

**Covenants and Rules Committee Meeting
Fairway Pines Estates Owners Association
Thursday, July 7, 2016 @ 9:30 AM (MDT)
255 Bear Cub Drive
Ridgway, CO 81432**

1. Call to Order, Roll Call

The meeting was called to order by Chairman Gay Dicus at 9:30 AM. The members present were Judy Farrington, Tony Litschewski, Erich Montgomery, and Glen Yoder. Jerry Farrington, advisor, was present. Mike Forstner, the incoming Board President, was present as was Chris Carr, Board President. Recording secretary, Mary Ann Guilinger, was present.

2. Member comments (Limited to 5 minutes per person)

None.

3. Approval of minutes of August 24, 2015, meeting

Judy Farrington made a motion to approve the August 24, 2015, CRC meeting minutes. Erich Montgomery seconded the motion. The motion was passed unanimously.

4. Compliance report

Compliance Officer Report – Violations were reviewed. Specific actions will be taken in the form of courtesy or violation letters.

5. Discussion on references to Cluster Lots - clarify and define

Chris Carr provided the general terms for the impetus of doing covenant amendments related to the definitions of cluster lots and cluster lot units. The Association has pending litigation over the interpretation of cluster lots and cluster units in the covenants. There is an absence of commercial requirements for cluster lots and cluster lot units because the developer holds many cluster lots. The CRC could do a comprehensive change to the covenants but on the advice of counsel, the Board is requesting specific and clarifying changes at this time. The covenants should have been better defined for the definitions of cluster lots and cluster lot

units about six to eight years ago. The primary focus in amending the covenants is so that there is no ambiguity related to cluster lots, and cluster lot units, and clarifications are crystal clear.

The Association hired Tom Kennedy, a real estate and HOA attorney from Telluride, to assist in amending the covenants. Tom Kennedy has expertise in homeowner's association law, especially in Colorado. Based on his suggestions, the amendments may appear repetitive in nature, but he also suggested that the covenants list all plat amendments that apply to Fairway Pines. He also suggested that in the recitals of the covenants, all Fairway Pines community documents be referenced such as the By-laws, the Articles of Incorporation, and the ARC Standards.

The amendments, if recommended for approval as written is an agenda item for the Board meeting this afternoon. Once the Board accepts the amendments to the covenants, then the Association members will have to approve the amendments to the covenants by approval via a Consent Form. A brief summary of the amendments will be provided to the members along with the necessity for the changes. If the Association members approve the amended covenants, then the revised covenants will be filed with Ouray County Clerk and recorded. The revised covenants will be placed on the website once recordation has taken place.

Jerry Farrington stated that in the recitals fifteen different plat amendments (sections a through o of the plat information) are referenced. Plat is referenced in some of the new changes along with the community documents and previous amendments to the covenants. The Association had prior litigation related to the ambiguity in the covenants related to cluster lots but no action was taken at that time.

The process for revising the covenants was for Jerry Farrington to make the first cut with essential and easy changes. Tom Kennedy advised that they needed more changes. Chris Carr and Jerry Farrington then made additional changes as noted in the red and green draft pending consideration.

Glen Yoder asked if the changes to the covenants could be used against the Association in the litigation. Jerry Farrington stated that changing the covenants could be argued in the litigation, but on the advice of counsel the Association must defend itself against the litigation. The State of Colorado statutes require Planned Unit Developments (PUD's), like Fairway Pines, to establish an assessment and lien process. The Association has a duty as an Association to defend the covenants

and Fairway Pines has a history since 1992 of interpreting the covenants. If the Association does not clean up the ambiguity on cluster lots and cluster lot units in the covenants, then every cluster lot could conceivably have problems in interpretation in the future.

Chris Carr stated that the Association needs to defend the HOA payments due based on the covenants which, also, outlines the payments for the golf fees for the Divide Ranch and Club, the water fees for Dallas Creek Water Company, and the Fairway Pines Sanitation District dues. The language related to the definition of cluster lots should have been clarified many years ago, but were not. There are other items in the covenants that need to be cleaned up, also, but we need to complete these amendments as quickly as possible. This afternoon at the Board meeting, Chris Carr will provide the amended covenants document to the Board members for their review and acceptance.

Jerry Farrington stated that once the CRC and Board approve the amended covenants, Tharaldson, the developer, through Paul Stashick, will have to agree with the amended covenants because the developer has 40 % of the eligible votes. The Association needs his assistance in accomplishing the specific amendments of the covenants. The Association and Paul Stashick need each other's help in various ways. The developer has 200 cluster lots pending development, so the changes to the covenants related to cluster lots and cluster lot units need to be agreed to by the developer.

The following questions were asked about the amended covenants:

Gay Dicus questioned the language on Page 9 which states "Owners shall be entitled to one vote for each Lot owned." The owner (s) on record should sign the voting document, but are entitled to one (1) vote, unless it is a cluster lot, which receives a vote for each cluster lot unit platted.

Erich Montgomery questioned the language on Page 7 Section 4. "Residence" shall mean and refer to a residential structure that has been built, or may be built, on a Lot, or Cluster Lot, in accordance with the Community Documents and those certain land use approvals granted for Fairway Pines by Ouray County. What if a residence has not been built yet? Tom Kennedy suggested the "residence" language; it's a legal change.

Gay Dicus asked if Dick Kreutzen will make changes for typographical errors. He will.

Erich Montgomery asked about the variation of cluster lot units. Some cluster lots have three units; some have four units. One lot at one point had 6 units platted, but the owner went to the Board of Ouray County Commissioners to have a plat change made about seven to eight years ago, which the Association was unaware of. Another lot owner tried to downsize his cluster lots from multiple units to one unit through the BOCC about three years ago, but the Ouray Planning Commission ruled against that effort after strong comments from the FPEOA. On a cluster lot, an owner cannot just build one unit for the number of units. The design for all units on a cluster lot have to be compatible, and approved by the BOCC in advance of construction. The Association owns four cluster lots which are for sale. Lot 108 is four cluster lot unit. Lots V-609, V-610, and V-611 have three cluster units each.

Tony Litschewski asked if an owner can build a residence on one unit under the cluster lot. Jerry Farrington lives on a cluster lot with two residences built on a four cluster lot unit. The built-out residences' footprint are compatible with each other. Also, his cluster lot has sub-association covenants which outline maintenance issues and dues. The owner of three of the four units on his cluster lots is the same owner, and he has gratuitously paid for some of the maintenance.

The DENS at Bear Cub Drive and Red Fox Lane have sub-association covenants and dues. The covenants allow the Association to collect dues for sub-associations. The sub-association covenants have to be compatible with the Fairway Pines covenants.

Tony Litschewski questioned whether on Page 11, Section 3, that the amount for the HOA dues of \$378 per lot for 2016 should be added instead of 2013's amount of \$345 per lot. Jerry Farrington stated that in the second restatement of the covenants adopted by the Board on September 9, 2013, there were included parenthetical statements as small bold inserts which reference changes. In the covenants adopted on September 9, 2013, the change of the HOA dues for 2013 of \$345 per lot was included with a bolded statement. Language has been added to this section that states: "Annual increases may occur from time to time as provided in this section." so that the covenants do not have to be changed each time a change is made to the HOA dues.

Chris Carr stated that to Page 17, Section 4, cluster lot unit was added along with lot for proof of financial responsibility for an owner building on a lot.

Erich Montgomery questioned the language on Page 20, Section 1 related to square feet; minimum square feet or maximum square feet. Should a minimum and maximum square feet be included for commercial units? For a change such as that to be made, the Association would have to have lengthy negotiations with the developer. Right now, the Association is making the necessary amendment changes. The Association does not want to address those specific changes at this point. For example, for Lot CV-101, which is 25 acres, a lodge was once planned, but obviously not built. The owner of the old clubhouse has also proposed that an RV park be allowed there. The owner could get a variance from the Association, but Ouray County's Land Use Code does not allow any new RV parks to be approved for construction in Ouray County.

Erich Montgomery asked if on Page 24, is Fairway Pines the subordinate association. The sub-associations are similar to the DENS with its own sub-association covenants. Fairway Pines is not the subordinate association; the DENS is.

For Page 38, Section 18 outlines a transfer fee of \$3,000 for the sale for a lot, a cluster lot, or each cluster lot unit as built. If an owner builds on a cluster lot, then the transfer fee is required for each residence. The \$3,000 transfer fee currently is paid to the developer through Divide Ranch and Club, and the Association, nor the community currently see any benefit of the fee.

The transfer fees could be used to develop or improve the street in the community. Both the Association and the developer agree that Ouray County should maintain the Fairway Pines roads. The developer has the responsibility to pave the streets initially. The Association's responsibility from Ouray County is for the maintenance of the roads; snowplowing, resurfacing, maintenance, such as crack sealing, and new gravel where required. The Reserve Fund set aside from the HOA dues is partially to maintain the roads and resurface them on a schedule.

When the Divide Ranch and Club was bought from Fairway Pines Development in 2006, it should have been required by Ouray County that the developer pave the graveled roads within Fairway Pines. Ouray County will be very clear in building permits issued to the developer in the future that the developer is required to pave the graveled roads.

The Fairway Pines Planned Unit Development is a separate quasi-governmental agency. When Ouray County approved the PUD, the Association was given responsibility to oversee the development, including the roads. In Colorado, the

majority of PUDs have stipulations that the property near the roadways are owned by the county but don't have to pay the costs for maintenance. Developers have the responsibility to pave the roads. Each Association member is currently paying \$100 per year for maintenance of the roads. A few years ago, a bid was provided for reference purposes, of \$14,000 to pave the small graveled section left on Bear Cub Drive just north of the intersection of Red Fox and Bear Cub. It is estimated that it would cost \$110,000 to \$115,000 to pave Pronghorn Lane, as an example.

Tony Litschewski asked if there should be clarification that the transfer fee that is listed in real estate listings as the HOA transfer fee is the developer transfer fee. Tony feels as if real estate agents should be made aware that the HOA fee goes to the developer/declarant. The developer/declarant supposedly uses the transfer fees for the improvement of the development, clubhouse, and golf course.

Erich Montgomery made a motion for the Covenants and Rules Committee to accept the amendments as submitted to the covenants, and recommend approval to the Board and eventual vote by the Association membership. Judy Farrington seconded the motion. The motion was unanimously approved by the CRC.

Jerry Farrington will submit the amended covenants to Paul Stashick and obtain a proxy/consent vote for his 200 votes. The developer/declarants voting privilege only effects certain Association actions, such as covenants and by-law changes, but does not authorize the Declarant to vote or nominate Association Board members as an example.

The Association has undertaken the goals of assisting in cleaning up the distressed properties of Fairway Pines. Fairway Pines has assisted the Divide Ranch and Club in assisting them with completing liens and other documentation.

Scheduled next meeting

Another meeting for CRC will be scheduled as needed in 2016 and as requested by the Board.

6. Adjourn

Judy Farrington made a motion for adjournment. Gay Dicus seconded the motion. The meeting adjourned at 11:00 AM.

Respectfully submitted,

Mary Ann Guilinger
Recording secretary
July 16, 2016