

**Inscription Canyon Ranch
Architectural Review Committee Minutes
ICRWUA Pump House
Grey Bears Trail
October 10, 2017**

Members Present: Eileen McGowan, Stan Salzman & Jerry DeSantis

Members Absent: Bob Summers and Ron Erps

Guests Attending: John Terwilliger, Linda Greenberg, Gene Leasure, John DeMartino, Jack McGowan, Olga Ford, Alan Ford and Jimmy Stoner for lot owner 27

Minutes: September 9, 2017 ICR ARC meeting minutes were reviewed and approved.

Reports:

Emails: 6 emails received, 4 of which were responded to.

Mail: Bank statements received from Country Bank

Budget / Financial:

Performance Account :	\$ 7,600.00	(no change from June 13, 2017)
Plan Review Account:	\$ 5,132.11	(no change from June 13, 2017)

New Business:

Lot 15: Lot owner submitted plans for a Ramada (i.e. outdoor shade structure with covered roof) and fencing. Proposal was tentatively approved by 2 ARC members and requires one additional ARC member approval. Refer to "PUBLIC COMMENTS" for additional comments as final approval is subject to review with legal consul..

Lot 50: Lot owner request for addition of attached garage was reviewed and approved.

Lot 100: Lot owner submitted certificate of completion for barn and ARC approved return of the security deposit.

Nomination Form: Two ARC committee member positions are open for the December, 2017 election.

Old Business:

Lot 17: Lot owner pergola proposal previously on hold pending color review was approved.

(over)

Public Comments:

Linda Greenberg: Ms. Greenberg's email dated June 7, 2017 regarding donkeys on lot 14 was read by the writer during the 'PUBLIC COMMENTS' section of the Aug 8, 2017 ARC meeting. But, the reading was not referenced in the August 8, 2017 ARC Meeting Minutes.

While technically correct, the ARC formally responded to Ms. Greenberg complaint via certified mail dated June 13, 2017 and considers this issue closed.

Linda Greenberg: Ms. Greenberg advised that a particular ARC form (i.e. Resident Request for ARC Meeting Agenda Item) was not posted on the ICRWUA website and it's difficult to know the ARC processes and procedures because they are not posted.

At the September 2017 ARC meeting, the ARC advised that four updated forms were approved as follows:

1. Resident Request for ARC Meeting Agenda Item
2. Resident Document Review / Copy Request
3. ICR ARC Main Dwelling Calculation Worksheet
4. Property Improvement Plan Review Form

Although it was previously discussed with Bob Hilb that ARC forms would not be posted on the ICRWUA website until all were reviewed and updated, the ARC will review the posting schedule.

Linda Greenberg:

Copies of ARC meeting agendas for the past 2 years were requested.

ICR ARC Meeting agendas from 2016 & 2017 were submitted to the ICRWUA / ARC attorney on April 13, 2017. Per the Discovery process, the agendas were distributed and Ms. Greenberg was advised to contact her attorney.

Gene Leasure: The ICRWUA website does not show ICR ACR Procedures & Forms. Is this correct?

Yes, this is correct. See the above response to Ms. Greenberg.

John DeMartino: Mr. DeMartino expressed concern regarding donkeys in ICR Lots 1 to 180.

After consultation with Yavapai County and the ICRWUAA/ ARC attorney, the ARC's position regarding donkeys was sent to 3 lot owners via certified mail. The response is attached and the ARC considers this issue closed.

John DeMartino: You need to review the language of ARS 33-1805. An associate member can request to review documents verbally. They don't have to fill out a form.

ARS 33-1805 does not contain the word "**verbal**" or "**verbally**" but does contain the word "**reasonably**." Given potential and actual litigation issues encountered in the past years, all financial and other ICR ARC records shall be made available per written request only using the ICR ARC "Request for Document Review" form.

John DeMartino: Mr. DeMartino challenged the ARC election process. Specifically, the ICRWUA is responsible to conduct and manage ICR ACR Elections.....

The sixth amendment to the ICRWUA bylaws dated March 23, 2010 paragraph 5 states in part:

The ARC shall be composed of five (5) persons who own lots in Inscription Canyon Ranch Subdivision Lots 1-180. They will be selected by ICRWUA based upon the results of a vote by the owners of these lots.

Although not clearly written, per verbal understanding with the ICRWUA, the ARC election process has been conducted and managed by the ARC for approximately 15 years. However, to address the concern, the ICR ARC will request written clarification from the ICRWUA in advance of the upcoming election.

Lot 15 Ramada: Ms. Greenberg objected to the proposal and Mr. DeMartino advised that the CC&Rs do not specifically include the word “**Ramada**.” And if it’s not defined in the CC&Rs, this is a problem.

The General Architectural Guidelines, Section 1.2 indicate:

Such improvements include; but are not limited to the following:

1. All buildings
2. RV garages, storage sheds, barns and other outbuildings.
3. Etc., .etc., etc.

Outbuildings which are subordinate structures not connected to the primary residence, have been historically interpreted by the ARC to include: casitas, observatories, dog kennels, green houses, Ramadas, pergolas, gazebos, workshops, arbors, etc. Moreover, the ‘R’ in CC&Rs refers to restrictions. And Ramadas in the context of the CC&Rs are not restricted outbuildings.

Meeting Adjourned: 9:26 AM

Next Meeting: Scheduled for January 9, 2018 at 9:00 AM

Subject: ICR ARC CC&R Interpretation Regarding Donkeys

Dear ICR ARC Member

Several lot owners within ICR lots 1 to 180 recently acquired donkeys which prompted the ICR ARC to conduct a detailed review of the CC&Rs and Arizona law to determine any potential CC&R violation if a member owns donkeys.

With respect to animals, the ICR CC&Rs provide the following:

- Paragraph 6 - speaks to an Equestrian Easement and/or Bridle Path for the exclusive use of riding “horses, mules, donkeys or other such animal that may be ridden and for purposes of human walking and hiking.

This language broadly allows Members to ride not only horses but other livestock such as mules, donkeys or “other such animals that may be ridden”, on the Equestrian Bridle Path.

- Paragraph 10 - allows Members to keep horses or 4-H animal projects (excluding poultry, fowl and swine);

This language does not define the type of “animal” allowed in permitted 4-H “animal projects, or limit the type except for the three express exclusions.

- Paragraph 10 - allow Members to build ARC approved fences and/or corrals “for livestock and 4-H animal projects”.

This language contemplates an Owner possessing “livestock” for which fences and/or corrals would be required.

“Livestock” is not defined in the ICR CC&Rs. “Livestock” is commonly defined as: “Animals kept on a farm, such as cows, sheep, chickens, and pigs” (Cambridge Dictionary). Under the U.S. Code of Federal Regulations, the term “livestock” includes cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm. (29 CFR 780.328 (Meaning of livestock), § 780.328). Yavapai County defines “farm animals” rather than “livestock” as:

“Animals other than household pets that shall be permitted to, where permitted, be kept and maintained for commercial production and sale and/or family food production, education or recreation. Farm animals are identified as being e.g. horses, cattle, swine, llamas, sheep, goats, rabbits, chinchillas, chickens, turkeys, pheasants, geese, ducks, and pigeons.) (Yavapai County Code, Chapter 3 – Definitions (Page 23)

Note: in the above stated definition e.g. or “exempli gratia” means “for the sake of example”, so this list is not meant to be specific or complete.

Yavapai County allows 2 horses “or other of similar size/weight” per acre (§501(D), Allowed Animal Chart, Category A), and 5 miniature horses, llamas, or other of similar size/weight per acre (Id. At Category B), with offspring up to one year of age of on-site animals not counting toward the total.

The ICR ARC has also reviewed applicable authority. Under Arizona law, words in the ICR CC&Rs must be given their ordinary meaning, and the use of the words within our CC&Rs gives strong evidence of their intended meaning. See, e.g., *Duffy v. Sunburst Farms E. Mut. Water & Agric. Co.*, 124 Ariz. 413, 416, 604 P.2d 1124, 1127 (1979). Unambiguous restrictive covenants are generally enforced according to their terms. *Id.* at 417, 604 P.2d at 1128. Restrictions that are not absolutely clear, like our ICR CC&Rs, should be interpreted in the ordinary and popular sense, related to circumstances under which they were used, having in mind their purpose and general situation." See, e.g., *Riley v. Stoves*, 22 Ariz.App. 223, 226, 526 P.2d 747, 750 (1974). Finally, when CC&R language is judged to be ambiguous, it should be construed in favor of the free use of the land. See, *Duffy* at 1128.

The ICR ARC has reviewed the ICR CC&Rs including the specific language set forth above, interpreting it in the ordinary and popular sense, relating that language to circumstances under which it is used, and keeping in mind its purpose and general situation, and when ambiguous, construing the language in favor of the free use of a member's land. The ICR ARC hereby provides its non-binding opinion that:

- the ICR CC&Rs allows its Members to ride horses, mules, donkeys or other such animal that may be ridden on the ICR Equestrian Bridle Path
- the ICR CC&Rs allow for its members to possess and fence or corral "livestock"
- the term "livestock" is not defined in the CC&Rs, but is both commonly defined and as expressly defined in Yavapai County as including horses or "other of similar weight and size"

As such, the ICR ARC has determined, in the good faith exercise of its discretion, that it has no basis for pursuing a violation of the ICR CC&Rs against a lot owner as a result of the presence of donkeys on that Members' lot. As you may be aware, the decision of the ICR ARC does not affect your independent right under our CC&Rs to pursue a private complaint against a lot owner should you choose to do so.

Regards

ICR ARC