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VIA EMAIL: jessica@jhmillerlaw.com AND US MAIL

June 18, 2021

Jessica H. Miller, Esq.
LAW FIRM OF JESSICA H. MILLER LLC
595 Canyon Blvd.
Suite 9
Boulder, CO 80302

Re: Roosevelt Ridge Homeowners Association, Inc.
Response to Your June 18, 2021 Letter

Dear Ms. Miller:

I am in receipt of your letter dated June 18, 2021, in which you accuse our clients, the Nolans, of attempting to interfere in the upcoming election.

Contrary to your contention, our clients merely want to ensure a fair and proper election that complies with Colorado law and the Association's governing documents. As all members do, the Nolans have the right to an open Annual Meeting of the Members and an open election, whether such acts are actually taken at the Annual Meeting or outside of a meeting (which you argue such acts that may be taken at an Annual Meeting may also be taken outside of a meeting). CCIOA requires that the entire Annual Meeting, including the election process, is open to each member and any of their designated representatives.

Instead, it appears this Board, wants to avoid transparency as to this election and does not have any intent on allowing the handling of the ballots and the envelopes, any rejection of any ballots, and even the counting of ballots to be open and transparent. If this is incorrect and the current Board, and its two individual members, intend to provide a fair, honest, open and transparent election process and Annual Meeting, then the Board will not interfere with our clients' right to have me present (1) at the CPA's office to inspect and review the envelopes, ballots, and other documents sent by members with their ballots (emails, etc.), (2) at the review by the Board or Secretary of any ballots, and (3) during the count of any ballots, which must take place during the annual meeting contrary to your assertion.

The Board cannot, whether or not with your support, make up the rules as they go without complying with the governing documents and applicable law by taking such act at a Board meeting after members have the right to comment, restricting the ability of out-of-state or out-of-country

residents to comply with the ballot return deadline by apparently refusing to accept ballots returned by electronic means, and avoiding the openness and transparency of the Annual Meeting and election of directors.

A. The Nolans have the right to inspect, review and copy the ballots and supporting documentation pursuant to Sections 308, 310 and 317 of CCIOA.

Your argument that our clients are not permitted to review the received ballots at the CPA's office, the Nolans, through our firm, is simply wrong. First, our clients, through our firm, made a timely and specific records request to inspect the ballots and related records by this Monday pursuant to Section 317 of CCIOA. As these requested records will be in the possession of the Association, through the CPA at the CPA's office on Monday, the Association must make them available. Of course, the Association may have someone present to supervise our inspection and copying. Your assumption that we somehow will tamper with the ballots is not only unfounded but insulting. The fact is that the Board has failed completely to produce or make available to our clients the numerous records our client requested under Section 317 of CCIOA and, as such, has not satisfied at all the other outstanding records requests and is in violation of Section 317 of CCIOA and the governing documents. The Board cannot hide these requested records when they are clearly available at the CPA's office. As further shown below, our clients and I have the right to inspect, review and copy them on Monday as they are part of the requisite open meeting/election process required by the Board.

The inspection will not impact anybody's right to vote by a secret ballot. The CPA is anticipated to separate the ballots from the envelope, emails, etc. in which they arrived per the direction explained by the Board to the membership thereby protecting any secrecy. Also, we understand some owners may have waived their right to vote by secret ballot.

As stated, we intend to come directly to the source, the CPA's office, to inspect the ballots to confirm what ballots were received and that the Board or anyone on behalf of the Board is not tampering with the ballots, improperly refusing to count any ballots, or otherwise interfering with the election.

I would assume that the Board would want to be as transparent as possible and allow the review of the entire handling of this election. Isn't that your desire?

As to your analysis concerning the right for certain acts to be taken outside of a meeting, your analysis simply is incorrect. First, you fail to cite the entirety of Section 4.14 of the Bylaws. Section 4.14 actually states, in full:

“Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. In addition, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting if and to the extent permitted by the Colorado Revised Nonprofit Corporation Act.”

This underlined language is of the utmost importance. The second section of 4.14 to which you

cited only allows an action to be taken if allowed by the Colorado Revised Nonprofit Corporation Act (the Nonprofit Act). However, C.R.S. 7-127-107(1) of the Nonprofit Act specifically states, “Unless otherwise provided by the bylaws, any action required or permitted by articles 121 to 137 of this title to be taken at a members’ meeting may be taken without a meeting if members entitled to vote thereon unanimously agree and consent to such action in writing.”

Even so, assuming that if the acts maintenance, separation and determination of validity of the ballots are acts that, although part of the election of directors that must take place at the Annual Meeting, such acts must be open to any member and their designated representatives. C.R.S. 38-33.3-308(2.5)(a) states, “Notwithstanding any provision in the declaration, bylaws, or other documents to the contrary, all meetings of the association . . . *are open to every unit owner of the association, or to any person designed by a unit owner in writing as the unit owner’s representative.*” As such, Section 308 of CCIOA requires the election process to be open and the Board may not interfere with a member’s right in this regard.

B. The counting of the ballots similarly must be open and completed at the Annual Meeting, and the Nolans and I have the right to be present during any such counting.

You also insinuate the counting of the ballots by the CPA will be done outside of the Annual Meeting. Specifically, you state CCIOA, the Nonprofit Act, nor the Bylaws do “not dictate the time or place of vote tabulation” and cite to C.R.S. 7-127-109 for the proposition that the ballots do not provide they will be counted at the Annual Meeting. However, your assertion is simply untrue.

The counting of ballots, as with the receipt of ballots and the Secretary or Board’s review of ballots to determine their validity, is an act that is part of the election of directors. The ballots do not state they will be counted outside of the Annual Meeting. They actually say that they are to be sent to “the CPA that will be counting the ballots.” In fact, not only did the Board actually notice the Annual Meeting, but the instructions the Board provided with the ballots cites specifically to the Bylaw provisions concerning the holding of the Annual Meeting and the election to be held during the Annual Meeting. As such, the Board merely sought the receipt of ballots (or directed proxies) for return by mail to count towards quorum and the voting for the election to be held during the meetings.

As you well know, the Annual Meeting of the Members is a member meeting, not a Board meeting. Any action to be taken without a meeting must be authorized by the membership, not the individual directors, and any change is to be made by a vote of the membership (See, Section 4.9 of the Bylaws - “At any meeting if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws . . .”).

As I pointed out previously, the Bylaws require the election of new directors to the Executive Board to take place at the Annual Meeting of the Members, which must occur at a “place” (see, Section 4.2 of the Bylaws - “The annual meeting shall be held to elect any Directors of the Association that are to be elected by the Members in accordance with the Declaration, and to transact such other business as may properly come before the meeting.”). Section 4.11 of the

Bylaws requires the “election of Directors” to take place 4th on the agenda at the Annual Meeting. This does not provide for just the announcement of the vote, but the entire election including the acceptance of the mail-in ballots, the counting of such mail-in ballots, and the reporting of the results. You cite to CRS 38-33.3-310 (Section 310 of CCIOA). However, Section 310 of CCIOA refers to voting during a member meeting, including the Annual Meeting. This is the section I cited in my last letter as to the right of owners to vote by proxy and that governs the Secretary’s (and the Board’s) duties to act in good faith with regard to any rejection of any ballot.

Although Section 310 of CCIOA allows the counting of ballots by an independent neutral person or persons, such counting is part of the election and must take place during the Annual Meeting. The purpose is to provide a fair and impartial election process that is verifiable by the membership for whom the meeting is for and who have voting control of the handling of the meeting.

Even if the Bylaws could be read to somehow allow the counting of the ballots separate from the actual holding of the election at the Annual Meeting by way of an action taken without a meeting, the counting of the ballots must again be open to members and their designated representatives. If a member and their designated representatives have the right to view the entire election of directors at an open member meeting, the same holds true if any related act is taken outside of a meeting as explained above.

What is most troubling to both of the issues you raised is that the Board, by soliciting advice from you and directing you to respond to me (rather than you just responding to my letter to which you have refused to do to other letters to which I have directed to you), is expressing their interest in not being transparent with regard to this election and to interfere with the members’ right to an open election process. By your letter, the Board, including Ted Bertele who is running for re-election and has a direct conflict as to any such direction provided to you by the Board, clearly is trying to prevent members of the Association from confirming (1) whether the Board has accepted or counted all requisite ballots sent to the Association, whether by mail or other means, (2) whether the Board is accepting votes for new candidates, (3) the direction the Board provided to the CPA with regard to counting the ballots, and (4) whether the Board or anyone on its or its individual member’s behalf are otherwise interfering with the voting process and the individual rights of the members.

As to a member’s right to review the receipt and counting of ballots and the separated envelopes or other transmittal documents received, again this is a member meeting. So long as the secrecy of how a member voted for a contested election is maintained, any member has the right to participate in and view every part of an election, which would include any action taken without a meeting. Such an act constitutes an act by the members, not the Board, and such act must be open and not performed in secrecy from the view of any members.

As stated, I will be visiting the office of the CPA to inspect the ballots received by the CPA on behalf of the Association on Monday, June 21st. As to your threat that the Board will take any action it deems necessary, the Board does not have any say or right to do so as the CPA is taking an action on behalf of the Association, through the members, not the Board. The members have not voted in any way to restrict the rights of members to confirm the receipt of the ballots or to view the counting of the ballots and the entire process must be open.

Again, the Nolans simply want a fair, proper, open and transparent election. Don't the individual Board members?

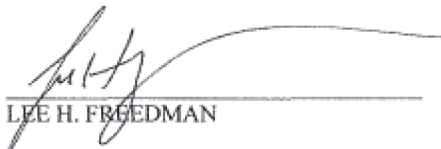
C. Response to Your Legal Opinion Concerning Outstanding Assessments Related to the Declarant Sent to the Membership Yesterday.

Finally, you provided a legal opinion to the Board concerning the possible liability of owners for Lone Pine's failure to pay outstanding assessments. Although I appreciate your and the Board's apparent agreement that neither of you have adequately researched the issues before negotiating the proposed Settlement Agreement with Lone Pine and admit that further research is required, I am perplexed as to how you had authority to provide such a legal opinion or how you determined you were not conflicted from providing such an opinion.

As to your authority, this opinion clearly was presented, at least in part, to address whether or not Ted Bertele is liable to the Association for outstanding assessments for the two lots he obtained from Lone Pine, his brother-in-law's company, for approximately \$7,000. As such, as I have explained to you ad nauseam, he has a conflict of interest and the retention of you to provide such an opinion is a conflicting interest transaction upon which Mr. Bertele did not have any right to discuss or vote. Further, such a vote, as well as the vote to direct you to prepare and send me the letter you sent today, clearly was taken outside of a Board meeting. As Mr. Bertele could not vote and there is only one Board member who could, the Board could not have enough votes to authorize you to so act as the affirmative vote of a majority (or 2) of the current Board members is required. As such, again, the Board has taken an action they were not authorized to take. Also, as the Board chose to publish your legal opinion to the entire membership as drafted, the act to authorizing your drafting was not privileged or confidential and was required to be taken at an open Board meeting only after providing the members the right to comment. However, the members were denied such a right.

Again, we hope the Board is willing to be open and transparent with regard to the remaining actions involved in the upcoming election by not interfering with our clients' right to inspect and review the documents received by the CPA retained by the Association to count ballots (including the envelopes, emails, and ballots) on Monday, through us, and to review the counting of the ballots by the CPA firm which must be done during the holding of the election at the Annual Meeting next Wednesday.

Very truly yours,



LEE H. FRIEDMAN

For The Firm

cc: Charles and Deborah Nolan