Bannockburn Homeowners Association, Inc.

**Questions and Answers for Ballot clarification**

The following questions and answers (Q&A’s) were addressed with the BHOA Board, and the BHOA Governing Documents Committee, as a result of the BHOA Informational meeting held on March 23, 2019, or by email communications between homeowners and Board members. Other Q&A’s are also added for clarification of potential questions arising out of changes to the Covenants or Bylaws.

1. **Colorado State Law requirement, vs. Best Practices distinction**

Question: Of the changes recommended by the BHOA Board and its legal counsel, which are the parts that are strictly a result of Colorado State Law Requirements, vs. which are parts that are a result of other changes that the BHOA and their legal counsel consider to be in the best interest of the community?

Answer: The changes in the Proposed Covenant draft do not specifically highlight which parts are one category versus the other because of the intertwined nature of the collective changes. However, in general, the recommended changes to the Covenants that the BHOA will be requesting votes on are generally categorized in four components: 1) Changes identified by the BHOA as worthy of a Covenant change as a result of the survey previously sent to homeowners, 2) Changes that are directly associated with Legal Requirements of Colorado’s HOA Law or Colorado Nonprofit Corporation Law, 3) Changes identified by VF Law that are considered as “Best Practice” for protection of homeowners of the Association and the BHOA itself, and 4) a few new ballot initiatives for things like whether or not Internet voting should be allowed to save time, money and effort in the voting process going forward. The intent of the Governing Documents Committee in evaluating changes made to the BHOA Protective Covenants was not to mimic or apply rules from urban or other rural homeowner associations to our neighborhood. Their intent was to only propose changes deemed as necessary by the Board and our legal counsel to a) help properly administrate our Association, b) help with legal protection of the Association and its homeowners, and c) to assure that the existing Board as well as future Boards are allowed to properly protect the aesthetic beauty of our rural neighborhood.

1. **Ballot organization**

Question: Will the Ballot be crafted to allow section by section voting on all components of the proposed Covenant changes, or just one vote allowed for all proposed changes?

Answer: Yes and No. The Ballot will be organized into three distinct parts or categories: 1) Changes proposed to address elements of the 2017 homeowner survey, 2) General initiatives based on current BHOA administrative needs (i.e. Internet Voting, utilization of a Management Company to help administrate the Association, etc.) and 3) ONE vote on all other changes. Because of the volume of changes being made to the Protective Covenants, it is impractical to request and receive homeowner votes on each paragraph or section. Instead, the Governing Documents Committee has broken the changes addressed above into the three categories to most practically address those changes that will 1) affect how our organization operates, 2) those changes that are being driven by homeowner input, and 3) all other changes necessary to comply with Colorado Law, Colorado Nonprofit Corporation Law and HOA Best Practice.

1. **Other changes included not considered Best Practices or HOA law**

Question: There seem to be many changes in the new draft that obviously aren’t required by law or seemingly for Best Practice reasons, and also weren’t an element of a previous homeowner survey. An example of this is the additional language on outbuildings (ARTICLE VI, paragraph 3). Why have changes such as these been made to this new Covenant draft?

Answer: Over the course of many years, many issues have been brought to and addressed by the Board. Many of these issues have lacked Covenant clarity and therefore lacked consistent interpretation. There are many examples in the new Covenant draft where the Governing Documents Committee has tried to clarify things that have historically caused such individual interpretation and to make the Documents clearer on their face. In addition, in the 40+ years that the Covenants have been in existence, certain things have changed, and more things have become available (such as new building materials) or more relevant, whereby such further clarification is necessary (i.e. specific Covenant ban on storage-type shipping containers as outbuildings)

1. **HOA Budget Preparation and Ratification**

Question: The proposed Covenant draft seems to allow the Board to create a budget for the BHOA with it being automatically ratified unless the homeowners veto it with a majority vote. Why shouldn’t homeowners be allowed to vote on all budgets or spending proposed by the Board?

Answer: According to Colorado Law, the budget proposed by the HOA board does not require majority approval from the Homeowners, but rather allows it to be deemed approved by the Owners unless a majority of Homeowners vote to veto it at the noticed public meeting to discuss the budget. This language allows the HOA Board the latitude to conduct normal business of the Association for enforcement of Covenants and other Administrative and Legal duties of the Organization without approval of the homeowners. This does not however apply to “Special Assessments.” Special Assessments are defined as those things that affect the common property of the Organization (i.e. entrance signs), or other commonly used components such as the roadways (i.e. paving the roadways). Special Assessments must be approved by 66 2/3% of the Members in Good Standing to approve any such expenditure. The Governing Documents Committee has intentionally not included language for routine, annual dues increases like other associations do (no dues increases have ever been requested since the beginning of the BHOA), opting rather for developing each annual budget based on only those costs necessary to conduct normal business of the HOA (Insurance costs, postage, community events, etc.).

1. **Dues Assessment increases**

Question: Can the BHOA Board of Directors change the annual dues of the HOA without vote of the homeowners?

Answer: The answer to this is similar to the discussion about the budget process addressed above. By law, the HOA must have the ability to conduct normal business of the organization regardless of approval of the homeowners. This does not give the Board authority to raise dues without approval on items of Special Assessment as addressed above, it only gives the Board authority to approve a budget for conducting routine administrative business of the organization. If the dues structure does not support the funds necessary to conduct business, then according to Colorado Law, the BHOA Board must have the ability to raise dues to meet budget requirements.

1. **Removal of expenditure limits in old Bylaws version**

Question: In the current Bylaws, the BHOA Board could not spend more than $1,000 without a vote of the Members in Good Standing. Why was this limitation removed in the updated Bylaws?

Answer: According to Colorado HOA Law, the Board must have the ability and authority to spend amounts necessary to conduct business and does not require a vote of the homeowners to spend such money. The HOA Board has a fiduciary duty to spend only those amounts needed to properly conduct HOA business.

1. **Variance Request cost increases**

Question: Why have the amounts required of homeowners to pay for variances from the Protective Covenants increased again to $250 per variance?

Answer: The BHOA does not think it equitable to its homeowners to require them to help subsidize other homeowners who wish to propose a variance for their individual properties. The Board tracks how much it spends on the variance process (costs of paper, postage, envelopes, etc.) and requires the requesting homeowner to cover those costs. As the costs for this effort increase, these costs must be absorbed by the requesting homeowner, not the BHOA at large. Currently, Bannockburn has about 180 resident homeowners. $250 per variance works out to $1.39 per mailing. This includes postage at $.55, plus paper, envelopes, printing, $.15/OZ postage for mailings over 1 OZ, etc.)

1. **BHOA communication channels**

Question: Of the homeowners present at the informational meeting, there seemed to be some confusion as to the normal means of communications from the BHOA Board to its membership.

Answer: The BHOA utilizes both the social networking site Nextdoor (<https://nextdoor.com>) and its own website ([www.bannockburnhoa.com](http://www.bannockburnhoa.com)) to communicate upcoming events, meetings, etc. The BHOA website also includes links to important HOA related documents for homeowners to access and review.

1. **BHOA Board decision making affecting homeowners**

Question: The existing Covenants, and the new proposed Covenants, provide much language protecting the BHOA Board members from liability for decisions they make in administrating the Protective Covenants. What if they make a decision that negatively affects the value of my property (i.e. location of a new structure on an existing lot)?

Answer: The existing and proposed Covenants protect Board Members from liability in the event they make “reasonable judgements” based on the facts at hand. The proposed Covenant language does not provide legal protection in the event that the Board or Board member acted “with malice or intentional wrongful acts”. In other words, in order to be protected from such liability, the BHOA and its Board must follow the guidelines in the Protective Covenants, the Bylaws and in the adopted Rules and Procedures documents, and act in a reasonable way. This is why ALL covenant violations or other concerns must be addressed by the BHOA regardless of whether an individual homeowner requests leniency or not. The BHOA Board is required to treat all homeowners in an equal and non-discriminatory fashion to protect the association and themselves from legal liability.

1. **Members in Good Standing voting**

Question: The old Covenants state that all Resident Homeowners be entitled to vote on matters related to the Covenants. The new draft changes this requirement to state that only Members in Good Standing (Members who have paid all their membership dues) are allowed to vote on Covenant changes. Why was this change made?

Answer: The Bylaws (current and new draft) have stipulated that only Members in Good

Standing can vote on affairs of the HOA. Historically, this has been the method for counting votes. The Covenants previously stated that all Resident Owners could vote. This change makes the Bylaws and the Covenants consistent with each other regarding voting rights.

1. **BHOA Environmental Committee latitudes**

Question: The new proposed language seems to give the Environmental Committee broad latitude to accept certain materials without the need for a Variance in the event that the newly proposed material meet the intent of the Protective Covenants. This seems to give the BHOA Board broad power to make unilateral changes without Community input.

Answer: The proposed language states that: *“The Environmental Committee shall have the authority to allow or disallow other proposed materials for their proposed use, without the need for a Variance, based strictly upon whether the proposed materials meet the aesthetic intent of this Declaration.”* The proposed language is intended to save the variance-requesting homeowner the expense of mailing and processing the variance ($250) in the event that the requested change is so minor as to not create aesthetic concern. This also saves the HOA homeowners being overburdened with potentially numerous small items not relevant to protecting the neighborhood from unsightly improvements. It will also save the BHOA considerable time and effort in processing and tabulating the results of such variances. (example: homeowner proposed metal roofing with vertical ridges on 10” centers vs. 9” as required in the Covenants). The intent is NOT to sidestep the variance process merely at the convenience of the Board, but rather to simplify the process for MINOR variances. It is also important to mention that this item is a “voteable” item under Voting Category No. 2 in the Ballot. Homeowners can vote against this addition while still voting for the rest of the Covenant package as a whole.

1. **Previous language stricken in the new Covenant draft**

Question: It appears that there are some references to retention of documents requirements that appear to be stricken in the new draft. (i.e. ARTICLE IV, paragraph 6.c, and paragraph 10). Why are these document retention requirements being stricken?

Answer: Any current references in the Covenants to records retention have been stricken because there are extensive record keeping requirements in the newly drafted Policies and Procedures documents. Previously, only a few references were made to document retention, which were inadequate to protect the Association from record retention deficiencies. Please review the Document Retention and Destruction Policy in the Policies and Procedures document to see the lengthy list of documents that the HOA must maintain and for how long. It is to be mentioned that document retention policies are mandated by Colorado Law.

1. **Removal of language regarding homeowner view impingement**

Question: ARTICLE VI, paragraph 7, seems to remove the requirement that new buildings will not be allowed to impinge on neighboring lots views of the mountains or other prime views. Why was this language removed?

Answer: The previous language stated that the Environmental Committee would make sure such building wouldn’t obscure such views “wherever possible.” Due to the subjective nature of such language, the new language gives the Committee more specific language upon which to make such judgements. “Views” have been removed from the language because in many cases, other lot restrictions such as topography, drainage, lot shape, setbacks, etc. restrict a building homeowner’s choices. The new language is intended to assure that the Environmental Committee takes into consideration certain of the listed restrictive elements on behalf of the new homeowner, while addressing any existing homeowner concerns such as existing views. The new language is intended to reduce the Association’s (and ultimately the community’s) risk of lawsuit from either the existing landowner upset with new building positioning, or by a new homeowner who isn’t allowed to build in optimal position on land they legally own.

1. **New exterior paint language in Covenants**

Question: Article IV, section 1: states that *“Any exterior changes or replacements, including exterior color changes or replacements, to an existing structure or new structure on any lot must have approval of the Board”.* Regarding paint or stain choices for exterior color, this seems to be somewhat subjective, and hard to understand what is acceptable. What was the reason for this?

Answer: The Governing Documents Committee intentionally crafted the language to be very broad. The Committee was not in favor of creating a “color palette” where only certain colors would be allowed, and then have the Board be in the position of submitting variance requests every time someone wanted to vary from the palette. Instead we crafted language that would fit the rural nature of the Bannockburn subdivision without being overly restrictive.

1. **Enforcement provisions have been removed**

Question: Why was “ARTICLE IX – ENFORCEMENT” removed from the Covenant draft?

Answer: This section along with several others appear to be stricken, while in fact they now just appear in other sections of the Document. Except for a few cases, stricken language from the original Covenant draft just indicates re-organization rather than removal of language.

1. **Like and Kind exceptions**

Question: Is it possible to allow a “Like and Kind” exception to Board approvals for property improvements that don’t meet the letter of the Protective Covenants? (i.e. if I currently have an outbuilding whose material doesn’t meet the BHOA Protective Covenant list of approved materials, can I build a new structure that is “Like” the old one without going through the variance process?

Answer: No. Materials used without BHOA approval in the past do not allow the homeowner to continue to use those materials simply because they are the same as previously used unauthorized materials. All property improvements must meet the Protective Covenant guidelines, or the BHOA is required to enforce them to protect the other Bannockburn Homeowners as a whole. However, if a homeowner received a previous approval of the Board for a material through a variance or other process, then those materials may be used in the future without the need for a variance, although they still must go through the BHOA review process.

1. **Commercial Vehicles definition**

Question: The definition of Commercial Vehicles that are disallowed from parking overnight in Bannockburn seem overly restrictive. The description seems to restrict certain types of heavy-duty pickup trucks from parking overnight.

Answer: It is not the intent to restrict any type of common pickup truck under the Protective Covenants. Pickups are specifically excluded from the commercial vehicle definition in the language of the new Covenant draft. Colorado Law currently defines a Commercial Vehicle as “a vehicle used in commerce that weighs at least 16,001 pounds and is self‑propelled, towed, or designed to transport 16 or more passengers.  Vehicles that are used for the commercial transportation of other motor vehicles or for hazardous materials transportation are included with the definition of a "commercial vehicle." The Governing Documents committee expanded its Commercial Vehicle definition to be in compliance with the Colorado Law definition, as well as to add other language to clarify acceptable or unacceptable vehicles. These new definitions do not change what was previously allowed; they just leave less room for subjective interpretation. Commercial Vehicles that are enclosed in a permanent structure will not be considered in violation of this restriction.

1. **Internet Balloting and communication**

Question: In the Ballot we are being asked whether we agree to allow Internet Balloting and Internet or electronic communication in lieu of the US Mail. If this measure passes, how will I be able to vote or receive communication if I don’t have Internet access?

Answer: If the Electronic Balloting and communications measure passes, each homeowner will be allowed to “opt-in” or “opt-out” of electronic communication. Any individuals “opting-out” will be put on a list to receive communications by US Mail. Individuals “opting-in” will be allowed to answer surveys, respond to variance requests, respond to ballots, and receive communications more conveniently by electronic means or email. This initiative is intended to save the Association significant mailing and administrative costs, which will allow the Association to keep its fees and assessments down.

1. **Bylaws powers granted to HOA Board**

Question: The current draft of the Bylaws seems to grant exceptional powers to the Board to govern without Homeowner approval. Why aren’t the Bylaws to be voted on similar to the changes proposed in the Protective Covenants?

Answer: Under current Colorado Law, the “Powers” of the Board as stated in our new Bylaws are already granted by Law, with or without the existence of a document. The only reason they are being re-stated in the new Bylaws is to provide transparency to our Homeowners, so all Homeowners know the powers the Board has to properly administer the duties and responsibilities of the Association.

1. **Are we just “boilerplating” other HOA Covenant documents?**

Question: Because of the seeming complexity and detail of the proposed Covenants, it appears that we are simply “boilerplating” language from other more urban HOAs (i.e. Highlands Ranch) that don’t have a place in Bannockburn.

Answer: The Governing Documents Committee and its legal counsel did not merely copy HOA documents from other HOAs and apply them to Bannockburn. Some particular language was reviewed from other local HOAs to get ideas of appropriate language to use within Bannockburn (i.e. definition of types of commercial vehicles that are allowed to be parked overnight.) In most, if not all, of these cases, the current Bannockburn Covenants addressed these issues already, but differing homeowner interpretation of particular Covenant Articles over time drove the Governing Documents Committee to clarify such language to eliminate, or at least reduce such confusion of interpretation. Much of the added language was added by legal counsel to ensure compliance with Colorado HOA and Colorado Nonprofit Corporation regulation. This was non-negotiable. Much of the remaining language and seeming complexity was advised by legal counsel as “Best Practice” based on their decades of experience in defending homeowners and Homeowner Associations from legal pitfalls. An example of this is the extensive section covering HOA insurance requirements. It is important to recognize that this is not merely to protect the HOA organization, but by definition, since the HOA is merely the representative of the collective homeowners, these protections are for the individual homeowner as well. Legal attacks against the HOA organization are legal attacks against individual homeowners, which by Colorado Law are the responsibility of the individual homeowners.

1. **Consequences if this new Ballot proposal fails**

Question: It appears that many of the changes proposed in the new Covenant draft are required by Colorado Law and HOA regulation as well as other best practices recommended by the BHOA legal counsel. What happens if the proposed changes are not ratified by 66 2/3% of the Resident Owners of the HOA? What happens then?

Answer:If the Association does not receive enough participation in the voting process, or if the participation causes the proposed Amended Documents to fail, the Board may be forced to file an application with the Court and have the documents approved by a judge. A judge will approve the documents deemed to be in the best interest of the community, and that which will make the documents compliant with Colorado Law and existing HOA regulations and Best Practice. This will cause additional and unnecessary expense to the Association, which will ultimately be borne by the residents in the form of an increased annual dues assessment. We hope that we can count on your participation and your affirmative vote to approve these important changes to avoid additional cost to the Association.

1. **BHOA new Policies and Procedures document**

Question: It appears that the HOA Board is adopting a whole new set of Policies and Procedures for conducting themselves, which is not being requested by a vote by the homeowners. Why are these documents necessary, and why do the homeowners not get to vote on them?

Answer: Policies and Procedures documents are mandatory under Colorado Law. Under Colorado Law, they are also not required to be voted upon by the HOA membership like Covenants are. These time-tested recommended policies and procedures have been provided to us by the BHOA Legal Counsel for utilization within our organization to add details and clarifications to restrictions and documents higher in the hierarchy.

1. **Liens of homeowner property as a result of legal liabilities of the HOA**

Question: The revised Bylaws seem to shift liability of Board actions directly to the residents via a lien on their property.  What if a lawsuit is prosecuted by the Board that ends up bankrupting the association? It appears the homeowners would have a lien assessed against their property to cover this.

Answer: The actions of the HOA Board directly affect all members of the Association. Any liability adjudicated against the HOA is ultimately the responsibility of the homeowners. If there are not enough funds in the HOA accounts to cover a legal crisis, Colorado Law allows that a lien can be placed against the HOA’s accounts, and their future dues assessments to the Homeowners. Liens could not be taken out against individual properties from such actions unless the homeowners refused to pay additional dues assessments levied by the HOA organization. Such liens are statutory according to Colorado Law. This is precisely why the BHOA Board and the Governing Documents Committee are working very closely with the BHOA legal counsel to assure that the Covenants, Bylaws, and Policies and Procedures documents are fully in compliance with Colorado Law, and additionally, use legally tested Best Practices to ensure that the BHOA, its Homeowners, and its Board, have all the legal protections in place to minimize this risk.

1. **Insurance policies required in new Covenant draft**

Question: In the new Covenant draft there is significant additional language regarding the Insurance policies that the HOA must carry. Are these necessary?

Answer: Yes, the insurance requirements stated in the new Covenant draft are required by Colorado HOA Law. Additionally, they protect the HOA and its homeowners from legal liability. As addressed in the above section, the goal of the HOA is to prevent unplanned liabilities from driving up homeowner dues assessments. Insurance policies protect all homeowners from this potential risk.