

Date: October 19, 2017
To: River End HOA Board Members
Subject: Numerous Irregularities in Process of Passing Amendment to CCR Recorded on August 8, 2017

Dear Fellow Board Members,

I am writing to document and have included in minutes of this board meeting the facts concerning numerous irregularities in how the recent amendment to our HOA CCR s was passed. Regrettably, some have characterized my questioning the process as sour grapes or somehow not respecting the right of the HOA to amend the CCR s. While it may be convenient for some to characterize and dismiss it that way, it simply is not true and draws attention away from real issues that should be addressed.

On August 8, 2017, Steve Kelch sent out an email stating the amendment had passed on August 7, 2017 and that he had it recorded at the County Recorder's Office the afternoon of August 8, 2017. Weeks prior to that, I had shared in a board meeting my concern about the process by which the Board was conducting the voting or election. And yes, if you review minutes and emails, the Board itself at varied times referred to the process as voting or an election. I didn't come up with those phrases. In an email dated August 2, 2017, again prior to the date that Steve Kelch said it had passed, I stated my concern to both the Board and DSI. In that email, I also stated that I was not in favor of the amendment.

I mention the timing of that to say that while I was not in favor of the amendment, my concern prior to any outcome being stated, was that as an HOA we were not going about amending the CCR s in a manner that would be defensible in the event of litigation.

After Steve Kelch said the amendment had been passed, I went to the Development Services Inc. office and reviewed the ballots. In reviewing the ballots, I found several things that were concerning. The following list should not be construed to be all-inclusive. It is meant to highlight some of the irregularities. In reviewing the ballots, Board meeting minutes, and emails concerning the election, the following facts were troubling:

- On several different occasions, it was stated in Board meeting minutes that there was an intended date by which the effort to determine whether or not HOA members favored the amendment would conclude. However, there was no record of action by the Board to extend those dates. It is entirely possible that members who at one point were in favor may have changed their ballot, but felt no need to restate it because the date by which the Board said the matter would be concluded had passed.
- There were various versions of the ballot. Some of them included wording and the opportunity for HOA members to check that they not in favor of the amendment. Some did not.

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- Several HOA members did not sign a ballot. In several cases, there was merely an email stating the member was in favor, but no signature.
- In at least one case, my own, Development Services Inc. was notified explicitly that I no longer supported the amendment. This was done in the spring of 2016 and again in my email dated August 2, 2017. Yet, when I reviewed ballots, my consent form was in the "Yes" stack and had been counted as part of the 2/3rds needed. This certainly may have been the case with others as well.
- The dates on the ballots spanned a period of almost five years. Some of the ballots were dated in the year 2012. There was no indication that any sort of validation of consent given under different circumstances years previously, was still the desire of the HOA member.
- Without notifying all members of the board that they were going to meet with an attorney, two board members met with an attorney to discuss the amendment process. This would have constituted an executive session. In so doing, it did not provide all members of the Board the opportunity to be a part of that discussion. As of the date of this letter, there has been no document provided by an attorney as to their legal determination of the process.

Again, this list is not meant to be all inclusive.

I believe and have stated before, that the solution is relatively simple. In order to have an amendment that is not challenged on the basis of the above and other irregularities, we should have a well communicated election period that should span no more than 30 days. We should be clear in what constitutes the ways consent or non-consent is expressed.

It is hard for me to imagine why those in favor of the amendment would not agree to this approach. If there truly were the number of members required for the passing, then it will be a very easy thing to express consent again in a manner that is not questionable.

Sincerely,

Rick Gividen
HOA Rivers End Board Member