

At the Home Owners Association meetings for the last four years it was brought up that the by-laws needed to be re-written. The board agreed with the need for that action at each of those meetings. To date no action has been taken. When the board tried to implement a beautification project, the homeowners took exception on how this was being done and took steps to remove the president of the HOA from the board, for taking unilateral action without the required the vote of the membership of the association. This action was in accordance with the existing by-laws of the Valley Shores HOA. During the process of gathering signatures, a number of homeowners were reluctant to endorse the vote for fear of retribution. They specifically identified the by-laws as being deficient in identifying the required processes that needed to be followed, such as addressing things like budget, contracts and steps needed to engage the membership.

The group that was attempting to get signatures agreed and formed a committee of homeowners to update the by-laws. The goal of the committee was to make the management of the association transparent and identify processes and procedures that can be adhered to that are fair and clear to the members and in line with the Articles of Incorporation, Covenants and Lake Rules and Regulations. During the process of revamping the by-laws they engaged the services of the law firm Croker Huck at their expense to make sure they were in line with established Association requirements.

The Draft of the by-laws were completed and forwarded to the board to be placed in front of the members for a vote well over a year ago. To date no action has been taken and based on the letter from the attorney utilized by the board, no action looks like it will be taken. I appreciate the opportunity to discuss why I believe this action is not in accordance with the established requirements of the Association.

The Articles of Incorporation on file with Secretary of State of Nebraska, established the HOA

1. To enforce the Declaration of Covenants, Conditions, Restriction and Easements of Valley Shores. It gave the HOA the power to collect dues and assessments and bring actions to enforce covenants.
2. It gave the board the power to enforce covenants.
 - a. Enact, amend & enforce rules and regulations of the lake known as Valley Shores Lake Rules as drafted by the Declarant.
 - b. Pay expenses in connection with conduct of business of the corporation including but not limited to all license taxes, government charges levied against property of corporation, accounting, legal, office and other expenses of corporation.
3. Defined Members
 - a. Class A. Lot owner giving one vote for each lot owned
 - b. Class B. Declarant or its successor receiving 20 votes for each lot in subdivision owned by Declarant or successor terminating when Declarant no longer owns any Lots.

4. Amendment of these Articles shall require the assent of seventy-five (75%) of the entire membership.

That brings us to the Covenants on file with the Douglas County Register of Deeds. In the covenants:

- 1, Declarant established initial Lake rules and Regulations for the Lake at the time the Covenants were established.
2. Declaration (Covenants will run in perpetuity).
3. Can be amended in any manner at the discretion of Declarant until all lots have been sold or for a period of 15 years from date of declaration whichever occurs first.
4. Covenants contained Valley Shores Lake Rules and Regulations established by Declarant. That declaration shall run in perpetuity and could be amended by Declarant for a period of 15 years from the date. This declaration could be amended by an instrument signed by owners of not less than 75% of the Lots covered by this declaration.

The next item is the Valley Shores Conditions, Restrictions, Safety Rules and Regulations drafted by the Declarant and posted with Douglas County Register Deeds on 25 October 2005.

1. Declarant professed that these regulations shall be binding on all members and shall be changed or amended only by written majority vote of the entire membership as provided in the Covenants.

In the By Laws approved by the Board of Directors on 12 January 2006 amendment can be made provided such amendment is not inconsistent with the Declaration or Articles of Incorporation at a regular or special meeting of the Members by a vote of a majority of the Members.

I think if you review the draft by-laws as submitted you will find that great care was made to comply with the Articles of Incorporation and the Covenants. We find it hard to comprehend that the comments from your legal person target the transparency of meeting notice and objection to written ballots. I could see that objection if we had a true Declarant, but the Declarant and his votes no longer exist. If you review the fourth amendment to the covenants, you find certification from the president of the HOA that the amendment was approved in writing by an instrument signed by the owners of not less than 75% of the lots covered by the Declaration and the executed original documents evidencing the written approvals by owners have been placed in the association's permanent records. If we don't have written ballots, where is the evidence. All other amendments were made by the Declarant who didn't have to prove

the votes because he had the authority to change the covenants based on the number of lots.

The other document of interest is the change in lake rules and regulations that was recently put out on the website that changed the requirement to amend the rules from written majority vote to simple majority of the board. Since the rules were never placed in front of the membership for a vote the legal standing of the lake rules and regulations validity comes into question, how can they be enforced?

The requirements in the proposed by-laws to have contracts specifying work to be done, the conditions, and expectation of the product is designed to protect the homeowners.

The request for a budget at the beginning of the year is for the understanding of homeowners so they can see what their money is needed for. Increased property values are nice on paper but the increase in property taxes and homeowners' insurance means that the dues must become a consideration for the members.