

REGULAR CB SOUTH P.O.A. BOARD MEETING MONTHLY MINUTES: September 10, 2009

Board Members Present: Al Smith, Cathy Frank, Ty Minnick, Shawn Olson and Patrick Wallace.

At 6:00 pm, Al Smith, President of the Board, called the meeting to order.

Staff Members Present: Chris Behan and Linda Roberts.

Others Present: Alan and Nettie Gruber, Pat Del Tredici, Margie Black, Virginia Roark, Peter Bogardus, Pepe Valian, Greg Wilson, Ben Shirk, Brian Levine, Sue Schappert, and Richard Crawford.

Existing Board Member Oath of Office: Pat Wallace signed the Oath of Office and reviewed the Conflict of Interest Policy.

Approval of Minutes: The August 26, 2009, Monthly Board Meeting Minutes were presented to the Board Members for review prior to the meeting. Ty made a motion to approve the August 26, 2009 P.O.A. Board Monthly Meeting Minutes. Cathy seconded the motion. Motion was approved by Al, Cathy, Ty and Shawn.

Approval of Financials: The August 31, 2009 financial reports were presented to the Board including: Bank Reconciliation statements for the Money Market, Operating, Hockey Rink, and Performance Deposit Accounts for the month of August 2009; Cash on Hand 8/31/09 and Monthly Credit Card Statement. The Board suggested that Chris write a letter to the newspaper, thanking Colorado 500 for their donation toward our hockey program. After reviewing and discussing the presented materials, Patrick moved to approve the financial reports as presented for August. Ty seconded the motion. Motion was unanimously approved.

Unscheduled Property Owner Comment Opportunity Time Chris explained that per the CB South P.O.A. By Laws, the Board needs to elect from its members a:

- **President** – The President shall preside at all meetings of the Board of Directors and shall act as ex-officio (non-official) member of all Committees created by the Board
- **Vice-President** – The Vice-President shall perform the duties of the President in the event of his absence.
- **Secretary-Treasurer** – Most of the duties of the Secretary-Treasurer have been delegated to Association Staff; however this person will have check signing authority on behalf of the Association; furthermore the Secretary-Treasurer shall fulfill the duties of the President in absence of both the President and Vice-President.

Cathy nominated Al Smith for President, Ty seconded the motion. Motion was unanimously approved.

Al nominated Patrick Wallace for Vice-President, Cathy seconded the motion. Motion was unanimously approved.

Shawn nominated Cathy Frank for Secretary-Treasurer, Pat seconded the motion. Motion was unanimously approved.

Virginia Roark presented a petition to the Board signed by 26 CB South residents expressing interest in a Community Garden. She explained that the plots in town are all taken. Town has 20 plots that are either 5'x5' or 10'x10'. Town collects \$10 or \$20 per year, per plot. In order to create community garden plots, the following will be needed: excavating approximately 2 feet down; 3-5' of top soil and top dressing; fencing; lumber to box in the space; and a water source. Availability would be first come, first serve. The time frame for preparing the area would be to accommodate planting in April next year. Chris added that the purpose of the park is for "community purposes" and there would be sufficient parking available. We have the space available to accommodate approximately 30 plots and Metro would probably make water available. The Board directed Chris to prepare a plan for the Board to review.

New/Continued Business:

Alleged Covenant Violations Hearing and Variance Request Hearing for 539 Haverly Street Fence, a.k.a. Lot 13, Block 18, Filing #3. Chris explained that Mr. Pepi Valian built a new solid 6 foot fence (and berm) on his property at 539 Haverly Street sometime in the early summer of 2008 without any approval, written or otherwise, from the CB South P.O.A. The fence is not in compliance with the Covenants for CB South or the Design Guidelines for CB South and would not have been approved if it had gone through the required approval process. He provided the Board with copies of the correspondence between the P.O.A. and Pepi and his attorney.

Pepi explained that there had been a 4'-5' tall wire fence in place for 15 years which was deteriorating and in need of repair. He hired Ben Shirk of Buckhorn Fencing and they looked through the neighborhood for fences that he liked, to model his after. Unfortunately at this same time his wife had an accident resulting in a brain injury. The fence provides his wife with a needed sense of security and privacy. Chris saw the fence going up but did not issue a notice of violation until a year later. Pepi suggested he could get a document signed by all his neighbors indicating that they did not object to the fence, if that would be helpful. Pepi also presented pictures of the old fence to show that the new fence is more attractive.

Ben Shirk added that he was not aware of the CB South rules on fence height and thought that this fence was comparable to others in CB South.

Mr. Valian's Attorney, Peter Bogardus, noted that there are 2 issues: 1-failure to go through the application process and 2-failure of the fence to comply with CB South Covenants and with the Design Guidelines.

He requests a variance based on the following:

1. If it is determined that any of Mr. Valian's actions amount to a failure to implement the covenants and Design Guidelines, then such a failure is of an insignificant proportion.
2. If it is determined that any of Mr. Valian's actions amount to a failure to implement the covenants and Design Guidelines, then such a failure will not result in substantial detriment to the public good or substantially impair the intent and purposes of the covenants or Design Guidelines.
3. If it is determined that any of Mr. Valian's actions amount to a failure to implement the covenants and Design Guidelines, then there exist exceptional circumstances applicable

to the actions in question and such exceptional circumstances do not apply generally to other properties in the neighborhood.

4. Mr. Valian understands that cost or inconvenience of strict or literal compliance with the covenants and Design Guidelines shall not be a reason for granting a variance. However, in this case a variance should be granted to prevent practical difficulties and unnecessary physical hardships inconsistent with the objectives of the rules and regulations of Crested Butte South.
5. Specifically:
 - 5.1 Special Circumstances. The lot on which the fence was built is especially vulnerable to headlights. Vehicles approaching from two separate directions shine their headlights directly into Mr. Valian's home. The improved fence blocks the headlights from two directions. Another use of the fence is to provide peace and privacy in the front yard which is necessary for Mr. Valian's wife who has recently experienced physical and emotional changes requiring a higher level of peace and privacy than others. Mr. Valian has indirectly also experienced physical and emotional changes so that his use of the front yard required a heightened level of peace and privacy. These particular uses of the fence make a variance for the fence appropriate.
 - 5.2 The Special Circumstances were not created by Mr. Valian.
 - 5.3 Granting of a variance will be in general harmony with the purposes of the CB South Rules and Regulations and will not be materially detrimental to the persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general.
 - 5.4 The variance does not depart from the provisions of the CB South Rules and Regulations any more than is required.
 - 5.5 The fence has existed since 1993 at the same height and in the same location.

Peter made a request for a variance based on the following term: Pepi would submit an application and required application fee and deposit; he would establish that the fence was within the property lines, he would take out some pickets so it would not be solid in front. He believes that this variance meets three conditions, which taken together call for the approval of this variance:

1. This variance request only applies to property that is situated near busy roads so that headlights shine into the residence when cars approach from two different directions.
2. This variance request only applies to fences that have been located at the same height and in the same location for over 15 years.
3. This variance request only applies to property owned by people who have recently suffered an enormous physical, emotional and financial change, creating exceptional circumstances that do not apply to others in the neighborhood.

The Board noted the following:

1. First and foremost, it is important that the Board apply the Covenants and Rules consistently.
2. The question is not whether this is an improvement, all owners must go through the approval process,
3. Headlights are not a unique situation and could be address with other solutions.

4. The construction of this fence is in direct conflict with the Covenant, to say that this is insignificant would indicate that all of our Covenants are insignificant.
5. There is nothing in the file to indicate that the prior fence was approved.
6. The Covenants were not drafted with the idea that “special circumstances” included health issues, rather variances were meant for circumstances where the variance is necessary in order to make the lot buildable.
7. Others who have gone through the proper procedures and sought variances have been denied.
8. The board continues to seek to discourage “after-the-fact” variance requests as shown by a change to the Design Guidelines which was approved at the August 2009 Board Meeting.
9. Builders should know to ask the owner if they have the requisite approval paperwork before starting a project.
10. Inconvenience and financial hardship to bring the fence into compliance are not grounds for granting a variance.

Chris informed that Board that the next step is: After all testimony and other evidence have been presented to the Board, the Board shall render its written findings and decision, and impose a reasonable fine, if applicable, within ten (10) days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority of the members of the hearing board present at the hearing. The Board may also issue and present for recording with the County Clerk and Recorder, a Notice of Finding of Violation. Upon satisfactory compliance with the Association's Governing Documents, the Notice of Finding of Violation may be released by the Association issuing and recording a Release of Notice of Finding of Violation.

Alleged Covenant Violation Hearing regarding Lot Appearance at 104 Blackstock Drive, a.k.a. Lot 24, Block 4, Filing #2. Chris explained that there has been a complaint regarding a dead/blocked vehicle at 104 Blackstock Drive. This vehicle is in a designated/approved parking space, it has not moved in some time, and is now tarped (at Chris’s suggestion). The complaining party would like to know if the Board views this situation as a violation to Section 18.01 of the Covenants for CB South. Chris provided the Board with the Covenant language and photos. Margie Black, the wife of the owner of the vehicle, explained that they have one vehicle in for repairs and once that is complete, the vehicle in question will be moved and repaired. The Board determined that generally a tarped vehicle on blocks is unsightly and a violation of Section 18.01 of the Covenants. Therefore, the vehicle must be off the blocks and tarp removed by November 2, 2009 to avoid further penalties.

Discussion / Guidance on Garage Progress at 635 Cascadilla Street, Unit A, a.k.a. Lot 1, Block 8, Filing #2 Chris explained that this to-be-attached 2-car garage project on a Condo Property (with a Condo Association) was approved a little more than 3 years ago and is still not complete, nor is it being finished according to plan. The current construction would not have passed the original approval process. The P.O.A. has received a complaint that the garage is not being completed as planned. The material on the backside of the garage has changed from what was proposed. The P.O.A. has a \$1,000 of performance deposit for this project which could be considered forfeited due to failure to complete the project within 2 years, however, the goal is to get compliance, not keep deposits. The garage connector is required; otherwise the other condo

owner can not build a garage because only 2 buildings are allowed on each property. Greg Wilson, owner, informed the Board that due to the economy he can not afford to complete the project yet. The Board stressed that it is important that any plan changes are brought to Chris before they are implemented. The Board required the owner to:

1. Stain the wood such that all four sides match
2. Move the fence to recapture open space;
3. Come in to the P.O.A. Office for Chris's approval of any changes and red line the plans to reflect any changes from the original plans.
4. The entire project must be completed by July 1, 2010.

2008 P.O.A. Audit Review. Chris presented the completed 2008 Audit Report to the Board for review. The Board instructed Chris to continue with an annual independent audit and to investigate posting the Report(s) on the website.

Request by Property Owner for a Survey about Dirt Bikes in CB South. Brian Levine, 169 Blackstock Drive, presented his concerns that for the past 10 years the noise from dirt bikes riding on Blackstock has become progressively worse. Brian feels these vehicles should be required to be licensed, be required to be no more noisy than an automobile, and should respect an individuals right to peace and quiet. Chris noted that the P.O.A. does not have jurisdiction over the roads in CB South. We do have a noise ordinance. The standards in the noise ordinance were established based on the recommendations of Ellyn Houghton, an audiologist. The dirt bikes do not exceed our noise ordinance levels. The Board instructed Chris to send out an e-mail to the membership reminding them to "be a good neighbor, please be courteous & mindful of the noise when driving dirt bikes, spread the word." Further Chris will investigate the possibility of signage reminding drivers of our noise ordinance.

Formulation of the 2010 P.O.A. Goals and Objectives. Chris asked the Board to start thinking about formulating 2010 P.O.A. Goals and Objectives. The Board suggested:

1. More community gatherings
2. Community garden
3. Continue to pursue bus service for CB South
4. Increased covenant enforcement
5. Weed control
6. Get more e-mail addresses for residents and owners
7. Make Nordic self sufficient
8. Better KBUT and cell phone coverage
9. Plant more trees.

The Board instructed Chris to do another e-mail Annual Survey of the membership to determine the highest priorities of our members.

Discussion: Intent / Interpretation / Possibly Seeking a Change to Section 7.01 of the Covenants for CB South (RV and Trailer Storage in CB South). At last month's meeting, the Board placed a moratorium on enforcement of Section 7.01 of the Covenants to allow the Board to explore clarifying the phrase: **"...trailer capable of habitation or containing living quarters..."**

Section 7.00 Temporary Structures Prohibited States:

7.01 No basement, mobile home, trailer, tent, shack, garage, barn or any outbuilding erected on any lot at any time shall be used as a residence permanently or temporarily; nor shall any structure of temporary nature be used as a dwelling. No trailer capable of habitation or containing living quarters shall be parked on any lot or street governed hereby for more than one consecutive overnight period; provided, however, that a trailer or trailers, used temporarily by a construction contractor or sub-contractor as an office, supply facility, tool room or warehouse, may be located on any lot during the actual period of construction on that lot, but not to exceed a total of 90 days.

Several preliminary points were made by the Board and owners:

1. Senate Bill 100 amending the Colorado Common Ownership Interest Act (aka CCOIA) overrides our covenants where there is a conflict
2. The second sentence of Section 7.01 stands independent of the first sentence
3. The intent of Section 7.01 may have been to address visual impacts and/or people actually living in the trailers.

Richard Crawford, 84 Zeligman, told the Board about all of the clutter he sees from his home in the third filing: rafts, snowmobiles, bobcats, work trailers & trucks, pop-tops, camper tops, snowmobiles etc. While the Covenants do not cover many of these items, the Board has the opportunity to at least limit the clutter with section 7.01 and should do so.

Brian Levine expressed his opinion that CB South has a “ghetto” look due to failure to enforce the Covenants. This results in property devaluation even for owners who do comply with the Covenants. Failure of some owners to comply saves some owners money at the expense of their neighbors. The Board can not make its decision of whether to enforce a covenant based upon how many people enforcement will upset, but rather the criteria for enforcement is the actual covenant language.

Sue Schappert stated her opinion that the Board should not revoke or change the Covenant. The Board needs to consider the impact of changing this covenant on the people who have to look at this stuff, as well as, the people who want to store things on their property. If a person can afford the RV, they should consider the cost of storage as part of the expense of owning. While pop-tops are not highly visible when not open, an RV is always highly visible. Further there is already limited parking for many of the lots in CB South, to allow additional vehicles to be parked in CB South parking spaces is not practical. If a group seeks to change the covenant, the expenses associated with such action should be the responsibility of that group, not the P.O.A.

Alan & Nettie Gruber requested that the Covenant be enforced fairly. In their opinion, if it is to be enforced on RVs, it must also apply to pop-tops, trucks with slide-ins, construction trailers, etc.

Pat was of the opinion that there is a difference between tradesmen trailers which generally do not have a sink, toilet, bed, etc., which must be parked in a parking space and which are needed for work, and RVs, pop-tops etc which people have a choice about owning. The cost of storage is part of the cost of recreation. Items such as boats, horse trailers, snowmobile and camper tops

do not fall under this Covenant Section, but rather would go to Section 18.01 Lot Appearance, which is a separate enforcement issue not under consideration at this meeting. There are 2 action points before the Board:

1. Enforcement of the Covenant currently on the books and
2. Consideration of revising the covenants.

He (Pat) is opposed to loosening the covenants to allow RV parking, as it will only lead to greater abuses.

Al suggested that the P.O.A should ease into enforcement of this covenant to avoid a revolt of the membership. Al was of the opinion that “trailers capable of habitation” include slide-in campers on trucks and RVs.

Ty was of the opinion that slide-in campers on trucks and RVs are not “trailers” and thus not covered by the Covenant.

Cathy was of the opinion that the focus of enforcement should be whether someone was actually living in the trailer. If the issue is Visual Impact, there is no difference between an RV and a construction truck.

Shawn noted that any vehicle is, in theory, is capable of habitation. The Board needs to be practical in its enforcement.

The Board agreed with Chris’s suggestion that he should pick one category of covenant violation, seek consistent compliance, and then move on to the next item and do the same. The clearest category is trailers, campers and RVs with kitchens and beds since they are clearly capable of habitation. Further, at next month’s meeting the Board will clarify exactly what items fall within “**...trailer capable of habitation or containing living quarters...**” e.g. boats, horse trailers, pop-tops, construction trailers, VW camper vans, slide-in campers for truck, RV, panel van, etc.

Manager’s Report: Crested Butte Search and Rescue has two used snowmobiles for sale for \$1,600. (1995-96 Ski Doo air cooled & well maintained) Last year the P.O.A. spent \$700 renting snowmobiles for Nordic Grooming and we lost 14 ski days when the Nordic Center needed their sleds (and equipment) for their special events. Search and Rescue also has a trailer for sale for \$1,200 which would allow the P.O.A. to transport the snowmobiles and grooming equipment. The Board suggested that Chris do research to make sure the snowmobiles have sufficient pulling capacity and inspect the maintenance records. Further Chris should review the budget and advise the Board regarding the source of funding. The Board would like to see Nordic become self sufficient, perhaps seeking sponsors. Issues regarding parking of the Snowmobile Trailer were discussed.

BOPA Clean Up Day is Saturday, September 26, 2009.

The Board set Monday, October 5, 2009 for the next P.O.A. Board Meeting Date. Cathy presented a CDC handout regarding planning for a possible flu pandemic. Chris will arrange for a speaker on this issue for the next meeting.

The Board discussed and reached a decision regarding the **539 Haverly Street Fence, a.k.a. Lot 13, Block 18, Filing #3, Valian Covenant Violation and Application for Variance**. The Board found that:

1. The need for this fence at this height was not a unique situation which could not be addressed through other remedies.
2. The failure to comply with the Covenant was not of insignificant proportions given that other similar applications had been denied and other applicants had been required to conform to the Covenants.
3. The failure to comply with the covenant would substantially impair the intent and purpose of the Covenant, in that fence height creates safety issues to the public and uniformity is needed.
4. There were not exceptional circumstances specific to this property not of the owners making. Cost and inconvenience are not acceptable reasons for granting a variance. The owner could have complied with the Covenants and chose not to.

The Board instructed Chris to advise the Applicant that his Application for a Variance was denied and that within 30 days of notification to the Applicant:

1. Applicant must submit an Application and provide a \$300 Performance Deposit.
2. The Application must include a site plan and must verify fence location with property lines.
3. The fence must comply with the P.O.A. Residential Design Guidelines as determined by the P.O.A. Manager.
4. The work must be completed and fence brought into compliance within 30 days of notification.
5. Failure to comply shall result in fines of \$50 per day as allowed by statute and Covenants.

The findings and decision were unanimously approved by the Board.

With no further business Al adjourned the meeting at 10:55 PM.