

SILVERHEELS NEW AMENDED COVENANTS COMMITTEE (SNACC)

Minutes of 02/1/23 Meeting (7:00 PM via Zoom) *Approved at 02/15/23 Meeting*

1. Attendance and Quorum (11 lots)

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

Members Absent: Mary Manka

Moderator: JB Burghardt

Quorum: The Quorum requirement was met with 15 lots represented at the outset.

2. Review and Approve Minutes of 1/18/23 Meeting

The Minutes of the 1/18/23 meeting were provided days in advance to all Members. They were unanimously approved.

3. Outcome of Susan's presentation at Board meeting on 1/20/23; impact on SNACC's plans

JB asked Susan to relate the results of her discussion with the Board at its meeting on Monday, 1/20/23. She said she thought the email summary she sent to SNACC members before tonight's meeting was pretty comprehensive, so she did not want to repeat herself. For the record, here is the text of that email:

"My understanding and highlights of my discussion with the Board:

- The board will not accept additional comments to clarify the actual text from the SNACC's new version of the covenants. Nor, will they accept questions submitted from SNACC members. The questionnaire will ask if the community member would vote for or against each Article (as copied directly from our work) and allow for comments.
- The questionnaire will come out in 2 parts. The board will provide a link for respondents to ask questions. I suggested that a few SNACC members along with board members could respond to any questions. That is under consideration.
- The board will accept questions about STRs from SNACC members for second part of the questionnaire. Tentative deadline for those questions is February 15. All questions will be considered but may not be included in the final questionnaire.
- I advocated for a town hall zoom meeting to answer any community questions by a panel of both SNACC and board members. The board indicated that if they receive a lot of questions from the community, they may consider a town hall after the second questionnaire is sent out. But this was not a commitment to holding a meeting.
- The board does intend to share the results and comments from the questionnaires with SNACC and the community.
- The board will include an area on the website explaining the history that led to development of new covenants, SNACC's current work and the questionnaires. They may include an FAQ section if similar questions are sent to the board.
- The board also discussed what the plan might be if after this process the covenants still do not pass. No course of action was confirmed.

JB asked whether the Board was going to be asking for reactions to total *Articles* at a time, or to individual *Sections within each Article* at a time. Susan deferred to Mike or Lane. Mike said that not every Article or Section would have a question -- only those that the Board felt were pertinent and for which the Board wanted input from the membership.

Susan and Mike provided an explanation of the next steps to be taken by the Board. Hopefully, Friday, Feb. 3 Mike will be sending an e-blast to owners giving them a brief summary of the history behind rewriting the Covenants and explaining the first questionnaire they will be getting. The first questionnaire from the Board will be about Articles 1- 4 of the Covenants as drafted by SNACC. That questionnaire will possibly go out Monday, Feb 6. The second questionnaire will be regarding Articles 5 – 8. It also will contain questions related to Short Term Rentals (STRs) and will follow the same format unless results of the first questionnaire suggest things should be done differently. The responses will be tallied by Survey Monkey and the results will be published along with any comments sent to the Board. Susan said that she did not know where the Board stood on having a SNACC member answer some questions, rather than solely the Board. Mike said they were still considering how they would proceed with that. Tyler asked if all comments will be released, or will the Board “filter” them. Mike said that it hadn’t been discussed but he was assuming all the comments will be released and will be anonymous. He would not consider releasing disrespectful comments, though. Tyler expressed that it would be important to see all comments to know how people are feeling.

Several Members noted that the previous Board had not requested community involvement in the process of reviewing the draft Amended and Restated Covenants, nor did it further involve the committee that had reviewed the draft covenants and provided its recommendations to the Board for changes. Other Members agreed that this indeed was what the prior Board had done, but that it was a mistake that should not be repeated by the current Board. Many Members are pushing for our involvement in the community review-and-comment process. Zach commented that the previous Board had approved this Committee for the purpose of creating a document, and then turning it over to the Board – then our job was done. He said that having a new Board does not change that. JB said he didn’t believe any of us wanted to go beyond what this Board, in good faith, might decide to do, but that we feel it’s important for us to have the opportunity to explain what we created as a Committee after working on this document for more than 16 months and 30 meetings. Also, we have the same right as any other member of this community to have our voices heard as this process goes forward. Tony emphasized the sense of responsibility that SNACC feels for its work product.

All agreed that with these viewpoints fully aired, we should return to our consideration of the next Sections of the draft Covenants.

4. Continue review of Article VI, using Draft v26 of the New Amended Covenants, starting again at 6.6

Definition of Lien

Work began with consideration of having the term “Lien” included in the Definitions Appendix, since no definition has been provided before. JB’s draft v26 for this meeting

proposed to use the definition contained in the Colorado Revised Statutes (CRS 38-35-201(2)). It was approved unanimously to read as follows:

Lien. An encumbrance on real or personal property as security for the payment of a debt or performance of an obligation.

At this point Mike indicated to JB that he would need all definition changes by this Friday so that they can be included in the Board's questionnaire for SNACC's draft of Articles 1 – 4. JB said he would meet that deadline one way or another.

Section 6.6 - Specific Assessments

JB began by saying that he had drafted the revised version of this Section based on the discussion at the 2/1/23 meeting, but that as several Members had alluded, another option was simply to strike it. The question was raised as to whether the objectives of this Section were potentially covered elsewhere anyway. JB said he thought that the treatment of Assessments elsewhere in the Covenants would encompass what probably was intended by the drafters of this Section (although we cannot know for sure since we are not permitted to talk with prior counsel to find out). A motion was made and seconded to strike this Section in its entirety. It passed by a majority vote. This will cause all subsequent Sections to be renumbered, per below.

Section 6.7 (now renumbered as 6.6) - Payment of Assessments

The proposed draft of this Section, after the elimination of the term "Specific Assessments" and the change of "paid" to "payable", was approved unanimously to read as follows:

Section 6.6 Payment of Assessments. Annual Assessments shall be due and payable annually. Special Assessments shall be due and payable as specified by the Board.

Section 6.8 (now renumbered as 6.7) - Obligation for Assessments

Discussion first focused on the interest rate to be applied to an unpaid Assessment and also the length of the Section in general. Members agreed that 21% interest seemed exceptionally high and arbitrary. Mike indicated that Bylaw 7.5 *Assessment of Lien* states that if an assessment is not paid in 30 days, an interest rate of 12% per year shall be applied. This is what he, as SROA Secretary/Treasurer, has applied in the past. It was suggested that we simply refer to the Bylaws and not indicate an exact percentage, as the Bylaws may change in the future. The discussion on how to simplify the rest of this Section led to several suggestions, including it being divided into three subsections. It was pointed out that each subsection contained an important responsibility of ownership that should be communicated to SROA owners. JB was asked to redraft the Section based on these comments; the redraft will be contained in Draft v27 which he will send to the Committee before our next meeting.

Section 6.9 (now renumbered as 6.8) - Effect of Nonpayment of Assessments

Discussion revolved around what already is set forth on this topic in the Bylaws, whether there was a need for language related to a lien and foreclosure, and the general length of the Section. JB indicated that the subsections do provide the Board with a sequential summary of all possible options to deal with nonpayment of an Assessment. Mike indicated the historic practice has been to file liens when multiple years of non-payment of annual dues have occurred, and that liens are addressed in Bylaws Section 7.1 - Creation of Liens. As to the issue of whether we need liens at all, several Members urged that the money from Assessments goes to the good of

the whole community, and the Association must have some way to obtain payment in those rare circumstances where Owners have failed or refused to meet their obligation to pay them on time. JB noted that CCIOA causes a lien to be wiped out if collection (i.e., foreclosure) proceedings are not begun within 6 years, but that the Board would need advice from legal counsel as to whether the same would be true for SROA as a “limited expense planned community” which is not under most of the CCIOA statute. JB pointed out again that foreclosure is simply the ultimate way to collect a lien if nothing else works, and it does not mean that the Owner automatically loses his or her home – they have multiple opportunities under the foreclosure procedures to simply pay their obligation and the process is over with. He noted that if the foreclosure remedy is eliminated, a bad actor could “play the system” and refuse to pay, knowing that the lien could be wiped out after six years. Mike expressed his belief that a lien could be renewed for additional periods before the end of the six years. JB said he didn’t know one way or the other, which is why we or the Board need competent legal counsel to answer this important question; Mike agreed that counsel should be consulted on the issue.

Some Members felt that the foreclosure possibility needed to remain in the Covenants to motivate those who might otherwise fail to take responsibility for their obligation to pay their dues. Others felt it was too heavy-handed. After much discussion, a motion was made to strike the following subsections: (a) which provides for a late fee being assessed 15 days after the due date, (e) which provides for foreclosure, and the last sentence, “The late charge and interest rate to be applied under this Section shall be established by the Board pursuant to Section 6.8”. A motion was made and seconded to approve the Section as revised. It passed by majority vote to read as follows:

Section 6.8 Effect of Nonpayment of Assessments. Any Assessment (regardless of type) which is not paid by its due date shall be delinquent. If an Assessment becomes delinquent, the Board in its sole reasonable discretion may take any or all of the following actions:

- a. if the delinquency continues for a period of thirty (30) days after the due date, assess interest in arrears from the due date until paid, and deliver a notice thereof to the Owner;
- b. suspend the voting rights of the Owner during any period of delinquency, and deliver a notice thereof to the Owner;
- c. bring a collection action against the Owner;
- d. exercise any other available remedies.

Section 6.10 (now renumbered as 6.9) - Lien for Assessments

There was a general consensus that this Section is much too long and complicated. Charlie felt it held a good explanation of the whole lien process under Colorado law but questioned whether all this was necessary to explain within our Covenants. When suggested that all of it be replaced with a single statement such as “the enforcement of liens is subject to current Colorado law”, JB expressed concern that this might be overbroad and compromise the Association’s ability to collect late charges, interest, and/or the cost of attorneys’ fees as part of the liened Assessment. Mike suggested that it be edited to a paragraph or two. JB suggested the possibility that two

subsections: (b) relating to “superpriority” under Colorado law for a lien covering the first six months of unpaid annual dues to an HOA, and (d) language related to foreclosures, could be eliminated. He offered to try a redraft of this Section, deleting anything that was not critical and simplifying the remaining language. He will include this in Draft v27 for our next meeting.

Section 6.11 (now renumbered as 6.10) - Surplus Funds

Section 6.11 as presented in Draft v26 was approved unanimously with one word change and a grammar change. It reads as follows:

Section 6.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for operating, capital, and other reserves in any fiscal year need not be paid to the Owners in proportion to their liability for Common Expenses, but shall be retained in the Association’s reserve funds.

Appendix A - Definitions

JB asked that the Committee consider having Appendix A be a complete list of all Definitions, whether defined only in the Appendix or also defined in the text. If someone looks up a term in the Appendix they will be referred back to the section where it exists. There were no objections to this. JB also suggested changing the definition of “Member” to read: “A member of the Association as more fully described in Section 4.3”. The term “Specific Assessment” will be removed from the definition of “Assessment”. Finally, JB suggested deleting the full statutory citation to the Colorado Nonprofit Act set out in Section 5.1, as it is better set out in the Definitions. All these suggestions were approved.

5. New Business

Mike reiterated that he would need any definition changes by Friday 2/4/23 because the draft of Covenants 1-4 will possibly be going to owners on Monday, 2/7/23. JB reiterated that this would be done.

6. Next meeting; determine advance homework

The next meeting will be Wednesday, February 15, at 7:00 PM via Zoom. Homework includes reviewing Article 7 Insurance and Article 8 General Provisions. Review and respond to Board’s questionnaire.

7. Adjournment

The meeting was adjourned at 9:04 PM.