

BOUNDARY/PERIMETER FENCE, FILING 1&2, DCV HOA

April 14, 2009, Board of Directors' Meeting Minutes excerpt:

“ACTION:*The committee (Boundary Fence committee) recommends: The Board acts to use existing Covenants and Policies/Procedures to encourage owners to repair boundary fences as deemed needed (by inspection of said fences by homeowner volunteers and/or Directors) which will bring these fences into uniformity with the other boundary fences which have been maintained by the owners to date. In addition, the Board of Directors will actively direct HOA resources to the mending of the stone pillars of these fences beginning as soon as bids are received and a contractor is chosen. Meanwhile, the committee will continue to work with the Directors to find a more permanent solution to this issue (such as an Amendment to the Declarations or Bylaws OR a Resolution for Policy, Procedures, etc.) Approval was by consensus.”

June 9, 2009, Board of Directors' Meeting Minutes excerpt:

4. **ACTION: BOUNDARY FENCE COMMITTEE:** The report was accepted by the Directors and it will be on record. The committee served its mission. Addendum 1

Addendum 1

Boundary Fence Committee Report

To: Dutch Creek Village HOA Board of Directors

Subject: HOA Fence Committee Report and Recommendations

The Fence Committee was formed to investigate the options for the maintenance of the Dutch Creek Village boundary fence (listed below) and submit recommendation to the HOA Board.

- Filing 1, Tracts A, D and G, Parallels S. Pierce St. and W. Coal Mine Ave
- Filing 2, Tract A, Parallels S. Pierce St.

Options considered were:

1. Dutch Creek Village HOA & Recreational Association assumes responsibility for the boundary fence maintenance, repair and replacement when needed.
2. Maintain the status quo and continue to encourage the individual homeowner to maintain the boundary fence to the original construction standard.
3. 50/50 cost split of the wooden portion of these boundary fences with the individual homeowner and the HOA as a whole for the boundary fence maintenance, repair and replacement when needed; HOA responsible for the stone pillar upkeep.

Background Information:

The boundary fence for Dutch Creek Village filing 1 was installed by the developer at the time of the initial development prior to the sale of the first home. It was implied by the builders and/or realtors during the sale of these first homes that the common property, including the fence was the responsibility of the HOA which the developer controlled at that time. None of the original owners of homes in Dutch Creek Village had the foresight to ask the developer for specific details on this common property or how it was to be maintained. It has been determined that the fence is not discussed in HOA Declarations nor is there any record of any subsequent discussion with the developer during the transfer of the control of the HOA to homeowner control.

The boundary fence has been considered the rear property boundary by the homeowners for the past 30 plus years. Most homeowners have acknowledged that they were receiving a significant benefit from this fence installed by the developer on or near their property line and were more than willing to maintain the fence for their benefit as well as the overall appearance of Dutch Creek Village. This un-written policy has served us well for most of this time. However, in the last few years the fence has deteriorated as a result of aging. The occasional replacement of a few pickets and a post has not in all cases been adequate to maintain the fence in an acceptable condition.

The continuing deterioration of the fence has resulted in lots of discussion by both the HOA Board and several of the homeowners. These discussions have at times pointed to the possibility that the HOA take responsibility for the boundary fence. This has created a condition where some homeowners may have been reluctant to make major repairs or replacement to the fence because of un-clear communications from the HOA Board regarding the Association's plan, if any, for the boundary fence maintenance and or replacement.

In 2004 the Cooks at 6356 S. Newland Ct. put together a plan to replace the entire fence for Filing 1, Tracts D & G. The plan would install a new 6 foot fence and was contingent upon getting all of the homeowners on the boundary to agree to pay for their share of the fence. The replacement cost was estimated at \$16 per foot plus an additional \$100.00 to extend each stone column. Although more than half of the homeowners agreed to this proposal, Nancy Cook could not get the required support from all of the homeowners, so the proposal was dropped. Several of the dissenting homeowners stated that they were maintaining their fence in an acceptable condition and did not want to spend money for a replacement fence just to obtain an additional foot of height that may provide some additional sound abatement. This proposal and the fact that the fence has been maintained by the individual homeowner for much of the life of the HOA is a clear indication that most of the homeowners accept at least some responsibility for the boundary fence maintenance

In September of 2007 a survey was conducted to determine the location of the boundary fence. The fence on S. Pierce Street north of Weaver is essentially on the property line while the section of the fence south of Weaver is anywhere from 16 inches to 22 inches east of the property line, placing this section of the fence clearly on the property at 6768 West Weaver Ave currently owned by the Barbees.

The fence on Coal Mine Ave. east of S. Marshall Court is between 21 inches and 28 inches south of the property line, placing this section clearly on the HOA controlled common property.

In 2008, the Cooks at 6356 S. Newland Ct. and the Leonards at 6366 S. Newland Ct., having reached a point where they could no longer tolerate the condition of the boundary fence bordering their property while the Association arrived at a fence policy, replaced the fence at their own expense. Being the good neighbors that they are, replaced the fence to essentially the same specifications as the original fence

During the early years of Dutch Creek Village the Architectural Control Committee (as part of the HOA Board) assumed responsibility for monitoring the exterior up-keep of the property in the subdivision. When a condition developed that did not meet the established guidelines of the covenants, the ACC would initiate communications with the homeowner to rectify the problem area.

Finding:

1. The major tenet of a good neighborhood homeowners' association is good communication between the association and the homeowners.

From the Dutch Creek HOA web page:

Communicating effectively with members and residents will do more to ensure the success of the board and the association than any resolution the board may pass or rule it enacts. For the Board to communicate effectively with the homeowner they must:

- a. *Communicate frequently, in varying settings and places, and in as many ways as possible.*
 - b. *Be positive, open, and direct.*
 - c. *Listen and be inclusive.*
2. The fact that the fence has been maintained by the majority of individual homeowners for the past thirty plus years and two of our neighbors have recently replaced their fence, a precedent has been set in the minds of most homeowners.
3. Most homeowners that share a portion of the boundary fence feel responsible for the fence and are willing to continue to maintain it for their own benefit and to a lesser extent, the overall appearance of Dutch Creek Village. While most of the homeowners seem to be willing to accept responsibility for the wood fence repair they are reluctant to accept responsibility for the repair of the stone columns.
4. An informal "strawman" survey of homeowners on the interior of Dutch Creek Village concerning the boundary fence yielded some mixed results. While most of the homeowners believe the fence is a reflection on the neighborhood, there was a mixed feeling about the responsibility for its maintenance. Some of the homeowners (many being original owners) feel strongly that the developer installed the fence as common property and should be maintained by the HOA. Another group feels that the individual homeowner that gets significant benefit from the fence should be responsible for its maintenance, but this maintenance should be consistent with the original construction. It is also fair to say that a large number of homeowners do not seem to care.

5. The location of the boundary fence on or near the property line of homeowners has raised several questions with regard to potential HOA assuming responsibility for the fence maintenance. Since the HOA does not have any legal documented ownership of the fence it may be impudent to assume we can enter homeowner's property to execute repair. Obtaining ownership and or right to maintain 100% of the boundary fence may represent a substantial legal cost and be very time-consuming for the HOA Board, with the strong possibility that there could always be enough dissenting members to prevent such a change.
6. Three concerned homeowners (and committee members) recently conducted a walk-down of the boundary fence to establish its general condition. They found that the section of fence behind 6352 S. Newland Ct. and 6376 S. Newland Ct. are in need of major repair and most likely replacement. The 6382 S. Newland Ct. fence is in need of major repair. The remainder of the fence is in decent shape considering the age, however all sections have some loose posts and should be repaired or replaced before major damage is done. All of the stone columns have numerous loose or missing stones. Most of the missing stones are lying on the ground in and around the column and could be used to repair the column.
7. The Dutch Creek Declaration of Covenants is clear on the roles and responsibilities in the event a homeowner fails to maintain his premises and/or the improvements thereon in a neat and attractive manner satisfactory to the Board of Directors of the Association. Resolution 005-06 provides the detail policy for the enforcement of covenants and rules and procedures for the notice of alleged violations, conduct of hearings and imposition of fines.

Conclusions:

Option 1 - Dutch Creek Village HOA assumes responsibility for the boundary fence maintenance, repair and replacement when needed.

Pros:

1. Ensures the long-term and consistent maintenance and appearance of the boundary fence.
2. Avoids the issue of enforcing individual homeowner maintenance and repair of the fence.

Cons:

1. Establishing legal ownership and obtaining easement rights to implement any required maintenance and or replacement will be expensive and time consuming and can't assure the outcome, anyway
2. Additional cost to the HOA for fence maintenance and or replacement and insurance.
3. Obtaining the majority of the homeowner's approval for the HOA to accept responsibility for the fence maintenance and or replacement.
4. Filing 3 homeowners may take exception to the HOA upkeep of those two fences yet none of their boundary fences.

For website filing with Policies, Resolutions, Procedures

Option 2 - Maintain the status quo and continue to encourage the individual homeowner to maintain the boundary fence to the original construction standard.

Pros:

1. The fence has been maintained by the individual homeowners for the past thirty plus years establishing a precedent.
2. May not require any changes to HOA existing policy or documents.
3. Issues involving access for maintenance is avoided.

Cons:

1. Enforcing the required maintenance and repair.
2. Inconsistencies with repair and or construction techniques and appearance will be an issue.
3. The stone columns may continue to deteriorate as well.

Option 3 – A combination of Option 1 & 2 with 50/50 shared costs of maintenance and or replacement of the wooden portion of the boundary fences with the lot owners and the HOA. The HOA maintains the stone pillars.

Pros:

1. Shares the cost since these fences may enhance the value of all homes within the community.
2. Decreases the overall cost to the HOA and to the individual homeowners as compared to the other two options.
3. The stone pillars are the feature that is different from other privacy fences within the community and were not an option to individual homeowners.

Cons:

1. Obtaining the majority of the homeowners' approval for the HOA to accept the financial responsibility for 50% of the fence maintenance and or replacement. (Declarations require an 80% quorum of owners with 67% of that voting affirmatively to accept an Amendment.)
2. Additional cost to the HOA for fence maintenance and or replacement and insurance (and potential for not getting insurance coverage with a shared responsibility agreement.)
3. Potential difficulties in working cooperatively with individual homeowners and collecting the 50% from such.
4. Could require specific agreements for maintenance and or replacement when fence is either deliberately or negligently damaged by the homeowners or their guests.

Recommendations for Maintenance of the Boundary Fence:

1. The HOA should accept responsibility for the maintenance of the boundary fence stone columns. The repair of the stone columns should start as soon as possible to clearly indicate the Board’s concern and show good faith on the part of the HOA to uphold its’ responsibility. This is a relative low expense.
2. The responsibility for the maintenance of the wood sections of the fence should remain with the individual homeowners.

Additional Comments:

The HOA Board of Directors should designate the Architectural Control Committee as the entity responsible for monitoring the exterior up-keep of all property within the subdivision, including the boundary fence

The and Board should address the immediate problem with the boundary fence by sending a well crafted, but polite letter to the property owners at 6352 S. Newland Ct., 6376 S. Newland Ct and 6382 S. Newland Ct. regarding the condition of the boundary fence on their border. This open, direct and positive dialog with these (and other) homeowners should continue until, as neighbors we can reach a resolution that will bring the fence up to standard. As neighbors, we should be sensitive to any circumstances that are affecting the fence repair on these properties and be willing to help mitigate these issues. This could include, but not limited to such things as the organization of a group of neighbors to help with the fence repair to reduce cost.

The HOA should make a concerted effort to improve the communications between the HOA Board and the homeowners and to all of our external interfaces. This communication should start with the enhancement of the Dutch Creek Village News Letter to include Board actions and other issues of common interest to all homeowners. In the near-term, the News Letter should include full disclosure of the finding and recommendation of the Fence Committee.

NOTE: All members signed original except Lou Day who dissented.

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