

Response to Notice of Violation Dated June 1, 2023

Andy Mowery <pohoaandy@gmail.com>

To: Poudre Overlook at FtC <attfcpoudreoverlook@gmail.com>

Cc: Lora B 4POHOA <lb4pohoa@gmail.com>, Clay Jones <joneswv66@gmail.com>, "Walker G. Flanary" <wgflanary@gmail.com>, John Tunna <pohoajohn@gmail.com>

Wed, Jun 21, 2023 at 11:41 AM

Resending due to images that may not have appeared within the email.

On Wed, Jun 21, 2023 at 11:36 AM Andy Mowery <pohoaandy@gmail.com> wrote:

Deborah & Andrew Mowery
1350 Bubbling Brook Court
Fort Collins, CO 80521

June 21, 2023

Poudre Overlook HOA of Fort Collins
PO Box 101
Laporte, CO 80535

Subject: Response to Notice of Violation Dated June 1, 2023

Dear Poudre Overlook HOA Board of Directors,

We are in receipt of your letter dated June 1, 2023, alleging that we are conducting a commercial business with customer visits on our property, in violation of the Association's Rules, Regulations, and/or Covenants.

We would like to respectfully bring to your attention that the activity in question was not a commercial business but a yard sale, held infrequently in the driveway of our home. The common, plain language understanding and definition of a "yard sale" seems to apply accurately to our activity.

Definition of 'yard sale'**yard sale**

Collins COBUILD

Word Frequency ●●●●●



Word forms: yard sales plural

COUNTABLE NOUN

A yard sale is a sale where people sell things they no longer want from a table outside their house.

[US]

Here is a photo of our yard sale which conforms with this definition:

This sale took place on only four days in May 2023, which falls below the threshold set by the Larimer County Land Use Code [20.2.4 Section H Paragraph 3](#). Private sale of items that are homegrown or homemade are allowed if they **occur seven or fewer days** per calendar year.

It is important to clarify that the Poudre Overlook Homeowners Association (POHOA) Covenants, Conditions, and Restrictions (CC&Rs) do not include a specific definition of "home occupation" or "commercial business" that encompasses yard sales, garage sales, or any other private sales on their lots. Neither do the POHOA CCRs attempt to regulate garage sales or yard sales, nor is there any policy in place that does so.

POHOA has used the services of VF-Law which has written an article that directly addresses what the POHOA Board is attempting to do with this violation notice.

Source: <https://vf-law.com/2012/03/25/garage-sales-and-your-hoa/>**"The authority for doing so was "commercial activities" prohibition in the association's governing documents. In short, the board contended that, because commercial activities are prohibited in the community, garage sales must be banned.****I must confess I was surprised by the request. Very few sets of HOA or condominium CC&Rs or bylaws—I can count the ones I have seen on one hand—expressly prohibit garage sales in a community. But, fewer still are the association boards that take the next step and attempt to ban garage sales based on an interpretation and application of existing language in the governing documents without seeking to amend the governing documents to add an express garage sale ban."**

Since the effect of this interpretation is to change the enforcement practices of POHOA, it appears to circumvent the Procedures for the Adoption and Amendment of Policies Procedures and Rules which were adopted in March of 2023. The enforcement, in effect, changes the policy of the POHOA, which had previously and consistently allowed such sales to occur without any regulation whatsoever. Since VF-Law considers this "surprising", it cannot be reasonable that we should have anticipated or known that our yard sale would be considered a violation. And, since VF-Law says an attempt to use such an interpretation can be counted less than "on one hand", it is therefore quite questionable that POHOA would attempt to do so - particularly without consulting the POHOA General Counsel prior to issuing the violation.

Garage sales and yard sales, such as the one we held, are often seen as community-building activities and legitimate residential uses. They offer an opportunity for neighbors to connect, fostering a sense of community and belonging.

Source: <https://www.jstor.org/stable/44127133>**"Some neighborhood sales have been organized expressly for the purpose of getting the neighbors to know one another in areas undergoing transition. They provide a positive means to combat a perceived "decline of community" in the United States today, developing both bonding and binding social capital."**

Considering the recent passage of HB22-1139, the association may need to reevaluate the rationale for prohibiting home occupations or yard sales based on the resulting parking on residential streets. These streets are public right-of-ways that, under the new law, the HOA can no longer regulate whatsoever. It is possible that the CCRs cited may no longer be valid because of these elements about traffic/parking, similar to the logic that forced us to rewrite several Policies as a result of HB22-1137.

Therefore, any attempt to invoke clauses within Article X Use Restrictions in the CCRs due to customer parking is now questionable as well - including attempting to define public parking as a nuisance. The yard sale we conducted appears to fall outside the definition of "home occupation" and, as such, cannot be classified as a "commercial trade." And, since Larimer County has the only published definition or description of a yard/garage sale, it appears to supersede POHOA Board interpretations since the governing documents have no specific definitions, policies, or guidelines.

It is crucial to mention that we have held identical sales in previous years, selling similar items without receiving any violation notices. There were no informal discussions or warnings given in advance that we were in violation of any regulations, which the new Covenant Enforcement Procedure Policy allows the Board to do.

6. Courtesy Notices. At any time, the Association may, but is not required, to send a Courtesy Notice of the violation informing the Owner of the violation. The Association may send the Courtesy Notice in any manner chosen by the Board.

Since the sale was held on May 13, May 20, May 21, and May 27, the Board had multiple opportunities to literally walk up to us at the sale and raise any issues. Instead, it appears that either members of the Board or agents of the Board took the following actions:

- A sign for the sale was stolen on late May 20 or early May 21
- A second sign was taken by Director Jones and hidden behind bushes on May 27 (he claimed it blew over in the wind, and put a rock on top to keep it from blowing away)
- The sign on May 27 was run over by a vehicle later in the day

At no time did the Board speak to us directly (in spite of face-to-face contact with Director Jones on May 27) and raise the complaint that the yard sale was a violation, nor did the Board send an email, text message, or call us. The Board chose to wait until after the 4th day of the sale (spanning 3 weekends), when it was known to have been completed, to send a notice of a violation.

This is the first time since we moved here in 2007 that such an issue has arisen, and to our knowledge, no other homeowner in the history of the HOA dating back to 2003 has received a similar notice (all records prior to 2022 have been reviewed). And, we have had the identical sale in prior years without any issue with prior Boards.

In light of the above, we formally request a hearing to discuss this matter further. We believe it is in the best interest of our community to have clear guidelines that differentiate between home occupations and legitimate residential activities such as garage or yard sales, as recommended by VF-Law because such interpretations are so extreme, infrequent, and unusual.

Therefore, our response in summary is that we contest the validity of the notice and request a hearing based upon the following:

- Inconsistent Enforcement
- Compliance with Larimer County Land Use Code regulations on Yard Sales or Garage Sales (7 calendar days/year)
- Lack of Applicable Definition or Policy in the POHOA Governing Documents
- Inconsistent Interpretation of the POHOA Governing Documents
- Yard/Garage/Plant/Private Sales are legitimate home uses and are community-building
- The issue of "curing" the violation is moot as the sale ended prior to the notice, which appears known to the Board prior to sending

We look forward to your response and the opportunity to work collaboratively to resolve this issue. We believe a reasonable resolution that respects homeowners' rights and maintains our community's harmony can be reached.

Thank you for your attention to this matter.

Sincerely,

Deborah & Andrew Mowery
pohoaandy@gmail.com
970-310-5296