

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

**Minutes of 01/18/23 Meeting**

*(7:00 PM via Zoom)*

*Approved at 02/01/23 Meeting*

**1. Attendance and Quorum (11 lots)**

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

**Members Absent:** Lillian Wissel

**Quorum:** The quorum requirement was met with 14 lots represented at the outset.

**Moderator:** JB Burghardt

**2. Review and Approve Minutes of 1/04/23 Meeting**

The Minutes of the 1/4/23 meeting were provided days in advance to all Members. At tonight's meeting it was pointed out that those Minutes did not note that Lane said he would include Short Term Rental questions in the Covenants survey that Lesley Hall is compiling. Lane reiterated that he did say this and that he had talked to Lesley about including STR questions. He said she told him that she already had completed the survey for the portion of the New Amended Covenants that our Committee had already completed. Lane emphasized to Lesley that STR questions should be included in the second segment of the survey to go out once SNACC has completed its work. The Minutes were unanimously approved with recognition of omission of Lane's original comment and its inclusion in these Minutes instead.

**3. Outcome of Susan Barden's communication with Lesley Hall regarding SNACC completion date, survey, and other matters (e.g. open Zoom forum for Q&A re: our New Amended Covenants)**

Susan reported that she had spoken again with Lesley since the meeting of 1/4/23, but had not spoken with any other Board members. Lesley suggested that Susan attend the next Board meeting (Monday, January 23) to propose a process for submitting requests, questions, and concerns discussed at the last SNACC meeting to the Board. Those concerns include: (i) the addition of clarifying statements about the Articles in the proposed survey; (ii) having SNACC Members assist in writing those clarifying statements; (iii) having SNACC Members submit questions for the survey; (iv) having questions regarding STRs included in the survey; (v) providing a variety of ways for questions to be submitted by Owners and answered by SNACC and the Board before a final draft of the New Amended Covenants is written and reviewed by an attorney; and (vi) making the results of the survey public in its entirety.

Susan reported that Lesley said that, at that point, the Board had made no decisions on any of these topics. Lesley made no mention of having the SNACC members who volunteered to assist with the survey questions, and she has continued to work on the survey on her own. When asked about including clarifying comments, Lesley told Susan that sending out the Covenants draft without these comments would be a test of how clear and simple the newly drafted Covenants actually are. Many SNACC members reacted to this statement, recognizing how interrelated the provisions of our draft document actually are and how the background as to

why and how the provisions had been drafted would be helpful for Owners to understand. Susan will present these points at the upcoming Board meeting. In addition, she will suggest that the Board hold at least one “Town Hall” Zoom meeting open to the whole SROA membership, where a panel of SNACC and Board members will be designated to answer questions. She suggested making it possible for Owners to email questions in advance of the meeting if they would prefer. She also offered to moderate the meeting.

The Board meeting on 1/23/23 will be in person and will be held at the old Timberline building on 4<sup>th</sup> and Front St. which is now the Center of Colorado Water Conservancy District. Susan said she will attend, and she encouraged other SNACC members to attend. She said that any additional questions SNACC members have could be presented at that time.

Susan also felt it would be beneficial to have SNACC include a notice in the remaining e-blast Reports explaining that we are nearing the end of our work and that the Board will be sending out a two-part survey about it. She hopes we will be able to include information regarding a Town Hall Zoom meeting and/or any other forms of communication between Owners, the Board, and SNACC. Members voiced hope that the Board will be willing to work with SNACC for passage of New Amended Covenants that are acceptable to a majority of Owners.

Kylie pointed out that the Zoom account is in the Board’s name, so we will be unable to hold Zoom meetings on that account if the Board withdraws its support of SNACC on March 1, as Dave Wissel’s prior communications on behalf of the Board had indicated. Kylie asked whether SNACC would accede to that deadline. JB replied that he felt we should follow the same careful process that we have taken throughout our work, devoting to the remaining part of the Covenants the same attention and thought that we have put into the rest of the document, regardless of any deadline arbitrarily set by the Board. He said we may be finished by March 1 or we may not, but he personally did not intend to stop until we are through considering the entire document. He also noted that he has a full Zoom account for his business mediation practice and will be happy to utilize it for this Committee if necessary. The Board can make, and be accountable for, whatever decision they come to about this.

We proceeded to consider the next portion of the Covenants.

#### **4. Review of Article VI, using Draft v25 of the New Amended Covenants**

**Section 6.1 - Purpose of Assessments.** JB noted that Section 6.1 is introductory in nature and that he could not recommend anything to improve it. A motion was made, seconded, and unanimously approved to accept it as presented in Draft v1, as follows:

Section 6.1 Purpose of Assessments. The Assessments levied by the Association may be used to carry out the powers and duties of the Association as set forth in the Governing Documents, or as provided by law.

**Section 6.2 – Budget.** JB submitted that the language of this Section in Draft v1 was long, cumbersome, and occasionally redundant. He noted Tyler’s suggestion that the single long paragraph in Draft v1 be broken into two subsections dealing with related but different matters: (a) the budget creation process, and (b) the process for handling proposed increases in the

Annual Assessment. In regard to the delivery language contained in subsection (a), JB pointed out that the draft of Section 8.3 will provide for delivery of all documents to the membership electronically, except for those who request US Mail delivery; therefore, detailed text regarding delivery is unnecessary in this subsection or anywhere else in the Covenants except Section 8.3. Some other rewording was suggested as well. Following these changes, subsection (a) was approved unanimously as follows:

a. Subject to the limitations in this Declaration, at least thirty (30) days before expiration of each fiscal year the Board shall prepare and adopt a proposed annual budget based on estimated Common Expenses. Within thirty (30) days after adoption of a proposed budget, the Board shall cause a copy of the budget to be delivered to each Owner. The Board also shall post a copy of the budget on the Association's website and set a date for a meeting of the Owners to review the budget. The meeting must occur within a reasonable time after delivery of the budget. The Board shall cause notice of the meeting to be provided to the Owners, and for the meeting to be conducted, as provided in the Bylaws.

The discussion of subsection (b) centered around similar elimination and simplification of language. The subsection was approved unanimously as reworded, to read as follows:

b. If, in the judgment of the Board, the proposed budget results in the need for an increase in the Annual Assessment per Lot over the previous calendar year, such increase shall require approval of a majority of Owners at the above-described meeting. If the proposed increase in the Annual Assessment is not approved, the prior budget shall remain effective until a different Annual Assessment is proposed by the Board and approved by the Members. The Board also may revise the budget and adjust the Annual Assessment from time to time during the year following the procedure set forth in this Section.

**Definition of "Annual Assessment".** The existing definition required some adjustments which were discussed. The revised definition was approved unanimously to read as follows:

Annual Assessment. The amount levied by the Board against each Lot to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Article 6 of this Declaration.

**Section 6.3 - Allocation of Assessments to Lots.** Numerous changes were necessary to clarify this Section. With 201 Lots identified in the original Silverheels plats, each Lot was intended to be responsible for 0.4975% (i.e., 1/201) of the total budget each year. While some Owners probably will appreciate seeing the math, others will be better served by using the term "equal portions," so we decided to include both. JB also proposed including a provision that if two Lots got purchased and merged into one Lot, they each should still be responsible for that same percentage. Mike (as longtime Secretary/Treasurer of the Board) indicated that this had indeed been the practice in the few circumstances where merged Lots had come up. The reworded Section was approved unanimously to read as follows:

Section 6.3 Allocation of Assessments to Lots. For Annual Assessments, each Lot shall be allocated an equal share of the Common Expenses as approved pursuant to this Article 6; provided that any Lot which constitutes the merger or consolidation of two or more of the original 201 Lots identified on the Plats shall be allocated 0.4975% (i.e., 1/201) of the Common Expenses for each such originally-identified Lot. Allocations of Special Assessments shall be treated in a similar fashion.

**Section 6.4 - Special Assessments.** Discussion again centered around simplifying language due to coverage provided in the Bylaws. The reworded draft was approved unanimously to read as follows:

Section 6.4 Special Assessments. In addition to other authorized Assessments, the Board may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted, subject to approval of a majority of Owners at a meeting called and conducted in accordance with the Bylaws. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**Section 6.5 Limitation on Assessments.** JB reminded the Members that, as we had discussed at the outset of our work more than a year ago, this Section is the key to assuring that SROA is treated as a “limited-expense planned community” under Colorado law, which will exempt our Association from all but a few provisions of the 80 pages of requirements in CCIOA (the Colorado Common Interest Ownership Act). Therefore, he suggested no changes to the language in Draft v1. This recommendation was accepted unanimously; therefore the Section reads as follows:

Section 6.5 Limitation on Assessments. Notwithstanding any provision of this Declaration to the contrary, the total combined Annual Assessments and Special Assessments allocated to each Lot in any fiscal year, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed the amount permitted by Colorado Revised Statutes §38-33.3-116.

**Section 6.6 - Specific Assessments.** This Section deals with the highly unlikely but not inconceivable possibility that a Lot Owner could do something to his or her Lot that violates the Covenants to the detriment of the community, and then refuse to correct the problem -- ultimately resulting in the Board needing to use its discretionary power to address the problem (probably through legal action if no informal resolution can be achieved). Section 6.6 would allow the Board to make a “Specific Assessment” against the Lot to cover any costs that the Board incurred to deal with the situation (again, most likely this would be legal fees and costs). Initially there were questions about whether this Section was needed at all. In response, it was noted that we previously have approved language that prevents the Board or the ARC from entering an Owner’s property to deal with a problem on the Lot without the Owner’s consent; therefore, in the absence of such consent, nothing can be done on-site to deal with such a problem until legal action is taken (causing expense to our community). Section 6.6 simply makes plain that in such a situation, the Board can assess that particular Lot for any costs the Board incurs in dealing with the problem. JB suggested inclusion of a “Notice and Hearing” clause to protect the Owner’s

due process rights before such an assessment could be made. Others proposed insertions that would limit what the Board could do in this circumstance. It also was mentioned that serious problems involving Lots might well fall within the purview of Park County through its “health and safety” regulations, so the Board should be able to look to the County to enforce its ordinances (the question, as usual, remains as to whether the County *would* do this in a timely and effective manner).

The major issue evolved to how much power the Board should have in a situation like this. After much discussion, two straw polls on wording, and many attempts at editing this Section, a vote was taken on one redraft but it failed to receive a majority vote. It finally was agreed that JB should work on a new redraft, and any Members who wished could send him suggestions. He will send out a new proposed redraft of this Section before the next meeting as part of Draft v26.

Related to this, we discussed the responsibility of STR owners for damages caused by their renters (this is already the law under the Park County STR ordinance), and whether their Lots could be specifically assessed under Section 6.6 for damages caused by their renters. JB noted that under Section 5.1(c) the Board has the power to assess fines and charges to deal with a problem like damages caused by renters. Under upcoming Section 6.10, any fine or charge would automatically be secured by a lien against the STR owner’s Lot until paid; thus, there is no need to address the fine or charge situation as a Specific Assessment under Section 6.6. It also was brought up that having a fines policy would clarify how and to what extent the Board could address such situations. Section 5.1 authorizes the Board to create such a policy, subject to the limitations set forth in Section 3.2. It will be up to the Board to decide whether it will implement such a policy.

**5. New Business**

There was no new business.

**6. Next Meeting; Homework**

The next meeting will be on Wednesday, February 1 at 7:00 PM via Zoom. Review remaining Sections in Article 6 and new drafts for Article 7 that JB will be sending out in advance of the meeting.

**7. Adjournment**

The meeting was adjourned at 9:06 PM.