STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JAMES R. PATRICK and DEBORAH A. PATRICK, husband and wife, *Plaintiffs*, vs. **REMINGTON RANCH OWNERS ASSOCIATION, INC., an Idaho non-profit corporation,** *Defendant*.	Case No. **CV 2016 1075** **MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT and DENYING DEFENDANT'S MOTION TO VACATE HEARING ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on Plaintiffs' Motion for Partial Summary Judgment and Defendant's Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment.

Plaintiffs James and Deborah Patrick are the owners of real property located in Kootenai County, Idaho. Complaint, pp. 1–2, ¶ 1. The subject property owned by Plaintiffs is one of the lots platted by Northern Rockies Corporation, an Idaho Corporation dba Rocky Mountain Land Company (hereinafter Rocky Mountain Land Company"), in a subdivision described as "Remington Ranch". *Id.*, pp. 2, 3, ¶¶ 3, 5, 6. Said property is encumbered by a "Declaration and Establishment of Covenants, Conditions, Restrictions, Reservations, Road Easements and Road Maintenance Provisions for Properties Known as Remington Ranch (IV. REM)" (hereinafter

"Declaration"). *Id.*, p. 2, ¶ 3. The Rocky Mounty Land Company recorded this Declaration on August 18, 1995 as Kootenai County Instrument No. 1410436. *Id*. Between January 26, 1996, and August 13, 1998, five amendments to the Declaration were recorded in Kootenai County, as Instrument Nos. 1431647, 1466016, 1496881, 1532659, and 1550017. *Id.*; Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A.

The Rocky Mountain Land Company is the "Declarant" of the Declaration. *Id.*, Exh. A, p. 2, Art. 1, § 4. Pursuant to the terms of the Declaration, the "Declarant shall assist the Owners in organizing the Association and other business associated with the first Owner's Meeting." *Id.*, Exh. A, p. 3, Art. III, §1. The Declaration defines the term "Association" as an entity that "shall allow the Owners to act as an organized body that shall have as its duties the governance and enforcement of the Declaration for the benefit of all Owners, both current and future." *Id.*, Exh. A, p. 2, Art. 1, § 2, p. 3, Art. III, § 1. Rocky Mountain Company did not fulfill its obligation to assist the owners in organizing the Association. Complaint, p. 3, ¶ 9.

As of January 2006, the Association had not yet been formed. *Id.*, p. 4, ¶11. There is a dispute as to the number of parcels that qualified for membership in the not-yet formed Association at that time. *Id.* Plaintiffs argue that there were fifty-eight (58) lot owners in January 2006, while Defendant Remington Ranch Owners Association, Inc., argues there were fifty-four (54) lot owners in January 2006. *Id.*; Affidavit of Jason Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, Exhs. B, C.

On January 3, 2006, a notice was sent to the owners of property located in the Remington Ranch subdivision, which stated in part: "You are strongly urged to attend a

Special Members Meeting which will take place on Thursday the 26th of January at 7 p.m. at the Athol Community Center for the purpose of discussing these common issues and electing board members." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. D (underline in original). This notice was signed by two lot owners. *Id.*

Article III of the Declaration, entitled "Owner's Meetings", governs meetings held by the owners of the Remington Ranch subdivision as follows:

> 1. **Annual Meeting.** The first annual Owner's Meeting, date, time and place shall be designated in written notice provided by Declarant to all Owners. Declarant shall assist the Owners in organizing the Association and other business associated with the first Owner's meeting. This meeting shall occur subsequent to proposed road construction competition. For whatever reason, lack of written notice and assistance concerning the first annual meeting, from Declarant, shall in no way lessen the terms and conditions of this Declaration. There shall be a meeting of the Owners at 10:00 a.m. on the last Saturday of June every year following the first annual meeting.
>
> 2. **Method of Voting.** Voting members unable to attend and personally vote, may vote by giving a written proxy of their right to vote to an attending Voting Member, or will be allowed to vote by mail on such matters as determined from time to time by the Association.
>
> 3. **Special Owner's Meetings.** Special Owner's meetings may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of the Owners for any reasonable purpose or for other matters which are necessarily to be considered by the Association. Such meetings shall be called by written notice, signed by **50%** or more of the Voting Members, which notice shall specify the date, time and place of meeting and matters to be considered thereat. No special meeting shall be called unless there shall be ten (10) days prior notice.
>
> 4. **Voting Requirements.** On all matters except amendments to this Declaration, a majority of a Voting Member quorum shall be necessary to pass any matter at either an annual or special meeting. **A quorum shall consist of 50% of the Voting Members either in person or by proxy.**

Id., Exh. A, p. 3, Art. III (bold in original).

On January 26, 2006, a meeting was held by the owners of property located in the Remington Ranch subdivision. Affidavit of Jason Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 2, ¶ 9. There is a dispute about the number of Voting Members who attended that meeting. Plaintiff argues there were twenty-four (24) Voting Members represented at the January 26, 2006, meeting, while Defendant argues there were twenty-eight (28) Voting Members represented. Complaint, p. 4, ¶ 12; Affidavit of Jason Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 2, ¶ 16. Pursuant to the Declaration, Voting Members were designated as follows:

> . . .The Association shall have one class of Voting Membership. Owners shall be entitled to one vote per parcel except as qualified below. For voting purposes, and to be a Voting member, some Owners of record of multiple parcels shall be limited to a single vote, and multiple Owners of record of a single parcel shall be limited to a single vote. When more than one person holds an interest in a given parcel, all such persons shall be members but the vote for such parcel shall be exercised as the multiple Owners may determine between or among themselves with one vote being cast for such parcel owned. When one owner owns multiple parcels, such parcels shall be deemed for voting purposes to be a single parcel, and such owner shall be restricted and limited to a single vote. . . .

Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A, p. 3, Art. II, §1.

At the January 26, 2006, meeting, the Voting Members present, either in person or by proxy, attempted to organize the Association and hold an election for a Board for Directors of Remington Ranch. Complaint, p. 4, ¶ 12; Affidavit of Jason Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 2, ¶ 9. At that meeting, five members were elected to the Board of Directors of Remington Ranch.

See Affidavit of Donald Lyons in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 3, ¶ 25. On March 1, 2006, the Articles of Incorporation of Remington Ranch Owners Association, Inc. were filed with the Secretary of State. *Id.*, p. 3, ¶ 24. The Board of Directors of Remington Ranch also adopted the Bylaws of Remington Ranch Owners Association, Inc. *Id.*, p. 3, ¶ 25. On March 20, 2006, that document, executed by the five Board of Directors of Remington Ranch, was recorded in Kootenai County, Idaho, as Instrument No. 2020035000. Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. F.

Subsequent to its formation, Defendant Remington Ranch Owners Association, Inc., imposed and levied assessments against the owners of parcels encumbered by the Declaration. Complaint, p. 5, ¶ 16. Plaintiffs initially paid the levied assessments, but eventually ceased, arguing the Defendant Association not a valid entity. *See id.* Plaintiffs allege Defendant then "referred any alleged unpaid assessments to collections entities and agencies, who, at the direction of the Association and its Board, proceeded to impair the credit record of affected Parcel Owners, including plaintiffs Patrick. *Id.*, p. 6, ¶ 18.

On February 3, 2016, Plaintiffs filed their Complaint, seeking declaratory relief, imposition of a constructive trust, and a temporary restraining order and preliminary injunction. Complaint, pp. 9-11. Specifically, Plaintiffs seek declaratory relief that the Defendant Remington Ranch Owners Association, Inc. be dissolved as it was not properly formed in 2006. *Id.*

On August 3, 2016, Plaintiffs moved for Partial Summary Judgment only as to their claim for declaratory judgment. That motion is supported by a Memorandum in

Support of Motion for Partial Summary Judgment and the Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment. The next day, on August 4, 2016, Plaintiffs filed a Memorandum in Support of Motion for Partial Summary Judgment –Corrected. The only change made to the memorandum filed the day before was to correct a typographical error where the year 2016 was written when 2006 was intended.

On August 17, 2016, Defendant filed a Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment and the Affidavit of Gregory M. George in Support of Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment. That same day, Defendant also filed Defendant Remington Ranch Owners Association's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment. That response is supported by the Affidavit of Gregory M. George Re: Plaintiffs' Motion for Partial Summary Judgment, the Affidavit of Jason Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, the Affidavit of Michelle Curtis in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, the Affidavit of Donald Lyon in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, the Affidavit of Gary Russell in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, and the Affidavit of William E. Cleavinger in Support of Defendant Remington Ranch Owners Association, Inc.'s Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment.

On August 24, 2016, Plaintiffs filed an Objection to Defendant's Motion to Vacate and a Reply Memorandum in Support of Motion for Partial Summary Judgment.

Hearing on both motions was held on August 31, 2016. For the reasons set forth below, the Court denies Defendant's Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment and grants Plaintiffs' Motion for Partial Summary Judgment.

II. STANDARD OF REVIEW

"Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court . . . demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law." *Brewer v. Washington RSA No. 8 Ltd. Partnership,* 145 Idaho 735, 738 184 P.3d 860, 863 (2008) (quoting *Badell v. Beeks,* 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) (citing I.R.C.P. 56(c)). The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Finance Corp.,* 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)).

"Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party," to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer,* 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134 Idaho 84, 87, 996 P.2d 303, 306 (2000). In construing the facts, the court must draw all reasonable factual inferences in favor of the non-moving party. *Mackay v. Four Rivers Packing Co.,* 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979).

The non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69 (1996). The non-moving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); *see Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). "[I]f the nonmoving party fails to provide a sufficient showing to establish the essential elements of his or her case, judgment shall be granted to the moving party." *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (2008) (citing *Atwood v. Smith,* 143 Idaho 110, 113, 138 P.3d 310, 313 (2006)).

If an action is being tried without a jury, "[t]he trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences." *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007) (citing *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)). The fact finder is responsible for resolution of conflicts between the possible inferences. *Id.* (citing *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997)). If the Idaho Supreme Court reviews the decision of a judge serving as fact finder, it "[e]xercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews the inferences drawn by the district judge to determine whether the record reasonably supports those inferences." *Id.* (citing *Intermountain Forest Management*, 136 Idaho at 236, 31 P.3d at 924).

III. ANALYSIS

A. The Motion to Vacate is moot, as Plaintiffs withdrew the corrected version of their Memorandum at oral argument.

The party moving for summary judgment must serve the "motion, supporting documents and brief . . . at least 28 days before the date of the hearing." I.R.C.P. 56(b)(2). However, "[t]he court may alter or shorten the time periods and requirements of this rule for good cause shown . . . ." I.R.C.P. 56(b)(3).

Hearing on the Plaintiffs' Motion for Partial Summary Judgment was scheduled for August 31, 2016. On August 3, 2016, twenty-eight (28) days before the scheduled hearing, Plaintiffs timely filed their Motion for Partial Summary Judgment, Memorandum in Support of Motion for Partial Summary Judgment, and the Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment. On August 4, 2016, twenty-seven (27) days before the scheduled hearing, Plaintiffs filed a Memorandum in Support of Motion for Partial Summary Judgment – Corrected. Defendant moved to vacate the scheduled hearing because the Memorandum in Support of Motion for Partial Summary Judgment – Corrected is untimely. Affidavit of Gregory M. George in Support of Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment, p. 2, ¶¶ 5, 6. Defendant acknowledges that the only alteration to the original Memorandum in Support of Motion for Partial Summary Judgment is that "Plaintiffs corrected the statement on page four, paragraph 16 of their initial memorandum in which they had stated the organizational meeting of Remington Ranch took place on January 26, 2016. In plaintiffs' Corrected Memorandum, this statement as changed to correctly state such meeting took place on January 26, 2006." *Id.*, p. 2, ¶ 4.

Plaintiffs and Defendant agree that the only difference between the two documents is that Plaintiffs corrected one typographical error in the "Undisputed

Material Facts" section of its memorandum; a date that was referenced by Plaintiff in the preceding paragraph. Plaintiff did not rely upon any new law or make any additional arguments in the corrected memorandum. At oral argument, Plaintiffs withdrew Memorandum in Support of Motion for Partial Summary Judgment – Corrected. As such, the issue is moot. However, the Court finds that action by Plaintiff was unnecessary. The corrected memorandum, filed one day after the deadline, caused no prejudice to Defendant. Defendant timely filed not only its responsive memorandum and supporting affidavits, but its Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment. There is good cause to "alter or shorten the time periods" set forth under Idaho Rule of Civil Procedure 56(b)(2). The Court finds no reason to have delayed oral argument on the Motion for Partial Summary Judgment on the grounds raised by Defendant. However, since Plaintiffs moved to withdraw their corrected memorandum at oral argument, the Court will only consider the initial memorandum filed by Plaintiffs.

B. The January 26, 2006, Special Owner's Meeting was called on improper notice and the actions taken at that meeting failed to comply with the mandatory requirements of the Declaration.

Plaintiffs allege the January 26, 2006, meeting was a "Special Owner's Meeting" as defined by the Declaration, which failed to comply with the notice requirements set forth therein. Memorandum in Support of Motion for Partial Summary Judgment, p. 10. The Declaration required any "Special Owner's Meeting" to be called by written notice, signed by fifty percent (50%) or more of the Voting Members. *Id.* Plaintiffs contend that since the January 26, 2006, meeting was noticed by only two Voting Members, notice was improper and thus void under the Declaration. *Id.*, pp. 10, 11. Plaintiffs further claim that at the January 26, 2006, meeting, members in attendance then attempted to

elect a five-person Board of Directors. Reply Memorandum in Support of Motion for Partial Summary Judgment, p. 8. Plaintiffs assert that the improperly elected Board then created the Defendant Association, which "constituted an attempted amendment to the terms of the Declaration." *Id.* Plaintiffs maintain that the Board of Directors also adopted Articles of Incorporation and Bylaws, which contained provisions that amended the terms of the Declaration without complying with the requirements set forth under the Declaration for amendments. *Id.* In sum, Plaintiffs maintain "[n]ot only was the January 26, 2006 meeting convened on improper notice, the Board was invalidly elected through a de facto amendment to the Declaration and all actions taken by the Board are (and remain) void ab initio." *Id.*, p. 11.

Defendant claims the January 3, 2006, notice did not need to comply with the requirements for a "Special Owner's Meeting" because none of the matters noticed up required approval by the Owners. Defendant Remington Ranch Owners Association's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 7. Defendant makes the following argument:

> . . . where the Declaration expressly requires the Owners to approve a given matter, such approval may be obtained at a Special Owner's Meeting (or at the Annual Meeting under Article III, paragraph 1). However, nothing in the Declaration speaks to a meeting requirement for matters that are not required under the terms of the Declaration to be approved by the Owners. For matters that do not have to be approved by the Owners, there is no requirement in the Declaration to call a Special Owner's Meeting. And where the Declaration does not by its terms require a Special Owner's Meeting, the notice requirement of Article III, paragraph 3, cannot logically apply.

Id. Arguing that only those sections of the Declaration that specifically reference Article II, Section 3 of the Declaration, Defendant contends that since the Declaration is silent on the matter of electing a Board of Directors, a "Special Owner's Meeting" was not

held and the notice requirements to hold a Special Member Meeting did not apply to the January 26, 2006, meeting. *Id.*, p. 8. Specifically, Defendant claims:

> Here, as discussed above, the terms of the Declaration do not require Owner approval for electing an initial Board of Directors. Where the Declaration does not require Owner approval of a matter, a Special Owner's Meeting is not required. And where a Special Owner's Meeting is not required, the notice requirement of Article III, paragraph 3, does not apply.

Id., p. 8.

Defendant next argues that since a Special Owner's Meeting was not held, Idaho Code § 30-3-50, which was repealed on July 1, 2015 (2015 Idaho Laws Ch. 337 (S.B. 1182)), but in effect in 2006, governed notice for the January 26, 2006, meeting. *Id.* Idaho Code § 30-3-50(1), prior to July 1, 2015, read: "A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner." Relying on that statute, Defendant maintains proper notice was given for the January 26, 2006, meeting and the Board of Directors were validly elected. *Id*., pp. 8, 10. Defendant contends those validly elected Directors were "legitimately empowered to incorporate Remington Ranch with the Secretary of State." *Id.*, p. 10.

In addition to claiming proper notice, Defendant maintains that pursuant to the Chapter 7, title 53, Idaho Code, the Uniform Unincorporated Nonprofit Association Act, which was in effect when the Declaration was recorded and the January 26, 2006, a meeting was held, the property owners expressly were allowed under the statute to elect a Board of Directors. *Id.*, pp. 11, 12. Defendant claims that because the Bylaws were adopted by the validly elected Directors, in accordance with Idaho Code § 30-3-21(1), they are valid and binding upon Plaintiff. *Id.*

"Idaho recognizes the validity of covenants that restrict the use of private property." *Shawver v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 363, 93 P.3d 685,

694 (2004) (citing *Nordstrom v. Guindon,* 135 Idaho 343, 345, 17 P.3d 287, 290 (2000) (citing *Brown v. Perkins,* 129 Idaho 189, 192, 923 P.2d 434, 437 (1996))). "When interpreting CC&R's, this Court generally applies the rules of contract construction." *Sky Canyon Properties, LLC v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 606, 315 P.3d 792, 794 (2013) (citing *Pinehaven Planning Bd. v. Brooks,* 138 Idaho 826, 829, 70 P.3d 664, 667 (2003)). The Court must first determine whether or not the covenants are ambiguous. *Pinehaven Planning Board,* 138 Idaho at 829, 70 P.3d at 667 (citing *Brown v. Perkins,* 129 Idaho 189, 193, 923 P.2d 434, 438 (1996) (citing *City of Chubbuck v. City of Pocatello,* 127 Idaho 198, 201, 899 P.2d 411, 414 (1995)). The determination of whether a covenant is ambiguous is a question of law. *Id.* (citing *Brown v. Perkins,* 129 Idaho 189, 192, 923 P.2d 434, 437 (1996)). To determine whether a covenant is ambiguous, the court must view the agreement as a whole. *Id.* (citing *Brown,* 129 Idaho at 193, 923 P.2d at 438). A covenant is ambiguous when it is capable of more than one reasonable interpretation on a given issue. *Id.* (citing *Post v. Murphy,* 125 Idaho 473, 475, 873 P.2d 118, 120 (1994)). "Words or phrases that have established definitions in common use or settled legal meanings are not rendered ambiguous merely because they are not defined in the document where they are used." *Id.* (citing *City of Chubbuck v. City of Pocatello,* 127 Idaho 198, 201, 899 P.2d 411, 414 (1995)). "Where there is no ambiguity, there is no room for construction; the plain meaning governs." *Id.* (quoting Post*,* 125 Idaho at 475, 873 P.2d at 120). If the Court determines that a covenant is unambiguous, then it must apply it as a matter of law. *Id.* (citing *City of Chubbuck v. City of Pocatello,* 127 Idaho 198, 201, 899 P.2d 411, 414 (1995)). "Interpretation and legal effect of an unambiguous contract are questions of law over which [a reviewing court] exercises free review." *Melaleuca, Inc. v. Foeller*, 155

Idaho 920, 924, 318 P.3d 910, 914 (2014) (quoting *Idaho Power Co. v. Cogeneration, Inc.,* 134 Idaho 738, 748, 9 P.3d 1204, 1214 (2000).

However, if a covenant is ambiguous, its interpretation is a question of fact. *Id.* When interpreting an ambiguous covenant, the Court must determine the intent of the parties at the time the agreement was drafted. *Id.* (citing *Brown,* 129 Idaho at 193, 923 P.2d at 438). To determine the intent of the drafters, the Court looks to "the language of the covenants, the existing circumstances at the time of the formulation of the covenants, and the conduct of the parties." *Id.* (quoting citing *Brown,* 129 Idaho at 193, 923 P.2d at 438). If a covenant is ambiguous, summary judgment is improper. *Best Hill Coalition v. Halko, LLC*, 144 Idaho 813, 817, 172 P.3d 1088, 1092 (2007).

In this case, Article III of the Declaration, entitled "Owner's Meetings", reads as follows:

> 1. **Annual Meeting.** The first annual Owner's Meeting, date, time and place shall be designated in written notice provided by Declarant to all Owners. Declarant shall assist the Owners in organizing the Association and other business associated with the first Owner's meeting. This meeting shall occur subsequent to proposed road construction competition. For whatever reason, lack of written notice and assistance concerning the first annual meeting, from Declarant, shall in no way lessen the terms and conditions of this Declaration. There shall be a meeting of the Owners at 10:00 a.m. on the last Saturday of June every year following the first annual meeting.
>
> 2. **Method of Voting.** Voting members unable to attend and personally vote, may vote by giving a written proxy of their right to vote to an attending Voting Member, or will be allowed to vote by mail on such matters as determined from time to time by the Association.
>
> 3. **Special Owner's Meetings.** Special Owner's meetings may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of the Owners for any reasonable purpose or for other matters which are necessarily to be considered by the Association. Such meetings shall be called by written notice, signed by **50%** or more of the Voting Members, which notice shall specify the date, time and place of meeting and matters to be considered

> thereat. No special meeting shall be called unless there shall be ten (10) days prior notice.
>
> 4. **Voting Requirements.** On all matters except amendments to this Declaration, a majority of a Voting Member quorum shall be necessary to pass any matter at either an annual or special meeting. **A quorum shall consist of 50% of the Voting Members either in person or by proxy.**

Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A, p. 3, Art. III (bold in original). Viewing the Declaration as a whole, the Court finds Article III of the Declaration is unambiguous, as it is not capable of more than one interpretation. It clearly sets forth the prerequisites for calling a Special Owner's Meeting, specifically; written notice, signed by fifty percent (50%) or more of the Voting Members, specifying the date (at least 10 days prior to the notice), the time and place of meeting, and the matters to be considered. *Id.*, p. 3, Art. III., § 3. It also provides such a meeting is required: "for the purpose of considering matters which, by the terms of this Declaration, require the approval of the Owners for any reasonable purpose or for other matters which are necessarily to be considered by the Association." *Id.*

The notice for the January 26, 2006, meeting, dated January 3, 2006, specifically provided in part: "You are strongly urged to attend a Special Members Meeting which will take place on Thursday the 26th of January at 7 p.m. at the Athol Community Center for the purpose of discussing these common issues and electing board members." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. D (underline in original). This notice meets all of the requirements of Article III, Section 3 of the Declaration, except for one: it is not signed by fifty percent (50%) or more of the Voting Members. *Id.* The notice is only signed by two (2) Voting Members, Don and Judy Lyons and Greg and Bobbi Seeds. *Id.*

Defendant argues the January 26, 2006, meeting did not qualify as a "Special Owner's Meeting" because, among other things, "the terms of the Declaration do not require Owner approval for electing an initial Board of Directors." Defendant Remington Ranch Owners Association's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, p. 8. Defendant's argument completely ignores the language of the January 3, 2006, notice. *The very title of the meeting* the two property owners used in their January 3, 2006, notice belies Defendant's argument that the property owners were not attempting to call a Special Owner's Meeting.

Moreover, there are only two kinds of meetings that can be noticed up under the Declaration: An Annual Meeting or a Special Owner's Meeting. Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, p. 3, Art. III, §§ 1, 3. Defendant appears to argue that none of the matters noticed up for the January 26, 2006, meeting specifically required approval from the property owners pursuant to the Declaration, so some sort of mystical third type of meeting, not described in the Declaration, was held. *See* Defendant Remington Ranch Owners Association's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, pp. 7–8. However, the Declaration requires a Special Owner's Meeting to be called "for the purpose of considering matters which, by the terms of this Declaration, require the approval of the Owners for any reasonable purpose **or for other matters which are necessarily to be considered by the Association**." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A, p. 3, Art. III, § 3 (bold added). Defendant's arguments disregard the bolded portion of the sentence. The January 3, 2006, notice described the "purpose" of the January 26, 2006, meeting, as "discussing these common issues and electing board members." *Id.* The January 3, 2006, notice then goes on to describe the voting process. *Id.* Defendant's claim that,

"electing board members" somehow is an action that is not required to "be approved by the Owners" is astonishing. The very nature of an election requires approval from those eligible to vote. Those seeking office submit their name for consideration of the voting members to be elected by those voting members into office. It is disingenuous for Defendant to claim that owner approval was not required to elect a Board of Directors. This argument is spurious because the January 3, 2006, notice specifically details that a vote will occur. It is impossible to have an election without "Owner approval" because only the members can vote.

The Declaration is not ambiguous on the issue of notice for a Special Owner's Meeting. At the time of the January 26, 2006, meeting the Declaration was the only controlling document. Defendant's argument that Idaho Code § 30-3-50(1) should control instead of the Declaration is misplaced. Idaho Code § 30-3-50(1) has no applicability. However, even if Idaho Code § 30-3-50(1) was somehow applicable before the Bylaws were adopted, the very terms of that section make it inapplicable as the section sets for the following requirement: "A corporation shall give notice consistent with its bylaws . . . ."

There is no genuine issue of material fact that notice in compliance with Article III, Section 3 of the Declaration was required. There is no dispute of fact that the notice for the January 26, 2006, meeting was not signed by fifty percent (50%) or more of the Voting Members as required by Article III, Section 3 of the Declaration. Having failed to comply with the unambiguous provisions of Article III, Section 3 of the Declaration, the January 26, 2006, meeting was held in violation of the Declaration. Summary judgment is granted to Plaintiffs on the issue of notice.

However, even if notice was proper, the actions taken at the January 26, 2006, meeting would still be void. As stated above, pursuant to the terms of the Declaration,

"Declarant **shall** assist the Owners in organizing the Association and other business associated with the first Owner's meeting." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A, p. 3, Art. III, § 1 (bold added). The term "Association" is defined in the Declaration as follows: "Association shall mean and refer to the [Remington Ranch] Property Owner's Association. The Association shall allow the Owners to act as an organized body that shall have as its duties the governance and enforcement of the Declaration for the benefit of all Owners, both current and future." *Id.*, Exh. A, p. 2, Art. 1, § 2. The Declarant never fulfilled its required obligation to set up an Association. Complaint, p. 3, ¶ 9. Pursuant to the Bylaws of Remington Ranch Owners Association, Inc., adopted by the Board of Directors who were "elected" at the January 26, 2006, meeting, "[a]ll association powers shall be exercised [by] or under the authority of, and the business and affairs of the associations shall be managed under the direction of the Board of Directors." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. F, Art. III, § 3.1. Thus, the Board of Directors was "elected" to govern the Association.

In order to comply with the requirement set forth under Article III, Section 1 of the Declaration, either the Declarant needed to be present at the January 26, 2006, meeting to "assist the Owners in organizing the Association", or the Voting Members needed to amend Article III, Section 1, to remove that requirement from the Declaration. Article V, Section 1 of the Declaration sets forth the procedure for amending the CC&Rs as follows:

> 1. **Amendment.** Subject to the rights provided exclusively to Declarant and referred to in Article II Section 1., this Declaration and any provision contained herein, may be amended only by an instrument signed by the Voting members of not less than **sixty-six and two-thirds**

> **percent** (66 2/3%) of the recorded parcels and such parcels corresponding Voting Member. Alternatively, an amendment to this Declaration may be evidenced by the signature of the president and secretary of the Association attesting to a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the voting Owners either present or voting by proxy at a special or annual meeting of the Owners. Any amendment to this Declaration or any subsequent Declaration must be filed for record with Kootenai County, Idaho.

Id., Exh. A, Art. V, § 1 (bold in original).

While there is a question of fact whether a quorum of fifty percent (50%) of the Voting Members were present at the January 26, 2006, meeting, there is no question that less than sixty-six and two-thirds percent (66 2/3%) of Voting Members were present. There is also no evidence that an instrument making any amendment to the Declaration was drafted and signed by the requisite number of Voting Members. Amendments to restrictive covenants are valid if properly adopted. *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 362, 93 P.3d 685, 693 (2003). Conversely, an amendment to a Declaration is void and unenforceable if it is not adopted in compliance with the applicable amendment procedures set forth by said Declaration. "Void contracts are deemed never to have existed in the eyes of the law". *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, ___, 367 P.3d 208, 222 (2016) (citing *Thompson v. Ebbert*, 144 Idaho 315, 318, 160 P.3d 754, 757 (2007)).

There is no evidence that the Declarant was present at the January 26, 2006, meeting. There is no evidence that the Declarant assisted in organizing the Board of Directors for the Association. To elect a Board of Directors without the Declarant present, the Voting Members needed to make an amendment to Article III, Section I of the Declaration, to remove that requirement from the Declaration. Having failed to properly amend Article III, Section 1 to the Declaration to allow the owners to organize the Association and elect a Board of Directors without the assistance of the Declarant,

any actions taken by the owners to form the Association are void. The election of the Board of Directors is void and unenforceable. Moreover, any actions taken by that Board of Directors is lacking in authority.

Finally, at oral argument, at oral argument on August 31, 2016, counsel for Defendant made arguments that never found their way into Defendant Remington Ranch Owners Association Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment. These arguments have no merit.

One argument was that the relief sought in the Plaintiffs' Complaint was not identical to the relief sought in the Plaintiffs' Motion for Partial Summary Judgment. That argument is absurd. Plaintiffs' Complaint seeks declaratory relief, Plaintiffs' Motion for Partial Summary Judgment seeks the same declaratory relief.

The other argument advanced by Defendant's counsel was that because certain portions of the Declaration specify what issues can be approved by Owners in a "Special Owner's Meeting" under Article III § 3 of the Declaration (for example, commercial use of property as set forth in Article IV § 11), then all other non-specified or non-enumerated issues must be a matter for other, non-"Special Owner's Meetings." That argument is based on the language in Article III § 3 which reads: "Special Owner's meetings may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of the owners for any reasonable purpose *or for other matters which are necessarily to be considered by the Association*." Declaration of John F. Magnuson Re: Plaintiffs' Motion for Partial Summary Judgment, Exh. A, Art. III, § 3. (italics added).

The absurdity of this argument by Defendant's counsel is twofold.

First, there are only two types of meetings set forth in the Declaration, "Annual Meetings" (Article III § 1) and "Special Owner Meetings" (Article III § 3). There is no non-special third type of meeting.

Second, that argument completely ignores the italicized portion of that phrase in Article III § 3. For the Defendant to now argue that election of a board of directors, discussion of private and public roads and voting on matters concerning those roads are somehow not "…*matters which are necessarily to be considered by the Association*" is irresponsible lawyering. The Court is not persuaded by any such ill thought out arguments of Defendant.

IV. CONCLUSION AND ORDER.

For the reasons stated above, the Court denies Defendant's Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment and grants Plaintiffs' Motion for Partial Summary Judgment.

IT IS HEREBY ORDERED Defendant's Motion to Vacate Hearing on Plaintiffs' Motion for Partial Summary Judgment is DENIED.

IT IS FURTHER ORDERED Plaintiffs' Motion for Partial Summary Judgment is GRANTED. The Court grants Plaintiffs declaratory relief that:

1. The Articles of Incorporation of Remington Ranch Owners Association, Inc., (Exhibit A to the Verified Complaint) were not adopted by the Members of the unincorporated Association established by the CC&Rs (Declaration) at a Special Member Meeting convened on proper notice;
2. The Defendant never had the legal right to assess Plaintiffs for any cost or expense as determined by the Defendant;
3. The Defendant's Articles of Incorporation and Bylaws do not bind Plaintiffs or their property; and

4. The Defendant holds all assessments currently on account, which were paid by Members of the unincorporated Association that was established by the CC&Rs, subject to a constructive trust, with the concomitant obligation to refund the same to those parcel owners who paid them.

Entered this 1st day of September, 2016.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of October, 2016, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
John F. Magnuson	667-0500	Gregory M. George	664-9933

_____
Jeanne Clausen, Deputy Clerk