

Centennial Trail HOA Annual Meeting 2022



- Update on drainage easements and rules
- CCIOA meeting rules
 - Colorado Common Interest Ownership Act
 - How our meetings must change
- ACC and home sale

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- Update on drainage easements and rules

Drainage Rules and Easements

- Swales and drains in the parks
- Easements along North and South perimeters
- Pump discharge into street

Nothing in this talk is new.

Everything I say here was in minutes of board meetings.

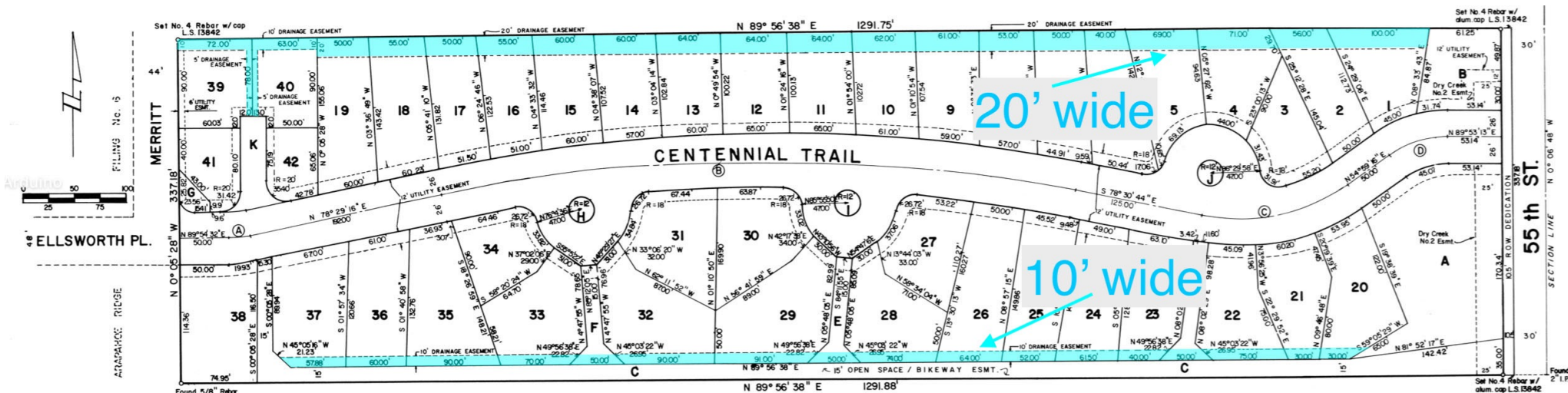
This presentation an attempt to disseminate the information as widely as possible and not intended to start further discussion!

Swales and drains in the parks

- The pipe under 55th St is City property
- It was missing from City maintenance plan and has been added
- All infrastructure within the parks belongs to CTHOA
- Pipes from street to park, under the footpath, belong to CTHOA
- Design and maintenance are up to CTHOA
- Research by City staff found no agreement with City on how it should be done.
- HOA volunteers continue to clear the drains
- No prices have been obtained for redesigning the drainage

What is a Drainage Easement?

- This slide all **CO state law**. (Not City or HOA)
- No formal legal advice has been received
- Board have simply read public documents
e.g., <https://www.hbcboulder.com/construction-law-blog/tag/drainage+easements>
describes CO state law
- Establishes principal that property be maintained to allow drainage flow
- Upstream property owner can sue to recover damages from the downstream property owner after the fact
- We have found no power for anyone (HOA, homeowner, City) to enforce a specific design on how that drainage is maintained.



- Research by City staff showed no 'Master Drainage Plan' filed with City so this plat is everything you have to go on
- 'Easements' intended to allow free flow of surface water in flood
- Original concept had a swale/ditch along each easement
- HOA board encourages all owners to clear and maintain these swales
- HOA appears to lack power or jurisdiction to enforce drainage easements

Pump discharge

- The City strongly discourages discharge of sump pumps into street
- Repeated attempts by multiple board members have failed to receive any satisfactorily clear statement on this from the city.
- HOA has **absolutely no jurisdiction** to enforce this.

8-2-8. - Discharging Water Prohibited.

(a) No owner ... shall cause or permit water to flow upon any sidewalk, street, alley or other public right-of-way:

- (1) So as to impair the use of such place;
- (2) When the weather is such that the water may be frozen into ice;
- (3) Where the drainage is such that it may create a hazard to persons or property; or
- (4) Where it may cause damage to any public property or facility.

11-5-5. - Discharges to the Stormwater Utility System.

(a) Illicit Discharges Prohibited: No user or other person shall discharge any illicit discharge into or upon the stormwater utility system, any public highway, street, sidewalk, alley, ...

(d) Exemptions: The following discharges are exempt from the requirements established by this chapter:

- (1) Landscape irrigation and lawn watering associated with single-family detached or duplex development,
- (2) Uncontaminated groundwater or surface water pumped from a foundation drainage or crawl space system in accordance with the regulations of the Colorado Department of Public Health and Environment

https://library.municode.com/co/boulder/codes/municipal_code
https://library.municode.com/co/boulder/codes/municipal_code?nodeId=TIT8PAOPSPSTPUWA
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- CCIOA meeting rules
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CCIOA

- Colorado Common Interest Ownership Act
- The Colorado law that governs HOAs
- Ongoing (several years) process of bringing CTHOA in line
- Some things it overrides our HOA Declarations and Bylaws
- Some things it defers to our Declarations and Bylaws
- From meeting (8th Sept 2021) with city attorney representing Boulder Neighborhood Services
- Read it yourself?
 - C.R.S. Title 38, Art. 33.3
 - <http://www.lexisnexis.com/hottopics/colorado/>
 - <https://law.justia.com/codes/colorado/2020/title-38/article-33-3/>

Don't Hold Votes at Annual Meetings

C.R.S. 38-33.3-303

“(1)(a) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.”

“(2.5)(b) ... before the board votes on an issue under discussion, unit owners or their designated representatives shall be permitted to speak regarding that issue.”

Advice from city attorney:

- The board cannot exercise powers that are reserved for the membership
- It is inappropriate for membership to vote on anything that is not *explicitly* reserved for membership vote.

Powers reserved exclusively for membership

- Borrowing funds for common area development [Cov]
- Dedicating common area to public authority [Cov]
- Annual dues increase >10% per annum [Cov]
- Special assessments (except to replace damage) [Cov]
- Amend declarations, bylaws [Cov,BL,Act]
- Election of officers [BL,Act]
- Removal of officers [BL,Act]
- Terminate the HOA [Act]
- Redefine eligibility, powers or duties of the board [Act]

Advice from city attorney:

- Only questions for which a proxy was circulated in advance can be voted on
- You cannot create a vote ad hoc at the meeting

Don't Vote to approve the budget

C.R.S. 38-33.3-303

“(4)(a)(II)(a) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners.”

“If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.”

Advice from city attorney:

- “majority of all unit owners”, not majority at the meeting
- Cannot modify budget – Accept or Veto

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- ACC and home sale

ACC inspection when house sold

- In advance of a sale, the title company requests a range of information from CTHOA regarding the status of the lot.
- The Architectural Control Committee (ACC) inspects the property for violations of Sections 8 (Architectural Control) and 9 (Land Use Restrictions) of our Covenants.
- If the ACC finds violations, the board reports these to the title company.
- In theory, if a potential buyer does not like how this plays out, the buyer could walk away from the sale.
- Please contact the ACC and/or Board early in the process - as you are **preparing** your home for sale.
- http://www.centennialtrailhoa.org/b_contact.html