

MICHIGAN HILL OWNERS ASSOCIATION NEWSLETTER

March, 2004



SPECIAL FROM THE BOARD:

A great deal of this Newsletter is devoted to reporting to you on the results of the Baker lawsuit. This is a matter of urgent concern to everyone. The Board is providing you this background and a status report of what is happening so that the matter can be fully discussed before and at this year's annual meeting on August 28, 2004.

Background: The lawsuit initially was brought by the Board in 2002 against homeowners who had erected a metal quonset hut style garage without prior approval from the ACC. When confronted during the process the owners refused to stop. The ACC and the Board at that time all agreed that the particular building would not have been approved if advance approval had been sought, because it did not fulfill the requirements of the Covenants. By ignoring the process, the owners got a head start and had the building up before action could be taken. The circumstances of that situation were deemed to be sufficiently serious that action was required. Therefore, the Board filed a lawsuit and asked the court to have the building removed – a remedy specifically provided for in our Covenants.

The case initially was filed in County Court, which usually provides for a faster and less complex forum and consequently less expense in the form of attorneys fees. The defendants brought counterclaims for breach of fiduciary duty, and also asked the Court to find that the Covenants were invalid. The Court ultimately rejected those counterclaims, but by bringing them the defendants managed to move the case to District Court, effectively foreclosing the possibility of a prompt and less expensive resolution.

After at least three trial dates were rescheduled, the case finally came to trial in October of 2003. However, it didn't finish on that day, and ultimately Judge Plotz did not hear closing arguments until December, 9, 2003, at which point he took the matter under advisement. His order issued on January 13, 2004. The full text of the order is available on the MHOA website at <http://www.coloradoalpine.com/MHOA/frames.htm>.

The Ruling: There are two sections to the order. In the first section, the Court found that (a) our covenants are enforceable, (b) the ACC was validly formed, and (c) the requirement in the Covenants that an application must be submitted to the ACC for approval before construction is also valid. In this first section, the Court found that Mr. Baker violated the covenants by failing to comply with the ACC application requirements. However, despite these findings, the Court did not agree with the remedy we sought, which was removal of the building. Instead, in the second part of its order, the Court expressed concern that the covenants as applied to the quonset hut in this case were unclear and ambiguous, and thus it would not be equitable to force its removal.

The Board and the ACC met to consider whether an appeal should be taken, since the opinion left the Association in a Catch 22 -- the Covenants were valid, the ACC could require applications to be submitted in advance, but the Court would not enforce the building restrictions because that part of the Covenants was in his opinion ambiguous. After consideration, the Board and the ACC decided that the best course of action was to end the lawsuit and not appeal. The Bakers' garage will stay, at great cost to them and the entire Association.

The issue now is where do we go from here. As you know, at the last annual meeting the overwhelming majority of those present voted in Board members and four new ACC members with a mandate to enforce the Covenants. Therefore it is our charge as elected officers to do so. We are committed to this effort. The Board and the ACC decided to address the Court's specific concern by adopting clear Guidelines setting forth building restrictions consistent with our Covenants, which will apply prospectively to new construction. Our purpose is to be certain that our Association is protected and the ACC has the tools it needs to function, so that the Baker situation will not be repeated before the entire membership can address the scope of the new Guidelines at the next meeting of the membership.

New Guidelines: The Board and the ACC met on January

21, 2004, to consider and draft proposed guidelines for building on the Hill. During that meeting, we looked at a set of 1983 guidelines which we discovered in some old Association records during the Baker case. They had apparently been forgotten over the years, as no one seemed to be aware of them. The Board and the ACC used these previous guidelines as a basis in drafting new ones. A draft was circulated and revised, and the Board and the ACC met again on February 21, 2004. In that meeting, the Board adopted a Resolution amending the Bylaws as follows:

The Board shall, from time to time, create and revise Design Regulations and Guidelines (the "Guidelines"). The Guidelines shall be consistent with the provisions of the Declaration of Covenants. The Guidelines shall be used by the Board and the ACC in evaluating all owner applications for approval of structures as required by the Covenants. A copy of the current approved Guidelines shall be recorded in the records of the Park County Clerk and Recorder's Office as Exhibit A to these Bylaws.

After adopting the Resolution, the Board then approved and adopted the proposed Guidelines. A copy of the new Guidelines is included in this Newsletter. They have also been recorded at the Park County Clerk and Recorder's Office as Exhibit A to the Amended Bylaws.

The Board and the ACC wrote these Guidelines to try to implement the concepts found in the Covenants, which are that construction on the Hill be held to some basic standards to maintain the attractiveness of our community and enhance property values. We recognize that these Guidelines will please some people but not everyone. The same is true of our Covenants. It is impossible to make rules that please 100% of the people. Our goal has been to try to please the majority based on what we have heard from the membership to date.

Your Involvement: The Board has used its authority to amend the ByLaws and adopt Guidelines to provide our Association with protection between now and the next annual meeting. The amended Bylaws and the Guidelines adopted by the Board are effective as of February 21, 2004. However, all Bylaw amendments must also be ratified by a majority of the members at the next annual meeting. The Board and the ACC want to encourage all the members to become involved and to provide input on the Guidelines adopted February 21, 2004. The Board and ACC intend to host several focus group meetings for members between now and August to get your feedback and suggestions. If it appears that a majority of the people want to add or change these Guidelines in a manner which remains consistent with

the Covenants, then those changes can be addressed at the Annual Meeting. The bottom line however is that the Guidelines must be consistent with the Covenants. We cannot indirectly modify the Covenants by adopting inconsistent Guidelines. By holding meetings before the next Annual Meeting on August 28, 2004, we hope we can focus the issues and identify the problems, if any, so that our Annual Meeting can be conducted in a businesslike fashion. We would like to have at least two meetings in the Denver area and two on the Hill. If you are willing to host a meeting at your home, please contact Michaela Zisk at (719) 836-0296.

So please, take a moment to read the new Guidelines and think about what is best for our community as a whole. If you want to review the Covenants, remember they are available on-line at our website at <http://www.coloradoalpine.com/MHOA/frames.htm>.

ACC

John Willers is the current Chairman of the ACC. John's telephone is (719-836-2621).

As always, all proposed construction must be reviewed by the MHOA Architectural Control Committee (ACC) and approved by the Board of Directors (MHOA

Covenants – Article 2 C). Plans and specifications must be submitted in writing to the ACC with sufficient time for review and approval – usually 30 days or less. The Board and the ACC will continue to use the attached form for applications for approval of proposed building plans. All applications will be reviewed by the ACC to be sure they comply with our Guidelines. Prior to beginning your construction activity, you must complete and submit the attached form.

ROADS

There have been some questions about how often the roads on the Hill are plowed. The Association has operated for many years under a contract which called for the roads to be plowed on the weekends. About five or six years ago, when it became obvious that there were many more full-time residents, the Association revised the contract to provide for weekday plowing of the major roads (Michigan Hill Road, Georgia Pass Lookout, and Glacier Peak Road) when needed. For now, if you are not on one of these roads, you may need to take responsibility for getting from your property to the nearest plowed road. The Board can foresee that we sooner or later we will need to expand our plowing to all roads as new homes are added. We will be discussing this issue at the next annual meeting and look forward to your input, as expansion of this service would in all probability require an increase in our dues.

FISHING POND

Get out your poles, we are on the list to get fish this year for our pond. We will try to get them delivered as soon as the weather and access to the pond make it possible.



ANNUAL MHOA CLEAN-UP DAY

The annual MHOA clean-up day is still planned for Memorial Day Weekend, 2004. A large dumpster will be provided near the pump on Michigan Hill Road. This dumpster is for Michigan Hill residents ONLY. If you have means of hauling trash to the dumpster or slash to the burn pit and wish to help out a neighbor, please meet at the dumpster on Saturday, May 29 at 10a.m. Residents who require help should also meet at the dumpster at the same time.

TREES, TREES, TREES!

As some of you may have noticed, trees are growing abundantly in the 10-foot easements along the Michigan Hill roads. The trees can cause a visual hazard for drivers and do interfere with the road grading. Therefore we are going to try to cut or remove as many as possible this year. Before then, any resident who would like to transplant some of these trees from their easement to another location before they are removed from the 10-foot easements are welcome to do so. If you would like to take trees from another person's easement, be sure to get their permission first. In addition, we are looking for contractors who would be willing to dig up trees for a fee payable to the Association. If you know of someone who might be interested in some trees, please have them contact Bob White at (719) 836-2180. The 10-foot easement begins at the edge of the road and runs to property lines. Please respect your neighbors' property and do not dig without permission or beyond this 10-foot range.

MHOA CONTACT INFORMATION

Board Members:

Susan Hargleroad (303) 839-1204 (work)
Blenda Crawford (303) 798-3830 (home)
and (303) 458-1820 (work)
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Michaela Zisk (719) 836-0296 (home)
Bob White (719) 836-2180 (home)

ACC Members:

John Willers (719) 836-2621
Tom Clinton (719) 836-2948
Ron Hunt (719) 836-7122
Ken Plattner (303) 663-5780

Committees:

Stacy Wiley (719) 836-1403 (Picnic/Rec)
Kathy Willers (719) 836-2621
Tom Clinton (719) 836-2948

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**MICHIGAN HILL
DESIGN REGULATIONS AND GUIDELINES
EFFECTIVE FEBRUARY 21, 2004**

A. OBJECTIVES OF DESIGN REGULATIONS AND GUIDELINES

These design regulations are intended to create guidelines to preserve the natural beauty of Michigan Hill and its setting, to maintain Michigan Hill as a pleasant and desirable environment, to establish and to promote a conscious quality of design for the community and to protect and to promote property values and encourage good fire mitigation practices. These regulations are not intended to make the construction of structures difficult, complicated or expensive, but to require owners and builders to draw upon their common sense to design a structure which is consistent with the Covenants and best meets their particular requirements. All construction within Michigan Hill shall be reviewed by the Architectural Control Committee ("ACC"), which shall use these regulations and guidelines to assure that the appearance of all construction conforms to the standards required by the Covenants. The ACC will use these regulations and guidelines to implement the requirements of the Covenants in a manner which provides direction while allowing for individual creativity and variety consistent with the natural environment, with the goal of assuring an interesting and pleasing residential mountain community.

B. DESIGN THEME

The major design themes for Michigan Hill require the following: (1) structures must be residential, not agricultural, industrial or commercial; (2) structures should have a rustic, rural, western mountain character; (3) buildings must be located on the lot in a way which complements the natural landscape; and (4) the overall plan and landscaping should blend into the natural setting to the greatest extent possible.

C. SITE LOCATION

When determining the location of buildings upon their sites, the character of each individual site should play a large part in shaping the building's style and orientation, while also taking into account adjacent building sites and views.

D. ARCHITECTURE

Because of Michigan Hill's remote and beautiful setting, it seems that the true essence of the character of the community should be one of solitude and quietness, where one can get away to a more relaxed atmosphere to enjoy nature without distraction. Environmental quality is a valuable amenity. Architectural styles should be consistent with the goal of preserving and enhancing solitude and quiet, while maximizing the privacy of all owners.

The materials used in the individual homes should be appropriate to the individual building design and also have a very close association to each individual lot's topography and vegetation. Flat open sites with little or no trees should have buildings with a close connection to the ground. They should not hover over the ground on stilts as may be done on steep or wooded sites. Colors and materials used in the buildings should be very natural and take from examples that can be seen in the native landscape. Exterior walls and trim must be constructed or finished with ruff cut lumber, natural logs or log siding, stone or stucco. Earth colors are required. If metal roofing is used, it should be painted earth tones in shades of green, brown, dark red, or blue. Other types of roof materials should also be earth colored. In general the emphasis of the architectural style should be that

of a rustic, textured feeling which from a distance blends in with the general natural landscape.

Outbuildings, such as garages, workshops, and storage sheds, must comply with these same standards and must be proportionate in size to the size of the residence. Small, prefabricated storage sheds not designed to withstand the snow and wind loads frequently encountered on the Hill are not allowed.

E. LANDSCAPING AND DRIVEWAYS

Landscaping is another important consideration when building upon the lots of Michigan Hill. The general philosophy should be to try to maintain the natural topography of the land and native vegetation as much as possible.

When grading for roads and driveways, the slope of the land should be an important factor in determining their layout. Roads should run perpendicular to the direction of the slope as much as possible to limit erosion on steep hills which are hard to maneuver in bad weather. Roads which curve around natural elements are more pleasing and are also not as noticeable.

Fences are an important landscape element. Perimeter or boundary fences enclosing entire lots are not allowed. Fences for household pet enclosures and fences to mark driveways are allowed. Allowed fences shall be constructed of natural materials such as wood and should have a rustic western mountain flavor. In addition, household pet enclosures may use wire as needed to contain the pet(s), but the use of wire should be as minimal as possible. Split-rail or buck-rail logs are examples of acceptable materials for allowed fences. Stockade fences and fences built of steel T posts and wire are not allowed. Fences should be placed in a manner which minimizes interference with the free access of wildlife across the Hill.

When clearing the land for drives and structures, owners are encouraged to comply with current fire mitigation techniques and practices. Any new vegetation which may be planted must be capable of sustaining life without irrigation. State law precludes the use of well-water for outside irrigation. Violations of these laws can impact and endanger the validity of all well permits on the Hill.

F. ALTERNATIVE ENERGY SOURCES

Structures designed to provide alternative energy sources must also be approved by the ACC. All such structures must be sized appropriately and located in an inconspicuous place considering the individual lot and the structures on it.

G. USE OF DESIGN REGULATIONS

Each individual building project upon Michigan Hill will have to be reviewed in the context of its own particular topography. The purpose of these design regulations is to provide general direction and clarification of the requirements set forth in the Declaration of Covenants.

When preparing a building application, owners must provide copies of building plans or drawings, adequate site plans, floor plans, and elevations. The application should also address the location of the building, important architectural features, landscaping, and alternative energy structures if any. The ACC and the Board have developed application forms which specify what is required. All applications must be submitted using the forms developed by the ACC and the Board.



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