

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION

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Covenant Amendment Steering Committee (CASC)

Meeting Minutes from Thursday – March 5, 2020 5:00 pm

In attendance: Sue Wallace – POA Compliance Coordinator/Secretary; Committee Members: Matt Barker, Mark Ewing, Kathy Norgard, Mark Tardiff, and Tim Williamson. Beth Appleton, Legal Counsel for CBS POA, also attended.

Motion carried to approve minutes from February 6, 2020 meeting.

The regularly-scheduled meeting for April 2, 2020, has been cancelled due to the COVID-19 pandemic.

The next CASC meeting will take place on Thursday, May 7, 2020.

Beth Appleton joined us at this meeting and we started with review and discussion of Article 7-Assessments, so that she could help us better understand the legitimacy of the changes to this Article with respect to CCIOA. We began our discussion with Section 7.3 and Beth made suggestions appearing in red:

Section 7.3-Determination of Regular Assessments and Dues. Annual assessments and dues are based on and determined by the annual Common Expense budget. The budget and the regular assessments and dues proposed by the Board do not require approval by the Owners, but in no event shall any increase in annual assessments exceed 10%.

Within 30 (30) days of adoption of the Common Expense budget, the Board shall notify all Owners of the new assessments and dues via email using most current Owner email addresses on file.

The Board of Directors may allocate assessments differently for lots which are unimproved or used for commercial purposes in the commercial area according to the Plat, based on the vacancy of, the type of structure built upon and the specific uses taking place on, the Lot. This allocation will consider the type of lot (residential, commercial, vacant) and the use associated with the Lot (Single-family, Multi-family, Duplex, Accessory Dwelling, Commercial).

This section addresses budget- and dues-setting: both responsibilities of the Board described in the By-laws. The original Covenant 3.03 from 1970 has this clause in it:

“The annual maintenance charge.....*but in no event shall any increase exceed 10% in any year without the affirmative vote of a majority of the then owners of lots.....*”

For many months, we have struggled with the 10% max dues increase. Some members feel 10% annually is too high and needs to be justified to the community. Most members acknowledge the difficulty of obtaining a majority community vote. The budget-setting process is done by the Board so justifications for increases need to be dealt with at the Board level, through By-laws, publicizing the budget, and providing member review opportunities prior to adoption.

Since the process of budget-setting is not a focus for CASC, Beth is strongly suggesting that we remove any limitation on the board in the new articles. ***In her words: “You do not want to hamstring the Board from being able to conduct business for the POA.”***

Beth suggests these revisions, appearing in red, to the following:

Section 7.4 Determination of Special Assessments. In addition to 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 Assessment. 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, and shall obtain an affirmative majority vote of the community if the special assessment is in excess of \$50,000.

Beth pointed out that \$50,000 does not go very far. She suggests removing language that limits the Board as this does.

Section 7.5 Assessment for Clustered Lots. Clustered lots shall assess 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. Notice of the amount due and due date of such default shall be sent to the Owner subject to such assessment at least ____ days before the due date.

Beth pointed out that the above highlighted statement may be more appropriate in the Collection Policy than here.

Section 7.7 Reserve Fund. The Association shall establish a Reserve Fund for the maintenance, repair or replacement of the Common Areas, Open Space, road, if applicable, 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.

Beth stated that we don't need to include any language in Section 7.7 about the Reserve Fund Analysis.

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 31 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.

Shall be due 30 days after invoices are sent to Owners for Special Assessment

Section 7.8 requires Board input.

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

7.9.1 Interest and Fees. The delinquent assessment shall bear interest and/or late fee 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 an Owner during any period of delinquency.

Beth suggests adding a definition of "Good Standing" in the Definitions Article and moving Section 7.9.2 to the appropriate place in the Restated Declaration that deals with voting rights.

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.

7.9.3 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.

Meeting adjourned at 6:45 pm.