

Douglass Ranch Property Owners Association

Board Meeting Minutes

July 31, 2002

Meeting called to order 7:05pm

Members Present: Larry, Rusty, Greg & Bryan

Guests Present: Mike & Cathy Reinberger, Jane Spooner, Gayle Hite

Committee Reports:

1. Treasurers Report

- Discussion and motion around the need for a continuous controller role for a non-board member who would be interested in staying with the role from board to board. This would add consistency to our books and accounting. It was moved that this role would function like a Treasury Committee. Motion was seconded and passed unanimously.
- Greg presented a Funding Solutions chart for funding new road paving in the future. There were 6 potential scenarios to consider. Discussion and motion about presenting the two most likely scenarios to members at the general meeting was seconded and passed unanimously.

2. Roads Report

- Our first estimate to repair several spots on our roads was presented from Ragsdale Paving at around \$5500.
- Larry is also getting estimates and timing for crack repair.
- Our snow plowing contract has expired and we are getting bids for service now with a preference for Ragsdale as he has done a good job for the past few years.

3. Hospitality Report

- Discussion was about weather to provide funds "as needed" for the picnic or set a budget. Larry does not want Douglass Ranch to pay for this year's picnic but would like to host the event at his cost. The board reluctantly but gratefully accepted his kind offer.
- It was decided that the board will attempt to rent Elk Creek Elementary for our annual meeting slated for September 26, with a September 25 backup date.

4. Water Report

- Discussion to develop a plan on changing our covenants now that the 600-foot well depth clause can be legally changed was tabled.

5. Design Review Report

- Progress is on schedule for lots 26 and 33 with \$800 still due from Barth.

6. Forestry

- Discussion was about how to best thank the fire department for their work in keeping our houses from burning. It was decided Rusty would call the department to ask them how we best can thank them before we make a final decision. A motion was made and seconded that should the department want a donation that we should double the amount we usually give, going from \$200 to \$400. Motion passed unanimously.

Old Business:

1. Easement Issue on Lot 19

- Survey was completed on the new easement and the report is due any day. Rusty stated how he felt the Spooner's have chosen a better location with easier grades than the original easement location.

New Business:

1. Pond restoration on Gail Hite's lot.

- The board is waiting to get information from the Water Commissioner, Roger Mlovzik before we decide on the benefits to Douglass Ranch.

2. Motion was passed to allow Rusty to purchase some books on association procedures and such not over \$100.

3. Jane Spooner and Cathy Reinberger discussed the purpose and intent of the letter from CDR and specifically Jane's feelings that the current board's election was invalid. The board was not convinced, but agreed to follow more stringent rules in future elections and use the document as a guide for future decisions.

4. Greg brought up an idea to start a volunteer lay-fire department for Douglass Ranch. The discussion was tabled for a later date.

5. Larry wanted the board to think about defining new trailer rules for extreme fire hazard summers to allow people to have trailers ready to pull away if evacuated. Discussion was tabled until a later date.

Meeting was dismissed at 9:28pm

June 28, 2002

Douglass Ranch Property Owners Association
Board of Directors
P.O. Box 603
Pine, CO 80470

Dear Members of the Board:

In recent years issues have arisen due to Board actions and decisions. The seriousness of these issues has caused a concerned group of Douglass Ranch residents to seek legal advisement. We have enclosed a memorandum containing our questions and the answers from Toussaint, Nemer & Coaty, P.C., Attorneys at Law. Since we all live in a litigious society, our purpose in seeking this legal advice is to benefit the community by gaining information to help guide the Association so that applicable statutes and provisions are followed.

We would be glad to discuss with the Board the content of the memorandum and issues which we felt need to be addressed.

Sincerely,

Cathy Rheinburg
Jane Spover
Representatives, Concerned Citizens of Douglass Ranch

TOUSSAINT, NEMER & COATY, P.C.
ATTORNEYS AT LAW

MEMORANDUM

TO: Jane and Wayne Spooner for Concerned Citizens of Douglass Ranch

FROM: Eve Moulding Ashby, Esq.

RE: Douglass Ranch Property Owners Association

DATE: May 1, 2002

I. APPLICABLE STATUTES AND CONTROLLING DOCUMENTS

A. Declaration of Protective Covenants Conditions and Restrictions for Douglass Ranch, recorded 4/21/89 ("Covenants").

B. Articles of Incorporation of Douglass Ranch Property Owners Association, Inc., recorded 4/13/89 ("Articles").

C. Bylaws of Douglass Ranch Property Owners Association, Inc. (missing signature page and effective date) ("Bylaws").

D. Colorado Nonprofit Corporations Act, repealed by Laws 1997, S.B.97-91. Disposition Table references section of the Colorado Revised Nonprofit Corporation Act, C.R.S. section 7-121-101 to 7-137-204.

Section 7-137-101 states, "subject to section 7-137-101, articles 121 to 137 of title 7 apply to all existing corporate entities subject to articles 20-29 of this title."

Accordingly, most of the questions are answered in partial reliance upon the Nonprofit Corporation Act ("NCA").

E. Certain provisions of the Colorado Common Interest Ownership Act ("CIOA") are applicable to the Douglass Ranch Property Owners Association ("DRPOA"). See C.R.S. section 38-33.3-117, attached.

F. Order of authority:

The Board may alter, amend or repeal the Bylaws but not in a manner which is inconsistent with law, the Covenants, or the Articles. Members may alter or amend the Articles but not in a manner inconsistent with the Covenants. The Covenants prevail over the Bylaws. Where the Corporate documents are silent as to a particular matter CIOA (Colorado Common Interest Ownership Act) will control. Mandatory provisions of CIOA and the NCA (Nonprofit Corporation Act) will prevail over conflicting provisions in the corporate documents.

To the extent relevant provisions of CIOA (Colorado Common Interest Ownership Act) conflict with the NCA (Nonprofit Corporation Act), the provisions of CIOA shall control. C.R.S. section 39-33.3-319. In the absence of CIOA (Colorado Common Interest Ownership Act) coverage, the NCA controls.

II. GENERAL ENFORCEMENT INFORMATION

A review of your corporate documents and the relevant statutes reveals that there are no provisions that are "self-enforcing." For example, if a member casts her votes cumulatively, in violation of the Bylaws, there is no express provision that the election is therefore void or that the member's membership shall be revoked. Instead, as discussed below, enforcement of the provisions contained in the statutes, Covenants, Articles and Bylaws begins internally. The members bear the responsibility of keeping competent and trusted directors on the board who will conduct elections properly. The members may amend the Articles as necessary, and must also monitor the conduct of the board members and officers. To the extent members feel the Covenants, Articles and Bylaws are not being properly implemented and applied, the members can, for example, call an election for the purpose of replacing a particular Board member who refuses to comply with the documents. The members can also apply to a court of law for relief, as discussed below. Of course, litigation is unpredictable and often expensive, as the members pay for their own legal counsel and often end up paying for the Association's counsel as well. Again, the most powerful tool the members possess is the authority granted to them in the Articles of Incorporation, including the right to vote on corporate matters and the right to control the membership of the board of directors.

III. CLIENT QUESTIONS AND ATTORNEY RESPONSES.

1. *Is the annual meeting of the membership invalid if all members are not notified of the meeting?*

Action taken at an annual meeting for which not all eligible members received notice may be voidable, unless notice is waived or unanimous consent is obtained. According to Article V of the Bylaws, all members entitled to vote at the annual meeting *shall* receive written or printed notice, personally delivered or mailed, of any meeting stating the place, day and hour of the meeting, and the purpose(s) for the meeting. On the face of the Bylaws it appears, therefore, that action taken at the annual meeting will be not be effective unless all voting members receive proper notice.

C.R.S. (Colorado Revised Nonprofit Corporation Act) section 7-121-104 requires fair and reasonable notice, consistent with the Bylaws, to each member entitled to vote at the meeting. Section 7-127-105 explains when and how a member may waive notice, such as by attendance at a meeting where he or she fails to object to the meeting at the beginning of the meeting, or fails to object to consideration of a particular matter when it is presented. Section 7-127-107 describes how action can be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing. Read together, these statutes provide that action taken in a meeting is not effective if members are not properly notified of the meeting.

2. *Part 1. Can the Board require members to vote to fill all vacancies on the ballot?*

No. Article II of the Covenants, Article III of the Bylaws, and Articles VI and VII of the Articles of Incorporation address membership and voting. They grant each member one vote for each Board vacancy, and they do not permit cumulative voting, which means a member can not cast all of her votes for one candidate. Section 7-127-208(5) of the NCA (Nonprofit Corporation Act) states that "in an election of multiple directors, that number of candidates equaling the number of directors to be elected having the highest number of votes cast in favor of their election, are elected to the board of directors." The statute does not require that the candidate receive a majority of the votes. When only *one* director is being voted upon, the affirmative vote of a majority of the members constituting a quorum at the meeting at which the election occurs shall be required for election to the board of directors." In other words, 51% of the members constituting a quorum must vote in favor of the single director. In a situation where there are three vacancies to be filled, the three candidates receiving the most votes in their favor are elected to the board. There appears to be no requirement in the documents or statutes that a member can cast a vote for each vacancy, and it appears a member can abstain from voting to fill a particular vacancy.

Part 2. Are the election results invalid if the membership was improperly instructed on how to Vote?

If the members believe the results were invalid due to improper instruction from the Board, the members can always remove a director, with or without cause. They can cause a Special Meeting to be called for the purpose of voting on the removal of the director, pursuant to Article V, section 2 of the Bylaws. The members' rights under the Articles, Bylaws and Declaration, and NCA (Nonprofit Corporation Act) may have been violated and this may be actionable. We believe the best solution would be to call another election.

3. *Can the board remove a board member by changing the bylaws...?*

No. The *Articles* provide for the creation of a Board of Directors. The directors, a/k/a board members, can only be elected by the members, and can only be removed, with or without cause, by the members, pursuant to Article VII of the Articles. Even after amendment by the Board, the Bylaws may not be inconsistent with law or with the Articles. Accordingly, the Board does not have authority to amend the Bylaws in a manner inconsistent with the Articles. The Board does not have authority to elect, appoint or remove directors/board members. The Board cannot change the Bylaws to permit itself to do so, as this would be inconsistent with the Articles of Incorporation.

The Board *does* have authority to fill a vacancy caused by death or resignation of a director, but that director will only serve until the next annual meeting of the Members. The Board also has authority to appoint and remove *officers* pursuant to Article VII of the Bylaws. This is not to be confused with the members' election and removal of *directors*, which is governed by the Articles. See also C.R.S. (Colorado Revised Nonprofit Corporation Act) sections 7-128-108 and 7-128-110.

4. *Part I. Do the Colorado Open Meeting laws apply to property owners association board meetings? Are all board meetings open to the members? When is executive session applicable to board meetings and what rules pertain t these executive sessions?*

No, the Colorado Open Meetings Law, C.R.S. section 24-6-402 does not apply to property owners association board meetings. However, section 38-33.3-308(2) to (7) of CIOA (Colorado Common Interest Ownership Act) does apply. All regular and special meetings of the Board or any committee thereof shall be open to attendance by all members of the association or their representatives. Agendas for meetings of the executive board shall be made reasonably available for examination by all members of the association or their representatives.

The members of the board *may* hold a closed-door meeting or "executive session" and restrict attendance to board members and others requested by the board, where the matters to be discussed include only: (a) matters pertaining to employees of the association or involving the employment, promotion, discipline, or dismissal of an officer, agent or employee of the association; (b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client; (c) investigative proceedings concerning possible or actual criminal misconduct; (d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; (e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

Prior to the "executive session" (closed-door meeting) the chair must announce the general matter of discussion. The minutes of such a meeting must indicate that an executive session *was* held and the general subject matter of the executive session. No rule or regulation of the board or any committee thereof may be adopted during an executive session.

Part 2. When board members conduct telephone meetings, do they need to keep minutes?

Yes. Regular or special Board meetings where one or more members "appear" by telephone should be recorded in the minutes as any other meeting. (Telephone calls among board members that are not part of regular or special meetings of the board, in which no official action is taken. need not be recorded in minutes.)

5. *Is it a violation of the Colorado Open Meeting Laws for board members, not in a called meeting, to make decisions regarding Douglass Ranch issues?*

It is not a violation of the Colorado Open Meeting Law, but it probably does violate CIOA (Colorado Common Interest Ownership Act) section 38-33.3-308. Again, no rule or regulation (including any instruments, which are adopted by the association for the regulation and management of the common interest community) can be adopted during an executive session. A rule, regulation, resolution, order and so on can only be adopted during a regular or special meeting or after the board goes back into regular session following an executive session.

6. *Do all members of the DRPOA have legal access to association documents...?*

Yes. "All financial and other records shall be made reasonably available for examination by any unit owner and such owner's authorized agents" CIOA (Colorado Common Interest Ownership Act), section 38-33.3-317. A limited exception may arise with respect to documents or records generated in an executive session.