

Proposed Amendments to Sunflower Gardens Covenants, Conditions and Restrictions to be Voted on at the 2016 SGHOA Annual Meeting

Background

In 2016, your Board of Directors of the Sunflower Gardens Home Owners Association (SGHOA) had the Covenants, Conditions and Restrictions (CCR) document examined by an attorney contracted by Jamar Property Management. The attorney determined that some sections, especially Sections 5.1 and 8.8, conflict as to how SGHOA is to be managed, because those sections are unclear about responsibilities of the Association versus the Owner of each Lot. This poses problems for the Board and the Association because it calls into question whether and how the Board and the Design Committee may take any action to help Owners with issues that may occur within the grounds of the Sunflower Gardens (SG) Subdivision. For those of you who may not be aware, SGHOA has ongoing issues with water drainage erosion on the east side and to a lesser extent on the west side of the Subdivision. Long term, these will need to be corrected in order to keep water from eventually causing damage to homes nearby the drainage pathways. The question is, how to get it done.

As you read the proposals below, you may want to compare the proposed wording changes to the complete wording of each section in the current CCR document you were provided when you bought your home and that was mailed to you by Jamar along with the most recent SGHOA Newsletter. If you need additional copies, please contact Jamar, 812-330-8655 or at jamarproperties@yahoo.com. Both the CCR and Bylaws documents are also available on the new Sunflower Gardens HOA website mentioned in the newsletter.

The two sections mentioned above and others utilize the words "maintain" and "maintenance" regarding upkeep of SG Subdivision grounds without defining their meaning. Currently no definition exists in the CCR for those words. Consequently, at the 2016 Annual Meeting, the SGHOA Board will propose several recommended amendments to the SGHOA CCR as shown below, to define and help clarify the meaning of those terms, as well as adjustments in other sections with specific remedies to help future Boards and Design Committees manage Association business on your behalf.

Board Recommendations

With regard to the definition of the word "maintenance" and synonyms, the Board recommends that you vote in favor of these changes. They essentially follow current practice of low monthly fees for mowing, mulching and general lawn care, including an explanation of what is NOT included, which is the wording that is new. Vote by secret ballot will be taken during the SGHOA Annual Meeting in October, with 75% majority needed to enact the changes. If you cannot attend the meeting personally, you may obtain a proxy statement and a secret ballot form from Jamar (see contact information above).

In places where new wording has been added, such new wording has been underlined to help you see the change. In the same way, in places where wording has been removed, such removed wording has been ~~struck through~~. The final document to be registered with the Monroe County Recorder will be formatted to match the existing document.

Change 1 – Add New Definition – *Limitation of Association Responsibility*

1.29 Maintenance

The terms “maintain,” “maintenance,” or synonyms, when referring to requirements of the Association, mean basic upkeep and beautification of the exterior grounds within the Association boundaries, limited to cleaning, mowing, weeding, mulching and other such types of routine lawn care activities outside the so-called “Five-foot Strip” assigned to the Owner of each Lot. They do not mean correction, repair, demolition, reconstruction of damage, removal of obstructions, or new construction within the Association boundaries.

When referring to requirements of the Owner, the terms mean cleaning, weeding, planting, mulching and other such types of routine care activities within the so-called “Five-foot Strip,” as well as correction, repair, demolition, reconstruction of damaged areas, removal of obstructions within the boundaries of the Owner’s Lot.

What does Change 1 mean for Owners? This would mean that, as at present, each Owner is responsible for paying all expenses related to their individual Lot – equivalent to owning a free-standing home. This would limit SGHOA activity to collecting relatively small fees for property management and for mowing, mulching and general beautification of Subdivision grounds outside the so-called “Five foot strip” next to each residence. This means there are still no common areas, per the original intent of the Developer. Owners should continue to expect relatively low Assessments, which have averaged about \$700 in recent years, under this choice.

Change 2 – Proposed addition to “Section 3”

Adding the proposed section below would clarify the intention of the Developer that there are no common areas required to be maintained by SGHOA. This is a typical situation in a Planned Unit Development (PUD) such as Sunflower Gardens, compared to a Condo Association where the condo corporation owns land held in common.

3.5 Common Areas. No common areas shall exist within the Subdivision. The boundaries of each Lot are defined by the Plat (see Section 1.19) recorded by the Declarant in the office of the Monroe County Recorder. Maintenance (See Section 1.29) required on each Lot shall be the responsibility of the Owner of such Lot except as specifically assigned to the Association.

Proposed changes to “Restrictions” section

- Section 5.1, as suggested by the attorney, would need wording that places a reference to the definition of the word “Maintenance” for clarity where it is used. Section 5.1 wording proposed only adds reference to Section 1.29 Maintenance that we just covered.
- Section 5.1.4. provides a remedy for potentially dangerous conditions. The original definition only referred to dead trees. This change could also help avoid or reduce damage claims that might affect SGHOA insurance rates.
- Section 5.1.7. adds guidelines for action that may be taken by the Design Committee to cause action by a homeowner not following CCR rules.

Change 3 – Revise wording of section 5.1

5.1. Maintenance of Lots and Improvements.

With regard to each Lot, the area which is within a distance of five feet from the exterior wall of the Residence, driveway, and any sidewalk situated on such Lot will be referred to as the "Five-foot Strip." The Five-foot Strip abutting any Residence, driveway and sidewalk is reserved for vegetation, plantings, and landscaping by the Owner of the Lot. The Association shall maintain that portion of each Lot that is outside the Five-foot Strip. (See "Section 1.29 Maintenance") The Association shall also maintain any so-called "tree plot" area, which is the area between any streets in or abutting the Subdivision and the sidewalk adjacent and parallel to such street, but only with respect to the Real Estate or Additional Real Estate. The Association will have no obligation to maintain any off-site real estate. The Owner of the Lot will be responsible for maintaining such Five-foot Strip on such Lot to the extent that such Owner or any prior Owner has installed any vegetation, plantings or landscaping in such areas. However, if no such vegetation, planting, or landscaping have been installed by such Owner or prior Owner, the Association will maintain such areas. The Owner of each Lot shall at all times maintain the Residence, Building, or other structure situated on it, and the Five-foot Strip, when applicable, in such manner as to prevent the Lot, Residence, Building, or other structure from becoming unsightly. From time to time, the Association may publish specific standards concerning such maintenance. Specifically, with respect to the Five-foot Strip and including but not limited to the Buildings, driveways, sidewalks, and structures on the Lot, such Owner shall." *(No more changes from here in this section)*

Change 4 – Revise wording of section 5.1.4

5.1.4 Trees. Cut and remove dead or diseased trees that may present a hazard to individuals or property within or outside the Subdivision.

Change 5 – Revise wording of section 5.1.7

5.1.7 Other. All other maintenance items not performed by the Association. To the extent that any Owner fails to meet such Owner's maintenance obligations, the Association may, by majority vote of the Design Committee and thirty (30) days written notice to the Owner, undertake such obligations on such Owner's behalf, but is under no obligation to do so and will bear no liability or responsibility if it does not do so. However, if the Association does undertake such maintenance, the Association shall charge the Owner for the expenses for such maintenance and will be entitled to file a lien against the applicable Lot and Residence in the same manner in which the Association is otherwise entitled to file liens under this Declaration for unpaid Assessments.

The Association will also maintain Signage within the Subdivision. Each Owner of any Lot upon which any such Sign or landscaping is located grants a perpetual easement to the Association to repair, replace, and maintain any such Sign location on such Lot.

Proposed changes to "Design Committee" section (Section 7)

- Changes to Section 7.1.1 would clarify a condition under which an Owner does NOT have to get Design Committee approval for an exterior repair of their home, i.e. allowing repairs that match the original condition (color, shape, etc.) without getting approval, which was not originally spelled out.

- Addition of Section 7.1.4., spells out exact powers of the Design Committee. These options match the options that define "maintenance" in new Section 1.29.
- Section 7.5 we propose to delete language no longer needed, and provide clarification regarding mid-year replacement of Design Committee members who can no longer serve. This latter situation arose during 2016 when two of three members could not continue to serve. In this case, the SGHOA Board appointed temporary replacements until new members could be elected at the 2016 Annual Meeting.

Change 6 – Revise wording of Section 7.1.1.

Section 7.1.1. General. In order to preserve the natural quality and aesthetic appearance of the existing geographic area, no Residence, Building or exterior improvement of any type or kind shall be repainted, constructed, or placed on any Lot without the prior written approval of the Design Committee, except that no such approval shall be required for necessary repair of exterior damage provided that it is restored to its original condition and appearance. ~~Such approval~~ Required approvals shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two complete sets of plans and specifications for any such proposed construction or improvement. *(No more changes from here in this section.)*

Change 7 – Add new Section 7.1.4. Other Powers to Section 7.1. Powers of Design Committee

7.1.4 Other Powers. It is expressly within the powers of the Design Committee to determine Lot Owner responsibility for correcting impairments that occur from time to time within Subdivision boundaries and within the boundaries of the Owner's Lot such as but not limited to diseased or damaged trees, sink holes, uncontrolled water flow damage, soil erosion, or other damage from Acts of God and not covered by insurance. The Design Committee is empowered to (1) determine the extent and urgency of any threat to the welfare or safety of individuals or a Building or a Residence; (2) decide whether such threat is either caused by or aggravated by circumstances or impairments on the Lots of one or more Owners that affect one or more Lots around them; (3) cause to be developed plans for corrective action in consultation with Owners and approve such plans; (4) work with the Association property management company, if any, to solicit bids from contractors to determine the cost to be paid by each Owner whose Lot is determined to be within the area of the Subdivision where corrective work is needed; and (5) work with the Association property management company, if any, to facilitate collection of Special Assessment funds from each involved Lot Owner and oversee timely completion of the corrective action. In all cases, however, decisions of the Design Committee may be appealed to the SGHOA Board for review and whose ruling shall be final by majority vote.

Change 8 – Revise Section 7.5

This change eliminates old wording that was in place when the Developer was still involved in management of SGHOA.

7.5 Membership. The Design Committee shall consist of ~~members designated by the Developer until the sooner of: (2) completion of a Residence on each Lot in the Subdivision; or (3) passage of control by the Developer to Owners by virtue of a written document in recordable fashion. After a completed Residence is constructed on every Lot in the Subdivision, the Design Committee shall consist of three Owners selected from time to time either through the written approval of at least 66 2/3 percent of Owners in the Subdivision or by majority vote of the Owners present at the next annual meeting. Membership on the Design Committee may be changed and vacancies shall be filled from time to time upon the written approval of at least 66 2/3 percent of all the Owners or by majority vote of the Owners present at the next annual meeting; however, in the event of a mid-term vacancy on the Committee, the remaining two members may appoint an Owner to the Committee to serve until the requisite percentage of Owners, as prescribed, shall otherwise appoint an Owner to fill such vacancy.~~

Change 9 -- Proposed revision of Section 8.5

At the suggestion of the Association attorney, this proposed revision substitutes the word "Owners" for the word "members" where used, to match wording in the rest of the CCR, and insertion of the reference to the definition of "maintenance" above.

8.5 Duties of the Board of Directors. The ~~members~~ Owners shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The Board shall be the governing body of the Association, represent all of the ~~members~~ Owners, and be responsible for the functions and duties of the Association, except for those specifically assigned to the Design Committee, including but not limited to the maintenance of certain items as prescribed in this Declaration. (See "Section 1.29 Maintenance.")

Change 10 -- Proposed revision of section 8.8

This proposed revision covers the same reference to the definition of "maintenance" as above, plus a recommendation from the attorney to change to a proper reference to "the Plat" for SG recorded by the Declarant in the office of the Monroe County Recorder when the Subdivision was established.

8.8 Maintenance Areas. The Association shall maintain the Signage; all yards, vegetation, plantings, and landscaping which are outside the Five-foot Strip on all Owners' Lots as well as within such Five-foot Strip on Owners' Lots if this Declaration so requires; street lamps (if any, including paying any utility fees and expenses); and other areas as shown on ~~subsequent plats~~ the Plat, or as determined from time to time by the Association, or as more specifically described in the Declaration. (See "Section 1.29 Maintenance.")

Change 11 -- Proposed revision of Section 9.7

This proposed revision would allow the Board to manage financial assets of the Association as needed over time. Rather than specify the exact type of account that must be used, it is felt that using a federally-insured account will provide adequate protection for Association funds, and allow movement of funds between interest-bearing and non-interest-bearing accounts as needed. This covers a concern expressed by an Owner at the 2015 annual meeting that we put money in an interest-bearing account, which is currently not allowed.

9.7 Operating Funds. The Association shall be obligated to establish an operating fund for the various expenses to be paid by the Association pursuant to this Declaration, based upon good faith estimates of such expenses. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged by a Special Assessment. All amounts held by the Association pursuant to this Section shall be maintained in a federally-insured ~~non-interest-bearing~~ account in a commercial bank or savings bank doing business in Monroe County, Indiana.