

Surfside Homeowners Association

Ad Hoc Environmental Committee

December 4, 2021

Ocean Park Retreat Center

Zoom participation available for Committee members only

<https://us02web.zoom.us/j/82483745956>

Meeting ID: 824 8374 5956

One tap mobile +12532158782,,82483745956#



Agenda

December 4, 2021

Welcome

Remind

- Ground Rules
- Our Charter: Assignment & Expectations

Deep Dive, Round II

- Explore → “View...” “Easement...”
- Survey Opportunity?
- New/Other?

Checkpoint

- Reminder: Google Drive fileshare is available at <https://tinyurl.com/SurfsideAdHoc>.



“Ground Rules”

- ✓ Focus on interests, not positions
- ✓ Engage with questions
- ✓ Explain reasoning and intent
- ✓ Use specific examples
- ✓ Test assumptions and inferences
- ✓ Seek to understand “needs” versus “wants”

... a “safe space” for civil discourse



RCW [9.61.260](#)

Cyberstalking.

- (1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:
- (a) Using any lewd, lascivious, indecent, or obscene words, images, or language ...
 - (b) Anonymously or repeatedly whether or not conversation occurs; or
 - (c) Threatening to inflict injury on the person or property of the person ...
- (2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.



Best Practices



- ✓ Don't quickly lock into limited set of solutions
- ✓ Encourage new and different alternatives
- ✓ Remember: clearly describe the problem to be solved
 - *What criteria define success?*
 - *How will we score alternatives?*
 - *Do we have all the (relevant) information we need?*



Creative

The parties look for ways to break impasses, or find even better solutions to those they have already explored.

Breakthrough

Propose, conditionally...

Make trades

Test and summarize

Make demands

Ask open questions

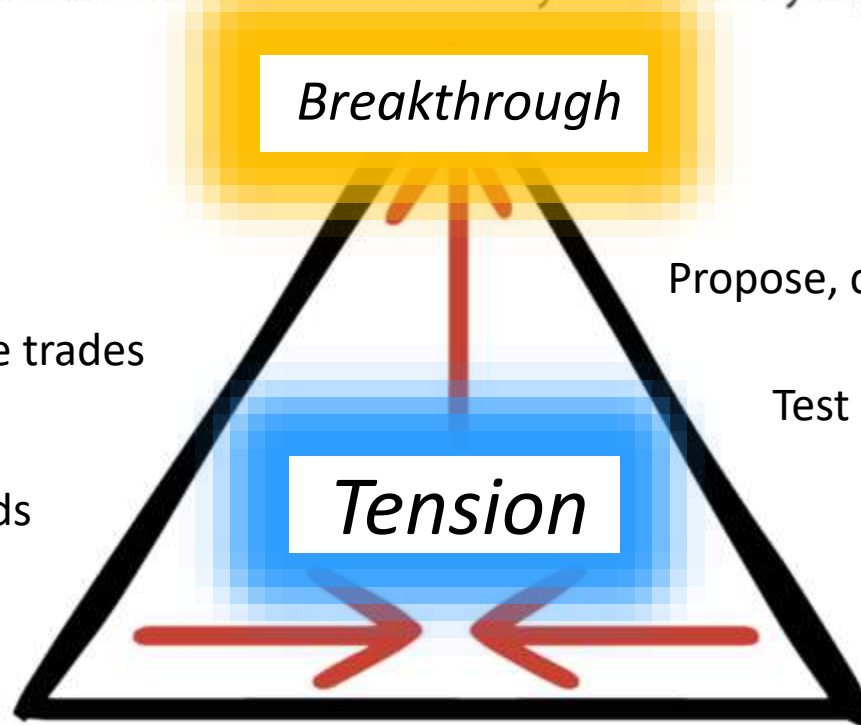
Tension

Collaborative

The parties attempt to find common ground, build their relationship, and discover mutually acceptable solutions.

Competitive

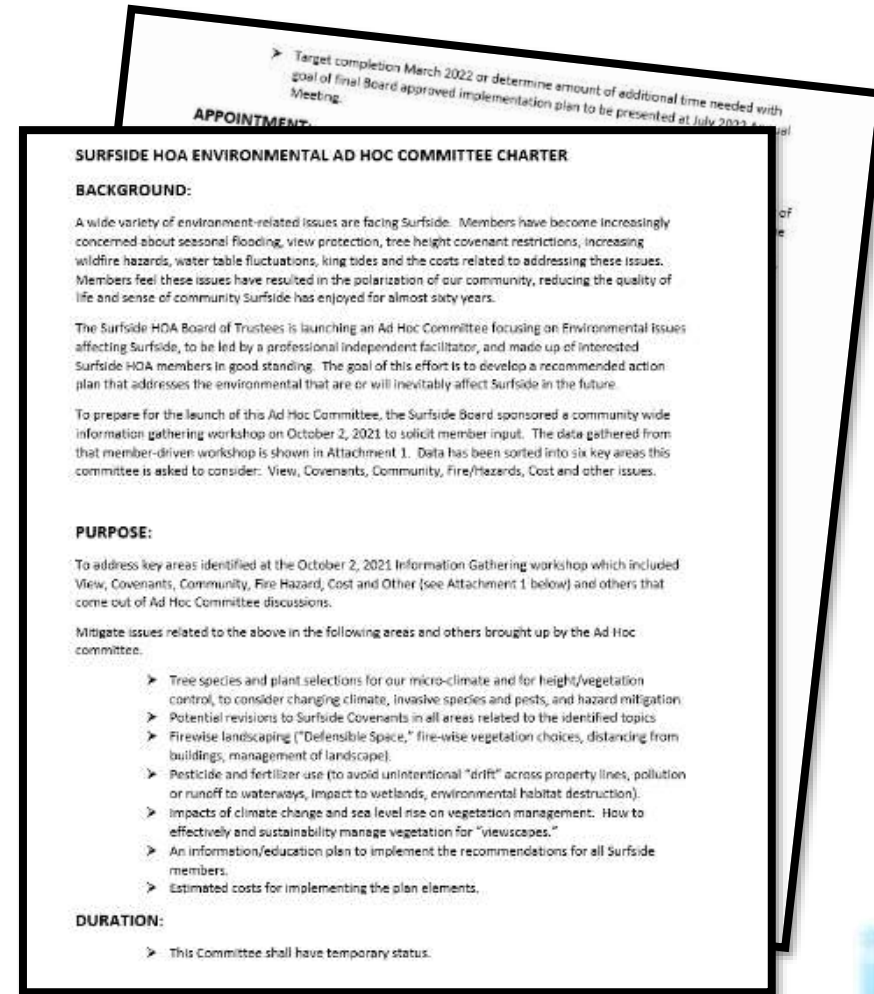
The parties look out for their own interests.



Ad Hoc Environmental Committee Charter...

Provide Recommendation(s)

- State each Problem
- Recommend action(s)
- Note associated cost(s)



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HISTORICAL CONTEXT: INTENT OF THE COVENANT LANGUAGE

5.2 Owners shall restrict the height of trees and vegetation growing thereon to the end that the view of other property owners shall be preserved to the greatest extent reasonably possible. (1980)

Exhibit “A” - Surfside Estates Restrictive Covenant Height Restrictions Other Than 16 Feet (1981)

1.8 The ARC committee shall have the responsibility for determining whether trees or vegetation on the platted parcel in question unreasonably interferes with the view of other properties. (1984-85)

6.7 When the Committee determines that trees or other vegetation unreasonably interferes with the view of other property owners, they will notify the board... (1984)

5.0 Owners shall restrict the height of trees and vegetation thereon to the end that the view of other property owners shall be preserved to the greatest extent reasonably possible. (1986)

6.5 When the Trees, Brush and Noxious Weeds Committee receives a signed complaint and determines that trees and vegetation unreasonably interferes with the view of other property owners and exceed allowable building height for said platted parcel, as shown in Exhibit “A” and described in subsection 5.3, it shall... (2002)



Perspectives: “View”

Since 1980, view and height restrictions have been in the Surfside Covenant language with some modifications over time. Current language is implicit that the intent of the height restrictions from the beginning was about views. It was a future-looking approach to acknowledging and maintaining views.

Disagreements about views and height restrictions are not unique to Surfside. With strong covenants, there does not have to be disagreements without resolution.

Courts have had to define views through injunctive relief in Washington when lawsuits have been filed for view protection:

- Faced actual and substantial injury
- Impaired enjoyment and use of their property and its dollar value
- A valuable property right conferred by the covenants



Perspectives: “View”

Height language is **necessary** in the covenants. Title deeds convey all the history of the Surfside Estates HOA covenants to the property.

Title Insurance - November 13, 2009

Subject to Surfside Estate Revised Restrictive Covenants Architectural Committee Guidelines, Articles of Incorporation and By-laws dated December 5, 2001, recorded July 9, 2002 under Auditor's File No. 3054171, amended November 16, 2002, recorded December 11, 2002 under Auditor's File No. 3058293, amended and recorded February 13, 2008 under Auditor's File No. 3054172, amended November 16, 2002, recorded December 11, 2002 under Auditor's File No. 3058294, amended July 7, 2007, recorded July 9, 2007 under Auditor's File No. 3104441



Perspectives: “View”

- From the early years to the current covenant language, the definition of height restrictions ties tree and building heights.
- Rewriting the covenants with unclear language in the CC&Rs will create legal situations in which the courts could define the intent of covenants on views and height restrictions. This can be a costly method for all parties for resolution.
- Given the deeded title of properties, the historical covenants related to the view and height restrictions are filed with the county and remains part of the property deed.
- Reinstating original view language will provide clarity for the intent of the covenants regarding height restrictions.

→ Original covenant language:

“Owners shall restrict the height of trees and vegetation growing thereon to the end that the view of other property owners shall be preserved to the greatest extent reasonably possible.”



RCW [64.38.020](#)

Association powers.

Unless otherwise provided in the governing documents, an association may:

- (1) **Adopt and amend bylaws, rules, and regulations;**
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) **Regulate the use,** maintenance, repair, replacement, and modification of **common areas;**
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;



RCW [64.38.020](#)

Association powers, continued...

Unless otherwise provided in the governing documents, an association may:

- (9) **Grant easements**, leases, licenses, and concessions **through or over the common areas** and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;
- (12) Exercise any other powers conferred by the bylaws;
- (13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and
- (14) Exercise any other powers necessary and proper for the governance and operation of the association.



“Easement”

An easement is the grant of a nonpossessory property interest that grants the easement holder permission to use another person's land.

There are different kinds of easements. If an easement appurtenant is granted, it involves two pieces of land, where one serves as the **servient tenement** that bears the burden, and the other the **dominant tenement**, which benefits from the grant of the easement and has permission to use the servient land in some manner.

There are two types of easements: affirmative and negative.

- An **affirmative** easement gives the easement holder the right to do something on the grantor of the easement's land, such as travel on a road through the grantor's land.
- A **negative** easement allows the easement holder to prevent the grantor of the easement from doing something on his land that is lawful for him to do, such as building a structure that obscures light or a scenic view.



“Easement,” continued

Easements can be created in a variety of ways. They can be created by an express grant, by implication, by necessity, and by adverse possession.

Easements are transferrable and transfer along with the dominant tenement.

Additionally, easements can also be terminated. An easement can be terminated if it was created by necessity and the necessity ceases to exist, if the servient land is destroyed, or if it was abandoned.



“View Easement” Idea?

1. Define the word “VIEW” and add it to the Covenants.
2. Enable SURFSIDE to grant “View easements” to those properties that have a view.
3. Remove unnecessary height language in the covenants in favor of just “No height on any property may infringe on a deeded view”
(current permitted and completed Grandfathered)

Pros:

- 1) Properties get
 - (a) defined view that can be included in property value
 - (b) “View easement” is a valuable asset added to the property value
 - (c) Assurance that “View” is now definable .
- 2) Tree issues will be for verifiable “cause”. Height restrictions become easy (everyone can SEE the problem) and apply to ALL, equally.
- 3) This will enhance the ecology of Surfside.
- 4) Enforcement becomes almost “Pro Forma”



Survey of HOA Owners

- *Opportunity!* for January “Surf-In-Sider” publication
- **What do we want to learn ?**
 - ? *Particular covenant objections/satisfaction ?*
 - ? *Conceptual approaches to solutions ?*
 - ? *Perspectives on ancillary concerns (Fire, Costs, Compliance, ...)*
 - ? *Other ?*

Proposal



