

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

As we consider **options** on amending our DCR’s, we need to remind ourselves as to what is important for the 2018 Annual Meeting to try to accomplish this.

As stated in the History of our DCR’s amending;

**“If we don’t change HOW we change our DCR’s, ...
it doesn’t matter WHAT we try to change!!!”**

Remember, we seem to have three possible definitions/scenarios for the “voting power” of Sunlight Waters and two different scenarios on the number of votes needed to pass any amendment on the DCR’s;

1. All “lot owners”?
2. All “members in good standing”
3. The 20+ member of the quorum
And the 51% verses 2/3rds

For reference and a reminder, here are the two amendment Articles/Paragraphs that are the basis of this discussion:

ARTICLE V GENERAL PROVISIONS.

1. TERM. These covenants and restrictions are to run with the land and shall be binding on all parties and person claiming under them for a period of 25 years from the date this Declaration is recorded. After the period of 15 years the covenants and restrictions shall be automatically extended for successive periods of ten years without further action of declarants. **Unless an instrument signed by a majority of the then owners of all lots within the property has been recorded, agreeing to extinguish or change the covenants and restrictions in whole or in part.**

2. AMENDMENT OF DECLARATION. This Declaration may be **amended at any time**, by the **affirmative vote of two-thirds majority** of the **voting power of the SUNLIGHT WATERS COUNTRY CLUB, INC.** at any annual meeting or any special meeting specifically called for that purpose.

So lets look at the pros-n-cons of these three “voting power” definition/scenarios.

Definition One

All “lot owners”

“... majority of the then owners of all lots within the property ...”

If we use this definition, it seems to be the clearest interpretation of this paragraph. It is talking about:

“... agreeing to extinguish or change the covenants and restrictions in whole or in part.”

That’s a pretty clear interpretation of what that paragraph is about.

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

This position/definition has two major flaws though:

1. The 51% affirmation. History shows this is an almost impossible measure to obtain.
2. **Section 2. AMENDMENT OF DECLARATION.**

This Amendment clause causes all the confusion on the amendments. Since the **Section 1 “Term”** paragraph says:

“... **extinguish or change** the covenants and restrictions **in whole or in part.**”

That pretty well sums up what an amendment would do. So why even have the Amendment clause? Good question, see if that gets answered below.

Definition two

All “members in good standing” (voting power)

“The voting power of the corporation is the total of all members who are in good standing with the Corporation in accordance with these Bylaws.”

This 2008 bylaw amendment was a really good attempt to solve the definition problem. It clearly states the parameters of the definition and would be the best restrictive definition of voting power as it also solve the phrase:

“... voting power of the **SUNLIGHT WATERS COUNTRY CLUB, INC.** ... “

The actual total count of the two statements “members in good standing” verses “all lot owners” is maybe 5-10%, which may be all the difference in a pass or fail.

At approximately 315 current lot owners, we would need 160 lot owners to agree to the amendment. Yet if we have a 5 – 10% unpaid membership, that creates a 299 – 283 total “members in good standing” That would mean a count of 153 or 145 votes respectively, just enough to possibly make the difference in a pass or fail. This year would be the first year that this definition would be used in the attempt to amend our DRC’s.

Yet this has its weaknesses/flaws also, just as the “All Lot Owners” except it would have a lower “head count” for the 51% and the affirmation.

Definition three

The 20+ member of the quorum

This option is by far the least restrictive. It has its defense in that two attorneys have said they could argue its defense. The **2003** attorney that suggested we go with the “all Lot Owners” for best defense against disbanding, but that the 2/3’s of members present was a legitimate argument, and the last attorney of **2016** that wrote a response to the Board’s question of how to change/amend the controlling documents.

If this were the definition option, the anniversary date 51% would be an actual higher number

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

than the non-anniversary date meetings. It would be easier to change the DCR’s in the off years rather than the anniversary years.

This option has the potential of a very small group changing the DCR’s “at will” without a lot of other members input.

So it’s flaws are in the lower head count. If used, as written, it gives little to no check and balance on our DCR’s. Remember the DCR’s affect out property titles and give the impetus/power to the Articles of Incorporation and our Bylaws. Where as the Articles and Bylaws control what and how we function.

If we went with this interpretation, we would definitely want to amend **Article V, Sections 1 & 2**, of the DCR’s to be a bit more restrictive in the future.

Besides these wording/definition issues, what is the problem?

- Attendance!!!
- Getting 150 members(+) for a turnout at our annual meeting is a near impossibility by itself.
- Getting them all there with the extra effort on the anniversary date? ... Maybe we can.
- But then get that same 150+ members to agree. (?????????????)
- Apathy – the cultural reality is “a lot of people don’t care” which impacts the head count.

What are some options?

Lets start with the statement:

**“If we don’t change HOW we change our DCR’s, ...
it doesn’t matter WHAT we try to change!!!”**

We learned in 2008 that though the majority present agreed on need to change, there was not an agreement on all the various changes.

So we need to get the **“HOW”** to changed agreed upon first, giving us the ability **“TO”** change.

For discussion here, lets break our DCR’s down into a Table of Contents so that we could narrow in on the **“HOW”** and **“WHAT”**

DECLARANTS – Who we are and what we are doing, stating our legal authority to do so.

ARTICLE I – Starts defining the limits and intents of the whole DCR’s. Lot owner = Member and Member = Lot Owner etc.

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

ARTICLE II – The actual stated Covenants and Restrictions – the controversial parts of agreement and enforcement. Really, what everything is all about. Where we are wanting to make changes.

ARTICLE III – Who’s going to be the “heavy” that enforces all of this. Which is SLWCC

ARTICLE IV – The teeth of the enforcer – Liens and Assessments

ARTICLE V – The “housekeeping” and updating authority of the DCR’s. This contains the “HOW” we change/amend and other authority such as “Insertion in Deed”

Other than some clarification in the “Declarants” from the previous versions, most of the Articles are not necessarily subject to change except Article II. There are some minor wording changes and lawyer legalese in the proposed 2008/2018 versions, but it’s Article II that has the most debate when it comes to changes.

Yet all of this is an exercise in futility because Article V, Sections 1 & 2, TERM and AMENDMENTS inhibits us from doing so.

POSSIBLE SOLUTIONS

Lets break **Section 1. Term** down into statements and intent.

1. TERM. These covenants and restrictions ... are to run with the land and shall be binding on all parties and person claiming under them ... for a period of 25 years from the date this Declaration is recorded. ... **After the period of 15 years** the covenants and restrictions **shall be automatically extended for successive periods of ten years** without further action of declarants. ... **Unless** an instrument **signed by a majority of the ... then owners** of all lots within the property has been recorded, **agreeing to extinguish or change the covenants and restrictions in whole or in part.**

The **obvious reason** for this Article is to **define the duration/term of these DCR’s** on the properties restricted by these DCR’s. The fact that there is a Section 2. Amendments shows there was an **intention to distinguish between the altering of the Term (Time Frame) and the ability to amend.** Unfortunately the wording of the statements muddled the intent.

The Articles of Incorporation states in Article V: (Note: the Article V in both documents are coincidental, not by intent)

ARTICLE V

The time of existence of this corporation shall be perpetual.

Since the Articles of Incorporation were created from and after the DCR’s, this would support that the intent of this section would be for a perpetual term, but give an escape clause if the **“then Lot Owners”** were to decide to **“extinguish or change the covenants and restrictions in whole or in part.”** on some sort of an anniversary date.

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

So lets try an alternate phrasing of this that may possibly be closer to the intent:

1. TERM. These covenants and restrictions are to run **perpetual** with the land and shall be binding on all parties and person claiming under them for a **probationary** period of 25 years from the date this Declaration is recorded. After a period of 15 years the covenants and restrictions shall be automatically extended for successive periods of ten years without further action of declarants. Unless an instrument signed by a majority of the then owners of all lots within the property has been recorded, agreeing to extinguish or change the **Term** of these covenants and restrictions in whole or in part.

These couple of words added, that would be consistent with the intent of the “Term” of the DCR’s, would make the majority clause limited to the “Term” (Time Frame) stated. With approximately 315 Lot Owners, this is still approximately 158 affirmative votes.

This would also differentiate between the (simple) majority of lot owners needed for changing the duration or “Term” of the DCR’s compared to the 2/3’s voting power needed to amend the DCR’s. Especially if you consider the option of “extinguishing” the DCR’s

Now if we consider some variation of wording of this section yet emphasizing the perpetual intent with an escape clause, it could solve the ambiguity of this paragraph and would allow us to consider the Amendment Section in a much freer light.

Section 2. Amendment of Declaration, as exists states:

2. AMENDMENT OF DECLARATION. This Declaration may be **amended at any time**, by the **affirmative vote of two-thirds majority** of the **voting power of the SUNLIGHT WATERS COUNTRY CLUB, INC.** at any annual meeting or any special meeting specifically called for that purpose.

Breaking this down now, we have: ... “ This Declaration” ... “may be amended” ... “at any time”, ... by the ... “affirmative vote” ... of ... “two-thirds majority” ... of the ...“voting power” ... of ... “the SUNLIGHT WATERS COUNTRY CLUB INC.” ... at ... “any annual meeting” ... or any special meeting specifically called for that purpose.

As discussed many time here, this says in essence, we can amend these DCR’s at any time at any meeting, as long as a 2/3’s majority of the voting power is met.

Now prior to the 2008 amendment of the Bylaws, the “voting power” was not defined any where in our controlling documents. However since then, the definition of “voting power” has been defined;

Article III, Meetings, Section 4,

... “In order to vote, *the member must be in good standing, that is*, all dues, debts,

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

and assessments shall be paid on or before March 31st of each year, following the meeting at which they have been fixed.” ...

“... *The voting power of the corporation is the total of all members who are in good standing with the Corporation in accordance with these Bylaws.*”

As has been stated above, this amount is the total of all Lot Owners minus the number of non-paid up Members. Also as has been stated, this could possibly be a larger number than that the 51% percent we have been discussing.

Based on our same numbers as illustrated above, using the round number of 315, and assuming a 7% non paid up members, our number would be approximately 293 members in good standing. The simple majority of this number would be 147 people in agreement to pass any amendment. However, a 2/3's majority or 66% would be 195 people in agreement. This seems like an added impossibility.

A couple of additional thoughts along this subject:

- Since the DCR's involve the Title/Deed to each property, shouldn't the voting power involve all Lot Owners/Members not just the paid up ones?
- Since voting power was defined at an annual meeting, and since the Bylaws can be changed/amended at any annual meeting, then the definition of “voting power” could be re-defined at this annual meeting. (Or the definition deleted from Article III, Section 4.) This could throw us back to the lawyers definition of the standard 2/3's of the members present, assuming a 20 member+ quorum.
- Any amendment of the DCR's should define the voting power within the document itself, removing any and ambiguity of the term, keeping it free from and not dependent on any amending power definitions within the Articles of Incorporation and/or the Bylaws.
- Though a 2/3's majority is a typical amending power number, this also gives the power to the 1/3. They don't need to have a contrary agreement, just the ability to prevent a 2/3's count. NON votes are as good as a NO votes for that group.

Using these thoughts as guidelines, we would want this amending paragraph to include all Lot Owners/ Members without reference to the SLWCC. To define a voting power based on Lot Owner count, smaller than the supposed 51%, but yet larger than the 20+member quorum of the Articles and Bylaws.

So some phrasing such as:

2. AMENDMENT OF DECLARATION. This Declaration may be amended at any time, by the affirmative vote of two-thirds **of the** majority of the **lot owners** ~~voting power of~~

“Voting Power” of Sunlight Waters (SLW) Declaration of Covenants and Restrictions (DCR)

~~the SUNLIGHT WATERS COUNTRY CLUB, INC.~~ at any annual meeting or any special meeting specifically called for that purpose.

This lowers the affirmation vote down to 2/3rds of approximately 51% of the lot owners, or in the case of 315 lots, which would equal 51% = 160 x's 2/3rds = approximately 107 votes. Still a huge number, but at least well defined. Yet still restrictive for any amendments.

If according to the “Term” limits, we can only amend Articles and Sections other than the “Term”, we really do not need the large affirmation votes this creates. We could set a Lot owner quorum lower than the simple majority but larger than the 20+ members of the Articles and/or Bylaws. Such as 50 or 100, but then 2/3's of that so it would be 34 or 67 respectively. Or we could use 51% of 51% which would be the 315 divided by 2 or a 158, divided 2 which would be 79 affirmative votes.

A proposed Option

1. TERM. These covenants and restrictions are to run **perpetual** with the land and shall be binding on all parties and person claiming under them from the date this Declaration is recorded; unless, **at anytime**, an instrument has been recorded, with the notarized signatures of 51% or more of the then Lot Owners agreeing to extinguish or change the **Term** of these covenants and restrictions in whole or in part.

2. AMENDMENT OF DECLARATION. This Declaration may be amended at any time, by the affirmative vote of a **simple majority** of a simple majority **quorum** of the **lot owners** at any annual meeting or any special meeting specifically called for that purpose.