

08/27/2024 07:57am

Dear Mr. Gee,

A debate, what a wonderful idea. I love a good debate.

- Sparring means “make the motions of boxing without landing heavy blows, as a form of training” or “engage in an argument, typical of a kind that is prolonged or repeated but not violent.”
- I feel that “sparring” is an apt description as some of our discussions were not apple pie and ice cream.

For example, here is an email exchange between the board and me.

On Mar 4, 2024, at 12:50 PM, Eagles Landing <hoa-eagleslanding@outlook.com> wrote:

Hello Mr. Mark,

Thank you for your email. The Board has received several emails from you referencing failures and problems without any suggestions for solutions. Can you identify anything good within the drafted Bylaws? Have you researched a path forward to changing the Bylaws or do you propose we leave them as is?

If you feel the community is best served by the current bylaws, which give 1.2% of the community the power to dictate everything that happens, then by all means vote against changing them.

However, in my opinion no matter how vigorous of a campaign you plan to launch I doubt you will get majority of the neighborhood to vote against something clearly drafted for their protection.

As it currently stands, our Board could meet today and decide to have a special assessment of \$1000 due payable by 235 homes in two weeks. The current bylaws give too much power to 1.2% of the community.

There will be some additional edits made, however, we have compiled these changes over the course of two years. These changes are necessary and include all the suggested edits people in the community have requested collectively not just the people we like. We held a meeting to discuss the changes and majority of the people in attendance understood why a representative Board is in the best interest of the neighborhood as a whole.

The Board created a committee allowing people to volunteer and have input on changing the Bylaws. Not one person who currently has an issue volunteered to help. Most people never read the existing Bylaws until they were displeased with some of the current Board's decisions which speaks volumes in my opinion.

Do you know we postponed the vote and opened the floor for comments, and you are the only person who responded? We have demonstrated over and over again that we are operating in the best interests of the community and we welcome community involvement. It is obvious some people don't really care; they just want to complain when the Board doesn't do exactly what they want.

All the committee members have full-time jobs in addition to volunteering and I personally think we did an amazing job. I'm sorry you are so displeased with the bylaws, but it is in the best interest of majority of the community that we move forward with changing them. We are looking into changing all of our governing documents if necessary to make sure everything is legal and uniform across the board.

Again, thank you for your diligence and I hope you have a great week.

Sincerely,

Nichole Gee

Executive Board President/Liaison | Eagle's Landing Prairieville

HOA-EaglesLanding@outlook.com

Here was my response:

Hi Nicole,

- 1) My problem is with the way the amendments read. Please don't take my comments personally- they have nothing to do with you.
 - 2) To a large degree, I have told you how to fix the issues. In the first comment, I specifically stated that the Declarations needed to be changed to remove power from the Board to raise assessments, either regular assessments or special. Otherwise, what you grant to the Owners in the Bylaws is overridden by the Declarations. Unless you change the Declarations at the same time that you change the Bylaws, the "benefits" achieved by virtue of the amendments to the Bylaws are illusory, because the Declarations are a higher ranked document.
 - 3) In the second comment, I suggested that the way to fix the problem was to amend the Articles to reflect that the Owners have the power to elect some or all of the Officers.
 - 4) Here is a possible solution to remedy my complaints in today's comment. Increase the number of directors to 6. If serving two year terms, elect three in odd number years and three in even numbered years. But you must allow all of the Owners to vote each year. With minimal changes to the current Bylaws you could even increase the terms to three years. The main problems arise from the pooling arrangement that you've tried to implement. The pooling impairs the only real protection that Owners have- the power to elect directors.
 - 5) When I first read the proposed amendments, I thought that it might be a good idea to have representation from different parts of the neighborhood. But after reading the proposed amendments closely, I realized that Board members are only required to live in the subdivision. See Qualifications. They are not required to live in the Phase that they are elected to represent. This amendment appears to apply only to the voting Owners. Frankly, I have no idea what you're trying to accomplish. But I know that the proposed amendments do not ensure a more diversified representation.
 - 6) The community documents work together. You can't just change one without determining how those change impact the other documents- and adjusting those other documents accordingly.
- Mark

I feel that exchanges like the one above fall squarely within the meaning of "sparring."

- Although you indirectly acknowledge that the proposed voting regime dilutes voting rights, you rationalize it by stating:
"In a representative democracy, the percentage of representatives will never be equal. Why is this concept good enough for America but not good enough for this neighborhood?"
I have two responses:
 - 1) we are an HOA and not America writ large; and
 - 2) our documents contain a specific provision that mandates equality of each vote.
- You may very well have been trying to draft a domicile provision- something like "in order to run for office in a particular filing you must own a lot within that filing." However, your use of "shall only represent a phase in which they are owners" can be construed in more than one way. It is well established that ambiguity in a document is always construed against the drafter, which in this case would be the HOA. I strongly urge you correct such ambiguities.
- You talk about changing the current bylaws to allow members to elect the President. Yet you ignore La.R.S. 12:225(A)(1) that provides "[t]he board of directors shall elect a president, a secretary

and a treasurer and may elect one or more vice presidents.” Emphasis Added. Do you have any legal support that allows us to ignore the above-described statute?

- You are correct about one thing. Instead of saying that the HOA is one year and four months behind in calling an annual meeting to elect new board members, I should have said that the HOA is four months behind on calling an annual meeting to elect new board members.
- From where I sit, in the cheap seats, it appears that we have one undisputed board member, as Ms. Gee’s term ended in the spring of this year and Daphne Anderson stepped down on June 18, 2024. This would mean that the current board is improperly constituted- as both the statutes that govern nonprofits and our governing documents require three board members. Since a properly constituted board is needed to approve by resolution the proposed new bylaws and to submit them for a vote at a special meeting, I respectfully submit that real problems exist with that resolution.

I will gladly respond to any other comments, questions or complaints that you may have.

Mark Starling

From: Eagles Landing <HOA-EaglesLanding@outlook.com>
Sent: Monday, August 26, 2024 12:20 PM
Subject: Fw: Response to Proposed Bylaws

Dear neighbors,

I honestly can't believe it has come to this.

I never considered our communications with Mr. Starling as "Sparring", I thought we were having a healthy debate.

Most of the changes made to the drafts of the current bylaws from the previous version were made because of conversations with Mr. Starling. It is EXTREMELY disingenuous for Mr. Starling to contribute to the changes in rational cordial conversations and then represent to the neighborhood that we were combative and refused to make changes. It is also disrespectful to name-call and to claim a lack of transparency when we spent hours on the phone trying to work through these issues with him. But now we know your true colors and will function accordingly.

These bylaw revisions have been reviewed, and comments have been solicited from community members on multiple occasions. This is what took so long to bring them to a vote. The opposition would have you believe that we are operating in a vacuum without transparency. This is because they have an agenda. I can only speculate what that agenda is. What I can tell you is that I do not believe THEIR agenda is what's best for the neighborhood as a whole but will serve only those with this agenda. This is the purpose of the attempt to put a representative board in place.

To uphold the equality of the homeowner vote, we have written into the bylaw revisions that the Community and not the Board will elect the president. In a representative democracy, the percentage of representatives will never be equal. Why is this concept good enough for America but not good enough for this neighborhood? I believe that it disrupts the agenda. I believe that there is a group of neighbors that would like to flood the offices of the board to serve themselves and not the neighborhood. If I'm incorrect, then we should be able to somehow ensure/guarantee that we all are represented on the board and not be served by those with only like-minded ideas and allow them to run roughshod over the rest of the neighborhood. We should welcome new Ideas (Like I did when I accepted many of Mr. Starling's recommended changes to the previous bylaw revisions).

The phrase "shall only represent a phase in which they are an Owner." New Bylaws 2.3.1 is not meant to suggest that a board member should only consider the phase they represent in their decisions but to identify that you must be an owner in the phase that you represent. The people walking around the neighborhood spreading lies about the current board do not have your interest at heart. I submit that if they were truly concerned with what is best for you, then they wouldn't be scheduling secret meetings to pass on their misinformation but would welcome a forum where we could explain the method and reasoning for our efforts. But Mr. Starling and several of his cohorts haven't attended the meetings that the board has held. This could explain why they believe that we haven't had an annual meeting. **They don't show up.**

Please take note that I have been able to get through this communication without calling Mr. Starling or anyone out of their name. I believe that we should be able to disagree without being disrespectful. But hey, maybe that's just my integrity. If Mr. Starling or any of my opponents cannot communicate with the same respect that I have, take from that what you will.

Hernando Gee

Bylaws Committee Chair

----- Forwarded message -----

From: **Concerned Neighbors** <eagleslandingla@gmail.com>

Date: Mon, Aug 26, 2024 at 11:27 AM

Subject: Response to Proposed Bylaws

To:

Greetings Neighbors,

As you have seen in other emails, a special meeting was called to vote on proposed bylaws on September 6th at 5:30pm at the Galvez Library.

We wanted to share this document regarding some of the proposed changes to the draft bylaws.

This document and the proposed bylaws are attached to this email.

We hope this helps everyone make an informed decision at the special meeting.

Thank you for your time and consideration.

Dear fellow neighbors:

This isn't the first time that I've had to fight with our current board to correct proposed bylaws. If you look at the previously proposed bylaws, which were purported to be "ready" to vote on, you will see that they differ dramatically from the current version. Although the board fixed numerous problems in the previous iterations, some old problems remain, and new problems have emerged.

First, the board claims:

"The proposed Bylaws put a cap on how much the Board can raise dues without your vote!"

The current Bylaws allow 3 people to raise dues as high as they want without your permission."

As a fact checker, I would give that claim four Pinocchio's for being misleading.

Bylaws typically don't create substantive rights. Instead, bylaws establish when, where and how an organization functions. Substantive rights are established in the Declaration of Covenants and Restrictions (Covenants), which always outranks the bylaws.

With respect to regular assessments the Covenant's states in pertinent part: *"If during the course of the year the Board determines that regular assessments are insufficient to cover the estimated expenses for the remainder of the year, the Board may increase regular assessments in an amount that covers the estimated deficiency."* The only limiting language appears to be "in an amount that covers the estimated deficiency." This is hardly a limit because the Board gets to estimate the deficiency.

But don't worry- our board is coming to the rescue. The proposed bylaws (which are inferior to the Covenants) prohibit the board from raising regular assessments "beyond the allowability expressed" in the Covenants. So, under the new bylaws the Board can estimate the amount of any deficiency and raise regular assessments accordingly. If you're wondering exactly what the Board has accomplished, don't worry you're not alone.

Similarly, the language in the Covenants allows the board to raise special assessments for "expenses not anticipated by the annual budget or reserve funds." Although they claim to have placed a cap on any future board's ability to raise special

assessments, you simply can't cap something that has no discernable limit. Besides, bylaws are inferior to Covenants and whenever there is a conflict the Covenants prevail.

This isn't the first time this board, and I have sparred over this issue. A previous version contained something similar. I bring this up to show that our board is aware of the problem yet remains unforthcoming and nontransparent.

The newly proposed system of voting based on dividing the neighborhood into filings will dilute our vote.

Number of Lots in Each Phase	Total Number of Lots	Percentage of Total
96	235	40.9%
64	235	27.1%
75	235	32%

As you can see the percentages differ wildly, yet each Phase elects two Directors. The pooling creates unequal voting power among the Phases when electing Directors and violates the Declarations' mandate that "[e]ach vote is uniform and equal to the vote appurtenant to every other lot." Declarations 7.6 Voting. This is a small neighborhood. Any benefit from an increase of diversity of viewpoint based on street addresses, which in some cases may only be a few hundred feet, will not outweigh the impairment of our voting rights.

On a related note, the new bylaws mandate that directors "*shall only represent a phase in which they are an Owner.*" New Bylaws 2.3.1 However, Directors owe a fiduciary duty to all members of the association, to represent all of us fairly, transparently and even handedly. New Bylaws 4.1 The new proposal puts Directors between a rock and a hard place and should be amended.

As stated above, I don't believe in this voting approach. But assuming for the sake of argument that a majority do, they still need fixing.

The phrase "majority in interest" is a term of art. It "means members whose percentage interests aggregate to greater than fifty percent of the interest of all members." If you read New Bylaws 2.2 as written, we would need 49 lots from filing one to be present at an annual meeting to elect the directors for that filing. The

other two filings would have the same turnout problem. Considering how difficult it is to get people to participate, this cannot be the outcome we desire.

On a different note, the new bylaws call for staggered terms yet provide no mechanism to establish the “stagger.” New Bylaws 2.2 The article needs to be amended to read that for the initial vote only, the Board members receiving the second highest vote for each filing will serve a one-year term. This would enable the board members to run for a two-year term the following year, which would be in this case would be the odd numbered year.

A quorum is a minimum number of members of an organization that must be present to ensure the validity of any of its meetings. Without a quorum, the organization must adjourn the meeting until a quorum can be gathered. The proposed new bylaws purport to allow the Association to conduct meetings without a quorum if they give the members a chance to object later. New Bylaws 5.8. This is a highly unusual and radical approach; I would need to see solid legal support for this proposition before I would back it with my vote.

As an aside, the new provision discussed above appears to conflict with the next provision, New Bylaws 5.9, as that article requires a quorum for a vote of the owners to bind all owners.

In conclusion, there are remaining problems. But I’m tired of writing.

We have not had an annual meeting for over two years. The terms of the members who presently make up the board have expired and yet no meeting has been called. The board is required to have three directors, yet we only have two directors. Nevertheless, this board is approving new bylaws, calling for special meetings, alienating yet another management company and generally making a horse’s ass out of themselves. I’m on board with a new set of bylaws- done the right way. But this board has repeatedly shown that they aren’t the board to accomplish it.

Please vote no!

Thanks,
Mark Starling