

OPEN HOUSE

Linda Renaud



View Protection: At What Price?

It was standing-room-only at last month's Marquez Knolls Property Owners Association annual meeting. The residents' main concern: view protection, as outlined in their CC&Rs (Conditions, Covenants and Restrictions). Attorney Rosario Perry brought them up to date on the legal hell the association found itself in during the past two years involving two separate lawsuits.

As was reported in the *Palisadian-Post* last August, the California Court of Appeal affirmed the right of Marquez Knolls homeowners to prevent neighbors from "unreasonably" obstructing their views. The appeal involved a room addition built by Lloyd McAdams and Heather Baines that partially obstructed the ocean view of their Turquesa Lane neighbors, John and Jalene Zabrocky.

The court's decision overturned a lower court action in 2001 in which a Superior Court judge found that the Marquez Knolls' CC&Rs reference to "structures" included fences, hedges and landscaping but not house additions. Not satisfied with the lower court decision, the Zabrockys appealed to the appellate court, which ruled 2 to 1 that the restrictive clause of the CC&Rs "prohibits the erection of any structures which obstruct views on an adjoining property."

The opinion took special note of the importance and value of ocean views in Pacific Palisades: "The prime thing the Marquez Knolls development sold its prospective homeowners was a beautiful ocean view. In fact, like most such housing, much of the value of any property within the development depends on the quality of the view. To significantly obstruct any homeowner's view of the Pacific Ocean is to depreciate the economic worth of their property."

In reaching the decision the court referenced three other cases, each involving other circumstances

and slightly different CC&Rs.

The first case, in 1971, involved the addition of a "rumpus room" that blocked an adjacent homeowner's view. The appellate court found that the language of those CC&Rs ("No...structure shall be...erected...upon any lot in such location or in such height as to unreasonably obstruct the view of any other lot") prohibited building the rumpus room.

However, a decision in another case 10 years later limited the CC&R language to landscaping: "No hedge or hedgerow, or wall or fence or other structure shall be planted, erected, located or maintained upon any lot in such location or in such height as to unreasonably obstruct the view from



any other lot or lots on said tract."

The third case, decided in 1979, involved a pine tree that had grown to the point of blocking a neighbor's view. The court affirmed a trial-court decision limiting the height of the pine tree to one story, thus allowing the trial court to order tree heights shortened to protect ocean views, setting a legal precedent.

While the Zabrocky case upholds Marquez homeowners' right to prevent new construction that obstructs views, it came at a price, said Marquez homeowner Bill Fado, who established the CC&R Review Committee in 1995 to help mediate view controversies.

However, his review committee suspended operations nearly two years ago after MKPOA was sued a second time. That lawsuit also involving a view dispute between

neighbors. Although the homeowner, Nicholas Valery, ultimately dropped the suit one month before trial, the committee decided it could no longer subject its volunteer members and the MKPOA to any more expense or potential liability. Now, MKPOA is hoping to recoup some if not all of its legal expenses on the Zabrocky case. A trial date is set for August.

MKPOA has also filed lawsuits against its insurance agent and carrier for taking the position that the costs incurred by the MKPOA in connection with the Valery lawsuit are not covered by the association's policy. No trial dates have yet been set.

"It was a bitter experience all the way around," noted MKPOA president Margaret Goff in the association's spring newsletter which recapped the turmoil. "Hopefully we all learned a lesson. We want to help homeowners retain and maintain what they are legally entitled to and that is the protection of the CC&Rs that were established in the 1950s. As most of you know, if you don't protect your rights you could lose them eventually."

At the April MKPOA meeting, Councilman Bill Rosendahl was asked a question from the floor about the possibility of a citywide view protection ordinance. He acknowledged that while there was not yet enough support for such a measure at City Hall, "I'm working on it."

While Fado, who has personally mediated over 40 such disputes, was pleased with the appeal court's support of the validity of the CC&Rs, he would prefer to see disputes settled in a "neighborly manner."

So would we.

(Editor's note: Marquez Knolls residents can obtain copies of their CC&Rs from any title company, according to MKPOA board member and local realtor Karen Fintzy.)

- Align the document to the top of the sheet, and the folded portion to the top-right corner.
- Calez le document dans la partie supérieure du transparent, la partie pliée, orientée vers le coin droit.
- Richten Sie das Dokument am oberen Ende des Trägerblattes, und das gefaltete Ende an der Ecke rechts-oben aus.
- Allineare il documento alla parte superiore del trasportatore fogli, e la parte piegata del documento allinearla all'angolo in alto a destra.
- Alinee el documento pegándolo al borde superior y el doblado del documento al borde derecho del portador de hojas.
- 把文件对齐装订的上端, 并把折叠的部分对齐右上角。

