

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

### **Minutes of 9/14/22 Meeting**

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

***Approved at 09/28/22 Meeting***

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

**Members Present:** Susan Barden, Tony Boccio, Luis Canales, Natalie Gorak, Lesley & Ed Hall, Gail & Steve Kloppel, Mary Manka, Lane Mathison, Maria Mitchell, Mike Peterson, Tyler Pontius, Charlie Schultz, Maria Smaldone, Jeff Togie

**Members Absent:** Rich Bainbridge, Zach Loos, Kylie Pontius, Lillian Wissel

#### **2. Review and Approve Minutes of 8/24/22**

The Minutes of the 8/24/22 meeting, previously provided to all Members, were unanimously approved.

#### **3. Impact on SNACC of Board elections at 9/10/22 SROA Annual Meeting.**

JB began the meeting by congratulating Lane and Lesley on being elected to the Board of Directors for SROA. He opened up discussion to any questions/concerns that SNACC members might have for these new Board members who also have served on the SNACC. He noted that David Wissel, who is already on the Board, had stated several times that he thinks we should not have Covenants at all anymore. Members expressed concern as to whether the new Board members will support the continuation of this Committee, and if so, whether they will support the final version of the New Amended Covenants that the Committee ultimately will present to the Board. Specifically, Members asked Lesley about her statement at the last meeting that she would not support the final document if the second sentence in Section 3.3 remained in it, even though that sentence had originally been approved by majority vote last January and also had easily survived her motion to rescind at the last meeting. Lesley responded by expressing her continued support for SNACC's work. She said the Committee has developed some good compromises in the past, but she wants to see whether the final document is something she thinks can be approved by the majority of SROA's membership. Lane expressed his desire to maintain the quality of Silverheels and the Intent expressed in Section 1.2 of our draft, and said he would not vote against the final document because of a particular sentence or two. He agreed that his goal was to see the final document be something that would be approved by the majority of SROA's members.

Some time was again spent discussing the survey that Lesley had developed after the proposed Amended & Restated Covenants did not pass in 2021. Lesley expressed the belief that her survey should be used as a tool to go beyond Committee Members' own personal beliefs. She felt her survey represented a majority of owners, and that her conversations with them were indicative of a majority. Issue was taken with this by several Members on a variety of grounds, including: (i) apparent bias in the way her survey was presented and worded, (ii) the belief that many SNACC members do not merely reflect their own personal beliefs, but those of their friends and neighbors in this community, and (iii) because only 63 of our total 201 lot owners submitted responses to her survey, while roughly the same number of lot owners had voted in favor of the Amended & Restated Covenants. Therefore, there is no way to call her survey results indicative of a "majority" of SROA members. Lesley said she recognized this variation in opinions, and because of it would

support having covenants, but with less overall control than the Amended & Restated version had proposed.

Continuing with Members' concerns that Lesley's survey could not be considered indicative of a majority viewpoint in the community, it was noted that she had stated that 32 of the 63 lot owners responding to her survey had said they wanted to eliminate the ACC altogether – but this represents only 16% of all lot owners and therefore nothing like a majority opinion. Lesley acknowledged that even though she originally had been interested in eliminating the ACC, because of the 50/50 split in opinion even from her own survey, she had ended up supporting the concept of a more limited ARC.

All Members agreed that we should take into account all opinions related to these matters, whether expressed in Lesley's survey or in some other source of information, but that we should never lose sight of the Intent expressed in Section 1.2.

The question was raised whether the Board has the ability to withhold the SNACC's proposed final document from being presented to the SROA membership for a vote. JB explained the steps of this process as he understands them: (i) at the end of its work, this Committee will submit its proposed final New Amended Covenants to the Board; (ii) the Board will review the document and comment on it or make suggestions back to this Committee; (iii) this Committee will have the opportunity to respond to any comments or suggestions from the Board; but (iv) the Board makes the final decision (presumably with prior approval by legal counsel) about the form and content of the document before it is sent to the full SROA membership for a vote.

Another question came up about Board members who are on SNACC having a vote in SNACC deliberations. This had been a concern at the inception of the Committee last year. After some discussion, it was agreed that the Committee would continue as it has to date, with Board members who are on SNACC retaining the right to vote on SNACC issues.

Finally, Charlie emphasized that after attending a recent 3-hour meeting with County officials, it is completely clear that the County is not going to protect property owners from almost anything, due to a claimed lack of resources to be able to do so. Because of that, he said it is imperative that this community continue to have covenants and some kind of process for managing problems ourselves.

#### **4. Section-by-Section Review of Article 3, using Draft v17.**

JB reminded everyone that his charge at the end of the last meeting was to try to draft new iterations of the next Sections of Article 3 based on the discussions and Straw Polls that had been taken at that meeting. He had provided his proposal to the Members well in advance of this meeting.

### **Section 3.2 - Rules and Regulations**

#### **Definition of Rules and Regulations**

The definition of "Rules and Regulations" currently found in Appendix A was approved unanimously, as follows:

Rules and Regulations. Rules, regulations, procedures, policies, and guidelines, however denominated, adopted, amended or repealed by the Board from time to time, for the regulation and management of the Community.

**Section 3.2(a)**

A motion was made to approve Section 3.2(a) as proposed in JB's new iteration, including the elimination of one phrase from the prior draft ("pertaining to these Restrictions"). It was approved by a unanimous vote to read 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 Rules and Regulations, provided that they are consistent with the terms and Intent of these Covenants as expressed in Section 1.2.

**Section 3.2(b)**

A unanimous vote approved JB's new iteration, reading as follows:

Except in a situation that the Board deems urgent, the Board shall give notice to the Members of a proposed Rule or Regulation that the Board wishes to adopt and allow a reasonable period of time (not less than three weeks) for Member feedback before the Board may vote on the proposal at a subsequent meeting. Upon adoption of any Policy, the Board shall promptly provide notice thereof to all Members.

**Section 3.2(c)**

Some discussion took place regarding this Section to clarify its application and potential impacts. JB pointed out that the "motion to affirm" concept was suggested by Charlie near the end of the last meeting as a compromise between those Members who want every new Rule or Regulation to be voted on by the total SROA membership before being implemented, and those who believe that the Board has the duty, and therefore has the authority, to adopt Rules and Regulations without requiring a full community vote (and that we will have a hard time finding people to serve on the Board if we make it too hard for them to do their job). It was suggested that this provision would cause the Board to be reasonably circumspect about developing new Rules or Regulations. It passed by a majority vote and reads as follows:

At the next Annual Meeting of the Association, any Rule or Regulation adopted by the Board since the last Annual Meeting shall be subject to a motion to affirm, which shall be made by the President of the Board. Affirmation must occur by a majority of those voting on the motion in person or by proxy.

**Section 3.4 - Use of Common Areas**

Before discussing the proposed revised text of this Section, we discussed the status of short-term renters fishing at our Pond. Mike explained that the revised (2016) fishing policy states that fishing is available *only* for SROA members, their guests, and *long-term* renters. Prior to the Annual Meeting of 9/10/22, the Board was working on a communication to the owners of short-term rental properties who are advertising fishing at the Pond as an amenity to their renters, which is not correct. The fishing policy is available on the website.

Editing was then suggested to shorten the proposed wording of this Section. It was approved unanimously with the revisions, to read as follows:

Common Areas are for the use and enjoyment of all Owners and their Permittees, subject to reasonable Rules and Regulations adopted by the Board. Individual users are responsible for removing their own trash. All Owners and Permittees should endeavor to maintain the Common Areas in a clean, neat, and natural condition. All Common Areas shall be kept open and unfenced. Colorado Parks and Wildlife Department regulations must be complied with. Owners of Lots adjacent to flood plain easements on the Common Areas may not construct ponds or dams or make any other Improvements that in any way obstruct the natural flow of water.

### **Definition of “Common Areas”**

The definition of “Common Areas” from Appendix A with certain simplifications proposed by JB, was approved unanimously to read as follows:

Common Areas. All real property, including easements and other land use rights, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The Common Areas include but are not limited to the fishing ponds and flood plain easements granted to the Association.

### **Section 3.5 - Compliance with Water Augmentation Plan; Water Supply**

Mike gave the background on the development and some specifics of the water augmentation plan, which has conferred a significant benefit on our community. JB explained that the only changes he suggested had to do with formatting to be consistent with the format the Committee had already adopted for our document. Because this Section was developed based upon court orders, he and Mike recommended that the Committee not modify it (other than for formatting consistency). This recommendation was approved unanimously. *[Because of the length and complexity of the full text of this Section, it is not reproduced here].*

The definition of “Water Augmentation Plan” in Appendix A was likewise agreed to be retained as it currently exists.

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

The next meeting will be on September 28, 2022 at 7:00 PM via Zoom. The homework will be to review Sections 3.6 and following, using a new v18 that JB will prepare and distribute in advance of that meeting.

### **6. Adjournment**

The meeting was adjourned at 9:00 PM.