



JULY 2004

NEWSLETTER

Discovery Bay Property Owners' Association, Inc.

P. O. Box 1977 • Discovery Bay, CA 94514

(925) 634-7585 • (925) 634-5532 Fax • Web site: www.discoverybay-ca.com

President

Bob Lyman

513-1939

Term Expires 2005

•
Vice President

Craig Klooster

634-4755

Term Expires 2004

•
Secretary/Treasurer

Bonnie Morford

634-9229

Term Expires 2004

•
Membership Chairman

Kelly Hammett

(408) 872-0722

Term Expires 2005

•
Welcome Wagon Chairman

Susan Marie Denkhau

634-9045

Term Expires 2005

•
Jeanette Brandt

516-7500

Term Expires 2005

•
Joe Minarik

240-0999

Term Expires 2004

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DERC MEMBERS:

John Ross, Chairman

Paul Amthauer

Ward Messersmith

Marston Myers

Sandee Visintin

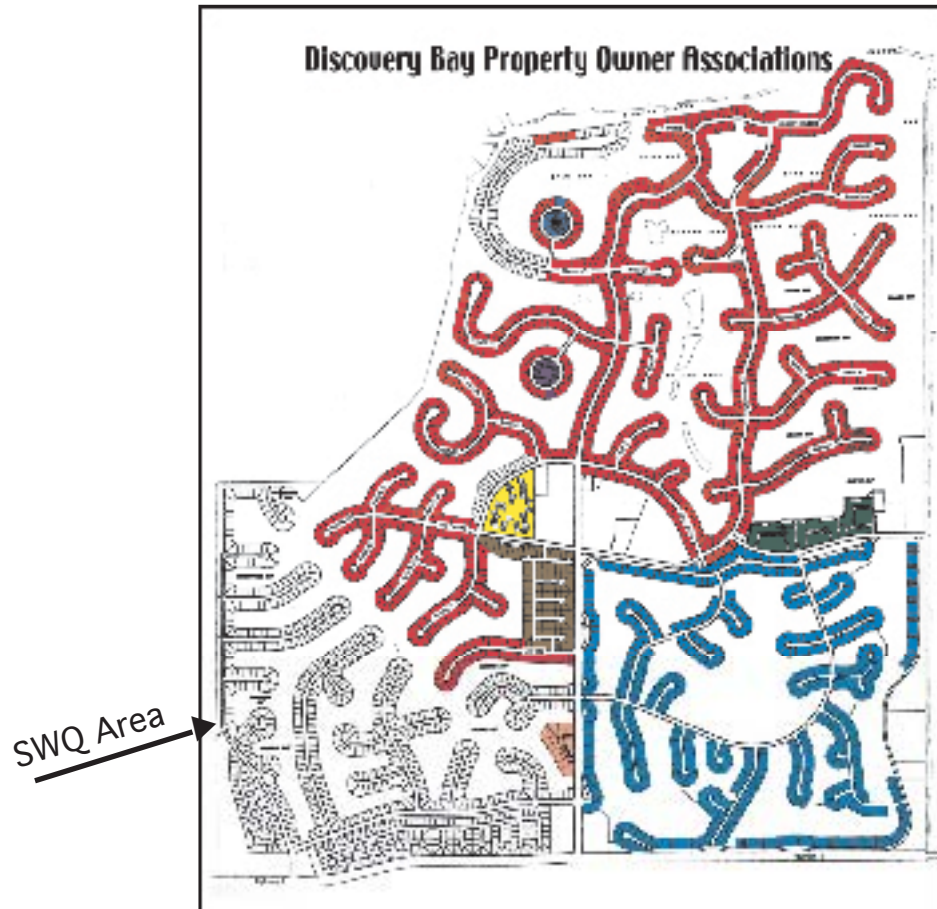
◆ ◆ ◆
Contract Secretary

Vicki Laganowsky

Compliance Inspector

Dale Welin

SOUTHWEST QUADRANT Special Report



All eight Associations including DBPOA.

The Board is looking for your input. Enclosed in this Newsletter is an opinion poll requesting you to indicate your support or objection to allowing the inclusion of the above shown Southwest Quadrant (SWQ) area into the DBPOA. We ask you to study the information in this Newsletter and mail in your opinion poll with comments.

The Board and DERC held a study session on the issue and invited comments from three DBPOA members and three SWQ property owners who had shown an interest in the process. The input was mostly positive but some points of concern were raised.

The information on page two covers the pros and cons of the annexation from the perspective of current members of the Association.

Southwest Quadrant (SWQ) Information

As many of you know, the DBPOA Board of Directors and DERC have been approached and have been in discussion with both homeowners and The Hofmann Company regarding inclusion of the remaining tracts surrounding Discovery Bay proper, generally known as the Southwest Quadrant (SWQ). Benefits have been advanced and concerns have been raised. The following information is meant to cover these issues as you are asked to respond on the enclosed opinion poll.

The addition of the SWQ would increase the size of the DBPOA by 800 homes. These homes are located starting on Spinnaker Way and proceeding clockwise on a map down Clipper/Cove/Newport and all lateral streets and ending on Newport Lane. Residents in these areas currently have CC&Rs but lack an effective manner of enforcement. Many of these residents have a concern about RV parking, protracted building/re-modeling, a few poorly maintained properties and various traffic and safety issues. Most of these concerns are covered in the DBPOA's Governing Documents (Rules, Guidelines and Enforcement Procedures). All of these issues impact property values and quality of life, which are the primary reasons for the existence of the DBPOA. Let's review some of the benefits.

1) The existing DBPOA members would gain economic depth as well as increased stature as the combined 2,400 households would represent the vast majority of Discovery Bay residents and our combined voice could add stability and structure to any future changes in Discovery Bay i.e.: Sheriff, Fire, cityhood, etc.

2) The new SWQ members would "buy into" the existing structure at the proposed \$40.00 per household adding \$32,000.00 to our existing funds, plus approximately \$8,000.00 to \$10,000.00 per year in transfer fees on resale homes based on a 6 to 10 percent turnover.

3) As the larger DBPOA is active in most of Discovery Bay with a single standard, Discovery Bay will become more homogenous and be maintained with more uniformity, thus maintaining our quality of life and property values throughout the community.

4) The residents of the SWQ would gain access to the existing enforcement structure without having to reinvent the wheel and gain the same benefits the current DBPOA members gain from the merging.

Now let's look at some of the concerns which have been raised.

1) Dilution of existing members voting power.

a. While it is true that our new members will also have a vote in the governance of the community increasing the members represented by each Board member, they have the same concerns and problems as our current membership. Their CC&Rs have been made to conform with ours (with few and very minor exceptions). Also, if one looks at most other quasi-public boards they all serve many more constituents than 2,400.

b. The homes in these areas tend to be newer and the owners have just as much or more at stake in maintaining their properties and causing the value to increase as our existing members.

2) The DERC will not be able to keep up with the increased workload.

a. It is proposed that a new DERC be formed from the new members of the SWQ. The SWQ DERC will simply mirror our existing systems and structures relying on the efforts of an increased staff and/or staff time to complete the business of the SWQ DERC. It is far more cost effective to scale an existing system which is working well than to start from scratch. Our existing team will simply scale up to meet our new workload.

3) The merger/annexation will generate legal action against the existing DBPOA.

a. Please direct your attention to the article on page 4. The Superior Court of the State of California found in favor of the DBPOA against all challenges and claims against it.

b. Remember that the SWQ must vote to be included in our Association and the DBPOA Board of Directors which represent the existing membership must vote to accept the SWQ.

c. The SWQ already has a full set of CC&Rs regulating building, maintenance, etc. Court action is currently the only remedy the SWQ members have to enforce the standards on recalcitrant neighbors.

4) There is no "common community" because the street entry to each area is different.

a. The opposing view is that we are all essentially an "on the water community" and this clearly ties the areas together.

5) The existing membership will not get to "Vote" on the inclusion of the SWQ.

a. The existing membership IS NOW being asked for their opinion of the merger. A

formal "VOTE" is time consuming and expensive. Clearly if the overwhelming majority is against the merger, your Board will take that into consideration when they decide the matter.

b. Our Association is a Republic form of governance, just as is our Country. We elect leaders who in turn make the decisions in our stead and in our best interest after gathering all the available information. When Hawaii became a State, it was the Hawaiians who voted to join the United States and then were accepted by our elected officials. The population of the existing United States was not asked to vote on Hawaii's inclusion as our 50th state.

6) What are the benefits to the Developer, The Hofmann Company who is paying to rewrite the CC&Rs and other costs associated with the merging?

a. The developer has completed all development in the SWQ tracts and has the authority to assign the declarant responsibility to DBPOA if the DBPOA will accept them. Being a current developer in the Discovery Bay West area gives them an incentive to do what they feel would help maintain the overall Discovery Bay quality of life, but other than that they have no direct benefit.

Summary

Your Board of Directors and DERC is very interested and involved with gathering all the necessary information in order to make the best decision regarding the SWQ for all of Discovery Bay. In any action such as this there are going to be positives and negatives and they must be weighed. Obviously each of us will weigh them in a slightly different manner, but that is the input we are looking for.

Does the long-term effort to improve overall CC&R compliance for a significant portion of Discovery Bay offset the potential problems created by the SWQ joining the DBPOA?

Please let us know by returning the enclosed opinion poll in the next week, with your position as to support or opposition including any comments. They will be addressed in total and only then will YOUR Board move forward.

Home Pride Appreciation Award for June

Larrie and Laurene Turner 1454 Marlin Place



Larrie and Laurene Turner have been at 1454 Marlin Place for 13 years. Larrie is in the pest control business and works for Genesis Building Services in San Mateo and works out of their home. Laurene commutes to Pleasanton each workday and works for Market Smart (a sales and marketing company).

They have been married for 32 years and have four children and five grandchildren, all living in the Bay Area.

Laurene gives credit to Larrie for the effort to maintain the front yard landscaping, however, both work at it and take great pride in their efforts.

From DBPOA, congratulations to the TURNERS.

CALENDAR

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|----------|--|
| Aug. 29 | Deadline to Apply for Candidacy on Board of Directors |
| Aug. 31 | Candidates Night, 7:30 p.m. |
| Sept. 28 | Annual Meeting, 7:00 p.m.
Board Election Results
Announced |

Board of Directors meetings are held the first Tuesday of each month at 7:00 p.m.

D.E.R.C. meetings are held the second and fourth Monday of each month at 8:00 p.m.

Above meetings are held at the Delta Community Presbyterian Church (1900 Willow Lake Road) in Discovery Bay.

5560 Starboard Drive



The proud winners of the DBPOA Home Pride Award for July are Chris and Joyce Provencher at 5560 Starboard Drive.

Chris is a self-employed tax accountant/financial planner working out of their home and Joyce is a Real Estate agent for Alain Pinel. They are the proud owners of three dogs and are very active boaters, belonging to the Yacht Club. Chris and Joyce spend many days cruising to the San Francisco Bay Area and McCovery Cove each year.

About a year ago, a commercial landscaper friend planned a revision for the front yard landscaping. Work began about 6-9 months ago and continues. Chris' mother is a "green thumb" when she visits the property. Chris is continuously on "weed patrol" - there are no weeds!

There are two unique things that the Provenchers offered during my visit to their home. Chris bought the house in July 86, their first date was in July 90 and the proposal for marriage was in July 92. 22 is an important lucky number to them for a variety of reasons. With regard to the landscaping, the landscaper ended up planting 22 palm trees, which is their lucky number.

Congratulations to Chris and Joyce and you may want to drive by their house in the evening to check out the exterior lighting. NICE JOB.

2002 against the Discovery Bay Property Owners' Association, Contra Costa County Superior Court Case No. CO2-O3118. In their lawsuit, the Meyners contended that the Association's CC&Rs were invalid, they were not required to pay the Association dues, and that the Association did not have the authority to record liens on properties for unpaid dues. In short, Judge Terrence Bruiniers and Judge David Flinn, after a Motion for Summary Adjudication as well as a trial on the matter, found in favor of the Association and against the Meyners. The court found that the Association was the prevailing party and awarded the Association their costs.

The court found that the individual property owners are automatically members of the Association as long as they own the property. The individual members cannot simply "quit" the Association. The court also found that the Association may assess its members to cover reasonable administrative expenses and that the CC&Rs provide that the Association may lien the property for unpaid dues. The Court further held that any amendment or changes to the current CC&Rs require approval of a majority of all the owners of Discovery Bay Property Owners' Association.

In the end, the court declared that the Meyners are members of the Association as long as they own property within the DBPOA, that they are required to pay their dues, that the CC&Rs are valid and enforceable, and that the Association is entitled to recover its costs in defending the lawsuit.

Reference: Case No. CO2-O3118 - Order on Motion for Summary Judgment (filed February 11, 2004)
Statement of Decision following Trial (filed May 13, 2004)
- Superior Court, County of Contra Costa

Superior Court Lawsuit Filed by a Property Owner v. DBPOA

Summary Statement by DBPOA Attorney
Gustave and Miriam Meyner filed a lawsuit in



Three Positions on Board of Directors

Three terms of office will expire on September 30. The three seats on the Board are currently occupied by Craig Klooster, Joe Minarik and Bonnie Morford.

Members interested in serving two-year terms beginning October 1 on the Board of Directors are encouraged to make their interest known by writing or faxing a statement of qualifications not to exceed 70 words to the Chairman of the Election Committee at the Association's office by **August 29**.

Here is your opportunity to get involved with the Association's activities. For more details call (925) 634-7585 and leave a message.



CC&R VIOLATION COMPLAINT FORM

Clip and Mail to: D.B.P.O.A., P. O. Box 1977, Discovery Bay, CA 94514.

Address of alleged violation: _____

Describe alleged violation: _____

The Association's Compliance Investigator will investigate this complaint. If the complaint is valid, the owner of the property will receive either a Notice of Immediate Enforcement or an Initial Notice and the complaint will proceed through the Enforcement Procedures until compliance with the CC&Rs is achieved. We accept anonymous complaints but do prefer a signature and/or telephone contact number in case there are questions regarding the complaint.

Signature* _____

Before Removal Get DERC Approval

Before you remove any of your landscaping, especially lawn areas next to the driveway, with the intent of replacing it with a concrete pad or walkway, it is necessary to get the approval of the Design and Environmental Review Committee (DERC).

Replacing living plant material with concrete is usually done to either (1) make the area low maintenance, or (2) provide an additional parking place.

The Covenants, Conditions and Restrictions (CC&Rs) of the Property Owners' Association are quite clear: A maximum amount of plants, shrubs, and lawn are desired to maintain the attractiveness of the community, and a minimum amount of concrete slabs and vehicles. The DERC understands many owners desire for a low maintenance landscaping, but there are a number of more attractive ways to achieve that goal than paving everything over with concrete. Vehicle parking is generally restricted to the driveways and, of course, to the garage - providing there is any space left over after storing the Christmas decorations, lawn furniture, camping gear, and all that "stuff" that is rarely used but just might be needed some day!

The DERC will do it's best to work with any owner who is thinking about adding more concrete to the front yard - but a sketch showing the dimensions of the proposed slab on a plot plan must be submitted for approval **BEFORE THE REMOVAL BEGINS**.

For details on just how to file the proposal with DERC, leave a message on their answering machine at 634-5598 and leave your phone number, e-mail address or mailing address, and someone will get back to you. Thanks for your help in this matter.

What's an Association-wide Inspection?

Based on some of the correspondence and comments received by the Design and Environmental Review Committee (DERC), there is considerable confusion, and some amount of frustration, with Association-wide inspections. Just what are they, and why are they conducted?

From time to time the DERC asks the Association's Compliance Inspector to conduct an on-site inspection of all 1,640 properties in the Association to determine the degree of compliance with one specific item of the Covenants,

Conditions and Restrictions (CC&Rs). Some of the more common inspections are concerned with parking (sometimes vehicles, sometimes trailers), the condition of the exterior of the houses, garbage cans, and landscaping.

One of the major benefits of these inspections is that a uniform standard is applied to everyone - no special exemptions, no discrimination, and no double standards. Furthermore, the DERC does not have to wait for a complaint before initiating an investigation of a potential violation of the CC&Rs.

Following the inspection, letters are sent to those Owners who were found to be out of compliance. They are asked to fix the problem in a reasonable period of time. A follow-up is made to see if those owners who were advised to make a correction have done so. If not, the next steps of the enforcement procedure are implemented.

Experience has shown that generally a small percentage of owners are out of compliance. In some cases it is because of a lack of understanding of the CC&Rs. Other times there are extenuating circumstances (illness or long trips for example) that have contributed to the property falling out of compliance. However, the DERC has found over the years that the vast majority of violations are easily and readily brought into compliance by cooperative owners.

Unfortunately, some owners elect not to be very prompt in remedying the problem to the detriment of the appearance of the Association, and to the frustration of those who have taken the time and effort to comply in a short period of time. The DERC makes an effort to bring everyone into compliance as soon as possible.

If you are the recipient of a notice saying you are out of compliance and there is any question in your mind as to the validity of the claim, or any question as to how to fix the problem, please contact the DERC'S Secretary, Vicki, at 634-5598. Be sure to leave a phone number or address where she can reach you!

The DERC'S Association-wide inspections are only one method used to help achieve the level of appearance that we are striving to have in the Association. By far and away, the best method is individual Owners taking pride in their properties and keeping the appearance and use in conformance with the CC&Rs. To the majority of you: KEEP UP THE GOOD WORK!!!!

Definite Violations of the CC&Rs

"Who do you expect to read all that stuff?"

It's a comment the Design and Environmental Review Committee (DERC) gets from time to time when they ask a Property Owner if he/she is familiar with a requirement of the Covenants, Conditions and Restrictions (CC&Rs) of the Association. The rules are without a doubt rather lengthy. When coupled with the additional requirements of the DERC Construction and Usage Standards it becomes pretty daunting reading.

In view of this situation, DERC has established a short list of violations of the CC&Rs labeled **Definite Violations**. These are violations that should be well known and understood by all Association members. They are readily identifiable and unmistakable when observed by the Compliance Inspector of the Association. All members are urged to familiarize themselves with the list. The goal is to help keep Discovery Bay an attractive place to live.

Definite Violations

(1) Any Boat - (a) Over six (6) feet high (excluding ski tower) stored on the property. (b) Stored over the landscaping or on the access drive to the side yard.

(2) Any type of Non-boat Trailer. May be temporarily parked up to 24 hours for loading and unloading.

(3) Recreational Vehicle (RV) over six (6) feet high. May be temporarily parked for up to 72 hours for provisioning and minor maintenance.

(4) Fences - (a) Over three (3) feet high in the front yard. (b) Over six (6) feet high in the side yard.

(5) Exterior House Color - Painted without approval from DERC.

(6) Concrete - Added to front yard without DERC approval.

(7) Vacant lot covered or partially covered with grass/weeds well over six (6) inches high.

(8) Landscaping - (a) Obviously not maintained (overgrown, weedy, unkempt) (b) Large unlandscaped or dead areas.

Treasurer's Report

For the period of 10/1/03 to 5/31/04:

Beginning Cash Balance

as of 7/30/03

\$61,138.08

Updated Enforcement Procedures

On July 6, 2004 the Association adopted new Enforcement Procedures for CC&R violations. A study committee made up of DERC and Board members spent the last six months developing the recommendations which were adopted at the last Board meeting. The new procedures have fewer steps and therefore require less time to implement than the former ones. However, any member that has been verified to be in violation is always given time to correct the matter without any penalty. A summary of the new procedures follows and included with this Newsletter is a complete copy of the procedures.

Two Procedures:

Under the new system there are two separate enforcement procedures. One, called Immediate Enforcement, is for readily identifiable, common, and well-known violations. The other one is called Progressive Enforcement and is applied in cases of minor, questionable or less common situations.

In both procedures the Compliance Inspector or DERC visually checks the property to confirm that a violation of the CC&Rs exists. If it does, the owner is sent a notice that states the violation and spells out the action required to remedy it. The next steps vary depending on whether Immediate or Progressive Enforcement is used.

Immediate Enforcement:

If the violation is readily identifiable (a Definite Violation), the owner receives a clearly dated Notice of Immediate Enforcement together with a CC&R Violation and Resolution form. The form is a convenient checklist of a number of options available to the owner. One, of course, is to fix the problem. The owner is given 30 days to do this, or as an option, explain some extenuating circumstances and ask for additional time. In order to encourage a full discussion of the matter between the owner and DERC, a Review Hearing is scheduled within the month following the Notice. Owner attendance at the Hearing is not required but it provides him/her with an easy way to discuss all the issues about the violation with the DERC.

If the owner does not correct the violation in 30 days, or contact the DERC, or attend the Review Hearing, fining begins 30 days following the first Notice.

A list of Definite Violations is maintained by the DERC, and published periodically in the Association Newsletter.

Progressive Enforcement:

In this procedure the owner receives an Initial Notice of Confirmed CC&R Violation as well as the checklist form CC&R Violation and Resolution. The owner is asked to correct the violation, return the checklist, or contact the DERC. If no contact is made within the first 15 days following the Notice, a member of the DERC, the Compliance Inspector or the Committee Secretary attempts to get in touch with the owner.

If the violation is not corrected or no contact is made in the 30-day period, then a Final Notice and Schedule of Formal Hearing letter is sent to the owner. The Hearing is held no sooner than 15 days after the Final Notice is sent. A full discussion of the violation and its remedy is conducted at the Hearing. The owner is not required to attend, but if the Hearing Panel confirms that the owner is in violation, then fining begins.

Hearing Panel:

The Hearing Panel function is an automatic part of the Progressive Enforcement procedure. It is empowered to declare the owner in compliance or out of compliance and assess a monthly fine.

The Panel can also be used by an owner under the Immediate Enforcement procedure. If the owner feels DERC has not properly assessed the situation and has commenced fining inappropriately he/she can submit a written request for a Formal Hearing. The Hearing Panel can over-ride the DERC decision to commence fining or confirm that fining is proper for the case at hand.

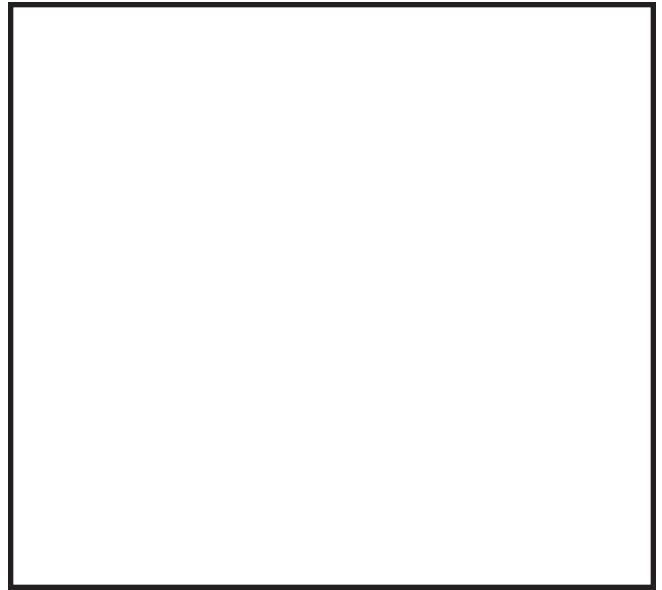
Appeal Procedure:

Within 30 days of the Hearing Panel decision an owner can appeal the verdict to the Association Board of Directors that sits as the Appeal Panel. This is the final course of action available to an owner who is dissatisfied with the results of the Formal Hearing Panel.



Meet New People

We are looking for a few members who would be interested in meeting and welcoming our new owners into the Association. If this would be something you might be willing to do, please call (925) 634-7585, leave a message and a Board member will call you to explain the details.



Discovery Bay Property Owners Association, Inc.
P.O. Box 1977
Discovery Bay, CA 94514

Address Correction Requested

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