

To: Genesee Foundation Board of Directors  
From: Chris O'Dell, ARC Chair  
Date: July 5, 2007  
Re: Possible Appeals Process for ARC

As some of you may recall, during the ARC Standards Re-write Committee deliberations, one of the frustrations expressed was the power of the ARC to make decisions with no appeal possible. The Declaration currently provides no appeal process from ARC decisions. The Standards Re-write Committee had some members who believed that this was wrong and others who believed it was just right.

Those who wanted some sort of appeal process argued that it wasn't fair to leave the decision to 5 people, four of whom were appointed and not have some way for a disgruntled homeowner to appeal what he/she thought was an unfair decision. They also argued that having a larger committee, even if its decisions were non-binding, might give the ARC a broader vision of what community members thought about certain issues and might help make ARC decisions more fair and better for the community.

Others felt that to allow a binding appeal process would simply make the ARC irrelevant. They also pointed out that unfair decisions could be challenged in court if they were arbitrary and capricious. Further, they pointed out that the four appointed members could be removed by the Board at any time. Finally, they asked a lot of technical questions about how a non-binding committee might work and whether it was really good for the community to have such a shadow committee which could stir up unrest. They were also concerned about the additional work load on the ARC which this might cause.

Unable to reach any kind of a consensus on this issue, the Committee determined to ask questions about the issue in its survey questions, but to leave the process as is, that is without the right of appeal, in the Standards.

The survey asked two questions. The first was whether there ought to be an advisory panel which could review ARC decisions and provide input to the ARC, but which could not overrule the ARC. Approximately 76% of respondents favored such a non-binding appeal process. The second question was whether residents favored a binding appeals process. Approximately 62% of residents favored this proposal. Since this second binding appeals process would require a Declaration change and in the survey, before any real campaigning for or against it the proposal received less than the 2/3's vote which would be necessary for a Declaration change, I don't think this is worth considering.

However, I do think it would we should at least consider the other proposal for a non-binding review committee. The ARC could implement this proposal on its own, but I don't think that should be done. I think there needs to be Board buy-in and discussion before the ARC spends a lot of time on this issue, only to have the Board disagree. If such were to happen, it could result in an uncomfortable conflict between the Board and its appointed ARC members.

Therefore, as the elected member of the ARC, I wanted to raise the issue with the Board before the ARC had any discussion about the matter with those that you have appointed to the ARC.

As talked about by the Standards Revision Committee, such a non-binding review committee would consist of a larger number of people (20 was suggested) who represented lots of different interests in the community and which should include, if possible, professionals in numerous fields such as architecture, real estate, design, artists and other interested residents who could provide as wide a range of opinions as possible so as to give the ARC input from a broad based group.

The group would then be asked to review decisions when there were ARC decisions to which owners objected. The group would then give its input to the ARC.

There has really been no discussion as to how this group would operate, what its rules would be, the timing of its decisions or any of the practical operating procedures. There has also been no discussion

of how such a group might legally affect the Foundation's position if, for instance, the review committee disagreed with an ARC decision, but the ARC nonetheless determined to stick with its original position.

In general, I have no problem with the concept of such a group as long as it is broadly based, not dominated by a single faction and not too much of an administrative burden for the ARC. I do see one major issue that the Revisions Committee didn't discuss. I don't see any problem with a review of an ARC decision to turn down or condition a homeowner request. However, I just don't see how it is possible for neighbors to have an appeal right to the non-binding committee. The Declaration requires the ARC to make a decision within 30 days or the requested improvement of the owner is "deemed approved." If we have an appeal to the review committee, it would have to be completed within that time frame and the ARC would have to change its decision within that time frame. I have a hard time seeing how this would work. In effect, every ARC decision would have to be conditioned upon there being no appeal to the review committee. This would delay projects which in my view is not a good thing and would be very frustrating to neighbors. This kind of neighbor appeal could be used as just plain harassment or to delay projects causing homeowners to lose contractors and have to significantly delay projects. I think this would be a bad move, especially since there is already the perception that existing and long-time residents have more rights than residents that want to improve their homes.

I would like to discuss with you this concept on Wednesday night and determine whether you want the ARC to proceed to work on drafting a charter for such a committee. If you have no stomach for this or think it is a bad idea, then my view would be not to move forward. If you think there is something here, then I am happy to move forward with the project and spend some time on it.