

REV: 2023-08-26

## RE: ANALYSIS OF THE PROPOSED CHANGES TO THE ORANGE ORCHARD HOA GOVERNING DOCUMENTS

NOTE: The final documents were sent out to the homeowners on 2023-08-24 and received (by many) on 2023-08-25. In all significant respects, the final documents are unchanged from the 2023-03-28 versions and my analysis of the final documents is unchanged from what is written below.

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Conclusion: If the Proposed Changes to the OOHOA Governing Documents below were in place when we were looking to buy in Orange Orchard 25 years ago, we would not have purchased here. There are plenty of properties in Boulder without Homeowners Associations. Those alternative properties will be much more attractive than Orange Orchard properties if the proposed changes are adopted.

If anyone on the Board wishes to defend their proposed changes, I will be happy to debate them at the next In Person Annual Homeowners Meeting. There is not a single proposed change that is beneficial to the Homeowners or is required by Colorado Law.

### Synopsis of Proposed Changes:

The control of the Association will shift from the Homeowners to the Board. The Board will be able to institute any changes to the Governing Documents with as few 13% of the homeowners voting to approve (ie 16 votes). The current requirement calls for 67% of the homeowners to approve the changes (ie 81 votes). The Board will be able to make those changes at any membership meeting called with 10 days notice. In Person Meetings will no longer be required. Notice by mail will no longer be required. The quorum requirement will be destroyed. The integrity of the voting process will be destroyed. The Board will be able to completely control what is permissible on a homeowners lot and force the compliance with the Boards wishes through fines, liens and foreclosure. Directors are now virtually impossible to remove. If a director is removed, resigns or dies the remaining directors appoint the replacement, not the Homeowners. Since there are 9 board members, at any meeting the board will already have 9 of the 16 votes required to pass any measure where there is a minimum quorum (30 votes).

### Summary of Documents, Pattern and Practice for the last 45 years:

For the last 45 years the Orange Orchard Homeowners Association has operated successfully with a set of Covenants and By-Laws that protected the individual homeowners rights and limited the Board to essentially ministerial functions. Everything of any import including changes to the dues, architectural rules and governing documents had to be brought up at the Annual In Person Homeowner meeting and agreed to first at that meeting by the majority of a quorum. Everything was face to face, debated and voted in public.

The homeowners were in direct control of the Association and the Board was an administrative body carrying out the instructions received from the homeowners at the annual meeting.

Currently the Board has no ability to institute any changes without approval of 67% (81 votes) of the homeowners. An overwhelming consensus of the homeowners is required. Historically, the Board never fined homeowners, lien properties for those fines or foreclosed on properties to collect on those fines.

#### Action Items:

Take these proposed documents along with this analysis to your personal attorney. Ask your attorney if these document changes are in your best interest. If you do are not satisfied that they are in your best interest, vote no on these proposed document changes. Do not rely on any the representations made by the Board.

If you plan to vote no, or not vote at all, let me know so that we can keep an independent count of the Homeowners that do not support the proposed changes.

#### **Analysis of proposed changes to the Covenants, Conditions and Restrictions per attachment to the email from the OOHOA of 2023-03-28.**

Article I, Section 7: Governing Documents now means not only the covenants and by-laws but have been expanded to include "plat, rules and regulations, and policies and procedures, all as may be supplemented or amended from time to time. So any rule, regulation policy or procedure that the Board issues is now part of the Governing Documents.

Article IV, Section 8: Annual dues are set at \$875 per lot and may be increased by the Board by 5% per above the assessment for the prior year. Increases over 5% must be approved by 67% of the homeowners (this is essentially unchanged).

Article IV, Section 9: Liens may be place against the homeowners property may be recorded for all unpaid assessments and associated costs.

Article V: The Board may now act as the Architectural Committee. The Architectural Committee may now propose design guidelines subject at any member meeting where a majority of a quorum ( $120 * .25 * .5$ ) approve ie 16 votes. These guidelines are based on "any other matter the Board or designated committee deems to be relevant or appropriate." No longer will the Board have to present the proposed changes as the annual meeting with a 67% homeowner vote required (81 votes) of a proposed changes to be effective. Now the proposed changes can be approved at any membership meeting the Board has called with as few as 7 homeowners plus the 9 board members approving.

Further the Board will have transferred the homeowners' development rights to the Board as the Board will be able to approve or disapprove anything submitted by a homeowner based on what the Board thinks is relevant or appropriate. In addition the board will have the ability to selectively enforce their decisions.

Currently, any single family residence that is approved in Boulder County may be built or renovated on a homeowners lot. That will no longer be the case.

Article VI: This article was dramatically expanded to require the property be kept in good repair and consistent with any design guidelines adopted by the Board. So apparently if the Board adopts design guidelines that require solar panels, we will all have to install solar panels. Since a fair portion of the fencing in Orange Orchard is fairly aged, apparently those fences will have to be replaced as well. There is essentially no limit to what the Board may demand of a homeowner to bring their property in compliance with the current design guidelines (whatever they may be). And with a 67% vote (7 votes) of the Board (not the homeowners') they can enter any homeowner property and make the changes they require to bring the property into compliance.

Article VIII: Board may force binding arbitration upon homeowners for shared driveway disputes.

Article IX, Section 1: This is a new provision that makes homeowners liable for the acts of their family and invitees.

Article X: Enforcement this is an entirely new section that the Board is able to selectively enforce. So homeowners the Board favors may be treated differently than other homeowners.

Article X, Section 1:

- Imposition of fines that will be a lien against the property owners lot.

- Suspend voting rights.

- Suspend services.

- Cease construction or modification not approved by the Board

- Remove unapproved construction

- Towing vehicles

- Litigation

- All costs incurred are a lien against the homeowners lot

Article X, Section 2:

- Board may selectively enforce anything in this Article

Article XI: Leasing this is an entirely new section

- Leases less than 30 days are prohibited.

Article XII: Insurance this is an entirely new section

Article XII, Section 1: Insurance on Lots: Homeowners are now required to carry insurance on their properties. Presumably, homeowners will have to provide proof of insurance to the Board.

Article XII, Section 2: Insurance to be carried by the Association

Article XII, Section 3: Payment of Deductible Amount. The Association pays any deductible under Article XII, Section 2. Any damage to Association property caused by a Homeowner will be paid for by that Homeowner.

**Analysis of Amended and Restated By-Laws of the Orange Orchard Homeowners Association per attachment to the email from the OOHOA of 2023-03-28.**

In Person Voting Requirements, Voting Security and Quorum Requirements are destroyed. Instead the Board can call for have secret ballots that can not be verified and may be delivered by email, zoom, phone or any other electronic method. We all know how this ends.

Article III has been substantially expanded. Section 6 through Section 8 is new. While this is now quite complicated, it now allows meetings and votes by Zoom or similar setups. In addition the Board gets a vote for each of the lots owned by the association. This language looks like it was a cut and paste from a set of developer covenants since common areas are specifically excluded from the definition of a lot and all other lots in the development are already in private hands. So there are no lots owned by the OOHOA.

Article III, Section 4. Quorum is  $\frac{1}{4}$  of the eligible votes (30 votes) except as otherwise provided. Changes to Dues (over 5% per annum) and special assessments require 67% (81 votes) approval of all the homeowners, not just a quorum. Per the Cambridge Dictionary: the term quorum means “the smallest number of people needed to be present at a meeting before it can officially begin and before official decisions can be taken.” Since under the proposed changes you can have meetings without anyone present, the purpose of the quorum requirement is destroyed.

Article III Section 5. Proxies (unchanged). Members may vote by written proxy filed with the secretary or in person.

Article III, Section 6 Place of Meeting (new). Place fixed by Board. Member may attend meetings by electronic means.

Article III, Section 7 Telephone or Electronic Communication (new). Members may participate electronically including on virtual meeting platforms. Members counted as present for all purposes.

Article III, Section 8. Member Voting (each lot gets one vote). If there are multiple owners to a lot, they must agree on the vote or it will not be counted.

Article III, Section 8 (g) Votes allocated to Lots owned by the Association may be cast by the Board. This has never been allowed but it does not appear that there are any lots to which this would apply.

Article III, Section 9: At the Boards discretion voting will now be by secret ballot. Secret ballots are easily manipulatable and as we all know, impossible to challenge.

Article III, Section 10: Voting by Mail or Electronic Means in Lieu of a Meeting. This eliminates the right to In Person Meetings for all votes. There will be no way to determine who received the notice, what information they were conveyed, what opposing view points they heard, if they received the notice, if they responded and how they responded. Essentially this ensures the Board will always get the vote they want. This includes director elections.

Article IV: Sections 5 through 8 are new or completely rewritten. Directors are now almost impossible to remove. Directors pick the new director to replace one that has been removed, resigned or died.

Article IV Section 3: Removal of directors. Removing a director requires 67% of the entire association membership voting for removal at a Member meeting at which there is a quorum. In the event of death, removal or resignation the remaining directors appoint the new director. Essentially it will be impossible to remove a director and if one is removed their replacement will be picked by the other directors and not the homeowners. This is a mechanism for making sure the Board maintains control of the Board in the very unlikely event a director is removed.

Article IV Section 5: Qualification of Directors. Homeowner in good standing.

Article IV Section 6: Board of Directors ability to act without a meeting by written notice.

Article IV Section 7: Standard of Conduct for Directors and Officers. These types of provisions are typically used to remove directors from serving on the board. Directors with uncomfortable opinions are deemed in violation of the standards of conduct (which the board may add to at any time), removed from the Board and under the provisions above the remaining directors pick the successor. A convenient tool for the Board to keep control of the Board.

Article IV Section 8: Even if the director breached their duty, did not act in good faith, was involved in intentional misconduct or violation of the law or received an improper personal benefit: The director shall still be entitled to a right of contribution from any other director or other person. For Other Person substitute the word Homeowner.

Article V Section 2: Election of Directors. Contested elections by secret written ballot to the extent required by law. All other votes for directors by voice, consent, mail, electronic, written or otherwise as the Board decides.

Article VI Section 1: Board meetings may be held electronically.

Article VI Section 4: Directors may attend meetings electronically.

Article VI Section 5: Directors may waive notice of the meeting, in writing, either before or after the meeting takes place. Attendance at a meeting constitutes a waiver of notice.

Article VI Section 6: Directors may now give their written proxy to another director for the purpose of determining a quorum and voting.

Article VII Section 1: Directors can now grant easements, leases, licenses, concessions

through or over the Common Areas.

Article VII Section 2: Enforce maintenance restrictions on Homeowners.

Article IX Committees: The Board may act as the architectural committee.