

## **SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)**

### **Minutes of 12/02/21 Meeting**

*(7:00 PM via Zoom)*

*Approved at 12/16/21 Meeting*

#### **1. Attendance**

Members present: Rich Bainbridge, Susan Barden, Tony Boccio, Luis Canales, Natalie Gorak, Lesley & Ed Hall, Gail & Steve Kloppel, Zach Loos, Mary Manka, Lane Mathison, Aleks Matthews, Mike Peterson, Tyler & Kylie Pontius, Art Recek, Charlie Schultz, Maria Smaldone, Jeff Togie (who gave notice that he would arrive late), and Lillian Wissel.

Moderator present: JB Burghardt.

Member absent: Maria Mitchell (gave prior notice)

SROA Member observing: Laura Biewick.

#### **2. Minutes**

The Minutes of 11/18/21 meeting previously provided to the Members were approved with no further changes.

#### **3. Replacing Resigned Member**

JB noted that after the last meeting Josh Jensen had sent notice of his need to withdraw from the Committee due to travel plans. The question presented was whether his spot should be replaced, and if so, what the process should be for handling this or any future resignations. The majority concluded that the vacancy should be filled, and that the process should be to invite the volunteer to join, provided that he or she would agree to catch up with the Committee's work by reviewing the recordings of previous meetings and all emails and materials previously circulated to Committee members. JB noted that since the Committee has been formed he has not received any requests to join or fill a vacancy. Lillian shared that one person who had expressed interest in joining the Committee when it was first being formed could not join because she could not commit to attend before January. Given that January now approaches, it was agreed that JB will contact this person about joining the Committee.

#### **4. Committee Postings on SROA website**

At this time, both the Eblasts (JB's brief summaries of our meetings provided to all SROA members who have given their email addresses to the Association) and our Minutes are posted on the current SROA website. Kylie explained that she is developing a new webpage that will have a SNACC section where she intends to have two separate categories for Eblasts and Minutes. It was therefore agreed that both Eblasts and Minutes should be posted on the website. Of Interest: Mike noted that some 215 members receive these Eblasts.

#### **5. Possible structural changes to Amended & Restated Covenants draft**

JB noted our collective concern that the final form of the Covenants be as "user-friendly" as possible. Several members noted that they had heard from others that the form of the proposed Amended and Restated Covenants last summer did not seem "user-friendly", including the fact

that a reader could not get into the substance of the Covenants until after multiple page-turns (including 3 pages of Table of Contents and 2 pages of Definitions). There also was discussion about how the Covenants document is likely actually used. Potential buyers, or vacant lot owners ready to build, usually are most interested in covenants related to building and construction. New owners might want to read through the entire document, but most longer-time owners probably only go to the document to look up specific topics such as keeping animals, having an in-home business, short-term rentals, and others.

Based on these general points, the following suggestions for potential change were discussed:

- Convert Table of Contents (at front) to Index (at back)?  
JB raised the possibility of converting the Table of Contents to an Index at the end of the document instead. Another suggestion was to create a hybrid: have the Table of Contents at the front list only the Article headings, and have the details in the Index at the back. Another suggestion was have a separate hyperlink incorporated into an abbreviated Table of Contents which would take the reader to the specifics of an Article. After discussion, the majority voted for the hybrid approach, noting that this decision could be revisited after we see how the final document comes together.
- Convert the Definitions Article (2 pages early in the document) to an Appendix (at back)?  
All agreed to this change.
- Other Concepts?  
First, all members applauded the significant work that Mary and Charlie each had separately done to create documents that compared the existing Covenants (original from 1979) to the proposed Amended Covenants that did not pass last summer.

Mary's work compared the texts of some key sections of the two documents. Her work cutting and pasting showed that there is very little difference between the two. Most of the difference is in the style of language used and legalese which makes it more difficult (or even intimidating) for the average reader. She said she will continue working through the documents in the same manner in weeks ahead.

Charlie's approach was to identify where each provision of the existing Covenants was located in the proposed Amended Covenants, as well as showing what was new in the Amended Covenants; he also cross-referenced with the existing Bylaws. Like Mary, he concluded that virtually everything in the existing Covenants was contained in the Amended Covenants as well, but sometimes in more formal or legalistic language. He also acknowledged that certain things in the Amended Covenants that had "offended" him when he first reviewed them last summer were actually contained in the existing Covenants as well. Some items were added in the Amended Covenants, such as several Bylaw provisions that had not been mentioned in the existing Covenants, and the necessary references to the CCOIA statute. JB reiterated the point that Mike had made at the last

meeting: the lawyers who drafted the proposed Amended Covenants last year had been instructed by the Board not only to preserve the intent and purpose of the existing Covenants, but to import and retain as many of their provisions into the Amended Covenants as reasonably possible. Mike confirmed that the Board's instructions tht nothing was to have been deleted except provisions that no longer applied, such as those related to the developer.

Charlie suggested that we look at the *sequence* of the Articles and Sections in both documents and better organize them. The declaration article, which includes the intent and purpose of the Covenants, should remain first, but Charlie believed the next logical article should be one addressing requirements for building on a lot. That article should collect all provisions throughout the document that relate to building, so everything is in one place and therefore easier to review and absorb. Provisions related to the Architectural Review Committee could be part of this article (since the ARC obviously is involved in the process) but would only be a part of the article rather than appearing to be its central feature. Charlie also suggested that we generally try to follow the sequence of sections in the existing Covenants because this would make it easier for owners to compare the existing Covenants to our final proposed version when they are asked to vote to approve it. Charlie already has put together a rough cut-and-paste revised version of the Covenants that he believes accomplishes what he has described.

After further discussion, the Committee unanimously agreed that Charlie and JB will work together promptly to create a new document that will incorporate all of the foregoing concepts into a new proposed base document that JB will disseminate to the members for review as soon as possible next week. This document will not change any language of any provision; it will simply re-order the provisions. All editing will be preserved for Committee discussion at future meetings. JB's offer to try to reduce legalese as much as possible without affecting substance (and of course subject to final review and approval by SROA's lawyers) will only occur after the Committee's substantive editing is complete.

- Related Topics

Some redundancies between the Bylaws and Covenants were noted. Discussion ensued that our governing documents already provide that any conflict between the Covenants and the Bylaws must be resolved in favor of the Covenants. Therefore, the Covenants must first be updated and then, in all probability, the Bylaws will require amendment as well -- but, by definition, that will not be the job of this Committee. The Covenants can be analogized to the Constitution, while the Bylaws can be analogized to the statutes and regulations that implement the Constitution. In other words, the Bylaws should describe the way we get done what's generally described in the Covenants.

It was noted that there are references to rules, regulations, requirements, and similar terms in both documents. The question was raised as to what rules or regulations already exist in our Association. Mike responded that so far, to his knowledge as a member of the Board

for some 20 years, only three rules have been created: one related to placement of For Sale signs within Silverheels Ranch, one requiring bear-proof trash cans, and the fishing rules posted at the pond. That brought up the further question as to whether the Board has the authority to make rules and regulations without the final approval by the owners. Under the existing Covenants, the Board does have the authority to make rules and regulations; however, but the process for doing so is vague. The Amended Covenants address this more fully but their provisions will be a topic of discussion and debate when we get to that issue.

JB explained that one of the benefits of being a “Limited Expense Planned Community” is that our Association is not required to adopt a long list of rules and regulations that are required under CCIOA. However, SROA’s lawyers have suggested that there is a simpler list of “Good Governance Principles” that many of their HOA clients (even limited expense planned communities) have adopted. The Board will be the one to address that possibility at some point in the future; those kinds of details will not be included in the Covenants and therefore will not be addressed by this Committee.

## **6. Other Matters**

The email that Rich sent to Committee members a few days ago, emphasizing the need to communicate our purpose, was discussed. Steve submitted that the first several points in Rich’s proposal could easily be adopted into a useful Statement of Purpose. Rich agreed to draft a proposed Statement of Purpose and send it to Committee members in advance of the next meeting, for discussion at that time. Also, Kylie suggested that Rich write an article about this for the SROA Newsletter that she is now working on. Rich agreed to do this.

The topic of enforcement of Covenants came up because of ongoing situations presently facing the Board that have been noted to this Committee as well. Mike expressed his view that the major problem is that Park County regulations (as well as our Covenants) are being violated, but despite complaints being filed with the County, it is not enforcing its regulations as the Board has repeatedly requested. Therefore, the Board is in the process of getting advice as to what enforcement steps the Board could take to deal with repeated violations without needing to hire the lawyers.

Finally, Lillian asked JB to make sure that, in responding to emails he receives from SROA members about the Committee’s work, he not express personal opinions about any topics raised in those emails. Her concern is that his opinions should not be perceived as being those of the Committee itself. JB responded that he had never intended to do this and did not in fact believe that he had, but that he would take extra care not to do so in the future. Several Committee members commented that they had not observed any problem in this regard and expressed appreciation for JB’s work for the Committee.

Some topics raised tonight that we will want to discuss when they come up in the new Covenants draft:

- What constitutes a business that is allowed in Silverheels, knowing that Park County controls what can be an “in-home” business?
- How can we enforce rules if the the County doesn’t?
- What should the process be for creating more complete rules and regulations (if any) within Silverheels?

**7. Next Meeting; homework**

The next meeting will be Thursday, December 16 at 7:00 PM via Zoom.

Homework includes:

- Review the draft of the Covenants, with a new sequence of Articles and Sections, as created by Charlie and JB.
- Review the article Rich will draft for the SROA newsletter on the purpose of the Committee.
- Review the Statement of Purpose that Rich will draft.

**8. Adjournment**

The meeting was adjourned at 9:03 PM.