

TO: Ranch Association Board; copy Darren
FR: Elizabeth Kepuraitis
DT: May 19, 2020
RE: **Informational on Arcadia Sissoo Trees**

The purpose of this memo is to provide the Ranch Association Board with status of the Arcadia Sissoo trees and introduce some recent developments, as well as provide background for the two new Board members.

An Executive Session (due to this being a legal matter) will soon be scheduled to discuss.

Background

DMB (the Declarant) planted Sissoo trees in Silverleaf's Arcadia neighborhood during its development starting in 2005. The Sissoo is an attractive tree, that grows quickly, reliably and provides thick shade in a few years. The Sissoo tree is not native to the Sonoran Desert, but is drought-resistant, hearty in poor desert soils, loves direct sunlight, and tolerates a light frost.

However, with those benefits, the Sissoo comes with an invasive, destructive, and thirsty root system. It will drink all the water it can find. The serpentine root system can run for 50 feet or more from the trunk and wrist-sized roots can break through at the surface over the distance. Finding water is its specialty. Cutting the tree down does not stop the roots from continuing to grow and expand. I have read that Sissoos represent 90% of trees being removed in the greater Phoenix area. After 15 years, the neighborhood streets and sidewalks show signs of damage. The trees will continue to pose a threat of property damage to homes, patios, pools, and utilities. Ranch Association stopped watering the trees two years ago, with no material impact on growth.

There are 917 Association-maintained sissoo trees in the Arcadia Neighborhood, located as follows:

- 670 "Street Trees" defined as trees on owner lots adjacent to the street (these trees are owned by each member and are required to remain until the Covenant Commission and Ranch Association agree otherwise);
- 162 "Entrance trees" located on common area at the front and back entrances; and
- 85 "Park trees" located on three neighborhood parks, also common area.

In April 2018, Darren Shaw's 2018 Goals submitted to the Board included: **Address Sissoo Tree concerns in Arcadia.** In the two years since, the Ranch Association and Board have invested hundreds of hours meeting with the Arcadia Neighborhood members, lawyers, and arborists.

The Street Trees are the most time-sensitive due to the risk created by the Sissoo's proximity to member homes, and because these trees are required to be maintained by the Association. Arcadia Neighborhood CC&Rs (Sections 8a, 8b) state that the Ranch Association shall assume responsibility for maintenance and irrigation of all Street Trees, the costs of which it shall recover through a Neighborhood Assessment.

Separately, the Entrance and Park trees are not on resident property nor are they situated close to resident homes. The Association both owns and maintains these Sissoos. These non-Street Trees can still cause damage within the community; however, they are less likely to cause damage to member homes.

The initial focus of this neighborhood effort has been to develop a "go forward" plan for the Street Trees. There are two options —keep or remove the trees.

The Pros and Cons

Due to the current and future potential damage the Sissoo creates to both member and Ranch Association property, Ranch Association has been interested in removing the Sissoo trees (and their roots) and replacing them with a less aggressive tree alternative (e.g., Red Push Pistache, Texas Ebony...in all 15 tree species were considered).

The positives of tree (including proper root) removal is the elimination of risk of property damage to both resident homes and neighborhood roads and infrastructure. The removal of trees would also eliminate the negative impact of Sissoos risk of damage on member property values, which is uncertain.

Conversely, removal of these mature trees and replacement with a suitable tree will have a high, one-time upfront cost, requiring a special neighborhood assessment. Plus, this project would be temporarily disruptive to the neighborhood. Once planted, the smaller replacement trees (vs. current Sissoo trees) could impact resale home values, but this impact would lessen in time. Expectations are that the replacement trees would look reasonable in about 5 years from planting, assuming 48" box trees were planted.

The long-term cost of keeping the Sissoo trees (forever) is most likely more expensive over time than a replacement that is suitable for such proximity to both homes and roads.

Arcadia Neighborhood Committee

A Neighborhood Committee was formed in April 2019. The Committee initially recommended removing the Sissoos and created and administered a neighborhood survey regarding replacement tree selection and its implementation. After the survey, some residents became more involved that were opposed to removal of the trees. The Committee is now seeking additional information on what keeping the trees involves. Yet, there is no apparent consensus currently. After two years, the residents recently informed us they wanted an "unbiased" arborist opinion. (The Ranch engaged three arborists, and the landscape architect originally used by DMB in the neighborhood's project-planning stage.) In summary, we are no closer to a solution today than we were two years ago; however, residents are more educated and engaged on the topic and more information has been learned in the process.

Recent Activity

On March 2, 2020, the Ranch Association Board granted the Arcadia Neighborhood Committee 90 days (until Jun 1) to work out its proposed solution.

On May 14, 2020, the Neighborhood Committee members arranged for a meeting with DLC Resources, a company that maintains the Sissoo trees at Verrado (another DMB community). Darren and Brad were present, as was new Landscape Manager Paul Connolly. DLC proposed to conduct a root damage assessment for Arcadia for \$2,800.

Darren and I have considered not removing the trees, but rather, amend the Arcadia Declaration of CC&R's, by removing the Association's responsibility for maintenance and irrigation of the Street Trees. Ranch Association would address the common area (entrance and park) trees and could also develop a neighborhood maintenance program to maintain the street trees, but with the appropriate indemnifications included. The Neighborhood members would assume full responsibility, including damages, for Street Trees. The Neighborhood could still make a recommendation to the Board at a future date to remove the trees.

Darren has informally mentioned this idea to a few members of the Neighborhood Committee, and they seemed receptive. Darren has also contacted Lex for legal consideration and the CC&R amendment. He also placed a call to Jill Hegardt from DMB. He is waiting to hear back.

To change the Neighborhood CC&R's, in accordance with Sections 1.3, 19.1 and 19.2 of the Ranch CC&Rs, affirmative votes are needed from Voting Members representing 75% of the total Class "A" votes, AND approval from the Declarant (DMB). We believe there is a good probability that both groups would approve. Relevant sections of the CC&R's are on the following pages, with discussed changes in red.

Open

Board discussion.

Feedback from the Neighborhood Committee; June 1.

Consideration of amending the neighborhood CC&R's, input from Ranch legal and DMB. Also, whether the Neighborhood would favor this direction.

Ranch Association to determine treatment of the 247 common area trees.

Several details on liability would need to be worked out, should we decide to go the route of changing the CC&R's. Determine liability on a Street tree shared between members? Who pays for damage to roads or common infrastructure resulting from member-owned Street Trees? How the Association ensures that the trees are maintained properly?

Arcadia T7 Amended and Restated Supplemental Declaration:

The sections of the Arcadia Supplement Declaration that would require amendment, with respect to responsibility for the maintenance of the 670 Street Trees are as follows:

- Sections 8a and 8b would be amended to specifically exclude Ranch responsibility for the Street Trees. Ranch would still maintain the sidewalks, which are limited to the parks and entrances.
- Section 13 may be amended to specifically include Street Trees. Note Special Assessment allowed for damages.

Parcel T7 Supplemental Dec of CC&Rs: Section 8. Maintenance of Streetscape Areas.

a. General. Any area that is located within a private street tract as shown on the Plat but outside of the private street improvements built within such private street tract, including any landscaping improvements located in such area (a "Streetscape Area"), shall be maintained by the owner of the adjacent Lot or common area tract (as applicable) in accordance with the Community-Wide Standard applicable to the Development, all other requirements of the Governing Documents, and all other standards imposed by applicable law, **except that the Street Trees (as defined in Paragraph 8(b) below) and sidewalks running parallel to adjacent streets shall be maintained by Declarant or the Ranch Association as provided in Paragraph 8(b) below.**

b. Street Trees. Declarant intends to install trees and irrigation facilities serving such trees in the areas located between the outside edge of the private street improvements and the sidewalks located along the perimeter of the Lots. Some of such trees and facilities may be within the boundaries of the Lots and some may be in the adjacent Streetscape Areas. **~~Notwithstanding anything to the contrary in this Amended Supplemental Declaration, Declarant shall maintain and irrigate all such trees (the "Street Trees") until such time as the Ranch Association assumes responsibility for their maintenance and irrigation in accordance with applicable subdivision landscape turnover processes. So long as Declarant is responsible to perform such maintenance and irrigation, Declarant shall pay for all costs incurred in connection with such maintenance and irrigation; once the Ranch Association assumes responsibility for such maintenance and irrigation, the Ranch Association shall pay such costs, which it shall recover through a Neighborhood Assessment levied against all Lots in Parcel T7 Neighborhood.~~** Declarant hereby reserves to itself (and to any homebuilder or other third party it may designate) and hereby grants to the Association a perpetual, non-exclusive easement over each of the Lots for purposes of such access as may be reasonably necessary for the installation, maintenance and irrigation contemplated by this paragraph.

Parcel T7 Supplemental Dec of CC&R's: Section 13. Enforcement.

The Community Council may recover from any Lot owner who fails to maintain its Lot or any portion thereof or any adjacent Streetscape Area, Boundary Wall, Common Yard Wall, or any portion thereof, as required by any of Paragraphs 7, 8 or 9 above, any and all costs incurred by the Community Council in performing such repair or maintenance on the owner's behalf pursuant to any of said Paragraphs 7, 8 or 9, as applicable. In addition, without limiting any other rights or remedies available to the Community Council, **the Community Council may impose a Specific Assessment under the Council Declaration against the owner's property within the Development in the amount of such costs or damages,** which assessment shall be immediately due and payable upon delivery of notice of such assessment to the owner. All or any portion of the foregoing rights of the Community Council may be delegated to the Ranch Association pursuant to Section 6.10 of the Council Declaration (provided that any Specific Assessment levied by the Ranch Association in accordance with this paragraph shall be levied pursuant to the Ranch Declaration).

DC Ranch CC&R's:

- Section 1.3: Community Council approval needed only after Declarant is out of the picture.
- Section 19.1: Declarant may unilaterally amend, provided no material adverse effect upon any Owner.
- **Section 19.2: Members may amend, with affirmative votes of 75% of Members, and that of Declarant.**

Either way, Declarant approval needed (but not Community Council).

Ranch CC&R, Article I - Ranch Governing Documents, Section 1.3:

Nothing in this Section shall preclude Recording a Supplemental Declaration or other instrument applicable to any portion of the Ranch containing additional restrictions or more restrictive provisions. However, any Person who seeks to Record any instrument applicable to the Ranch **must obtain Declarant's written consent so long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration and that of the Community Council thereafter.** Any attempted Recordation without such consent shall result in the instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant, so long as Declarant owns any property described in Exhibit "A" or Exhibit "B," and the Community Council thereafter. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood.

Ranch CC&R, Article XIX Amendment of Declaration.

19.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose.**So long as Declarant owns property described in Exhibit "A" or "B" for development as part of the Ranch, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.**

19.2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of **Voting Members representing 75% of the total Class "A" votes in the Association**, including 75% of the Class "A" votes held by Members other than Declarant, **and the consent of Declarant**, so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1. In addition, the approval requirements set forth in Article XV shall be met if applicable.