

Karen Mitchell

From: David Betz
Sent: Wednesday, December 11, 2019 9:34 AM
To: Karen Mitchell; Rocky Kambo
Subject: FW: P&Z Meeting Dec11
Attachments: The Retreat Architectural Review Committee Procedures and Responsibilities.pdf

Please give to the P&Z members.

From: David Cerutti <d.cerutti@earthlink.net>
Sent: Tuesday, December 10, 2019 8:59 PM
To: Leilani Napier <LNapier@cityofpowell.us>
Cc: Rocky Kambo <RKambo@cityofpowell.us>; David Betz <DBetz@cityofpowell.us>
Subject: P&Z Meeting Dec11

As I will not be able to attend the P&Z meeting on Dec 11, please provide the Commission with my comments as well as the attached file. I assume these will be included in the Exhibits.

Thank you.

David Cerutti

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Powell recently changed the fee for a development plan text by a reduction of 95%. This enables a subdivision in Powell to institute a development text for a neighborhood that was formed 45 years ago - an unprecedented action. The purpose is to allow neighborhoods with expiring deed restrictions to have a way to continue them - even though the intent of the deed restrictions was to expire at some point unless 100% of each individual subdivision homeowners approve otherwise. If the development text is anything more than an extension of the deed restrictions (which it clearly is) this is a re-development text, not a development text as stated.

The deed restrictions have never been enforced as expected because there is no HOA(s) and no legal architectural committee(s). Only neighbors can sue each other per the deed restrictions. This has not occurred. However, the RA has for the first time recently challenged a resident (Cardinal Hill) in court over a deed restriction issue and the trial in 2020 should occur before this development text is completed as questions exist.

The voluntary Retreat Association (RA) is making this request and will be a part of the development text enforcement. They are not an HOA as they have no governing standing via the deed restrictions. Each individual subdivision is not equally represented on the Board as Section 3 has the most lots but 0 board members. Subdivision 4 has 50% of the Board with 13% of the lots. The RA has one all-member meeting for review of actions and "elections" with a quorum now reduced to 1 !!! The Retreat Architectural Committee (RAC - now ARC) was an independent group(s) but was found to be formed and operating illegally by the attorney hired by the RA. They were forced to become a subcommittee of the RA in 2006 to avoid legal issues. The RA is leading the effort to get these new rules imposed but I believe they also do not follow their own rules:

1. Need to have 11 members on the Board – and they only have 10.
2. Two of the 10 Board members are from the same property !
3. RAC should have 7-12 members, one from each subdivision. Currently there is 1 member. **(Please see attached file)**
4. RAC should have regular meetings and publish minutes for their meetings. There are no minutes.
5. The Board should publish their minutes for all meetings but this year there are only minutes for two meetings (Feb and June) and not the annual meeting held in March.

When residents bought their homes (some recently) they agreed to deed restrictions and terms – not a redevelopment text. I feel you are violating homeowner property rights since no one could have foreseen this unprecedented action. Many adjacent

neighborhoods have expiring (or expired) deed restrictions but only the Retreat Association has taken this action. Have you communicated this to all of Powell ?

This development text incorporated 8 different subdivisions with 8 different deed restrictions all expiring as all homeowners agreed to when they bought their house. Most of the subdivisions require 100% approval of any changed/extensions. Some Retreat subdivisions have few lots (e.g. 9) but are included and really have no say. Adjacent neighborhoods require 70-75% approval of all homeowners for each individual subdivision for any changes to deed restrictions. Are you going to lower the standard and precedent to something less?

If you allow as little as 3 on the RAC committee that means that only 2 would represent a majority. How do you represent 8 different subdivisions with a 2 people majority - maybe next-door neighbors ? Maybe all from one home? If the RA appoints all the members how do residents that are not a member of the non-HOA Retreat Association get representation?

Text refers to "permitted structures" but structures require the approval of a committee and no legal committee(s) (RAC) has ever existed since the deed restrictions call for 8 different committees. This has been confirmed by an attorney hired by the Retreat Association to look into this matter. Also, the RA acknowledges this in a disclaimer statement that the "RAC" has NO authority to approve or deny projects. Therefore all structures are valid per the deed restrictions.

Some of the earlier homes existed before even the illegal "RAC" even existed. Actually at one point two different RAC committees existed but they also illegally combined for convenience. Who has all the records to know of past actions ?

The text states that "Mechanisms for relief to address any such condition available to The Retreat prior to the adoption of this text shall remain available and are not precluded". What legal entity is "The Retreat" - all properties as referenced in 1.1 ? No mechanism was ever available to "The Retreat" for non compliance of deed restrictions. Only individual homeowners could sue and that disappears with the deed restrictions on Jan 1. You can't give individual homeowners the right to sue for expired deed restrictions since that would mean you're extending the deed restrictions.

What about structures and conditions that were illegal before but are proposed to be legal now - such as most mailboxes in the Retreat and paver stone driveways ? How do these reflect the preexisting deed restrictions?

What about structures that were clearly illegal before (no legal RAC needed) and are still illegal but no action was ever taken - in some cases for many, many years? Can action be taken now and by whom? Will Powell now enforce all of the violations? For example a garage has existed on a lot with no house for many years, illegal before and illegal in the new text. Will Powell now take action (at taxpayer expense) when nothing was done before ? Will all infractions result in action or will there be discrimination and legal responses?

The text states that "dead limbs, dead trees, and dead plants and shrubs shall be removed in a timely manner, leaving no debris". There is nothing in the original deed restrictions about the removal of dead limbs and trees, and dead plants. However the deed restrictions do limit that weeds on lots be seasonally cut and no trees over 4" in diameter be cut without approval - which has been omitted in the new text. How does this text "extend" the deed restrictions?

So called naturalized areas (no mulch/ no grass) are side by side with unnaturalized areas (mulched/grassed) such that an offending dead tree will be inches away from a non offending dead tree or branch. In those numerous cases who will be looking to see if mulch/grass is at the base of the tree - does it matter ? This again does not reflect the deed restrictions.

The bottom line is that there are issues that should be resolved and communicated before an unprecedented action is taken. We need to avoid legal issues like Powell Crossing. I do appreciate all the time and effort of those involved in this application and I personally have no objection to extending the original deed restrictions but with a typical 75% agreement rate even though my deed restrictions call for 100%. Significant deviations from that involve a loss of trust in the original agreement and Powell honoring it.

The Retreat Architectural Review Committee (RAC) of The Retreat (Homeowner's) Association

1. Purpose

The purpose of the RAC is "to manage the architectural review process for the members of The Retreat Association,...[which is] generally understood to be the review and recommendation of homeowner property improvements within The Retreat."¹

2. Composition & Terms

The RAC will be composed of from 7 to 15 homeowners. Every effort will be made to draw representative members from the seven sections/phases of The Retreat (Sections I-V, Cardinal Hill and By The River). Membership on the committee is open to any member of the Association. Members will be nominated by the current members of the RAC or by any other homeowner and elected at The Retreat Association's annual meeting.

The chair of the RAC will be appointed by The Retreat Association's Board of Trustees. At least one Retreat Association Board of Trustees Member will be represented on the RAC to serve as a liaison between the RAC and the Board.

Members shall serve 2 year terms, which are renewable. The committee shall strive to have a mix of new members and members who have served at least one term to provide continuity to the review process.

3. Meetings

- a. Regularly scheduled meetings of the RAC will be held on the second Saturday of each month at 10:00am if reviews are pending. Announcements of such meetings shall be posted on the Association's website. Expedited reviews may be requested by the homeowner. Expedited reviews may be done by polling the members of the RAC by telephone or email.
- b. Regularly scheduled meetings are open to the public and to residents who submit projects.
- c. A quorum (majority) of the committee membership will be needed to conduct business.
- d. Meetings shall be conducted using Roberts Rules of Order as a guide and at a level of informality considered appropriate by the chair.
- e. Minutes of the meetings will be kept and be available to current members of The Retreat Association. Proceedings of the meetings will be reported to the next The Retreat Association's Board of Trustees meeting.

4. Review Process

- a. Projects may be submitted to the RAC by either the homeowner or his contractor. Projects should be submitted at least ten (10) days before the next regularly scheduled meeting of the RAC. Projects should include professionally prepared architectural/building plans. These plans should include (where applicable): site plan, floor plans, elevation drawings, landscape plan, building materials. Three (3) sets of plans should be submitted to the committee. Sketches or drawings are not acceptable. The committee will keep a set of plans for its files.
- b. The committee will review each project and give its recommendations to the homeowner in writing (see Exhibit 1). Recommendations will be arrived at by voting of a simple majority of those members attending the meeting.
- c. Recommendations will be based on "The Retreat Community standards and existing deed restrictions"¹. Such recommendations may include to go forward with the project as submitted, or to modify the project. The committee may also withhold its recommendation.

DISCLAIMER. THE RAC AND THE RAC REVIEW IS ESTABLISHED FOR ADVISORY PURPOSES ONLY. THE RAC HAS NO AUTHORITY TO EITHER APPROVE OR DISAPPROVE IMPROVEMENTS IN THE RETREAT NOR DOES IT HAVE ENFORCEMENT AUTHORITY. THE RAC WILL GIVE AN OPINION ONLY OF WHETHER THE IMPROVEMENT MEETS THE REQUIREMENTS OF THE DEED RESTRICTIONS. EACH LOT OWNER SHOULD KNOW, HOWEVER, THAT EACH OWNER IS PERSONALLY RESPONSIBLE FOR COMPLYING WITH THE DEED RESTRICTIONS GOVERNING THE SUBDIVISION REGARDLESS OF THE OPINION OF THE RAC.

¹ Motion approved at The Retreat Association Board of Trustees meeting, August 7, 2006