



Alliance of Reston Clusters and Homeowners
Supporting Homeowner Groups in All of Reston's Neighborhoods

ISSUES BULLETIN 2005-3

September 8, 2005

**RESTON ASSOCIATION GOVERNING DOCUMENTS:
SUMMARY OF Q&A FROM THE AUGUST 24 ARCH COMMUNITY FORUM**

Attached is a table summarizing the Q&A component of the August 24 ARCH community forum on the proposed RA governing documents. Questions were asked (by either the ARCH moderator or the audience in attendance) to an invited panel representing the RA Board of Directors: Jenn Blackwell, RA Board President; Milton Matthews, RA EVP/CEO; Ray Leonard, RA CFO; and Bob Diamond, a partner at Reed Smith whom RA has retained to assist in the drafting process. This summary was prepared based on notes several ARCH members took during the meeting; it is not a transcription of the meeting and is not intended as such. It is a good-faith effort to provide an overview of the Q&A session.

ISSUES BULLETIN 2005-3

ARCH SUMMARY: Q&A from the Governing Documents Forum of August 24, 2005

("RA Response" provided at the Forum by Jenn Blackwell, RA Board President; Milton Matthews, RA EVP/CEO; Ray Leonard, RA CFO; or Bob Diamond, Partner at Reed Smith retained by RA Board to advise on the documents)

TOPIC: RA FINANCE/GOVERNANCE		
ISSUE	QUESTION/COMMENT	RA RESPONSE
Alternative Cap	Current draft removes the cap on annual assessments. There has been talk of an alternative cap. What are its terms?	Alternative would increase the baseline by \$69 to \$514, with annual increases capped at greater of 5% or ECI. The ECI is more appropriate accelerator, since significant part of RA costs is personnel. ECI does not include Federal government salaries.
	Is the explanation of the alternative index already on the Web?	Should be up now; if not, will be put up ASAP.
Financial Picture	There are new revenues in the draft documents (resale fee, DRB fee, plus savings on the owned building), are there still problems in the future? Were these factored into the new Assessment rate projections? Will you put these numbers on the Web?	These are only proposals, so cannot plan around them.
Transparency	Subtext of previous question: To vote on a no cap or an increased alternative cap, Members need to know the revenue needs of the organization. Must have a complete financial spreadsheet laying out what the actual dollar needs are, why, and how any changes and all changes in the document (comprehensively, not isolated) will address those purported needs.	RA will consider providing such a detailed analysis.

ISSUES BULLETIN 2005-3

TOPIC: RA FINANCE/GOVERNANCE (CONTINUED)		
Impact of \$250 resale fee	Understand a key motivator to doing away with or increasing the cap is the need to address the aging infrastructure. The capital reserve study suggests @ \$375,000 in new annual contributions needed. That amount would be provided by the new resale fee (\$250 fee multiplied by 1,500 home sales per year). Again, what is the need then for changes to the cap, and how/when will a more fulsome analysis of the financial needs be provided?	Cannot plan around the resale fee since not adopted yet; in any event, we are looking long-term here. Not just a fix to address the capital reserve study, but to address the long-term needs of the Association.
Budget Disciplines	Elimination of budget disciplines disturbing. Now, budget must be approved by year end or existing Assessment carries forward.	This is not a major concern since it's never happened. In any case, the old rate would carry forward until a new budget is approved.
Additional Assessments	Follow up to question about budget disciplines: There is a fundamental difference – RA Board under existing documents can not change the carryover Assessment without a Special Assessment, which requires Member approval. Under draft documents RA Board could simply approve an Additional Assessment, without Member approval, any time it believes new revenues are needed. So there is no hard and fast requirement a budget be on time; and no discipline on the Board to comply with the budget it approved.	Not the intent. RA would use same approval process. RA would work on that error, if necessary. Ray Leonard added there was not a provision for the Board to levy annual assessment in arrears if not set by start of fiscal year. The last sentence 4.1(10) clearly allows this as an “Additional Assessment.” He averred this was not intended, and Board will revisit to consider removing this caveat.

ISSUES BULLETIN 2005-3

TOPIC: RA FINANCE/GOVERNANCE (CONTINUED)		
Mortgagee	What is the need for the new mortgagee provisions?	"Mortgagee" means the lender, not the borrower, and these provisions were inserted to make the documents more palatable to lenders. If Reston becomes a town, it wouldn't necessarily terminate RA so the mortgagee wouldn't have to give approval.
	Mortgagees being given right to run for RA Board. Why?	Mistake. This will be removed from the documents.
Multiple Fees/Assessments	One member offered that he prefers a system of one Annual Assessment, building in what you need, rather than adding new fees (\$250 resale fee; DRB fees) which make it less transparent what RA's revenue picture is.	Comment acknowledged.
Timing/Schedule for Documents Referendum	Will the referendum calendar be adjusted to provide time to digest new changes?	Changes to be made not likely to be that significant. By mid-September RA hopes to have the next-to-final draft ready. These changes will be discussed by RA members in late September and October. RA President believes that will give members enough time to digest the documents.
Redline Document Showing new Changes	Will the new draft be redlined to show changes from the July 19 draft?	Yes, that will be provided.

ISSUES BULLETIN 2005-3

TOPIC: CLUSTER GOVERNANCE/SERVICES		
ISSUE	QUESTION/COMMENT	RA RESPONSE
Upkeep	The new term Upkeep moves beyond traditional areas of RA Board jurisdiction to include Cluster "Care and operation." Seems to shift authority toward the RA Board.	Not intended; will clarify. RA only wants ability to intervene if a Cluster is not in compliance; that is the only time RA Board would take action. Existing relationship between Clusters and RA Board is not intended to be changed.
Definition of Common Area	Bit confusing; seems to include <u>Cluster</u> Common Area.	Not the intent; will clarify. Definition intended to be effectively unchanged—this term refers to RA Common Area only.
Definition of Lots	Likewise confusing; does this also add Cluster Common Area?	No. Longer definition needed to address care of RA trails/pathways that cross private property. However, will revisit and make clear Cluster Common Area not part of this definition.
RA Mgmt Services to Clusters	Under 11.7 or elsewhere, can RA take over operations from a Cluster board?	No and no. This is offered as a resource at request of the Cluster; but RA cannot mandate that a Cluster contract for these services. Will add clarifying language.
Rescinding Cluster Status	Do the proposed documents allow RA to rescind cluster status if the cluster is in major violation of RA covenants?	No. If the cluster violates DRB or cluster standards and refuses to change, RA has the right to come in and fix it. RA would have the flexibility and the power to answer requests by the cluster to get these services. RA cannot agree to take over management of a cluster or rescind a Cluster's status.
New Cluster Boards	Suggest RA require Cluster Boards to register each year, as RA records often are years old and it is difficult to determine who is on the various Cluster Boards at any time.	Will consider.

ISSUES BULLETIN 2005-3

TOPIC: DRB/COVENANTS COMMITTEE ISSUES		
ISSUE	QUESTION/COMMENT	RA RESPONSE
Upkeep	Introduction of the term Upkeep seems to expand DRB and CC jurisdiction beyond traditional areas by referencing Cluster "care and operation."	No intent to change these agencies' jurisdiction.
Simplify the Jurisdictional Issue	If it is not your intent to change the jurisdictions of these agencies, would you agree to eliminate the term Upkeep and one time simply define DRB's jurisdiction as oversight of exterior additions, alternations, or modifications on the Property, and CC's as implementing and enforcing Use Standards that apply the Use Covenants set forth in Section 14.2?	That is our intent, and if we can simplify we will. We will look at that.
Affected Party	On DRB process, the documents eliminate neighbor as an affected party. And what about the cluster board?	The present 'signature' requirement is not effective; staff will do notifications. Issue is left to future RA Boards to determine.
	Clusters may have to adopt a requirement for notification before it goes to DRB.	Could be difficult for the DRB to be responsible for ensuring such Cluster requirements are enforced, since it would vary from Cluster to Cluster.
Member Ability to Enforce	There is no mention of Cluster or member right to enforce covenants.	There is no need to mention that. It's the law, because the POAA permits it.
Variances	Wide open authority for DRB to grant exceptions or variances. Could swallow any guidelines whole. Perhaps narrow definitions of these terms should be added.	The terms are standard: variance covers a case otherwise illegal; exception allows for a use otherwise forbidden, e.g., 'fence will not run beyond the front of the house.' Must make allowances for special cases, and must give some discretion to DRB to handle them. [Note: Under new documents, DRB Guidelines must be approved by RA Board.]
DRB application fee	Why was this added? Could be unfair to Members, who will in effect be paying for DRB services twice (the Annual Assessment plus Application Fees).	The intent here was to address complex commercial cases. Will look at limiting this provision to those kinds of cases.

ISSUES BULLETIN 2005-3

TOPIC: DRB/COVENANTS COMMITTEE ISSUES (CONTINUED)		
Trash Storage and Collection	Authority for RA to regulate trash collection has now been added to 14.2. Could RA mandate that Clusters contract with an RA or RA-mandated trash collection service?	No. This will be deleted.
Consistency of DRB Decisions	Shouldn't DRB be bound by precedent?	No. It won't work because the facts in each case are different. And documents require they not be arbitrary or capricious, so there are some built-in protections against wildly inconsistent rulings.
Precedent	While maybe good not to be bound by precedent, why not require DRB to at least address precedent of same or nearly identical facts and either expressly distinguish it or decline to follow, thus improving transparency?	Don't think that is a good idea.