



Andy Mowery &lt;pohoaandy@gmail.com&gt;

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**email of January 4, 2024**

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**Andy Mowery** <pohoaandy@gmail.com>

Wed, Jan 17, 2024 at 1:05 PM

To: Poudre Overlook HOA at FtC &lt;atftcpoudreoverlook@gmail.com&gt;

Cc: naquetta@ricks4co.com, hd40aide@gmail.com, "Altmann - DORA, Nick" &lt;nick.altmann@state.co.us&gt;, David Graf &lt;dgraf@moellergraf.com&gt;, Brianna.Titone.House@state.co.us, shindi@denverpost.com

To the Board:

I am continuing to follow up until I receive a response to the rebuttals of your claims. The dispute remains unresolved if you cannot provide justification for your actions that meets either strict or substantial compliance standards as required by statutes or governing documents (the standards may be different).

To summarize:

- The Bylaws state Director Resignations are effective immediately (strict compliance required)
- The Amended Bylaw cannot be retroactively enforced (substantial compliance required)
- The Bylaws do not require nominations to receive votes (strict compliance required)
- CCIOA requires proxies be accepted, and ballots counted (strict compliance required)
- The right to vote is considered fundamental because it is ultimately “preservative of all rights.” *In re Hickenlooper*, 2013 CO 62, ¶ 13, 312 P.3d 153, 157 (substantial compliance required)
- Under the CCIOA, members of a common interest community, *i.e.*, unit property owners, have the right to vote on any matter affecting the common interest community. C.R.S. § 38-33.3-310 (substantial compliance required)
- Such members have a right to cast their vote by proxy. C.R.S. § 38-33.3-310(2)(a); *see also* C.R.S. § 7-127-203 (strict compliance required)
- Unless provided for otherwise in applicable bylaws, every member entitled to vote must be provided with a written ballot. C.R.S. § 7-127(1) (substantial compliance required)
- To invalidate the results of a past election, it must be shown that the true will of the voting public was not reflected in the results, or that statutory requirements were not substantially complied with by those responsible for calling, scheduling and conducting an election. *Wilde v. City of Wheat Ridge*, 967 P.2d 213 (Colo. App. 1998); *Crowe v. Wheeler*, 439 P.2d 50 (Colo. 1968). (substantial compliance required)

The facts are not in dispute, and you have documented your own intentions and actions over the course of the past year.

- Lora Ballweber found multiple ways to attempt to refuse acceptance of my resignation on 1/25/23 when strict compliance was necessary
- The Board was notified in writing on 2/2/23 that the Amended Bylaw could not be considered effective until signed, which occurred the same day preventing retroactive enforcement on an invalid vote taken on 1/25/23
- The Board acknowledged receiving a notice of self-candidacy more than 30 days in advance of an election by Andrew Mowery
- The Board has not produced any citation of the governing documents, CCIOA, or the Non-Profit Act that supports refusing to accept a written nomination in advance of the meeting by Andrew

## Mowery

- The Board received a valid Proxy from Andrew Mowery assigning his vote on a written ballot to John Tunna
- John Tunna raised the issue of Andrew Mowery's self-nomination at the meeting
- Lora Ballweber, acting as Chair of the Homeowner's Annual Meeting, declared the self-nomination invalid NOT because it was not made from the floor, but because she was enforcing the Amended Bylaw in spite of knowing it was not legally effective due to the signature occurring 1 week after the valid resignation.
- Lora Ballweber did not accept the valid proxy ballot held by John Tunna written by Andrew Mowery, and therefore denied Mowery his right to cast his vote in the election for himself.

If you have any rebuttal or citations, I am happy to look them over. However, the combination of these citations and the undisputed facts results in a claim upon which Declaratory Relief may be granted by a Small Claims Court, which does have jurisdiction in this matter. Yet, for stating the fact that this is true, this is not, in fact, a legal threat. It simply points out that should the POHOA Board refuse to engage in any form of Dispute Resolution (currently via dialogue without involving attorneys), that other steps could be taken including litigation.

I would prefer that you simply admit the errors in judgement regarding your duty to act in compliance with statutes and the governing documents, apologize, and proceed with the proper action of accepting that I have been duly elected. In addition, the POHOA Board would need to announce that outcome to the homeowners in a written notice explaining the errors, and why the law requires that outcome.

You should not fear, at this time, personal liability - which you raised with your collective 1/2/24 testimony memorialized in your 12/27/23 AWAM. While you were given written notice about the non-compliance via email multiple times since 1/25/23, your ignorance of the law may still be an affirmative defense if you received legal advice that encouraged you to continue to make the incorrect choices. Absent such legal advice, however, a challenge to the protections of the Business Judgement Rule could be made given the fact that you not only received written notice, but you decided to quantify them in your 12/27/23 AWAM in a complaint about the volume being oppressive to you.

You see, if you did not read them, they cannot possibly be oppressive. Therefore, you have admitted, as a Board, to having been given notice and being briefed on the relevant parts of the law for which there is a claim you are being non-compliant.

Therefore, I am sending this email today as a formal complaint of your non-compliance, which I believe required, per CCIOA, impartial fact-finding. I demand that you respond with the results of your impartial fact-finding as it pertains to the specific allegations of non-compliance listed above in bullet points.

If my allegations are considered "frivolous", then it would be necessary to provide the evidence that contradicts the claim. Factual evidence, to be clear. If no such facts are presented, then the ultimate choice to litigate would be made in good faith, and the act of filing litigation could not be considered bad faith or frivolous, as I have done exhaustive research and can find no support for your actions whatsoever, including with legal experts on the matters.

In the meantime, it is important that you cease and desist from taking any actions outside of scheduled Board Meetings, as there is a dispute as to whether or not I am duly elected. If my claim is verified, then

any AWAM vote would require my approval prior to taking the vote. And, if my claim is verified, then any actions taken in the interim would be legally ineffective.

Please acknowledge receipt of this email without further delay.

Sincerely,

Andy

On Mon, Jan 15, 2024 at 9:00 PM Andy Mowery <pohoaandy@gmail.com> wrote:

To the Board:

While awaiting your response, I have located the standard used in Colorado for judging whether an HOA Board of Directors has acted in compliance with the governing documents or any laws.

***The Colorado Supreme Court has explained that to evaluate substantial compliance, a district court should consider “***

- (1) the extent of the noncompliance;***
- (2) the purpose of the provision and whether that purpose was substantially achieved in spite of the lack of compliance; and***
- (3) whether there was a good faith effort to comply.”***

**Griswold v. Ferrigno Warren, 2020 CO 34, ¶ 12 (citing Loonan v. Woodley, 882 P.2d 1380, 1384 (Colo. 1994))**

Notably, the underlying cases (Griswold and Loonan) address elections. As previously cited, there are several elements in your actions outlined in detail:

- Failure to follow the Bylaws in recognizing a resignation as immediately effective
- Attempt to retroactively apply an amended Bylaw (with evidence of written legal advice to the contrary)
- Refusal to accept a self-nomination for an open seat made in writing prior to the meeting.
- Refusal to accept proxy votes following a self-nomination

While some of these may require strict compliance, they all at the very least require substantial compliance. I believe using the standards above, one or more of these bullet points fail to meet the threshold of substantial compliance. It may, however, be that certain elements of these points actually require strict compliance.

For instance, there does not seem to be any gray area regarding the issues of the timing of effectiveness of the resignation and amended bylaws. It creates a binary where there either is or is not compliance. Partial compliance is simply not possible.

In sum, however, the 11 pages of emails sent between October 14 and December 5, 2023 outline the full set of issues to be evaluated, and prior to taking action on 12/5/23, you had, at the very least, the opportunity to consider or reconsider your evaluation of compliance based upon verifiable facts. Yet, you took the action that is not compliant anyways, which may indicate the action was in bad faith.

My theory is that the Board has made statements at meetings indicating it is incapable of impartial fact finding or unbiased adjudication. The rulings seem to be made in direct defiance of the governing documents and/or state laws because barring me from being on the Board is the desired outcome for which the Board will find any excuse it can. I suspect the reason is that there is political pressure from the homeowners who wish that the Amended Bylaw COULD be enforced on me, and will perhaps withdraw their political support for failing to properly sequence the actions.

Again, the Board knew or should have known that a Bylaw would not be effective at the time of the vote. Rather than seeking actual paid legal advice, it either took the advice of homeowner Gloria Jones (who spoke as though she was an expert or authority on the matter at the 12/5/23 meeting), or from either of the two homeowner-attorneys who happen to be on the Board at this time. Regardless of the source of the advice, it turns out to be bad advice.

While this may be politically embarrassing, it is not sufficient justification to qualify for substantial compliance. And, it does not appear to be in good faith, which is probably key to the impartial adjudication of the matter.

I would like to make the Board aware that a new Appellate decision was reached in June of 2023 regarding the issues of substantial compliance in a case where a Board was found to have performed an invalid election. I believe the elements of an invalid election exist on 12/5/23.

In that case, which is ongoing, the Court has ordered that the election was invalid Declaratory Relief. As a result, ALL decisions made from that point forward by the Board may also be invalid or legally ineffective.

One of the key points to be made here is whether my election as a minority facing 3-4 votes against my initiatives could be effective anyways - making my election functionally meaningless. What's the point?

Well, the point is AWAMs. While a minority may be unable to win hotly contested votes, the minority does have the power to stop AWAM actions with a single vote against having a vote. And, that, in turn, supports transparency, as the Board would then have to bring that agenda item into an open meeting where homeowners would have notice and an opportunity to comment prior to a vote that would be on the record.

As I have previously stated, I am aware that former Director John Tunna had a difficult time getting the rest of you to adopt the practice of formally documenting actions outside of meetings. Between January and May of 2023, several AWAMs were documented and posted on the website without any homeowner being forced to use document requests - and being told they have to pay a per-page fee, or be denied altogether.

However, John has also told me that after May, the Board began to ignore AWAM requirements, and may have taken some actions without appropriate documentation. We know that Director Clay Jones spouse, Gloria Jones, led a Board from 2021 through mid-2022 that failed to properly document at least 18 AWAMs - and then attempted to clean up the mess by simply bringing up the titles at the 5/12/22 meeting and vote them all as Board approved in arrears - without any homeowner really knowing what happened (details were not given prior to the meeting). So, homeowners were denied an opportunity to comment, or even know about those actions.

In the current interim since the 12/5/23 election, we know if at least one AWAM, where the Board chose to authorize Lora Ballweber to engage in lobbying activities before the HOA Task Force with a prepared statement. I would have opposed that action, particularly as it was obviously targeting me with direct personal attacks. But, perhaps more importantly because HOA Boards are already represented on HOA issues by Community Associations Institute (CAI) and the Colorado Legislative Action Committee (CLAC) - with some of those members ON the Task Force itself!

While I may not have won a vote at an open meeting, at least the action would be taken with homeowners allowed to weigh in prior to it being done IN THEIR NAME. The Board didn't just speak on 1/2/23, the ASSOCIATION did as an official Board Action.

The cause of simply keeping AWAM actions from being a place to avoid transparency is sufficient good faith reasons to pursue the remedy of addressing the past election with my seating on the Board.

Again, I recognize a Petition may be waiting in the wings. But, that potential does not justify failing to meet even the weak threshold of Substantial Compliance.

Again, I plan to write about this, and am seeking resolution to the dispute prior to writing about it again.

I am also seeking a remedy in the legislature, and several homeowner rights advocates who have reviewed this are FLOORED that not only did you make that testimony with a written AWAM (some tell me they've never seen this in

decades of observation), but that going further to essentially make lobbying a PRIMARY activity of POHOA may risk the HOAs tax-exempt status.

So, for that additional reason, sitting on the Board to at least document that such actions may not be compliant is enough of good faith purpose to continue writing to you about the matter for full mutually agreeable resolution. I do not seek litigation, but unless we can have communication and a good faith attempt to resolve the dispute without legal expenses at all, it appears that you intend to create legal expenses and simply hope that the burden falls on me while you may be protected by D&O insurance.

The problem with this calculus is that if the Board did not operate a legal election on 12/5/23, it may be possible that other legal actions the Board may take in the future could be challenged as ineffective or illegitimate. Since you are contemplating litigation against a homeowner for 18 months (and having spent several thousand dollars on this), messing with the legitimacy of elections in the interim could have unintended consequences.

I hope you will read this and consider the points made soberly and with the best interests of the association and its members considered before you weigh your political decisions. I understand deciding in my favor may cause you to lose political support, but that may be a price for making promises you cannot keep. Anything else is corrupt, bad faith, or willfully ignorant.

I continue to await your response.

Sincerely,

Andy

On Fri, Jan 12, 2024 at 6:52 AM Andy Mowery <pohoaandy@gmail.com> wrote:

To the Board:

I want to make clear that there were multiple communications sent to the Board between 10/14/23 and 12/5/23 which are attached as a PDF. Since you are fond of counting pages, it's 11 pages - all following up on the original email in the voice of someone who sincerely believes he is doing what is right, necessary, or expected based upon extensive experience with past elections and knowledge of Colorado Law.

Included in that assessment, is a requirement from [CRS 38-33.3-209.4](#). This section is clear on the subject of updating all HOA Homeowners about the complete set of governing documents, which includes policies, rules, and guidelines. All CCIOA HOA Non-Profit Corporations are required to give notice about any changes made since the prior fiscal year - a practice that POHOA has not engaged in throughout its history since 2004.

Because homeowners have recently experienced a BARRAGE of "document revision", including spending over \$21,000 in a failed attempt to change them wholesale, literally, we are seeing two main contributions to misunderstandings about what the rules, guidelines, and policies actually are:

1. We have a history, particularly with elections, of doing things differently almost perennially. There is rarely an explanation, and it is often accompanied with an authoritarian Board who insists that their interpretation of the documents is correct.
2. We have seen with this particular Board led by Lora Ballweber, an insistence that the Board is free to create "board policies", which are almost always unwritten, and amount to nothing more than an interpretation of existing documents, or alternatively, creating out of thin air policies, rules, or guidelines when the governing documents are actually silent.

This is a potent combination that leads to Boards changing the fundamentals, such as nominations, simply because they "have the votes" (often without actually using AWAM, and not actually having a vote - but they COULD have, if they wanted). Since we have had two major wholesale resignations/removals, the new Board sometimes says that in spite of a prior Board doing things a different or even opposing way, the current Board is within its right to simply, without any due process or procedure, and without actually following the Policy for actually changing policies (which is one of the 9 required by CCIOA), simply state, usually after the fact, that they are interpreting the documents/law, and are within their rights to simply disregard and/or override a prior Board's

interpretation, actions, or stated policies.

A homeowner is then expected to navigate and know these rules - and in this specific case, know in advance that THIS Board expects a Floor Nomination and only a Floor Nomination to be valid - without the notice of any change that is required in the referenced section above. This defies logic, and is questionable to the point where it warrants actual legal advice from a qualified attorney (not an attorney who happens to be a homeowner who is either on the board, or somehow informally advising the board). We have confirmation that prior to changing 2 policies on 11/14/23, the Board said they did not have it reviewed prior to enacting it, and essentially winged it themselves.

But, while Lora Ballweber testified for the Board at the HOA Task Force (see attached AWAM with the text of her testimony pre-written) that she complains about the volume of pages written, tools such as ChatGPT and AskMyPDF.com are available to upload long content and ask direct questions in plain English:

Should an HOA Board receiving the communications in this email thread be notified that Andrew Mowery has self-nominated in an upcoming election for a Director?

10:07 PM

Yes, based on the communications in this email thread, it is clear that Andrew Mowery has self-nominated for a Director position on the HOA Board. Therefore, it would be appropriate to notify the HOA Board of Andrew Mowery's self-nomination for the upcoming election.

#### SOURCES:

- Page 11: "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."



If a board member disputes the self-nomination because the word "intend" was used, is that a reasonable interpretation to deny Andrew Mowery from being a candidate if absent from the election meeting?

10:08 PM



Based on the information provided, it does not appear reasonable to deny Andrew Mowery from being a candidate if absent from the election meeting based on a board member's dispute over the self-nomination. Andrew Mowery has stated that he resigned from the Board and submitted his resignation in writing, which should have been accepted according to the POHOA Bylaws. The board's attempt to refuse acceptance of the resignation and hold a vote to "remove" him may be considered out of order and a violation of the bylaws. Additionally, there is no mention of any specific provision in the bylaws that would disqualify Andrew Mowery from being a candidate if absent from the election meeting. Therefore, it would be reasonable to allow Andrew Mowery to be a candidate for the Board of Directors.

**SOURCES:**

- Page 11: Andy Mowery's email stating his intention to self-nominate and his claim that the board attempted to refuse acceptance of his resignation and hold a vote to "remove" him.

## SOURCES:

- Page 11: Andy Mowery's email stating his intention to self-nominate and his claim that the board attempted to refuse acceptance of his resignation and hold a vote to "remove" him.
- Page 6: Andy Mowery's statement during a meeting about the contradictory statements made by Lora regarding his eligibility as a candidate and the lack of appeal process in the bylaws.
- Page 3: Andy Mowery's objections to the meeting minutes and the lack of written notice regarding the application of the Amended Bylaw to his candidacy.



While it is true AI can get things wrong sometimes, it is true that this tool is useful. And, if the Board did this themselves and got this response . . . and then still sent the email on 1/11/24 (the beginning of this thread), it would not be reasonable to dismiss and discount the AI analysis.

In fact, I spent some time trying to find out what COULD be reasonable about the interpretation leading to the conclusion that I had merely said "intended", and that given ALL the follow-up emails, how Lora or the Board could arrive at and continue to defend the interpretation and actions.

The following was an AI conclusion after considering Robert's Rules Section 66, and parts of CCIOA relevant to this discussion:

**"Yes, the email thread provides sufficient qualification for Andrew Mowery's self-nomination in advance of the meeting. In the emails, Andrew Mowery clearly states his intention to self-nominate for the two open seats on the POHOA Board of Directors. He also mentions his previous resignation from the Board and his belief that the vote to remove him was invalid. He demands that the Board communicates to all homeowners that he is not disqualified from running for the Board due to his resignation. These statements demonstrate Andrew Mowery's interest in serving on the Board and his understanding of the relevant bylaws and procedures."**

Playing Devil's Advocate, I tried to get the AI to take the other side and find what is reasonable about the Board's position. I got this response:

**"Based on the information provided, it appears that the Board is not arguing that a Floor Nomination is necessary or a consistent practice. Instead, it seems that *they may be willfully ignoring the only guidance that is available*. The individual raising the issue points out that the Board's statements and actions contradict each other and do not align with the objective facts, Robert's Rules, or the Bylaws. They also mention that *there is no evidence of any vote or special power given to the President or Chair to make a unilateral determination regarding the individual's eligibility as a candidate*. Therefore, it seems that the Board *may be avoiding addressing the issue directly* and attempting to create the perception that the Amended Bylaw has been retroactively applied to block the individual's candidacy. However, *there is no written notice or evidence of such application*."**

I therefore sincerely believe in good faith that if the POHOA intended to change the practices we saw in the 2021 election:

- Had an obligation per [CRS 38-33.3-209.4](#) to disclose these requirements by actually publishing changes to relevant policies and giving notice of the changes within 90 days of the fiscal year when these changes were made (in 2022 or 2023)
- That the Board has no such powers to make "board policies" that are unwritten, sprung upon homeowners after the facts
- That the Board had an obligation and opportunity to respond to me at least 6 times between 10/14 and 12/5 to explain the position that a self-nomination had not actually been made, and that a Floor Nomination was required, even if there is some reason the Board feels it doesn't have to follow the law and rules on changing one of the CCIOA required policies.
- That the Board was obligated to notify me when I first signed in for the meeting, that my self-nomination was invalid, and that I would need to self-nominate at the meeting. Failing to disclose the information appears to be deliberate to create foundation for this far-fetched excuse and interpretation.
- That when creating a new Policy on Meetings in March of 2023, if they intended to change how elections were run at meetings, a section memorializing this unwritten "board policy" should have been proposed, comments received, and then been part of the actual change to our Meetings Policy.

Given this additional analysis, using AI tools that address the Board's complaint about length of emails, which create a RICH set of content by which to analyze my words, actions, and intentions, has failed to utilize free tools that could have avoided this dispute entirely. By stating that the conversation is unilaterally terminated by the Board, instead of seeking a mutual understanding if not agreement, the Board is acting in an authoritarian manner without regard to the impropriety of their actions and approach.

I contend this is at the heart of nearly every dispute at POHOA, not only with myself, but with several others including previous Directors who have resigned.

Sincerely,

Andy

On Thu, Jan 11, 2024 at 7:13 PM Andy Mowery <[pohoaandy@gmail.com](mailto:pohoaandy@gmail.com)> wrote:  
To the Board:

While you may not wish to debate the matter further, this method of Alternative Dispute Resolution (ADR) is preferred as it is done without expense to any party as you are now well aware since you've engaged the HOA Homeowners Rights Task Force process. As you know, it is a central topic, and the fact that a Board can simply shut down communication is one of the primary topics LEADING to litigation. I'd also like to point out that on the same day you testified, Ms. Stevens testified about a "landmark case" regarding HOA elections that may address the fact that HOAs have inconsistent practices that allow a Board to preserve power may making up

the rules year after year.

Therefore, while it may take up both of our time to resolve the dispute, communication is the best way until there is an impasse that requires next steps. Creating the impasse intentionally in 2020 is what led to me finally choosing to litigate the matter by filing on 6/1/19 - which calls into question whether or not your actions (as an ASSOCIATION/BOARD - it is the Association that is the party, as the Board itself cannot be sued) contribute to the need to litigate.

In fact, it is true that POHOA has no actual "consistent" practices regarding elections. I'm happy to document a review of our elections to illustrate the point:

2004-2009 is the DECLARANT Period while the neighborhood is constructed. During that era, we see Directors either appointed, or if there were elections (I searched as Secretary for records and could not locate them), it is unknown how they were run. What we do know is that Bill Sullivan and Bill Tuminello emerged from this era as the perennial Directors, with Perry Malisani joining the Board soon after to create a 3-member Board until 2016. My recollection is that the few who attended meetings in those years essentially waived their right to an election and let the Board simply continue. Again, if there are records, you are free to produce them. When I had possession of the records, I could not find evidence of actual elections during this period, or even when each of those 3 had terms that were overlapping.

In 2016, as you mentioned in your testimony, there was a dispute. I asked for monthly payments, and our CAM and Board filed a lien even after an agreement was made with the HOA General Counsel, Pete Dauster. Requests for a hearing were denied until the CAM scheduled a meeting AT THE HOA ATTORNEY'S OFFICE. The matter was resolved completely at that meeting, including rescinding the lien and not attempting any attempt to assign legal fees to us. It was the fact that the Board chose to spend over \$2000 to chase a \$420 debt for which there was already a legally effective payment plan (following CCIOA) that called into question the fiduciary judgement of Directors Tuminello and Sullivan, as well as the CAM (Kellison Corp) to simultaneously resign in advance of the Annual Homeowners Meeting in November of 2016.

Because Directors Sullivan and Tuminello did not announce their resignations until the night of the meeting, there was no other option than to have floor-nominations at that meeting, and therefore the election was ad hoc.

In the 2017 elections, we saw a very strange situation. I was approached by Irve Denenberg to run for the Board on the premise that we needed to expand our Board from 3 persons to 9 persons. His pitch was based upon a need to have overwhelming numbers in case either Mr. Sullivan or Mr. Tuminello wished to rejoin the Board (appealing to my sense of injustice caused by their actions), and the fact that our documents allowed up to 9 members. I accepted the offer.

The election, however, was anything but standard. Essentially, all the persons recruited were pre-planned by what I later learned was essentially a political group (that would self-name themselves Poudre Overlook Advocates or POA in later years). Basically, the audience of nearly 150 persons (representing 87 homes) was asked who wanted to run. Those who were pre-invited either raised their hands or stood up. Then, the audience of homeowners was asked if anyone had a problem with them joining the Board, and they were approved by some general assent. It was close to the end of a meeting that was already contentious on a different issue, so in a hurry, we elected 6 additional Directors in a process that those asked to recount all have different recollections. The meeting minutes don't really record what happened.

In 2018, we perhaps more standardized elections. There was contention over enforcement activities that were non-compliant with our governing documents and CCIOA. So, we saw a combination of ending terms and resignations open up seats. But, once again, recruitment in advance of the meeting led to decisions made in advance of the meeting. It was noted at that meeting that we didn't really have an established election procedure given the history (that I just described). There was debate over how to do it properly, who was in charge of counting votes, and even how ballots were to be distributed. It is the first election we had that had actual paper ballots submitted secretly at all. Arguably, this is our starting point, not 2004, in terms of describing actual contested elections.

In 2019, we had a contentious year leading to a Petition to remove the entire Board on August 27, 2019. I was one of the 5 members on that Board, and I only remained (and didn't resign) because we had Directors Jones, Hammond, and Flanary taking actions that were non-transparent and non-compliant AFTER receiving the removal petition. Director Flanary, acting as President didn't even want to schedule the Special Meeting, which is required by CRS 7-128-108 and CCIOA!

At the Special Meeting on 8/27/19, the entire procedure was botched. In spite of dozens of people reviewing CCIOA, the governing documents (which advocated removal could occur with a majority) was contradicted by CCIOA, which held a standard of 67%. For whatever reason, all parties involved (I was not invited to the decision-making process, in spite of being a Board Member) agreed to the majority standard, not 67%.

So, in spite of the vote only garnering about 63% for removal, the entire group of homeowners ACCEPTED THE REMOVAL. The election that occurred the same evening was anything but consistent. Because of 4 resignations between November of 2018 and August of 2019, some argued that the replacement Board should also be 5 members. The whole debate, however, is [preserved on video](#).

One of the points of contention was whether to have elections for all 5 seats at once with the Top-5 vote-getters being seated. The opposing view was to have elections for each seat, one at a time. The latter prevailed, in spite of the governing documents being silent on the matter.

As a result, there were certain candidates like Gloria Jones who lost elections multiple times the same night. All nominations were on the floor as a matter of necessity - no one knew the outcome of the removal in advance of the meeting. The fact that the Board was not actually legally removed actually calls into question the entire election, period!

But, after seating 5 new members, those in POA began an angry vociferous protest. Threats were made, including telling President Matt Clark that he needed to sell his home and move if he did not put 4 POA members onto the Board by appointment. The validity of the vote held on 8/27/19 to have only 5 members was questioned, and is probably justified in hindsight.

That being said, the dispute was resolved by having another vote at the Annual Meeting in November of 2019 where the question would be put to the homeowners a second time. Again, the homeowners affirmed their desire to keep the Board at 5 members. Again, this meeting record is [preserved on video](#). Those in POA actually stormed out of the meeting when the 17 proxies they held were insufficient to win the day on the decision.

However, again, in 2019, we had an election after that vote that was perhaps better prepared with pre-written ballots handed out at the beginning of the meeting as homeowners checked in. Yes, floor nominations were again used (not all Board seats were open, and there was an open question as to how many board seats would eventually be available for election). Therefore, nominations in advance of the meeting were simply made impractical given the open questions. Floor nominations again were rooted in necessity caused by the circumstances.

In 2020, however, we were now in the Pandemic. So, the procedure in 2020 had to adjust to the circumstances, and the meeting was online via Zoom. Therefore, no Floor nominations were "in the room". However, nominations during the meeting did occur. With the question of how many Board seats were available no longer contested, and with certain sitting Directors seeking re-election while there was ongoing litigation, the circumstances favored continuity (as it did in the 2009-16 period).

Therefore, the first time we actually have Directors leaving seats open for a truly contested election not muddied by a dispute over how many seats there actually were was . . . in 2021. Therefore, to say that prior to 2021 that there was "consistency" is just somewhere between misleading and demonstrably false. Again, much of this record is in audio/video recordings - which YOUR Board has BANNED (allowing for revisionist history to be persuasive when presented to parties who were not there). Control of the Meeting Minutes means control of the history as well, so there's a tangent subject attached to this narrative (an aside).

But, in this election, while there were solicitations in advance of the meeting sent by the new CAM, Trademark

Properties, only TWO persons responded. Bill Tuminello and myself. And, as the document I furnished showed, within the document itself the statements state an INTENTION. Mr. Tuminello merely states he is "interested" in "applying" for the position. Yet, he was presented as a pre-approved/qualified candidate at the actual meeting.

## **Bill Tuminello**

### **I am interested in applying for the open Board position.**

Therefore, to rely upon the use of language that says "interested" or "applying" vs. my use of "intended" is to create different standards in the only two examples that exist in the entire history of the association. In other words, it is my contention that because you have obvious bias and outright animosity towards me, you are grasping for reasons to invalidate my actions when, in fact, the governing documents are SILENT on any matter of procedure or due process for nominations.

In other words, the lack of SPECIFICITY in both CCIOA and the Non-Profit Act, combined with zero requirements that an HOA Bylaws have an actual policy on how elections should be run, this gives Boards the freedom and leeway to perpetually make up new rules, year after year. Which, if you actually go back into our history, is the objectively verifiable case.

THAT is the reason for appealing to the legislature to stop the GAME PLAY by various HOA Boards across Colorado by using the combination of CONTROL of the HOA election process (nominations, how elections are run, how ballots are collected and counted, when they are collected (sometimes post-meeting, btw, which we did in 2021 and I believe 2022 while online), and how such disputes are resolved, we wind up with disputes that a homeowner is at a significant disadvantage because all a Board has to do is SHUT DOWN COMMUNICATIONS (you've done this multiple times in this exchange since October) and stonewall homeowners. Since that can persist through any required Mediation/Arbitration requirements (simply denying the homeowner) and a refusal to have a hearing that is not a kangaroo court, the only option left for homeowners is . . . LITIGATION.

And, if the homeowner takes that path, as my experience exemplifies, the homeowner is accuse of 'suing their neighbors', and is forevermore socially isolated as an aggressor, mentally ill (used against me), or actually engaged in bad faith (frivolous suits) because it is nearly impossible to get a court to rule on the merits given the lack of SPECIFICITY in CCIOA and the Non-Profit Act in regards to elections (or virtually any other topic, for that matter).

Therefore, a Board that recognizes that they are essentially legally untouchable acts in brazen and bizarre ways - often creating new justifications for their actions on the fly - which is apparent in this case.

If it is true that when I said I "intended" to be a candidate on October 14, 2023 for a meeting to be held on December 5, 2023, you had more than a month to respond by stating that it was not a nomination. Or that only floor nominations would be accepted because of whatever reason you made up - because the documents themselves are silent. Given the history, citing "consistency" without evaluating the context of each of these often-strange circumstances is omitting relevant information, which I believe intentional. Clever even.

The fact is, it is your fiduciary duty to run fair and free elections, and to administer them without bias. Had any other homeowner submitted their intention more than a month in advance, then I would argue they'd be considered a candidate. By withholding relevant information affecting my candidacy, you created a circumstance by which you could declare a disqualification. And, avoid me debating the veracity of your claims in advance of the meeting. Withholding the information you think is dispositive is therefore appearing intentional in favor of your bias against me.

Therefore, I do not accept this excuse. You know that we have a history of simply accepting, when there is an open seat, sweeping in such persons who are uncontested (see 6 such persons accepted in 2017). And, the fact that you cited an ineffective Amended Bylaw at the meeting indicates that this new technicality was not

even conceived at the meeting. If John Tunna says "Andy has self-nominated", you didn't respond with this rationale - you claimed it was your job to RULE on the INTENTION of the Petitioning homeowners, whether it was legally effective or not. And you KNEW it was not (making the action wanton/willful).

I therefore submit to the legislators and Task Force members these facts in advocacy of creating specificity in CCIOA to standardize HOA elections to the greatest extent possible, and to create binding statutes enforced with statutory penalties that allow a homeowner (any homeowner in the association by the way, not just the one in the disputed election) to have standing and a claim upon which relief may be granted. This should included nominal monetary relief (\$500) combined with a guaranteed reimbursement of legal fees for parties who succeed in bringing such cases.

Until such time, we see Boards engage in social isolation and other forms of retaliation, while getting authoritarian control of HOA Boards establishing dynasties sometimes lasting decades, sometimes enhanced with Proxy Hoarding. None of this serves the interest of the Association or homeowners - unless a minority is NOT to be heard or protected. This strikes at the very justification of HOAs as replacement of public government with private corporate governance. If the elections can be so easily manipulated, the same type of prejudice and discrimination that is forever tied to the history of restricted deeds is not just possible, but predictable and probable and even inevitable. Authoritarianism will always rise without checks and balances, and a democracy isn't the existence of an election.

It is long overdue for the Colorado Legislature to address this inequity.

And, to the POHOA Board, the resolution to this dispute is to accept my election. If you wish to use the powers of Petition to remove me per CRS 7-128-108, have at it. I accept that the path can lead to the same outcome (I am forced from the Board by resignation or vote), but you do not have a right to use that to justify manipulating and interfering with the election process because it might inconvenience you.

The middle ground here is to establish an actual Election Policy, if the legislature is not motivated to act.

In the meantime, I believe the 'landmark case' cited by a stakeholder at the 1/2/24 meeting may be of significant interest, as I have heard that the HOA in that case lost and is facing judgment with significant costs. I caution POHOA against creating circumstances where litigation is the only means of resolving this dispute. Obviously, my interest is greater than actually being on the Board, but it remains in the interest of this community to have SOME representation of opposing views ON a Board not just dominated by coordinating and colluding parties (who disrespect CCIOA and the Open Meetings Act), but also with SPOUSES, who are disallowed by many HOA Bylaws, allowing to operate on such a board that is already failing to represent the entire community.

Let's resolve this through dialogue and mutual agreement for a change this time.

Sincerely,

Andy

On Thu, Jan 11, 2024 at 3:06 PM Poudre Overlook HOA at FtC <[atftcpoudreoverlook@gmail.com](mailto:atftcpoudreoverlook@gmail.com)> wrote:  
Mr. Mowery, we reiterate the Board's position:

1. Your email stated only that you **intended** (emphasis added) to nominate yourself.
2. The Board did not solicit pre-meeting ballot nominations from the Association members and there was no action without a meeting by the Association members directing the Board to solicit such nominations.

3. The custom of this Association is to take nominations from the floor at the meeting, which is #2 of 6 in Robert's Rules of Order hierarchy of methods of nominations. The Association only used pre-meeting ballot nominations (#4 in the list) for the annual meeting in 2021 as a result of the extenuating circumstances associated with the Covid pandemic. We returned to our customary practice of floor nominations with the annual meeting of 2022, in which you fully participated, and this practice continued for the 2023 meeting. There was no motion to change nomination methods at the meeting.

4. No one nominated you at the meeting.

5. No votes for you were received.

We do not wish to debate this matter further. You have, however, formally requested a copy of all ballots for a recount. This ask encompasses two entirely different requests which have vastly different procedures to follow. Please clarify your request and adhere to the appropriate procedure.

Poudre Overlook HOA of Fort Collins  
Board of Directors

On Tue, Jan 9, 2024 at 8:24 PM Andy Mowery <pohoaandy@gmail.com> wrote:  
To the Board;

**"The Association has no record of your nomination taking place before the members at the annual meeting concerning a Board position"**

This appears to be a made-up rule, which is a common problem at POHOA with this particular Board. Here are the issues:

### **1. NOMINATIONS IN WRITING IN ADVANCE OF THE MEETING ARE THE CONSISTENT PRACTICE OF POHOA:**

My nomination was made in advance of the meeting in the exact same manner as it was in 2021 - by submitting the self-nomination in writing in advance of the meeting. See the attached copy (Candidates.pdf) of what was INCLUDED in the information packet sent out to all homeowners in advance of that meeting. I expected that all persons who self-nominated in advance of the meeting would have also appeared in the meeting notice, as it is the common and consistent practice of this Association.

Note that Mr. Tuminello also self-nominates in his statement in the same document.

### **2. POHOA HAS NO BYLAWS OR RULES ON NOMINATIONS**

- POHOA has never published any rules, guidelines or bylaws regarding nominations of any kind
- POHOA does not have a Nominating Committee
- POHOA has no rules, guidelines, or bylaws requiring Nominations From the Floor
- POHOA Governing Documents prohibit creating qualifications for candidates
- Therefore, at best, Robert's Rules of Order are the only guidance on Nominations, and since there is no superseding restriction to Nominations from the Floor, other forms of nomination and self-nomination are valid

### **2, ADVANCED WRITTEN SELF-NOMINATIONS (NOTICE OF CANDIDACY) HAVE NO REQUIRED FORM OR FORMAT.**

- Article VI Section 4 is the only section of the Governing Documents that addresses elections
- Article VI Section 4 and in fact the entire Governing Documents are silent on the subject of nominations
- There is no requirement for Nominations from the Floor in the Governing Documents
- Therefore, other types of Nominations mentioned in Robert's Rules are valid
- Self-Nomination in writing (ie by mail) is a valid method, per Robert's Rules of Order
- Robert's Rules of Order allow for absent candidates, particularly in the case of a written secret ballot (Section 66, see copy below)

### 3. NOMINATIONS ARE NOT NECESSARY WHEN THE ELECTION IS BY BALLOT (RONR SECTION 66)

- ***"This nomination is not necessary when the election is by ballot or roll call, as each member may vote for any eligible person whether nominated or not."***
- POHOA runs elections by secret written ballot distributed prior to the beginning of the meeting
- I filled out my ballot and entered my name on the ballot, which was then submitted by John Tunna, who held my proxy as I had to leave the meeting early
- Even if I was not nominated, my ballot and vote in an uncontested election supersede all remaining concerns

### 4. THE POHOA BOARD ACKNOWLEDGED RECEIPT OF THE WRITTEN NOTICE OF CANDIDACY

- If the Board wished to enforce any rules regarding nominations, or put in place a requirement of a Floor Nomination, the Board was obligated to respond to the written notice with such requirements (valid or invalid)
- The Board waived any right to attempt to disqualify a written self-nomination in advance of the meeting (valid or invalid)
- The Board was made aware of the candidacy at the 11/14/23 Regular Board Meeting, and did not mention any need for a Floor Nomination

For these reasons, the Board is not in the position to adjudicate independently, as the matter is decided at a Homeowner's Meeting where the Board does not have a vote. Therefore, since candidates may be absent, written notice of candidacy (self-nomination) was sent more than 6 weeks in advance of the meeting (but only acknowledged on 11/30/23), and because there was no instruction, rebuttal or protest of the written self-candidacy in advance of the meeting, nor was there a word spoken to me as I checked in and discussed this matter (and how proxy votes would be counted given my notice upon checking in that I would be leaving early), the Board appears to be making up rules out of thin air because it does not like the outcome of the election. The Board holds no such powers.

Therefore, I am requesting that the Board consult the HOA General Counsel regarding the validity of this approach to denying my seat on the Board.

This also appears to sidestep the failed attempt to disqualify me based upon a retroactive application of the Amended Bylaw that was only effective on 2/2/23, when it was signed.

This issue needs resolution in advance of the meeting. Please let me know if the HOA General Counsel has reviewed the matter, and whether the points I am raising are disputed. Please cite any authorities, if there is something I have missed.

I am ***formally requesting a copy of all of the ballots for a recount***, as I would protest the election if my ballot has been spoliated.

Sincerely,

Andy

**66. Nominations and Elections.** Before proceeding to an election to fill an office it is customary to nominate one or more candidates. ***This nomination is not necessary when the election is by ballot or roll call, as each member may vote for any eligible person whether nominated or not.*** When the vote is viva voce or by rising, the nomination is like a motion to fill a blank, the different names being repeated by the chair as they are made, and then the vote is taken on each in the order in which they were nominated, until one is elected. The nomination need not be seconded. Sometimes a nominating ballot is taken in order to ascertain the preferences of the members. But in the election of the officers of a society it is more usual to have the nominations made by a committee. When the committee makes its report, which consists of a ticket, the chair asks if there are any other nominations, when they may be made from the floor. The committee's nominations are treated just as if made by members from the floor, no vote being taken on accepting them. When the nominations are completed the assembly proceeds to the election, the voting being by any of the methods mentioned under Voting, [46], unless the by-laws prescribe a method. The usual method in permanent societies is by ballot, the balloting being continued until the offices are all filled. ***An election takes effect immediately if the candidate is present and does not decline, or if he is absent and has consented to his candidacy.*** If he is absent and has not consented to his candidacy, it takes effect when he is notified of his election, provided he does not decline immediately. After the election has taken effect and the officer or member has learned the fact, it is too late to reconsider the vote on the election. An officer-elect takes possession of his office immediately, unless the rules specify the time. In most societies it is necessary that this time be clearly designated.

I have

On Tue, Jan 9, 2024 at 3:49 PM Poudre Overlook HOA at FtC <atftcpoudreoverlook@gmail.com> wrote:  
Dear Mr. Mowery:

The Association has no record of your nomination taking place before the members at the annual meeting concerning a Board position, or any vote thereon. Consequently, your presumption of membership upon the Board of Directors is a nullity and unfounded. Accordingly, the Board is not in a position to, and will not comment upon this matter further.

Poudre Overlook HOA of Fort Collins  
Board of Directors



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