

Correction: March 17, 2022

An earlier version of the January 2022 HOA Board meeting minutes misstated a conversation cited by Mr. Davis between he and his neighbor concerning removal of trees. That conversation, occurring some two years previously, concerned a request by his neighbor to have trees removed on Mr. Davis's property. The minutes had incorrectly stated that Mr. Davis had requested removal of trees in that earlier conversation. When the error was brought to the Board's attention by Mr. Davis at the March 2022 Board meeting, the Board voted to amend the minutes. Mr. Davis's subsequent request to have trees removed from his neighbor's property, accurately cited in the meeting minutes of the January 2022 HOA Board meeting, was made in the context of possible resolution of the dispute concerning the removal of a geodesic dome from the neighbor's property.



Sovereign Oaks HOA Board

board@sovereignoakshoa.com

Sovereign Oaks HOA Meeting MINUTES (Approved February 7, 2022)

Date: Monday January 10, 2022

Location: 17 Hawberry Court

Attendees:

Kirsten Kern, President

Mark Jordan, Vice President (via phone until 7:45 p.m.)

Brad Allen, Secretary

Javier Samayoa, Treasurer

Mike Newton, Member

Non-Board Members in Attendance

Morris Davis, 125 Wandering Oaks Way

Margie Cohen, Lot #93 (via phone)

President Kirsten Kern called the Meeting to Order at 7:00 p.m.

The Board welcomed both non-BOD members and thanked them for appearing before the Board to discuss their dispute with Eric Newman and Carolina Rojas (117 Wandering Oaks Way). [Following is a recap of the discussion main discussion points and conversation, but is not intended as a verbatim transcript.]

Kirsten Kern:

- There has been a lot of email exchange between the BOD, Moe Davis and Margie Cohen in reference to the Davis email sent to the HOA BOD on 28 December and follow-on email January 7 indicating his intention to sue the HOA.
- We are a Board of volunteers and have done our best to respond to your concerns in a timely fashion. It is important to have a face-to-face conversation, to meet you both as the Board and as neighbors to get a common understanding of the facts.
- Kirsten offered to link Moe's wife, who was unable to attend due to dog sitting obligations, in to the meeting via phone, but he stated that was unnecessary.
- Kirsten invited him to make his statement to the BOD.

Moe Davis:

- Andy Baker bought this property and filed declarations with Buncombe County declaring that all properties within Sovereign Oaks would be subject to the same restrictions.
- One of those restrictions is that accessory structures complement the main structure, be made of the similar materials and in the same style as the main structure.
- The accessory structure on the Newman/Rojas lot does not meet that restriction. (Mr. Davis referred to the structure in question -- geodesic dome situated on a platform as a "yurt" throughout the meeting.)
- Dwayne Williams, Sales Agent for Andy Baker's development company for Sovereign Oaks, TFM Carolina, (now deceased) had sent Moe an email before Davises purchased the lot stating that the accessory structure was temporary and would be removed by the time the Davis built. Moe said he was also told the "yurt" was only there as a temporary shelter while the main house was being built.
- Moe said that he relied on the assurances from Mr. Williams before agreeing to build within Sovereign Oaks. He bought Lot 95 while the Newman/Rojas house was still under construction.
- After the Newman/Rojas house was completed in 2019, the "yurt" had not been removed. Moe brought the issue up at the 2019 Annual Meeting.
- By that time the developer had transferred authority for the HOA and DRC to the residents. He was subsequently told that the previous developer-led HOA kept incomplete written records but that the status of the structure in question had been deemed to have been approved by that previous DRC as a permanent structure approved by the DRC.

Marjorie Cohen:

- When Ms. Cohen purchased her lot (83) which also overlooks the Newman/Rojas property, in the fall of 2021, she chose Steven Lee Johnson as landscape architect on the recommendation of her building architect, because Mr. Johnson had been on the original DRC and knew the DRC guidelines.
- Mr. Johnson told her that the "yurt" was temporary and would be coming down, stating that he had records of that.

Moe Davis:

- While there are no records from the original DRC, Steven Lee Johnson stated that he remembered approving it as temporary and that it does not comply with the guidelines, further stating another DRC member, Con Dameron, would confirm that.
- Moe referred to emails from both Steven and Con, written in late 2021, supporting his contention, emails which he had previously sent to the BOD.

- Moe stated that there was nothing for the former DRC to approve since the structure did not meet the stated restrictions of conforming style, materials and color and is not a subjective judgement.

Mike Newton:

- Mike said that he was at the transition meeting in the fall of 2018 between the developer-led DRC and the incoming HOA-led DRC of which he is a member. Both Steven Lee Johnson and Con Dameron were at those meetings and he (Mike) has a different recollection of the discussion concerning the geodesic dome on the Newman property.
- At that meeting, it was communicated to the incoming DRC that the accessory structure in question, both the platform and geodesic dome atop it, were approved as permanent and part of the overall site plan at 117 Wandering Oaks Way.

Kirsten Kern:

- Our job as the current HOA BOD is not to vote on an already built structure but to try to determine what happened three years ago.
- We wanted be thorough in our due diligence. She stated she had reached out to Andy Baker, Con Dameron and the third DRC member at the time, Nathan Taylor (Sovereign Oaks resident and DRC administrator), while BOD member Mark Jordan reached out to Steven Lee Johnson.
- Kirsten read a "To whom it may concern" memo mem from Andy Baker written in 2018, confirming that the accessory structure had been approved by the DRC, according to a conversation Mr. Baker had at the time (2018) with DRC member and administrator Nathan Taylor.
- In a recent conversation, Andy Baker told her: 'Yes we approved it as permanent structure and we liked it.' He said he would be happy to talk to the HOA attorney and provide a written statement to that effect.
- Kirsten said in her recent conversation with DRC member Con Dameron, he was relying on his memory of events from three years ago and Kirsten needed to speak with Nathan as he was the administrator of the DRC at the time and would have the most complete records.
- Kirsten said that in recent communication with Nathan, he stated that the developer-led DRC had approved the platform and dome, and sent here a written statement to that effect which she read.
- Kirsten said she would forward both the document from Andy Baker and from Nathan Taylor to both Moe and Margie.
- Based on evidence from the developer-led DRC and information from the turnover meeting, it became clear to the Board that the accessory structure in question was approved as a variance to the guidelines. Kirsten said she had reviewed all the communications with the HOA attorney who concluded that the Boards hands are tied, as the board has no authority to reverse a previous decision of the DRC.
- Kirsten referenced the board communicating that decision to Moe in writing on January 7, where he responded with his intention to serve the HOA with a legal filing.
- Kirsten explained the sequence and timing of the recent (Jan 7) communication of the BOD determination, stating that in a perfect world we (the BOD and Moe) would have had a conversation prior to sending the letter, but Kirsten had had a conversation earlier in the day with Carolina Rojas who was upset at Facebook posts Moe was making about the Newman/Rojas property listing. She told Carolina at that time what the BOD's inquiry had

revealed and the conclusion the Board had made. Kirsten attempted to reach Moe but was unsuccessful. The entire Board felt it important to get a written notice out to both the Davis and Newman/Rojas households so the written note was sent without the BOD speaking to Davises directly.

- She also asked that Moe take down his facebook post threatening a lawsuit against whoever purchases the Newman property, as it reflects poorly on the entire neighborhood.

Mark Jordan:

- The issue at hand centers on the question of where the DRC can provide a variance from the guidelines, whether to meet specific site requirements or allow for certain creativity.
- That is not to say what would be approved by the current DRC one way or another, but when Andy Baker originally brought the Sovereign oaks covenants over from his previous development at the Ramble, the developer-led DRC left an option for creativity in design to be at play, which creates gray areas we are dealing with.
- The HOA BOD has had other issues come up with regard to prior DRC decisions. We have even had to go all the way through arbitration with one neighbor. There the arbiter found the current DRC properly applied the design guidelines even though the prior DRC had allowed a variance in regard to fences.
- The current DRC has tried to adhere more within the written guidelines.
- If the BOD were to reverse a prior DRC judgement, we would have to revisit every variance granted in the past. HOA members would not be able to rely on DRC decisions they agreed to in good faith.

There followed a brief recitation of examples within the community of past variances granted.

Mike Newton:

- The current DRC tries not to grant variances unless site specific issues require them.
- We see plenty of different designs within Sovereign Oaks.
- A part of wanting more creativity in the neighborhood is that neighbors have to be more accepting of what's in their neighbor's yard.

Kirsten Kern:

- The BOD does not want HOA members to be unhappy.
- The Newmans had submitted a plan to the DRC which was approved to replace the dome. They never executed on that plan within the 18-month window following approval, and it has since expired. Since it had already been approved the DRC has indicated it would be willing to extend that plan.

Margie Cohen:

- Asked for clarification on the replacement plan.

Kirsten Kern:

- Explained that it was a plan to replace the existing dome with a structure which was a miniature version of the house, with similar materials and colors as the main house. The DRC has indicated it would be willing to extend approval of the existing plan to help the Newmans sell their house and can take that action on extending the approval without the Newmans' approval.

Moe Davis:

- But the HOA can't obligate a buyer to replace the dome.

Kristen Kern:

- The DRC could insist that any replacement of the existing dome match materials and colors but cannot make them (buyers) replace the dome. But we know the direction any replacement would take, rather than put a new buyer through the work of submitting a proposal to the DRC.

Kirsten Kern & Mike Newman:

- The Covenants have a dispute resolution process that requires negotiation, then mediation, then arbitration.

Moe Davis:

- I am only representing myself, not Margie Cohen here.
- My only recourse is to file for injunctive relief, otherwise I'll be taking a risk that I have to live with that eyesore for the rest of my life.
- The email from the salesman that the "yurt" would be removed constitutes wire fraud.
- I need to act before they (Newman/Rojas) transfer title.

Margie Cohen:

- If Moe wants to file a suit, that's up to him.
- I want to live in the Sovereign Oaks community.
- I am required to keep within the written standards. I can't paint my house white. I have to adhere to the DRC guidelines.
- If the dome were painted an extremely dark gray, two shades darker than it is, I could accept that.

Kirsten Kern:

- Margie, if the DRC gave a variance and approved a white house on your lot, you could have a white house.

Moe Davis:

- I bought my lot in good faith that the dome was a temporary structure.

Brad Allen:

- (Addressing Moe) You state you need to act now. What is the urgency for addressing a structure that has been in place for three years?

Moe Davis:

- After the Annual Meeting in 2019, Carolina and I were talking about two trees on my property they wanted removed. Carolina said she knew I was upset about the "yurt." She said they had a plan to replace it but asked that I be patient as they had financial obligations to address.
- Then Covid hit and they left Sovereign Oaks and rented their house out. No action was taken on the replacement plan.

- The statute of limitations is running out.

Kirsten Kern:

- (Addressing Moe) Your letter says the HOA BOD needs to act to enforce covenants. We have informed you of our judgment that the Board has no authority to do what you demand.
- This is between you and your neighbors, the Newmans.

Moe Davis:

- I intend to file against Carolina Rojas, the HOA, Anadana LLC and TFM Carolina.

Mike Newton:

- Reminded Moe of the Dispute Resolution process outlined in the covenants.
 - While nobody put it in writing at the time, even with conflicting statements, the preponderance of the evidence supports the Board judgement.
 - We can't go back in time. It's silly to suggest that things that were not done in the past we have to do now.
- The last dispute the HOA entered in to went all the way through negotiation, mediation and arbitration. It took a period of 18 months to finally resolve the issue in the HOA's favor.

Moe Davis:

- Indicated he was not concerned about a drawn out process, stated he had sued his previous HOA and it took two years but "they cut me a check in the end."

Kirsten Kern:

- We all would like more definitive documentation.
- Andy's written statement for 2018 had holes in it since he was relaying a conversation he'd had with Nathan. That's why we went to Nathan himself. Nathan's statement as DRC Administrator carries weight.

Mark Jordan:

- I tried to speak with Steven Lee Johnson to ask him to produce documentation, but was unable to connect.

Mike Newton:

- The current DRC met with Steven at the Cohen site recently where he (Steven) said the "yurt" was temporary. I reminded him of the status of the dome as an approved structure which was conveyed at the transition meeting between the old DRC and the new DRC which he (Steven) had attended. He responded "Oh, really?"

Javier Samayoa:

- We are faced with a "he said/she said" situation.
- It seems we have a what was a friendly discussion between two neighbors about trees and plans for a replacement, and asking if you could be patient.
- We have different documents.
- What if they changed their minds? There is nothing illegal in changing your mind.

Kirsten Kern:

- Th Newmans had always planned to only live here half a year and rent their property the other half. They planned on making the change to the dome then when the HOA voted to amend the covenants to only allow annual rentals, they paused.

Brad Allen:

- Asked Margie Cohen to clarify her earlier statement about being satisfied if the dome were painted “two shades darker” and asked Moe his reaction.

Margie Cohen:

- Agreed that would satisfy her if it was dark enough to blend in to the surrounding landscape.

Moe Davis:

- Agreed that would satisfy him, if in addition, the Newmans removed two trees on their property that obstructed his ridgeline view in the summer.
- He also proposed another option: that a statement be put in writing that the person buying the property understood that they had to remove the “yurt.”
- He also stated he had researched yurts. At some point they’ll deteriorate. They last about five to ten years.

Javier Samoya:

- Addressing both Margie and Moe: Are you willing to talk to them to ask them to paint it darker?

Kirsten Kern:

- The BOD can talk to your neighbors about your ideas on repainting the dome darker color. Our desire is to find a way to resolve this issue amicably.

Mr. Davis and Ms. Cohen exited the meeting at 8:04 p.m.

The Board resumed its

Mr. Davis left the meeting and Ms. Cohen disconnected from the meeting at 8:04 p.m. The Board then proceeded with regular business.

Approval of Previous Board Meeting minutes: The December minutes were approved without change.

Treasurer's Report:

- See Attached).
- (Treasurer report. Javier said he has been working with Art Mandler (previous treasurer) to complete the transition, and is dealing with some QuickBooks issues, expects them to resolve soon.
- There was a general discussion about the need to reserve additional funds for anticipated legal expense, in light of the Davis threat to sue the HOA. The Board agreed

to make additional reserves and draw upon the road repair fund if needed to cover the expenses and communicate that decision to the HOA.

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Committee Updates: The Board unanimously agreed to defer all Committee reports until the next meeting.

Executive Session: The Board went into executive session to discuss the above referenced dispute at 8:10 p.m. for approximately 15 minutes.

The meeting was adjourned at 8:35 p.m.