

An Introduction to Establishing Review Board Services as a Component of an Architect's Professional Practice

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PREFACE

According to the Community Associations Institute, more than 60 million Americans reside in approximately 305,000 association-governed communities, which include among other neighborhood types, city-size master-planned communities. Undeveloped parcels in these communities currently represent a sizeable percentage of ready to build single family home sites nationally.

Since early 2009 planned communities across the US have experienced unprecedented foreclosures and short-sales of homes and undeveloped lots. Developers in many cases have abandoned their communities. Owners already invested in these communities have seen their property values plummet, and know that recovery of values may take a decade or more. The common fear is that the influx of poorly designed and constructed homes, mostly proposed by purchasers of foreclosed lots who actively seek to bypass community standards, will create a blight of low quality housing in their community resulting in ‘permanent devaluation’.

The need for professional leadership has never been greater than at the present time. Even during this lengthy recession, Architectural Review Boards (ARBs) continue to influence the design or modification of tens of thousands of single family homes each year. Without professionals to evaluate the proposed designs, and with ARB members often having limited knowledge of what drawings really communicate, problems are usually not seen until the home is completed. Owners want values protected. Architects have the knowledge to assist community leaders in developing positive, holistic solutions and need to have a visible presence on review boards. And this assistance should be provided as a professional service for a professional fee.

A note on volunteerism. A recent question posed during a session for residential architects at the 2012 AIA National Convention asked how many serve on Architectural Review Boards? A significant number of hands went up. When asked the follow up, how many do so for a fee? Only one hand remained up. In a follow up conversation it was learned that one is paid a fee of \$150 for about eight hours work on a developer controlled ARB. It is this writer’s opinion that while serving on a Board to help a not-for-profit organization providing such things as humanitarian aid to the displaced is admirable, providing professional services to persons who can well afford to pay for them diminishes their value. To that end, a portion of this paper will focus on making the transition away from free ARB services without creating a financial burden to the not-for-profit HOA Board.

The fact is that while we remain focused on securing that single commission to make our numbers work each month, we are not seeing the full value of what we can provide. That being the knowledge to properly

influence the development of the community, as reflected in the appropriateness, aesthetics and value of each individual home.

To that end, we architects should collectively develop professional practice standards that establish service to an Architectural Review Board as a component of a regular professional practice, supported by documents and standards similar to those available for other aspects of our work.

There is also another important area architects can contribute, and which is the singular reason this Architect chose to share his thoughts with fellow professionals on how to add Review Board services to a professional practice. That is the collective value that many architects can have if we see this as an opportunity to influence on a large scale the choices owners make with respect to sustainability; and if we agree to work together.

Architects are already actively engaged in educating regional governments as well as their clients on the need for sustainable measures. However, other than occasional submissions of their designs to review boards, architects have little opportunity to educate the decision makers in Planned Communities on the value of sustainable standards and the means to implement them within their communities. Meeting critical sustainability goals, such as those proposed by the AIA 2030 challenge is needed to ensure survival of a quality of life for ourselves and the seven billion (and rising) people occupying our planet as we progress into the 21st century. To overlook this opportunity to make significant inroads into an area where principles of sustainability could be easily communicated and acted upon would be a travesty.

Therefore, promoting sustainability is recommended as a necessary component of the standards of practice for this endeavor.

This program outlines, from the writer's personal experience, a series of steps and some tools needed to add this service as a component of a residential architect's professional practice. It also describe the means to organize and/or supplement credentials of architects who specialize in single family home designs so that they may serve these communities long term in a professional capacity as educators, consultants and consensus builders. The program further presents some of the methods employed to secure design commissions within these communities without creating a conflict of interest between service to the community and service to an individual property owner.

And finally, this paper presents some of the important documents that architects will encounter as they serve communities, including a sample of a contracts for these professional services.

The Structure of Planned Communities.

Almost all single family residential communities are governed by a document entitled, or similarly titled: “Covenants, Conditions and Restrictions” (CC&Rs). This document authorizes the establishment of the Home Owners Association (HOA) and as a component of the HOA, an Architectural Control Committee, Architectural Review Committee or Architectural Review Board (collectively hereinafter called ‘ARB’). *(Even though the word “control” has implications in the American lexicon much more forceful than “review”, there seems to be little difference in the authority or practices of a ‘Control Committee’ versus a ‘Review Committee’ as seen in the various community’s governing documents. Similarly, there is little if any difference between a ‘Review Committee’ and a ‘Review Board’.)*

The CC&Rs cover many issues related to the HOA, and generally only make general statements about the ARB, leaving the formation of Guidelines or standards to the actual committee. The CC&Rs are not easily modified, typically requiring two-thirds majority of owners to modify. A developer controlled community, one not handed over to owners, can more easily change this document since the developer often retains a controlling number of votes until some threshold is reached or until it has sold the last lot.

The consulting architect may well be required to navigate within these two phases of a community’s life and will very likely be involved in the transition from a Developer controlled community to one that is Owner controlled. While developer controlled, the architect should engage as soon as possible in discovery of written rules in the CC&Rs that may not support sustainable measures or have other negative consequences that may not be seen by the developer. For example, the requirement to drill wells *(in what the architect may know to be a fragile aquifer)* for lawn irrigation may be stated in the CC&Rs. If left unaddressed, the consulting architect will be required to enforce this requirement. An architect knowledgeable of this unsustainable condition may be able to influence the developer to change the requirement in favor of sustainable measures more easily than convincing an owner controlled Board to go to the expense and take the time to convince other owners to agree to the change.

Planned Communities will also have Bylaws establishing governance, meeting times and terms of service for officers. The provisions of Bylaws of each community are important for the consulting architect to know, but are not particularly germane to the work of the ARB.

In the paragraph above, the term ‘consulting architect’ was used. This is a term that appears to work well in describing the role of the professional architect on the ARB in most cases. And in all cases, it is wise for the architect to clarify with the HOA his/her specific role. The significance is directly related to professional

liability. This is a topic covered later in this paper, but with respect to CC&Rs, this document most always makes provisions for the officers and ‘agents’ of the HOA to be covered by liability insurance purchased by the HOA. Agents typically include the Association Manager and the HOA attorney. The consulting architect should insist on being recognized as an agent of the HOA and require in their contract that a certificate of insurance be provided to them for their work. It is also important for the consultant architect to be named as a member of the ARB, and not it’s chair, and certainly not the person who makes the sole determination with respect to an ARB determination.

The consultant architect should be the entity that apprises the committee when a proposed home is not in compliance with the published Architectural Guidelines (Guidelines) or when the design needs aesthetic improvements. It should also be the entity that prepares the determination letter ‘on behalf of the committee’, but is not the committee, and should never act unilaterally. In every case, this writer insists that the Chair of the ARB have the final word on the issuance of any determination letter, and this authorization is retained by this writer as a permanent record.

There is often another authority which is sometimes present and must be considered in the management of the HOA and specifically the Administration of the ARB. This is the individual State’s Statutes related to Planned Communities. In North Carolina for instance, there is the General Statute Chapter 47F, The Planned Community Act. This law is a higher authority than the CC&Rs unless the CC&Rs were in place prior to the adoption of the Statute. The provisions of the Statute typically are applicable only if the Owner of the property does not abide by the CC&Rs or the Architectural Guidelines. Knowledge of and familiarity with the particular State enacted Statutes with respect to HOAs and ARBs is essential, since the consulting architect will be an essential part of any action against an owner for non-compliance of the Guidelines.

A word on behalf of adoption of a Planned Community Act. In South Carolina there were efforts made to enact such a law, but in the spirit of not wanting more government regulations this act was defeated a few years ago. However, in some South Carolina Association CC&Rs it is written that the ARB may come onto a property anytime there is a non-compliance observed and remove that item at the owner’s expense. No notification required. In addition, the owner who purchased property and accepted the Guidelines waived rights to filing legal action to prevent such intrusion. Although this and other draconian measures are sometimes placed in CC&Rs, no doubt with the developer’s attorney’s concurrence, and perhaps insistence, they can hardly be considered appropriate for creating or maintaining peaceful enjoyment of the community.

A Planned Community Act, such as that provided to North Carolina residents has merit in giving both parties recourses for alternate conflict resolution.

Other documents that are regularly found to be useful to the consulting architect are the Plat drawings of the community and other recorded documents specific to that community's plan. In many cases, the developer will have applied for and received concessions with respect to setbacks and other zoning limits enforced in a neighboring community, or they may be held to a higher standard than adjacent communities. Simply knowing to ask for copies of these documents during an interview often impresses HOA Boards that you as an architect know what you are doing.

In Coastal locations there are often impervious area limits regulated by State water quality agencies, and possibly regulations with respect to a particular watershed or aquifer that individual lot owners or HOA officers or Association Managers will not be familiar, but which may impact the usability of sites within the community.

Architectural Guidelines, Standards or Checklists (hereinafter called Guidelines) are the legally binding requirements that the architectural consultant is called upon to interpret and assist in enforcing. The question you will no doubt ask first is: If they are legally binding, why are they called Guidelines as opposed to Requirements? This writer has not heard a reasonable answer to that question. What the consulting architect needs to know is that when there are specific items listed in the Guidelines, these are requirements and are enforceable. If there are items not written in the Guidelines but are viewed by the committee as necessary to complete the aesthetic of the home or hold it to standards equal to other homes in the community, these are also enforceable as requirements. The ARB is given broad authority to interpret the Guidelines, and while having written standards is important, other reasonable conditions may be enforced as conditions dictate. This is particularly true in themed communities where an otherwise well-designed home may have all of the required elements but misrepresent the theme.

In several community Guidelines this writer observed the statement that the ARB can reject any submittal for any reason and without stating a cause. It is highly questionable whether this is defensible in court, but the more important considerations are simply ones of courtesy and professionalism. If there are compelling reasons to reject a submittal, these should be articulated in the most thoughtful and helpful manner possible. The architect's skill in writing and commitment to be courteous (and you will be challenged in this regard) are keys to success in this market.

The golden rule of the Guidelines is “Be Consistent”. If a standard is enforced for one home, it should be enforced the same for all others. A simple enough rule but one which has to continually be brought to the attention of ARB members, especially with an owner controlled community where a relationship between an ARB member and a friend making a submittal may result in a request for special consideration.

Being inconsistent in ARB determinations is the singular greatest opportunity for successful litigation against an ARB and HOA.

Guidelines are not unchangeable. In fact, as a community matures, it may be necessary or just simply helpful to add clarifications to the document. Much like a specification, once issued, addendums are added to clarify points based on events during the bid phase or construction. The Guidelines will also have addenda written from time to time and every year or two, they will require revisions to incorporate addendums into the body of the text.

Two other items worth noting. The Board of Directors in planned communities typically appoints members of the ARB and in some cases are required by their CC&Rs to have an architect on the committee. The ARB is not typically required to obtain approval of the Board for any decision it renders, nor obtain approval of the Board to modify the Guidelines. This is not generally the way a committee of a Board works where committee recommendations are brought to the Board for a final decision. Although it is typically a good idea to inform the Board of any change, since they are often approached by owners when there is a concern about an approval, it is not required. ARBs are established in this fashion so as not to be unduly influenced by persons with other agendas.

The second point is that it is not generally a good practice to have Board members also serve on the ARB. However, there are communities where the entire Board comprises the ARB. Unless this is challenged legally on a case by case basis, the Board can do as it sees fit.

One thing that this writer insists and has placed in his contract for services is that a Board member serve as Chair of the ARB, if for no other reason than to ensure the HOA retains control of its own community, and secondly to ensure ARB issues are communicated to the Board for information.

A sample set of Guidelines is incorporated as an appendix herein for reference.

OUTLINE OF THE PROGRAM

Identifying the “gate-keepers” of a planned community:

Ultimately, the goal is to secure an agreement with the Home Owners Association (HOA) to provide professional services. Developers generally establish a not-for-profit HOA prior to offering lots for sale in order to ensure the vision for the community is articulated. It also serves to assure early buyers that these standards will be carried on after the developer has released control to owners.

The HOA will be either under developer control, meaning the developer has appointed Board members to serve on the HOA and represent the owners (often officers of the development company), or the developer has given control to the Owners. In this latter case, the HOA will elect a Board consisting of owners and will have hired an Association Manager or have chosen to manage the community itself. A small community will often self-manage, at least until the Board members realize how much work is involved and how much constant scrutiny they are under.

Marketing strategies for each of these three organization models will vary. But the first task is to find out who is the gate-keeper for the community. We will first of all focus on communities that have contracted with a management company, as these are the most prevalent.

If you are interested in finding out about a specific community, some will have signs posted at their entry giving the name of the management company you should contact. Another tact is to go to tax records and find the name of a resident in the community and call them. Tell them simply you are an architect and ask if they can direct you to their management company.

To simply explore what is available in your geographic region, go to the telephone directory or internet and look for Association Management or Property Management Companies in your area. Another source is the Better Business Bureau website for Association Managers or Property Management Companies. You will typically find a list there that also gives the length of time the company has been a BBB member, another valuable bit of information.

When reading the information about each association management company you will get an idea of the kind of services they offer and whether they serve HOAs or simply work with managed properties to collect rents and support maintenance.

You will also find that Association Managers are very protective of their clients. Some will say this is a policy to afford the community officers privacy, but mostly the reason is that they do not wish to give away their clients names to their competition. Management companies are very competitive with one another. Their services are under the microscope continually, and with little notice, a complaint filed to the Board by a disgruntled owner can lead to their dismissal.

What they look for continually is a way to set themselves apart from other management companies. The value an architect brings to a discussion with them is that difference. By having in their portfolio an additional service or relationship to a professional that other association managers may not have is something they will likely find attractive.

Architects have not been in their field of view because we are looked at simply as the people who sometimes bring in drawings for the ARB to review. We need to present the Management companies with a different view. That being the additional resource they can bring to their client that others may not have.

Marketing to a developer has a different dynamic. Finding a community that is developer controlled may be as simple as looking for advertisements for communities still having lots for sale. The developer will no doubt have a real estate division handling sales, and a contact to an agent can result in a lot of information, including copies of CC&Rs, Guidelines and who the developer may have on their ARB.

The value to the developer of having an independent architect is to reduce their liability. Developers are notorious for doing what they need to do to make a sale, including violating their own Guidelines. While the small print in the community documents will waive the developer from following their own published Guidelines, the increase in litigation in recent years has made them very cautious. Architects can provide a consistent approach to ARB administration and take the heat off the developer. Most developers will see value in this.

The last group is the community that does not have a management company. Typically, these communities are small and somewhat isolated. You will most likely discover them as you make calls to locate association managers for the community. If they do not have an association manager, ask who is their Board President or head of their ARB. Identifying yourself as an architect and asking for this information generally meets with a positive helpful response.

In preparing for a meeting with any of the above parties, being familiar with the communities within yours and their geographic area will be useful. Most architects reading this paper will already know their area

intimately. Even still, going to the local GIS, or even Google Earth for a snapshot of how many un-built lots exist in the community will help in culling out some communities with little or no need for ARB services. However, in general, due to the rapid shutdown of community development endeavors over the past few years, you may find many communities with a large percentage of vacant lots, ready to be built upon.

Towards an Introduction

As a residential architect, you will already have an extensive portfolio of work. This work will need to be organized with two primary goals in mind. The first is what you can do to assist the management company in presenting itself as having a resource not usually available from others in their field. The second is to show the professional skills and tools you bring to the community to make the ARB process run smoothly.

Assisting the management company: Attached in the appendix is a flow chart that shows the usual steps and the entity responsible for each step as part of the total scope in managing the ARB process including reviews of submittals. The management company often coordinates the receipt and distribution of documents from owners as part of their service, leaving the actual evaluation to the ARB. This is time consuming and often done as a courtesy, without much compensation. Your ability to manage this work will be a relief to most.

Your most important selling point is the way you will conduct the reviews. Management companies consist of specialists in many things other than design. By presenting plans, elevations and details you can demonstrate from your own experience how a project progresses from the program stage, through schematics, design development and construction drawings and the work required for field inspections.

What you will also wish to emphasize is how important you see placement of the home on the lot, the relationship with existing topography, how the massing and composition can be evaluated fairly, and how materials need to be detailed to complete a design. What is always evident in listening to an architect's description of design is that there is more to designing a home than just drawing a plan. What will also be evident is that you as an architect will be able to elevate the dialogue between the ARB and the individual home owners.

As part of this paper, some of the tools useful in managing the process will be attached, and may be used freely if they are helpful in communicating how you will manage the process.

In speaking to Association Managers and eventually the HOA Board, you should emphasize that you are not performing design services for owners. The owner's architect or professional designer should be doing this.

You should state that you will assist the committee in evaluating the design and will draft a response letter to the owner, but that your providing a design to an owner creates a potential liability for the HOA since you are acting as their consultant.

For instance, your helpful sketch showing a change in a roofline may not be fully coordinated by the owner's designer with other elements of the design resulting in a leak and fingers being pointed to you. This is why writing skills are important. Advising in writing that a design is not acceptable and stating the areas where the designer needs to concentrate more effort should be the extent of your involvement in the design. Making a quick sketch for an owner is one of the greatest temptations in this line of work. But if you are clear to state that you are not the home's designer, and a verbal description is all that you will provide, you will most likely remove yourself and the HOA from potential legal action.

While the normal course of design consists of the steps mentioned above, the ARB will require one or more of the following interactions with owners.

Concept review: This step is highly recommended since it gives the ARB an opportunity to review the schematic plan and ensure the designer is preparing a properly themed home, or meets other community core standards such as size, general composition and relationship to the site. For this reason, the review should include as a minimum the site plan, four elevations and a roof plan. It is not necessary to see the interior design of the home as this is not within the scope of most ARB evaluations.

Preliminary Review: Likened to a Design Development review, much more detail is provided and includes the selection of materials. This step is important in that the owner will often use information at this level to secure financing.

Final Review: This last step in the review process should include the construction documents and all material color selections.

Following the approval of the final submittal, it is recommended that the architect include in the professional services agreement the time to meet the owner on site at three specific times: Site Staking; Dry-in and Final Review. A list of items checked during each of these visits is attached in the appendix.

Avoiding a Conflict of Interest

As an architect serving on an ARB, you will eventually be asked if you have to be hired in order for a design to be approved. If you are able to secure enough work serving on ARBs without performing designs for

clients you may simply have simple response to that question, Such as: “ Our firm does not perform design services for communities where we serve on the ARB to avoid a conflict of interest.”

Since customizing homes for clients is what you enjoy, and you most likely do not wish to give up this part of your practice, you should have a specific strategy to avoid even the perception of a conflict of interest: Here are some suggestions:

- Assist the HOA in compiling and publishing the names of architects (and the ARB will also wish to include non-architect residential designers who have provided acceptable designs in the past) who have qualifications to design homes of the caliber expected in the community, your firm being one of them. Acknowledging to any question about a potential conflict that any one of the firms listed by the community has the capability of providing an acceptable design, is a reasonable way to deflect this criticism.
- In a larger firm, you can functionally separate the person involved in ARB work from the residential design group. A senior partner who may oversee the work of others in the office may be sufficiently detached to not present a conflict. You can acknowledge this separation of interests in any number of creative ways, by having it stated on the community website, or included in your contract for services so that the Board members are aware of your efforts to be fair and impartial.

Making the Transition to providing professional service to an ARB for a fee.

As witnessed at the 2012 AIA National Convention and in discussions with professionals on other occasions, it appears many architects are now serving on ARBs for little or no fee. As volunteers to assist ones own neighborhood we should follow the lead of doctors who expect payment for an office visit, but who volunteer for other duties in their neighborhood. Where a developer has suggested your underpaid or even unpaid service to its business gives you a greater chance to gain access to potential clients, you need to evaluate what this arrangement is actually bringing to the table for you, and if you were not serving on the ARB, whether you would truly lose opportunity. Developers are noted for hard negotiations, and should expect the same in return. If this arrangement is working, then for that developer you may wish to leave this arrangement as is. But be aware that by serving on the ARB you have a legal responsibility to the HOA, and unless you have a written contract with the developer and the HOA, you may not have the protection from liability that any decision you render can create.

Others who may have never served on an ARB may see this an unexplored opportunity.

In all cases, elevating the value of this service so that it returns an acceptable fee for your efforts is a direction this paper wishes to promote. Here are some suggestions for making a transition:

- Any initiative should be part of your firm's business plan. That plan will delineate the opportunities and risks. Begin to draft an outline for an ARB component to your business plan now. Focus on identifying market potential by discovering which communities in your area have an ARB.
- Contribute to and take time to critically evaluate contributions to the dialogue we wish to encourage between professionals as we move toward standards of practice for this work.
- Begin to reformat your marketing materials to tell the story of how you will contribute to the ARB as a professional architect who is working with standards developed in collaboration with other professionals.
- Arrange a meeting with the Board of the ARB or developer you serve for little or no fee, or the owner of the Association Management company who is the agent of the HOA. In presenting yourself listen to what they are telling you about their needs. Architects are especially good at this. Be prepared to speak to how to retain value, what to do with violators or the Guidelines, how to break up factions that have formed in the community.
- With the Association Mangers, stress that you are looking for a relationship that will be long term and which will benefit both of you. Their bringing a professional to the community and having this professional take the pressure off of them with respect to the many issues that come up during the ARB review process may be seen as a relief. You may also be seen as someone who is taking money off their plate, since some charge for handling the ARB paperwork. But virtually none will admit to being knowledgeable as to whether a design is appropriate or not.

What you may not have readily available are the knowledge and tools to elevate the value of your service. The intention of this paper is begin sharing knowledge and tools, but to also entreat interested professionals to agree to work together in creating the standard of practice that will validate our assertion that the fees we charge bring value to the community without increasing its burden. (A key point is that owners of proposed homes pay the consulting architect's fee, not the HOA – the HOA is getting value with no expense.)

- At a point you will have prepared a presentation package showing the additional services, insights, skills, attitudes that you bring to this work. Your main thrust will be that you can protect values, which is in fact the purpose of having an ARB in the first place. It is also the most important thing any owner or Board member in a community has on their mind.
- In presenting your case for securing a fee for your work or increasing that fee, you will no doubt need to educate your potential client as to what an architect ‘really’ does apart from drawing a nice picture. Bringing to the table a set of standards such as those we will create together and showing that these are now being adopted by architects nationally will carry additional weight. But of course, we will need to collaborate in order to create these standards.

Professional Networking – creating a Learning Organization:

On the following pages are examples of documents used during a review process. Forms are also included for the various inspections and qualifications. Some or all may be useful as an introduction to this service. They represent one firm’s attempt to make inroads into a service not generally recognized as mainstream by our profession in that this work is not supported by standards or documents readily available, or perhaps not yet conceived, from our professional associations.

But it is abundantly clear that having resources such as standards of practice would be very beneficial in promoting the profession as knowledgeable experts in the field of Review Board services. And would greatly help in elevating what has traditionally been a voluntary service to one that contributes to the wellbeing of communities, engages a larger number of persons in a dialogue with respect to sustainability and allows architects to receive appropriate professional compensation.

There is a base of knowledge that goes beyond the experience of this writer that needs to be added to the dialogue. In creating a successful initiative, leading to significant inroads on a national scale, on-going collaboration among professionals by means of a "learning organization," with architect educating architect, is viewed as essential.

This paper is the first attempt to garner interest from like minded professionals to develop such standards in a collaborative manner that will benefit us as professionals and benefit the communities we serve.