

SHANE HENRY ASSOCIATES, LLC

ATTORNEYS AT LAW

June 11, 2024

Mrs. Deere and Others:

I am writing on behalf of the CVNA Board of Directors in response to your email of 5/31/24. Let me start by saying that while the Board appreciated your thoughts and concerns, the tone of your letter left them disappointed and certain that their intentions were misunderstood. My clients are hopeful that an informal clarifying response might help. The Board hopes to explain their processes, address your points, and ask that in light of this information you refrain from threatening legal action.

I was approached to give guidance last year and informed the Board that as a non-profit organization and an HOA, they are governed by the Covenants & Restrictions, Bylaws, the Arkansas Horizontal Property Act and Arkansas Nonprofit Corporation Act. The Bylaws also refer to Robert's Rules of Order. I can attest that this Board has worked hard to determine what is in the best interest of the HOA, maneuvering through conflicting provisions and making good faith efforts. They've given time to their duties and have not taken them lightly. Anyone who has been a part of a board such as this knows the job is often a thankless and criticized position. Basically, you can't please everyone.

Intentions. With the recent vote, intentions were to clean up the overly specific and conflicting provision in the by-laws concerning dues and to raise dues for the first time, which has been long overdue in the opinion of most Board members. The specific monetary figure stated in the by-laws is overly cumbersome in that it is concrete and allows no room for movement, yet conflicts with other provisions that clearly state dues may be raised or lowered by vote. Obviously, the conflicting verbiage needed to be addressed. Securing half the homeowners to vote *at all*, much less affirmatively or negatively, would be arduous enough, not to mention securing a 2/3rds affirmative vote. The Board has long believed at some time a Board would have to take on this challenge in the best interest of the association. This Board decided to "take the hit".

The second goal was to make it possible for the more homeowners to be able to participate in the vote. It is the strong opinion of the Board that more homeowners having the opportunity to vote results in a better representative of what the HOA members want. **Any argument that attempts to make it harder, more unreasonable, more expensive or more unlikely that members can participate because of schedules, frankly, makes no sense to this Board in general.**

Notice. In determining notice for the vote, my clients agree that the Bylaws list notice as "certified mail" or hand delivery. The Bylaws also adhere to Robert's Rules of Order which have been amended to allow email notice *unless forbidden by the Bylaws*. Decades have passed since the CC&Rs and Bylaws were adopted. The Board's duty to be financially responsible with HOA funds played heavily into the decision to use email notice along with other manners. Certified/Restricted Mail delivery would cost \$8 to \$10 per household, costing the HOA over \$1,000 to \$1500 each time notice was needed. Knowing the Bylaws did not prohibit email and due to this unreasonable cost, the Board decided to provide notice using ALL of the following six steps: 1) each homeowner received notice via U.S. Mail on March 27th, 2) hand-delivered the three mailed notices that were returned as undeliverable, 3) emailed on two occasions to all members, 4) posted on the neighborhood Facebook page, 5) held two informational meetings, and 6) placed meeting notices and information on the CVNA website. Without question, additional steps were taken to give every member notice.

Proxies. There may be some confusion on this issue that we hope to clear up. We allowed written ballots. The Nonprofit Corp. Act addresses this in §4-33-708. Again, efforts made were in attempt to notify more homeowners and allow more the opportunity to vote. Everyone had access to a ballot (required by the Ark. Nonprofit Corp. Act). The Board received no proxies but more effectively took email votes directly from members. The Act allows written ballots if there is no prohibition in the Bylaws, and these votes are included in the quorum. The Board was advised and followed statutory requirements including the following: clear notification of the proposed action, access to a “for or against” ballot, and notification of the end date for submitting votes. Emailed/faxed ballots are allowed per §4-33-708(f)(2). Also, you mentioned “sealed” votes in a way that insinuated a violation of privacy, however, the votes were not shared and were only seen by the Board which counted the votes. Votes would not need to be anonymous to the Board. An email is, in essence, a sealed vote with a digital signature that comes straight from the voter. Additionally, there has certainly been no allegation of a board member manipulating a ballot.

You stated something to the effect that Board Members were contacting voters. Obviously, the Board was hoping for a good turnout. This certainly is no secret. They would not have proposed the vote if they did not hope the changes could be made in the best interest of the HOA. Some Board members were contacting some homeowners reminding them to vote. This fact seems benign, unless you have a desire for members *not* to vote. With no disrespect meant, this is illogical to us.

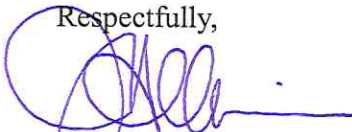
Confidentiality. We have been made aware of one potential breach of confidentiality. A concern was raised that a non-Board member (possibly a former board member) has accessed the board of directors’ email without authority and forwarded emails to a non-board member. We share your concern and will take steps to find out who/how this happened.

Board Members Vote. There has been a history of waiving the board members’ dues as a token of appreciation for volunteering. Many boards waive dues in exchange for service. Certainly, this gesture should not prevent the Board from voting or classify them as “non-paying members.”

Conclusion. I advised my clients that Courts in Arkansas have a long history of assuming the Board of Directors is acting in good faith unless shown otherwise. There is a rebuttable presumption that HOA Members and Board of Directors are “better equipped to determine what is in the best interest of their organization than the Courts.” I ask that you give this Board the same deference.

Above all, understand the vote was accurate. There is no question what the voters wanted. My clients would be happy to discuss how to better serve the membership and hope you understand its decisions and motives more clearly. Thank you in advance for your time and consideration.

Respectfully,



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