

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION

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Covenant Amendment Steering Committee (CASC)

Meeting Minutes from Thursday – November 7, 2019

In attendance: Sue Wallace – POA Compliance Coordinator/Secretary; Committee Members Matt Barker, Kathy Norgard, Susan Duffy, Elise Meier, Mark Ewing, Mark Tardiff, and Joe Frank; Judy Theis, community member.

Motion carried to approve minutes from October 3, 2019 meeting.

Next meeting will be our regularly scheduled standing meeting on Thursday, December 5, 2019.

We welcomed Joe Frank as the newest member of CASC.

We began by reviewing the Project Timeline. Since we were unable to discuss “Assessments” at the October meeting and this was pushed to the November meeting, our project timeline is shifting by one month. The group agreed that our work is likely to take longer than August 2020 to complete properly and that is okay. We also agreed on moving the public comment topic of Campers and RVs to the January 9 and March 5 meetings in 2020.

We then reviewed the proposed language for Article 6-Animals. First, we discussed including “Exotic Animals” in the Article. The group asked why we need this definition, and why we need to further regulate exotic animals. Matt explained that the State of Colorado already defines exotics and has numerous regulations for their management. Sue explored this and found that the Colorado Dept of Agriculture has many definitions and regulations for exotic, prohibited, and unregulated animals. Seems we really don’t need to include anything additional in our regulations for exotic animals. Thanks Matt!

We then discussed proposed new language for Article 6. Discussion focused on language in 6.1.1, specifically: “An Owner may keep and maintain a reasonable number of dogs and cats within the Lot as determined by the Board of Directors”. All agreed that keeping “a reasonable number of dogs and cats” is appropriate, but felt it is not appropriate for the Board to dictate the number of allowable dogs and cats. This felt like an over-reach of Board authority, and the group believes the language in 6.2 adequately addresses the “what ifs” by stating that Gunnison County AND the CBS Board of Directors have “dual” authority to “reasonably determine” when an animal has/animals have created a compliance issue.

Section 6.1.3 provides for a Board review process for permitting livestock in CB South. This process will need to be developed, but we decided this can take place if/when the changes are voted on and approved.

For now, the committee agreed upon the following language (changes redlined):

Section 6.1 Animals. No animals of any kind shall be bred or kept commercially on any residential lot in Crested Butte South. At no time shall any Owner allow their dogs/cats/animals to create a nuisance: noise, odor, or otherwise; make excessive or prolonged vocalization; or disturb, threaten, or injure any person or other animal. At all times, the Owner shall be personally responsible and liable for all actions of any pet and any damages caused thereby. Owners keeping or maintaining dogs within Crested Butte South shall be subject to Gunnison County’s current regulations regarding the control and licensing of dogs in unincorporated Gunnison County. Additionally:

6.1.1 Dogs and Cats. An Owner may keep and maintain a reasonable number of dogs and cats. ~~within the Lot, as determined by the Board of Directors. This determination will consider the number, type, and nature of the animals proposed, and the plan for their care, housing, and sanitation.~~

Commented [SaPW1]: Process will need to be identified

6.1.2 Other Pets. Other pets kept exclusively indoors are permitted as each Owner sees fit. ~~with the exception of Exotic or Wild Animals.~~

6.1.3 Livestock. The keeping and maintaining of livestock in Crested Butte South may be permitted only after review and approval by the Board of Directors. This ~~review~~ will consider the number, type, and nature of the animals proposed, and the plan for their care, housing, and sanitation.

Commented [SaPW2]: Process will need to be identified

Section 6.2 Rules and Regulations. The Board of Directors shall adopt and enforce the current rules and regulations established by Gunnison County regarding the keeping and maintaining of animals and pets within Crested Butte South, and shall have ~~the sole dual authority, along with Gunnison County,~~ to reasonably determine when any such animal has created a safety, noise, odor or nuisance problem within Crested Butte South.

Section 6.3 Impoundment. The Association is specifically empowered to impound any animal running at large, being abused or neglected, or suspected of being abused or neglected within Crested Butte South. Upon impoundment by the Association or other County or State Animal Welfare agency, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility which accepts impounded animals. It is the duty of the owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the Owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the Association, any other Owner, or the facility.

Next, we reviewed the proposed changes to Article 7 -Assessments. As part of the group homework prior to our meeting, Sue provided a simplified version of Article 7 that integrates relevant language from the By-laws and the Working Template, and asked the group for feedback. The language we reviewed reads as follows:

Section 7.1 Purpose of Assessments and Dues. Such assessments and dues levied by the Association shall be used for the following:

7.1.1 The operation of the Association in the performance of its duties and obligations, including the allocation of assessments to Reserve Funds.

7.1.2 The maintenance, repair, improvement, and construction of all Open Space and Common Areas.

7.1.3 The payment of any other common expenses.

7.1.4 The maintenance, repair or other improvement required to be made by any Owner to an improvement on any Lot which the Owner fails to ~~do~~.

7.1.5 Any other ~~purpose~~ approved by a majority vote of the Members of the Association or by a two-thirds vote of the Board.

Commented [SaPW3]: Is there a legal protocol /procedure here? Would the POA actually incur costs before seeking fines/penalties/damages?

Commented [SaPW4]: "Any other purpose" seems like it needs a definition.

"Any other purpose" needs defining. When is it appropriate for a membership vote vs Board vote? The group expressed interest in imposing a dollar limit on the amount the Board may approve, and after that limit is reached, the vote must go to the membership. Is this a question for Beth? Does CCIOA address this?

Section 7.2 Types of Assessments. The Board shall have the authority to levy assessments and dues to all Owners in Crested Butte South as follows.

7.2.1 Regular Assessments. Assessments and dues for the business, administration and operation of the Association shall be apportioned equally among all lots containing structures and equally among all vacant lots. Regular assessments and dues shall be based upon the annual Common Expense budget adopted by the Board of Directors of the Association.

Commented [SaPW5]: Lots with structures and vacant lots are assessed differently. Should we describe that difference here, or in Section 7.3?

7.2.2 Special Assessments. Special Assessments are for the construction, improvement, repair, replacement, expansion or other special purposes pertaining to a specific or special matter.

7.2.3 Road Assessments. Assessments for the construction, improvement, repairs, replacement, and/or snow removal from the roads being owned and maintained by the Association.

Section 7.3 Determination of Regular Assessments and Dues. Annual assessments and dues are based on and determined by the annual Common Expense budget as adopted herein. Within ninety (90) days after the adoption of a Common Expense budget, the Board of Directors shall make the budget publicly available by posting it on the Association's website. The budget proposed by the Board does not require approval by the Owners, but in no event shall any increase in annual assessments exceed 10% in any year without the affirmative vote by the Owners. The Board may amend a budget from time to time as needed for the efficient operation and administration of the Association.

Commented [SaPW6]: What exactly does "amend" mean? Increase? Decrease? Net zero?

The group discussed the 10% increase. They are concerned that this maximum may be too high, and that it could be increased annually at 10%, indefinitely. Mark Tardiff asked if this % increase shouldn't be connected to inflation, and other members felt inflation may not realistically keep pace with cost increases in insurance, materials, etc. The committee feels budget expenses and increases need to be transparent and justified at any level of increase. Perhaps the budget review process needs to be done with more effort to gain community buy-in?

We ran out of time to continue our review of the remaining sections and folks needed to leave. The group agreed to provide feedback via email on Sections 7.4-7.13. So, please:

By Monday, November 25, please email your comments and feedback on the remaining sections to Sue at compliance@cbsouth.net. Thank you!

Section 7.4 Determination of Special Assessments. In addition to assessments for Common Expenses as set forth above, the Association, acting through its Board, may from time to time determine and levy one or more Special Assessments. All special assessments shall be apportioned and allocated equally among all Lots, unless such special assessment benefits substantially fewer than all Lots, in which event such special assessment shall be levied against only the Lots so benefitted. The Board shall have reasonable discretion in apportioning responsibility to pay such special assessments. Notice of the amount and due date for such special assessment shall be sent to each Owner at least ___ days prior to the due date.

Commented [SaPW7]: Specify between res/comm lots, and lots with structures and vacant land?

Should there be a section on "Determination of Road Assessments"?

Commented [SaPW8]: Owners should have a say in this type of assessment before being asked to pay for it. Can a limit be imposed on Special Assessments up to a certain \$\$ limit, and then beyond that it goes to a member vote?

Section 7.5 Assessment for Clustered Lots. Clustered lots shall assess at 100% for the first lot, and all lots clustered to it thereafter assessed at 50%.

Commented [SaPW9]: Based on language in Beth's template... group should discuss.

Section 7.6 Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf or because of an Owner, including interest, fines, charges, and reasonable attorneys' fees and costs, shall be a default assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount due and

the due date of such default assessment shall be sent to the Owner subject to such assessment at least ___ days before the due date.

Section 7.7 **Reserve Fund.** The Association shall establish a Reserve Fund for the maintenance, repair or replacement of the Common Areas, Open Space, roads, operating expense deficiency, or as permitted by law. Such Reserve Fund shall be funded through payments of assessments and held by the Association in a restricted account and accounted for separately.

Commented [SaPW10]: Q for Beth? Does CCI/OA require/limit certain amounts allowable for reserve funds?

Section 7.8 **Billing of Assessments.** The Association will deliver by US mail invoices to all Owners for the collection of annual assessments and dues by January XX of each year. Unless the Board of the Association determines otherwise, regular assessments shall be payable by the Owners by February 28 of each year.

Section 7.9 **Delinquent Assessments.** Any regular assessment that is not paid by February 28 of each year shall be considered delinquent. Any special or road assessment that is not paid by (insert date?) shall be considered delinquent. Additionally:

Commented [SaPW11]: Mark T's suggestion: create a graphic representation of the process for non-payment that can be used on website

7.9.1 **Interest and Fees.** The assessment shall bear interest and/or late fees as established by the Board of Directors. A late charge of ten percent (10%), or such other rate allowed by law and as the Board may determine, of the payment due shall be imposed for every month of delinquency to cover additional costs and expenses involved in collecting payment.

7.9.2 **Voting Right Suspension.** The Board of Directors may suspend the voting rights of the Owner during any period of delinquency.

7.9.3 **Reimbursement for Collection Costs.** The Association may require reimbursement for collection costs and/or reasonable attorneys' fees and costs incurred as a result of such delinquency without the necessity of commencing such legal action.

7.9.4 **Creation and Notice of Lien.** The Association may file a Statement of Lien by recording a written statement with the Gunnison County Clerk and Recorder of Gunnison County, Colorado. Said statement will include the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent assessments. The Statement of Lien shall be signed and acknowledged by the President, Vice-President or Secretary of the Association, and shall be sent by certified mail to the Owner of the Lot at the most current address known by the Association. Thirty days following the mailing of the Statement of Lien, the Association may proceed to foreclose its Statement of Lien in the same matter as provided for the foreclosure of mortgages under the laws of the State of Colorado. Such Statement of Lien shall secure all assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorneys' fees and costs incurred in the preparation, recording, or release of such Statement of Lien. The Statement of Lien shall be superior to all other liens and encumbrances on such Lot as provided by the Act, except any tax and assessment liens levied by any government entity and any first mortgage.

Section 7.10 **Collection Policy.** Any collection efforts by the Association for unpaid dues and assessments shall comply with the Association's Policy for Collection of Unpaid Dues and Assessments and Imposition of Liens as it may be amended from time to time by the Board of Directors.

Commented [SaPW12]: There exists such a policy?

Section 7.11 **Effect of Non-Payment.** In addition to the imposition of interest and late charges set forth in Section 7.9 above, the Association may bring action at law and/or in equity against any Owner personally obligated to pay such delinquent assessment, and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association or Owner against another Owner to recover a money judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing, or in any way waiving, the lien therefore. In

any legal action for a money judgment, the Association may recover all late charges and interest to the date of payment, and all costs of collection and reasonable attorneys' fees and costs.

Section 7.12 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all assessments and the Association lien on a Lot for such assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid assessments interest, costs, expenses and attorneys' fees against such Lot.

Section 7.13 No Waiver. The failure of the Association to fix the assessment for any assessment period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the Common Expenses.

Commented [SaPW13]: Really? This is legal? Doesn't this get resolved at closing?

Commented [SaPW14]: "fix"? AKA, "disclose", "make public", "invoice for"?

Meeting Adjourned at 6:45 pm.