

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Board Member Attendees: Peter Lincowski, Tom Botchie, Bob Linsell, Francis Morgan, Margaret Weinberg, Chris Pappas, Mike Carsten, Karen Egbert

Visitor: Gary Jamnicki, Andy Gaudet 228, Don and Linsey Abbott 241,
Jerome Glass 239, Tamera Seagle 16, Mr. Rendone 128, Felicia Alicia 236,
Gary Watts, Shelly Ford 238

Upcoming Dates:

June 2019 renegotiate trash service
Security dates to be submitted by Mike Carsten
Domain renewal May 2018
Sept: Send nomination letter in Sept.
November review the security service

President –

The meeting was called to order by Larry Lewis at 6:05 p.m.

Homeowner Business Before the Board

Concerned homeowners came to discuss short term rentals in Cimarron Foothills Estates

Board's understanding is that you can lease your home, but can't run a business. Our position is that our CR and Rs precluded short term rentals: Here is a summary from a law firm specializing in HOA law here is AZ:

V. SHORT TERM RENTALS – SB 1350 – REVISED A.R.S. § 9-500.38 AND REVISED A.R.S. § 11-269.15 SB 1350, the "Airbnb bill," prevents cities, towns and counties from prohibiting vacation rentals or short-term rentals, such as those facilitated by Airbnb, based only on their classification, use or occupancy. This affects Associations by reinforcing the provisions of A.R.S. § 33-1260.01 and A.R.S. § 33-1806.01, which state that **restrictions regarding rental or leasing activity and the term of the lease (how long the property may be rented) must be expressly contained within the CC&Rs of the Association.** Rental or leasing terms may not be created through Association Rules and Regulations unless the Association's CC&Rs allow the Association to create Rules and Regulations regarding rental and leasing terms. **SB 1350 does not prohibit Associations who have valid rental and/or leasing CC&R provisions from restricting short term rentals or leases.**

Rental in question lot 238 Placita Ligera owned by Mr. Watts and Ms. Ford. The board sent an email and letter to both owners. 5505 E. Paseo Cimarron Lot 35, Simlka Melgoza, owner, lives in Florida.

**February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates**

Letter sent from Larry Lewis to Gary Watts:

Dear Gary Watts,

Welcome to Cimarron Foothills Estates. My records show you closed on your house in April 2017. One of the many papers you signed off on when you closed on your home were the CR&R's (Conditions Reservations and Restrictions) that govern our community.

Our Cimarron Foothills HOA Board has received several complaints from your new neighbors that you have been advertising and renting out your home located at [5978 N Placita Ligera \(lot 238\)](#) on a short term basis. Please be advised that this is in direct violation of our community CR&R's (Conditions Reservations and Restrictions). You can access your phase 3 CR&R's on our website under "Documents". www.cimarronfoothillshoa.org Para 1 makes it clear that no business can be run at your property and that the only use allowed is single-family residential use. Long term rental or leasing is permitted.

1. Said lots, and each and every one thereof are for **single- family residential purposes only**; no building or structure intended for or adapted to any multiple dwelling, **rental, business,** professional, or so-called home occupation purposes shall be erected, placed, permitted or maintained on said property or any part thereof, and **no such activities shall be permitted or conducted on said property** or any part thereof; provided, however, that this paragraph shall not be construed as preventing the leasing or renting of an entire lot, together with the improvements thereon, for **single- family residential purposes**.

This link is proof that you are promoting your home for rent on airbnb.

https://www.airbnb.com/rooms/20816185?location=Cimarron%20Foothills%20Estates%2C%20Catalina%20Foothills%2C%20AZ%2C%20United%20States&s=5_jxiPxc

You must cease this practice immediately. You have 30 days from receipt of this email / letter to comply and avoid further corrective action including HOA fines and notification to the Pima County Tax Assessor that you are in violation of state statues regarding the definition of transient lodging rentals and the collection of Transaction Privilege Tax and relevant bed tax. (see link below to the state tax link)

[https://www.azdor.gov/TransactionPrivilegeTax\(TPT\)/ResidentialRental.aspx](https://www.azdor.gov/TransactionPrivilegeTax(TPT)/ResidentialRental.aspx)

If you are in disagreement with our decision, you may ask for a hearing before our HOA Board of Directors.

Our mid-year newsletter (attached) was sent out in August 2017 included guidelines to all residents regarding rental and / leasing of their home.

Respectfully,



February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Mr Watts responded back that he did his homework and determined that they were in their rights to rent on Air BnB. Change of law Jan. 2017 bill 1350. Short term rentals: SB1350 Air BnB bill prohibits neighborhoods from prohibiting short term rental.

Mr. Watts response to Larry Lewis via email:

Hello Larry,

Thank you for the welcome to Cimarron Foothills Estates. We love our home and the Cimarron Foothills neighborhood. The house was purchased as a second home, and our only complaint is that we can't spend more time there right now due to business interests near our other home near Seattle. However, we expect that this will change within several years' time.

When we were in the process of buying a home in Tucson, the review of HOA covenants was a very important part of our due diligence. We wanted the option of renting our home on a short term basis so it would not sit empty for extended periods of time until the time came when we would be living there at least as snowbirds for a good part of the year. It was never our intent to violate the CC & R's and we are committed to be good neighbors and homeowners in the community. In our opinion, we have been acting in accordance with state law and the provisions within the CC & R's.

As you are well aware, a new state law (SB 1350) was passed in 2016 and became effective on January 1, 2017. The bill prohibits municipalities from restricting or regulating the ability of homeowners to use their property as vacation rentals and short-term rentals, with certain specified exceptions. In regards to HOA's, ARS Section 33-1806.01 expressly states that "[a] member may use the member's property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions."

Paragraph 1. of the Cimarron CC & R's specifically states that "...provided, however, that this paragraph shall not be construed as preventing the leasing or renting of an entire lot, together with the improvements thereon, for single-family residential purposes." The short term rental of our home **is** for a single-family residential purpose and **not** any of the other uses listed in the preceding sentences of this section. The CC & R's, however, do not specify "rental time period restrictions" as provided for in ARS Section 33-1806.01 (a).

It is our understanding and interpretation of the state law, and in regards to HOA covenants, that unless the CC&Rs expressly restrict "vacation rentals," "transient lodging" or "short-term rentals," the short term rental of properties within homeowner association communities is lawful. Because there is no time period restrictions established for rentals within the Cimarron CC & R's, we are in conformance with the covenants.

It was never our intent to conduct a prohibited activity at our home. We have established an account with the Pima County Tax Assessor and are paying all applicable taxes as it relates to

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

short term rentals. We would appreciate it if you could provide more information about the neighbor complaints you have received. Our rental policies include restrictions against large parties/events and the number of guests, and we certainly want to know about any problems experienced by our neighbors if they occur. You have my permission to provide my phone number and email address to any neighbor.

Unless you can provide further legal support that we are not in conformance with state law and our CC & R's, we will assume that we are in compliance with the covenants of the Cimarron CC & R's.

Sincerely yours,

Gary Watts

[425-226-5825](tel:425-226-5825) office

[425-442-7615](tel:425-442-7615) mobile

[425-226-8008](tel:425-226-8008) fax

Mr. Watts stated: State law permits short term rentals. Board argues it's a business, and therefore our CR and Rs negates the new state law. Gary Watts sent additional info, including his research that short term rentals benefit a neighborhood.

Does it specifically address homeowners associations? Francis says no.

Clarification: Short term rental definition: Guidelines is less than 30 days. More than 30 days is allowed according to our CR and Rs. According to a realtor in attendance, anything less than 12 months is considered short term.

Change in the law has caused confusion.

Attorney in attendance question: Why do we not have a lawyer keeping on top of the issue? Board doesn't have a lawyer on retainer. The board will explore finding one that specializes in HOA Law.

Mr. Watts stated he moved here recently and looked for a community that didn't have restrictions for short term rentals. He researched the CR&Rs and state law SB1350 vacation rental of any single family home or home unit. Argues that it isn't a business. Neighbor Jerome Glass argues that if you don't live here, and have not established yourself as a resident, then it would be a business. Mr. Watts and Ms. Ford have not lived at the property.

If the board/neighborhood wanted to change the CR&Rs, we'd need 75% approval from each separate phase of the neighborhood.

The disagreement boils down to a legal argument that we can't make without a lawyer or judge.

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Mr. Watts had good intentions. He made good faith effort to follow the rules. Mr. Watts worked with Long realty to make sure that there were no problems. The realtor should have been more specific and directed them to the board.

Francis Morgan confirms that rentals are allowed, but doesn't specifically address very short rentals. Neighbor in attendance states that precedence prohibits short term rentals.

Larry Lewis believes the new law may apply, allowing the rentals. Francis Morgan believes it does not. Bob Linsell's concern is that the laws are dated, and in the interest of time, we need to get an attorney.

Karen Egbert asked are they paying taxes on their income? The response is yes. Chris Pappas asked are they registered as a sole proprietor in their tax forms? The response is yes.

Andy Gaudet, neighbor in attendance, believes that if you rent a property you have a rental business.

Felicia Alicia, neighbor in attendance, believes that she was misled after meeting the Watts/Ford. She was disturbed by the state of the house. She is concerned that it is a blight on the neighborhood and a party house. She has noticed an increase in service people and trash cans left out for a week at a time.

Gary Jamnicki, neighbor in attendance, is concerned about problems at the house. Heard people screaming and went to investigate. Lots of noise and traffic problems. Owner response is that she has cameras on her property to keep track and prevent problems. Also there are limits on the number of people allowed to stay at the property. He believes that the perception of the neighborhood is skewed. Causing more traffic, more need of the security detail. The parties are a problem. Concerned that it isn't neighborly.

Paseo Ventosa experienced a lot of traffic last week because of a wedding and a UofA alumni party. Neighbor worked with neighbor to make sure it went smoothly.

Francis Morgan says Mr. Drobney is selling his house and to have the rental nearby will possibly affect the sale of his house. He is very concerned and strongly objects.

Frank Bermudez, and Ed Hartnett, 5680 E Paseo Cimarron next door to lot 35 (short term rental) Their objection is because the house is used for large events with 10 + cars. They strongly object.

Realtor neighbor suggested if they are willing to rent it long term, then we could proceed without a lawyer.

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Board will contact a lawyer to clarify. We will fight the short term leases. We hope to have an interpretation by the March board meeting and will contact those involved.

Andy Gaudet came to discuss 5756 via Ligera, Lot 209. Concern about an abandoned property. Renovations were approved 2 years ago, and still unfinished. Roof was raised by approx. 2 feet and they did not request approval to raise the roof. Point 2: AC units 3 on the roof. Not allowed on Phase 3 - 5 roofs. The built a small wall and removed a mesquite tree.

Andy Gaudet is requesting that a notice be sent notifying them that they are well beyond the 6 month limit. The fees suggestion of Andy Gaudet (a former board member) is that we threaten daily fines. Larry Lewis suggested that Bob Linsell work with Andy Gaudet who was on the board for many years prior, to compose the letter. The fine amounts are amendments to the bylaws that require 50% of the vote. May run this by an attorney. Karen Egbert suggests we make a list of questions to present to the lawyer to clarify concerns of the board. Francis read that one should be renewing CR&RS every 5 years or so.

Bob Linsell and Andy Gaudet will work together to compose the letter and be reviewed by the board. Bob Linsell will inform him of the infraction and fines and the date of his hearing to appear before the board. (April 24, the April board meeting.)

Karen Egbert, Vice President/Community Relations

Lot 344: Trash business: we are allowed an extra 10 bags. One homeowner put out 60 bags in 4 weeks. Larry sent a letter telling him not to put out that number of bags. (Way exceeds the limit.) Karen suggested we ask this homeowner if we could put a biannual dumpster on his property for the neighborhood use.

Construction down the same street. Garbage trucks couldn't get through.

Community Relations, Norma Niblet recognition was special. Karen wants to know if we should do it annually. Francis suggested it wasn't necessary. Larry, also thought it was a good idea.

CR&R – Bob Linsell

Short Term Rental CR&R as written

Changes in the state law

Discussion and neighbor input

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Lot 305 – trash pick up and control while remodeling: closed.

Lot 194 – DB – Junk Truck in driveway: A letter was sent.

Lot 255 Canoe and motorcycle in his driveway. Motorcycle is fine but canoe and junk should be removed.

Lot 351 Dog barking complaint (renters occupy the house.) Bob Linsell hand delivered a letter to the homeowner and spoke to her in person. She doesn't believe the dog barking is a problem. Bob Linsell told them they need to do something about the dog barking. The dogs are large and imposing. The renters said they are moving by Feb 15.

Lot 226 Neighbor has had a storage trailer parked in their driveway for the last year. Bob Linsell will follow up the complaint.

Address: 5945 Paseo Cimarron (no Lot number given) Had a fire and when they redid the house the repaired part is the correct color but the old portion of the roof is white. Agreed that she has until the end of September to repaint the old portion of the roof that is the wrong color. Bob Linsell will send a letter to confirm the agreement.

Lot 95 owner died, property flooded. Jack Carleson, neighbor, is unhappy with the disrepair of the property. The daughter is now responsible. She took over the property and business and may lose the house to the bank. Storage pod is an eyesore for the neighbors. Larry Lewis proposes talking to the owner. Karen Egbert says we should give her deadline and threaten fines to get the storage pod removed. Bob Linsell will send a notice of violation. If it goes back to the bank, then the bank will be responsible for cleaning it up and/or paying the fine. Bob Linsell will copy Pat Stoll about the action.

Secretary – Margaret Weinberg

Minutes taken by Margaret Weinberg.

The January meeting minutes were reviewed. A motion was made by Tom Botchie to review the minutes. Karen Egbert seconded the motion. The minutes were approved without corrections.

The Annual Homeowners meeting minutes were reviewed. A motion was made by Tom Botchie to review the minutes. Karen Egbert seconded the motion. The minutes were approved without corrections.

In Favor: Peter Lincowski, Tom Botchie, Bob Linsell, Francis Morgan, Margaret Weinberg, and

Opposed: None

Motion carried.

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Treasurer – Peter Lincowski:

Bookkeeper Pat Stoll first year performance and salary review. Peter and the board is thrilled with her performance. A motion was made to raise her rate from \$17 to \$20 per hour after book review. Shooting for Apr 1.

Peter Lincowski made a motion Bob Linsell seconded it. All in favor.

Foreclosure Dues Issue – lien options

According to State law, HOAs trump other lien holders. HOA is first in line if a property is foreclosed. Peter argued for full payment following foreclosure and we did receive it.

Peter Lincowski learned that we didn't need to file a lien, it's statutory. It must be paid.

Safety and Security Mike Carsten

January Safety report nothing to report

Architecture – Tom Botchie:

Review of ongoing and new projects from Tom Botchie's worksheet.

Lot 293 In work: Garage construction and setback variance has conditional approval. Construction in progress.

Lot 67: In Progress: Back yard remodel in work moving along.

Lot 345 Solar panel installation (probably complete)

Lot 126 In Progress: New addition to home.

Lot 209: Delayed construction. Neighbors are angry because it has been under construction for 2 years. Bob Linsell and Andy Gaudet will work together to compose the letter and be reviewed by the board. Bob Linsell will inform him of the infraction and fines and the date of his hearing to appear before the board. (April 24, the April board meeting.)

Lot 238: Solar panels approved to start in December. Was completed. Tom Botchie took photos of his solar panels. Tom Botchie noted his roof was white.

Lot 281: Building a new garage. Collected the money for new construction approval. Received board approval. Check was sent to Pat Stoll.

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

Owner is complaining that they paid \$150 for paint approval but there is no fee for paint approval. It needs to be reimbursed. Pat Stoll offered that she can write a letter informing neighbors that are owed a refund for completed, approved work. She will arrange to refund money to those due a refund.

Lot 40 Tom Botchie had a request for approval of a fence to keep his cats in and wildlife out of his yard from 5620 E Via Arbolada (lot 40). Initially he was unsure of the type of fence he wanted, but then sent me a link to view the fence (picture attached). I reviewed paragraph 5 of the Phase 1 CR&Rs with him and explained the Neighbor Feedback form to him. He took issue with the fact that he had to obtain approval and that was a recipe for conflict. He said that the CR&Rs are out of date and if his neighbors or the HOA board disapproved his fence he would get his lawyer involved. After trying to explain the process to him again he became agitated and hung up on me. Larry invited him to come to the annual meeting or get involved with the board but he said he was too busy and had a bad experience from being on an HOA board before. Karen Egbert suggests a letter sent with CR&Rs and fine schedule notifying him he needs to comply. Tom spoke with the owner about possible fence options. The homeowner states the fence plans are on hold for now.

Tom Botchie expresses concern with the 6 month deadline for construction. He believes it is too short to be realistic.

Lot: 345: In Progress: Solar panel installation.

Roads and Medians – Chris Pappas

Update regarding ongoing median maintenance

Entrance gravel refreshment completed – \$2100.

Board acknowledges we can't relieve any concerns about neighborhood road conditions because they are public roads and the neighborhood isn't responsible for repairing them. It's up to the county to maintain them and we've done what we can to facilitate it with the county. It is out of the board's hands.

Median maintenance, waiting to hear back on next step. Still getting negative feedback.

Webmaster – Francis Morgan

Pat Stoll has been updating the neighborhood database. She needs to get the most recent updates to Francis.

Old Business: Question of board roles. Everyone decided to stay in their current role.

February 27, 2018 Homeowner Meeting Minutes
Cimarron Foothills Estates

New business:

Bob Linsell received 36 quotes for the driveway refresh. One woman was upset that she was on the list because her husband wanted to be on the list and he passed away.

Bob Linsell proposes that we make a motion that we to develop formal standard operating procedures/rules to supplement the CR and Rs. Karen Egbert seconds it. The board approved. Send your suggestions to Bob Linsell. Goal is to vote on standards in May 22.

Bob Linsell proposes that we vote on the decision to get legal counsel. Karen Egbert informed us that we don't have a specific lawyer we need to work with. Bob Linsell proposes that we find a lawyer that works specifically with HOAS so we don't waste time and money. Karen Egbert and Peter Lincowski have a suggestion for the lawyer and will research it further. Vote is not necessary for discussion.

Larry Lewis makes a motion we spend up to \$2500 with a lawyer to address the short term rentals. Margaret Weinberg seconds the motion. All in favor.

Annual Meeting follow up: The high school complained that food was served, and the carpet was stained. We will be charged for the clean up by the school.

A motion was made by Larry Lewis to close the meeting at 7:51 p.m., it was seconded by Peter Lincowski. The board unanimously approved.