

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION

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Covenant Amendment Steering Committee (CASC)

Meeting Minutes from Thursday – June 4, 2020 5:00 pm

Meeting was conducted online using Uberconference.

In attendance: Sue Wallace – POA Compliance Coordinator/Secretary; Dom Eymere-Association Manager; Committee Members: Matt Barker, Mark Ewing, Kathy Norgard, Mark Tardiff, Joe Frank, Tim Williamson, Elise Meier, Susan Duffy. Dave Neben – POA Board of Directors. Marnie Morey-community member.

Meeting began at 5:10 pm. Minutes for March 5, 2020 meeting were approved with revisions; the commentary from Beth Appleton, CB South's legal counsel, was removed from the March minutes since this conversation took place after the March meeting. This commentary now appears in this month's minutes, below.

The next CASC meeting will take place on Thursday, July 2, 2020.

We began our discussion with Dom giving a recap of the Board of Director's decision at their May 13, 2020 meeting to not approve the Camper Pilot program. On May 14, 2020, Dom shared with CASC via email the news that the Board had decided against the Camper Pilot due to concern over potential legal challenges brought by some members of the community regarding violations of the covenants. He also shared the legal analysis provided by Beth Appleton regarding same. The Board felt uncomfortable with the legal exposure that would have been created by taking actions to support a pilot. Dom and Sue acknowledged that the exercise of holding two listening sessions with the community about campers and conducting a camper survey was still valuable for data gathering and for the development of the Restated Articles.

The survey had a 48% response rate, and the main take-aways are that 70% of the respondents support resident-owned campers being able to be parked on resident's properties, and 73% of the respondents support visiting family and friends being able to park their campers for a short-term on resident's properties. This certainly points to strong sentiment in favor of allowing campers to be parked in CB South, with rules, regs, and enforcement in place.

The group asked many questions about other ways the Board of Directors could be responsive to this strong sentiment. Could campers be parked in CB South with a cover over them? In a garage? Obscured from view? Sue stated that any change in the current regs (which limit the parking of campers to a single, 24-hour period) would require Board action, and that it is not the work of this committee to vet or propose such changes. While there is interest from many on CASC to provide immediate, short-term relief to camper owners, it is only action by the Board that can change policy.

Marnie Morey expressed frustration as a property and camper owner. She feels that the current rules are arbitrary, allowing slide-ins and pop-ups, but not other small campers. She supports residents being able to park their campers in CB South during the camping season.

Tim stated he hopes that future work done by CASC gets Board and legal review before proceeding too far, as this is what seems to have happened with the work done by CASC on the Camper Pilot. CASC invested time and energy in the discussion about campers, the camper survey, and the development of the pilot program. It is disappointing to have made that investment, and then to discover relatively late in the process that it would not be legally tolerable.

This brought up a good discussion from Mark Tardiff, who pointed out the value and importance of having a Board member on the CASC committee, who can serve as liaison as we redraft the covenants. Dave Neben, Board Member, has agreed to attend future CASC meetings and serve in this role. Thank you Dave!

We changed gears to discussion about Article 7-Assessments. After the March 5, 2020 meeting, Beth Appleton suggested revising the language in Sections 7.3 and 7.4 to the following:

Section 7.3 - Determination of Regular Assessments and Dues: Annual assessments and dues are based on the annual Common Expense budget and determined by the Board of Directors and subject to the provisions of Article 7. Regular assessments may be allocated differently for lots which are unimproved (vacant) or used for commercial or light industrial purposes in the commercial area according to the Plat. Within thirty (30) days of adoption of the Common Expense budget, the Board shall notify all Owners of the new assessments and dues for the next calendar year via email using most current Owner information on file.

Beth stated that we need to include in Section 7.3 the method for determining dues for each lot: Residential and Commercial-developed and vacant, single family, multi-family, duplex, etc. Sue and Dom will work with the Board to develop this determination and will then share it with CASC.

In preparation for the May meeting, Sue Wallace sent materials (May 7, 2020 Meeting Agenda and March 5, 2020 Draft Minutes, which contained the revised Article 7 language above), to the committee on April 29. With no April meeting, we needed to approve the March minutes at the May meeting. When the May 7 meeting was also cancelled, Sue emailed the group about approving the draft March minutes through email.

No objections were received regarding the revisions to Sections 7.4-7.13. Many members, however, expressed disagreement with the revised language in Section 7.3, above. Context for why the language describing the 10% maximum annual dues increase without a community vote was removed from the current draft. Sue issued an email with explanation for striking that language; Mark Ewing suggested it become part of the March minutes. With the context from this email in mind, the group discussed Section 7.3 language, and favors keeping an absolute 10% maximum annual increase in regular assessments, and striking the language from the draft covenant requiring a vote of the membership for any increases beyond 10%. **New proposed language for Section 7.3 is as follows:**

Section 7.3 - Determination of Regular Assessments and Dues: Annual assessments and dues are based on the annual Common Expense budget and determined by the Board of Directors and subject to the provisions of the Act and Article 7. The annual increase in regular assessments shall be limited to a maximum of 10%. Regular assessments may be allocated differently for lots which are unimproved (vacant) or used for commercial or light industrial purposes in the commercial area according to the Plat. Within thirty (30) days of adoption of the Common Expense budget, the Board shall notify all Owners of the new assessments and dues for the next calendar year via email using most current Owner information on file.

The group was comfortable with the revisions to Sections 7.4-7.13, as follows:

Section 7.4 - Determination of Special Assessments. The Association, acting through its Board, may from time to time determine and levy one or more Special Assessments to cover expenses as set forth in Article 7.2.2 above. All special assessments shall be allocated among all Lots by the Board of Directors, who shall have reasonable discretion in apportioning responsibility to pay such special assessments, based on the relative benefit to each lot. The Board shall hold a public meeting at least sixty (60) days prior to issuing any special assessment.

Beth's notes: "Because CB South is a pre-CCIOA community, if the Board wants or needs to special assess at any time, the power and ability to levy special assessments needs to be in the Declaration. If there is no special assessment language, the Board is not able to levy a special assessment. This is case law. CCIOA is silent on special assessments per se. The threshold you guys decide to include in the Declaration is up to the owners to decide. Recall that \$50,000 does not get you very far. I would either remove it or increase it. We may want to include what would be covered by a special assessment, but not use limiting language."

Section 7.4 Determination of Special Assessments. The Association, acting through its Board, may from time to time determine and levy one or more Special Assessments to cover expenses as set forth in Article 7.2.2 above. All special assessments shall be allocated among all Lots by the Board of Directors, who shall have reasonable discretion in apportioning responsibility to pay such special assessments, based on the relative benefit to each lot. The Board shall hold a public meeting at least sixty (60) days prior to issuing any special assessment.

Section 7.5 Assessment for Clustered Lots. Clustered lots shall be assessed as one lot.

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.

Section 7.7 Reserve Fund. The Association shall maintain a Reserve Fund for the maintenance, repair or replacement of the Common Areas, Open Space, other assets owned by the Association, 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.

Section 7.8 Billing of Assessments. The Association will deliver invoices to all Owners as Owners may designate for the collection of annual assessments and dues by January 31 of each year, or at such other time as determined by the Board. Unless the Board of the Association determines otherwise, regular assessments shall be payable by the Owners by February 28 of each year.

The billing for Special Assessments shall be determined by the Board of Directors. Subsequently, the due date shall be within 30 days of the date of invoice for the Special Assessment.

Section 7.9 Delinquent Assessments. Any regular assessment that is not paid by February 28, or at such other time as determined by the Board, of each year shall be considered delinquent. Any special assessment that is not paid as determined by the Board, or at such intervals as determined by the Board, shall be considered delinquent.

Additionally:

7.9.1 Interest and Fees. The delinquent assessment shall bear interest and/or late fees as established by the Board of Directors. Late fees on the amount due shall be imposed for every month of delinquency to cover additional costs and expenses involved in collecting payment.

7.9.2 Attorneys' Fees and Costs. The Association shall be reimbursed for collection costs and/or reasonable attorneys' fees and costs incurred as a result of such delinquency without the necessity of commencing legal action.

7.9.3 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 the Association has in its records. 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 Act and 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.

Section 7.11 Effect of Non-Payment. In addition to the imposition of interest and late charges set forth in Section 7.9.1 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.

As the meeting was running very late and committee members needed to wrap up, we were not able to begin the discussion of Article 4 – Land Use. We will start this at the July meeting.

Meeting adjourned at 7:00 pm.