



Andy Mowery <pohoaandy@gmail.com>

Notice of Candidacy for the POHOA Board of Directors

Poudre Overlook HOA at FtC <atftcpoudreoverlook@gmail.com>

Thu, Nov 30, 2023 at 11:07 AM

To: Andy Mowery <pohoaandy@gmail.com>

Your email has been received. Thank you.
Poudre Overlook HOA of Fort Collins
Board of Directors

On Wed, Nov 29, 2023 at 4:29 PM Andy Mowery <pohoaandy@gmail.com> wrote:

Lora,

I have not received a response to the last email. I have, however, received your notice about the Annual Homeowner's Meeting which includes Meeting Minutes attempting to document a failure to appeal a decision.

Here is the video recording of the relevant section of the meeting: <https://www.youtube.com/watch?v=6vok8CdWY4U&t=141s>

Below is an AI transcript (provided by Glasp).

The problem with your attempt to record my resignation as "out of order" and without appeal is:

- A resignation is a Privileged Motion - such motions can be offered at any time, per Robert's Rules
- The POHOA Bylaws state a resignation is effective the moment the Association is given notice - there is no procedural requirement, nor any mechanism for "acceptance"
- I raised the issue of the fact that Bylaws trumping any attempt at procedural maneuvers to refuse acceptance or disqualify the resignation. See the transcript. That is literally an appeal.

Therefore, I am notifying you in writing that I dispute the attempt to record these inaccuracies in the Meeting Minutes. I also dispute the effectiveness of attempting to apply a Bylaw retroactively to a removal action that was actually the part of the meeting that was "out of order". You literally ruled correctly at first (calling the vote "moot"), but then allowed members to conspire a way to overcome the resignation and have the vote anyways. What you allowed to occur is an embarrassment to the Association.

I am demanding a hearing prior to the meeting on 12/5/23, or some other means of resolving the dispute. As you have offered in the past, resolving the matter in writing is acceptable.

If, on the other hand, you can point out where in the video you believe I "failed" to appeal, or when an opportunity to voice an appeal (you are repeatedly shouting me down and interrupting me) would occur. I'd like the exact time-stamp where such an opportunity occurred. At the meeting, Director Jones stated that in order for the resignation to be effective and not out of order, it would have had to have been made at the beginning of the meeting. This is false per the Bylaws and Robert's Rules. And, examination of the recordings of the rest of the meeting demonstrate that you earlier got angry at both Director Tunna and myself for attempting to speak on the earlier motion. There was literally no other opportunity - and if you LOOK at the video, I had my hand raised to signal an attempt to present a privileged motion (since you got angry if we verbalized such motions, which is allowed in RONR).

I believe that should you not provide the opportunity to resolve this dispute in a timely manner (prior to the meeting on 12/5), I would be left with no other option than to pursue [Declaratory Relief under Rule 57](#), which allows for such relief to be obtained through Small Claims Court. The issue at hand is enforcement of the Bylaws (requiring acceptance of a resignation upon notice), which you demonstrably failed to do (see the video). Declaratory relief would include amending the proposed Meeting Minutes (if approved), notice to all members of the incorrect action taken, and other actions to rectify the attempt to apply the 3-year Ban Bylaw retroactively. I am told the changes in HB22-1137 make the venue appropriate, and that the objective facts make this a candidate for Summary Judgment.

I would also like to remind you that at the meeting proceeding 1/25/23, **you verbalized a demand that I resign**. It appears that **my actions were responsive to the demand**, not simply a maneuver to avoid the effect of changing the Bylaws.

And, even if it was, you acknowledge both at the meeting and in the Meeting Minutes that such a maneuver was legitimate and possible. You appear to argue that the sole reason my resignation is ineffective is the timing, and whether it was "out of order". Neither appears to be true per the Bylaws or simple understanding of Robert's Rules (Resignations are a Privileged Motion). Your case is further complicated by the effective date of the Bylaw change (2/2/23), and the lack of retroactive application language within the Bylaw - which was voted upon without actual agreed-upon language at the meeting!

My resignation letter, which I simply wished to read at the open meeting as all other resignors had done previously, noted the dysfunction of your communication style as the reason. The dysfunction continues in this dispute, reinforcing my point. I was ready to let Dr. Tunna attempt to bring similar agendas and points of view to represent me - as a means of overcoming the dysfunction. But, you managed to frustrate him too - and there is absolutely no way to heap blame upon him as you did me. I knew that if my letter took more than 2 minutes to read (even though on 5/25, many directors were given > 5 minutes to read their letter), you might disrupt my reading. This is why I gave notice to John in advance of the meeting, and asked him to help me shorten the letter to avoid you preventing me from finishing under the guise of some unwritten "board rule".

Therefore, our shared agenda and POV remains unrepresented on the Board. I am compelled to contest the open seats as a result of this.

Please, let's resolve this to avoid any use of time at the 12/5 meeting.

Sincerely,

And

IMG 6679 - YouTube

<https://www.youtube.com/watch?v=6vok8CdWY4U>

Transcript:

(00:02) we have a quorum of wait a minute there's 57. 59. 60 well they should only be fit behind well let's hope we're invoked and they can do this at the end at the end meeting right now um it's clear that the amendment has the request to amend the bylaws has passed um we will now move to uh could we hear the vote yeah well it's

(01:05) 37-22 but there's a question as to um whether we have uh we have only have 59 ballots that have been handed out well there's one blank ballot that was turned in yeah yeah but there was a blank ballot so we'll get that sorted out but for right now all right the next item on the agenda is the vote to remove Andrew Mowry from the board of directors is there a motion the second time is there a second

(02:14) group so it is moved and seconded to vote to remove Andrew Mowry from the board of directors um not yet because the person that makes the motion has the first right to speak clay do you wish to make any statements well I think the resignation of the previous board of women who are doing an excellent job cause of the actions of one member of the HOA thinks all that needs to be spoken Andy members of the board and Association I have made the difficult decision to resign from the board of directives when I joined the board last December I hope

(03:19) to improve the community however the dysfunction and lack of communication with this award is greater than my ability to overcome at this time even simple matters are not properly deliberated or voted upon and many decisions are made by individual directors I cannot agree to speak with one voice on matters when we do not deliberate or vote I've always believed that admitting what you are wrong is not a sign of weakness but rather a sign of strength I've always believed that leading by example is in facts and evidence

(03:49) encouraging open and honest communication promoting continuous learning and Improvement and showing empathy and respect for opposing points of view the keys to overcoming the dictatorial attitudes that have caused so much Discord in our community I believe this community deserves better and I cannot in good conscious can continue to serve as directors when some of my colleagues cannot uphold the principles that we have all agreed to follow he's therefore I respectfully resign my position as director of pure

(04:18) Overlook HOA wish you the best as the board and will return to roles of influence as a homeowner and serving on any committees where I'm welcome if conditions change I may once again volunteer for service as a director thank you for your opportunity to serve all right with Andy's resignation oh I'm sorry yes voted off he could get back on again so I think you need to refuse to resignation and we're still having a proposal I oh I cannot increase conscious do that um is there a so with Andy's resignation that makes

(05:16) the um vote yes why why uh because Andy is resigning yeah but why oh let me okay let me ask Walker do you refuse to accept his resignation John do you refuse I'm asking any questions John I I don't refuse them hi I understand what his actions

are because he wants to be able to run again was it December yeah you're putting words in my mouth that's not true well you're putting words all right let's but the logic the logic of his action would dictate that he has a desire to
 (06:21) run in December which he doesn't resign that is three years that seems to be obvious um please stop okay I'm trying desperately to conduct a respectful meeting here so let's so since there are two three that that will accept the resignation correct my vote really won't matter except he's got he would he still has a vote right because we haven't accepted so we're in this acceptance mode this is ridiculous but you're still on the board correct but it's ridiculous so where I'll vote even if we were to try
 (07:17) to okay great so it's currently for weatherington if we're so concerned about this amendment that we just put we voted for we both off of the director he can't get back on for three years he is resigning he is not getting voted up so we're really worried about wording and getting a committee to get it right no I mean it's it's what Bob said might it make some sense doesn't it well but we've had two people that will accept the resignation he accepts his resignation so it's yeah
 (08:04) so it isn't accepted so we move on to the next item of business yes um a motion was placed on the floor to address the amendment or not the amendment but the removal of the director and the resignation was submitted in the middle of that discussion and the resignation did not come at the beginning of this meeting it came after the amendment asked so I think there was a motion to address the vote and that probably should be carried through I hear yeah uh your acceptance of the resignation was in the middle of you're
 (09:00) right **the resignation was basically out of order um all right so we are voting what removing Andy that was the motion is that the board member I think he addresses correctly we have the three motions in front of us that was what the special meeting is all about in the middle of it so the book the idea is that the motion was made and seconded to vote to remove Andrew Mallory from the board and he offered his resignation which was out of order**
 (10:05) can I ask a question when was it in order at any point prior in this meeting you already you already cut me off once and speaking about a different issue which John by the way actually finished my sentence for me so when was the proper time for me to raise this you could have done it before the meeting you could have done it after the after the vote I mean there's you could have done it a lot at a lot what are the **what did the bylaws say about the proper time to submit a resignation you can submit it at any time including in the middle**
 (10:41) of a meeting or you know this is so frustrating listening to these kids argue over this the fact is if you if you can stand up and do this why can't you stand up and volunteer to get on the board if one of you just one of you people would have stood up and said I like to be on the board we wouldn't be having this discussion right now you'd be on the board all right all right all right all right all right all right all right stop so stop let us vote I got one this is precisely why I resigned can't do anything right literally
 (11:40) literally literally the exact same way this is this is literally the problem kind of black thank you right now

On Wed, Nov 15, 2023 at 5:09 PM Andy Mowery <pohoaandy@gmail.com> wrote:

Lora,

At last night's meeting, you made contradictory statements regarding my eligibility as a candidate for the 2 open Board seats. At first, you disclaimed responsibility by saying it was the "owner's decision", but then later said that you yourself determined I was out of order, and in some unexplained manner, failed to appeal the decision (it is unclear whether you are referring to your own decisions - allowing the vote to remove to proceed, or attempting to not accept my resignation, etc, or whether you mean the vote of the owners - which I don't think any process for appeal actually exists in the bylaws). Your comments conflict with one another, and do not reflect the objective facts about the meeting, Robert's Rules, or the Bylaws.

I would like to remind you that the meeting was recorded, so there is no dispute as to what occurred, and that has been publicly available to you for over 9 months. I would also like to remind you that I raised the issue at the March Board Meeting, at which time you said something different, again.

I do not find any support for your opinion that any sort of appeal is necessary. However, I will run through the relevant facts to refresh your memory. If you wish to label this as an appeal, you are free to do so.

1. According to Robert's Rules 12th Edition Section 46 "Resignation and Removal of Officers" it states that if an director/officer tenders a resignation the resignation is a privileged motion and takes precedence over the motion to remove.

It is clear that I raised my hand and otherwise attempted to speak (several times) prior to the motion to make a privileged motion, but you would not allow me to speak. I physically handed the letter as soon as you would allow it, which wasn't a decision made by the owners. There was an earlier dispute with Director Tunna in which you did not seem to comprehend that a privileged motion is NOT out of order, and because you became loud and angry, both Director Tunna and I simply waited to be called upon after the confrontation.

However, **the actual tendering of my resignation to the Board occurs no later than 131pm on Tuesday January 24 by email**, a full day prior to the meeting. Director John Tunna can attest to his knowledge of my resignation prior to the meeting, therefore, the hair splitting over the timing at the meeting is likely to be irrelevant. The question was

whether you would cut me off at 2 minutes, or attempt some other means of preventing me from turning in the resignation over Robert's Rules or time constraints - which was apparently a valid concern. You have already been sent a copy of this draft version in prior correspondence.

Andy Mowery <pohoaandy@gmail.com>
to pohoajohn

Tue, Jan 24, 1:31 PM

John,

At 568 words, it should take less than 4 minutes to read. Let me know if I covered the points we discussed. I am concerned it may still be too much.

Cheers!

Andy

...

One attachment • Scanned by Gmail



2. Even if, for some reason, you find that a means to justify the decision to proceed with the vote of removal, which you actually reversed at the meeting (calling it "moot" and not allowing the vote to go forward), the POHOA Bylaws supersede Robert's Rules of Order - even according to your own past statements and judgement.

The Bylaws In Article IV Section 6(b) are sufficiently clear and plainly written that the resignation is effective upon receipt by the Association. Whether Director John Tunna's receipt of the notice and letter, or my laying it on the table on January 25th prior to the vote is used, the resignation is effective at that moment. There is no use of Robert's Rules of Order that supersedes that fact, nor is there any process for refusing to accept a resignation (attempted at the meeting for considerable time), nor is there any mechanism for any sort of appealing of your decision described in the Bylaws.

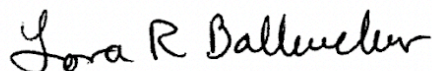
3. Even if, for some other reason, you refuse to accept that the Bylaws supersede and the resignation is immediate either on January 24 or 25, the Bylaw vote at the meeting does not go into legal effect until an Action Without A Meeting Vote on February 2, more than a week later. The Bylaw has no such language that describes retroactive effect on any Director who was subjected to a vote that had no other purpose than embarrassment and humiliation. Director Tunna confirmed this to me at the time, and expected you to do the same at the March meeting.

**FIRST AMENDMENT TO THE BYLAWS
OF
POUDRE OVERLOOK HOMEOWNERS ASSOCIATION OF FORT COLLINS
(a Nonprofit Corporation)**

PURSUANT TO a vote by Members of the Association present at a meeting on January 25, 2023, and in accordance with Article XVI of the Association's Bylaws, the Bylaws of the Association are amended to include the clause "Directors that have been removed from the Board by a vote of the Members may not be elected or serve on the Board for three calendar years following the date of removal."

NOTICE of his amendment was sent by first class U.S. mail to all members of the Association on 3 February 2023.

DATED this second day of February 2023



Lora R Ballweber, President

4. The POHOA Board has not issued any written statement giving notice or actually applying the Bylaw to me. The only response to prior inquiries was to table the issue until the next "owners meeting". It was not until last night that you informally blurted out "yes" to the question of whether or not you considered me banned. I am unclear as to whether that is your personal view, or whether that is an action of the Board (I see no record of a vote on the matter). You did send out a notice to the community, but Dr. Tunna pointed out that it was merely an attempt to record actions taken by the owners, not any Board decision on whether to apply the decision as a matter of law. I don't believe that is up to the owners at all, but I'm willing to review any citations you may have.

I believe a reasonable resolution to the matter is for the Board to consider these facts, and to issue a written statement on the matter making it clear whether or not you are attempting to retroactively apply the new Bylaw that was not legally put into effect until 2/2/23. If you have a citation or case law indicating such a maneuver is legally possible, please provide without further delay.

I believe it was proper to allow the issue to be raised during New Business or Open Comment at last night's Regular Board Meeting. Instead, you treated me with disrespect as you angrily demanded I leave the room. This issue deserves attention and closure after months of delays. I believe that I only have a statute of limitations through 1/15/24 if it were necessary to seek Declaratory relief in Small Claims Court (apparently now available as an option due to HB22-1137) to settle the matter. And, since the meeting for which elections consider new candidates is on December 5, irreparable harm could occur by that date if you intend to enforce this ban up until and through the meeting.

I do not wish to use litigation to settle the matter, and this is not by any means a legal threat. It merely maps out the available options for dispute resolution. I presume that you would decline mediation given how I was treated last night.

I therefore suggest that instead of winging it (as you did with the two policies passed last night) and avoiding an actual legal review, that you use your free 30 minutes from the HOA General Counsel (the plan you are paying for, according to Dr. Tunna's recollection) to submit a simple question verifying the legal effective date of 2/2/23, and whether or not this amended bylaw could possibly be retroactively applied to a Director who submitted a written resignation on 1/24/23 or 1/25/23. If you do not get legal support from a practicing HOA attorney, then I would simply ask that you publicly announce the attempt to ban me to be ineffective legally.

I will not accept that your need to consult an attorney to understand plainly written facts is any justification for assigning legal expenses to me personally. You are free to judge the facts and arrive at the correct conclusion, as Dr. Tunna has, on your own. Please do not create legal expense for the fact I've made this inquiry. You will need to judge whether you need an

attorney to make counter arguments or present new facts that address the points raised. As you have already done with policies, you can just look it up on your own if you choose.

I hope we can settle this dispute of interpretations amicably without further delay. Please acknowledge receipt of this email. I am copying members of the HOA Homeowners Rights Task Force, Legislators, and DORA with this email as I believe this behavior rises to the level of consideration in reviewing changes to CCIOA. I believe the right to bar a member from participation should be limited to CRS 7-128-109, which requires a quorum and court order. I do not believe the Bylaws should be used to usurp such powers from the courts to avoid fair and reasonable due process.

Sincerely,

Andy

On Sat, Nov 4, 2023 at 8:22 PM Andy Mowery <pohoaandy@gmail.com> wrote:

To the Board:

I have not received a reply or confirmation of receipt of this email. I hope that this will be addressed within the agenda of the November 14 Board Meeting. I have waited 3 weeks for a reply without follow-up.

I am also writing with an update regarding new requirements for those who serve on the Board, as well as the potential for those who serve as paid contractors. This information has been published since February, and according to DORA, it appears that it may apply to Directors in 2024. Below is a legal review of the new requirements, with the source cited. Those who plan to serve should be made aware in advance of these new requirements. This appears to also affect our accounting contractor. An excerpt is below.

Those planning to run for the board should know, in advance, of these new requirements, as the issue of privacy has been raised in the past for some serving as volunteers, or even contractors. Attempts to know, see, or understand the contracts we have with homeowners for certain functions has been met with obfuscation.

There is an open question as to whether the use of proxies extend the reach of "control" to such individuals. The authority to remove Directors appears to be relevant to the analysis, and therefore related to the original request. The legal analysis recommends consultation with legal counsel for more information.

I believe this may be a topic discussed within the HOA Task Force, which just began meeting in October, and may be the subject of legislation in the 2024 session. Homeowner Advocates have not taken a position on the matter, but I can relay that I have participated in discussions where advocacy points towards limiting these requirements by statute to avoid reducing the pool of potential volunteers for HOA Directors. I sense we may have agreement on this approach to this issue, and I'm available to discuss if you choose.

Note that at the bottom of the excerpt, the subject of substantial control by management companies is discussed, and in our past, when we have abdicated control or decision-making, it would likely meet the new requirements. Whether or not hiring an accountant or bookkeeper, particularly when they exerted substantial control in the past while serving as a Director, is again something that should be reviewed by an HOA general counsel.

Sincerely,

Andy

Under the Final Rule, a "beneficial owner" means, "any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company."¹⁰ The Final Rule looks only to the "individual" and requires reporting companies to look through non-natural persons to derive the individuals who own or control them.

Also, the definition of "beneficial owner" includes any person who "exercises substantial control." The Final Rule provides¹¹ that, "An individual exercises substantial control over a reporting company if the individual:

- (A) Serves as a senior officer of the reporting company;
- (B) **Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);**
- (C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:
 - (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - (2) The reorganization, dissolution, or merger of the reporting company;
 - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

¹⁰ 31 CFR § 1010.380(d).

¹¹ 31 CFR § 1010.380(d)(1)(i).



- (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
- (5) Compensation schemes and incentive programs for senior officers;
- (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
- (7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or
- (D) Has any other form of substantial control over the reporting company."

The Final Rule's definition is non-exclusive and requires the reporting company to include any individual who "has any other form of substantial control." As a result, many reporting companies will need to engage counsel to consider whether particular corporate governance arrangement bring individuals within the ambit of "substantial control" and thereby render them into beneficial owners.

The Final Rule also clarifies¹² that an individual may exercise "substantial control" over a reporting company, directly or indirectly, including as a trustee of a trust or similar arrangement, through:

- (A) Board representation;
- (B) Ownership or control of a majority of the voting power or voting rights of the reporting company;
- (C) Rights associated with any financing arrangement or interest in a company;
- (D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
- (E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) any other contract, arrangement, understanding, relationship, or otherwise.

This guidance is non-exclusive and **requires a reporting company to consider "any other contract, arrangement, understanding, relationship or otherwise" that might cause an individual to exercise "substantial control" in an indirect manner.** The Final Rule establishes a facts and circumstances test that cannot be circumvented through a formalistic arrangement if there is an unwritten or covert "understanding, relationship or otherwise" that gives an individual indirect "substantial control."

For Homeowner Associations that are governed by a board of directors, each director would be expected to exercise "substantial influence over important decisions" by virtue of their vote. Any senior officer of the HOA would also be a beneficial owner under the language in the Final Rule.

¹² 31 CFR § 1010.380(d)(1)(ii).



HOAs that are managed by an external management company should consider whether that management company **exercise** any "other form of substantial control" by virtue of their management contracts. A management company that exercised substantial control could be deemed to have substantial control, thereby requiring the management company to go through a similar analysis to determine those individuals that are beneficial owners of the management company. **To avoid being deemed to have substantial control, management companies should review their management companies to ensure that they do not have the discretion required to exercise independent decision-making.** A management company whose actions were entirely subject to the board of directors would likely take the position that it lacked substantial control.

Source: https://passle-net.s3.amazonaws.com/Passle/5fe0c4f453548a10fc881e09/MediaLibrary/Document/2023-02-14-17-36-54-610-TE_HTeichmanJWilsonHOACTALawAlert_021423.pdf

On Sat, Oct 14, 2023 at 11:39 AM Andy Mowery <pohoaandy@gmail.com> wrote:

To the Board:

I am writing to ensure that your Annual Homeowners Meeting Notice will include candidates for the two open seats for the POHOA Board of Directors. I intend to self-nominate.

I resigned from the Board on January 25, 2023 (see attached letter), and submitted my resignation at the meeting in writing, and read the letter aloud.

In spite of this, President Ballweber attempted to refuse acceptance of the resignation, which is contrary to our Bylaws Article IV Section 6(b), and subsequently held a vote to "remove" me.

6. Resignation of Directors.

- (a) A director may resign at any time by giving written notice of resignation to the Association.
- (b) A resignation of a director is effective when the notice is received by the Association unless the notice specifies a later effective date.
- (c) A director who resigns may deliver to the Colorado Secretary of State for filing a statement to that effect.

I believe that the vote held was out of order and violated the POHOA Bylaws.

After the meeting, the POHOA Board sent out a communication to homeowners that appears to indicate the Board intends to ban/bar me from participating as a POHOA Director because of the improper vote. No subsequent communication has been sent to clear up the matter.

I therefore demand that prior to the Annual Homeowners Meeting to be held on November 14, 2023, the POHOA Board communicates in writing to all homeowners that I am not disqualified from running for the Board because I resigned and that the removal vote was invalid or ineffective after review of the Bylaws.

As a candidate, I expect an equal amount of time to speak at the meeting in support of my candidacy, and do not wish to have a disruptive meeting regarding any dispute over proper application of the Bylaws. The matter should be settled in advance of the meeting.

Sincerely,

Andy