

Dixie Springs ACC Feedback to the June 2020 Community Meeting

A meeting organized by the community was held on 30 June 2020 in the Dixie Springs Park. The ACC feels it is important to address the following six topics that were presented. The ACC attorney was consulted and clarified the legalities, operation and the governing of our nonprofit corporation. He also pointed us to our CC&R's for the controlling rules on block walls and to our Bylaws for the appointment of Directors where all of that is specifically outlined.

1. The ACC was part of Clarence Jolley's corporation

This is not correct. The complete history of the Dixie Springs subdivision was published in the November 2019 Community Newsletter.

The platting of Dixie Springs close to what we have today was done by Clarence Jolley on 1 May 1998. At that time, Clarence was the owner of 3 companies that owned lots in Dixie Springs. This was also when the CC&Rs were applied to all of the lots. Clarence appointed the people that were on the ACC from that point until the end of 2015. That is when he sold most of his lots to another company. The ACC was never part of any of Clarence Jolley's corporations that owned the lots.

The first election of the ACC members by the lot owners in Dixie Springs was held in June 2016. As Dixie Springs grew at a rapid rate, the board at the time wanted to minimize any personal liability they might incur by being on the board. The only way to do that was to create a nonprofit corporation and purchase Board and Officers insurance. The ACC members are the only members of the nonprofit corporation: not all of the lot owners in Dixie Springs. The Utah nonprofit act talks about the indemnification of officers and directors. An individual's liability on the board of a non-profit is limited. The corporation, not its members, is the entity responsible for debts. Also, the corporation, not the individual ACC members, has the right to sue and to be sued, to hold property, and to enter into transactions.

Without the creation of a nonprofit to protect the board members, it would be very difficult to get good people to be on the board.

2. The ACC is an HOA

The ACC is not an HOA because it doesn't meet the definition of an "association" under the Utah Community Association Act. The Act applies to all HOAs in Utah, but it doesn't apply to legal entities that don't meet the definition of an "association."

The Act defines an "association" as a legal entity in which its members, simply by virtue of owning a residential lot, are obligated to pay the association at least one of the following as assessments (dues): (1) real property taxes, (2) insurance premiums, (3) maintenance costs, or (4) improvement of real property not owned by the member such as common areas. Utah Code § 57-8a-102(2)(a).

The way an owner of a residential lot becomes a member of an association, and as such obligated to pay assessments, is by CC&Rs that are recorded with the county recorder. If the CC&Rs say the owners in the subdivision are obligated to pay assessments to a legal entity (e.g. an HOA), then the legal entity and the property within the subdivision are governed by the Community Association Act.

Typically, the way an HOA comes about is through a developer who wants to develop its property into a residential subdivision. The developer records CC&Rs against the property before any of the property is

sold as separate lots. Those CC&Rs would state that all the lots are subject to the governance of an HOA and must pay the HOA monthly assessments. The Dixie Springs CC&Rs don't say anything about an HOA and do not require owners in Dixie Springs to pay any assessments to a legal entity. If the CC&Rs required owners to pay assessments to the ACC, things would be different, but they don't.

3. The ACC needs to adhere to the Utah Community Association Act

The ACC is not an HOA and therefore the Utah Community Association Act does not apply.

4. Residents of Dixie Springs are part of the ACC Non-profit

While lot owners in Dixie Springs vote to elect the members of the ACC's board of directors, lot owners are not necessarily members of the ACC.

The ACC is a Utah Nonprofit Corporation. This means that the ACC is governed by the Utah Revised Nonprofit Corporation Act. Utah code Section 16-6a-601 says that "[a] nonprofit corporation is not required to have members". Whether a nonprofit corporation has members is determined by the nonprofit's Articles of Incorporation or Bylaws or by resolution of the board of directors. See Utah Code § 16-6a-102-(32) (a). Utah Code Section 16-6a-603(2) says that "[a] person may not be admitted as a member without the person's consent."

In a subdivision with an HOA, the CC&Rs will typically say that every person who buys a lot in the subdivision is a member of the HOA. This means that by buying a lot, a person consents to being a member of the HOA.

When a person buys a lot in Dixie Springs however, the person is not consenting to being a member of an HOA, and the person is not necessarily consenting to being a member of the ACC either.

5. Side and Back Walls need to be outside the setbacks.

This is not true. The CC&Rs state: "The Architectural Control Committee will consider approval of aesthetically compatible fences and walls which are no more than six (6) feet in height, are located on the side or rear Lot Lines of a Lot, or on the perimeter of a patio or open porch and do not extend beyond the front or rear yard setback lines. Walls between adjacent properties are located on our property lines and are considered "party walls".

6. Any new Board Members need to be voted on by the community.

Section 3.2 of the Bylaws specifically state that the ACC "may, as it deems necessary, increase the membership of the committee as determined by a majority of the then appointed members", and Section 4.1 states that the initial board of Directors shall consist of three Directors but may be increased by the majority vote of the ACC. The ACC can bring on new board members up to a total of 7, and replace board members that resign, without a lot owner vote. Three ACC board members are not sufficient to handle the tasks and duties expected of the ACC today.

After the election, the ACC immediately brought on a new board member to help handle the workload. The new board member was voted on as prescribed in our documents and was announced in the first newsletter. The ACC is being transparent and is acting without secrecy. We are committed to perform our duties and actions with great care.