Memo

To: Hot Springs Village Board of Directors
From: Governance Committee
Date: August 15, 2018
Re: Motion - Protective Covenant Amendment Policy

Motion

I move to:

1. Create a new policy entitled Chapter 8, Article 5: Protective Covenant Amendment Policy (attached)
2. Consider any Protective Covenant language that conflicts with this policy to be hereby superseded, including but not limited to Sections 3.4.2, 3.4.3, 3.5.2 and 3.8
3. Revoke Chapter 5, Articles 1-3 – ACC Policies
4. Revoke Chapter 2, Article 7 – Common Property Policy

Background

In the Board’s quest to modernize governing documents, revisions to the process for proposing and adopting Protective Covenant changes were needed. This led to a series of discussions and ultimately today’s motion.

On July 11th, the ACC Chairman, CEO, ACC Board Liaison and ACC Staff Liaison discussed the Governance Committee proposal planned for the July Board meeting. Following the Board’s discussion of the proposal, which was detailed in their July 18th memos that are publicly available in the Board meeting packet, Chairman Weiss asked the Governance Committee to review their recommendations against Board member comments and present a revised recommendation at the August Board meeting.

On August 7th, Governance Committee Chair Erickson convened a discussion with Board Chairman Weiss, Board Vice Chairman Cunningham, CEO Nalley, ACC Board Liaison Dixon, ACC Chairman Froning, ACC Vice Chairman Oden and ACC Staff Liaison Heffer. During this discussion, agreement was reached to define a policy designed to encourage consensus between staff and the ACC for amendments to the Protective Covenants.

Future Related Action Items

1. Establish an audit function to test permitting activities against governing documents.
2. Revise the ACC Charter to reflect the policies and processes surrounding the application of, and amendments to, the Protective Covenants, as well as incorporate any updates necessary as a result of the 2018 Declaration vote.
3. Ensure each permit denial or approval references the applicable protective covenant.
4. Amend the Protective Covenants, using the new Chapter 8, Article 5 Protective Covenant Amendment policy, to reflect the pertinent content from added and revoked policies.
ARTICLE 5
PROTECTIVE COVENANTS AMENDMENT POLICY

Section I Purpose
To set forth a process by which the Protective Covenants are amended to facilitate objective permitting decisions and limit the Association’s risk from interpretation or inconsistent application.

Section II Amendment Process

1. Whenever staff, ACC or the Board cannot cite language within the Protective Covenants that sufficiently allows for objective permitting decisions, the ACC Chair, ACC Board Liaison, CEO and ACC Staff Liaison will be notified of the deficiency.
2. The individuals filling those four roles are charged with arriving at a unanimous opinion and drafting their recommendation for amending the Protective Covenants. In doing so, they may utilize external zoning and legal experts, where needed.
3. When a unanimous opinion cannot be reached, the recommendation will include the dissenting opinion and that opinion must outline alternative solutions.
4. The ACC will propose the amendment to the Board by the next regularly scheduled Board meeting.
5. The ACC may elect to include a statement of support or dissent. Dissenting statements must outline alternative solutions.
6. Approval of such amendments requires a majority vote of the Board of Directors.