



FELICE F. HUNTLEY
ROBERT N. GREGORY
MICHAEL H. HARRISON*
JILL D. BLOCK
Paralegal

*Licensed in CO, MA and NH

February 25, 2022

VIA EMAIL & MAIL

Shock Hill Property Owners' Association Owners

Re: Proposed Amendments to the Shock Hill Property Owners' Association's
Governing Documents

This letter is written on behalf of the Board of Directors of the Shock Hill Property Owners' Association (the "Association" or the "Board") and is intended to provide you, as an owner within the Association, with a summary explanation of the proposed amendments to the Amended and Restated Declaration of Land Use Restrictions for Shock Hill Subdivision (the "Declaration"), the Bylaws of Shock Hill Property Owners' Association, Inc. (the "Bylaws"), and the Articles of Incorporation of Shock Hill Property Owners' Association, Inc. (the "Articles" and with the Declaration and Bylaws, the "Governing Documents") on which you will be asked to vote at the next annual meeting. Nothing in this letter should be construed as legal advice. The specifics of the proposed amendments are set out in detail below. Additionally, attached to this letter are clean and redlined versions of the Governing Documents illustrating the various proposed amendments as well as the current versions of the Governing Documents. If there are any aspects of the proposed amendments with which you don't agree or that you don't understand, the Board asks that you voice these concerns or questions to the Board. These changes are critical to improving the overall operation of the Association, and, as such, it is extremely important that, even if not every change affects you directly, you support the proposed amendments and vote "yes."

Make Voting Rights Uniform Across the Association

The overarching goal of many of the proposed amendments discussed below is to decrease Board control and to afford each owner a stronger voice in the governance of the Association. In its current form, the Declaration affords certain aspects of the Association with greater voting rights than others. *See* Declaration, § 5.3(a); Bylaws, § 3.3(c). Specifically, Shock Hill Overlook is entitled to 66 votes within the Association, even though it only contains twenty Lots. As such, the Board believes that, as part of its effort to increase owner control, each owner should be given an equal voice, which translates into equal voting rights. In an effort to implement such a structure, the Association proposes removing the current voting structure and replacing it with a system in which each Owner is afforded one vote per Lot. *See* Redline Declaration, § 5.3; Redline Bylaws, § 3.06. For the sake of voting only, each unit within any du- tri- or four-plex shall constitute a Lot. *See* Redline Declaration, § 2.19.



Limiting the Board's Authority

- Ability to Replace Directors

In their current form, the Governing Documents give the Board the right to fill any directorship vacancy for the duration of the unexpired portion of the former director's term. *See* Articles, Art VII; Declaration, § 6.1. In an effort to increase ownership control, the Board proposes limiting its ability to appoint any such replacement to the period between when the vacancy occurs and the next annual meeting at which the owners will vote on a replacement to occupy the vacated seat for the unexpired portion of the term. *See* Redline Declaration, §§ 5.3(c), 6.1; Redline Articles, § 7.1(b)(iv), (e); Redline Bylaws, §§ 4.02-4.03.

- Ability to Remove and Replace Review Board Members

In their current form, the Governing Documents allow the Board to appoint the members of the Design Review Boards and to remove a Review Board member with or without cause. *See* Declaration, §§ 6.1, 9.2. In similar fashion, the Board is currently allowed to fill any vacancy on either Review Board for the unexpired portion of the term. *See* Declaration, § 4.1. The Board proposes removing its ability to appoint the membership of the Review Boards and, instead, giving the owners the right to vote on those positions; to remove the Board's right to remove Review Board members without cause to ensure that the owners' wishes are respected (*i.e.*, the people elected to the Review Boards retain their positions); and to limit the Board's right to fill any vacancy on any Review Board to the period between the vacancy and the next annual meeting at which the owners will vote on a replacement. *See* Redline Declaration, §§ 4.1(a), 6.1, 9.2. All of these changes are intended to provide security for the Review Board members and to avoid a scenario in which the Board could unilaterally restructure the Review Boards without any owner oversight.

- Right to Assign Future Income

The Declaration and Articles currently allow the Board to assign future income. *See* Declaration, § 4.1(xiv); Articles, § 6.1(k). The Board believes it is inappropriate to have such power and, therefore, proposes deleting this right from the Declaration and Articles.

- Board's Ability to Amend the Bylaws without Owner Approval

In their current form, the Governing Documents allow the Board to amend the Bylaws by a majority vote of the Board. *See* Articles, Art. VII & IX; Bylaws, Art. XI. The Board proposes removing this right and requiring a majority vote of the ownership to make any changes to the Bylaws. *See* Redline Articles, § 7.1(b)(ii), Art. IX. This change not only removes the Board's right to amend the Bylaws, but it also lowers the ownership voting requirement to make any such change from 67% to 50.001%. *See* Redline Bylaws, Art. IX. All of these changes will give owners a stronger voice in the operation of the Association.



- President's Ability to Record Amendments to the Declaration

In an abundance of caution, the Board proposes adding language to the President's right to record amendments to the Declaration and/or Articles, *see* Bylaws, § 7.4, requiring Board approval before any such amendment can be recorded. *See* Redline Bylaws, § 5.04. While it is procedurally necessary for the President to have such authority, the Board wants to avoid a scenario where a future President could attempt to modify the Declaration or Articles without prior owner signoff.

- Decrease in Percentage Vote Required to Remove a Director

The Board proposes decreasing the percentage of ownership votes required to remove a director from 60% to 50.001%. *See* Declaration, § 6.3 and Redline Declaration, § 6.2. This change will give the owners more control over the Board and will avoid a scenario in which a majority of the owners desire to remove a director but are simply unable to collect the requisite votes.

- Owner Approval of Annual Budget

Currently, the Board sets the annual budget for the Association without any owner involvement. *See* Declaration, § 7.4(a). In an effort to increase ownership oversight of the Board's actions, the Board proposes requiring the approval of a simple majority of the owners at any meeting at which quorum is established to set the annual budget. *See* Redline Declaration, § 7.4. This change will give owners the ability to question and discuss potential increases or decreases in the annual budget before they are finalized.

- Change Board Action to "Reasonable"

The Articles require any Board action to be "necessary and proper." *See* Articles, Art. VI. The Board proposes changing this language to "necessary and reasonable." *See* Redline Articles, § 6.1(t).

- Board's Right to Interpret the Governing Documents

Currently, the Board has the right to interpret the Declaration. *See* Declaration, § 18.5. Thus, in the event there is ambiguity in a provision of the Declaration, the Board has the final say as to what that provision means, even if the owners disagree. The Board proposes removing this right to interpret, which change would put the Board and ownership on closer to equal footing with respect to interpreting the Declaration. In the event the Board and owners reach an impasse with respect to interpretation/application of a provision of the Declaration, either party would have the right to ask a court to opine on the provision in question.

Restrictions on Ownership Use

The Governing Documents originally contemplated certain commercial operations within the Association. *See, e.g.,* Declaration, §§ 10.3 (discussing Chalet Houses) & 11.1 (discussing



Bed and Breakfast and Condominium/Hotel operations). Because the Association does not currently have any such establishments and there are no plans for any such use in the future, the Board proposes removing references to Bed and Breakfasts and Chalet House operations from the Declaration.

In addition to removing the aforementioned commercial uses, the Board also proposes prohibiting timeshare ownership, which is currently allowed in a limited portion of the Association, *see* Declaration § 11.4, and restricting owners to traditional long- and short-term renting at the exclusion of membership services. *See* Redline Declaration, § 11.1. The Board’s reasoning behind limiting rentals to traditional long- and short-term structures is to avoid the scenario in which an owner leases her/his property to a membership service and the membership service, in turn, conveys the property to an unknown number of guests. The Board feels that this membership service structure removes a degree of control (between owner and tenant) that is essential to maintaining the quiet and pristine Association the ownership has come to expect.

Revision of Design Review Areas

Under the Declaration, the Association is equipped with two design review boards, Review Board A and Review Board B (collectively, the “Review Boards”), which are tasked with overseeing the construction and exterior maintenance activities of the ownership. Each Review Board is responsible for a certain portion of the Association. The current scope of each Review Board’s oversight is tethered to the developer’s expected use of each lot and tract within the Association at the time it was created. As the Association has been built out, it has become clear to the Board that the development of the Association differs from the developer’s expected use (e.g., there are no lodging facilities). In an effort create a system in which each Review Board’s area of supervision is uniform, the Board proposes changing the Review Areas as follows:

Original: Review Area A: means those portions of the Property located within Lots 1 through 38 and Tracts A, B, I, J, L, M, N, O and R of the Subdivision

G Review Area B: those portions of the Property located within Tracts C, E, F and Shock Hill of the Subdivision and the median landscaping within Drive

Revised: Review Area A: those portions of the Property located within Lots 1 through 60 of the Subdivision

F Review Area B: those portions of the Property located within Tracts A, B, C, E, within Shock and G of the Subdivision and the median landscaping Hill Drive

See Declaration §§ 2.30-2.31; Redline Declaration §§ 2.30-2.31. The Review Areas currently in place make Review Board B responsible for what were expected to be lodging tracts and



are now the Landings, Overlook, and Cottages; Review Board A is responsible for everything else within the Association. This new structure will make Review Board A responsible for the 60 scattered site single family homes and Review Board B responsible for the subdivisions: Cucumber Patch, Town Homes, Landings, Overlook, and the Cottages. The Board continues to discuss the idea of whether a single Review Board is appropriate for the Association, but it believes that the above-referenced restricting will, in the meantime, make the owner review process more logical.

The restructured Review Boards will need Board approval to establish rules and regulations. *See Redline Declaration, § 9.3(a).*

Review Board Reporting to the Board

In an effort to keep the Board apprised of the Review Boards' decisions and activity, the Board proposes adding to the Declaration language that gives the Board the right to request that the Review Boards apprise the Board of any decisions they make along with providing updates on project currently supervised by the Review Boards. *See Redline Declaration, § 9.3(d).*

Remove Voting Restriction for Design Review Boards

The Governing Documents currently limit an owner's right to elect members to the Review Boards to the Review Board that controls the portion of the Association in which her/his home is located. *See Declaration, § 9.2.* Understanding that Review Board decisions can affect all owners, the Board proposes removing this voting restriction and allowing owners to vote in the election of both Review Boards. Part of this proposed change is to remove the quorum requirement of 20% of a specific set of owners (those situated in the relevant design review area) set out in § 3.3 of the Bylaws and make it a general quorum requirement of 20% of the ownership. *See Redline Bylaws, § 2.03.*

Board and Design Review Board Member Terms Extended to Three Years and Staggered

In their current form, the Governing Documents limit the Board of Directors and Design Review Board members to serving one-year terms. *See Bylaws, Art. VI; Declaration, § 9.2.* In an effort to avoid needing to elect an entirely new Board of Directors and two Review Boards at every annual meeting, which could result in a lag in the boards' ability to operate as a result of the new board members needing to get up to speed, the Board proposes making each directorship and Design Review Board seat a three-year term and to stagger the terms of each member of both boards. *See Redline Articles, § 7.1(d); Redline Bylaws, § 4.01.* The effect of this change is that, unless there is an unexpected vacancy, the ownership will elect one director and one Review Board member (for each Review Board) at each annual meeting.



Allocation of Common Expenses

In an effort to align the voting and allocation of common expenses and accounting for the proposed voting change discussed in the section above, the Board proposes removing the current allocation formula, which is based on the old voting structure, and making the allocations based on each lot's voting rights, which will be a 1:1 ratio. *See Declaration, § 7.3; Redline Declaration, § 7.3.*

Decrease Minimum Threshold to Amend the Declaration

In its current form, the Declaration requires seventy-five (75) percent of the owners to approve any change to the Declaration. *See Declaration, § 18.2.* Such a high voting floor is an extremely high hurdle to clear and, as a result, makes the amendment process significantly more time consuming and expensive (due to the substantial efforts required by the property manager to collect votes). Understanding this, the Board proposes decreasing this threshold to sixty-seven (67) percent, which aligns with what most other associations in the county require for such amendments. *See Redline Declaration, § 17.2.*

Increase Management Company's Insurance Requirements

At present, the Association's management company is required to maintain fidelity insurance in an amount not less than \$50,000.00. *See Bylaws, § 6.4.* In an effort to avoid a scenario in which the Association's management company is underinsured, the Board proposes changing this requirement to not less than an amount greater than the retained earnings and budgeted revenue of the Association for the year. *See Redline Bylaws, § 4.04.*

Clarification of Annual Dues Amounts

The current version of the Declaration, which was recorded in 1999, limits Association dues to the maximum amount allowed under Colo. Rev. Stat. § 38-33.3-116, which was, at that time, \$400. *See Declaration, Art. III.; § 7.9.* The intent behind this provision of the Declaration is to exempt the Association from a set of statutes that control many of the common interest communities in Colorado, the Colorado Common Interest Ownership Act or "CCIOA." Given the nature of the Association, a master association made up of several smaller associations, exemption from CCIOA makes operation of the Association significantly easier. The Board wishes to maintain the Association's exemption from CCIOA but feels that it is important to provide additional information to owners about annual dues. Section § 38-33.3-116 of CCIOA explains that the \$400 maximum annual dues set out in 1999 is to be adjusted annually to account for inflation. As such, the Board proposes adding language to Article III and section 7.9 of the Declaration noting that the \$400 maximum may be increased to account for inflation. *See Redline Declaration, Art. III, § 7.9.*



Terms for Board Officer Positions

In an effort to avoid any confusion about how long Board members may hold their respective roles as officers on the Board (e.g., President, Vice President, Secretary, etc.), the Board proposes adding language to the Bylaws to clarify that each term for an officer will be one-year and an officer may be reelected for multiple terms. *See Redline Bylaws, § 5.01.* In other words, while a Board member will sit on the Executive Board for three years, she or he may hold different positions within the Board over the course of their tenure as a Board member.

Ownership Subdivision of Lots Requires Board and Government Approval

The Declaration currently requires an owner wishing to subdivide her/his lot to obtain the approval of the appropriate Review Board. *See Declaration, § 10.13(b).* In addition to obtaining Review Board approval, any such owner will also be required to obtain approval from the relevant government authorities; this is true regardless of what the Governing Documents provide. As such, in an effort to avoid a situation in which an owner obtains Review Board approval but fails to obtain approval from the government and is later penalized as a result, the Board proposes adding language to section 10.13(b) to explain that owners must obtain Review Board and governmental approval. *See Redline Declaration, § 10.13(b).*

Allow for Electronic Meetings

To make it easier for owners to participate in both annual and special meetings, the Board proposes modifying the Governing Documents to allow for email notice to owners and for meetings by electronic means. *See Redline Bylaw, §§ 3.03-3.04, 4.05, 4.06, 7.02.*

Removal of References to Declarant

The Governing Documents were originally drafted at a time when the Association was controlled by Shock Hill Development LLC, a development company tasked with developing the Association as we know it today. As such, the Governing Documents refer to the development company as the “Declarant” and afford it a significant amount of authority to operate the Association, much of which has since been bestowed upon the Board since the Declarant is no longer in control or otherwise involved with the operation of the Association. Because the Declarant is no longer involved with Association, there is no need to retain most of the references to that entity, which references consume multiple pages in the Governing Documents. As such, and in an effort to make the Governing Documents more user friendly, the Association proposes removing all references to Declarant with the exception of certain limited rights that survived the transition from Declarant to the Board. These changes can be found in both the Declaration and Bylaws.

Remove Reference to Initial Board Members

The Articles currently list the original board of the Association. *See Articles, Art. VII.* Since these initial members have long since left the Board, the current Board proposes removing



this reference in the Articles in an effort to declutter that document. See Redline Articles, Art. VII.

Update/Removal of Office Location from the Governing Documents

In their current form, the Governing Documents reference the Association's previous registered agent and office address. See Articles, Art. II; Bylaws, Art. II, § 9.3; Declaration, § 9.6. The Association proposes updating the Articles to reflect the current registered agent of the Association, Alpine Edge Property Management, and removing any reference to the Association's office from the Bylaws to avoid needing to update that document in the event the Association's office address changes in the future. See Redline Articles, Art. III; Redline Bylaws, Art. II; Redline Declaration, § 9.6.

Conclusion

Pursuant to section 18.2(b) of the Declaration, any amendment of the Declaration requires an affirmative vote of at least 75% of the ownership, which translates to 104 out of 138. In similar fashion, the article XI of the Articles requires an affirmative vote of at least 67% of the ownership (93 owners) to amend that document. Lastly, while the Board has the right to amend the Bylaws by a vote of the Directors, in the interest of transparency, the Board will put the proposed amendments of the Bylaws to a vote of the ownership and will require an affirmative vote of at least 67% of owners. **Given the large number of votes required to pass these amendments, it is extremely important that you cast your vote, or vote by proxy, on the proposed amendments.** As explained in detail above, these changes are intended to benefit every owner within the Association. In the event you have questions or concerns, please direct them to the Board and allow the Board members to address them by conveying your message along with your name and contact information at least two weeks before the scheduled vote on March 12, 2022. Ignoring or voting against these proposed changes will prevent the Association from being able to best serve its owners.

Sincerely,

Mike Harrison

MHH

cc: Shock Hill Property Owners' Association Owners Board of Directors
Alpine Edge Property Management

Note from Management – Please visit the URL below to view the exact proposed updated verbiage to your governing documents.

<https://aepropertymanagement.com/shock-hill-poa-2022-annual-meeting/>