

SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)

Minutes of 06/29/22 Meeting
(7:00 PM via Zoom)
Approved at 07/13/22 Meeting

1. Attendance and Quorum (13 lots)

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

Members Late: Maria Mitchell

Members Absent: Natalie Gorak

Quorum: A quorum was met with 17 lots represented initially.

2. Review and Approve Minutes of 6/15/22 Meeting

The Minutes of the 6/15/22 meeting, previously provided to all Members, were unanimously approved.

3. Continue section-by-section review of proposed modifications to Article 2, using Draft v13, beginning with proposed Section 2.14 – Enforcement.

Section 2.14 Enforcement

Prior to this meeting, JB had sent the Members the version of this Section presented in last year's proposed Amended and Restated Covenants, along with a new version he had drafted ("to give everyone something to shoot at") based on opinions expressed at our 6/15/22 meeting. Discussion of both versions brought up widely-varied opinions, from eliminating the Section entirely to changing only one word in JB's proposed revision.

Several Members pointed out that the language for enforcement in our original (1979) Covenants has been in place for over 40 years, and that there have been no major issues regarding noncompliance in the past. It was posited that the reason for this was that the strict language related to enforcement powers and responsibilities in the original Covenants was exactly what kept noncompliance to a minimum. Some members expressed belief instead that the history of general compliance demonstrated that people moving into Silverheels do so with the intent to maintain the quality of the community. However, others pointed out that at least one situation going on right now in our community contradicts this belief. Also, within the last couple of years considerable change of ownership has taken place in Silverheels, and Members felt it is incumbent on this Committee to assure that the Covenants are clear to everyone, but especially new owners, about enforcement of community standards.

Several specific language issues were discussed:

- Mary Manka made the suggestion to change the term "violation" in the second sentence of JB's draft to "deviation" because, initially, the problem would be based on an alleged deviation from an approved Application. Only after it was determined that a deviation was not in compliance with the Covenants could it then be labeled a violation.

- Some members felt the concept of requiring an owner “to restore the Lot to substantially the same condition as existed prior to the nonconforming work” was an extreme option for enforcement that simply went too far. Others felt that providing this option was necessary to assure that everyone in the community understands how essential it is to construct what their approved Application says they are going to construct. Without clear and strong enforcement mechanisms, they argued, there is no reason to have Article 2 at all.
- It was noted that the opening few sentences in both versions of this Section relate to the ARC and conformity of the actual work to the Application, but that the remainder of the Section relates to the Board’s responsibilities in the event of nonconformity. A suggestion was made to retain the language related to the ARC since that is the focus of Article 2, but that the Board’s role and responsibilities for enforcement should be addressed in Article 5.
- All Members agreed that enforcement should be the responsibility of the Board alone -- that whatever we decide about the ARC’s role, it will not include enforcement. Several Members suggested that, rather than having enforcement provisions sprinkled in various places in Covenants such as Section 2.14, they should all be located in a single place and relate only to the Board (as of today, that place would be Section 5.1 in our Base Document – Draft v1). The objective should be to express the Board’s ability to enforce compliance without making the Covenants seem overbearing.
- A corollary to this concept would be to change the title of Section 2.14 from “Enforcement” to “Compliance” or a similar title if we make the changes to the text suggested above.

In summary, several Members recommended that Section 2.14 should relate only to the ARC’s role in reviewing compliance by the owner with the terms of his or her approved Application. If the ARC found that there were material deviations from the approved Application that could not be worked out consensually with the owner, the ARC should report this to the Board, and the Board would handle the enforcement side of the matter.

However, it then was noted that if the goal is to assure that what gets built conforms reasonably to what was approved in an Application, then only the ARC will be able to determine this, because only the ARC reviews and approves an Application to begin with. So the argument was made that the ARC needs to have the ability to inspect the work being performed. It was noted that we had voted unanimously at the 5/18/22 meeting to eliminate what was then identified in Draft v10 as Section 2.14 - Inspection of Work, which would have given the ARC the right to inspect work by going onto the owner’s property. We had concluded then that inspections should not take place on an owner’s property without his/her prior consent, but instead would need to depend on what could be seen from a public location such as a road, or by a neighbor viewing the work from their own property. The issue of whether ARC inspections of work in progress or work at completion should be part of the overall process was debated further, but time ran out before it could be resolved.

Although a motion had been made and seconded to approve JB’s version of Section 2.14, the foregoing discussion consumed the entire meeting time; there was not enough time to complete our discussion and then have revised wording ready for a vote. Instead, due to the number of sub-issues raised during the meeting it was agreed that Members would **send their suggestions and concerns to JB by 5:00 PM this Saturday, July 2**. He will draft questions for straw polls by email based on these suggestions, to which members will **reply to all** so that everyone

is able to see how each Member has voted on each straw poll question. JB then will try to draft a revised Section 2.14 based on the straw poll results, that we will take up at our next meeting.

4. New Business

Kylie asked for a volunteer to write article updating SNACC progress for the upcoming SROA newsletter. Susan graciously volunteered.

JB noted the adoption of HB-1137 by the Colorado legislature, signed into law by the Governor on June 2. This statute amends CCIOA to limit foreclosure, fine, and other enforcement powers of HOAs that are not “limited expense planned communities” like SROA. Even though this statute will not apply to us, it may contain information that some Members could find instructive, so he will send everyone a summary of the statute provided by Colorado DORA.

5. Next Meeting and Homework

The next meeting will be Wednesday, July 13, 2022 at 7:00 PM.

Homework: **Send suggestions/concerns to JB by Saturday, July 2 at 5:00 PM.**

Vote on straw polls that JB will send out using Reply to All.

6. Adjournment

The meeting was adjourned at 9:06 PM.