

SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)

Minutes of 05/18/22 Meeting

(7:00 PM via Zoom)

Approved at 06/01/22 Meeting

1. Attendance and Quorum (13 lots).

Members Present: Rich Bainbridge, Susan Barden, Tony Boccio, Luis Canales, Natalie Gorak, Lesley & Ed Hall, Gail & Steve Kloppel, Zach Loos, Mary Manka, Lane Mathison, Maria Mitchell, Mike Peterson, Kylie & Tyler Pontius, Charlie Schultz, Maria Smaldone, Jeffrey Togie, Lillian Wissel.

Quorum: All members were present.

2. Approval of Minutes of 4/27/22 Meeting.

The Minutes of the 4/27/22 meeting were approved.

3. Continue section-by-section review of proposed modifications to Article 2, using Draft v10, starting with minor correction to Section 2.9(d), then on to Section 2.10 and beyond (keeping Draft v1 base document text handy for reference).

Section 2.9(d)

Section 2.9(d) was approved at the 4/27/22 meeting, but JB suggested moving one clause within the approved text for better clarity. The edited version was approved unanimously. It reads as follows:

The ARC shall have the authority to approve, disapprove, or conditionally approve an Application by a majority vote of its members, using its reasonable good-faith judgment.

Section 2.10 - ARC Decision Deadline

There was a lengthy discussion about the elements of this section. In drafting a modified version as tasked by the Members at the 4/27/22 meeting, JB included wording that addressed the options of email and postal service communication, reduced the ARC's decision deadline from 30 to 21 days, and emphasized the need for the owner's Application to the ARC to be complete, all while maintaining the objective of prompt completion of the ARC's review process. Members determined that details regarding email vs. US Mail were not needed, which allowed deletion of two sentences from the draft. Although some members preferred a shorter turnaround time for the ARC's review of Applications, the 21-day "Decision Deadline" was finally agreed upon, recognizing concerns about ARC members being delayed from meeting due to their own work or personal schedules. Considerable discussion also revolved around the concept (carried over from the Original 1979 Covenants) that if the ARC did not inform the applicant of its decision by the Decision Deadline, the Application would be deemed approved. A related issue was raised as to whether, if an Application included content that

violated a Covenant, but the Application was deemed approved by not having been disapproved by the Decision Deadline, would the Covenant violation still be outstanding? Due to the number of issues still unresolved, JB was asked to try drafting a revised provision that tries to address these concerns and issues, for review at the next meeting.

Section 2.11 - Right to Appeal Disapproval Decision

This new Section proposed by JB was based on feedback received from multiple Members that an Owner should have the right to appeal, to the Board, an ARC decision disapproving an Application. The last sentence in his draft proposed that “The Board’s decision shall be final.” It was noted that this language possibly could preclude an Owner from taking an Application disapproval issue to court if the Owner chose to do so. Finally a motion was made and seconded to adopt the draft Section but with the last sentence deleted. The motion was approved unanimously. Therefore, new Section 2.11 will read as follows:

A decision by the ARC to disapprove an Application, after further good-faith attempts to resolve outstanding issues by both the applicant and the ARC have been exhausted, may be appealed by the applicant to the Board. The Board shall act promptly to decide the appeal after hearing from both the applicant and the ARC.

Section 2.13 - Prosecution of Work After Approval

This provision was included in the Amended and Restated Covenants which did not get approved last summer. Members voiced varieties of negative opinions about the features of this Section, including whether it was needed at all. Many members stated that its timelines were too restrictive, given the limited window of opportunity to build during the year in our mountain climate, not to mention the recent unreliability of the supply chain and the unavailability of workers. We noted that the Original 1979 Covenants (which remain in effect now) do not require completion of work within a specific timeframe. It also was noted that if an Improvement was not completed within a reasonable amount of time and thereby caused concern within our community, the County could be asked to address it as a health and safety issue. Although all Members agreed with the concerns discussed, some felt the Section should be edited to retain only the opening sentence as a statement of intent, but that balance could be eliminated. Finally, however, a motion to delete the entire Section was made and seconded. After further discussion, the vote was 14 to 5 in favor of deleting the Section entirely.

Section 2.14 - Inspection of Work

This was another new provision included in the Amended and Restated Covenants which did not get approved last summer. A possible implication of this proposed Section is that it would give enforcement power to the ARC. Charlie emphasized that the role of ARC is limited to reviewing conformity of a proposed Improvement with the Covenants, and that enforcement was not the responsibility of the ARC but solely the responsibility of the Board. As a result, few felt that this proposed provision was needed. After discussion, a motion to delete the entire Section was made, seconded, and approved.

Section 2.15 - Guidelines

This new draft provision attempted to address the right of the ARC to promulgate Guidelines that would interpret and implement the provisions of the Covenants with regard to Improvement projects. As drafted, it would call for the ARC to draft Guidelines and present them to the Board for approval, following which the Board would notice them to the entire membership. Several Members argued that the Guidelines should be subject to a vote of approval by the entire community in the same manner that Covenants must be approved. Others felt that since the Board and ARC are elected by the owners, the Board and the ARC should have the responsibility and power to develop, review, and approve Guidelines without going through the laborious and time-consuming process of having them approved the way the Covenants must be approved.

Charlie and Tyler noted that the current Architectural Control Committee (ACC) has developed a short and simple checklist of requirements taken directly from the current Covenants that pertain to Improvements; this checklist is what the ACC actually uses to evaluate proposed Improvements. As explained at an earlier meeting, this checklist was developed to provide clarity and to attempt to limit any subjectivity or randomness in the decisions of the ACC. To advance all Members' understanding of how the ACC currently makes its decisions, Charlie agreed to provide Kylie with a copy of the checklist for dissemination to all Members. Further consideration of the proposed section was tabled until the next meeting after Members have had the opportunity to review the checklist.

4. New business.

There was no new business.

5. Next meeting; Advance homework.

The next meeting will be on June 1, 2022, at 7:00 PM via Zoom.

Homework is to review the checklist being emailed to all members by Kylie and to study the remainder of Article 2 as presented in Draft v11, which JB will circulate shortly.

Adjournment

The meeting was adjourned at 9:02 PM.