

April 28, 2021

TO: SEPO Corporate Board of Directors

SUBJECT: Cover Letter to the three reports of the 2021 By-Laws Committee

Thank You for letting us serve the neighborhood in this very vital function. Attached are reports covering recommended changes to the Covenants, By-Laws and Policy& Procedures.

As a committee and as individuals we have spent a considerable amount of time reviewing both the questions presented to us and questions that each of us brought to the table. As individuals with long experiences in life as well as within SEPO we each bring a unique set of knowledge and opinions based on those experiences. As you might expect some of those experiences may not always mesh particularly well. That was especially true regarding the method of amending the By-Laws to accommodate Texas law. Here are the more relevant references as well as the source of the disconnect:

a) The By-Laws currently contain section 12.01 which reads as follows:

12.01 These Bylaws may be amended by a majority of a quorum eligible to vote at any annual membership meeting or special membership meeting called for such purpose, if at least thirty (30) days written notice is given of an intention to amend these Bylaws at such meeting.

b) Texas State law (Tex. Prop. Code § 204.010(1)) refers a reader back to the above clause.

As a summary of the law from a variety of sources – “ There are very limited statutory provisions regarding amendment of a Texas Nonprofit Corporation HOA's Bylaws, and the amendment process will primarily be governed by the procedures set forth in the Bylaws itself. “. The previous sentence is from a book published by a Texas attorney with over 20 years of HOA law experience.

c) However, in a March 15, 2013 letter from the current corporate attorney there is the following sentence:

“The By-Law Committee can, if it so chooses, lift the amendatory language directly from the statutes and place it into the amended By-Laws.”

This difference of directions caused some very strongly held opinions within the committee and those differences continue. The attached document titled “The report from the 2021 By-Laws committee with respect to potential changes to the: SEPO By-Laws” is consistent for all of the items listed in that it contains wording that reflects the ballot amendment process including;

#2 Notice of Meetings

#3 Open Meetings

#4 Special Meetings

#5 Notice

and #7 Resolving Conflict – Length of an appointment - End of vacated term or Next annual meeting.

even though, if the direction of the corporate attorney were to be followed, no such vote would be needed on the 5 items above.

There is no disconnect on the remaining items in the report since they are not inserting state law text into the By-Laws and must go to a vote of the property owners in any case.

Texas law over-rides all of our controlling documents; in the 5 areas above as well as several other areas not being suggested for amendment. This disconnect could be resolved if our Covenants and By-Laws each were amended to allow a reference to applicable law to be inserted by the board of directors without a further property owners vote. Such an offering to the shareholders might read as follows:

“The SEPO Board of Directors by majority vote shall be authorized to insert a reference to the applicable Texas state law into any section of this document that is amended by that law.”

However the board wishes to handle this disconnect, it can only be resolved by the SEPO board of directors, the By-Laws committee was unable to resolve it.

There was a subject that was raised after the committee meetings had adjourned and thus was too late for debate, and therefore, too late for recommendation but we are offering it for the board's discussion . The possibility of adding to the second paragraph on the first page of Policies & Procedures as follows; ALL NEW RESIDENTS MUST PROVIDE PROOF OF AGE THAT WILL BE KEPT ON FILE IN THE BUSINESS OFFICE OF SEPO.

As a separate suggestion, the book covering Texas Homeowner Association Law that rests on Valerie's desk is a 3rd edition. The 4th edition was published last December. It is the definitive reference to Texas HOA law and is a valuable aid. SEPO should invest \$50 and get the current edition.

The attached three reports (Covenants, By-Laws and Policy & Procedures) are respectfully submitted.

The 2021 By-Laws Committee

Steve Fransene
Pat Harvey
Share Nelson
Earl Weir
Jerry Wetherbee

Enclosures;

Potential changes to the SEPO Covenants
Potential changes to the SEPO By-Laws
Potential changes to the SEPO Policies & Procedures

The report from the 2021 By-Laws committee with respect to potential changes to the:

SEPO Covenants

#1 Occupancy Limits and Occupancy Definition

This is a case of trying to be pro-active and avoid problems before they occur. Housing is very tight in Cameron county and it is expected to continue to be so for some time. We don't need "Bunk Houses" in our neighborhood.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 6.1 of the Sunshine Estates Property Owners Covenants shall be amended as follows:

SECTION 6.1 SENIOR CITIZEN RESIDENTIAL USE

Owners intend to operate the properties as housing for persons 55 years of age or older. Therefore, each occupied residence in the subdivision shall be occupied by at least one person 55 years of age or older. A resident whose spouse has died, however, may continue to reside in the subdivision even though he or she is not 55 years of age.

Any person acquiring an interest through inheritance must be 55 years of age or older to reside in the property. Anyone planning to reside in any property located within the subdivision must provide proof of age that will be kept on file in the business office of SEPO.

No one under the age of 18 years shall be allowed to reside in any residence located within the subdivision. This shall include children born to or adopted by residents.

Residency shall be deemed to be occupancy of a property in excess of one (1) month.

No Owner shall occupy or use his lot, home, or outbuildings, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner, his/her family, guests or tenants.

Occupation of a Dwelling Unit by more than two persons per bedroom in the Dwelling Unit is prohibited. For the purpose of this provision only, "occupancy" means staying overnight in the Dwelling Unit more than 30 times in any six-month period.

#2 Residential Use

In today's "connected" world it is very common for people to work from home doing a wide range of business functions. Others do off-site consulting, accounting, hair cutting, handy man work and any number of other services. The committee spent a considerable amount of time over multiple meetings contemplating how to refashion a draft set of words to provide for the kinds of businesses that are non-intrusive but exclude the "commercial" kinds of businesses which are of concern in our neighborhood as well as in 209.015 (2) (A).

As a result, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 6.1 of the Sunshine Estates Property Owners Covenants shall be amended as follows:

SECTION 6.1 SENIOR CITIZEN RESIDENTIAL USE

Owners intend to operate the properties as housing for persons 55 years of age or older. Therefore, each occupied residence in the subdivision shall be occupied by at least one person 55 years of age or older. A resident whose spouse has died, however, may continue to reside in the subdivision even though he or she is not 55 years of age.

Any person acquiring an interest through inheritance must be 55 years of age or older to reside in the property. Anyone planning to reside in any property located within the subdivision must provide proof of age that will be kept on file in the business office of SEPO.

No one under the age of 18 years shall be allowed to reside in any residence located within the subdivision. This shall include children born to or adopted by residents.

Residency shall be deemed to be occupancy of a property in excess of one (1) month.

No Owner shall occupy or use his lot, home, or outbuildings, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner, his/her family, guests or tenants.

An Owner or occupant residing in a dwelling unit may conduct business activities which are commonly conducted within residential areas within the Dwelling Unit so long as (a) the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Properties; and (c) the business activity does not involve visitation of the Lot or Dwelling Unit by suppliers, or other business invitees or door-to-door solicitation of residents of the properties.

#3 Changes in Ownership – Minimum square footage

The By-Laws committee was asked to look into the requirements of Covenants section 6.2 and ascertain the level of compliance. The SEPO Covenants section 6.2 specify a minimum number of square feet (560) within a residence after the transfer of ownership for smaller lots (40 x 60) in the southeast portion of our neighborhood. The Cameron County Appraisal district files were used to verify that all 26 residences meet or exceed the minimums.

Thus there is no action required.

#4 Fines

The question of fees vs fines received considerable discussion within the committee. Based on 204.010(6)(9) SEPO can charge a fee for providing a service, such as mowing grass. However a fine can only be imposed if that power is explicitly given to the board in the governing documents (Texas Law Library) and that power does not exist in the SEPO governing documents. Doing a wordsmith of the word “fine” into “fee” was not an acceptable option within the committee.

There are currently two areas in the SEPO Policies and Procedures that call out fines. These are sometimes known as – Nails in the street and violations of ACC “Stop Work” orders. One of these has worked because the simple threat of significant cost (\$10 / nail) gets compliance and the other does not work because the fine is far too low (\$5 / day).

The committee could not reach agreement on fines and thus there is no recommendation. If the Board wishes to levy fines that are sustainable in court, then an amendment to the Covenants would be required.

End of Report
on potential changes to the SEPO Covenants

The report from the 2021 By-Laws committee with respect to potential changes to the:

SEPO By-Laws

#1 Board 101 – New board member familiarization

It is safe to say that if nothing else becomes part of the SEPO culture as a result of this committee then this exercise will still have been a major success if “Board 101” is implemented. By simply having new board members initiated before being seated, they will be able to make reasoned decisions from day one, rather than needing to “learn on the job”.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.02b of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

The existing Paragraph 4.02b of the Sunshine Country Club Estates By-Laws shall be renumbered as 4.02c.

A revised Section 4.02b of the Sunshine Country Club Estates By-Laws shall now read as follows:

4.02b Once the list of candidates for election to the Sunshine Country Club Estates board of directors has been finalized; all candidates must complete a course of instruction before being seated upon a successful election to that board of directors. Said course of instruction will include as a minimum:

- a) A review of the governing documents of the corporation;
(Covenants, By-Laws and Policies / Procedures)
- b) A review of Texas law as it applies , particularly Title 11, Chapter 209.051
- c) An on-site property boundary tour including a discussion of applicable easements.
- d) Employee Handbook
- e) Calendar of monthly required functions

Appointees to fill a vacancy on the Sunshine Country Club Estates board of directors must complete the above course of instruction before being seated on that board of directors.

#2 Notice of Meetings

Texas Property Code 209.0056 is quite clear regarding the notice required and the existing wording is in conflict.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 3.04 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

NOTICE OF MEETINGS

3.04 Written or printed notice stating the place, day, hour and purpose of any meeting of members shall be hand delivered or mailed to each member entitled to vote at such meeting, ~~not less than thirty (30) nor more than fifty (50) days~~ not later than the 10th day, nor earlier than the 60th day before the date of such meeting, by or at the directions of the President, or the Secretary, or the Board of Directors or the persons calling the meeting. The hand delivered or mailed notice of a meeting shall be deemed to be delivered when received, or deposited in the United States Mail addressed to the member at his address as it appears on the records of the Corporation with postage thereon paid and as witnessed by two (2) Officers of the Corporation.

#3 Open Meetings

Texas Property Code 209.0051 provides clear and precise direction regarding Open Meetings, how they are to be announced as well as actions that must be performed in an Open Meeting if they are to be valid.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.03 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

OPEN MEETINGS

4.03 All meetings of the corporation's Board of Directors shall be open to the public and shall be made available to the owners by using any electronic or telephonic communication. Regular and special board meetings are open to owners, subject to the right of the Board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary will include a general explanation of expenditures approved in executive session.

#4 Special Meetings

Texas Property Code 209.0051 provides clear and precise direction regarding Open Meetings, how they are to be announced as well as actions that must be performed in an Open Meeting if they are to be valid.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.05 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

Special Meetings

4.05 Special meetings of the Board of Directors may be called by/or at the request of the President, or any four (4) Directors. Special meetings shall be held at any time or place and shall include electronic or telephonic communication. A Board may take action outside of a meeting, including voting by electronic or telephonic means, without prior notice to owners if each board member is given a reasonable opportunity to express the board member's opinion to all other board members and to vote. Any action taken without notice to owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting.

The board may not, unless done in an open meeting for which prior notice was given to owners consider or vote on:

- _____ fines,
- _____ damage assessments,
- _____ initiation of foreclosure actions,
- _____ initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety,
- _____ increases in assessments,
- _____ appeals from a denial of architectural control approval,
- _____ a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue,
- _____ lending or borrowing money,
- _____ the adoption or amendment of a dedicatory instrument,
- _____ the approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than 10 percent,
- _____ the sale or purchase of real property,
- _____ the filling of a vacancy on the board;
- _____ the construction of capital improvements or
- _____ the election of an officer.

#5 Notice

Texas Property Code 209.0051 provides clear and precise direction regarding Open Meetings, how they are to be announced as well as actions that must be performed in an Open Meeting if they are to be valid.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.06 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

Notice

4.06 Additional regular meetings of the Board of Directors will be held as required upon call of the President, or two (2) or more Directors, reasonable notice having been given by the Secretary or other officer to each Director. Formal notification is required for special meetings. ~~However, special meetings may be held on shorter notice if all Directors are present, or waive notice in writing.~~ Members shall be given notice of the date, hour, place and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session and shall include instructions for owners to access any communication method, telephonic or electronic. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 72 hours before the start of the meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website maintained by the association or other Internet media; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

It is an owner's duty to keep an updated email address registered with the property owners' association.

#6 Regular meeting - word conflict

This amendment basically brings the By-Laws into agreement with past practice. For the most part SEPO Board meetings are only held on an “as needed” basis during the summer months.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.04 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

4.04 There shall be two required meetings of the Board of Directors. One shall be held immediately following the Annual Membership Meeting, or as soon as possible at the discretion of the Board of Directors, for the purpose of electing officers for the coming year and for organizational purposes. The other one shall be held during the first full week in January preceding the next Annual Meeting of the Membership on a date to be determined by the Board of Directors and duly published in advance on the Bulletin Board. Additional regular meetings of the Board of Directors ~~shall~~ are to be held monthly, or more often as needed, upon call of the President, or two (2) or more Directors, unless Monthly-meetings may be suspended by the President during the summer months of April through September.”

#7 Resolving Conflict – Length of an appointment - End of vacated term or Next annual meeting

The By-Laws of the Sunshine Country Club Estates contain a conflict in the term of an appointee. This section (4.02a) conflicts with other sections of the By-Laws (5.03) as well as Texas Law 209.015 (2) (A). This section currently says the appointee is to serve until the next annual meeting. Both law and elsewhere in the By-Laws the appointee is to serve the remaining term that was vacated.

Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 4.02a of the Sunshine Estates Property Owners By-Laws shall be amended in part as follows:

By-Laws 4.02 a – **Number and Tenure**

Vacancies of the Board of Directors of the Corporation, occasioned by death, illness, resignation, removal or disqualification, or any other valid reason, shall be filled by a majority vote of the remaining Directors. Such appointment shall continue until ~~a successor is duly elected at the next Annual Meeting.~~ the end of the term of the position being filled.

#8 Secretary /Treasurer clean-up

There was an oversight in a previous amendment to the By-laws which split the functions of the Secretary and Treasurer. This change would be considered a part of that previous amendment. Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 5.04 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

5.04 The President shall be the principal executive officer of the Corporation and shall, in general, supervise and control all of the business and affairs of the Corporation. He or she shall preside at all meetings of the members and of the Board of Directors. He or she may sign, with the ~~Secretary/Treasurer~~ Secretary, Treasurer or any other proper officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Corporation.

#9 Signed by clean-up

There was an oversight in a previous amendment to the By-laws which split the functions of the Secretary and Treasurer. This change would be considered a part of that previous amendment. Therefore, it is the recommendation of the By-Laws committee that the SEPO Board of directors offer the following to the members of the corporation for consideration:

Paragraph 7.02 of the Sunshine Estates Property Owners By-Laws shall be amended as follows:

7.02 All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by the ~~Secretary/Treasurer~~ Treasurer, the President, or 1st Vice President or such other party authorized by a majority vote of the Board of Directors. The Board of Directors shall by resolution set necessary standards of safety concerning all disbursements and deposits.

End of Report
on potential changes to the SEPO By-Laws

The report from the 2021 By-Laws committee with respect to potential changes to the:

SEPO Policy and Procedures

#1 Fences

The committee was presented with a very well reasoned and carefully documented review of fences in our subdivision. Based on that review, the committee would like to recommend the following change to the Architectural Control section of the Policy and Procedures:

As to fences, Exhibit B of the Covenants states in paragraph 16, “no fence, wall or hedge shall be built or maintained nearer than ten (10) feet to the front curb line of any lot, or side curb line on corner lots. An exception shall be retaining walls of not over twelve inches above the ground.” Paragraph 17 states, “No fence, wall or hedge or shrub planting which obstructs sight lines shall be placed or permitted on corner lots.” Paragraph 18 states, “All fences shall be approved prior to construction.” Paragraph 19 states, in part, “No lot owner shall impair any easement. No fences, walls or structural improvements shall be built or constructed on any easement.” For clarification, our lots have a ten foot utility easement from the lot line across the front and a five foot utility easement from the lot line across the back. That in itself declares no fences will be allowed along within the 5' rear lot easement adjacent to the golf course. ~~Golfers are allowed to go onto an Owner's property for the purpose of retrieving a stray golf ball and for no other purpose. They may not strike a ball from within an Owner's yard.~~

#2 Political Signs

After an extensive review of political sign laws and ordinances at the state, county and Harlingen city levels the committee found that neither the county or the city exercised any significant control. The state of Texas on the other hand exercises considerable control by protecting political signs in Section 259.002.

Based on the protection provided by Section 259.002, this committee recommends that the SEPO Board take no action with respect to political signs.

#3 Fees for Services

The question of fees vs fines received considerable discussion within the committee. Based on 204.010(6)(9) SEPO can charge a fee for providing a service, such as mowing grass or trimming bushes providing proper notice is given to the negligent property owner. Note that a fine can only be imposed if that power is explicitly given to the board in the governing documents (Texas Law Library) and that power does not exist in the SEPO governing documents. Therefore, it is the recommendation of the By-Laws committee that:

The Policy and Procedures – section “**PROPERTY AND YARD MAINTENANCE** “ be changed to read in part :

1. It is the responsibility of all property owners to see that their property or yard is maintained, mowed, and trimmed AT ALL TIMES. If it becomes necessary for SEPO to care for an owner’s property at any time, ~~an assessment~~ a service fee of \$50.00 for mowing and \$75.00 for weeding of rocked yards will be made. There will be ~~an assessment~~ a service fee of \$75.00 to pick up fruit that has fallen from your fruit tree. All owners must furnish SEPO office personnel with up to date information as to who is responsible for their property during the owner’s absence.

End of Report
on potential changes to the SEPO Policy and Procedures