

SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)

Minutes of 06/15/22 Meeting

(7:00 PM via Zoom)

Approved at 06/29/22 Meeting

1. Attendance and Quorum (13 lots required)

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

Members Absent: Zach Loos, Maria Mitchell, Mike Peterson,

Quorum: A quorum was met with 16 lots represented.

2. Review and approve Minutes of 6-1-22 Meeting

The Minutes of the 6/1/22 meeting, previously provided to all Members, were unanimously approved.

3. Continue section-by-section review of proposed modifications to Article 2, using Draft v12

Section 2.9(a) - Owner's Preliminary Communication with ARC

At the 6/1/22 meeting, proposed Section 2.12 - Guidelines was deleted by a majority vote. This led to a discussion which concluded that the current ACC's Metric for Review of Applications, along with other resources to be developed by the ACC, should be made available to owners on the SROA website. In light of that discussion, Tony moved that a reference to ARC resources on the website should be added to the language in Section 2.9(a) to help owners, especially new owners, become aware of those resources. After further discussion and debate, the motion was approved by majority vote. To this end, Section 2.9(a) was modified (with the new language in italics) to read:

An Owner considering the possibility of constructing any Improvement on the Owner's Lot is strongly encouraged to *review the ARC section of the Association's website and then* communicate on an early, preliminary, and informal basis, with the ARC for comments or suggestions related to conformity with these Covenants. Any such comments or suggestions do not constitute actionable advice regarding Park County ordinances, regulations, or requirements; the Owner must obtain such advice from the Owner's architect, contractor, or other professional consultant.

Section 2.12 - Variances or Adjustments

The discussion of this section centered around the circumstances (if any) under which variances or adjustments from the requirements of Article 2 might be appropriate. Several Members argued that setbacks and topography are the most obvious situations where, on a particular lot, an unnecessary hardship might result by strict enforcement of all Article 2 requirements. Several Members felt it was important that any variance be through a written process so that the record is clear as to why a variance was requested and approved. Mary Manka also suggested replacing the word "grant" with "approve" and adding a reference to a written request for a variance, so that the Section would read "The ARC may *approve a written request* for reasonable variances or adjustments..." The question of whether either the ARC

or the Board actually has the authority to grant variances at all was raised. JB noted that the under the current (1979) Covenants, the Board's express authority to do this relates to setbacks. There also was discussion regarding whether it would be feasible to maintain the already agreed-upon 21-day Decision Deadline for approval of an Application if the Board's approval of a variance was also required. A straw poll was taken as to whether the Board's approval for a variance should be required; a majority said it should not. A straw poll then taken as to whether variances should be allowed at all; a majority agreed that they should be allowed under appropriate (extraordinary) circumstances. A motion was made to add that a variance must be requested in written form; it passed by majority vote. After further discussion, Section 2.12 was approved by majority vote to read as follows:

The ARC may approve a written request for a reasonable variance or adjustment of any condition or restriction imposed by this Article 2 in order to overcome significant practical difficulties or prevent unnecessary hardships that would arise from strict imposition of the condition or restriction. Specifically with regard to setback requirements, exceptions or adjustments may be granted in the case of topographic limitations, or where strict compliance would require excessive destruction of trees or foliage.

Section 2.13 - Waivers

Several versions of this section had been set out in Draft v12, starting (as usual) with the original language proposed in Draft v1 - the proposed Amended and Restated Covenants as drafted by SROA's lawyers that did not get approved last summer. As each version was discussed, it became apparent that difficulty in interpretation would likely lead to confusion in the future. The issue of whether any decision by the ARC should have precedential value for future decisions was discussed at length – both (i) as to whether an ARC decision should constitute precedent only for the *present* Application (including modifications) by that applicant, or for *all* future Applications of *any* applicant, and (ii) whether any ARC decision should ever constitute binding precedent at all. A number of Members expressed their understanding that the objective of the original language was to reduce the risk of legal claims that a prior ARC decision about an Application should constitute precedent that required the ARC to treat a future Application exactly the same way -- even though the ARC might view the particular circumstances of the latter project as sufficiently different to warrant a different conclusion. After considerable further discussion and debate, a final version was approved by majority vote to read simply as follows:

The ARC's decision as to any Application shall not constitute a precedent as to any other matter.

Section 2.14 - Enforcement

JB suggested that, due to the limited time available until our adjournment, we could only get started sharing comments on this important topic tonight. Voting on language for this section will need to await the next meeting.

Section 2.14 is intended to address enforcement only in the context of Article 2 - Construction of Improvements. Other sections in the Covenants will address the broader issue of enforcement generally. In the current (1979) Covenants, general enforcement language is found in Section 19 (copied into tonight's Draft v12 for reference). JB pointed out that much of the language in Section 19 was clearly written for the benefit of the Subdivider, rather than SROA members. This of course is no longer relevant -- except, as some Members noted, to

the extent the same provisions might now be deemed applicable to the Board of Directors. JB also noted that two sentences in the middle of Section 19 were repeated verbatim at the end of Section 19 – a typographical error that apparently nobody caught before recording the original Covenants [a number of Members expressed belief that some form of those two sentences nevertheless should be included in our new draft]. JB also pointed out that the broader provisions regarding enforcement appear in the proposed Amended and Restated Covenants that did not pass last summer (our Draft v1) in Section 5.1, and that we will get to those eventually. He recommended that before the next meeting all Members review that boarder enforcement language for reference purposes, and he promised to send another complete copy of Draft v1 to facilitate that review.

As to Section 2.14 currently under our consideration, several Members expressed their basic concern and position that while the nature and scope of enforcement in Article 2 will require more discussion, there must be some form of enforcement regarding construction of Improvements in our Covenants; otherwise, there was no point in having Article 2 at all. A concern was expressed that our unanimous decision to delete proposed Section 2.14 - Inspection of Work in its entirety, from Draft v10 at our 5/18/22 meeting, had negated any authority of the ARC to inspect Improvement projects as-built to ascertain whether the work performed actually adhered to the approved Application. But several Members reminded everyone that the ARC's job, as we have defined it, is to review Applications to assess their conformity to the Covenants; it does not include either inspection or enforcement. They also noted that because of aggressively negative attitudes expressed by some owners, an ARC's physical inspection of a project on-site without the owner's advance permission could not be considered. The idea was suggested that neighbors seeing what they perceived as a problem with an Improvement should notify the Board, and that it should be up to the Board to take action if there was a Covenant violation. Several Members urged that all inspections should be left completely to Park County, both during construction and when an application for Certificate of Occupancy occurs. However, others argued that the County's lack of interest in what Improvements actually look like meant that its inspections would not suffice to meet the Intent of our Covenants as expressed in Section 1.2. Some Members asserted that the freedom to do whatever an owner wants on his or her own property was an inherent right of ownership; others noted, however, that this is a *community* and that each owner needs to respect the rights of fellow SROA members, which will call for some limitations on an owner's rights. Again, the argument is that this is why Silverheels always has been "A Covenant-Controlled Community". This discussion will continue at our next meeting.

4. New Business – none.

5. Next Meeting and Homework

The next meeting will be Wednesday, June 29, 2022 at 7:00 PM.

Homework will be to thoroughly review the new Draft v13 that JB will prepare for that meeting, which will include all enforcement provisions he can locate in the existing (1979) Covenants as well as those in Draft v1 (including Section 5.1).

6. Adjournment

The meeting was adjourned at 9:06 PM.