

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

**Minutes of 07/13/22 Meeting**

**(7:00 PM via Zoom)**

***Approved at 08/10/22 Meeting***

**1. Attendance and Quorum (13 lots required)**

**Members Present:** Susan Barden, Tony Boccio, Luis Canales, Lesley & Ed Hall, Gail & Steve Kloppel, Zach Loos, Lane Mathison, Mike Peterson, Kylie & Tyler Pontius, Jeffrey Togie, Lillian Wissel

**Members Late:** Maria Mitchell

**Members Absent:** Rich Bainbridge, Natalie Gorak, Mary Manka, Charlie Schultz, Maria Smaldone

**Quorum:** A quorum was met with 13 lots represented initially.

**2. Review and approve Minutes of 6/29/22 meeting**

The Minutes of the 6/29/22 meeting, previously provided to all Members, were unanimously approved.

**3. Review Straw Poll Results; Continue section-by-section review of proposed modifications to Article 2, using Draft v14, starting with new proposed revised version of Section 2.14; Impact of recently-passed HB 22-1362 on Section 2.6; Drone question**

**Section 2.14 - Enforcement**

As agreed, shortly after our last meeting JB had disseminated a “Straw Poll” containing five questions related to Section 2.14 Enforcement issues. The goal was to provide him and all Members the opportunity to understand how each of them would be inclined to vote on each of those questions, which should help us create new language for this Section. In addition to answering the Yes/No straw poll questions, some Members had sent side-comments to JB that he also tried to take into account in drafting a new proposed version of Section 2.14. The questions were as follows:

1. After an Application for an Improvement project has been approved and the work has been completed, should the ARC have the right to inspect the work to assure its conformity to the approved Application?
2. Should the ARC also have the right to inspect a project during construction to assure conformity to the approved Application?
3. If the ARC identifies any potential non-conformity of the work to the approved Application (whether due to the ARC’s own inspection or due to an inquiry from an SROA member), should the ARC first be required to communicate with the Owner to try to address the problem informally?
4. If the Owner and the ARC cannot resolve a non-conformity problem informally between themselves, should the ARC then be required to report the problem to the Board and leave all other decisions regarding conformity, including possible enforcement decisions, to the Board?

5. Should Section 2.14 identify specific enforcement remedies (such as fines, liens, court filings) or leave all such remedy language to Article 5, regarding Association Powers and Responsibilities?

The results of the Straw Poll revealed that substantial majorities of the SNACC voted “NO” on Questions 1, 2 and 5 and “YES” on Questions 3 and 4; none of the votes were close. JB therefore drafted his new proposed revised version of Section 2.14 to take these results into account, including (to the extent possible) the suggestions Members included in side-comments. After discussion about further possible modifications, JB’s proposed draft was approved by majority vote without any changes. It reads as follows:

Construction of an Improvement must conform in all material and practical respects to the terms of the approved Application. Complaints or expressions of concern by any member of the Association about potential nonconformity, or about other possible violations of these Covenants regarding the construction work, must be directed to the ARC. The ARC will communicate with the Owner to review the complaint or concern in an effort to address the problem informally. The Owner is strongly encouraged to allow the ARC to visit the construction site for this purpose, but in the absence of such consent must provide detailed photographs of all exterior aspects of the Improvement to the ARC. If the ARC and the Owner cannot resolve the problem informally, the ARC will report the matter to the Board, and thereafter the Board will assume sole responsibility for addressing the problem. If the problem still cannot be resolved informally within a reasonable time, the Board shall retain all enforcement powers set forth in Article 5.

Additionally, it was agreed that the title of Section 2.14 should be changed to “Conformity of Construction to Approved Application”.

### **Section 2.15 - No Liability**

JB noted that the wording of this Section was as set forth in the Amended and Restated Covenants drafted by SROA’s lawyers last year. He expressed his view that the wording was pretty much what one would expect in Covenants for an organization like ours. As volunteers trying to serve our community, the members of the ARC, the Board, and other members of SROA, as well as SROA itself, should not be faced with exposure to legal liability for serving in their various capacities in the processes described in Article 2. After brief discussion, Section 2.15 was approved unanimously, as follows:

The ARC, the Board, the Association, and all members, Directors, Officers, and other agents of any of them, shall have no liability to any person submitting an Application or to any other person, due to any action, failure to act, approval, conditional approval, disapproval, or failure to approve or disapprove any Application. In reviewing any matter, neither the ARC nor any of its members shall be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor for conformity with any applicable governmental laws or regulations. Any approval or conditional approval by the ARC (or the Board on appeal) of an Application shall not be deemed an affirmation or certification of conformity to any applicable governmental laws or regulations.

**Section 2.16 - Damage or Destruction of Structures on Lots;  
Section 2.17 - Temporary Structures**

During discussion, many Members felt that these Sections do not seem to belong in Article 2 because they do not pertain to the process for construction of Improvements which is the subject of Article 2. Rather, to the extent they are needed at all, they seem to fit more properly into the broader category of Article 3 - Restrictions. Without actually committing to include either provision in Article 3, we devoted the remainder of our time to discussing issues related to these two Sections.

Section 2.16, which was a new provision included in the proposed Amended and Restated Covenants last year, had set out deadlines by which damaged or destroyed structures needed to be either removed or repaired. Several Members expressed the view that deadlines for completion of rebuilding or removal could cause a hardship for an Owner dealing with insurance claims or trying to find appropriate tradespeople to do the work (a serious problem at the time of this writing), or other unforeseen problems on the heels of what probably was a crisis situation (fire, explosion, and the like). It also was noted that an Owner might decide to sell the property but be unable either physically and/or financially to have the lot cleared of damage before selling. Where the problem might be related more to health and safety than simple appearance of the structure, it was noted that Park County has a major role and responsibility; some Members expressed the view that it was not necessary to include anything in our Covenants that duplicates what County regulations already address. Others argued, however, that when deleting these Sections, protection of the community should still be addressed in our Covenants because the County has hardly been dependable or consistent in enforcing its own ordinances. It was noted that Section 3.1 in our Base Document gives the Board the discretion to address issues for the good of the community and that this problem could be addressed somewhere within Article 3 – possibly in Section 3.14.

All agreed that Section 2.17 regarding Temporary Structures did not need to stay in Article 2. Some questioned whether it is needed at all, given that our new definition of “Improvements” already includes the term “structures”. Susan also shared some information she had collected when exploring Park County regulations and restrictions related to temporary structures. She agreed to send all Members that information and/or links to it after this meeting.

After this discussion, deletion of both Sections 2.16 and 2.17 from Article 2 was approved by unanimous vote; however, some concepts contained in those Sections might still merit consideration for placement in Article 3, which we will begin considering at our next meeting. JB will send a copy of the complete Article 3 in the next version (Draft v15) so that Members can study it to that end.

**Section 2.6 - Dwelling Units impacted by Colorado HB 22-1362**

The Colorado Legislature and the Governor recently passed HB 22-1362, a 36-page statute which, among other things, deleted CRS §6-7-01 which was specifically referenced in our

original (1979) Covenants and in Section 2.6 of our already-approved draft new Covenants. The bill replaced that section (and others) with a much broader and encompassing law addressing renewable energy, energy conservation, and related issues. JB recommended that we simply delete the sentence in Section 2.6 regarding the now-deleted statute as no longer relevant; besides, the new state statute is binding on everyone and need not be specifically referenced in our Covenants. This recommendation was unanimously approved.

### **Drone Question**

The suggestion had been made at the end of the 6/29/22 meeting that the ARC could use a drone to assess whether a completed Improvement had followed the approved Application related to it. At the time, Members had expressed concern about an owner's privacy. After that meeting, JB had reviewed some legal sources and reported that there was a strong likelihood that, at least now, a drone flight over privately-owned land could constitute a trespass. JB also noted that the purpose of the Covenants is to set forth principles, rather than specific means of implementing those principles (especially since some of those means may become obsolete or otherwise irrelevant over time); the details belong in other rules or procedures addressed by the Board as and when needed. Therefore it was agreed not to include anything about drones in the Covenants.

### **4. New Business**

There was no new business.

### **5. Next Meeting; Advance Homework**

The next meeting will be on July 27 at 7:00 PM via Zoom. Gail and Steve will be unable to attend. If anyone else cannot make it, please let JB know ahead of time.

Homework:

- Review information sent by Susan
- Review Draft v15, which JB will send out, and which will include a complete copy of Article 3
- JB also will provide a PDF copy of all provisions we have approved through the end of tonight's meeting.

### **6. Adjournment**

The meeting was adjourned at 8:28 PM.