

REVIEW OF "DECLARATION OF COVENANTS" FOR PPW  
Submitted by Tom Boren - December 4, 2010

As with the proposed amended bylaws, the "Declaration" seems more appropriate for a much larger subdivision with a much larger recreational infrastructure. Additionally, the vastness and intricacies of the Bylaws and the Declaration seem to be more appropriate for a subdivision just coming on the market rather than for a development consisting of established properties with an established culture, if you will. The benefits of attaining mandatory membership are obvious. However, I don't think the highest level of participation will approach even a simple majority of the current owners. That leaves quite some time before we would even approach the need for such a voluminous set of rules and regulations, that is unless current laws require all that language. Regardless, there are places in both the bylaws and the declaration where reasonableness in regards to powers is cited. However, most of the powers of the boards fall into either absolute or discretionary. More "reason" should be incorporated into assigned board powers.

Therefore, I believe the prospects for maximum acceptance and participation would result from a much less overpowering set of documents, more tailored to PPW's age and culture. Focus should be more on the basic goal - that of requiring future buyers to become members of the swim-tennis - rather than an all encompassing HOA. I would suspect that many people through the years found the *lack* of such a set of rules to be an attractive feature of locating here. I know we did. We ruled out some subdivisions strictly on the basis of their HOA rules.

That having been said, following you will find references to specific items/issues and my accompanying comments. To facilitate connecting my comments to the specific paragraphs of the Declaration, I have included page number, section and paragraph number.

- p3-§4(a)            Membership and Voting Rights -Unnumbered paragraph following paragraph (iii). ". . . on such terms and form as they determine in their discretion the Board shall have the discretion . . .". This should be revised to provide more constraints. I have no problem with flexibility as to the form to be used for the conversion, but I do have problems with discretion as to the terms. As written, the Board could conceivably ignore the written Declaration and/or bylaws for the stated purpose(s).
- p4-§ 4(b)(ii)        Typo in last line - "shall not (sic) effective unless. . .". Believe this should read, ". . .shall not *be* effective. . .".
- p4-§ 4(b)(iv)        Don't like this. Takes away our leverage to get holdouts to convert. By offering seasonal use passes (at the discretion of the Board) to residents of PPW, leverage to get them to convert is lost. We have had a long-standing policy that residents of PPW CANNOT use the facilities with the exception of group functions to which they are specifically invited. This restriction should remain.

- p5-§ 4(c) First sentence - Short of record rainfall, we don't have a lake.
- p6-§ 5(h) Provides very broad powers to the Association, including seizure of intangible personal property (monetary assets???) and acquisition (seizure?) of real property. More details, and limitations, should be listed.
- p7-§ 6(a) Second paragraph (unnumbered) - Properly assigns full use of facilities to lessees, but does not rescind those privileges for the owner of record or non-resident family members. This should be done to prevent "dual-membership" for one payment of dues.
- p7-§ 7(a) Implies that the Board could commit large sums for capitol improvements without first obtaining approval from the membership. To do so opens the door for irresponsible expenditures leading to depletion of reserves and, further, leading to assessments for projects that the membership did not desire nor approve.
- p8-§ 7(b)(ii) We are a small subdivision. Any such notification should be delivered, not just mailed. In addition, acceleration should not be allowed for a period of 21-30 days. People do take vacations. Some for two weeks. Someone could become "non-responsive" merely because they went on vacation a day or two before the notice was mailed or delivered.
- p8-§ 7(c)(i) No real problem with the 10% penalty for late dues (annual assessment) but adding interest at the "highest rate permitted under the Act" is going a bit far. Some interest - well, OK. But at the highest rate!?!?!?
- p8-§ 7(c)(ii) As mentioned in the review of the proposed bylaws, there is a little preferential treatment being afforded here. Although not stated in this section, by virtue of the language in the bylaws, Board members would have 60 days to rectify arrearage but here, members only have 30 days.
- p9-§ 7(d)(i) Two issues. First, I don't like the idea of a "floating" 15% assessment increase accumulating over a period of time and then being imposed. It either should be assessed, or not. It's just not right to tell members that, "Hey, if we don't need an increase this year or next, we won't assess it, BUT, if we need more money the third year, we can increase your bill by 45% that year, whether we really need it, or not." Second, increase should not be the result of the Board's "desire." Increases should occur *only* based on verifiable *need*.
- p9-§ 7(e) Too loose on special assessments. Board could levy for "any" purpose!?! Granted, a vote is required, but criteria for passage is too loose. Should require majority of *all* Equity Members. In all likelihood,

there would not be that many instances requiring a special assessment but, I believe, more controls should be in place.

p10-§ 7(f) A little too broad on the allowed amount to suit me. Should specify a percentage for reserves with specified provisions for identifiable future capital needs . For example, the courts would need resurfacing in the next couple of years, or so. State that purpose and identify the amount being allocated to it in the budget.

p10-§ 8 A little too loose on controls. For instance, “. . . and, in the Board’s discretion, improve the Common Property . . .” Maintenance is one thing. Capital improvements are something else. A little tweaking is one thing but, as worded, the Board could decide to just go ahead and build a new doo-dad because the then sitting board thinks it would look nice. According to the proposed bylaws, as long as the cost didn’t exceed the proscribed amount they could just go ahead and do it whether the membership knew about it (or wanted it) or not.

p12-§ 11(b) Just out of curiosity, what does \$1,000,00.00 in public liability cost? I know my personal umbrella policy is not all that much but don’t know what covering an “organized” group would cost.

p12-§ 12(b) Two issues with this paragraph. First, there should be a direct relationship between this paragraph and the opening paragraph of the section. Specifically for the involvement of the membership. Though the opening paragraph appropriately applies some controls to expenditures for damages (though it is a sort of “negative” approval) at least the membership has a say in the actions to be taken. However, the reference to membership “disapproval” precedes the requirement for cost estimates. Adding such reference between sections of a document is not unusual. In fact it occurs in this very paragraph where “Paragraph 7” is cited.

It should be clearly stated that membership approval should occur only AFTER all cost estimates, etc. have been obtained. As I read paragraph (b), a vote *could* be called early on, prior to obtaining all the details, then the Board could proceed with obtaining bids and estimates and then, if the insurance doesn’t cover the costs, the Board could issue a special assessment. The reference to *not* requiring compliance with sections 7 troubles me but that section is far too lengthy to specify objections.

Further, and particularly troubling, is the option for the Board to retain any excess or unused funds in the Common Funds for use at the Board’s discretion. No, no! Especially if a special assessment has been imposed. Excesses, in these circumstances, should be returned

to the members.

SPECIAL COMMENT: The aforementioned opening paragraph requires an 80% vote of the "Equity Members". Not, 80% of the Equity Members *who vote*. It states 80% of those members must vote to not proceed. However, in the "Improvements" section, all that is required is a majority of those members who vote. Capital improvements should also require an approval of a majority of the class of members eligible to vote on a given issue - not just a majority of those who do vote. Capital improvement expenditures place a burden on all members, not just those who vote for it.

p13-§ 13(b) I have a little trouble with the overall scope of this paragraph. Seems to afford *very* broad powers. However, specifically, it states that provisions in the bylaws are abrogated by this section of the Declaration. No reference to which parts of the bylaws are set aside, either by paragraph/section or by general reference. As stated, it implies that, under the circumstances described, the entire bylaws could be ignored.

p13-§ 13(b) Second paragraph (unnumbered) - While I understand the purpose and need for this paragraph, it appears that the Association gets a chance at double-dipping. First it states that action can be taken against the member's family, guests, etc. (that actually committed the infraction) but then goes on to say that, in addition, action can be taken against the member as well! If the violator is a member of the family (particularly if they reside in PPW), for all intents and purposes it's one in the same. However, if it's a guest or, especially, a renter (in which case the member would in all likelihood be nowhere around), this provision seems a bit much.

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