

WR Special Meetings to discuss Homeowner comments

Oct .10, 2017 (minutes)

Oct. 28, 2017 (minutes)

Purpose: The WR Board of Directors and the Covenants Revision Committee were present to discuss the Homeowner review comments regarding the Draft Proposed Covenants Revision dated June 14, 2017 (Revision 1). Homeowner comments were due October 6, 2017.

Attendees: (Oct. 10, 2017)

Board Members: Jim Keefe, Wayne Gardner, Hal Goldback

Committee Members: Barb Doremus, Deloris Kenerson

Homeowners: Jack Windeler, Kathleen McCormick, Susan Grant

Attendees: (Oct. 28, 2017)

Board Members: Jim Keefe, Wayne Gardner, Hal Goldback, Sharla Davis, Royal Koepsell

Committee Members: Barb Doremus, Sharla Davis

Homeowners: Jack Windeler, Kathleen McCormick, Pete Popp

Discussion:

The following Homeowner review comments were discussed. The Board decision is noted. Approved changes will be incorporated into Revision 2.

1. Article 1.1 C Remove the Declarant from the definitions, and remove "including declarant" from definition M Owner.

10/10/17 Board - search all remaining "declarant" references. May change wording in definition.

10/28/17 Board - the following Rev. 1 sections have "declarant" remaining (sections 1.1C, 1.1M, 2.3, 2.4, and 2.5 E). Change "Declarant" to "Original Declarant" in Rev. 2.

ACTION: Item closed. Change wording as described above.

2. Section 2.3 Conveyance of Minerals, remove.

10/10/17 Board - important to keep this reference as updated in Rev. 1.

ACTION: item closed. No changes to Rev. 1.

3. Section 2.4 Reservation of Water Rights, remove.

10/10/17 Board - important to keep this reference as unchanged from original.

ACTION: item closed. No changes to Rev. 1

4. Section 2.5 Water Augmentation and use restrictions (Homeowner proposed revision)

A. The Water augmentation and use restrictions are the result of a court order, so noncompliance can result in a contempt of court situation. District Court Water Division

2, case number 93 CW75, and Water Division 1, Case No 93 CW147 resulted in the 4 June, 1996 Judgement and Decree by Water Division 2 Water Judge John E Anderson III, which governs The Wissler Ranch HOA and homeowner's water use.

- B. The decree requires the Wissler Ranch HOA to augment the maximum 51.38 acre feet of water they could withdraw from the Upper Dawson Aquifer annually with 15.414 acre feet of water from the Laramie-Fox Hills aquifer to be released into Jackson Creek to feed Monument Creek. About \$10 of each homeowner's dues pays for the pumping of the augmentation water, which is currently done by the Northgate Company in Monument.
- C. The court imposed the Wissler Ranch Water Covenants. Irrigation is limited to 1500 square feet per lot, total homeowner water use is limited to 122,400 gallons per year, homeowners must maintain a functioning water meter and report annual water use to the HOA on 1 November. The HOA is required to report consolidated homeowner water use to the Water District on 30 November. A homeowner's failure to report is reported. The court granted the HOA the right to drill 137 wells and consume an aggregate of 51.38 acre feet of water annually, giving the HOA something over 5 million gallons of water to resolve the unintentional overuse of water by an individual homeowner.
- D. Because our water covenants were imposed by court decree, the water court is the primary enforcement agent with a Water Court requirement that the HOA support the Water Courts actions. The Water Court can cap a homeowner's well for repeated water violations. Any homeowner who has a valid reason for regularly using more than 122,400 gallons per year can always petition the court for a higher water allowance.

10/28/17 Board - the above proposed rewrite is too detailed for the covenants. However, these suggestions will be considered, if the Water Policy is revised.

ACTION: item closed. No changes to Rev. 1.

- 5. Section 2.5, paragraph E. Remove.

10/28/17 Board - same comment from Section 2.5 above.

ACTION: item closed. No changes to Rev. 1.

- 6. Section 3.1 Right. remove and replace with the following:
Section 3.1 Interpretation and Policies.

The Association's Board is responsible for interpretation and implementation of this declaration. The interpretation must be reasonable and uniformly applied. Individual homeowners may not declare a covenant violation, or initiate suit against a neighbor for a covenant violation. Homeowners can identify a potential covenant violation, but the investigation, hearing and resolution are the Boards responsibility. The Board may establish

policies to clarify the meaning of covenants and facilitate their enforcement. The Board may not adopt rules, which in effect create new covenants or change existing covenants. Colorado established a two-year statute of limitations for covenants on structures (buildings, fences, landscaping and driveways) but did not create a statute on covenant controlled activities. The HOA will generally follow a three-year statute of limitations on covenant controlled activities unless a significant threat to public safety, forest health or major nuisance is involved. The HOA cannot modify court orders and decrees.

10/28/17 Board - the Board and the Design Review Committee have utilized this section many times. The changes as proposed in Rev 1 reflect improvements and clarifications.

ACTION: item closed. No changes to Rev. 1.

7. Section 3.2 Rules and Regulations. Section 3.2 Rules and regulations was fine when the developer controlled the board, but is inappropriate for a homeowner controlled board. Section 8.6 Amendment specifies that the covenants can only be added, or changed by approval of 67% or 90 homeowners. The language in the current 3.2 would allow three of five board members to adopt a rule which changes or establishes new covenants. This is a fundamental violation of homeowner rights. Suggested rewrite:

Section 3.2 Boards Right to Grant Variances, or Decline an Enforcement Action.

Restrictive covenants affect homeowner's basic property rights. When it makes common sense and has no significant impact on public safety or the basic quality of life in the HOA the board may grant covenant variances to individual homeowners. The Board of Directors or the DRC may follow this established procedure to enter into agreements with the owner of any lot to deviate from those conditions, restrictions or limitations. Such a variance or agreement does not change the covenant for the rest of the homeowners. The board has a fiduciary responsibility to the homeowners. During covenant enforcement the Board may face a situation where it likely to lose the case in court and be required to pay the defendants legal fees, which could create a special assessment situation involving \$50,000. In this case the Board should consider taking no action on the violation. This decision does not change the covenant, which continues to be binding on the rest of the homeowners.

10/28/17 Board - the Board and the Design Review Committee have utilized this section many times. The original wording was not changed. The Board does not agree with the above interpretation of section 3.2.

ACTION: item closed. No changes to Rev. 1.

8. Section 3.3 VA or FHA Approval

As stated in my last recommendation, **delete**. There is absolutely no legal requirement for the Wissler Ranch Homeowners to gain approval of their initial declaration from the VA or FHA. This was a 1990s requirement on developers who were declarants using covenants to manipulate the mortgage industry. This requirement ended when our developer and declarant Wissler Ranch LLC sold the last lot.

Section 3.3 remove. This was a declarant requirement that does not apply to current HOAs. Declarants were adopting covenants restricting the fundamental rights of Mortgagees. The Veterans Administration protested and the declarant requirement continued until the declarant sold the last lot. I can find nothing even suggesting HOAs have a current requirement to notify the FHA or VA about anything.

10/28/17 Board - - important to keep this reference as updated in Rev. 1.

ACTION: item closed. No changes to Rev. 1.

9. Section 4.4 Primary Structure. Add this sentence - "There shall be only one residential or primary structure on a lot. No other structure or accessory building shall be used on any lot as a residence, either temporarily or permanently."

10/10/17 Board - this does clarify the current standing on this issue.

ACTION: Board approved proposed change for Rev. 2. Insert above sentence after "single-family dwelling". Item closed.

10. Section 4.5 Accessory Structures. The phrase "All buildings and structures shall be constructed out of the same material as the main dwelling on the lot" should not be a covenant. The DRC should have the freedom to maintain the architectural quality of our community.

10/10/17 Board - the Design Review Committee wants to leave this section as proposed in Rev. 1. It is broad in requirements, yet still requires DRC approval.

ACTION: item closed. No changes to Rev. 1.

11. Section 4.8 Prohibition Against Business Use. is too restrictive. About 70 of our homeowners just invested over \$300,000 to get state of the art internet. The nature of business is changing and many more of us will be working from home. We do not need covenants that restrict efficiency and innovation.

10/10/17 Board - This section does not prohibit a Homeowner from working at home. However, DRC approval is required as outlined in the section.

ACTION: item closed. No changes to Rev. 1.

12. Section 4.19 Swimming Pools. What do we have against small above ground swimming pools that have minimum visibility and have been approved by the DRC? They are a lot safer for children and wildlife than in ground pools.
10/10/17 Board - the Board agrees the proposed wording is too detailed. The original wording shall remain (except change incorrect reference from section 4.4 to 4.5). As referenced in Section 4.5, DRC approval is required.
ACTION: Item closed. Change wording as described above.

13. Section 4.20 Animals and Pets. The El Paso County animal inoculation, leash and nuisance barking laws are in effect regardless of our covenants. Our covenant should be that the board has the right to order removal of an animal from the community for repeated El Paso County law violations.
10/10/17 Board - this section was already simplified. The revised wording is pertinent.
ACTION: item closed. No changes to Rev. 1.

14. Section 4.21 Nuisance. Add: Storage is defined as the keeping of potential nuisance item on a lot for over 30 days without use.
10/10/17 Board - this section is written in broad terms intentionally. If necessary, an incident is handled on a case by case basis. A homeowner may ask for a variance.
ACTION: item closed. No changes to Rev. 1.

15. Section 4.24 Utilities. I am not sure we gain anything by talking about the FCC rule. Our covenants cannot override it. All large antennas that are a potential visual nuisance need to be approved by the DRC. The DRC will not intentionally violate any laws or rules.
10/10/17 Board - The DRC believes the revisions provide necessary clarity.
ACTION: item closed. No changes to Rev. 1.

16. Section 5.2 DRC. Gobbledygook wording. All it needs to say is that the DRC members are appointed by the either the HOA President or the board.
10/28/17 Board - homeowner opted to withdrawal this comment.
ACTION: item closed. No changes to Rev. 1.

17. Section 6.2 B Voting Rights. Why would an HOA ever suspend a homeowner's voting rights? Extremely draconian and accomplishes nothing!
10/28/17 Board - Unfortunately, this section has been utilized a couple times in the past for various reasons. The section shall remain.
ACTION: item closed. No changes to Rev. 1.

18. Section 7.4 C. Capital reserve. Why keep our reserve in an interest-bearing account? All we do is lose capital to inflation. 10% of the reserve should be in an emergency fund interest bearing account. 90% should be invested so we have adequate capital to cover our long-term maintenance needs.
10/28/17 Board - most HOA's do not invest the Capital reserve. Since WR HOA is a small volunteer organization, it's a question of who, in the long run, would manage this investment.
ACTION: item closed. No changes to Rev. 1.
19. Section 7.7 FHLMC Restriction. I think this is redundant and can be removed. The board cannot change the covenants or financial requirements without 67% homeowner approval.
10/28/17 Board - - important to keep this reference as updated in Rev. 1.
ACTION: item closed. No changes to Rev. 1.
20. Section 7.11 B. Why do we have a draconian 18% delinquency rate, rather than a 6% rate?
10/28/17 Board - the stated rate of 18% is standard and fair. Other delinquency rates are even higher. Keep the rate at 18%.
ACTION: item closed. No changes to Rev. 1.
21. Section 7.16 Assessment Reserves. Remove. This serves no valid HOA purpose.
10/28/17 Board - this action has not been utilized by WR HOA (as far as we know), however, other HOA's have utilized this action. It is important to keep this original section for possible future requirements.
ACTION: item closed. No changes to Rev. 1.
22. Section 7.17 Subordination of Lien to First Mortgagee. Remove. Colorado law on liens is clear. Our covenants cannot change Colorado Law. I am told that one of the Hindman Sanchez attorneys recommended we include this. We are only inviting future legal problems for the HOA when we start putting this type legal opinion in the covenants.
10/28/17 - Board - This entire section was updated by the WR HOA attorney to comply with Colorado state law.
ACTION: item closed. No changes to Rev. 1.
23. Section 8.2 Notices. Get rid of the return receipt requirement. In today's world of lawsuits, no legally sophisticated person will sign for a certified letter, or return receipt delivery confirmation unless they have advance information about what they are admitting they received. If something important needs to be delivered to a resident, either have a board member deliver it, or send it Priority Mail for \$6.65 so we get delivery confirmation.
10/28/17 Board - for legal reasons, it is important to send two separate Homeowner covenant violation notices (First-class US mail, and certified signed return receipt). The wording will be updated in Rev. 2.
ACTION: item closed. Change wording as Board suggested.

24. Section 8.6 Amendment. Paragraph 8.6 should be changed back to the original wording in the current covenants.

As discussed at the open meeting on Sept. 16th. Covenants by their very nature covenants should be difficult to change. The original wording, made the covenants hard to change. Requiring signatures from each owner ensures that they are aware of the changes proposed and are in support of the changes. Requiring mortgage holders assent, ensures the association and the owners believe the change is of such importance to justify the cost of attaining signatures and mailing changes. This also helps ensure a quality product is produced before being put forward.

As proposed, this paragraph allows too much interpretation of what is required to change a covenant and could potentially allow a very small group to change covenants without the assent of the majority.

10/28/17 Board - agree the requirements of the Owners and First Mortgagees should remain. The strike-through wording proposed in Rev. 1 will be changed back to the original wording.

***ACTION:** item closed. Change wording as Board suggested.*