



The Honorable Carol Murphy

EXPEDITE
 No hearing is set
 Hearing is set
 Date: July 14, 2017
 Time: 9:00 am
 Judge/Calendar: Carol Murphy

FILED
 SUPERIOR COURT
 THURSTON COUNTY, WASH
 17 JUN 15 AM 11:49
 Linda Myhre Eriow
 Thurston County Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

THERESA J. LOWE, a single woman;
 LOREN J. BOSSHARD and DONNA A.
 BOSSHARD, husband and wife; BURLEIGH
 M. CUBERT AND CAROLYN CUBERT,
 husband and wife,

NO. 17-2-00812-34

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

Plaintiffs,

vs.

FOXHALL COMMUNITY ASSOCIATION,
 a nonprofit corporation,

Defendant.

I. RELIEF REQUESTED

Defendant moves the Court for an order dismissing this case with prejudice. This lawsuit involves a narrow issue: were the bylaws purportedly adopted on November 15, 2015 valid and enforceable. The Board of the defendant homeowners' association rejected those bylaws because :1) the restrictions the bylaws sought to impose on the use of the horse trails in the community conflict with the Protective Covenants applicable to the defendant Association

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1 which provide that the trails “shall be for the benefit of, and be used by, the residents in
2 Foxhall,” and; 2) the process used to adopt them violated the Bylaws in at least three respects:
3 a) the motion to amend only passed if proxies were included and Article X of the bylaws
4 provides that Bylaws can be amended “by a vote of a majority of the members of the
5 corporation **present** at any meeting,” b) the notice of the meeting during which the Bylaws
6 were purportedly adopted was defective because the purpose stated was incorrect and
7 misleading; and c) there were motions made during the meeting which the “parliamentarian,”
8 Rose Eilts,¹ refused to allow to be considered.

9 II. FACTS

10 Defendant Foxhall Community Association is a Washington Non-profit Corporation
11 and a Homeowners Association for a tract of land located in rural Thurston County. Its
12 Articles of Incorporation were filed in 1981. (Exhibit A to Lewis Decl.) The property was
13 subdivided and sold as an equestrian friendly development with access to several miles of
14 equestrian trails. (Whisler Decl. ¶ 3) Protective Covenants were filed by the developer, Virgil
15 Adams, in 1982. (Exhibit B to the Lewis Decl.)
16

17 Les Whisler, one of the early residents of the community, was a friend of the developer.
18 (Whisler Decl., ¶ 1). Mr. Whisler bought two five acre parcels in the community and built a
19 house, stables and a riding arena for his family’s use. (Whisler Decl., ¶ 3). Virgil Adams, the
20 developer, and his son Dennis, approached Mr. Whisler to consider taking on boarders as that
21 would make the development more desirable for equestrian families. (Whisler Decl. ¶ 5). Mr.
22 Whisler therefore started to board horses for both residents and non-residents. *Id.* The non-
23 resident boarders routinely used the Foxhall equestrian trails during the period Mr. Whisler
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¹ Ms. Eilts has a separate lawsuit against the same defendant regrading amendments to the Bylaws that were properly adopted. *See* Cause No. 17-2-02345-34.

1 owned the property. *Id.* ¶ He sold the property with the boarding facility to the Mr. and Mrs.
2 Johnston in 2001. (Whisler Decl., ¶ 8). The Johnston family continues to operate the boarding
3 facility to this day, with the boarders using the Foxhall equestrian trails. (Johnston Decl., ¶ 4).
4 Thus, since the inception of this community in the early 1980s, non-resident boarders have used
5 the equestrian trails in the community. (Whisler and Johnston Decls.)
6

7 Mr. Whisler was never advised by either Virgil Adams or his son that non-residents
8 could not use the trails or that they had to be accompanied by a resident. (Whisler Decl., ¶ 5)
9 Nor were there any signs during this period prohibiting guests or boarders from using the trails
10 or otherwise requiring them to be accompanied by a resident. (Whisler Decl., ¶ 6).
11

12 **A. The 2015 Bylaw Amendment.**

13 In 2015, some residents of the community sought to change the By-laws to prohibit
14 non-residents from using the equestrian trails. They called a Special Meeting for November 19,
15 2015.² (Exhibit D to the Lewis Decl.) The notice stated that the Objective was to “Amend the
16 Bylaws to adopt a clarifying rule for current and future Boards of Directors.” The meeting did
17 no such thing. (Lewis Decl. ¶ 7) Below that provision was a statement that the “proposed
18 bylaw clarifies the governing documents that Foxhall Parks and Trails are for the exclusive use
19 of residents, families and friends. Foxhall Association members businesses may not extend the
20 business activities onto Foxhall Parks and Trails.” The actual amendment proposed and
21 purportedly passed went much further than the amendment description set forth in the notice;
22 the purported amendment adopted even prohibited non-resident customers from using the trails
23 even if accompanied by a resident:
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² There was an earlier meeting on October 27th, but the notification time of the meeting was questioned so a new meeting was scheduled. (*See* Notice of Meeting, Exhibit D to the Lewis Decl.)

1 Foxhall Parks and Trails are for the exclusive use of the residents,
2 families and friends. Nonresident visitors must be accompanied by
3 a resident when using Foxhall Parks and Trails. Foxhall Association
4 members' businesses may not extend their business activities onto
5 Foxhall Parks and Trails. Members' business invitees, customers, or
6 patrons, whether in trade or in barter, are prohibited from using Foxhall
7 Trails, even when accompanied by a member.

8 (Lewis Decl., Exhibit E).

9 At the beginning of the meeting, member Robert Armstrong called a point of order and
10 asked that the president preside over the meeting as he was in attendance. (Armstrong Decl., ¶
11 3). Board member Solverson stated that she was presiding over the meeting because she was
12 the board director in charge of the trails, and she designated non-board member Rose Eilts as
13 "parliamentarian" to preside over the meeting. (*Id.* at ¶ 4.)

14 During the meeting, member David Fleming made a motion to amend that was
15 seconded. Mr. Fleming then distributed a copy of his proposed amendment to those present.
16 (*Id.* at ¶ 5) However, Rose Eilts asked what was going on, and Mr. Fleming explained that
17 there should then be a discussion and a vote on the motion to amend. (*Id.*) Nevertheless, Ms.
18 Eilts told him to sit down and would not allow a vote on the amendment. (*Id.*)

19 A motion was then made by member Dan Olson to refer the matter to a committee for
20 review prior to a vote by the members which was seconded by member Armstrong. (*Id.* at 6.)
21 Another member then made a motion to amend Olson's motion to add that a professional
22 mediator preside over the committee. Member Armstrong testified in favor of the committee
23 so, among other things, that all viewpoints from all impacted could be heard. (*Id.* at 6)..A vote
24 was taken on the amendment 24 voted in favor. (*Id.*) Nevertheless, "parliamentarian" Eilts
25 stated that the vote failed to get the required two thirds to pass, even though two thirds did vote
in favor of it (*Id.*), and there is no such two thirds requirement in the Bylaws. There was then a
vote on the proposed Bylaw amendment. The vote failed by a count of those present, 18 to 5,

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1 but passed if it included the 73 proxies collected by the proponents. (Lewis Decl. ¶ 9 and
2 Exhibit E.).

3 The Board has rejected this purported amendment for several reasons. First and
4 foremost, it believes that such a limitation conflicts with the provision in the Restrictive
5 Covenants that the trails “shall be for **the benefit of**, and be used by, the residents of Foxhall.”
6 (emphasis added) Second, the Board believes that the process used for adopting the Bylaws
7 was flawed because it passed only if proxies were counted and the bylaws provide that only
8 those present can vote, the notice of the meeting was defective, and motions were made during
9 the meeting which were not allowed to be voted upon. Third, the language that was chosen for
10 the proposed Bylaws amendment interprets the covenant language to provide what the
11 proponents wanted, but it is both unclear and arbitrary. (Lewis Decl. ¶ 10).

12 III. ISSUES PRESENTED

13 1. Do the restrictions in the bylaws purportedly adopted on November 19, 2015 that
14 restrict the use of the community equestrian trails to only residents or their accompanied guests
15 conflict with the applicable Protective Covenants which provide that the trails “shall be for the
16 **benefit of**, and be used by, the residents in Foxhall?”

17 2. Did the process used to adopt the Bylaw amendments in November 2015 violate the
18 Bylaws because: a) the motion to amend only passed if proxies were included and Article X of
19 the bylaws provides that Bylaws can be amended “by a vote of a majority of the members of
20 the corporation **present** at any meeting,” b) the notice of the meeting during which the Bylaws
21 were purportedly adopted was defective as the purpose stated was incorrect and misleading
22 thus conflicting with the requirements of the Bylaws; c) there were motions made during the
23 meeting which the “parliamentarian,” Rose Eilts, refused to allow to be considered, and d) the
24 language of the purported amendment is both unclear and arbitrary.
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IV. EVIDENCE RELIED UPON

This Motion is based on the Declarations of Board President Bert Lewis with attachments, Les Whisler, Robert Armstrong, Judy and Gary Johnston, Dennis Longnecker, Andrew Kolibas, Cynthia Coble and Jessica Bradley, and on the records and files herein.

V. AUTHORITY

A. Summary Judgment Standard

Summary judgment is proper if papers on file show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). A defendant can move for summary judgment by setting out its version of the facts and allege that there is no genuine issue as to the facts as set out. *Hash v. Children's Orthopedic Hosp. & Med. Ctr.*, 110 Wn.2d 912, 916, 757 P.2d 507 (1988). Alternatively, a party moving for summary judgment can meet its burden by pointing out to the trial court that the nonmoving party lacks sufficient evidence to support its case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989).

In other words, the moving party bears the burden of producing evidence showing the absence of an issue of material fact or challenging the sufficiency of the plaintiff's evidence as to a material issue. *Hash*, 110 Wn.2d at 915; *Young*, 112 Wn.2d at 225-26. If the moving party carries its burden, the burden shifts to the nonmoving party to show that there is a genuine issue remaining for trial. *Id.* A moving party is entitled to summary judgment when the non-moving party fails to make a sufficient showing on an essential element of its case in which it has the burden of proof. *Young*, 112 Wn.2d at 216.

B. The November 15, 2015 Purported Bylaw Amendment Imposes New Restrictions on the Use of Common Property that Conflicts with the Protective Covenants Governing the Development.

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1 The purported bylaw amendment that prohibits business members' guests from using
2 the Foxhall trails imposes new restrictions on the use of common property that conflicts with
3 the Restrictive Covenants governing the community and are therefore unenforceable.

4 *Wilkinson v. Chiwawa*, 180 Wn.2d 241 (2014) In *Wilkinson*, homeowners in a residential
5 community sought to invalidate a covenant adopted by a majority of the members of the
6 association prohibiting short term vacation rentals. The Association argued that the restrictions
7 should be upheld because they were consistent with the covenants that prohibited commercial
8 use of the property. The State Supreme Court disagreed and affirmed a summary judgment
9 striking the new restrictive covenant. The Court held that the new restriction was not consistent
10 with the original covenants, and was therefore unenforceable; the court explained that new
11 restrictions cannot be imposed on the use of the property by simply majority vote. *Id.* at 255.

12
13
14 Here, like *Wilkinson*, the purported bylaw amendment seeks to impose restrictions on
15 the use of the Association trails that are inconsistent with the covenants governing the
16 community. The Protective Covenants for the Defendant Association provide that the tracts on
17 which the equestrian trails are located “shall be **for the benefit of**, and be used by, the residents
18 in Foxhall.” (Exh. B to Lewis Decl., p. 1, emphasis added). The covenants also include
19 contradictory provisions about business use by Foxhall residents. The Restrictive covenants
20 state on the one hand that lots “shall be used for residential purposes only,” while at the same
21 time stating that the “Architectural Control Committee shall determine what trade or business,
22 or use is undesirable or noxious.” *Id. at II A and II F*). Obviously, if no business were allowed
23 at all within the community, there would be no need for the provision about the Architectural
24 Control Committee governing such businesses. In any event, there is no record of any attempt
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1 to prevent the Foxhall members from boarding horses for non-residents. Indeed, at least some
2 members have boarded horses for non-residents since the 1980s. (See Whisler and Johnston
3 declarations).

4 Interpretation of a restrictive covenant presents a question of law. *Wimberly v.*
5 *Caravello*, 136 Wn. App. 327, 336, 149 P.3d 402 (2006). Courts apply the rules of contract
6 interpretation when analyzing such covenants. *Id.* The primary objective on contract
7 interpretation is determining the drafter's intent. *Harvis v. Garwall, Inc.*, 137 Wn.2d 683, 696,
8 974 P.2d 836 (1999). In doing so, courts consider the contract language, the subject matter and
9 objective of the contract, the circumstances surrounding the making of the contract, subsequent
10 conduct of the parties, and the reasonableness of the interpretations the parties advocate.
11 *Martinez v. Kitsap Pub. Servs.*, 94 Wn. App. 935, 943, 974 P.2d 1261 (1999).

12
13
14 When interpreting any contract, language should be given its plain meaning. *Viking*
15 *Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116 (2014). Here, the
16 language in the Restrictive Covenant that the trails are “for the benefit of” the owners indicates
17 by its plain language, that the owners can use the trails for their benefit. One of those benefits
18 is that their boarders can use the trails. Further, each part of the document should be given
19 meaning. *Wash. Prof'l Real Estate LLC v. Young*, 190 Wn. App. 541, 551, 360 P.3d 59 (2015).
20 Reading the clause “for the benefit of” to indicate that it only conveys the right to use the trails
21 to the owners themselves would make this language redundant, as the covenants already
22 provide that the trails are “for the use by” the residents.

23
24 The conduct of the parties subsequent to the adoption of the Protective Covenants also
25 demonstrates that the phrase “for the benefit of” was intended to allow members' guests,

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1 whether paying or not, to use the Foxhall trails. Past resident and longtime Board member and
2 President Les Whisler was approached by the founders of Foxhall to start taking on boarders in
3 order to make the development more attractive to equestrian families. (Whisler Decl. ¶5).
4 Indeed, Mr. Whisler started taking non-resident boarders within his first five years of living at
5 Foxhall, and neither the developer nor anyone else ever claimed that the Boarders could not use
6 the trails. (*Id.*). Had the language in the Restrictive Covenants that the trails were “for the
7 benefit of, and be used by, the residents of Foxhall” meant that member guests could not use
8 the trails, the Whislens would not have been allowed to do so during the duration of his family
9 living in the community. In fact, the Johnston family, who bought the Whisler property with
10 the boarding facility, have continued to board horses for non-residents since they purchased the
11 property in 2003. (Johnston Decl., ¶ 2).

12
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14 The Plaintiffs will argue that the amendment is consistent with the covenants because
15 “for the benefit of” the residents means that only members and their families and friends can
16 use the trails. However, that interpretation is erroneous not only for all the reasons stated
17 above, but also because it makes no sense. The covenants, for example, do not mention
18 friends; the covenant states that the trails are for residents. Under plaintiff’s interpretation,
19 friends of the residents could also be excluded. How can trails be “for the benefit of” residents
20 if even family friends can be excluded by a simple vote. Further, resident is not defined. What
21 about a step child who is only visiting; is that step child a ‘resident’ and therefore allowed to
22 use the trails? How about grown children? Or a child that is away at college? The same
23 problem attaches to the purported amendment itself. It tries to exclude business invitees, but is
24 a friend who talks business a business invitee and therefore not allowed to use the trails? Can
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1 any friend use the trails? How about friends of the children, friends of non-resident children, or
2 friends of friends? Similarly, the amendment says “visitors must be accompanied by
3 residents.” Is a visitor the same thing as a friend? Can a non-resident family member be the
4 one who accompanies a “friend?” The list of problems with interpreting “for the benefit of” in
5 the covenants so narrowly is endless.

7 **C. The Adoption of the November 2015 Bylaw Amendment Violated Bylaw**
8 **Provisions Governing Amendments**

9 1. The Bylaws Provide that Only Those Present Can Vote

10 Article X of the Bylaws states explicitly that they can be amended “by a vote of a
11 majority of the members of the corporation **present** at any meeting of the membership duly
12 called for such purposes.” (Lewis Decl., Exh. C, page 8 emphasis added).

13
14 Plaintiffs maintain that even though Article X of the Bylaws states that only those
15 present can vote on a Bylaw amendment, “present” means present in person or by proxy. They
16 base this argument on Article 5 of the Foxhall Bylaws which allows members to vote in person
17 or by proxy, and on the Homeowners’ Association Act which states that a quorum includes
18 those who are present in person or by proxy and that to remove a Board member the votes can
19 be in person or by proxy. However, a review of the Homeowners' Association Act, RCW
20 64.38; the Nonprofit Corporation Act, RCW 24.03; and the governing documents of the
21 association, in particular the Bylaws, demonstrates why members must actually be present to
22 vote on Bylaw amendments.
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1 **i. Homeowners' Association Act.**

2 While the Homeowners' Association Act states that a quorum includes those who are
3 present in person or by proxy, and that to remove a Board member the votes can be in person or
4 by proxy, the specific language in that Act governing how an HOA can amend its bylaws;
5 RCW 64.38.030 states that "[u]nless provided for in the governing documents, the bylaws of
6 the association shall provide for:... (5) The method of amending the bylaws;" Thus, some of
7 the provisions of this Act are mandatory (establishing a quorum and removing a board
8 member), others are subject to the governing documents, such as how Bylaws are to be
9 amended. Under this Act, an HOA can determine how it amends its bylaws. There is no
10 specific requirement set forth in the statute, as there is for removing a Board member or for
11 establishing a quorum, that proxy votes be counted. Instead one looks to the Bylaws
12 themselves to see how they are to be amended. If the governing documents specify how the
13 Bylaws are to be amended, then the governing documents control. This statute makes it clear
14 that the method of amending the Bylaws is to be found in the Bylaws (unless it is somewhere
15 else in the governing documents). This is important because it separates out Bylaws
16 amendment voting from other voting and applies particular rules to Bylaws amendment voting
17 as opposed to any other sort of voting in general.

18 **ii. Nonprofit Corporation Act**

19 The Nonprofit Corporation Act also provides that the Board can decide how to amend
20 its own Bylaws: RCW 24.03.070 provides that "[t]he power to alter, amend or repeal the
21 bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided
22 in the articles of incorporation or the bylaws." This is contrasted with how Articles of
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1 Corporation are amended: RCW 24.03.165, 170 provides that these can be amended by "the
2 votes members present at such meeting or represented by proxy are entitled to cast." There is
3 no companion statute that says that voting on amendments to Bylaws must allow proxy voting.
4 Thus, under both the Homeowners' Association Act and the Nonprofit Corporation Act, the
5 Bylaws control how they are amended there are no statutory requirements, and specifically to
6 requirements to include proxies.
7

8 **iii. Foxhall's Bylaws**

9 Art. V, Sec. 5, which provides that "A member may exercise his right to vote by proxy,"
10 is a general provision and applies to voting generally. Thus, unless stated otherwise, a vote
11 may be in person or by proxy. However, Art. X specifically provides that only those present
12 can vote on Bylaw amendments: "The Bylaws may be amended at any time by a vote of a
13 majority of the members of the corporation present at any meeting of the membership duly
14 called for such purposes."
15

16 **iv. Rules of Contract Construction Mandate That Only Those Actually** 17 **Present at a Meeting to Vote on Bylaw Amendments Can Vote**

18 Since it is clear under the controlling statutes that Foxhall's Bylaws control how they
19 are to be amended, the question is what does Article X mean when it says those "present" can
20 vote on amendments? Basic principles of contract construction tell us that "present" means just
21 that, they must be there to vote:
22

- 23 • the specific prevails over the general. *Spokane Sch. Dist. No. 81 v. Spokane Educ.*

24 *Ass'n*, 182 Wn. App. 291, 310, 331 P.3d 60 (2014). Here, the Bylaws amendment
25

1 provision is more specific; it addresses one specific kind of voting as opposed to voting
2 in general;

- 3 • each part of a document is given meaning. *Wash. Prof'l Real Estate LLC v. Young*, 190
4 Wn. App. 541, 551, 360 P.3d 59 (2015). If members can vote in person or by proxy on
5 Bylaws amendments, then the provision in Art. X that that the majority vote of those
6 **present** can amend the Bylaws has no meaning and adds nothing to what is already
7 there.
- 8 • Language should be given its plain meaning. *Viking Bank v. Firgrove Commons 3, LLC*,
9 183 Wn. App. 706, 713, 334 P.3d 116 (2014). The meaning of Art. X is plain. The
10 Bylaws amendment clause is placed within its own Article, highlighting its importance.
11 The dictionary or plain language meaning of "present" is, "in a particular place," "being
12 in view or at hand," "being, existing or occurring at this time or now," "being actually
13 here," "being with one or others or in the specified or understood place," "at the
14 particular place or event that is being referred to," or "being or existing in a specified
15 place." *See, e.g., Nationwide Mut. Ins. Co. v. Hayles, Inc.*, 136 Wn. App. 531, 537, 150
16 P.3d 589 (2007) (the ordinary meaning of a word is considered to be the dictionary
17 definition of a word.) Nowhere is it defined as including being somewhere when one is
18 not actually there. There would be a different result, of course, if the Bylaws
19 amendment provision said, "present in person or by proxy." This would mean that the
20 drafters intended that the usual meaning of "present" was to be altered to include those
21 not actually present but having given a proxy to another. There would also be a
22 different result if the word "present" in either the governing statutes of the governing
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1 documents defined present to mean “in person or by proxy.’ Of course there are no
2 such definitions.

3 **v. The Court Should Give Deference to the Board’s Interpretation**
4 **of its Own Bylaws**

5 The Board maintains that Article X of the bylaws means exactly what it says, to vote on
6 the amendment requires that the member be present. (Lewis Decl. ¶ 5). The Court should
7 give deference to an organization’s interpretation of its own governing documents unless it
8 is unreasonable or arbitrary. *Couie v. Local Union No. 1849 Bhd. of Carpenters and*
9 *Joiners of Am.*, 51 Wn.2d 108, 115, 316 P.2d 473 (1957). This is particularly so here in
10 light of the manner in which the few tried to ram through this change through intimidation,
11 providing misleading information, and disallowing a vote on a motion to amend the
12 proposal. (See section 2, *infra*). As the Board members well know, it is critical that voters
13 hear the reasons for and against such an important decision. To allow proxy votes puts a
14 tremendous amount of power into the hands of a few. This was particularly evident during
15 the November 19, 2015 vote when those present voted 18 to 5 against the amendment, yet it
16 passed if considering proxy votes because there were 73, and not one proxy vote that was
17 against.

18 2. The Notice for the November 2105 Meeting was Defective.

19 RCW 64.38.035(3) sets forth the requirements of a notice to amend governing
20 documents:

21 The notice of any meeting shall state the time and place of the meeting
22 and the business to be placed on the agenda by the board of directors for
23 a vote by the owners, **including the general nature of any proposed**
24 **amendment to the articles of incorporation, bylaws,”””””**

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1 (emphasis added).

2 Here, the notice for the meeting to address the Bylaws was defective because it was
3 misleading. The notice stated that the objective of the meeting was to “Amend the Bylaws to
4 adopt a rule for current and future Boards of Directors.” The meeting had nothing to do with
5 such an amendment. (Lewis Decl., ¶¶ 7 & 8 and Exh. D). The only amendment considered
6 was to restrict the use of the equestrian trails. *Id.*

7
8 The notice did go on to provide a general description of the proposed bylaw, but one
9 that omitted a key provision. The Notice stated that the proposed bylaw clarifies the governing
10 documents that the parks and trails are for the exclusive use of residents, families and friends,
11 and that members’ businesses may not “extend their business activities onto Foxhall Parks and
12 Trails.” But this summary omitted the key restrictive language in the actual proposed
13 amendment that “Members’ business invitees, customers, or patrons, whether in trade or in
14 barter, are prohibited from using Foxhall Trails, even when accompanied by a member.” This
15 absolute prohibition, which attempted to negate an over 40 year history of allowing such
16 activity, was not mentioned anywhere in the notice. This omission, in conjunction with the
17 completely erroneous objective stated, made the notice extremely misleading and therefore
18 defective.
19

20
21 This is particularly so as the purveyors of this amendment sought to pass it by proxies
22 and mislead members as to why they were seeking this restriction. For example, Plaintiff Lowe
23 told member Longnecker that Foxhall was unable to get insurance because businesses were
24 allowed to use the trails. (Longnecker Decl., ¶ 4). This statement is false, Foxhall has not had
25 any trouble getting liability insurance (Lewis Decl., ¶ 12). Another was warned of increased

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1 liability to homeowners, even though there is no basis for such a claim. (Coble Decl., ¶ 3).
2 Others felt pressured into signing proxies. (Kolibas Decl., ¶ 4, Bradley Decl., Longnecker
3 Decl., ¶ 5). Plaintiff Lowe went so far as to tell one member that she had a proxy from a
4 previous vote and she could just use that again. (*Id at* ¶ 5). These actions demonstrate not just
5 why the notice was defective, but also why it was important for those voting to actually attend
6 the meeting and hear the arguments for and against.
7

8 c. The November 19, 2015 Meeting Was Improperly Conducted

9 The November 19, 2015 meeting was conducted by a non board member at the time,
10 Rose Eilts. She was appointed “parliamentarian” by those orchestrating the meeting. During
11 the meeting, a motion was made and seconded to amend the proposed bylaw. A draft of the
12 proposed amendment was circulated. Yet the so called parliamentarian, Ms. Eilts, did not
13 allow a vote on the amendment and went back to discussing the original motion. (Armstrong
14 Decl. ¶ 5) A motion was then made by member Dan Olson to refer the matter to a committee
15 for review prior to a vote by the members which was seconded by member Armstrong. *Id. at* 6.
16 Another member then made a motion to amend Olson’s motion to add that a professional
17 mediator preside over the committee. Member Armstrong testified in favor of the committee
18 so, among other things, that all viewpoints from all impacted could be heard. *Id. at* 6. A vote
19 was taken on the amendment 24 voted in favor. *Id.* Nevertheless, “parliamentarian” Eilts
20 stated that the vote failed to get the required two thirds to pass, even though two thirds did vote
21 in favor of it (*Id.*), and there is no such two thirds requirement in the Bylaws. There was then a
22 vote on the proposed Bylaw amendment. The vote failed by a count of those present, 18 to 5,
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1 but passed when it included the 73 proxies collected by the proponents. (Lewis Decl. ¶ 9 and
2 Exhibit E.).

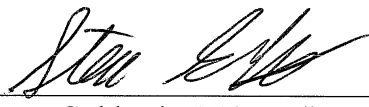
3 The complete failure to follow the bylaws in the conduct of the meeting, the failure to
4 allow a vote on a motion that were properly presented and seconded, and the refusal to
5 recognize another vote on a motion to amend that did pass rendered the eventual vote on the
6 original amendment flawed and voidable.
7

8 VI. CONCLUSION

9 For any or all of the reasons set forth above, the amendments purportedly adopted
10 during the November 19, 2015 meeting are unenforceable and Plaintiffs' complaint should
11 therefore be dismissed with prejudice.

12 DATED this 14th day of June, 2017.

13
14 BETTS, PATTERSON & MINES, P.S.

15
16 By 
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