

Silver Springs CC&R Rewrite

The “Independent Whitepaper”

11 Things You Should Consider Before Voting

Note: Due to a desire for anonymity by some owners submitting comments all comments are being attributed as “Owner comment”. SSL has the names on file if a legal need for disclosure should arise.

The “Attorney comment” sections result from an off-the-record discussion with a local attorney versed in HOA matters.

Cautionary Notes

“Underdrain can be maintained at a cost of \$11 per owner per year”.

– statement by board members

ATTORNEY comment: *“With respect to the drains in the neighborhood, I agree with the County, regardless of what may have been intended initially with respect to development approval, if there is not an obligation currently in the owners’ chain of title (including the plat and/or the CC&R’s), then there is no good reason for the owners to voluntarily assume such obligation now. “*

Owner comment: *“This reflects current low-level maintenance, does NOT take into account potential costs. Where are the cost figures? Where are the answers about the scope of the problem?”*

Owner comment: *“We must not allow them to be included in the new CC&Rs. They weren’t part of the CC&Rs before and we don’t need them there now. They are not on the recorded plat at the County. We’ve been maintaining them up to this point without including them in the CC&Rs. Let’s continue the status quo. No underdrain language. Otherwise, all homeowners will be impacted adversely.”*

Changes NOT redlined to existing CC&Rs

Problem: The current rewrite offers a redline to illustrate changes to the prior document. This redline references the 2017 draft of the new CC&Rs, it does NOT reference the current existing CC&Rs. This is misleading at best and has led to much confusion and a feeling that there is lack of transparency by the board.

Owner comment: *“Of primary concern is the fact that the board based their rewrite NOT off existing CC&R’s but off of a draft of earlier proposed, and never approved, CC&R’s. This allowed them to bypass discussion of many potentially sticky changes.”*

Owner comment: *“The re-write should have been based on the most recently recorded CC&Rs. It was not. It was a completely new document that the fired attorneys put together and which the new attorney (Richards) and the re-write committee have continued to work on. They used a template for condo HOAs which are 10 times more complicated. This is the primary reason we should vote this down.”*

CC&R changes proposed by new Rewrite

Questions & Concerns - what these mean for you

Dissolvement of the HOA

Current: requires majority vote (51%)

Proposed: Dissolvement of the HOA will now require **100%** of owners to vote “yes”.

Reference: **Article 14: Termination of the Association – page 39**

ARTICLE 14 TERMINATION OF THE ASSOCIATION 14.1. Required Vote. Except as otherwise provided in Article 13, the Association may be terminated only by the approval of Owners holding one hundred percent (100%) of the Allocated Interests.

Problem – board claims this is mandated by Utah law, however - **It appears to be illegal.**

ATTORNEY comment: *“With respect to unanimous approval of the owners to dissolve an HOA, I believe that would be illegal and unenforceable even if adopted. I am assuming that your HOA is not a condominium association, so the Utah Community Association Act governs (but even if it is a condominium, there is a similar provision in the Utah Condominium Ownership Act). ... Section 57-8a-104(1)(a)(i)(A) of the Utah Code expressly states: “To amend the governing documents, the governing documents may not require . . . the vote or approval of lot owners with more than 67% of the voting interests.”*

Owner comment: *“There is nothing in Utah law that mandates this. Current CC&Rs require 51% approval. If these CC&Rs pass, we will never have control over our own HOA again!”*

Owner comment: *“Why did John Richards “whitepaper”, which was supposed to outline in summary the changes to the CC&Rs, so conveniently leave this super-important change out? What was the purpose behind that “oversight”?”*

Owner comment: *“This may be applicable in a Condo project where this is common areas, that will require continued Maintenance and management. Silver Springs is made up of single-family homes with no common area. This option should remain as a possibility for residents. Especially in light of the concerns relating to this new document.”*

Owner comment: *“The HOA is composed of owners. If a majority of owners don’t want the HOA, for whatever reason, all it takes is one person on the board of the HOA facing dissolvement to say “no”. You will NEVER be able to dissolve the HOA. Period.”*

Owner comment: *“Why do they want to change it from 51% to 100% of the homeowners? If these CC&Rs pass, we will never have control over our own HOA again.”*

... their proposed language ... scares the heck out of me.”

Easements for Underdrain

Current: Includes easements for utilities.

Proposed: Includes easement for maintaining and repairing underdrain

Reference: **Article 10: Property Rights in Lots – page 31**

Problem: New CC&Rs state that there will now be a blanket easement on all properties for purposes of maintaining an underdrain system which does not appear on plats and therefore is not included in chain of title which also precludes it from being piggy-backed under existing easement rights from County.

Owner comments: *“As verified by Summit County, “Easements cannot be established without written approval of individual property owner””.*

Owner comment: *“New easements against individual lots can only be established with written approval of individual property owner. HOA should prepare an exhibit indicating the location of underdrain system and which lots currently have underdrains and which ones do not.”*

Owner comment: *“The new CC&Rs put a Blanket Easement on all of our properties. The County rules do not allow an easement on anyone’s property without their consent.”*

Attorneys & Lawsuits by Owners

Current: None or Arbitration

Proposed: Must go to attorneys. Owner shall pay for ALL costs, their own as well as HOA’s.

Reference: **Article 18: Attorneys & Lawsuits by Owners – page 44**

Problem: Unfair burden on owners and a total discouragement to ever challenging any aspect of the CC&Rs and/or Bylaws.

Owner comment: *“If someone feels so strongly as to want to litigate there should be A) arbitration required B) both sides pay their own legal fees in the event arbitration fails. C) prevailing party may be entitled to recover reasonable costs and fees provided the action is deemed frivolous and without merit. ...This is NOT how the new docs are written.”*

Owner Comment: *“This should be a no brainer! Arbitration is such the norm in today’s world. Do residents really understand this? Nobody should be arguing about this one!”*

Rentals - Term

Current: Restricted to One Year lease.

Proposed: Same

Reference: **Article 20: Leasing & Non-Owner Occupancy – page 46 (20.5 – Requirements)**

Problem: The neighborhood has a changing demographic and many owners would like to rent their homes while they travel for extended periods. This is better handled by a 6-month minimum lease.

There are also potential tax benefits from being able to rent for 6 months, as one owner pointed out.

Owner comment: *“If someone has the means and desire to lease for 6 months, at a cost of \$4,000 to \$6,000 per month, they are likely fairly responsible adults. Additionally, the owner is ultimately responsible for the actions of those he leases to. The HOA and County can enforce all the standard rules and laws, and ultimately, the owner has to pay those which aren’t handled by the renter. That should be incentive enough to manage things properly. A 12-month minimum is no longer a reasonable period and constitutes an unfair restriction on use.”*

Owner comment: *“The age demographics of Silver Springs have evolved over the years and now, a large contingent of homeowners are 55+ and close to if not already retired.*

Many of these senior’s would like to travel (to warmer destinations) and would appreciate the opportunity of having their homes work for them while away.

We do live in a resort community that is driven in large part by visitors who want to enjoy the benefits that we are all so lucky to have. It is not right that an HOA can decide what we can and can’t do with our private property.”

Owner comment: *“The length of a lease term does not dictate the character and quality of a potential tenant.”*

Owner comment: *“Other than what is adopted in the CC&Rs, I can find nothing in the Utah code, county code, or the Park City Municipal Code that restricts homeowners from renting or swapping their personal home to individuals. The statutes address short-term or nightly rentals. We are bound by whatever is in the CC&Rs. We can change it to 3, 6 or however many months the neighborhood desires. ...”*

Owner comment: *“I have seen more than a few next door 12 month leases which I had wished were only 3 months....I understand a 3 month minimum...I can’t fathom the rationale behind a 12 month minimum.”*

Exhibits

Current: Few if any exhibits referenced or attached.

Proposed: Multiple references to documents meant to support and clarify articles. Few if any exhibits attached.

Reference: **Article 4: Maintenance & Utilities – page 16**

Problem: Items being referenced should have an exhibit to lock in what the purpose/intention is behind the clause. Without these the clarifying documents can be created/produced at any time in such a fashion as to support whatever the goal of the day is.

Owner comment: *“The intent of the entire document is to cast a “Blanket” over the entire subdivision. There is zero back up material, i.e.; survey’s, reports, studies etc. to support the broad control given to future Boards.”*

Rentals - Lease Review

Current: nothing

Proposed: HOA shall have the right to review the lease only allowing redaction of personal information.

Reference: **Article 20: Leasing & Non-Owner Occupancy – page 46 & 47 (20.5 & 20.6 – Requirements)**

Problem: This seems at odds with State law. State Law appears to say the HOA can NOT require review of a lease, UNLESS it pertains to a restricted/disqualified type of renter and then only that part of the lease is reviewable. In this case the length of lease could be called to review but even then, ONLY that part of the lease which states the term of the lease. The current writing seems to border on illegal.

Owner comment: *“The HOA has no legal right to review a lease between Homeowner and tenant.*

There are very strict rules & regulations in place for Silver Springs. These should be made part of any lease agreement.”

Owner comment: *“This applies to rentals in the neighborhood. By Utah statute, we do not have to include any kind of a lease review in our CC&Rs nor should we do that. We need to reduce the Board’s powers, not increase them.”*

Architectural Guidelines

Current: References the Rules, a separate doc outside the CC&Rs

Proposed: New CC&R’s have many guidelines included in the CC&Rs (where they can’t be changed) while some are left in the Rules (where they can be changed)

Reference: **Article 5: Architectural Control – page 19**

Problem: Standards, design tastes, building materials, community styles...these all change over time. We now allow metal roofs when before we didn’t. We have various siding materials which were never allowed and now are. Solar Panels? Couldn’t have them ten years ago – now they are almost encouraged.

Point is, things like this change with time. Architectural Guidelines should NOT be locked in place. If they had been in the existing document none of the example changes provided above would have come about.

Owner comment: *“Reference the Architectural Guidelines doc in the CC&Rs but leave the body of it out.”*

Owner comment: *“The original CC&R’s do not include these items. This is something that has been added during the redlining process.”*

Owner comment: *“These need to be a separate document instead of all tied up in the CC&Rs, especially with the ever-changing rules and regulations.”*

Voting

Current: paper ballot

Proposed: e-voting: proposed says that emails provided by the owner for correspondence purposes can be used AS WELL AS ANY EMAIL EVER USED by the owner to contact the HOA or management company.

Reference: Article 17: Notice – page 42

Problem: State law currently allows for e-voting IF the owner has specifically delivered to the HOA an email address they indicate to be used for this purpose. It does NOT give the right to pull any email from the archives, use it, and claim they have properly delivered the correspondence.

Owner comment: *"I have an old Hotmail email I check once every couple of months. If the HOA sends email there, chances are I won't see it in time to act on it. So, instead of using the email I provided them, they could use that one and call it good, when it isn't."*

Owner comment: *"I wonder what percentage of owners did not receive the ballot in their email or overlooked it? If any at all...could ignoring this be construed as vote manipulation?"*

Owner comment: *"The vote should be a super majority."*

RV Parking

Current: 3 days

Proposed: 4 days max

Problem: OK this isn't too far off for most folks. Four days to clean and restock an RV is reasonable. Except at the time of a seasonal changeover. Then, a few days extra would be appreciated.

Owner comment: *"What might be nice is if those with RV's could have a twice-yearly extension, with proper notice to the HOA management company, say to extend up to five days. This could handle the once in the spring and once in the fall overhaul at the end of each season."*

Owner comment: *"Current is 3 days. It should be 4 days, and RV Parking should be something referenced in the Architectural Guidelines."*

This would allow for future consideration of potential changes in attitude about time frames and restrictions regarding recreational vehicles.

The restrictive nature of this language discourages residents to enjoy the tremendous access we have to the outdoors. After all, 85% of Utah is comprised of open space and National Parks.

I don't mind seeing a \$100,000 trailer in my neighbor's yard for a limited period of time.

It actually creates an opportunity for me to meet and greet my neighbor! To ask about recent adventures.

If the HOA is so against RV's in the neighborhood, what about the multiple trucks and cars parked on various homes in our neighborhood?"

Owner comment: *"I think 7 days would be appropriate, encompassing two weekends. Do you know how much work there is to loading and unloading RVs?"*