

Subject: Re: Opposition to OOHO Association Document Changes

From: John C Dean <johncdean@aol.com>

Date: 4/16/23, 8:05 AM

To: Howdy Pierce <howdyp@gmail.com>

CC: Orange Orchard <hoa@oohaboulder.org>, governance@oohaboulder.org, OOHA Board <board@oohaboulder.org>

Collectively Orange Orchard represents about one half a billion in real estate value. Any change to the governing documents must meet a very high bar to to put that investment at risk. If there is anything the board is prevented from doing under the current documents that the new documents allow (and the homeowners would approve of), I would like to see that list.

Once the homeowners are fully briefed on what these modifications will allow, I expect these changes will be rejected for the same reason the prior attempt to make these types of changes was rejected.

In any future emails to the homeowners regarding these document changes I request that you insert the following:

"For a viewpoint opposed to any adoption of the document changes proposed by the board please contact John C Dean, 303-473-9900, 4342 Apple Way."

Regards, John C Dean

On 4/8/23 6:10 PM, Howdy Pierce wrote:

John—

Thanks for your email and your thoughts.

I want to try to explain our reasoning, if it helps at all. The changes in the documents are a combination three things: those required or suggested by state law and recent legal precedents; those necessary to fix out of date references, language and information; and those added by the committee asked to look at updating the documents. I believe we have been fully transparent with the neighborhood about the fact that there are changes that are not strictly required by law — it has been mentioned in every conversation or email I can remember.

The governance committee (a majority of whom are not board members) volunteered to work on this and engaged a lawyer for advice. After many hours of discussion around potential changes that have been suggested by members of our community, we decided to canvass support for any changes through a survey. Items that clearly lacked broad support were not included in this draft — for instance, we considered but did not move forward with changes to how dues can be altered.

What remains has majority support in principle, based on our survey. I appreciate your request, but we will be continuing with a single set of marked-up documents as we consider it the most practical way to complete this work. In general the elements changed that are not related to CCIOA (the Colorado Common Interest Ownership Act) are either noncontroversial modernizations (allowing email and Zoom meetings, for instance) plus a) changing the procedure for revising ARC rules and b) prohibiting short term leasing.

As you know, on Thursday we held a lengthy online discussion, attended by about a quarter of our community, with robust debate around the actual wording in this draft. That session is available for replay for anyone who missed it. Most of that discussion revolved around the language for enforcement and short term leasing. The committee is going to discuss that valuable feedback as well as the many emailed responses next week. A revised draft will then be sent out.

The changes to the process for changing ARC Rules were necessary because the existing document is significantly out of date in two regards. It mandates things that we should no longer do (like use cedar shingles) and it asks for things that the community never enforced.

Ultimately, architectural rules need to periodically change because building styles change, technology changes, people's tastes change and our environment changes. And the problem is, that under the current arrangement it is all but impossible to alter outdated ARC rules.

The governance committee feels that the revised process in the proposed documents is far more practical, while still being fully democratic and ensuring that a small minority cannot ram through unpopular changes.

To directly address your concern, while it is theoretically possible for "15%+1" of the neighborhood to approve new ARC regulations, this would have to happen at an officially noticed meeting, where an agenda is circulated in advance. The 15%+1 only works if the bare minimum quorum shows up to that meeting. In practice, any time we have had issues with even the least bit of controversy, we have had a larger turnout. And again, it is now easier for people to attend remote meetings.

On top of that, we are making it easier to replace board members, elect board members, easier for everyone to vote and clarified the obligations of the elected board members. This should serve as an additional check if there were ever a rogue group trying to force changes that lacked broad support.

Your example of a suggested change that you opposed, being rejected, showed that our neighborhood's democratic system worked back then. The majority agreed with you and the change was rejected. And it will be even easier for people to reject things like that in the future. I'm confident that we have made it easier for our community to decide future changes in a more open and democratic way and actually reduce the possibility of a non democratic change being made.

In any event, we do appreciate your comments and respect your perspective, so thanks for taking the time to email.

Regards,
—Howdy

On Apr 8, 2023, at 9:50 AM, 'John C Dean' via OOHA Governance Review 2022 <governance@oohaboulder.org> wrote:

Committee and Board Members:

I oppose these documents for the following reasons:

First: I have asked for redline copies of the changes that separate out any absolutely required changes to bring the documents into compliance with Colorado law from all other changes. The documents supplied conflate the required Colorado law changes (if any) and changes the board would like to see. Accordingly, I must assume that none of the changes suggested are actually required by law.

Second: Major changes to the to the Architectural Control section now allow the board to change the design guidelines to control design compatibility, harmony, scale, location, natural environment, street visibility etc. None of these vague terms are defined or definable. Those changes may be approved with 15%+1 of the homeowners. Meaning dramatic restrictions on all homeowners property rights can be pushed through by a small minority of the homeowners.

Some years ago, the board tried to make changes in the size of houses allowed on the properties. And this proposal goes far beyond that, it is just not as obvious. I will remind the members of the committee that the boards proposal to control home size was roundly defeated at an annual meeting. Other than board members, only one or two homeowners were in favor. The ability of the board to make changes such as these has already been rejected. But here we are again.

This list of my issues with these documents is not exhaustive.

In totality, these documents dramatically shift homeowner property rights from the homeowners to the board.

I will be actively opposing any adoption of these documents.

John C Dean

4342 Apple Way, Boulder CO 80301

On 4/5/23 9:08 AM, Orange Orchard wrote:

Hello neighbors—

As a reminder, we will hold a virtual meeting to discuss the changes to the OOHA governance documents and answer questions. That meeting will be held **TOMORROW, Thursday, April 6, at 5:30 pm**, using the following Zoom link:

<https://cuboulder.zoom.us/j/94949065745> (Meeting ID: 949 4906 5745).

We will record the meeting for those unable to attend live.

Thank you to those who have already commented on the documents. We are maintaining a list of changes that seem to the committee to have broad support, which you can see [here](#).

The draft documents, with redlines indicating differences from our current documents, are available here:

- Declaration of Covenants, Conditions and Restrictions: [Word](#), [PDF](#)
- Bylaws: [Word](#), [PDF](#)

We continue to welcome your suggestions and comments via email to

governance@oohaboulder.org.

Thanks and we look forward to seeing you tomorrow evening.

OOHA Governance Committee:

Kate Fay
Dick Harris
Daryl James
Lisa Jensen
Christine Mullen
Howdy Pierce
Mark Taylor

Original email:

From: Orange Orchard <hoa@oohaboulder.org>
Subject: OOHA: Draft governance documents for review and comment
Date: March 28, 2023 at 4:15:36 PM MDT

OOHA Neighbors—

As we have shared a few times, OOHA needs to update its governance documents because of changes to the Colorado law concerning HOAs. A committee of the neighborhood has been meeting since last summer to recommend changes for our neighborhood. We have engaged a lawyer specializing in HOA law and educated ourselves on the issues. We also surveyed the neighborhood (thank you all for your responses) — that survey was quite influential.

We now have final draft versions of revised declarations and bylaws, which are linked below for your review and comment. If you have comments, we ask for them before April 20. Please email comments to governance@oohaboulder.org. You may also share your concerns directly with any member of the governance committee, listed below.

We will also hold a virtual meeting to discuss the changes and answer questions. That meeting will be held via Zoom at 5:30 pm on Thursday, April 6, using the following Zoom link: <https://cuboulder.zoom.us/j/94949065745> (Meeting ID: 949 4906 5745)

After the comment period is over, we intend to prepare final versions of these documents for approval. These versions will be sent to each household by both US Mail and email. We will need to receive written approval from 81 houses within 60 days.

The revised documents are available (with redlines indicating differences from our current documents) here:

- Declaration of Covenants, Conditions and Restrictions: [Word](#), [PDF](#)
- Bylaws: [Word](#), [PDF](#)

As discussed at the annual meeting, the changes can be summarized as follows:

- Updated provisions required or allowed by the Colorado Common Interest Ownership Act (CCIOA), which is the law governing HOAs in Colorado. Because CCIOA has updated how HOAs can enforce their rules, there is a new section on enforcement (Declaration, Article X), along with other changes
- Clarified that Zoom meetings and email communications can be used for meeting announcements and meetings themselves, and that votes can be taken electronically (Bylaws, Articles III, V and VI)
- Relaxed the process for amending our architectural rules (Declaration, Article V)
- Clarified that owners are responsible for ensuring that guests and tenants follow OOHA rules (Declaration, Article IX)
- Clarified insurance obligations (Declaration, Article XII)
- Made it easier to remove a Board member; added Board qualification requirements & standards of conduct (Bylaws, Article IV)
- Added option for the Board to require arbitration if two neighbors who share a driveway cannot agree on maintenance (Article VIII of the Declaration)
- Clarified requirements for homeowners to maintain exterior property and landscape (Declaration, Article VI)
- Established provisions that limits leases to 30 days or longer, thus outlawing short term rentals (Declaration, Article XI)

No changes were made to how the neighborhood raises dues, although we considered this idea. The proposed documents keep our existing rules regarding dues, with small clarifying changes only (see Article IV of the Declaration).

The committee looks forward to your suggestions and comments. Again, our email is governance@oohaboulder.org.

Thanks and we look forward to seeing you around the neighborhood.

OOHA Governance Committee:

Kate Fay
Dick Harris
Daryl James
Lisa Jensen
Christine Mullen
Howdy Pierce
Mark Taylor

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