

Concerns Regarding Bull Opinion- Summarized

Some past and present members of the Bannockburn Board of Directors and Members of the Bannockburn HOA community at large are concerned that the letter to Amy Maier from James Bull (Bucholtz and Bull, P.C.) contains factual errors as well as errors based on insufficient analysis of the Bylaws and Covenants and that these errors were used by Bull to arrive at an opinion that is not only flawed but in direct opposition to the clear interpretation of the Bylaws and Covenants. These concerns are summarized below.

Many of these concerns apply to multiple paragraphs in Bull's letter.

1. Bull states he looked at the specific Bylaws and Covenants sections referenced by Amy Maier in telephone discussion and email. The list of sections does not include the most important section of all, "Bylaws Article XI, 2 Separate Instrument" clause. This clause states in its entirety:

"The Bannockburn Protective Covenants are a separate instrument which must be amended according to the procedures set forth therein. Therefore, no provision in or amendment to these bylaws shall have any effect on the content, interpretation, validity or standing of the Bannockburn Protective Covenants, including the duties, responsibilities and make-up of the Environmental Committee as set forth therein."

In attempting to determine who can vote on Covenant amendments, concerned Members believe it is only necessary to review this "Separate Instrument" clause of the Bylaws and Covenant "Article X, 4 Amendment", which states that Covenant amendments require approval by 66-2/3% of the "Resident Owners".

2. The concerns are that the "Separate Instrument" clause was ignored by Bull to come to an opinion diametrically opposed to it – in his opinion the Covenants ARE dependent on the Bylaws and the Bylaws MAY be used to affect the "content, interpretation, validity or standing" of the Covenants.
3. It is also unclear if James Bull considered Bylaws 'Article I, Section 8 Protective Covenants' which also specifies that the Covenants are a "separate instrument" and that "each Member of the Corporation agrees to be bound by the conditions, restrictions, stipulations and agreements as set forth in the Protective Covenants". Those stipulations would include the Covenant requirement that Covenant amendments be approved by 66-2/3% of the "Resident Owners" as defined in the Covenants.

Concerned Members believe this Bylaws section, in conjunction with the "Separate Instrument" clause, unambiguously confers complete independence and self-governing status to the Covenants.

4. There is concern that James Bull ignored or did not understand Covenant 'Article III, 2 Voting' when forming his opinion. This article states that "Only Bannockburn Homeowners Association members who are **Resident Owners, as defined above**, shall be entitled to vote on matters related to these covenants. Each Resident Owner **shall be** entitled to a single vote."

Concerned members point out that the Covenants do not require a "Resident Owner" to be in "Good Standing" to be entitled to vote on Covenant amendments and, in fact, have no concept of "Good Standing" – this is a Bylaws concept only.

5. James Bull states the Covenants "integrates" the definition of "Membership" with that in the Bylaws. The Covenants, as a "Separate Instrument" per the Bylaws "Article XI, 2 Separate Instrument" provide their own, independent definition of "Member" in "Article III, 1 Membership in the Bannockburn Homeowners Association". While the definitions of "Member" in the Bylaws and Covenants are slightly different in wording, they point to the same set or people with only one requirement – ownership of property in Bannockburn.

Concerned Members believe the "Separate Instrument" clause of the Bylaws requires the Covenants to be interpreted using only the definitions provided in the Covenants themselves.

6. James Bull states 'the Covenants have **delegated** the definition of the term "member" to the HOA to determine who a member is'. The concern and belief is that the "Separate Instrument" clause of the Bylaws delegates complete authority to the Covenants to determine who can vote on Covenant amendments.

The belief is that Bull got the direction of delegation exactly backwards. Because his final opinion is based on this premise, concerned Members believe his opinion is fatally flawed.

7. James Bull stated that CCIOA (Colorado Common Interest Ownership Act) does not apply to Bannockburn. CCIOA does apply and treats Bannockburn as a corporation founded before July 1st, 1992. Therefore, only certain portions of CCIOA apply.

Getting this simple matter completely wrong gives concerned Members reason to question every conclusion in Bull's letter.

8. James Bull stated that the "HOA has further defined a "Member" to be someone who has paid dues up to date as someone and is therefore in good standing". The Bylaws state that each "Owner" of a residential lot in Bannockburn automatically becomes a "Member". By definition, although Members are required to pay dues, there is no requirement that an Owner pay dues to remain a "Member".

Concerned Members believe a) failure to pay dues simply results in the "Member" failing to gain "Member in Good Standing" status, b) that Bull got this completely wrong as well and c) based his final opinion, in part, on this error. This perceived failure of analysis causes concerned Members to question the validity of his opinion.

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