

## Minutes, Directors' Meeting, January 2016

### Eagle Rock HOA

Following the election of Directors by the Members of the HOA at the Annual General Meeting of January 25, 2016, Peter Flynn (President) called a Directors Meeting for 5 PM January 25, 2016, at 750 Rhapsody Rd., Sedona. Members were notified of the meeting able to attend if interested. David Dahman attended the meeting.

The following Board Members were in attendance:

John Cantello  
Peter Flynn  
Paolo Scardina  
Steve West

#### **1. Presentation by David Dahman.**

David Dahman had requested an opportunity to present to the Directors why he believed their appointments were invalid. David presented his view that the 2009 resurrection of the HOA after the bankruptcy of the declarant was invalid. Directors expressed their opinion that the Special Meeting of Members held March 20, 2013 validly appointed Directors, as was confirmed in an e mail to Mr. Dahman from the HOA counsel, Jim Atkinson. Further, all Annual General Meetings of Members since that time conformed to the requirements of Arizona law and hence constituted valid elections of Directors by the Members of the HOA. For certitude, the Board, in March of 2013 after the Special Meeting of Members, had readopted its previous resolutions. Bylaws were modified after the Special Meeting of Members, following the specified procedure. All of these actions (the Special Meeting of Members and subsequent Board actions) had been taken on the advice of counsel, as Mr. Dahman had requested in 2012. Mr. Dahman advised that he was still not convinced of the validity of the Board, and his intention to call a Special Meeting of Members. The Board thanked Mr. Dahman for his presentation and encouraged him to call a Special Meeting of Members, as outlined in the Bylaws of the HOA, as the best means of bringing his concerns to the attention of the Members.

#### **2. Motion: On the recommendation of the Nominating Committee, the Directors make the following appointments:**

Officers:

President	Peter Flynn
Vice President	John Cantello
Secretary	Carsten Holm
Treasurer	Steve West

Architectural Review Committee:

Chair Paolo Scardina

Member Carsten Holm

Member Steve West

Alternate John Cantello (can participate, but only votes if one of the above steps down due to a conflict)

Nominating Committee:

Chair Peter Flynn

Member Steve West

The motion was passed unanimously.

3. Steve West presented the financial statements for the HOA, noting that the financial statements are prepared on a cash basis, recording expenses at the time the HOA disperses the cash. **Motion: The Directors approve the financial statements and direct that they be posted on the HOA website.**

The motion was passed unanimously.

4. The Directors discussed the status of the weed control program (addressing weeds along the road allowances, drainage system and post box in Eagle Rock). The ARC, who had been charged in October with developing a program, reported that it had no quote for an effective weed control program that was within the financial resources of the HOA. The ARC indicated it would further study the issue and see if a feasible plan could be developed.

5. The HOA annual assessment has been \$200 per Member (lot) since the reactivation of the HOA (six years). In light of the weed control discussion, the Directors recommended a modest increase in the assessment. **Motion: The annual Assessment for 2016 be set at \$225 per Member (Lot), due March 1, 2016.**

The motion was passed unanimously.

6. Section 4 (a) of the CCRs provides for a late payment penalty in the event of non-payment of assessments. The Directors agreed that in the event of non-payment of assessments, after two late notices, the practice of the HOA should be to file a lien against the property of the non-paying Member. **Motion: The late payment penalty for non-payment of assessments be set at \$200 at the time of the filing of a lien, plus the cost of lien filing.**

The motion was passed unanimously.

7. A Member, David Dahman, filed a formal complaint about the performance of the Architectural Review Committee (ARC). The complaint followed a notice from the HOA to the Dahmans, approved at the

October 2015 Directors Meeting, to correct four seriously non-compliant plantings. The Directors discussed the specific complaints. **Motion: The Board of Directors of the Eagle Rock HOA thanks Mr. Dahman for his formal complaint regarding the actions of the HOA and ARC, and directs the President to send the following response on behalf of the Board.** The e mail listing the complaints and the response are attached.

The motion was passed unanimously.

8. After the October Directors meeting the issue of seriously non-compliant plantings led to a letter to the Dahmans from the HOA counsel requiring removal of four plants. The Dahmans were notified that if the pampas grass planting on Tract O (common property that the HOA is obligated to maintain) were not removed by December 1, 2015, the HOA would do so. The HOA arranged for the removal of the pampas grass in late December at an expense of \$100. Section 3 C (v) of the CCRs provides for recovery of the expense of a repair to Tract O that a Member fails to make as an assessment against the Member. **Motion: The Directors approve an assessment for Lot 7 (David and Sheryl Dahman) of \$100, to recover the direct cost of the removal of the pampas grass planted in Tract O, due March 1, 2016.**

The motion was passed unanimously.

There being no further business, the meeting was adjourned.

Prepared by: Peter Flynn  
January 29, 2016

**Eagle Rock Homeowners Association**  
**Formal Complaint Lodged with Board of Directors by David Dahman, November 19, 2015**  
**And**  
**Approved Response from the Board**

**Approved motion: The Board of Directors of the Eagle Rock HOA thanks Mr. Dahman for his formal complaint regarding the actions of the HOA and ARC, and directs the President to send the following response on behalf of the Board.**

**The Complaint:**

**E Mail from David Dahman to Peter Flynn re the Eagle Rock ARC, November 19, 2015**

“My most recent exchanges with the ARC, the Board, and the attorney for the Board have brought to my attention issues that are relevant to our recent disagreements. As stated in my previous email, I do not believe that we are being treated fairly by the Board and the ARC relative to the tree/pampas grass issue.

The CC&Rs provide that I, as a member of the Association, have the right to lodge a complaint with the Board should I observe and object to Covenant violations. **Through this email I wish to submit the following complaints:**

Steve West obtained a building permit on March 15, 2013 and a Certificate of Occupancy on November 12, 2014. Consequently it is clear that construction of his home took over 19 months. The CC&Rs state that construction is not to take more than 12 months. Additionally, with an occupancy in November 2014, and his landscaping not complete to date it is taking him more than a year after C.O. to complete his landscaping and full fill his landscape obligations to the Association. The Covenants state that there is to be a landscape plan submitted prior to approval for construction. Was a plan submitted and since it appears that no plan has been implemented has Steve West been fined or otherwise sanctioned for his failure to comply with the CC&R's? If he has, please let me know what specific action has been taken? I note that Steve is a member of the ARC. I believe that he should remove himself from the ARC regarding this matter due to a conflict of interest and should be reviewed by an ARC of not less than three.

Your home has very limited landscaping and it does not appear that your driveway was ever completed. It is my understanding that you purchased your lot and built your home prior to the members taking control of the Association. However your home was and remains subject to the CC&Rs which require that you submit a landscape plan and that you implement your plan. Did you submit the required plan and if you did, does the ARC have a copy of that plan that it can confirm you implemented? It concerns me that you may feel that you have gotten "under the wire" with regard to

landscaping your Parcel. It would be appropriate for you to confirm your approved landscape plan and its implementation with the existing ARC. If you can not, it would be appropriate for you to submit a new landscape plan that complies with the Landscape Guidelines and that you implement an approved plan. I note that you are an alternate on the ARC and President of the Board. I believe that you should remove yourself from any official capacity with regard to this matter due to a conflict of interest and this matter should be considered by an ARC of not less than three.

Yesterday I noticed that Palo has posted a sign on his lot that it is now for sale. The background of the sign is of a house. The implication is that the house pictured on the sign has been approved by the ARC. Has a house design been approved by the ARC? If a house design has not been approved, the sign becomes an advertisement, not of the lot for sale sign but an advertisement for architectural services. Signs depicting houses that have not been approved or advertising signage are not consistent with the CC&Rs. What action has the Board taken with regard to this matter? I believe that Palo should remove himself from his official capacity on the ARC due to a conflict of interest and that this matter should be considered by an ARC of not less than three.

It is important that all members of the Association be treated equitably and fairly. To me it appears that members of the Board and the ARC are turning a blind eye to covenant violations by Board members. If this is the case, it must change!

As you know, I am a licensed architect and have been for over four decades. I have served on numerous ARCs and Boards and I am very familiar with the processes and the proprieties involved. My past involvements have been very sensitive to the principals of equity and the avoidance of conflicts of interest. Given that some of the ARC chairs will be temporarily vacated by you, Steve, and Polo, I am volunteering to serve on the ARC in review of the above matters. I look forward to your response.

Thank you and enjoy the moment

*David M. Dahman*

**The Approved Response:**

**The West Property (Parcel 15):**

The complaint cites that the CCRs state that construction is not to take more than 12 months. This is in error: the CCRs actually state in clause 7B that construction shall be completed in 9 months after the issuance of a building permit. The HOA has felt that this time frame is unrealistic for custom designed non-spec homes, and decided not to enforce this provision of the CCRs.

It is a well-established principle of law that failure to enforce a particular act of default does not mean that the same default in the future, or any other acts of default, are permitted. The HOA's judgment that the nine month time frame is not compatible with custom designed home is a specific, not a general waiver of the conditions embedded in the CCRs.

The complaint goes on to cite landscaping, and cites that the CCRs state that there is to be a landscape plan submitted prior to approval for construction. Again, this is in error: the CCRs give the power to the ARC to request a landscaping plan, but no obligation; the CCRs simply call for plans. Landscaping can be included on a Site Plan if the ARC does not request further documentation.

The Wests have repeatedly approached the ARC to advise of and seek approval of landscaping. Relative to other parcels within Eagle Rock, the landscaping conforms closely to clause 7H "All Parcel areas beyond the Building Envelope shall be maintained in their natural state, and not subject to a disturbance excepting for underground utilities to serve the Parcels."

As regard the timing of the landscaping, the position of the HOA has been that it will not enforce a hard limit on landscaping implementation, since owners frequently wish to play an active role.

#### **The Flynn Property (Parcel 13):**

Two concerns are raised regarding this property. First: was there a landscaping plan? Landscaping was identified on the Site Plan, which is on file with the City of Sedona, and approved by the then ARC. The notion that there was no ARC at the time of construction of the first three homes in Eagle Rock is in error: all three were subjected to architectural review by the then ARC, the developer Paul Galloway. In the case of Lot 13, the ARC review involved Galloway retaining an independent architect to review the full plan set.

The home itself covers most of the building envelope. The "landscaping" was intended to scrupulously honor clause 7 H of the CCRs: "All Parcel areas beyond the Building Envelope shall be maintained in their natural state, and not subject to a disturbance excepting for underground utilities to serve the Parcels." Hence, landscaping is intentionally minimal in order to conform to the CCRS, and this is noted on the Site Plan, which identifies no disturbance to the area outside the building envelope. Pains were taken during construction to fence off the surrounding Tract O. There is no evidence at Lot 13 of a failure of landscaping to conform to the submitted plans for this property or the CCRs.

A second concern is that "it does not appear that your driveway was ever completed." There is a misconception here. The long concrete pad that appears to be a "driveway" is not, in fact, a personal driveway related to Lot 13, but rather a Common Driveway under clause 7 E (iii) of the CCRs and as per that Plat of Eagle Rock. The common driveway is available for use by Lots 14 and 12. Hence the portion of what appears to be a "driveway" that is exclusive to Lot 13 is a very small western portion of the total concrete pad. As such, most of the concrete pad is not Transition Zone but rather is in Tract O, and landscaping is restricted to the restoration of natural vegetation. By inspection, the damaged area on either side of the Common Driveway has been replanted with cacti and snake broom weed, both approved

for Tract O and the Natural Zone. This planting complies with the obligation on owners to remediate damage to Tract O.

The HOA and ARC have no basis for a complaint regarding this common driveway.

**The Scardina/Gilson Property (Parcel 6):**

One concern in the complaint is: "A sale sign has been posted on this property that includes a picture of a house: has a house design been approved by the ARC?" The answer is "No".

The second concern relates to a concern that the sign per se constitutes an advertisement for architectural services. The complaint notes that "Signs depicting houses that have not been approved or advertising signage are not consistent with the CC&Rs." The statement itself is only partially correct. Long term advertisement signs are indeed prohibited, and on two occasions the HOA has requested that signs promoting architectural services be removed. However, during construction of a home, the HOA has accepted a common practice of builders to identify who is building the home. This is not only a common practice, it helps Members who want to contact the builder in the event of a problem, e.g. blowing trash.

However, the CCRs do not comment on whether pictures of a conceptual house can be shown on a For Sale sign. This is not uncommon, and the Board does not see a reason to intervene about a picture of a conceptual house. In the case of Lot 6 there is no obligation on a buyer to either build that particular house or use the design services of the seller. On balance we think that the sign is indeed a For Sale sign, not an advertisement. More prominent ties to a firm, or a promotion of design services, would, as the complainant notes, violate the CCRs.