

SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)

Minutes of 11/18/21 Meeting

(7:00 PM via Zoom)

Approved at 12/02/21 Meeting

1. Attendance.

Maria S and JB took attendance. All but 3 members were present. Josh Jensen was absent. Maria Mitchell had sent an email that could not attend, but included comments relevant to this meeting. Art Recek was unable to join due to computer and Zoom issues. SROA members Laura Biewick and Linda Rulli joined the meeting as observers, per the open invitation of this committee to SROA members to listen in.

2. Review and approve Minutes.

Minutes of 11/9/21 meeting, as modified by prior suggestions from members, were approved.

3. Additional Procedural Matters.

In light of Maria Smaldone's volunteering to prepare the first draft of the Minutes of each of our meetings, she was unanimously elected Secretary of this committee (with the clear understanding that her *sole* duty is to take attendance and prepare the first draft of the Minutes of each meeting). JB will edit the first draft and then send it out to the members for review.

A new link is required for each Zoom meeting. For all future meetings, the Zoom link will be provided several times to all members, including once very close to the date and time of the meeting.

Kylie introduced some voting and polling options on Zoom that she is working on and that we may use once some details are worked out.

It was decided that a quorum for these meetings will be 80% of the total committee membership. With 22 lots currently represented on the committee, it was agreed that the quorum requirement now will be members representing 17 lots. As the Moderator, JB is not a member of the committee and does not vote.

It was decided that a simple majority vote will be used when voting on committee matters.

3. Report regarding Committee's key legal questions to date.

JB reported on his review of the provisions of the Colorado Common Interest Ownership Act ("CCIOA" – pronounced "Kiowa" - found in Colorado Revised Statutes §§ 38-33.3-101 through 402) that are relevant to our community, which he followed with a short but detailed Q&A session with Brianna Schaefer, legal counsel to SROA from the firm of Winzenburg Leff Purvis & Payne in Littleton:

- *Q: What is the absolute minimum that must be added to our current Covenants (adopted in 1979) to bring them into compliance with current Colorado law?*

A: Actually, nothing. As the Covenants now stand they are not contrary to state law, so nothing is needed to bring them into compliance with current Colorado law.

However, our current Covenants fail to address one legal issue of significant importance: a clear statement as to *what kind of community* we are defined as being under CCIOA. Our covenants should clearly state whether SROA chooses to be totally subject to all requirements of CCIOA (80 pages in the official statutes), or chooses to be a “limited expense planned community” under CCIOA, which makes us subject to only a few CCIOA provisions (8 pages), none of which actually affect our community in any meaningful way. Shortly before the meeting, JB had emailed copies of those 8 pages of CCIOA to the members. He encouraged everyone to review them for themselves to confirm that there is nothing burdensome or even particularly relevant to our community.

- *Q: What are the advantages and disadvantages of having our Covenants identify SROA as a “limited expense planned community” under CCIOA?*

A: The major advantage is that, as a limited expense planned community, we will not be under virtually any substantial regulations or requirements of CCIOA. Our small size and type of development are not what CCIOA was primarily designed to regulate, so CCIOA provides a way out of most of its provisions for communities like ours: the “limited expense planned community” designation.

The major disadvantage is likewise: as a limited expense planned community, we would not get all of the powers and protections that CCIOA provides as a matter of law. But that disadvantage can be overcome, as explained next.

- *Q: Is there a way to compensate in our Covenants for the disadvantages of being a “limited expense planned community”?*

A: Yes. We can look to CCIOA for those (relatively few) provisions that might be beneficial to our community and simply adopt them – verbatim or edited as we wish – right into our own Covenants. Rich expressed the view that what caused a quagmire last summer was that the proposed Amended Covenants did incorporate some CCIOA provisions, but that the reasons for making these additions to our Covenants were not adequately explained. All agreed that holding community forum meetings where everything can be explained will be an important element of our process.

- *Q: If we decide that it is in the best interests of SROA to be classified as a “limited expense planned community,” what do our Covenants need to state to achieve this?*

A: SROA’s lawyers drafted the proposed Amended Covenants with the clear understanding that SROA’s best interests will be served by being identified as a limited expense planned community; therefore, the proposed Amended Covenants covered what

was needed. Going forward, all we will need to do is match the language in the proposed Amended Covenants referencing key CCIOA provisions in Section 1.1 and Section 5.5.

- *Q: What is the current cap on the “annual average common expense liability” to keep SROA in the “limited expense planned community” category? [The cap figure was \$400 per year in 1992. After annual adjustment based on increases in the CPI, what is it now?]*

A: Shortly before the meeting, JB had separately emailed copies of the parts of CCIOA that address this, together with a spreadsheet showing Brianna Schaefer’s and his separate calculations of the cap annually since 1999. While those calculations differ slightly, the cap is clearly higher than \$635 per year.

- *Q: What expenses are / are not included in the “annual average common expense liability” figure that must be capped as just discussed? Is that relevant to us?*

A: Annual dues are included, of course. If any special assessment might later be approved by the SROA membership, it would be included. Note that our annual dues for 2021 were only \$80, and there are no special assessments. Therefore, the cap is unlikely to become relevant to us unless, sometime in the future, a special assessment were to be approved by the SROA membership. Then we would need to pay attention to the cap calculated to that date, and make sure we do not exceed it.

4. Members’ reactions after studying the 1979 Covenants and the Amended Covenants: Which document should serve as the base for our work going forward, and why?

Everyone voiced the opinion that the 1979 Covenants need to be revised because they do not address the “limited expense planned community” issue just discussed, but that last summer’s proposed Amended Covenants were too long, complicated, and seemed at points to go too far.

Several members felt strongly that we should start with the 1979 document and make all changes to it, but not do anything more than what was minimally necessary. Many felt we should compare both documents, topic by topic, and create a new document. A few felt we should look only at the proposed Amended Covenants because it is the more complete of the two and is the work product of lawyers who do this kind of work for a living, and just needs to be cleaned up; we could simply debate any necessary changes that members may propose. Several speakers emphasized that it will be easier to change or eliminate language from the amended document than it would be to draft brand-new language to add to the 1979 document.

Mike noted that last year at the start of the Covenants project, the Board had instructed SROA’s lawyers to keep everything that was still relevant and important in the 1979 document and incorporate it into the proposed amended document. He believed they accomplished this.

It was suggested that we move through the amended document topic-by-topic, while making sure for ourselves that the amended document retained all material provisions of the original document that are still relevant (e.g., we don’t need provisions related to the developer anymore). Charlie and Mary noted that they each had started preparing side-by-side

comparisons of the two documents which would do just that; they agreed to send them to JB to share with the rest of the committee within a few days.

After more discussion a vote was taken, and a majority voted in favor of using the Amended Covenants as a base document to edit, but to constantly assure that all necessary provisions of the 1979 Covenants are retained in the new revised version being created.

JB agreed to do his best to edit the new document to be as readable and straightforward as possible, without affecting its legal effectiveness. He noted that at the end of this project (probably after the Board has reviewed the Committee's effort), the final version should be submitted to SROA's lawyers for review and approval. This should not take much lawyer time given that he can provide them with a simple redline showing the changes to their own document.

Other Comments:

We don't want ever to lose sight of what we have in the original Covenants.

We don't want to lose the theme and concept of our community as stated in the original Covenants, Section 1: INTENT. It was noted that this language is repeated almost verbatim in the Amended Covenants Section 1.2. But we always want to keep it in mind.

When we make a change, an explanation of why the change was made will be very important.

5. Agenda and date/time for next meeting.

The next meeting will be Thursday, 12/2/21 at 7:00 PM by Zoom.

6. Adjourned at 9:01 PM.