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

Voting Power – A Historical Perspective

This is the second of three different discourses on the subject of the “voting power” of amending Sunlight Waters’ (SLW) Declaration of Covenants and Restrictions (DCR's)

Rather than a lengthy discourse in one document, there are 3 different documents covering different aspects of this “voting power” issue. Please read each one for a complete understanding of this subject. 1. Dilemma, 2. History, and 3. Options.

Picking up on the this issue where the “Dilemma” document left off;

Synopsis of the problem

The “Dilemma” left us with three different 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 51% verses 2/3rds

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

1968/1993 Documents both read the same

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.

The original DCR’s were recorded by the original developers of the plat of Sunlight Waters in 1968.

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There is no known attempt to amend this document prior to the 25th anniversary date of 1993. We are now at the second 25th anniversary date, this year in 2018. It is also the 50th anniversary of the development of Sunlight Waters. (Should be a celebration!!!)

In the last 25yrs there has been lots of talk, controversy, debate, discussion and whatever on amending our current DCR’s. The first 10 -15yrs after ‘93 There was more controversy and debate than anything productive. These last 10 - 15yrs have been more on discussion and actual attempts to try to amend our DCR’s than just controversy and debate. What these discussions, debates and attempts have brought to forefront, is the dilemma of the definition of the “voting power” of Sunlight Waters Country Club.

In **2003** there was a large portion of the membership that wanted to **disband SLWCC**.
This culminated in a special meeting being held in the fall of 2003. It was the first and only known time that we had an attendance large enough to have a possible 51% vote. However it was not an anniversary year, so a 2/3rds of “all lot owners” was the needed count. The vote was on the disbanding of the SLWCC, the organization itself, not on the DCR’s. This vote was an overwhelming NO. If it had passed, the option to do any voting on the DCR’s would not have passed due to not enough members present for a 2/3’s vote. However a 51% + margin was obtained, but was moot.

A few lessons from this event. One, it exemplified the then dissatisfaction of a large number of members with SLWCC in general. Another, if the vote had succeeded, it would have disbanded SLWCC but not the DCR’s and the reference to it in our real estate titles. All of our titles would be encumbered with DCR’s that had no maintenance or enforcing authority.
In essence they would be pointing to a non-existing corporation.

Also just as important as these two lessons above, the ability to argue/manipulate the interpretation of “voting power’ of SLWCC. The lawyer that advised the Board during that time, explained how he, as a lawyer, would could defend argue/defend the most conservative view of 51% of ALL Lot Owners, and or the 2/3’s of the “membership present” at the meeting. Of course the Board felt the responsibility to go with the conservative interpretation. After all was said and done, all votes cast, the 2/3rds of members present would have defeated the measure anyway.

So the take way from this was, and still is, a majority all in agreement???
This is next to impossible.

In **2004,** there was the first known real attempt, since 1993 to amend the DCR’s at the annual meeting of that year. This attempt failed miserably as it was too soon after the 2003 contentious meeting and also it was not an anniversary date. However, the need for a Covenant Committee and a lot of thought and effort was needed to ever attempt to get our DCR’s amended became very apparent.

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So in 2007/**2008,** a very real, whole heart-ed effort was put forth to get an amended version of our DCR’s. Months of work had gone into the Covenant Committees work to present a proposal that was hoped to be an approved version by the majority of the membership. There were some hotly divided issues of various sections of the DCR’s and not all were happy with the proposal, but all agreed the “change” was needed. An attorney’s reviewed and suggested edits prior to the annual meeting. However, time did not allow for good communication of the proposed amendments prior to the meeting.

This attempt failed also for basically the same reasons as 2004, except it was at an anniversary date. Therefore it would need the affirmative “Yea” by 51% of the membership/lot owners. Here again the lack of membership turnout thwarted the attempt. Although we had over a 51% turnout, we did not have 51% agreement. The discussion of the proposed amended version also brought out that the “wholesale” approval of the proposal wouldn’t fly, as there were individual paragraphs/sections that were still up for debate.

In summary we can deduct a couple of realities from our history that we need to consider **for our 2018 meeting.**

One, we need to get everybody on board for **a large turnout** for this meeting. We need possibly two thirds of “ALL Lot Owners” to turnout to get to a possible 51% agreement.

Second, if there is any lesson we’ve learned so far, it is we need to change **“how”** we amend/change our DCR’s if we really want to change **“what”** we want to change.

Referring back to this 2008 meeting again, there was discussion at the end of the meeting about what can we ever do to solve this “voting power” dilemma?

So there was an honest attempt to define “voting power” with in the Bylaws themselves. After discussion and debate it was resolved to amend our Bylaws to amend

Article III, Meetings, Section 4, to add the following statements:

> **4.** … “In order to vote, ***the member must be in good standing, that is,*** all dues, debts, and assessments shall be paid on or before ***March 31st*** of each year, following the meeting at which they have been fixed.” …
>
> And “… ***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 did appears to give a legal definition for “voting power” as we can see below, in the lawyer’s analysis of the subject. However it is still a large number to deal with, for the affirmation vote.

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History of Lawyer’s Analysis

The lawyer that had historically been the council to SLW, and who advised us **during the 2003** attempt to disband the Corporation, shared his opinion on these definitions.
He said if he was just giving us his opinion, with no alternative motives involved, he would argue for the “2/3rds majority of the members present”. However, if and since, he was advising SLW the best way to keep the organization “in tact” he advised us to go with the 2/3rds of all lot owners. NOTE: Remember, it was not an anniversary year so the (simple) majority clause was not an option.

The layer involved in the **2008** version/proposal was mainly making sure we had our “ducks in a row” as far as “legalize” and continuity. So the proposed amendments for these two paragraph was about the wording being consistent and in continuity with each other. Also if lowered the 10yr anniversaries to 5yrs. See below

2008 Proposed:

ARTICLE V
GENERAL PROVISIONS.

1. Term. These covenants and restrictions are to run with the land and shall be binding on all parties and persons claiming under them **for a period of five** years from the date this Declaration is recorded. After the period of five years the covenants and restrictions shall be automatically **extended for successive periods of five 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.

However, the Amendment paragraph was changed to match the 51% of all lot owners as defined in the preceding paragraph.

2. Amendment of Declaration. This Declaration may be amended at any annual meeting or any special meeting specifically called for that purpose **by the affirmative vote of a simple majority of the Lot owners** representing the number of Lots within the Property **within the plat of Sunlight Waters.** Each lot is entitled to one vote regardless of the number of owners.

This proposal got rid of the “voting power” wording/dilemma, but it obviously did nothing for meeting the 51% of all the lot owners. But at least it was consistent and clear.

Then in **2016**, the Board at that time, asked a Home Owner’s Association lawyer, that had been referred to them, the very specific question for clarification on amending our DCR’s.

They looked at all three controlling documents of SLW’s, the Articles Of Incorporation, the Bylaws and the Declaration of Covenants and Restrictions.

They compared the language between each and tried to interpret “with” the intent of the drafters. (The original developers).

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So they, in essence deducted that:

1.) Since the purposes of the Corporation could be altered/changed and any annual or special meeting called for that purpose by a 2/3rds vote of the members present,

> **ARTICLE I**
> **Section 2.** The purposes for which this corporation has been created **may be altered, modified, enlarged or diminished by** the **vote of two thirds of those members in good standing**. This voting shall occur in person or by proxy **at an Annual Meeting or at any Special Meeting** duly called for that purpose.

2.) That the Declaration could be amended by a 2/3rds vote of the members present at any annual or special meeting

> **ARTICLE V**
> **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.**

Therefore when the Bylaws stated:

> **ARTICLE X**
> **Section 4**: Amendment: These Bylaws may be amended only by the members of the Corporation at an Annual Meeting.
>
> It is understood that the intent of the drafters meant for Bylaws to need the 2/3rds of the members present.

Conversely, if the drafters stated “members present” at … meeting … for both the amending of the Articles of Incorporation and the Bylaws, … therefore the drafters meant the “voting power” to be “members present” at any annual or special meeting called for that purpose.

This opinion is the least restrictive interpretation of what it would take to amend our DCR’s. However, is it one that we as a community would be comfortable with using?

We can now look at the pros-n-cons of these options and some other ones also in our “Options” discourse.