

SECTION VII

APPEALS

SEA PINES COVENANTS AND THE ARCHITECTURAL REVIEW PROCESS

The Sea Pines Covenants establish and describe the architectural review process for improvements to property in Sea Pines Plantation. The role and authority of the Sea Pines Architectural Review Board (ARB) are defined in the Covenants, as is the right of property owners to appeal, through arbitration, the ARB's final disapproval of architectural plans or any conditions or actions imposed or required by the ARB.

The Sea Pines Architectural Review Board Arbitration Guidelines described in this document have been instituted to clarify and facilitate the appeals process. The arbitration process described in these Guidelines is the sole means for property owners to appeal final ARB determinations. The Guidelines have been instituted under the authority granted the ARB in the Restated Covenants¹ to modify or add procedures to facilitate the performance of its duties.

PROPERTY OWNER OBLIGATIONS

The Sea Pines Covenants are incorporated by reference in the deeds to all Sea Pines property. Each owner, by purchasing property, enters into an agreement to be governed by Covenant requirements. An application for a Building Permit constitutes a further agreement to conform to the Architectural Review Process including adherence to the Arbitration Guidelines described in the following sections.

REVIEW STANDARDS - SCOPE OF ARB DECISIONS

The Restated Covenants reserve to the ARB a wide range of latitude in approving or disapproving plans submitted for approval. Decisions may be based on any reasonable grounds consistent with the broad objectives of the Covenants, including the following:

- Size (square footage, height, mass and scale);
- Siting of structures, including setback requirements;
- Placement and number of parking spaces

¹ "The Restatement and Assignment of Rights, Restrictions, Affirmative Obligations and Conditions Which Constitute Covenants Running with the Land of Sea Pines Plantation, Recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 390 at Page 166 ("the Restated Covenants")."

- Aesthetic considerations of harmony and suitability of overall design, including color and construction materials;
- Landscaping and preservation of significant trees or other unique vegetation;
- Exterior lighting and drainage;
- Auxiliary amenities such as pools, fences, docks;
- Effect on neighboring properties; and
- Appearance of the property from public or private roads.

The Covenants grant the ARB full authority to approve or disapprove plans based on subjective or aesthetic judgements and based on objective, quantitative grounds. This authority is limited only by the requirements that the architectural review process may not be conducted in an arbitrary or capricious manner. It would be arbitrary or capricious, for example, for the ARB to apply substantially different standards to similar cases reviewed during the same period of time. Nevertheless, the Covenants make clear that any approval of a plan which, when built, is not considered desirable for future construction, shall not be considered a precedent requiring the ARB to approve similar plans on subsequent submissions.

MATTERS SUBJECT TO ARBITRATION

It is not the intention of the arbitration process to enable the arbitrators to substitute their own subjective or aesthetic judgements for the prior judgements of the ARB. The arbitrators shall limit their rulings to determining whether or not the ARB conducted its review in an arbitrary and capricious manner. The appellant shall have the burden of proving, to the satisfaction of the arbitrators, that the ARB did act in an arbitrary and capricious manner.

Only if the arbitrators conclude that the actions of the ARB were arbitrary and capricious, shall the arbitrators require the ARB to approve plans or to take such other actions the arbitrators deem appropriate. If the actions of the ARB are not determined to have been arbitrary and capricious, the arbitrators must affirm the decision of the ARB, even if they might not have reached the same decision if the decision were theirs to make.

CHOICE OF LAW

Arbitration shall be conducted generally in accordance with the Uniform Arbitration Act, as set forth in Title 15, Section 48 of the South Carolina Code of Laws, subject however to the specific provisions described in these Sea Pines Architectural Review Board Arbitration Guidelines.

STEPS LEADING TO ARBITRATION

Upon receiving written notice from the ARB disapproving plans or any portion thereof, or imposing conditions, the property owner receiving such notice (the "Applicant") must first apply to the ARB for reconsideration (the "Request for Reconsideration"). The Request for Reconsideration shall be in writing to the ARB Administrator. Upon receipt the ARB shall either: (i) deny the Request for Reconsideration; (ii) approve the Applicant's plans as previously submitted; or (iii) modify its previous decision. The ARB shall have sixty (60) days to consider the Request for Reconsideration.

If the Request for Reconsideration is denied or the Applicant refuses to accept the modifications proposed by the ARB, then the applicant shall make an appointment to meet with the Board at a regularly scheduled meeting to discuss the project and determine if a compromise can be reached to allow approval of the project. The Architect or Designer of the project must also attend the meeting.

If the meeting does not result in an acceptable plan being developed, and the applicant intends to proceed with arbitration, the applicant shall notify ARB of that intention by filing an appeal in the form shown in the attached Exhibit A. The Appeal Notification shall include a written statement, together with the name, address and phone number of the representative the applicant has selected to make the presentation to the Arbitration panel.

COSTS

The Applicant shall pay all costs of arbitration proceedings, including, but not limited to, all costs and/or fees of the three arbitrators, all costs by ARB staff in preparation for the arbitration hearing and all costs of recording the arbitration hearing and preparing a transcript thereof. A deposit of \$10,000.00 will be required at the time the Appeal Notification is submitted. These funds shall be used exclusively to cover the cost described above. Any costs which exceed the initial deposit will be billed to the applicant as they are incurred, and must be paid within 30 days. No final decision of the arbitrators will be filed until the applicant has met all costs of the proceeding. Any balance from the applicant's deposit will be refunded to the applicant within 30 days after all expenses have been paid.

APPOINTMENT OF ARBITRATORS

Within thirty days of receipt of the Applicant's Appeal Notification and deposit, the ARB shall notify the American Arbitration Association at its' Charleston, South Carolina office to request the appointment of three neutral arbitrators.

TIME AND PLACE OF HEARING

The time and place of the hearing shall be determined at the sole discretion of the ARB Administrator, but in any event shall be not later than sixty (60) days after the ARB has confirmed the appointment of the arbitrators, that the issues presented are subject to arbitration, and that the Applicant has conformed to the procedure set forth above. Each hearing shall be limited to not more than ninety (90) minutes in duration with the Applicant and the ARB being allotted thirty (30) minutes each to present their respective positions unless otherwise extended by the Chairman.

APPOINTMENT AND DUTIES OF CHAIRMAN

The three arbitrators shall appoint one arbitrator to act as chairman of the panel (the "Chairman"). The Chairman shall be responsible for procedural decisions during the course of the hearing, tabulating the arbitrators' vote on the issues presented, and communicating in writing the decision of the arbitrators to the ARB and Applicant(s), as provided below.

NOTICE OF HEARING

The ARB Administrator shall serve notice upon the parties personally or by certified mail not less than five (5) days prior to the hearing. Appearance at the hearing waives such notice.

REPRESENTATION BY COUNSEL

A party has the right to be represented by an attorney at any proceeding. A waiver of this right prior to the proceeding or hearing is ineffective. In the event an Applicant intends to be represented by an attorney at the initial proceeding, notice thereof will be included in the Appeal Notification.

DISCOVERY

Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised. Neither party shall have the right to depose witness. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by a majority of the arbitrators, which determination shall be conclusive. All discoveries shall be completed within ten (10) days of the appointment of the arbitrators.

ADJOURNMENT OF HEARING

The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the Chairman unless the parties consent to a later date.

EVIDENCE AT HEARING

The parties are entitled to be heard and to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing. The parties shall answer any questions posed by the arbitrators.

SCOPE OF REVIEW

The arbitrators shall determine issues of fact only. The arbitrators shall not determine questions of law. Questions of law include, but are not limited to, interpretation of covenants.

NO DAMAGES AVAILABLE

The arbitrators shall not award consequential damages in any arbitration.

MAJORITY DECISION REQUIRED

A final determination in the arbitrated matter shall be made by a majority of the arbitrators. Such decision shall be **binding** on all parties.

FINAL DETERMINATION

The arbitrators shall make their final determination within ten (10) days after the hearing. The arbitrators shall put the final determination in writing signed by the arbitrators. The Chairman then shall deliver a copy to each party personally or by certified mail.

RECORD OF HEARING

A verbatim record shall be kept of the hearing and a written transcript prepared unless otherwise agreed by the parties and the Applicant shall be responsible for all costs of keeping said record, including, but not limited to, the cost of hiring a court reporter and preparing the transcript. Said transcript shall be made available to each arbitrator and each party as soon as available.

RIGHT TO MODIFY PROCEDURES FURTHER

Pursuant to the power granted to the ARB by the Restated Covenants, the ARB reserves the right to modify further and/or add to the procedures contained herein.