

EXAMPLES OF PROXY HOARDING

2019

<u>Candidate</u>	<u>Votes from Room (attendees)</u>	<u>Proxy Votes</u>	<u>Total Votes</u>
Scott DuBuke	45	78	123
Stacie Duffy (incumbent)	46	350*	396
Carol Hawk (incumbent)	31	350*	381
Tamara Pelham	36	78	114
Daming Wang	4	0	4

* Total number of proxies returned to the Board = 350

Note: All of these numbers were verified through record request)

2020

<u>Candidate</u>	<u>Votes from Room (attendees)</u>	<u>Proxy Votes</u>	<u>Total Votes</u>
Scott DuBuke	47	0	47
Bill Campbell (incumbent)	37	224*	261
Chris Lee	36	0	36
Greg Cann (incumbent)	32	224*	256
Tamara Pelham	25	0	25
Mike Mauro	16	0	16
Other 2 (single digit votes)	<	<	<

* Total number of proxies returned to the Board = 224

2021

The Piney Creek Nominating Committee, chaired by the Board Secretary Stacie Duffy and required by bylaws, did *not nominate* Chris Lee to be a candidate in the election. However, there is no record of vote, the "Record of Action Taken by the Nominating Committee" (attached) documents only those nominated and obviates any references to other candidates; the member volunteers on the nominating committee have not answered whether or not a vote was actually taken. No records of the referened written nominations are available for review, despite Nonprofit CRS 7-136-102(2), per correspondence from Moeller-Graf (attached).

Julie Whipple and Paul Orlino were nominated by the Nominating Committee at least a week before the election. Chris Lee was nominated from the floor with 1 day to campaign for him. Someone stole most of the signs we placed throughout the community for less than 24 hours.

<u>Candidate</u>	<u>Total Votes</u>
Julie Whipple (incumbent)	204
Chris Lee	34
Paul Orlino	62

We have one Board Member that has been sitting on our Board for over 20 years. Another for close to 12, others for longer than 6. How can there be fresh ideas, inclusion of homeowners, if the process for voting is broken?

Proxies that were offered to the Board of Directors from Member Business properties: 2 proxies returned to Westwind that defaulted to the board (no proxy option selected) and these were allocated 29.68 votes (calculated based on square footage of business space represented) = **10% of the 300 votes cast.**



ASSOCIATION INFORMATION ENCLOSED



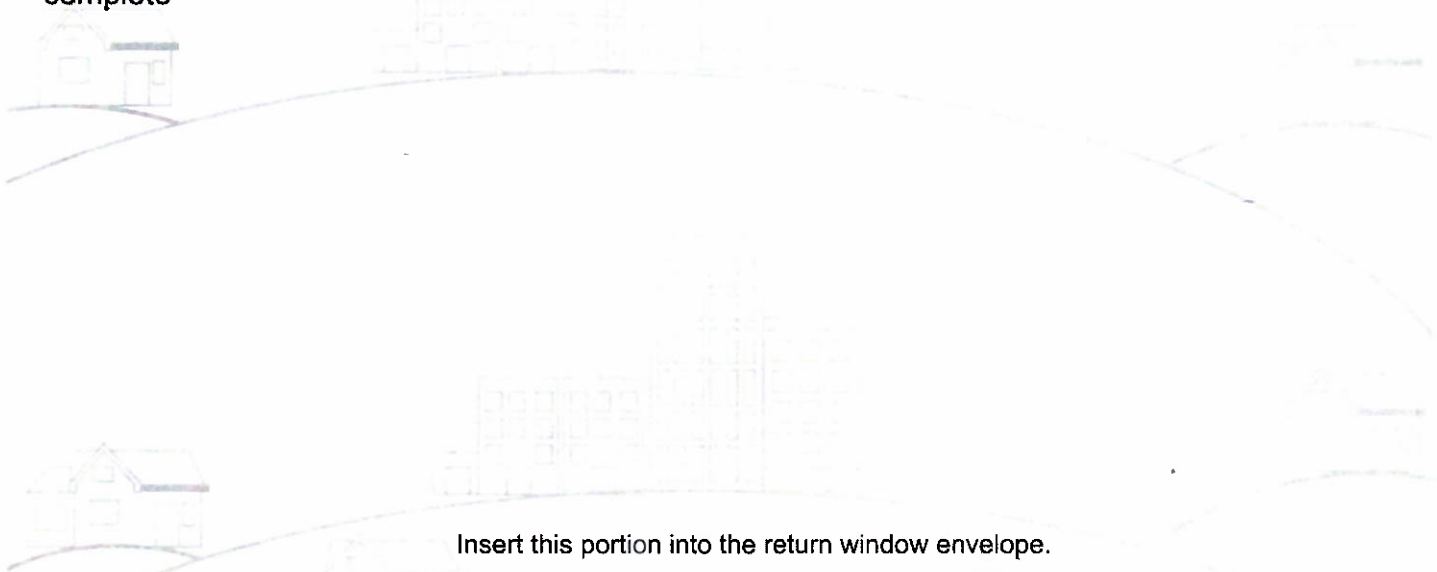
Robert C & Tamara J Pelham
15533 E. Prentice Lane
Centennial, CO 80015



Instructions

Please follow these instructions to reply:

- 1) Insert completed form into the Return Envelope
- 2) Tear off the bottom portion of this sheet containing the remit address
- 3) Insert the bottom portion of this sheet into the white window envelope (make sure the address shows through the window of the envelope)
- 4) Fill out the return address in the upper left corner of the window envelope, if this is not already complete



Insert this portion into the return window envelope.

Robert C & Tamara J Pelham
15533 E. Prentice Lane
Centennial, CO 80015

Piney Creek Recreation Association
C/O Westwind Management Group LLC
27 Inverness Drive East
Englewood CO 80112

**PINEY CREEK MAINTENANCE ASSOCIATION, INC.
PINEY CREEK RECREATIONAL ASSOCIATION, INC.
COMBINED ANNUAL MEETING
TUESDAY, OCTOBER 26, 2021 ~ 7:00 P.M.**

The Piney Creek Maintenance Association, Inc. and the Piney Creek Recreational Association, Inc. are holding the Annual Meeting virtually through Zoom. The meeting will begin at 7:00 p.m., sign in will begin at 6:30pm.

Held Via Zoom:

<https://us06web.zoom.us/j/85319703399?pwd=dHdWTFpTWk5YWlRyY1pua2twRS8xdz09>

Meeting ID: 853 1970 3399

Passcode: 555349

You may also attend via telephone by calling +1 253 215 8782 and entering meeting ID 853 1970 3399 and if prompted, enter passcode 555349,

Important Deadlines:

1. **Proxies MUST be received on or before October 25, 2021 at 5:00 p.m.** Proxies received thereafter will not be accepted.
2. **Owners desiring to vote must do so at the Piney Creek Clubhouse on October 27, 2021 between 4:00 p.m. and 7:00 p.m.** Owners, who are not proxy holders, attempting to vote thereafter will not be allowed to do so. If you are a proxy holder, you will not be allowed to vote on October 27, 2021.
3. **Proxy holders desiring to vote must do so at the Piney Creek Clubhouse on October 28, 2021 between 4:00 p.m. and 7:00 p.m.**
4. **Meeting will adjourn after votes are tallied.**

IMPORTANT BUSINESS OF THE COMMUNITY WILL BE CONDUCTED, SO PLEASE...

SEND IN YOUR PROXY TODAY!

PROXY FORM AND POSTAGE PAID ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE

THE ABSENCE OF A QUORUM WILL REQUIRE THIS MEETING TO BE RECONVENED AT AN ADDITIONAL COST.

IF YOU COME IN PERSON TO VOTE AND YOU SUBMITTED A PROXY FOR YOURSELF, YOUR PROXY WILL BE GIVEN BACK TO YOU AND YOU MAY VOTE IN PERSON.

The following subjects will be voted on:

1. **Election of Directors** – One (1) Director position is subject to election for a three (3) year term.
2. **2020 Annual Meeting Minutes – Approval** – Minutes are included in this mailing and also on the Associations' website.

Your current Board of Directors, their offices and terms are:

Greg Cann	President (term expires 2023)
Carol Hawk	Vice President (term expires 2022)
Bill Campbell	Treasurer (term expires 2023)
Stacie Duffy	Secretary (term expires 2022)
Julie Whipple	Director (term expires 2021)

Any one of these individuals would be willing to serve as your proxy designee.

**PINEY CREEK MAINTENANCE ASSOCIATION, INC. AND / OR
PINEY CREEK RECREATIONAL ASSOCIATION, INC.**

PROXY----- For the combined Annual Meeting of The Piney Creek Associations to be held beginning Tuesday, October 26, 2021 at 7:00 p.m. Proxies must be **RECEIVED** on or before October 25, 2021 at 5:00 p.m. Proxies received thereafter will **NOT** be accepted.

PLEASE PRINT & COMPLETE ALL BLANKS

Date: _____

I/We _____,
being the owner(s) of the property located at

(address), in the Piney Creek Maintenance /Recreational HOA, do hereby authorize and appoint the following:

Circle A or B – If no option is chosen, option B will be considered your selection by default.

A. I/We hereby appoint _____ to be my / our proxy, with full power of substitution, to represent me/us and vote on my/our behalf on issues submitted to vote at this meeting, or in the event a quorum shall fail to attend, at such time and place as the adjourned meeting shall be resumed. This Proxy shall remain in full force and effect until the Annual Meeting has been completed.

Please notify your proxy holder so they can come vote for you. The management company cannot be responsible to notify proxy holders.

B. I/We grant my proxy to the Secretary of the Board of Directors.

Email Address

Signature of Owner(s)

Signature of Owner(s)

**PINEY CREEK MAINTENANCE ASSOCIATION, INC.
PINEY CREEK RECREATIONAL ASSOCIATION, INC.
RECORD OF ACTION TAKEN BY THE NOMINATING COMMITTEE TO
NOMINATE DIRECTORS FOR ELECTION**

Recitals

A. The Piney Creek Maintenance Association, Inc. and Piney Creek Recreational Association, Inc. ("Associations") are Colorado nonprofit corporations, duly organized and existing under the laws of the State of Colorado.

B. Article V, Section 1 of both the Bylaws of Piney Creek Maintenance Association, Inc. and the Bylaws of Piney Creek Recreational Association, Inc. state that "[n]omination for election to the Board of Directors shall be made by a Nominating Committee."

Record of Action Taken

1. On or about October 2, 2021, all members of the Nominating Committee provided written approval to nominate Paul Orlino and Julie Whipple as Directors for the 2021 election.

The undersigned hereby certifies the foregoing record of action taken by the Nominating Committee on the 2nd day of November, 2021.

By: 
Stacie Duffy
Nominating Committee Chair



K. CHRISTIAN WEBERT
cwebert@moellergraf.com

November 15, 2021

Tamara Pelham

Re: Piney Creek Maintenance Association, Inc. and Piney Creek Recreational Association, Inc.
/ Request for Copies or to Review Business Records, dated October 25, 2021

Dear Mrs. Pelham:

As you know, our office represents Piney Creek Maintenance Association, Inc. and Piney Creek Recreational Association, Inc. The purpose of this letter is to respond to your Request for Copies or to Review Business Records, dated October 25, 2021 (“Request”) and your email, dated November 4, 2021. In your Request, you request “all documentation pertaining to the 2021 Nominating Committee votes and meetings determining nominations for candidates and disqualified candidates for 2021 Board of Directors election – Per C.R.S. 7-128-206 + (201-205).”

On November 4, 2021, you were provided with the Record Of Action Taken By The Nominating Committee To Nominate Directors For Election, dated November 2, 2021 (“Record Of Action Taken”). This is the only record you will be provided in response to your Request.

The Associations are not required to provide you any additional records regarding the Nominating Committee. Within the scope of your Request, the Associations’ obligation to retain and produce records is limited to “a record of all actions taken by any committee of the executive board.”¹ The attached Record Of Action Taken is a record of the only action taken by the Nominating Committee in 2021 and, thus, satisfies this requirement. Please note, Colorado law imposes fewer requirements regarding records retention and production of actions by a committee than actions by the executive board.

It appears that your citation to C.R.S. § 7-128-201 through 206 is not applicable here. In general, these sections govern meetings and actions of the boards of directors for non-profit corporations. With the exception that waivers of notice must be kept part of the corporate records², Sections 201 through 206 do not address record retention and production. Furthermore, even if they did, Section 317 of CCIOA is the exclusive provision regarding the Associations’ obligation regarding retention and production of records.³

¹ C.R.S. § 38-33.3-317(1)(c)

² C.R.S. § 7-128-204

³ “the sole records of the association”

Last, after conferring with candidates for the Board of Directors, the Board does not believe that production of additional records is a good idea. Communications of the Nominating Committee will not be produced. The Board believes these types of deliberations are best not being produced, and, as noted above, the Associations are not obligated to produce them.

Sincerely,

MOELLER GRAF, P.C.



K. Christian Webert
For the Firm



September 24, 2020

Dear Piney Creek Owners:

As the year winds down, we find ourselves once again at Annual Meeting time. As a community, we have faced our share of challenges this year related to Covid and have had to adapt to what seems like an ever changing new normal. This year's Annual Meeting will present its own challenges and look different than it has in years past.

Because of Covid, the Annual Meeting will be virtual through Zoom. We will not be able to be together in a physical room and will make the most of the virtual room. Because we will not be able to be together, we will not be able to take nominations from the floor for the election which is why we were counseled to provide a Call for Candidates ahead of time and to get that information out to everyone through many outlets. Thank you to those of you who heeded the call. Candidate information is on the website at www.pineycreek.org.

You will have the opportunity to be present at the Annual Meeting though video and audio means as indicated in the enclosed meeting notice. The regular business of the meeting will still be conducted as it has before. The major change you will experience is the way in which you will vote for candidates and the 2019 Annual Meeting Minutes (also enclosed).

Proxies will be due back to Westwind Management by October 19, 2020 at 5:00pm and a postage paid envelope is included for your use. You may also drop proxies off at the clubhouse via the drop box or email them to mgr@pineycreek.org. **No proxies received after 5:00pm on October 19, 2020 will be valid.** Because of the online meeting, we need to be able to achieve quorum BEFORE the meeting.

Please read the following paragraphs very carefully:

Voting will occur over a consecutive two-day period beginning the day after the Annual Meeting. On Wednesday, October 21, 2020 from 2pm-7pm, only owners who are representing themselves without proxies may come to vote. Only one vote per home will be taken.

On Thursday, October 22, 2020 from 2pm-7pm, those owners who have been designated to vote on behalf of someone may come to vote. As proxies will have been received by that time, we will have the proxies available to be voted. Please ensure that if you are designating a proxy to someone, you know that person will be able to vote on your behalf on October 22nd, 2pm-7pm and that the proxy will be received by 5pm on October 19th.

We know the process is complicated this year and we apologize in advance for any inconvenience. Thank you for your patience and understanding. Please contact Christine Williams at mgr@pineycreek.org or Cylinda Walker at cylinda@westwindmanagement.com with any questions you may have.

Sincerely,

Your Piney Creek Board of Directors

**PINEY CREEK MAINTENANCE ASSOCIATION, INC.
PINEY CREEK RECREATIONAL ASSOCIATION, INC.
COMBINED ANNUAL MEETING
TUESDAY, OCTOBER 15, 2019 ~ 7:00 P.M.**

The Piney Creek Maintenance Association, Inc. and the Piney Creek Recreational Association, Inc. are holding the Annual Meeting at the Clubhouse located at 5800 S. Joplin Way, Centennial, Colorado. The meeting will begin at 7:00 p.m., sign in will begin at 6:45 p.m.

IMPORTANT BUSINESS OF THE COMMUNITY WILL BE CONDUCTED, SO PLEASE...

SEND IN YOUR PROXY TODAY!

PROXY FORM AND POSTAGE PAID ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE

THE ABSENCE OF A QUORUM WILL REQUIRE THIS MEETING TO BE RECONVENED AT ADDITIONAL COST.

IF YOU CHOOSE TO ATTEND, YOU MAY RECLAIM YOUR PROXY AND VOTE IN PERSON.

The following subjects will be voted on:

Election of Directors – Two (2) Director positions are subject to election for a three (3) year term. If you are interested in serving on the Board, please send in a candidate profile (available on the Association website at www.pineycreek.org) to admin@pineycreek.org no later than October 10, 2019. Please note if you are agreeable to having the Association post your profile on the Association website.

The agenda for the meeting will consist of the following items:

- I. Roll Call
- II. Proof of Notice
- III. 2018 Annual Meeting Minutes
- IV. President's Report
- V. Treasurer's Report
- VI. Election of Director(s)
- VII. Unfinished Business
- VIII. New Business
 - A. 2020 Budgets – Ratification
- IX. Adjournment

If your Association account is in arrears, please call DeEtt at 303-369-1800 ext. 110 to arrange to bring your account up-to-date to assure your voting rights.

Your current Board of Directors, their offices and terms are:

Greg Cann	President (term expires 2020)
Carol Hawk	Vice President (term expires 2019)
Bill Campbell	Treasurer (term expires 2020)
Stacie Duffy	Secretary (term expires 2019)
Julie Whipple	Director (term expires 2021)

Any one of these individuals would be willing to serve as your proxy designee.

Sincerely,
Board of Directors

Piney Creek Maintenance Association, Inc. & Piney Creek Recreational Association, Inc.

Good afternoon; thank you chair for hearing my testimony. My name is Tamara Pelham; I own a home governed under two Piney Creek HOAs. Our Associations have seen abuses of proxies and proxy hoarding to sustain the existing board for at least 3 years, but my understanding from long-standing community members is that proxy hoarding by the board has historically been the mechanism used to establish quorum and sustain or broaden board prerogatives, attitudes, and constitution.

I appreciate the effort to propose changes to the proxy provisions of CCIOA in an effort to limit gross abuse/s of this generic legal mechanism that has become adulterated through administrative loophole.

I brought documentation evidentiary for your reference of how even the Instructions to homeowners persuade the abuse of proxies. They are clearly crafted to compel homeowners to use a proxy – “to meet” QUORUM. And, because so many homeowners don’t know any better, they do it.

Combine the VACANT understanding of proxies with voting instructions that say:

“Proxies will be due back to Westwind Management by October 19, 2020 at 5:00pm and a postage paid envelope is included for your use...No proxies will be received after...we need to be able to achieve quorum BEFORE the meeting.”

And what is the common homeowner supposed to think? Just “Send in my Proxy” And then, who gets to craft the proxy template? The Board or their counsel, or their property manager – and they can make those proxies look any way they want. Because nobody recognizes a Proxy can be written on a napkin and signed if someone wants to. EVERYTHING ABOUT THIS PROCESS IS SUBJECTIVE AND THEREFORE VULNERABLE TO SERUPTITIOUS INFLUENCE. The net result is that fair elections cannot be held while proxies can be generically assigned for the board to vote themselves into power repeatedly.

The legitimate intent of Proxy isn’t the root-problem, but it has become so because of QUORUM, and because of the need to meet QUORUM, member proxies generously relinquished to association Boards are then free to be misused to their own benefit and with prejudice. So, while QUORUM needs to be removed from CCIOA to sync HOA voting provisions to those of any other type of local, state, or federal election that does not require quorum to commence, the more immediate fix is to preclude the use of proxies for purposes of voting – specifically – HOA board members.

No one is excluded from voting, yet no one should be forced as a function of meeting QUORUM. I've said before and now again: HOAs are the lowest echelon of governance affecting the lives of people in their native habitats and they are, functionally – quasi-municipal and need to be treated as such even if Colorado law does not recognize it.

Nevada has gone so far as to statutorily eliminate QUORUM requirements for HOA board elections. [NRS 116.31034(15)(c)] Although this is not a small tweak to our laws, it is a necessary change to allow TRUE DEMOCRACY to unfold throughout those lowest echelons of governance.

I cannot see how these proposed changes in any way affect the complexity or viability of any commercially-driven operation or work product, nor does it affect the legitimate interests of the legal community it that it only serves to make the voting process easier, more representative, fair, and democratic. The only economic impact of these proposed changes is to enhance and promote the free-market economics of commercial competition based on fair elections voted by those that care to have an interest in the issues and elections voted on. I beg you to ask yourselves why there should be criticism of that, because the answer is obvious – fair elections compromise the sustainability of cash-cow contracts and the profitable influences that can be garnered under them.

We need you to forward THIS proposed Amendment to CCIOA, AND THEN we need you eliminate QUORUM at the level of the HOA.

Thank you for your time and consideration.