



Meeting Date: December 7th, 2021 at 10:00 AM

Meeting Location: Offices of Paul Kosnik @ 556 Main Ave, Durango, CO 81301

Attendees: John Bernazzani, Jim Scholan, Judy Wachob and Terra Bumpers (via Zoom).

Background

Over the course of the past several months, various owners within the Florida River Estates neighborhood have sought clarification as to the responsibilities of the Florida River Estates Homeowners' Association, Inc. (FREHOA) Board of Directors (BOD), specifically as to the enforceability and responsibility in relation to covenants and bylaws. On December 7th, members of the FREHOA BOD met with our attorney, Paul Kosnik, pertaining to the responsibilities of the BOD in relation to recorded covenants, declarations (water regulations), bylaws, and related amendments thereof. The findings from this encounter as well as useful links and contextual commentary are documented below.

Historical Timeline (See email for live links)

1. [Recorded: Covenants by Florida River Estates, Inc \(Developer\) – 1965](#)
2. [Recorded: Declaration of FREHOA Water Regulations – 1993](#)
3. [Not Recorded: Revised Bylaws of the Florida River Estates Homeowners' Association \(FREHOA\) – 1996 \(No Known "Originals"\)](#)
4. [Recorded: Amendment to Original Bylaws of FREHOA – 1996](#)
5. [Recorded: Amendment to Original Declaration of FREHOA Water Regs – 2019](#)

Recorded Covenants (Item 1)

This document was created by the developer of Florida River Estates Subdivision, Florida River Estates, Inc. The board referenced within this document is that of the developer, a corporation that has since been dissolved. The document allows for an Architectural Control Committee (ACC) with responsibility to enforce the covenants. The duties of the ACC, upon the absence of such committee, resorts back the developer's now non-existent corporation. The document also provides for enforcement by any lot owner in proceedings at law (for damages) or in equity (for resolution).



The covenants contain several items, under the primary headings below:

- Land Use and Building Type
- Use and Care of Lots
- Easements

The original terms of the covenants expired in 1990 with automatic 10-year renewals in 2000, 2010 and 2020. If lot owners wish to form an ACC, they must adhere to the membership, duties and recording responsibilities within the covenants and secure a majority vote by all lot owners. Covenants can also be modified or rescinded by a majority vote of all lot owners. It is strongly encouraged that homeowners' review this document in detail and understand its contents.

Declarations of Water Regulations (Items 2 & 5)

The primary governing documents of the Florida River Estates Homeowner's Association (FREHOA) were established in 1993, though the actual FREHOA organization was incorporated in 1976, per the Colorado Secretary of State. The water regulations pertain primarily to the maintenance and billing of the water system and community property, such as the tank site, water plant and pond areas by the FREHOA Board of Directors (BOD) and establish rules for customers of FREHOA. There was an amendment to these regulations passed by majority vote of the membership in 2019, primarily to address changes in section 12 pertaining to water service, rates, fees, and billing as well as section 13 pertaining to the capital account, but also other changes. The regulations allow for their own modification by FREHOA BOD vote.

Bylaws (Items 3 & 4)

Homeowners' Association bylaws are not typically recorded in the property records. On April 2nd, 1996 the BOD revised FREHOA's bylaws and on April 8th, 1996 the amendment was recorded. The recorded amendment entitled each owner to a single vote, regardless of joint or corporate ownership, and disallowed the same owner from having multiple votes for multiple lots. The 1996 did not replace any preexisting bylaws, but only amended Section 5 of the bylaws. At a high level, Florida River Estates Homeowners' Association, Inc. is a non-profit that operates under the Colorado Nonprofit Corporation Act. The water system and community



property under its care is subject to the Colorado Common Interest Act (CCIOA). Primarily, the bylaws address the specific makeup, terms, and responsibility of the FREHOA BOD as well as specific dates on which regular and annual meetings should be held. Bylaws may be amended by 4 of the allotted 5 BOD members or by 2/3 vote of the subdivision membership who are present at a properly noticed meeting.

The FREHOA BOD is a volunteer board that is acting in accordance with the water regulations and the primary objective of FREHOA bylaws, an excerpt of which is below:

Section 2

The object of this Association shall be to own, operate, maintain and improve, on a nonprofit basis the Florida River Estates Water Association land, facilities and equipment, a water treatment and distribution facility, dedicated to the supplying of water to the residents of Florida River Estates as described in Attachment 1.

Our published mission statement and repeated vocalization as to being primarily a water company is in line with this as well. Below is what is posted on the www.FREHOA.com website:

Mission Statement of the Board

The Florida River Estates HOA Board consists of volunteer community residents. The Board's primary objective is to provide a safe and reliable source of water to the community it serves.

This objective is executed in a number of ways, amongst which is:

- Providing for both regular and emergency maintenance in all aspects of our water system
- Meeting state compliance standards and facilitating compliance testing
- Producing and enforcing a rate structure that provides for long-term financial stability in all aspects of delivering water service, including day-to-day operations, capital spending and crisis spending
- Enacting water restrictions only under careful review out of consideration to its residents
- Seeking out and authorizing low or no interest external funding sources on an as needed basis
- Regularly communicating important documents, plans and news to residents via the most appropriate of several channels, including email, the community website, monthly invoicing, flyers and door-to-door calls as necessary

As a secondary objective, we also maintain a recreational use area and a related spending fund.

Input and participation from the community is welcomed and encouraged.



Summary & Closing

We hope this has provided clarification as to the governing documents of the Florida River Estates neighborhood and encourage increased participation in monthly, special, and annual meetings as called forth by the Florida River Estates Homeowners' Association, Inc. Board of Directors. While not technically within the responsibilities of the FREHOA BOD, several topics are being spearheaded by members of the board and meeting attendees, as listed below, in addition to some topics that are the responsibility of the FREHOA BOD. We would like to remind any lot owner that he or she may act according to his or her own will to help pursue these and additional topics for the greater good of our community.

Many of the questions sitting behind our decision to seek legal counsel spawned from real and perceived violations of the community covenants and concern for general wellbeing and maintenance of the community. The FREHOA BOD cannot and will not pursue enforcement of the covenants, though the regular, special and annual meetings we hold are forums for community discussions, decisions, and the pursuance of joint issues outside of water regulation.

Non-BOD Specific Topics:

1. *Pine Beetle Mitigation*

Originally brought forth by Kai Kauppi (408 Sortais) with significant interest by the larger subdivision membership and revisited by Jeff Nelson (633 Sortais) recently. The FREHOA BOD investigated various vendors, landing on <https://shop4verbenone.com/> as we would be able to purchase in bulk at a discount but were unable to fulfill orders in June 2021. FREHOA is not responsible for the cost of this program except as it pertains to application on community property, and it would be individual lot owners' decision as to whether to participate. This item has not been re-addressed as of January 2022 and could use a point person.

2. *Fire Mitigation (throughout subdivision)*

During and in the aftermath of the Missionary Ridge fire in 2002, many but not all residents sought counsel and mitigated fire hazards around their homes. Several residents are interested in pursuing re-evaluation of fire hazard and organize individual lot owner funding of shrub and tree removal. We are planning to initially pursue this with



the help of the Wildfire Adapted neighborhood ambassador program:

<https://www.wildfireadapted.org/become-a-neighborhood-ambassador>. The point person on this topic is Tim Papi (580 CR 248) – papiandsons1@gmail.com.

3. Single Trash Service Provider

Originally brought forth and discussed in the annual meeting in October 2021, several lot owners feel it would benefit the subdivision to move towards a single trash provider to limit the number of large trucks in the subdivision and eliminate multiple days that unsightly trash is curbside and reduce the potential for attracting bears. Waste Management was not able to offer as well-rounded service to accommodate all residents at as enticing a price (quote available to any interested) as Phoenix Recycling. A few households are also on WCA service, but currently those involved are considering Phoenix to be the best all-around option with the most services, seasonal flexibility, and lowest base cost. Additionally, there is a great potential to realize an additional 20% savings with 90% participation, but participation is again an individual lot owners' decision. Information will be sent out shortly with the comparison and services offered. We would like to do a poll to see how many households are already on Phoenix. The point person on this topic is Terra Bumpers (101 Sortais) – terra.bumpers@gmail.com.

4. High Speed/Fiber Internet Service Provider

Originally brought forth by several lot owners at the beginning of the water system replacement project as a consideration to utilizing the same trenches, the issue was further intensified by the COVID-19 pandemic, as many households shifted to remote work and schooling. The FREHOA BOD met several times with Cedar Networks, who was also installing fiber at neighboring Edgemont properties in 2020, during which time they were purchased by Ting. We were able to survey and document the 75% interest in fiber required to move forward but have since been unable to reach anyone at Cedar Networks or Ting. Ting notably does not list Durango as a city they serve. There are no other available service providers for our area. We are advising residents to show interest in Fiber to Ting through their website <https://internet.ting.com/fortyourtown>. The point person on this topic is Kai Kauppi (408 Sortais) – kauppik2003@yahoo.com.



BOD-Specific (pursuant to Declarations and CCIOA) Topics:

1. Pond Weed Eradication

Originally brought forth by Devere Gamble (7156 CR 240) and several other residents in the summer of 2021. A few people have tried to reach out to various groups, organizations and other HOA's with limited success. We believe it is watermilfoil and have requested per the September invoice any experience with this topic from the membership, but thus far none has been received. During the annual meeting, residents discussed that this has happened in the past and attempts to drain and rake the pond were met with limited success. We believe the root cause was the slowness of flow from our primary water source, Mud Spring Creek. Several other small ponds in the area are experiencing the same. This topic will be re-addressed in the Spring 2022. The point person on this topic is Jim Scholan (151 Mapel) – jhscholan@msn.com.

2. Trespassing on Community Property

The ponds are community property and therefore a concern of FREHOA BOD, but the process by which to report trespassing requires documentation of repeat violations. It may behoove the community to know about offenders and keep a repository of this information, but ultimately requires active participation in documenting and confronting potential trespassers and a willingness to call the sheriff when necessary, as a means of timely resolution. Appropriate pond usage could be added to the community bylaws and is a likely topic for disagreement amongst residents, specifically as it pertains to large gatherings and use by long-term tenants, guests, and short-term renters. It is the position of the current BOD that we are a generally non-restrictive community and would like homeowner's to retain decision making authority on when and how to use community property, while being respectful of their neighbors. New 2022-2024 pond passes are in development and will be a different background color than current passes. At the time of distribution, all old pond passes should be disposed of and will become invalid. We should address this topic further at the next annual meeting, where more members are in attendance. The point person on this topic is John Bernazzani (494 Sortais) – jbland22@msn.com.