

Sundance Homeowners Association

Special Meeting with Board of Directors and Architectural Control Committee (ACC)

February 7, 2018

5:45-7:30pm

Meeting Topic: Consideration for amending and re-instating Declaration of Covenants and Articles of Incorporation.

Attendees

- Board Members present: K.J. McCorry, President, David Julie, Secretary, Samantha McBride (Treasurer), Lindsay Sharp, Director (Kim Rider absent)
- ACC members present: Ralph Doane, Scott Troetel and Carrie Mabie (Kim Rider absent)
- Nick Conley, HOA community manager
- Aaron Goodlock, Orten Cavanagh & Holmes (OCH), HOA attorney

Background and Opening Remarks

In 2016, the board reviewed the existing governance documents for the HOA. The HOA decided to amend and revise the bylaws as well as initiate nine governing policies, as required by the CCOIA, State of Colorado regulations.

The HOA contracted with OCH and Aaron Goodlock in November 2017, to conduct a review of our other governing documents, Declaration of Covenants and Articles of Incorporation and provide recommendations on revisions. Aaron provided a full report on these recommendations to the HOA on January 5, 2018. These documents are over 30 years old and were initially drafted by the developer of the community. It has been recommended by OCH that the HOA amend and reinstate both the Articles of Incorporation and Declaration of Covenants to be more reflective of current community needs, in alignment of City of Boulder and State of Colorado regulations and statues and remove irrelevant information.

Aaron Goodlock has been with OCH for over five years and specializes in counsel for HOA's in the State of Colorado. He has worked with numerous HOA's to modify, revise and re-instate governance documents.

Discussion and Comments on the OCH Recommendation Report

The following were cited as **risks or liability to the HOA** if the governance documents are not updated:

- a. Eliminating discrepancy between governance documents and city code and State statue. If there is a discrepancy usually government statues will supersede HOA governance.
- b. Reduce legal fees for interpretation. If documents are not updated, there is more need for legal counsel on dealing with HOA issues for interpretation.
- c. Reduce risk to the HOA. A risk to the HOA is members could sue the HOA to enforce the covenants, even though items in the covenants are outdated, irrelevant or not according to government regulations. There was a supreme court case that upheld this responsibility of the HOA.

- d. Create reasonable expectations for owners. The current covenants are confusing to homeowners and lead to continual mis-interpretation.

In terms of **enforcement of new governance documents**, the HOA cannot go back and require homeowners to make changes structurally based on new guidelines. Items that are not structural can be enforced immediately once the new governance documents have been approved by the members.

HOA's are not obligated to update governance documents every time government approves **new regulations**. However, when a significant portion of governance documents are outdated, then it is recommended to change them. Aaron commented there has been numerous and significant regulation changes in the past 5 years and thus another reason it is recommended to change HOA governance documents. Associations can be more restrictive than city and state regulations but never less.

When **revising the covenants**, the following were noted to take into consideration:

- In CCOIA there is a list of items to be included in your declaration, upon revisions, these items would need to be included in any revisions.
- It is important to provide a balance between clarity and flexibility. This will ensure the governance documents will be long standing moving forward.
- ACC needs to be included in all governance documents to protect liability. It would be an added protection to add in the ACC into the declaration.

Lots 1-6, are part of the Sundance community but are not members and do not pay dues. It was originally suggested by Aaron to remove these lots from the HOA covenants. Based on further research, it could be difficult to remove Lots 1-6 of the covenants. The City of Boulder, would probably see removal as illegal sub-division. Aaron now recommends that we remove the liability of Lots 1-6 and insert a disclaimer but not remove them. K.J. will also follow up with the City of Boulder planning office to address this issue. The HOA will notify the owners of lots 1-6 of our plans after the 1st draft of revised documents have been reviewed by the board and ACC.

For **member approval**, the HOA will need 67% "yes" votes or 48 homes based on Colorado law. The HOA will also need to get consent from 75% of mortgage lenders/ first mortgagees. The HOA law firm, OCH, can assist with procuring approval from the mortgage lenders / first mortgagees however it will be an additional \$1500 (estimated) cost. If the HOA does not get approval by homeowners due to insufficient ballot return, then they HOA can submit a court petition process to get approval, which usually occurs.

The **voting process**, needs to be formal voting with ballots at an HOA meeting of all homeowners. For homeowners that cannot attend the meeting, Aaron recommended to get proxies that appoint another member to vote on their behalf. OCHR will develop the proxies to make sure it is legally sufficient. The HOA cannot message to owners in lack of voting that will be tacit approval. The HOA can do proxies in advance (they are good for 11 months) and submitted electronically. If the HOA conducted the vote on the new documents electronically, the HOA would need to get the 48 "yes" votes within 60 days.

The new governance documents, before voting, need to be available publicly (on website) and it is also recommended to send copies of the new documents via paper mail. Aaron recommends, and will provide, a version with annotations and explanations with changes on the new documents to make it easier for members to read and approve.

The following is the **proposed timeline and process** if the HOA decides to move forward with revising the Declaration and Article changes.

- February 2018: Review proposed changes and board/ACC meeting with attorney
- February 2018: Questionnaire sent to HOA board and ACC members to get initial feedback

- March 2018: 1st draft of amended declaration and articles of inc. from ORCH
- April 2018: Board review of initial draft
- April 2018: 2nd draft of amended declaration and articles of inc. from ORCH
- May 2018: Hold meeting with HOA homeowners/members to review 2nd draft.
- June 2018: 3rd draft of amended declaration and articles of inc. from ORCH
- July 2018: Final review of 3rd draft by board
- August 2018: Messaging to HOA members of final documents and last comments. Request for proxies.
- October 2018: Final vote and member approval- Hold meeting.
- October 2018: Submit amended and revised documents to the City of Boulder and State of Colorado.

Vote for Approval

KJ McCorry motioned to approve working with Aaron Goodlock and his firm, Orten Cavanagh & Holmes, to revise, amend and re-instate the Sundance HOA Declaration of Covenants and Articles of Incorporation. David Julie, seconded the motion. It was a unanimous vote of approval of the HOA board of directors and ACC members attending.

The Special Meeting was adjourned at 7:30pm.

Next Steps

- K.J. McCorry will draft and record meeting minutes
- K.J. McCorry will contact Aaron and approve proposal to move forward with new governance documents
- K.J will work with Nick to develop an initial survey and questionnaire for the homeowners
- K.J. will plan the April board meeting and add to the agenda to review initial draft

Meeting Notes written by President, K.J. McCorry on February 8, 2018

Meeting Notes reviewed and edited by Secretary, David Julie on February 9, 2018

Meeting Notes approved by Board of Directors on February 11, 2018

SUNDANCE HOMEOWNERS ASSOCIATION, INC.
a Colorado nonprofit corporation

By: David Julie 7/11/2018

David Julie, HOA Secretary