

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

**Minutes of 11/30/22 Meeting**

*(7:00 PM via Zoom)*

*Approved at 12/12/22 Meeting*

**1. Attendance & Quorum**

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

**Members Absent:** Zach Loos

**Moderator:** JB Burghardt

**Quorum:** A quorum was satisfied with 17 lots represented at the onset.

JB announced that Natalie Gorak was resigning due to the demands of a new job. We thank Natalie for her contributions to our Committee. Her resignation lowers the total number of Lots represented to 18. Using the 65% of Lots criteria agreed upon earlier in the year, the new quorum requirement becomes 11 (the nearest odd number of Lots rounded up or down from 65% of the total Lots represented). Since there were no objections, the quorum will be 11 going forward.

**2. Review and Approve Minutes of 11/9/22 Meeting**

JB had provided a draft of the Minutes of the 11/9/22 meeting days in advance to all Members, after which two minor adjustments were requested and made. He was unable to send the modified version to the Committee in time for this meeting, but since those adjustments did not materially change the content, he asked that they be approved. The Members agreed to this, unanimously approving the Minutes as modified.

**3. Continue Section-by-Section review of Article 3, using Draft v22, additional materials provided in advance, and JB's proposed email to the SROA Board re: legal counsel.**

**Section 3.18 - Camping; Short Term Rentals ("STRs"); Bed & Breakfasts**

JB had supplied the Members with copies of Park County ordinances related to these three items prior to the 11/9/22 meeting. In addition, prior to tonight's meeting he had sent information related to case law in Colorado stating that an STR does not constitute a "commercial use" of property, which means that HOA covenants prohibiting commercial uses of property (such as our Section 3.7, subject to limited exceptions) do not prohibit STRs. He also provided a copy of a Colorado Legal Education seminar outline on this topic, in addition to his draft of possible wording of the Section based on comments made during our last meeting. At that meeting Members had voiced a desire that, at a minimum, the Covenants state that these activities must comply with all County ordinances. JB also had prepared a proposed second sentence (also based on comments at our previous meeting), that specifically asserted the power of the Board to create Rules and Regulations related to these topics. He expressed his concern that it might be beyond the scope of our Committee's authority to create and put detailed restrictions on these topics in the Covenants without clear input from the Board and/or the entire community. His draft Section 3.18 read as follows:

Section 3.18 Camping; Short Term Rentals; Bed & Breakfasts. All uses of real and/or personal property within the Community for purposes of camping, short-term rentals, or bed and breakfasts are subject to all applicable Laws. However, the Board is specifically authorized to establish and enforce Rules and Regulations on these matters that are more restrictive than any otherwise applicable Laws.

Based on the information JB had reviewed to date, he said he did not know whether the second sentence would be deemed specific enough to empower the Board to adopt limitations on STRs; the legal authorities he had reviewed at least suggested that the only assured way to set limitations on STRs would be to have them clearly and specifically set forth in the Covenants themselves; his proposed second sentence was as far as he believed we could go for now without guidance from the Board (and preferably from the entire community). Several Members expressed the opinion that the proposed second sentence was redundant of Section 3.2, which addresses the Board's power and the process related to creating new Rules and Regulations. JB expressed his belief that there is a difference in the level of restriction here: Section 3.2 is intended to authorize the Board to provide more detail and clarification about the restrictions *already set forth* in the rest of Article 3, whereas the second sentence of Section 3.18 would authorize the Board to set *completely new restrictions* on STRs that are not anywhere else in the Covenants. Other Members expressed their concern that the County could always change its ordinances and make them more lax (there already may be some pressure to do this from the "hospitality" lobby), and therefore those Members felt that we need to emphasize the Board's power to create Rules and Regulations specific to Silverheels in the Covenants. It was suggested that the second sentence could be kept with a reference to Section 3.2.

JB urged that to properly handle this issue, the Committee should get advice from legal counsel with HOA expertise (noting again that he retired from his law career some 5 years ago, and no longer acts as a lawyer for anyone, including SROA or the SNACC). To that end he had drafted a proposed letter to the Board asking about the status of HOA law firm retained by the prior Board, and whether the Board intended to continue with that firm or to engage another one. His letter also suggested having a SNACC member who is also on the Board to function as a liaison from the Board to work with him on behalf of the SNACC in acquiring any agreed-upon legal advice. Some Members felt legal counsel was not necessary, in that the Board would need to have the proposed new Covenants reviewed by legal counsel prior to submitting them for a community vote anyway. Others felt that it would be beneficial to make some determinations prior to sending our newly-drafted Covenants to the Board for review – especially since the solution on a key issue like STRs might include polling the whole community in the near future (see next paragraph).

The concept of polling SROA members on the STR issue was also discussed. Several Members expressed that the best (if not the only) way to develop specific requirements for STRs would be to get input from all owners in Silverheels. But all agreed that polling was beyond this Committee's scope, and instead would need to be spearheaded by the Board. Some Members did suggest that the poll could be a simple questionnaire asking if owners wanted to allow STRs at all, and if so, what limitations should be put in place. But others pointed out that if only a small percentage of owners responded to such a poll, the validity of the survey might not

warrant it being used as a determining factor in development of a Covenant. Still, the need for information from the owners was deemed important by quite a few Members.

It was asked whether the Board had already prepared any Rules or Regulations related to STRs. Mike explained that the Board is in the process of writing something that could turn into a formal Rule or Regulation. Also, the Board will be sending out a request again, as was done last year, asking STR owners to provide the Board with contact information and a copy of their County license. The Board intends to provide STR owners with a list of bullet point reminders regarding County requirements. Hopefully this action will take place in the next 30 days. It was suggested that in addition to the bullet points, the Board should emphasize that owners are responsible for the actions of their renters and, as such, should clearly communicate with their renters regarding County ordinances and requirements and that the renters would be held responsible to the owners if violations occurred.

All three Board members who are also SNACC Members agreed that a request for a poll would be considered by the Board. It was suggested that a member of SNACC formally communicate to the Board to request that a poll be taken.

In the interest of moving ahead with our work on the Covenants, JB suggested approving some version of Section 3.18 but also agreeing to revisit it in the event a poll or survey is conducted and/or the Board agrees to ask the advice of legal counsel. A motion was made and seconded to approve proposed Section 3.18 as proposed, but with some editing (see italics). The Section reads as follows:

Section 3.18 Camping; Short Term Rentals; Bed & Breakfasts. All uses of real and/or personal property within the Community for purposes of camping, short-term rentals, or bed and breakfasts *must comply with* all applicable Laws. However, the Board is specifically authorized *under Section 3.2* to establish and enforce Rules and Regulations on these matters that are more restrictive than any otherwise applicable Laws.

This Section will be revisited after the Committee receives legal advice as to whether the second sentence would be effective to allow the Board to adopt Rules and Regulations on these topics without specific limitations being written into the Covenants themselves.

We then moved on to consider Article 4.

#### **Article 4: The Association and Its Members**

##### **Section 4.1 - Function of Association**

Before discussing this Section, two Definitions needed to be addressed. A slight addition (see italics) was added to the definition of “Board” contained in Draft v1. It was unanimously approved as follows:

Board of Directors or Board. The Board *of Directors* elected pursuant to the Association’s Bylaws.

Grammatical changes were also suggested for the definition of “Governing Documents,” and it was unanimously approved as follows:

Governing Documents. This Declaration, the Plats, the Articles of Incorporation, *the* Bylaws, and *any* Rules and Regulations, as they may be amended or supplemented from time to time.

A short discussion took place regarding Draft v22's proposed rewording of this Section from Draft v1. The revised language passed unanimously with a change to the first sentence (see italics) and elimination of the second sentence, to read as follows:

Section 4.1 Function of Association. The Association, through the Board, has responsibility *to enforce* the Governing Documents.

#### **Section 4.2 - Membership**

No changes were suggested to this Section, and it was approved unanimously as written:

Section 4.2 Membership. Every Owner shall be a Member of the Association, and the membership of the Association at all times shall consist exclusively of all Owners. Membership shall be appurtenant to and may not be separated from ownership of any Lot. There shall be only one membership per Lot. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

#### **Section 4.3 - One Class of Membership**

Only one grammatical change was suggested (in italics below). When asked for clarification of the last clause, JB speculated that it might refer to the very remote possibility that if a Lot were to go into foreclosure, the Board would decide that the Association should buy it. The Section was approved unanimously as follows:

Section 4.3 One Class of Membership. The Association shall have one class of voting membership. The right to vote commences at such time as the Owner acquires the Lot; provided *that* no votes allocated to a Lot owned by the Association may be cast.

#### **Section 4.4 - Exercise of Voting Rights**

Before discussing this Section, the Definition of "Good Standing" required attention. Draft v1's definition of "Good Standing" reads as follows:

Good Standing. An Owner who is no more than thirty (30) days late in the payment of any Assessments or is not in violation of the Governing Documents.

JB's draft included a title change and addressed the problem of who would need to decide whether an Owner was "in violation of the Governing Documents"; he proposed that only the Board could make this decision. It was pointed out that the Bylaws do not allow voting by an Owner who has not paid all assessments in full; therefore, the "30-days late" aspect of the above definition needed to be deleted. A vote was taken on JB's initial draft including the statement regarding the Board, and it failed substantially. With some editing (see italics) another vote on the definition was taken and passed unanimously. It reads as follows:

Owner in Good Standing. An Owner who is current in the payment of all Assessments and who is not in violation of the Governing Documents.

After the Definition of “Owner in Good Standing” was approved, a vote was taken on Section 4.4 and unanimously approved with no changes. It reads as follows:

Section 4.4 Exercise of Voting Rights. Each membership shall be entitled to one vote for each Lot owned. If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only as agreed upon by the Owners. No Owner shall be entitled to vote in any matter unless that Owner is in Good Standing with the Association.

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

JB explained that because of other responsibilities he had been unable to send out an e-blast report on the 11/9/22 meeting before today, but would be doing so shortly.

#### **5. Next Meeting & Homework**

Because of the holiday season, possible dates for our next several meetings were discussed. **The next meeting will be Monday, December 12, at 7:00 PM via Zoom.** No other meetings will be held in December.

It also was agreed that **Wednesday, January 4, 2023, at 7:00 PM via Zoom will be our first meeting of the new year.**

Prior to the December 12 meeting, JB will send Members a copy of Article 5 - Association Powers and Responsibilities with any suggestions for revision.

#### **6. Adjournment**

The meeting was adjourned at 9:01 PM.