs
- Full collection of member annual assessments

Vote summary

- Both questions failed
- 75% target was not met, but some confusion about what by-laws clearly allow
- Next time, according to lawyers, is that we could go with simple majority.

Property lines & other legal concerns addressed by lawyer

- Need to understand responsibility of common areas behind white fence.
- Board member requirement
- Copy of questions & answers at bottom of report.

Financial Reporting: (Katie)

- Annual assessments were due today, 26 still outstanding
 - o Late fees effective March 1 if not paid by then
- Year end, \$5600 balance, to be carried forward to cover some expenses, including new trees at bottom of 128th.
- Hoping for balance to allow for fence washing
- Challenge because of 5% limit to annual assessment increase, can't really do what is needed.
- No suggestions for movement of budget
- Motion moved and approved – 12 – 0 vote (Frank: actual number is limited to one vote per lot. I think it should be 9-0. Modify according to the sign-in sheet.

Landscaping (Frank for Michael)

- Stump being removed from plum tree this Friday

- Two new trees will be planted at bottom of 128th next week
- Power washing of fence being evaluated, original bid to be reevaluated. #1 priority for landscaping, budget allowing.
- Leak in sprinkler system needs to be fixed; but a lot of heads were replaced, new wifi-connected controllers are in place that enables better management.

Architectural: (empty – Bill acting)

- Pretty light activity in 2018, some roofs, fences, other light activities
- A couple trees removed without approval, neighbor notified.
- Idea to have architectural guidelines reviewed, what can be made clearer via the guidelines and CC&Rs. Ron Coulam has agreed to participate, no other neighbors have volunteered

Hospitality (Tessa)

- No updates

2019 objectives

- To have a new vote for annual assessment increases
 - o Need to have plans for increase by September
- Reserve study should be updated, neighbor Steve Marks has volunteered to lead effort
- Architectural guidelines revision/review

General Topics/New Business:

- Kids hopping over fire lane fence; risk of liability
- Bill to try and speak to Hopkins family to advise of risks, and get update on plans for access.

Board Status

- Nominations – anyone interested?
 - o None provided

MEETING ADJOURNED

8:35 pm

NEXT MEETING

- Quarterly Board meeting
 - o April 2019 – date tbd

ACTION ITEMS:

- N/A

Jordan Ramis PC
Two Centerpointe Dr., 6th Floor
Lake Oswego, OR 97035
Tel. (503) 598-7070
Fax (503) 598-7373
www.jordanramis.com

LEGAL MEMORANDUM

TO: Bauer Crest Homeowner's Association Board of Directors;
Bill McConnell, President

FROM: Matthew D. Lowe and D. Adam Anderson

DATE: January 30, 2019

RE: Questions Regarding HOA Governing Documents
File No. 52857-75511

Introduction

In advance of Bauer Crest's (the "HOA's") annual meeting on January 31, 2019, your email to us of January 18, 2019, posed a variety of questions relating to the governing documents of the HOA. For ease of reference and review, we have reproduced those questions here and provide answers below. Please let us know if you would like to discuss any of these matters further upon review.

Our answers are based on our review of relevant Oregon law, the Amended and Stated Declaration of Protective Covenants, Conditions, and Restrictions for Bauer Crest, dated December 2, 2011 (the "CC&Rs"), and the 2007 Amended and Restated Bylaws of Bauer Crest Homeowners Association, as amended by resolution dated January 22, 2012 (the "Bylaws").

Question 1

"We recently did a ballot asking for an increase of greater than 5% in the annual assessment, in accordance with our amended by-laws. I used previous ballots as a guideline for wording of the ballot and we required an affirmative vote of 75% of all the homeowners in order for the measure to pass. However, looking through our by-laws I can only find reference to a 75% vote when voting to increase contributions to the reserve fund. Everything else seems to be a simple majority of people attending a duly called meeting or ballot in lieu of meeting. Can you please clarify this for us? Since the vote failed to achieve 75%, we plan to try again next year and want to make sure we are following proper procedures but not overburdening ourselves."

- The answer here depends, in part, on whether the increase at issue was a general “Annual Association Assessment” for common expenses governed by Article 11 of the CC&Rs (an “AAA increase”), or a specific increase to contributions to the Reserve Account for Major Maintenance, Repair, and Replacement governed by Section 11.8 of the CC&Rs and Section 8.2 of the Bylaws (a “Reserve Assessment increase”).
- Section 11.3 of the CC&Rs requires adoption at least annually by the HOA Board of a budget to cover common expenses, subject to adoption of an amended or special budget if all or any part of the current budget proves inadequate to meet common expenses. Member AAAs are established and calculated under Section 11.5, by reference to the annual, amended, or special budget in question. This process does not require any member vote at all, and AAA assessments are made by resolution of the HOA board, subject only to various notice and timing requirements. Sections 11.5; 11.6. A January 22, 2012, resolution to the Bylaws establishes a 5% cap on year-to-year AAA increases.
- Common expenses include annual Reserve Assessments established by Section 11.8. See Section 11.4(d). The annual budget presumably includes a line item for Reserve Assessments, comprising a part of each member’s total AAA. Section 11.8(c) requires an annual study/ review by the HOA Board of the reserve account, and the Board may adjust Reserve Assessments based on such findings without a member vote. Section 11.8(c)(1)(A).
- Separate and in addition to the above-described budget and reserve assessment authority of the HOA Board, the Association members may also on their own initiative vote to increase or decrease future Reserve Assessments (with a 75% Owner majority) or to skip entirely an annual Reserve Assessment (with unanimous Owner consent). Section 11.8(e). These provisions are also found at Section 8.2 of the Bylaws. We read this provision to operate essentially as a check by the members on Board decisions concerning Reserve Assessments.
- In sum, if as part of the HOA Board’s annual budgeting and reserve review processes, and if consistent with the applicable budget, a general AAA increase of up to 5% from the previous year is simply part of the Board’s budget and assessment authority, and requires no member vote at all. This appears to be the case even if a 5% AAA increase were wholly attributable to an increase in the Reserve Assessment, if necessitated by findings of the annual reserve study.
- If, however, the Board wishes to approve a greater than 5% annual increase in the total AAA assessment, then the 2012 Board resolution amending the Bylaws now requires owner approval. We believe that only a simple majority

approval by owners would be required for such an increase, unless the portion of the total increase attributable to the Reserve Assessment was itself in excess of a 5% increase over the previous years' total AAA assessment.

Question 2

“Does Article 4 of the CC&R’s prevent homeowners from placing fences, landscaping or other personal use items on the common grounds? Does it also prevent the board from granting approval for such? And assuming the answer is yes to both of these, does it mean that a previous board authorization for a fence on common ground is invalid?”

- Yes, Owner-installed fences, landscaping, or other permanent personal use items on the common grounds would constitute a “private use” that is prohibited by Article 4. Section 4.4(a)(1). Use of the common grounds cannot be “obstructed” by any Owner. Section 4.4(a)(3).
- Yes, the Board is prevented from granting an Owner approval for a private use, though it may adopt rules concerning the use of the common areas by non-owners, or by those permissibly delegated by Owners the right to use the common areas. Sections 4.4(a)(2); 4.5.
- Assuming that the previous board authorization for a fence on the common areas was for a specific Owner’s private use, that prior authorization would appear to be invalid.

Question 3.

“A nearby HOA ran into trouble when trying to block the establishment of a day care in a home in their neighborhood. ORS 93.270 was cited. When I read 93.270, it all seems pretty clear until I get to the part at the end where it talks about governing documents adopted after January 1, 2018. How does this law affect our HOA? Does that 2018 date somehow exempt us? Should we adopt a policy of having our governing documents reviewed on a regular basis, such as every 5 or 10 years in order to make sure we are keeping up with the laws?”

- ORS 93.270 prohibits various discriminatory practices and use restrictions in deeds and planned community declarations. This includes restrictions on various statutorily-defined child day care facilities. ORS 93.270(1)(b). Any such restrictions are void and unenforceable. *Id.* at (2). The prohibition of day care restrictions specifically was added to the statute in 2017, effective January 1, 2018, by 2017 Or Laws c. 221. The prohibition applies to HOA governing documents adopted on or after the January 1, 2018, effective date. 207 Or Laws c. 221(7).

- The current CC&Rs appear to at least potentially restrict day care uses, allowing only “residential uses” to the exclusion of any “trade, craft, business, profession, commercial, or similar activities,” unless the HOA Board consents to such use. Section 8.1(b). Such consent can be granted only if clients of the business “do not regularly visit” the community, or “will not unreasonably disturb” other owners/ occupants. Section 8.1(c).
- The current CC&R restrictions appear to violate current ORS 93.270, but the fact that the current CC&Rs were adopted prior to the January 1, 2018, effective date operates to preserve the existing restriction. Later adopted/ restated declarations or changes to HOA governing documents would, however, be subject to the new prohibition on such restrictions.
- Whether you adopt a formal policy or not, we would recommend as a best practice that the HOA’s governing documents be reviewed for legal sufficiency on an annual basis (budget allowing), but no less often than every 5 years. Certainly, any desire to amend or restate the documents should be accompanied by a legal review. We do keep abreast of legal developments in this area, and as able will inform our clients of relevant upcoming changes.

Question 4

Our by-laws state that the Board shall consist of a minimum of 5 members and a maximum of 7. What happens if we do not have minimum 5 Board members? Is it even possible for a Board member to resign, if that leaves the Board short? If the entire Board were to resign what would the state or county do?

- You are referring to Section 4.1(a) of the Bylaws. As a nonprofit corporation, vacancies on the board are governed by the default provisions of ORS 65.334, unless the bylaws state otherwise. Here, Section 4.3 of the Bylaws would control the election of vacancies on the board.
- A director may resign, or can be removed by members/owners, even if it would temporarily result in less than the required number of directors. Both ORS 65.334 and Section 4.3 of the Bylaws contemplate a situation in which only a number of director constituting less than a quorum could be left on the board due to resignation or removal (e.g., only two left on a required five member board). In all cases (whether or not a quorum remains), Section 4.3 allows vacancies caused by resignation, and no director would be required to continue to serve if resignation would reduce the board below its required minimum seats.
- If a vacancy is caused by resignation (or any reason other than removal by owner vote), such vacancies shall be filled by majority vote of the remaining directors (whether or not a quorum remains), and those new directors shall serve for the remaining term of the resigning director. Section 4.3.

- If a vacancy is caused by owner removal, the owners shall vote in a replacement director at the meeting called to remove the removed director, or else the Board president may call a special meeting for that purpose. Section 4.4.
- As a mutual-benefit nonprofit corporation (as distinct from a charitable, public-benefit nonprofit corporation), the Oregon Department of Justice has no oversight authority over the HOA. In the event of a full resignation of the Board, we are aware of no immediate state or County consequences. The then-existing CC&Rs would remain in effect, and the Owners would have the authority to call a vote and seat a new Board.