

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