

## LLHOA Concerns Regarding ACC Actions September 13, 2021

Notable instances of arbitrary rule enforcement:

- 2018 road built between 423 San Juan and 1458 Loma Linda Dr.
  - No approval from ACC
  - >20 foot grade change
  - Slope exceeds County specs for driveways
  - Spouse of ACC Chair encouraged this road building project by supplying road building information to the resident.
- Variances:
  - More variances have been issued in the past 3 years than in the previous 20 years
  - Within 24 hours of appointing 2 new ACC members, an emergency meeting was called in April 2021 to issue a variance for one of the new members.
    - Reason for variance: topography
    - The swift calling of this meeting and undocumented reports that the lot owner stated that a variance was needed because the owner refused to remove any trees on the property, has caused some residents to question ACC behavior.
- Antagonistic attitude towards the Board
  - On July 6, 2021, Jo Myatt sent a letter, signed by the other four ACC members plus two other lot owners, encouraging them to cease following the Approved Policy on Amendment proposals and to instead follow a different procedure of their own choosing. The Board members were given a deadline to respond.
  - While this action is not a direct violation of any laws or Covenants, it is suspicious and confrontational when the Committee tasked with enforcing the rules is actively advocating the Board to not follow its own rules.
- Complaints: *Note: The Board has received 5 written complaints in the past 6 years. 4 have been about ACC behavior.*
  - The Board received a written complaint on May 12, 2021, regarding fence placement. As outlined in the Procedures, the Board directed the ACC to investigate and provide the Board with details. The ACC member with the fence in question said that 3 surveys had been conducted and the fence was in the proper location. The member refused to allow the Board to inspect the latest survey. At the June 2021 ACC meeting, it was announced that the matter was closed. The Board was not consulted prior to that decision.

- The Board has received 4 written complaints in the past 2 months regarding ACC behavior at meetings. The following items were brought up
  - Rude and confrontational behavior of Committee members, in particular Annie Pack and Jo Myatt
  - Meeting minutes that do not reflect what occurred
    - July 5, the committee voted to provisionally approve two horse shelters. The minutes say that the structures and number of horses allowed were rejected.
      - There was no request regarding number of horses.
      - The committee asked how many horses the prospective buyer owned. He said he had three and was buying two lots, allowing 2 horses per lot.
      - The Committee chair told him that would not be allowed. Committee members agreed while shouting and talking over each other.
      - The Board president was on the meeting and stated that the Board had previously ruled that two horses were allowed per lot and that the owners could move them back and forth for pasture management and that they did not have to spend all their time on each lot respectively. The President reminded Jo Myatt that he had informed her of this decision previously.
      - Jo refused to follow the directive of the Board with the result that the prospective buyer backed out of a cash deal that was under contract to purchase two lots. The deal was worth approximately \$1M.
      - The committee voted on the barn structures after the contracted buyer said he was done. The structures were approved (Contrary to the Minutes).
    - July 5, Bill Trimarco and Lisa Jensen applied for a revision to the breezeway connecting two sheds and a time extension to complete it. One of the committee members went on a tirade over the request. The time extension was not an issue. Changing the connecting breezeway to a height 8" lower than the original request took a half hour of heated debate.
      - It was noted that it has been easier for some residents to obtain 30 foot variances than for this 8 inch revision.

- Observers at the meeting commented that the process appeared to be a witch hunt against Trimarco and Jensen.
- Nancy Dorenkott of the ACC has hired an attorney who has accused the Board of numerous infractions of Colorado Statutes.
  - The attorneys for the LLHOA have verified that the Board has followed all procedures according to statute and to the HOA Bylaws.
  - Repeated actions by the Dorenkott's attorney, one of which was in violation of attorney ethics procedures, have been causing expense and harassment of the Board.
- Weed violation warning letters were sent out to 51 residents by the ACC.
  - Some people who received letters only had a few weeds.
  - Most of the people on the County list to be sprayed were sent letters.
  - Certain people who have infestations were not cited.
  - The letters did not follow proper procedures to inform the residents of their right to appeal
  - One irate resident came to the Board President's home threatening a \$300K lawsuit based on arbitrary rule enforcement.
  - Resident comments have questioned the threatening tone of the letter.

#### Responses

- The Board called two Executive Sessions in August to address legal opinions regarding various concerns.
  - The decision was made to remove Annie Pack from the ACC.
  - The Board chose to warn Jo Myatt about the gravity of the actions of the ACC.
    - The confrontational behavior and misleading statements have continued.
    - Jo Myatt prepared 2<sup>nd</sup> weed violation notices for 13 residents. The letters contained false and misleading statements and were not sent out by the Board because of this.
    - The ACC has continued to operate without regard to the approved procedures.
      - Less than 30 day comment periods for rule proposals
      - Establishing ACC rules in ways that would effectively act as changes to the CC&R's regarding structures.
    - ACC minutes are not reliably accurate descriptions of what occurs at meetings.

- At the August ACC meeting, it was stated that the Committee intends to expand its duties beyond what is listed in the governing documents.
  
- **The ACC Committee has repeatedly overstepped their authority and acted without regard to Board decisions and directives. The minutes of their meetings cannot be relied upon for accuracy.**
- **The actions listed above have placed the Association in legal jeopardy. To date, we are not sure if any suits will be filed. The one regarding the contracted property could easily result in a lawsuit that would exceed our liability coverage. If one or both of those suits are filed, the Association would have difficulty obtaining Directors and Officers insurance in the future.**
- **Our attorney has advised us that we are well within our rights to remove any of the ACC members from their positions if they are confrontational or cannot work cooperatively with the Board that appointed them.**
- **Our insurance agent has advised that we should take action and document what measures we have used to keep the Association out of these types of situations.**
- **Because of the above mentioned confrontational, arbitrary actions and failure to follow procedures and Board directives, it is the Board's fiduciary responsibility to take action to ensure that these situations do not occur in the future. Failure to do so could be construed as negligence on the part of the Board.**