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Court of Appeal Cause No. 51898-8-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THERSA J. LOWE, a single woman; LOREN J. BOSSHARD and
DONNA A. BOSSHARD, husband and wife, Appellants/Petitioners

v.

FOXHALL COMMUNITY ASSOCIATION, a nonprofit corporation, Respondent

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS.

Petitioners Theresa J. Lowe and Loren J. and Donna Bosshard ask this Court to accept review of the Court of Appeals set forth in Section B of this Petition.

B. COURT OF APPEALS DECISION.

Petitioners seek review of the Court of Appeals Unpublished Opinion issued on January 7, 2020 in Case No. 51898-8-II. A copy of the Unpublished Opinion is located in the attached Appendix at pages A-1 through A-7.

C. ISSUES PRESENTED FOR REVIEW.

The Foxhall Bylaw governing regular and special meetings expressly states that “[a] member may exercise his right to vote by proxy.”¹ At the time of the vote in question, the Foxhall Bylaw regarding amendment of Bylaws states that the Bylaws “may be amended at any time by a vote of a majority of the members of the corporation present at any meeting of the membership duly called for such purpose.”² Are proxy votes in support of (or opposing) a Bylaws amendment permitted, or must the member be physically present at the meeting?

¹ CP 400.

² CP 50.

D. STATEMENT OF THE CASE.

1. The Foxhall Community.

The Foxhall Community was platted as a 118-lot community in Thurston County starting in 1981.³ The development was marketed as an equestrian-friendly residential community with several miles of trails owned and maintained by the Foxhall Community Association,⁴ a Washington non-profit corporation and homeowner's association established by the developer of the Foxhall Community in 1981.⁵

The Foxhall Community is subject to the Foxhall Community Protective Covenants ("Covenants") recorded by the developer in 1981.⁶ The Covenants mandate that all of the lots in the Foxhall Community "shall be used for residential purposes only."⁷ The Covenants further declare that the trail system owned by the Association is for the benefit of Foxhall residents:

[The Tracts containing the trail system and park] shall be for the benefit of, and [shall] be used by, the residents in Foxhall. . . and the maintenance thereof shall be the responsibility of the Foxhall Community Association and all repairs and maintenance thereof shall be provided for at the expense of the Foxhall Community Association

³ CP 360, 362-63, 365-67.

⁴ CP 353.

⁵ CP 30-33.

⁶ CP 35-41.

⁷ CP 36.

and funded by assessments against all owners of lots in Foxhall . . .”⁸

2. A dispute arises regarding non-resident and commercial use of the bridle trails.

The use of the Foxhall trails by nonresidents has been a longstanding concern in Foxhall Community. On November 15, 1997, for example, Association President Dennis Longnecker wrote a letter to a neighboring (non-member) property owner who was using the trails unaccompanied:

The “Bridle Trails” in Foxhall (Tracts , H, I, J, and K) are for the benefit of, and to be used by Members of the Foxhall Community Association and their **accompanied** guests. . . . While this may seem the unneighborly thing to do, but due to the current (and future) developments around Foxhall, homeowner security, and insurance/liability concerns, we feel this is a essential step in protecting the investment of Foxhall Community Association members. **Please do not utilize these trails unless a bona fide member of the Foxhall Community Association accompanies you.** Simply having permission by a member – or on your way to visit them – is not considered a bona fide use.⁹

Four years later, the Foxhall Newsletter, *Foxhallian*, documented a survey Foxhall members that found 85% of members objected to non-resident use of the trails.¹⁰ In confirmation of this opposition, signs posted at the direction of the Association’s Boards of Directors over

⁸ Cp 35.

⁹ CP 415 (emphasis in original).

¹⁰ CP 372-378.

the years state that the trails are to be used by the residents only or accompanied guests.¹¹

In 2003 Foxhall community members Gary and Judy Johnston started operating the Johnston Farm Arabians, Inc., a boarding/riding facility with approximately 18 horses.¹² In response to ongoing complaints, the Association's Board of Directors repeatedly advised the Johnstons that their non-resident boarders could not use Foxhall trails.¹³ Nevertheless, the Johnstons continued to allow their unaccompanied non-resident boarders use the community trails.

3. The Foxhall Members vote to ban commercial use of the bridle trails.

The issue of nonresidents using the trails unaccompanied and for commercial purposes came to a head in 2015. On August 24, 2015, the Board learned that the Association's insurance company was not willing to continue to insure if non-resident boarders used the trails for commercial purposes.¹⁴ Nevertheless, a majority of the Board of Directors adopted a resolution that allowed commercial boarders to use the trails when accompanied by a Foxhall resident.¹⁵

¹¹ CP 354, 382, 413.

¹² CP 115, 407. The prior owner of the property, Les Whisler, had also boarded horses for both Foxhall residents and non-residents. CP 59.

¹³ CP 115, CP 384.

¹⁴ CP 111-12.

¹⁵ CP 117.

Concerned about the ramifications of the Board's resolution on members' liability exposure and its inconsistency with the Covenants and Foxhall Residents' wishes, a group of residents spearheaded the scheduling of a Special Meeting of Association members on November 19, 2015, to address the commercial use of the trails.¹⁶ The Notice for the Special Meeting stated that the Objective was to "Amend the Bylaws to adopt a clarifying rule for current and future Boards of Directors" and that the proposed bylaw amendment

clarifies the governing documents that Foxhall Parks and Trails are for the exclusive use of residents, families and friends. Foxhall Association members' businesses may not extend their business activities onto Foxhall Parks and Trails.¹⁷

At the time of the November 19, 2015 meeting, the Foxhall Community Association had 127 members.¹⁸ The Board circulated proxy for the meeting, and Seventy-three members submitted proxy votes before the meeting, all of which were in favor of the amendment.¹⁹ Forty-two members were physically present at the meeting, 18 of whom voted against the amendment. Of the remaining

¹⁶ CP 52. The meeting was originally scheduled for October 27, 2015, but was continued to November 19, 2015, due to a question regarding the timing of the notice. CP 52.

¹⁷ CP 52.

¹⁸ CP 390-94.

¹⁹ CP 396.

24 members, only five voted in person, as the remainder had already voted by proxy and were explicitly told that the proxy votes would be counted; accordingly, there was no reason for members who had voted in favor by proxy to void their proxy votes and vote again.²⁰

The official vote tally of the November 19, 2015 meeting shows that the bylaw amendment passed by a vote of 78-18.²¹ Accordingly, 63.9% of Association members voted for the Bylaws amendment, 14.8% voted against the amendment, and 21.3% did not vote.²² Notably, had all 42 members in attendance voted in person, as opposed to with the use of proxies, the bylaw amendment would have still passed by a vote of 24-18.

The minutes of the November 19, 2016 Special Membership meeting were read to and adopted by the membership at the April 25, 2016 annual membership meeting.²³ No motions were made to modify the minutes as written, and no objections were made by any members.²⁴

²⁰ CP 355. Comparing the meeting sign-in sheet with the official vote tally further reflects that 19 members who were physically present at the meeting chose to let their proxy votes stand as opposed to voting a second time in person at the meeting. CP 390-94.

²¹ CP 388, 396.

²² CP 355.

²³ CP 99, 103.

²⁴ CP 99, 103

4. The Board of Directors invalidates the Members' vote.

Despite the overwhelming vote for the November 19, 2015 Bylaws Amendment, shortly after the April 25, 2016 membership meeting a majority of the Board of Directors decided that the proxy votes in support of the November 19, 2015 Bylaws Amendment should not have been allowed (even though it was the Board itself that circulated the proxy forms to members) and, therefore, the Amendment was void.²⁵ The Board based this reasoning on the language of the amendment provision of the Bylaws:

The Bylaws may be amended at any time by a vote of a majority of the members of the corporation present at any meeting of the membership duly called for such purpose.²⁶

Although the amendment provision makes no mention of an “in person” voting requirement, the Board nonetheless decided that “present” meant “present in person” and could not mean “present by proxy,” even though Article V of the Bylaws, which governs membership meetings, expressly stated that “A member may exercise his right to

²⁵ CP 355 ¶ 17.

²⁶²⁶ CP 50. Oddly, none of the parties below ever submitted to the trial court a copy of the Bylaws as they existed on November 19, 2015. Rather, the only full set of the Bylaws is the version amended as of March 7, 2017. CP 43-50. But documentation regarding the March 7, 2017 meeting that details the proposed amendments shows that the provision regarding Bylaws amendments was not changed. CP 398-401.

vote by proxy.”²⁷ Other provisions of the Bylaws as they existed at the time of the meeting also state that members can vote by proxy.²⁸

E. PROCEDURAL HISTORY.

Appellants Theresa J. Lowe and Loren J. and Donna A. Bosshard, along with fellow Foxhall community members Burleigh M. and Carolyn R. Cubert (collectively, “Lowe”), filed a Complaint for Declaratory and Injunctive Relief on February 22, 2017.²⁹ The Complaint sought a court determination that the November 19, 2015 Bylaw Amendment was valid and enforceable³⁰ and an injunction requiring the Board to enforce the November 19, 2015 Bylaw Amendment.³¹

On June 15, 2017, the Association filed a Motion for Summary Judgment seeking dismissal of Lowe’s claims on the grounds that (1) the November 19, 2015 Bylaw conflicted with the Covenants’ provision that the trails “shall be for the benefit of, and be used by, resident in Foxhall,” (2) the Bylaws required that members be physically present in order to vote on a Bylaws amendment, (3) the meeting notice for the November 19, 2015 meeting was defective, and (4) there were

²⁷ CP 400. Notably, the Board itself was the one who circulated the proxy forms for the November 19, 2015 meeting. At the March 7, 2017 meeting, the Association added multiple questionable limitations on this right. CP 400, 46, which led to the March 7, 2017 version found at CP 43-50.

²⁸ CP 399.

²⁹ These parties will be collectively referred to as “Lowe” for ease of reference.

³⁰ CP 3.

³¹ CP 4.

procedural irregularities during the course of the November 19, 2015 meeting.³² After Lowe responded and the Association replied, the judge recused herself due to a perceived conflict-of-interest. After a series of other delays, Defendants refiled their Motion for Summary Judgment on March 19, 2018.³³ On March 22, 2018, Lowe also filed a Motion for Summary Judgment of her claims.³⁴

On April 20, 2018, the Honorable John C. Skinder granted the Association's summary-judgment motion and denied Lowe's summary-judgment motion, finding that there were no material questions of fact that:

1. The November 19, 2015 Bylaws Amendment failed as a matter of law because the restrictions the Amendment sought to impose on the commercial use of bridle trails conflicted with the Covenants provision that the trails "shall be for the benefit of, and used by, the residents in Foxhall."³⁵
2. The process used to adopt the November 19, 2015 Bylaws Amendment violated the Bylaws because
 - a) The Bylaws amendment provision that states Bylaws can be amended "by a vote of the majority of the members of the corporation present at any meeting" meant that the members had to be physically present, not present by proxy;

³² CP 9-25.

³³ CP 144.

³⁴ CP 163-182.

³⁵ The trial court accepted the Association's argument that since the Johnsons benefitted monetarily by having their commercial non-resident boarders use the trail system, such use could not be prohibited.

b) The meeting notice for the November 19, 2015 Bylaws Amendment was misleading and incorrect; and

c) The “parliamentarian” at the November 19, 2015 meeting refused to allow consideration of one or more motions at the meeting.³⁶

Petitioners appealed the trial court’s ruling to the Court of Appeals. In an Unpublished Opinion issued on January 7, 2020, the Court of Appeals reached only the proxy issue and held that, despite the Bylaws express provision that voting could be done in person or by proxy, for meetings called for the purpose of Bylaws amendments “present” meant only “present in person” and not “present by proxy”.

F. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

The Court of Appeals decision is completely contrary to Washington law and the actual language of the Foxhall Bylaws. It also effectively disenfranchises Foxhall residents who are unable to attend an association meeting due to work, illness, physical limitations, lack of access to childcare, or other family commitments.

1. The Bylaws and Washington law provide a right to vote by proxy.

Fifty-four of the Foxhall Community Association members who voted in favor of the November 19, 2015 Bylaw Amendment voted by proxy and did not physically attend the special meeting.³⁷ Additionally, 19

³⁶ CP 429-30.

³⁷ CP 355

members who physically attended the meeting did not vote at the meeting after they were told by the Board-appointed parliamentarian to rely on the proxies that they had previously submitted.³⁸ Nevertheless, the trial court and Court of Appeals held that all of these proxies were void because the proxy-holders were not “present” at the meeting. But this position makes no sense given that Washington’s homeowners association statute *and* the Association’s governing documents use the term “present” to include proxies. Moreover, accepting the Court of Appeals holding leads to absurd results.

a. The Bylaws expressly allow for voting by proxy.

At the time of the November 19, 2015 special meeting, the Foxhall Bylaws contained a clear and unambiguous grant of the right to use proxy votes. Specifically, Section 5 of Article V – which is the Article that governs *all* regular *and* special membership meetings – stated that “**A member may exercise his right to vote by proxy.**”³⁹

Nevertheless, the Court of Appeals accepted the Association’s argument that, because the amendment provision of the Bylaws does not mention proxies, members must be physically present in order to vote. But the Bylaws amendment provision doesn’t mention “in person” either – rather, it merely states that the member must be “present”:

³⁸ CP 355.

³⁹ CP 400 (emphasis added).

The Bylaws may be amended at any time by a vote of a majority of the members of the corporation **present** at any meeting of the membership duly called for such purpose.⁴⁰

Similarly, the Bylaws' do not require physical, "in person" presence for the purpose of establishing a quorum:

At all annual and special meetings of the members, ten percent of all of the members of the corporation shall constitute a quorum for the transaction of business. Each single membership shall be entitled to one vote and multiple memberships shall be entitled to one vote per lot owned and they shall be similarly counted to determine the **presence of a quorum**.⁴¹

Hence, the Association Bylaws don't require a member to be "present in person" any more than they require a member to be "present by proxy."

Moreover, contracts (and statutes) must be interpreted to give effect to all their provisions rather than adopting an interpretation that renders some of the language meaningless or ineffective.⁴² Here, the Foxhall Bylaws provision regarding membership meetings explicitly allow "a member [to] exercise his right to **vote by proxy**."⁴³ Rather than using this directive, the Court of Appeals effectively severs this directive and looks solely at the language of the amendment provision. This is contrary to Washington law.

⁴⁰ CP 50 (emphasis added).

⁴¹ CP 46.

⁴² *Hearst Commc'ns Inc. v. Seattle Times Co.*, 154 Wn.2d 493, at 503-04, 115 P.3d 262 (2005); see also *Newsom v. Miller*, 42 Wn.2d 727, 731, 258 P.2d 812 (1953).

⁴³ CP 400 (emphasis added).

Finally, the Court of Appeals reliance on the “plain meaning” of “present” is mistaken even if the allowance of proxy voting wasn’t firmly addressed by the Bylaws. When an otherwise common word is given a distinct meaning in a legal or technical context, courts do not rely on the “ordinary meaning.”⁴⁴ As set forth in RCW 64.28.040 (discussed further below) and multiple other authority, when the interpretation involves corporate and governance documents, the “plain and ordinary meaning” of “present” means “present in person or by proxy.”

Overall, the Court of Appeals decision that proxies could not be used as part of the vote on the November 19, 2015 Bylaws Amendment is wholly contrary to the Bylaws.

⁴⁴ *Citizens All. for Prop. Rights Legal Fund v. San Juan Cty.*, 184 Wn. 2d 428, 443-44, 359 P.3d 753 (2015) (“While we typically ascertain plain meaning from standard English dictionaries, it is helpful to examine legal dictionaries when words are used in a legal context.”); *City of Spokane ex rel. Wastewater Mgmt. Dep’t v. Washington State Dep’t of Revenue*, 145 Wn. 2d 445, 454, 38 P.3d 1010 (2002) (“...where an otherwise common word is given a distinct meaning in a technical dictionary or other technical reference and has a well-accepted meaning within the industry, and when the word is used in a rule promulgated by an expert agency familiar with the technical meaning, courts should turn to a technical rather than a general purpose dictionary to resolve ambiguities in its definition....”); *Polygon Northwest Co. v. American Nat. Fire Ins. Co.*, 143 Wn. App. 753, 189 P.3d 777 (2008) (trial court properly applied commonly understood legal meaning of “costs taxed against the insured” to mean “taxable costs,” excluding attorney’s fees); *Whidbey Gen. Hosp. v. State*, 143 Wn. App. 620, 180 P.3d 796 (2008) (When an otherwise common word is given a distinct meaning in a technical dictionary or other technical reference and has a well-accepted meaning within the industry, courts construing that word in a statute turn to the technical, rather than general purpose, dictionary to resolve the word’s definition); *Bernhard v. Reischman*, 33 Wn. App. 569, 577, 658 P.2d 2 (1983) (“If parties to an insurance contract use words having a specific legal meaning, they will be presumed to have intended that those words be construed in accordance with established rules of law.”)

b. Washington’s homeowners’ association statute expressly allows for voting by proxy.

Washington’s homeowners’ association statute⁴⁵ mandates that proxies are counted as “present” for the purpose of a quorum:

Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.⁴⁶

While it is uncontroverted that the homeowners’ association statute allows homeowners associations to determine what *percentage* of members “present” will constitute a quorum if the association chooses not to use the statutory default, nothing in the statute gives authority to an association to decide whether members are considered present only if they are physically present. Instead, the statute states that whatever the percentage of owners specified, they are to be counted if they “...are present in person or by proxy at the beginning of the meeting.”⁴⁷ Thus, while the actual percentage is determined by the association, an association has no authority to change the counting method for finding a quorum.

It is black letter law that when interpreting a statute, a court must avoid “unlikely, absurd, or strained” results that would follow their

⁴⁵ RCW ch. 64.38.

⁴⁶ RCW 64.38.040.

⁴⁷ *Id.*

interpretation.⁴⁸ Here, following the Court of Appeals' decision to its logical conclusion would create a situation where proxies would be used to establish a quorum present at a meeting where the bylaws were to be amended but would then be disregarded when it came time to vote. For example, under the Court of Appeals interpretation, it would be possible that 90% of members voted by proxy for a given outcome while ten percent opposed voted in person. The members present by proxy would be counted towards establishing the quorum, but their actual proxy could not be counted for the substantive vote. Rather, the 10% minority who showed up "in person" would nullify the will of the 90% majority, thereby allowing the clear minority to dictate the outcome.

This outcome is made more absurd by the facts here. Nineteen members who had previously submitted proxies also attended the membership meeting but did not vote "in person" to ensure there was no double voting and because they had been assured by the Board's representative that their proxy would count as it always had previously.⁴⁹ Had they voted in person the way they voted by proxy, the amendment would have passed, because a majority of those attending in person supported it.⁵⁰

⁴⁸ *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002).

⁴⁹ CP 355.

⁵⁰ *Id.*

At the very least this Court should recognize that the members who were physically at the meeting and supported the amendment should not be punished for following the Association's direction and trying to ensure a smooth counting process by allowing their proxies to stand.

Finally, while RCW 64.38.040 is the governing statute here, it is not the only example in which "present" is described as in person or by proxy. For example, Washington's law governing condominium associations also defines being "present" to include presence both in person and by proxy:

Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.⁵¹

Likewise, the American Jurisprudence Legal Forms for § 64.38 on bylaws for Association of Owners repeatedly use the phrase "presence in person or by proxy" or similar language. Finally, this Court has recognized that "present" did not equate to physical presence in a for-profit corporation context in *Wool Growers Service Corp. v. Ragan*:

Galanena, apparently, did not attend this meeting. The minutes of the stockholders' meeting, reducing the number of trustees from four to three, which was held on the same day, recite that Galanena was *present by his power of attorney and proxy* to Ellis Ragan.⁵²

In sum, the Court of Appeals' decision is contrary to law.

⁵¹ RCW 64.34.336.

⁵² 18 Wn.2d 655, 677, 140 P.2d 512 (1943) (emphasis added).

2. Barring proxy voting violates public policy.

Contrary to the Court of Appeals' reasoning, barring the use of proxies upends public policy. Foxhall, like other neighborhoods, includes disabled people, people with work commitments, people who take vacations, people to take their children to sports/music/dance practice, people in the military, and people who would simply rather sign a proxy form versus attending a long association meeting.⁵³ Even assuming that a court could reasonably find that the word "present" in this context is ambiguous, such ambiguities are supposed to be decided in favor of the most "reasonable and just" interpretation.⁵⁴ It is hard to imagine that the more "reasonable and just" interpretation is the one that disregards the overwhelming majority of votes in order to affirm a Board of Directors that waited months to dispute the vote and which did so on transparently pre-textual grounds. Without requiring a more definite statement of intent to restrict bylaw amendments to those who can physically attend the meeting, the Court of Appeals' ruling nullifying the use of proxies disenfranchises a large majority of voters from voting on matters that often directly impact their property

⁵³ CP 355. Indeed, 53 of the members voted in favor the November 19, 2015 Bylaw Amendment could not or did not physically attend the special meeting.

⁵⁴ See *Berg v. Hudesman*, 115 Wn.2d 657, 672, 801 P.2d 222 (1990) (quoting *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d 826, 837, 726 P.2d 8 (1986)).

values and quality of life and allows room for further egregious behavior in the future. What is to stop Board from scheduling meetings for bylaws amendments for times when they knew most members cannot attend and be heard? If the Bylaws amendments are so important, why should they be made only by those able to be physically present at the meeting rather than as many members as possible through use of a detailed proxy process? *Not* allowing proxy voting (or call-in attendance and voting, which would also be prohibited) puts a tremendous amount of power into the hands of a few.

Finally, while the proxy issue in this matter arose in the context of Bylaws amendments, the Court of Appeals decision is very troubling precedent for any corporate association, nonprofit or otherwise. The result of the decision is that “present” will always require physical presence at meetings regardless of what applicable statutes and the corporate bylaws say regarding voting and quorum procedures. As noted above, this could allow the disenfranchisement of any members or shareholders who work, have physical limitations preventing “in person” attendance, or are too ill to attend “in person.”

G. CONCLUSION.

The Court of Appeals decision conflicts with both the actual language of the Bylaws and Washington law. Accordingly, the Court

should reverse the Court of Appeals ruling and affirm the legality of the
November 19, 2015 Bylaws amendment.

Dated this 6th day of February 2020.

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CERTIFICATE OF SERVICE

I, Christine L. Scheall, declare under the penalty of perjury of the laws of the State of Washington that on February 6, 2020, I caused a copy of the foregoing Petition for Review to be served, as follows:

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APPENDIX

A-1 through A-7

Unpublished Opinion

January 7, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

THERESA J. LOWE, a single woman; LOREN
J. BOSSHARD and DONNA A. BOSSHARD,
husband and wife,

Appellants,

BURLEIGH M. CUBERT and CAROLYN
CUBERT, husband and wife,

Plaintiffs,

v.

FOXHALL COMMUNITY ASSOCIATION,
a nonprofit corporation,

Respondent.

No. 51898-8-II

UNPUBLISHED OPINION

WORSWICK, J. — Foxhall Community Association is a homeowners association for an equestrian friendly development in Thurston County. In 2015, at a special meeting, members of the community passed a bylaw amendment prohibiting the use of the communal equestrian trails by members' business invitees. The Foxhall Community Association Board of Directors later invalidated the amendment, and Theresa Lowe filed a lawsuit seeking declaratory and injunctive relief to enforce the amendment.

Lowe appeals the trial court's order granting Foxhall Community Association's motion for summary judgment dismissing Lowe's claims. Lowe argues that the trial court erred by concluding that the Foxhall bylaws require in-person presence to vote on bylaw amendments.¹

We hold that the trial court did not err by granting the Association's motion for summary judgment because the Foxhall bylaws require in-person presence to vote on bylaw amendments. Thus, we affirm the trial court's summary judgment order.

FACTS

Foxhall is an equestrian friendly development in Thurston County with several miles of equestrian trails, which the Foxhall Community Association maintains. In 1982, the community's developer, Virgil Adams, recorded protective covenants against the community, setting aside tracts of land for equestrian trails "for the benefit of, and [to] be used by, the residents in Foxhall." Clerk's Papers (CP) at 35.

Foxhall Community Association's bylaws discuss the methods by which owners may vote. Article IV of the Bylaws of the Foxhall Community Association provide: "The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of

¹ Lowe also argues that the trial court erred by concluding that bylaw amendment constituted a new restriction on members' benefit of the trails subject to unanimity requirements, the special meeting notice was insufficient, and the special meeting was improperly conducted. Because we hold that the Foxhall bylaws require in-person presence to vote on bylaw amendments, we do not consider these arguments.

the board of directors with or without cause.” CP at 46. Former Article V, section 5² stated, “A member may exercise his right to vote by proxy.” CP at 400. Article X of the bylaws pertaining to amendments states, “The Bylaws may be amended at any time by a vote of a majority of the members of the corporation present at any meeting of the membership duly called for such purpose.” CP at 50.

One of the early residents of Foxhall, Les Whisler, purchased two five-acre lots and built a house, stables, and riding arena. Adams and his son, Dennis, approached Whisler to consider boarding horses on his property to make the development more desirable for other equestrian families. Whisler began to board horses from Foxhall residents and nonresidents that lived in the area. Whisler’s boarders routinely used the Foxhall equestrian trails. In 2001, Whisler sold his property to the Johnstons. The Johnstons continued to operate a horse boarding business from the property. Over the years, Foxhall residents have disagreed as to whether nonresident boarders should be permitted to use the equestrian trails.

In 2015, one of Foxhall’s members, Denise Solveson, called a special meeting. At the special meeting, members of the association voted by paper ballot and passed a bylaw amendment that stated:

Article VI; POWERS AND DUTIES OF THE DIRECTORS Sec 9. Foxhall Parks and Trails are for the exclusive use of residents, families and friends. Nonresident visitors must be accompanied by a resident when using Foxhall Parks and Trails. Foxhall Association members’ businesses may not extend their business activities onto Foxhall Parks and Trails. Members’ business invitees, customers, or patrons,

² The bylaws were updated in March 2017, primarily to bring the bylaws into conformity with changes to the RCWs. Article V, section 5 was amended to narrow the right to vote by proxy in order to “improve governance in Foxhall.” CP at 400. The language of former article V, section 5 is most relevant to this case.

whether in trade or in barter, are prohibited from using Foxhall Parks and Trails, even when accompanied by a Foxhall member.

CP at 54-55. Including proxy votes, the amendment passed by a vote of 78-18. A majority of the in-person voters voted “no,” at 18-5. CP at 57. Some members who attended the special meeting in person chose to rely on their proxy vote in lieu of casting a paper ballot. In April 2016, the Foxhall board of directors rejected the bylaw amendment.

Lowe filed a lawsuit for declaratory and injunctive relief against the Association on February 22, 2017. The parties filed cross motions for summary judgment. The Association argued that the November bylaw amendment was invalid because (1) it imposed a new restriction on the use of property in conflict with the restrictive covenants governing the trails and (2) the process used to adopt the amendment was flawed in three respects: (a) the use of proxy votes conflicted with the bylaws, (b) the notice was defective, and (c) the procedure during the special meeting was improper. Lowe argued that the restrictive covenants prohibit the public use of Foxhall’s trails and the bylaw amendment was properly passed

The trial court entered an order granting the Association’s motion for summary judgment, denying Lowe’s motion for summary judgment, and dismissing Lowe’s claims. Lowe appeals.

ANALYSIS

I. STANDARD OF REVIEW

We review an order on cross motions for summary judgment de novo. *Wilkinson v. Chiwawa Communities Ass’n*, 180 Wn.2d 241, 249, 327 P.3d 614 (2014). In reviewing summary judgment orders, we consider the facts and all reasonable inferences from them “in the light most favorable to the nonmoving party.” *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400

(1999). Summary judgment is appropriate where “the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002); CR 56(c).

II. VOTING BY PROXY

Lowe argues that the trial court erred by concluding that members could not vote on the bylaw amendment by proxy. Article X of the Foxhall bylaws provides, “The Bylaws may be amended at any time by a vote of a majority of the members of the corporation *present* at any meeting of the membership duly called for such purpose.” CP at 50 (emphasis added). At summary judgment, the Association argued, and the trial court agreed, that “present” meant physically present in person. CP at 153. Lowe argues that given the provision expressly permitting voting by proxy, “present” meant present in person or present by proxy. We disagree with Lowe.

We interpret the governing documents of a corporation according to the accepted rules of contract interpretation. *Roats v. Blakely Island Maint. Comm’n, Inc.*, 169 Wn. App. 263, 273-74, 279 P.3d 943 (2012). Contract interpretation is a question of law that we review de novo. *Dave Johnson Ins. v. Wright*, 167 Wn. App. 758, 769, 275 P.3d 339 (2012).

The purpose of contract interpretation is to determine the parties’ intent. *Roats*, 169 Wn. App. at 274. Contractual language generally must be given its ordinary, usual, and popular meaning. *Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 105, 267 P.3d 435 (2011). We view the contract as a whole, interpreting particular language in the context of other contract

provisions. See *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 669, 15 P.3d 115 (2000).

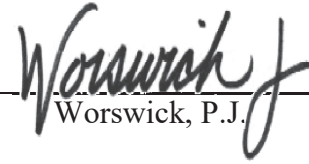
Lowé relies on Article V, section 5 which states that “[a] member may exercise his right to vote by proxy.” Br. of Appellant at 23. But, Article X specifically provides that only members *present* at a meeting may vote to amend a bylaw. And when interpreting contracts, the specific prevails over the general. *T-Mobile USA, Inc. v. Selective Ins. Co. of Am.*, ___ Wn.2d ___, 450 P.3d 150, 155 (2019). Lowé contends that “present,” as used in Article X, means present in person or by proxy. But we give language its usual meaning, and “present” is defined as “being in one place and not elsewhere: being in view or at hand: being before, beside, with, or in the same place as someone or something.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1793 (2002). It follows that article X’s “present” means present in person. This interpretation is further supported by the bylaws’ express use of “proxy” elsewhere. If the drafters had intended to include proxy votes in votes to amend the bylaws, they could have said so, as they did in, Article IV, section 8—“The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting . . . may remove any member of the board of directors.” CP at 46.

Lowé also argues that interpreting “present” to mean “present in person” would lead to absurd results because proxies can establish a quorum. Br of Appellant at 26. Washington’s homeowners association statute requires that proxies are considered present for the purpose of establishing a quorum. RCW 64.38.040. But the means of establishing a quorum does not

prohibit an association from imposing additional procedural safeguards onto particular types of votes, especially votes as significant as bylaw amendments.

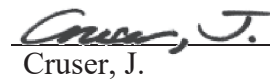
Accordingly we hold that the superior court did not err by granting summary judgment to the Association based on the use of proxy votes to pass the bylaw amendment. We affirm the trial court's summary judgment order.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:


Glasgow, J.


Cruser, J.

GORDON THOMAS HONEYWELL LLP

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