

Is it a Bird? Is it a Plane? No it's a Drone!

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I knew when I saw a popular discount store advertising a drone complete with video camera for less than \$100 that many folks – young and old – might receive one as a holiday present. Now, with the holidays behind us, your community may be “abuzz” with the sound and spectacle of these unmanned aerial vehicles flying over common area and lots alike. How can the Board balance the views of drone enthusiasts and quiet enjoyment proponents? Or draw the line between appropriate recreational use of the common area and nuisance?

In this case, considering drone use under the Association’s CC&R’s will not be enough. Drone operators now enjoy significant protection under state law. Effective October 1, 2015, AB 239 established the right to operate drones in this state in a manner which is not inconsistent with federal law.

The Federal Aviation Administration (“FAA”) regulates drones (called “unmanned aircraft systems” in FAA-speak) operated by government, businesses and private individuals. However, Congress created a “carve-out” from FAA regulation for model aircraft which includes drones flown for hobby use; operated in accordance with community based safety guidelines, weighing not more than 55 pounds, and flown within the operator’s visual line of sight. Visit www.faa.gov/uas/ for more information.

Under Nevada law, the right to operate a drone will generally supersede any CCRs or rules to the contrary, except where the operator flies the drone below 250 feet or unreasonably interferes with the existing use of the property. Here, the CC&R’S will determine what property the Association owns and has the authority to regulate. In some situations, this may not include individual lots. The law allows the landowner to bring a trespass action against operators for low altitude operations provided they give notice that such operations are unauthorized. However, law enforcement, public agencies and businesses or land surveyors who are properly licensed are exempt.

In summary, managing drones in the community will not be as simple as adopting a CC&R based rule. But with proper research and consideration, the Board can find an appropriate balance that is right for the community.