

Frageria Landing HOA briefing on Architectural Control Committee

Presentation to the Board of Directors

By Ray Bulliman



Agenda:

1. Facts and Data
2. Federal, State & Local Laws
3. FLHA meeting minute's research
4. ACC committee
5. Recent ACC request
6. Summary Analysis
7. Tips for handling HOA Architectural Approvals Fairly
8. Questions?
9. Summary recommendations
10. FLHA Board vote on recommendations

Accountability is a key ingredient in any success, but it seems to be the one that people have most difficulty with. When we accept accountability we put ourselves in a position where we can make the necessary changes to be successful, whereas when we look to blame it disempowers us.

Facts and data

Commonly, CC&Rs have a declared term of existence, after which they expire naturally. The positive side of having covenants with fixed terms of life is that subsequent property owners are not burdened with restrictions that have become arcane, dated, or no longer desirable. We have 46 properties with 42 homes, most of which have been built more than 20 years ago. We have 2 homes currently being developed and two other parcels of land with unknown development plans. We also have some outdated covenants that need to be reviewed at the very least.

It is essential for an HOA to have a clearly outlined policy of specific guidelines for the ACC to enforce. Once an HOA has a policy in place, it is important that the ACC uniformly follows that policy.

The general purpose of an architectural committee is to ensure compliance with architectural standards established by the association. In planned developments, an architectural committee is primarily concerned with exterior aesthetics. Following is a list of the kinds of issues that a committee would regulate. Lot setback requirements, structure placement, structure height, structure design, paint colors, roofing materials, fencing, landscaping, satellite dish, solar panels, etc.

ACC Decision Requirements

Any decision regarding a member's architectural application must:

- Be made in good faith and not be unreasonable, arbitrary or capricious.
- Not be in conflict with any "governing provision of law" (e.g., Fair Employment and Housing Act, building codes, laws governing land use or public safety, etc.). *and*
- Be made in writing.

If an application is disapproved (rejected), the written decision of the architectural committee must include both an explanation of why the application was disapproved and a description of the procedure through which the member may request reconsideration of the decision by the board.

Federal, State, Local laws

The HOA document hierarchy

1. Legislative law (federal > state > local)
2. HOA plat/map
3. Declaration
4. Articles of incorporation
5. Bylaws
6. Rules and regulations

HOAs are governed by the Washington State Homeowners Association Act codified in RCW 64.38

Chapter 64.38 RCW
HOMEOWNERS' ASSOCIATIONS

Sections

HTMLPDF	<u>64.38.005</u>	Intent.
HTMLPDF	<u>64.38.010</u>	Definitions.
HTMLPDF	<u>64.38.015</u>	Association membership.
HTMLPDF	<u>64.38.020</u>	Association powers.
HTMLPDF	<u>64.38.025</u>	Board of directors—Standard of care—Restrictions—Budget—Removal from board.
HTMLPDF	<u>64.38.028</u>	Removal of discriminatory provisions in governing documents—Procedure.
HTMLPDF	<u>64.38.030</u>	Association bylaws.
HTMLPDF	<u>64.38.033</u>	Flag of the United States—Outdoor display—Governing documents.
HTMLPDF	<u>64.38.034</u>	Political yard signs—Governing documents.
HTMLPDF	<u>64.38.035</u>	Association meetings—Notice—Board of directors.
HTMLPDF	<u>64.38.040</u>	Quorum for meeting.
HTMLPDF	<u>64.38.045</u>	Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts.
HTMLPDF	<u>64.38.050</u>	Violation—Remedy—Attorneys' fees.
HTMLPDF	<u>64.38.055</u>	Governing documents—Solar panels.
HTMLPDF	<u>64.38.057</u>	Governing documents—Drought resistant landscaping, wildfire ignition resistant landscaping.
HTMLPDF	<u>64.38.060</u>	Adult family homes.
HTMLPDF	<u>64.38.062</u>	Electric vehicle charging stations.
HTMLPDF	<u>64.38.065</u>	Reserve account and study.
HTMLPDF	<u>64.38.070</u>	Reserve study—Requirements.
HTMLPDF	<u>64.38.075</u>	Reserve account—Withdrawals.
HTMLPDF	<u>64.38.080</u>	Reserve study—Demand for preparation and inclusion in budget.

FLHA meeting minutes research:

1. “Guidelines” to be prepared by the ACC and submitted to the board goes back to 1993. In June 1993, the board approved for the ACC to prepare guidelines to be submitted to the FLHA membership for approval as a CCR change / amendment.
2. In June 1994, Mark Yand recommended that new ACC guidelines be written by the ACC to clarify its role in the Association. The ACC chair will work on these guidelines and present them at the next Board meeting.
3. In December 1997, the ACC chair, John Kintz, submitted a document to the board for review. He noted that the rules and CCR’s are “worthless unless some means of enforcement are specified”.
4. There is no evidence in FLHA meeting minutes that the board approved the guidelines document or that it was ever submitted to the full homeowner’s membership for a vote.
5. In April 2006, a former (ACC chair and Director) said in an e-mail to the FLHA “Either the covenants mean something and are binding for all, or they are irrelevant and (ultimately) unenforceable. If homeowners can successfully defy the spirit or letter of *one* subset of covenants...or architectural controls – then the *entire* set of covenants is devalued and loses credibility.”
6. In May 2016, Norma Brown wrote to Carol McGee in an e-mail saying “I’m really sorry that the covenants have no power to be enforced” as she resigned from the ACC committee.
7. No evidence can be found that a permit was obtained for installation of the gate to the beach. Additionally, in 2012, International Fire Code 506.1 states in part “Where access to ... an area is restricted because of secured openings or where immediate access is necessary for lifesaving of fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an accessible location. The key box shall be of an approved type listed in accordance with UL 1037 and shall contain keys to gain access as required by the code official.”

“The man who complains about the way the ball bounces is likely to be the one who dropped it.”

- Lou Holtz

ACC committee

FLHA covenants, Section 1 –

“The members of the ACC shall be appointed by the Board of Directors”

Did the Board appoint all the current ACC members and validate that they were qualified? I see no evidence that the Board qualified or appointed any current ACC member.

FLHA covenants, Section 3 –

The ACC shall have the authority to adapt and amend the written guidelines to be applied in the review of the plans and specifications in order to further the intents and purposes of the Declarant and any other covenants or restrictions covering the property. If such guidelines are adopted, they shall be available to all members upon request. As already mentioned above, no guidelines exist beyond those detailed in the covenants. Additionally, no evidence can be found that the Board or FLHA members voted on or approved changes to the architectural controls in the CCR's.

Recent ACC request:

The following email was sent to the ACC Chair & FLHA President from Ray Bulliman on Tuesday, July 26th, 2022. No response has been provided from my formal request as authorized by the following covenants:

FLHA covenants, Article VI, section 3 - "Guidelines shall be available to all members upon request". Almost all the reasons for denying both of my requests for a shed were not detailed in any of the broad guidelines in the Covenants. I request you provide me all guidelines that are available.

FLHA covenants, Article VI, section 4 - "The ACC shall meet as necessary to perform its duties and shall keep a record of all actions taken at the meetings or otherwise". I request you provide me a copy of all meeting minutes and actions taken at the meetings.

In the interest of being fully transparent to the entire community, I would expect all guidelines and meeting minutes to be posted on the FLHA website.

I met with the FLHA President and ACC Chair to discuss my request on July 29, 2022. I shared my concerns and was informed that the ACC does not have meetings (hence no meeting minutes to share) and they do not have any guidelines beyond what is documented in the covenants. I asked the ACC Chair to formally document those statements in an e-mail back to me in response to my request and I was told no written response would be provided. As I have been personally involved in at least 3 meetings with the ACC and know of others in the community who have also had meetings with the ACC and/or Board regarding ACC submissions, the lack of minutes and guidelines is troublesome.

Summary Analysis:

- All items listed on the ACC tab of the FLHA website have been created by ACC members over time without FLHA approval or voted on by FLHA membership.
- No documentation exists that ACC written guidelines or proposed changes to the CCR's have ever been approved by the FLHA board or been voted on by the FLHA membership for approval.
- All current members of the ACC were not qualified or appointed by the Board as required.
- Property owners are currently burdened with restrictions that have become arcane, dated and/or no longer desirable.
- I agree with John Kintz and Norma Brown that the documented covenants have no power to be enforced
- The ACC does not have a transparent process or system
- The ACC has not been fair and consistent

“From error to error, one discovers the entire truth.”

- Sigmund Freud

7 Tips for handling HOA Architectural Approvals Fairly

Seven tips for making HOA's architectural approval process transparent, fair, and as speedy as possible.

1. Educate home owners on the committee's role.
2. Create written standards.
3. Take tons of decisions out of the committee's hands.
4. Create a transparent system.
5. Document your decision process.
6. Remind the committee of the stakes involved. Disputes can end up in court or arbitration, and the committee might be asked to explain everything they've done. "Keeping that in the back of their minds hopefully keeps things moving along in a fair and consistent manner."
7. Always be open to change.

Reference: HOAleader.com

Questions?

“If not us, who? If not now, when?”

“Every accomplishment starts with the decision to try.”

- John F. Kennedy

Recommendations:

1. I recommend that we disband the ACC as a separate entity. Future ACC requests and issues become the responsibility of the FLHA board to determine / resolve.
2. I recommend that the ACC tab on the FLHA website be removed completely (nothing on the tab has been approved by the FLHA or community)
3. I recommend a committee be formed to review the current covenants and make recommendations to bring them up to date reflecting life and laws in 2022 for a neighborhood that has existed since 1987.
4. Once committee recommendations are approved by the FLHA board, they should be presented to the FLHA membership to vote on.

Questions?

I recommend the FLHA Board votes on each of these recommendations - any seconds?