

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

**Minutes of 08/24/22 Meeting**

*(7:00 PM via Zoom)*

*Approved at 09/14/22 Meeting*

**1. Attendance & Quorum (13 lots)**

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

**Members Late:** Luis Canales

**Members Absent:** Zach Loos, Mary Manka, Maria Mitchell, Mike Peterson

**Quorum :** A quorum was satisfied with 14 lots represented.

**2. Review and Approve Minutes of 8/10/22**

The Minutes of the 8/10/22 meeting, previously provided to all Members, were unanimously approved.

**3. Continue section-by-section review of Article 3, using Draft v16.**

At the 8/10/22 meeting it was agreed that Section 3.1 should be separated into two sections. The following refers to the new Sections 3.1 and 3.2, which JB had drafted based on deliberations at the 8/10/22 meeting.

**Section 3.1 Restrictions.** Proposed new Section 3.1 reads as follows:

Restrictions. The Community is subject to the provisions set forth in this Article as well as all provisions of the Plats (collectively, “**Restrictions**”).

After brief discussion, this language was approved unanimously.

**Section 3.2 Rules and Regulations**

JB explained that his draft of proposed new Section 3.2 was based on the results of straw poll votes taken during the 8/10/22 meeting. Those votes tended to indicate that: (i) a majority of Members were against requiring a full Covenant-like approval process for adoption of new rules or regulations; (ii) a majority of Members were against waiting until an Annual or Special Meeting to hold a vote to approve new rules or regulations; (iii) most Members were in favor of the Board providing advance notice to all SROA members before new rules or regulations were adopted, but views varied as to whether specific requirements for such notice should be set forth in the Covenants; (iv) there was a very close vote as to whether the Board should be required to provide advance notice and an opportunity for feedback before adopting a new rule or regulation; and (v) those in favor of advance notice thought there should be as much notice as possible for SROA members to provide feedback; (vi) in general, however, a majority believed that the Board could be trusted to adopt reasonable rules and regulations.

JB's proposed first sentence of Section 3.2 reads as follows:

The Restrictions are general in nature. The Board, in the exercise of its good-faith business judgment, shall have the power to adopt, amend, repeal, and enforce reasonable Policies pertaining to these Restrictions, provided that they are consistent with the terms and intent of these Covenants.

JB explained that he proposed adopting the term "Policies" in place of "Rules and Regulations", because it seemed less imposing. Most Members, however, preferred to retain the term "Rules and Regulations", so "Policies" will be eliminated in the final version.

JB also noted that he had adopted the term "good-faith business judgment" in the second sentence to emphasize the standard by which the Board is expected to make decisions; further, the phrase at the end of the sentence emphasizes that only items included in Article 3 may be addressed by new rules or regulations, and that they must be consistent with the terms and intent of the Covenants.

JB also had offered two alternative second sentences for the Section, based on whether advance notice and an opportunity for community input should be required before any new rule or regulation could be adopted by the Board. The alternatives read as follows:

Alternative 1: Upon adoption of any Policy, the Board shall promptly provide notice thereof to all Members.

Alternative 2: Except in an urgent situation, the Board shall seek input from the Members before adopting any Policy. Upon adoption of any Policy, the Board shall promptly provide notice thereof to all Members.

Alternative 1 drew little support. In contrast, significant time was spent discussing Alternative 2.

Lesley began by reiterating her stand from the previous meeting that the process for approving a new rule or regulation should be the same as is required to approve amendments to the Covenants: 60 days' advance written notice mailed by US Mail to all SROA members, and a positive vote of more than 50% of all lots in the subdivision (i.e., 101 lots) to approve. She then acknowledged that this process would be time-consuming and expensive, so she offered a compromise: to require a majority vote at an annual or special meeting of the SROA members at which a quorum was present in person or by proxy. Susan instead urged a compromise that would require the Board to provide notice to SROA members of a proposed rule or regulation and allowing a few weeks until the next Board meeting for members to provide feedback. The Board would then consider all responses at that next meeting before voting. In response, Lesley expressed concern that without a vote by all SROA members, the Board could disregard the

feedback given to them. Charlie suggested a compromise that would allow the Board to create a new or amended rule or regulation which would be in effect until the next Annual Meeting, at which time a vote of affirmation would be required. If that vote failed to affirm the rule or regulation, the Board would be required to re-address the matter.

There was discussion regarding the concept of an “urgent situation”. Some Members felt that nothing would require urgent action or that someone might disagree with the Board on what constituted an urgency. From her experience on the Board, Kylie said the Board has had to deal with certain situations that did require urgent action. Mike was not present to add to this topic. Tony pointed out three instances when urgency might be required: toxicity, safety, and legal liability.

Rich voiced the concern that if the requirements placed on the Board to act become too burdensome, potential volunteers for Board positions might hesitate to assume the burden. With a lack of volunteers, the association might have no choice but to hire a management company – something nobody in Silverheels should want.

It was again noted in the last 40 years only three (3) rules or regulations have been adopted by our Boards. It does not seem reasonable or justifiable to worry that a future Board, being made up of volunteer neighbors who already are committing a great deal of time to Board responsibilities, would want to further busy themselves creating multiple new rules and detailed regulations.

After all of this, a straw poll was taken on a new version of Alternative 2 that JB read several times to the Committee; a majority indicated approval. Another straw poll was taken regarding Charlie’s suggestion to allow the Board to create or amend a rule or regulation and have it go into effect, but then to make it subject a vote of affirmation at the next Annual Meeting. A majority indicated approval of this concept as well. JB was charged with drafting proposed final language for these provisions which will be reviewed one final time and voted on at our next meeting.

### **Section 3.3 Compliance with Laws**

A version of this Section was originally located in Article 2. At our 1/19/22 meeting the language of the first sentence of this Section was approved and the second sentence was added; however, the Members also concluded that it did not belong in Article 2 but should be moved to Article 3. The Section now reads as follows:

All Owners, all Permittees, and all other persons shall comply with all applicable federal, state, and local statutes, ordinances, laws, regulations, rules, and requirements of all governmental and quasi-governmental entities, agencies, and authorities (collectively, “**Laws**”). A violation of any Law also constitutes a violation of these Covenants.

JB noted that we had discussed and debated this provision (especially the second sentence) at length back in January when it finally was approved. He said that since this already was a settled vote, it did not require any additional review or approval again now. However, he did propose one minor suggestion for change: to insert the word “County,” between the words “state,” and “and local” on the second line. This would reflect the obvious fact that the majority of the governmental obligations Silverheels deals with come from Park County.

Lesley then expressed her strong view that we needed to revisit the second sentence despite having approved it in January. She felt that the way it was written, SROA members who are not law enforcement personnel might take it upon themselves to try to enforce Laws (even those from other communities, counties, etc.) themselves. In response, among other things it was noted that this Section uses the term “applicable” Laws, meaning that it would only apply to Laws that concern the Silverheels community. The principle discussed in January was that if a violation of a County ordinance was occurring but the County was not willing or able to enforce it (which many Members recognize as an ongoing problem), this language it would make completely clear that our Association (through its Board) has the authority to do something about it – not by acting like a police force but by asserting a violation of our own Covenants that could be addressed through the mechanisms provided by our Covenants. Kylie emphasized that Board members investigate problems in response to complaints from neighbors; Board members do not cruise the neighborhood looking for violations. Nor would a Board member enter a private lot without permission from the lot owner. It also was noted that this Section does not define who, how, whether, or when enforcement would be addressed; it says simply that as community members we agree to abide by governmental Laws that apply to us and that failure to do so constitutes a violation of our Covenants. What is implicit in the first sentence is made explicit in the second.

Lesley then stated that she is so strongly opposed to the second sentence that if it is included in the final version of the Covenants she would vote against the Covenants themselves. Given her continuing objection to the second sentence, JB advised that it is possible to change a decision previously made by our Committee if a “motion to rescind” is brought. He said his recollection is that rescission requires a 2/3 vote under Robert’s Rules of Order; this is logical because there should be a higher requirement to un-adopt a provision that previously had been adopted. Jeff Togie confirmed the 2/3 requirement via a Google search of Robert’s Rules. Lesley then made a formal motion to rescind the second sentence, and the motion was seconded. After additional discussion, a vote was taken. The motion to rescind was defeated by majority vote.

We then voted on the proposal to insert the term “County” where recommended; this passed by majority vote.

The final action taken tonight regarded JB’s grammatical recommendation regarding the defined term “Permittee”: to clean up the sentence by consistently using singular form of all nouns. This passed unanimously.

#### **4. New Business**

Tyler reminded Members that the ACC Guidelines have now been eliminated, and in their place a list of frequently asked questions (“FAQs”) now has been posted on the ACC page of the SROA website. Also, a member of the ACC recently resigned. Under our present rules, the other two members of the ACC are authorized and called upon to select a replacement. Jeff Togie had volunteered to fill that position and the other two ACC members (Tyler and Charlie) approved his appointment.

#### **5. Next Meeting and Homework**

Following our schedule of meeting every two weeks on Wednesday night, the next meeting would fall on 9/7/22, but Kylie will be out of town and unable to run the Zoom meeting. It was discussed whether we could meet one more time before the Annual Meeting on 9/10. Wednesday 8/31 was suggested, but quite a few Members cannot attend that night, so it was determined that **next meeting will be Wednesday, September 14 at 7:00 PM.** JB will send a redraft of Section 3.2 for study in advance of the meeting.

#### **6. Adjournment**

The meeting was adjourned at 9:04 PM.