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CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Sent Via Email: president@hawkridgehoa.com

February 9, 2022

Board of Directors
Attn: Ken Witt, President
Hawk Ridge Home Owners Association
P.O. Box 2093
Monument, CO 80132

Re: Proposed Amendments to Declaration of Covenants

Dear Board:

You have requested my advice as attorney for the Hawk Ridge Home Owners Association (the "Association") regarding the proposed amendments to the Declaration of Covenants. My comments are as follows:

1. General. It will be necessary to seek approval of the proposed amendments in a manner that complies with the Colorado Revised Nonprofit Corporation Act (Section 109). Therefore, certain language must be included in the ballot and certain language must be included in the letter transmitting it to the Owners. Enclosed are Word versions of the ballot and the letter which could be revised by you and sent to the Owners. It is essential that the letter set a deadline for the time in which responses must be returned; that deadline could be up to 11 months from the date of the letter.

One other general comment before the beginning of my other specific comments is that courts will look to definitions in the Amendment to determine the application of provisions. If the Amendment does not define terms, the court will look to a dictionary and then to a zoning code to find the definitions. For example, I do not find that "auxiliary structures" is clearly defined in the Amendments, nor would it be defined in a dictionary. Instead, the court would look to a definition of the term "accessory structures" in an applicable zoning code, such as the El Paso County zoning ordinance. I think that the Amendment should set forth a definition or it should reference "accessory structures," which are defined as shown on the enclosed copy of the County Land

Development Code. However, you will note that both the County and the City impose various limitations and restrictions on accessory structures.

Similarly, there is a question of definition of “auxiliary vehicles,” although those appear to be more defined in the Amendment. It appears sufficient to allow the Board or the ARC to resolve disputes.

2. Group 1 – Vehicles. The proposed changes to the vehicle provisions raise certain questions. For example, the 14-day limitation does not contain a time limit; is that 14 days per month, or per year, and must it be consecutive days, or can it be intermittent? The reason this is important is that one of the most likely vehicle questions will be when children come home from college during the summer or holidays, or otherwise have their own vehicles, which would increase the number of vehicles per Lot. That raises the question of whether the Amendment should restrict the total number of vehicles which are allowed to be outside the garage, especially if the Owners are renting rooms. There may be some conflict between the 14-day limit and the 1 day per week restriction.

It would seem to me that parking in an area adjacent to the driveway or adjacent to the residence should be under the control of the ARC because it would often involve creating a paved or graveled parking area. The goal of most of this provision is that vehicles should be first parked in the garages before any vehicles are allowed to be parked outside. It would seem that the requirement that it be driven off the Lot at least once a week would be difficult to enforce, but perhaps the proof of that removal can be placed upon the Owner of the vehicle.

I think that the penultimate sentence should state that:

“Garages must be used by the Owner for parking of vehicles, rather than parking outside; storage is allowed in the garage so long as it does not prevent parking.”

Finally, I would note that the requirement for the garage doors to be closed is difficult to enforce and many associations have dropped that requirement.

3. Group 2 – Outbuildings and Decks. This has the reference to “auxiliary structures,” but it does not clearly define those structures; I assume that it means detached occupancy structures such as a cottage or guesthouse, as well as non-occupancy detached structures such as detached garages or sheds. It appears that the square footage requirement applies only to the non-occupancy structures. Again, there may be zoning restrictions which you should consider. An issue arises as to whether auxiliary structures would include things such as storage trailers or metal shipping containers because those types of storage are becoming more common. As to decks and screens, I think this should state:

“Decks and any screens, trellises or other items attached to the Residence shall be submitted to the ARC for approval prior to construction.”

4. Enclosures. The use of the words “ground level” may be somewhat confusing; I assume that it means a person standing at the highest point in the person’s Lot, looking at the view.
5. Construction Type. I think that the intent is to prohibit manufactured housing, but it seems to be unclear because it refers to pre-manufactured structures from another location; it is possible that manufactured housing could be made new and brought onto the Lot itself.
6. Trash and Garbage. I think that the original provision was to allow the option for the Association to enter into trash removal contracts which might save the Owners considerable money by having a preferred provider do the trash collection. It is a trade-off of lower price for a required service.
7. Antennae. If your intent is to allow CB and HAM radios, there is an antenna or pole tower that is necessary. There is a sentence in subparagraph (t) which states: “No radio antenna, television antenna or other antenna of any kind shall be erected or maintained on the exterior of the Residence or any other portion of the Lot.” That provision should also be struck; perhaps you might substitute a specific authorization stating that:

“Antennae for HAM or CB radio are allowed to the extent that they are in compliance with State and Federal law and approved by the ARC.”

8. Group Three. As to Section 6.2, “Use Restrictions”, I think that the reason for the prohibition against renting rooms is to prohibit bed-and-breakfast operations or boarding operations. If the intent is to allow those types of activities, it should probably be affirmatively stated. If your intent is to keep these operations limited as to publicity, number of guests, etc. then I would recommend stating that they are allowed only if their operations comply with the home business and other zoning/safety requirements; many cities and counties are requiring permits and installation of fire sprinkler systems in short-term rentals.
9. Short-Term Rentals. These activities are a major problem area in many associations due to the aggressiveness of VRBO and Airbnb. Some associations have sued claiming that VRBO is commercial use, but a Colorado court decided that VRBO has been recognized as a non-hotel, non-motel residential use like single-family housing which is not prohibited by the covenants. If you intend to ban short-term rentals, I recommend the following:

“No Lots shall be used for transient, hotel or motel purposes, or for short-term rentals. Rentals of less than ninety (90) days in duration are prohibited, such as VRBO, Airbnb, and similar-type operations. No industry, business, trade, commercial activities or pursuits for profit shall be conducted within any Lot, except to the extent allowed by the County zoning code for home businesses.”

I think that this is important to prohibit commercial activities because there have been situations where Owners have started running businesses from their homes and that increases traffic, affects property values and can be a general nuisance. Prohibiting commercial activities would still allow home businesses as allowed by the zoning code, which has various exemptions which would allow for in-house professional use.

10. Pets. A recent problem with kennel operations and dog grooming operations would suggest that you should replace the language which you have struck out and state that:

“No commercial kennels, dog grooming or pet-related businesses shall be allowed.”

That is probably already covered somewhat in the language which states that there cannot be any commercial dog activities.

11. Signs and Advertising. I think it is advisable not to make any reference to political signs because the law on political signs at the State level has been changed consistently; changes now may not include restrictions as to sizes, times and various other requirements for political signs or on-Lot signs in general. If you wish to have a provision on political signs, you could state:

“... such political signs as are allowed by State or Local law.”

12. Group Four. Recreational vehicles are often a major concern of homeowners, both those who have the vehicles and those who oppose such vehicles. You should probably put an exception after “truck” to add: “except for pick-up trucks”. I also think that the end of the first sentence should read:

“... or any other vehicle whose primary purpose is for recreational or sporting activities, as determined by the ARC in its reasonable discretion.”

I think that the wording as to “auxiliary vehicles” is somewhat confusing and would suggest the following:

“... otherwise, all auxiliary vehicles must be parked within the garage or off the Property, except that RVs and campers may be parked on the Lot at the side or rear of the Lot or in the driveway for no more than fourteen (14) days after the Owner delivers notice to the ARC of such parking.”

Finally, I do not recommend self-help as is set forth in the last sentence of Section 6.2. Very seldom in my many years of experience with HOAs has there been a reason or a need to enter a Lot and remove vehicles; condominiums and townhome associations have towed vehicles from time to time which have parked illegally or blocked fire lane access, but that would not occur when vehicles are parked on single family Lots and so I would recommend that the last sentence be deleted.

The above are my general comments; I would be happy to discuss those comments further once you have reviewed this letter.

QUALIFICATIONS

The above opinions are subject to the following qualifications: My opinions are provided as attorney for the Association and do not constitute a guarantee of a particular result or conclusion to be obtained in litigation. Although I believe that my opinions are supported by the Declaration and other legal documents, an attorney cannot guarantee how a court would rule on a particular set of facts or circumstances after reviewing the testimony presented by witnesses, other evidence offered, and any applicable case citations. This letter is intended for submission to and use by the Board of Directors, and it is not intended for use in any other manner by any other person or persons. My opinions are limited, of course, to the facts, laws and matters described above. If the Board of Directors has any questions or desires any substantial legal work beyond this letter, please contact me.

Sincerely,

ANDERSON, DUDE & LEBEL, P.C.

A handwritten signature in cursive script, appearing to read "Lenard Rieth", is written above a horizontal line.

Lenard Rieth
Special Counsel

LR:LP

Enclosures