

COVENANT FEEDBACK, REPORT #1
OCTOBER 31, 2015

Five responses submitted to date,
names withheld

1.

Two comments.

1. Why the ban on modular homes? Modular homes can be constructed in a variety of styles and usually with better quality than on-site construction. I can understand the plans needing to be approved by the Architectural Control Committee (ACC) prior to construction, but I don't like the idea of arbitrarily banning a particular method of home building for no apparent reason other than someone's uninformed bias.

2. What is the "Architectural Control Committee"? How large is it? How is it determined? How does it function? How does it vote? What percentage of its members must approve or disprove plans or modifications? There are a lot of items in the covenants that fall under the "control" of the ACC, but I see no mention of the makeup or function of the ACC. I'm familiar with ACCs that are ridiculous in their decisions, that are biased towards certain property owners, etc. What provisions are there for a fair and unbiased ACC? Is there any recourse to a property owner who disagrees with the ACC's decision(s) or is the ACC "god"? Remember power corrupts and absolute power corrupts absolutely.

2.

ETLOA Covenant Review

Article I:

- a) Prevent erection of round or dome homes. No installation or erection of a yurt or similar structure? It's good enough to be allowed in the wilderness and the backcountry all over Colorado but not in ETLOA?

Article II:

- a) Land use and building type: one is unable to put a sub 200sf structure on your lot without approval? This is a minor addition that should not concern others.
- b) Commercial activities? Why would I be unable to run my chinese medicine/acupuncture clinic on my lot? It is one of the quietest and most mellow businesses one can do. This also leads into the aspect of why can we only have (2) secondary structures on our 4 acre lots. I bought 4 acres with the anticipation of using 4 acres , not a small plot in the center of it.

Article III:

- a) Preservation of Natural Scenic Views: one should be allowed to choose the color of their roof and house, no matter how awful it may appear to others, without being pushed through a committee. It is a beautiful thing to have one's personality come out in their building/home.
- b) No supporting poles or structures? We should be encouraged to have solar panels. We often want to put our houses in the trees and therefore will need poles to put our solar panels on. To get the most of the passive/solar design of ten our roofs are not conducive to solar panels being placed on them.
- c) Landscaping: some want to fill their lots with rock, others with trees and plants and others flagstone features. One should be able to do whatever they want without going through a committee. Again, this is a person's personality being presented.
- d) Accessory Buildings: 200sf structure is acceptable, but why only one? An 800sf detached is acceptable, but not bigger? Why? One should be able to build a small house, within requirement, and then be allowed to build whatever size secondary structure is needed for their allotted use. I, personally, do not want an attached garage to my house, but would love to have a large workshop and covered storage area for my toys. I live in the mountains to play and therefore have the toys needed for such activities. If one is truly to have a hobby shop, one needs storage space as well as a place to work. In my standards an 800sf structure will not perform these. We each own close to 4 acres of land and should be able to actually use it for our own purposes/needs. What about a greenhouse? Is this one of our two structures or is it in addition to the two structures? We should all have the ability to grow our own food.

- e) Alternative energy sources: I addressed this in Article III a)
- f) Fences: I believe we should be able to fence in as much of our yard/land as we feel is appropriate. I have dogs and often watch friend's dogs and want them to be able to run free, to an extent. I don't want other people's pets hanging out at my house and I therefore don't want mine hanging out at other people's properties. Again, we have almost 4 acres each and I have full intention of using it for my animals, some of which are geriatric, and can't roam free. If we want to fence in a large pet area and have another fenced in area within this area for a hot tub or such we should be allowed. We also shouldn't have to go through a committee for this. Where is it we live again?? Oh yeah, the mountains of Colorado!

Article IV

- a) Terms of covenants: I don't like the idea of our plans having to be reviewed and having someone that is appointed to work with us on our ideas and designs. We are individuals with different tastes and needs and therefore our designs should be allowed to showcase this. Otherwise we all may as well live in suburbia, which you are creating, and have the exact same homes.

Article V

- a) Trash and refuse: you want our scrap materials to be stored away from others, yet are only allowing us to have (1) 200sf structure to store these things in. Most hobbyists/artists and such need material to work with, yet we don't have a place to adequately store our materials according to your guidelines. What about firewood piles? Can we have a wood-shed to store this in or would that be classified as one of our exterior structures?
- b) Livestock and Poultry: everyone should be allowed to have chickens without any sort of approval. Again, we should be encouraged to growing/raising our own food.
- c) Domestic pets: dog's can't be leashed for extended periods of time or allowed to roam free and yet we can't fence in our whole lot? It seems a bit contradictory to me. If I want a large fenced in lot with a dog or three for protection I should be allowed to have this. I should be allowed to have pets in whatever way that brings me happiness, outside critters, inside critters, protective critters, snuggling critters. It shouldn't matter what I have or what purpose they serve, because they are my responsibility, not yours!
- d) External lighting: One thing I do agree with is that no outside/flood lights should be allowed and nothing that runs continuously.
- e) Play equipment: basketball hoops, agility course, archery targets, disc golf baskets, pump tracks or dirt jumps should be allowed and encouraged to be placed anywhere on your lot to encourage outdoor activities for ourselves, our kids and our grandkids. We should be promoting people to be outdoors as much as possible, not hindering it and I should NOT have to ask to put it

- up or to use it. If it offends someone that I am outside shooting hoops or jumping my bike then you should get a hobby!
- f) Outdoor storage was noted in Article V b) however, no storage of salvage materials or unlicensed vehicles is absurd! Hobbyists need parts and materials to work with and you are trying to disallow us from building the buildings we need to store these items.

Article VII

- a) Trespassing: no one has the right to come on my property to access anything. If someone comes on to my property to access violations or to correct any violation they will be met with force and resistance. It is completely unacceptable to think that someone can come onto my property, correct something that they feel is out of compliance and then charge me. That's ludicrous. Again, if something is out of compliance, which is ridiculous, giving them 30 days to make the changes is not an acceptable time frame. Some people work full time and/or may not have the financial means to correct something that you feel is out of place at this exact moment in time. The only people who shall come onto my property are the building department, sheriff, emergency crews and anyone that is doing an inspection from the state or county.

As an overview, I do not think we need any such regulations! We all live in the mountains to enjoy the mountains. Those of you who moved here from the cities came for the peace, the serenity, the beauty and to get away from many of the rules of the city, yet you are bringing the rules with you. I grew up in the mountains, lived in many cities and beautiful areas all across the country. I have never been a part of an HOA and have no desire to start now. I value freedom and personal choice. Everyone is infatuated with property values. I see your point, but I'm more interested in building/creating a home. A dollar is an object, happiness is a state of mind and I'll take happiness over a dollar, any day.

I was raised to be self-sufficient, to help others and do whatever is needed to survive. I help others because I love it, not because I'm told to. I plow my driveway because it's needed and I'll do the road the same way, I don't wait for someone else to do it. I buy the equipment that is needed to be self-reliant. I do what is needed to be self-sufficient and not pay fees to be at the mercy of others. When you were talking about the HOA fees you talk about the positives, snow plowing, road maintenance, etc , and the low fees we will pay. Yet, the low fees only apply to the insurance, PO Box , website and such. What are the real fees going to be once we actually get some of these benefits that you propose? I plow snow all winter and know what it costs and I'm interested to see how much our fees will raise if/when this is implemented. We have common space, but how is it to be used? Funded? We don't need picnic tables or a community area, that's what the national forest is for. If we truly want to be progressive and have something positive for everyone why can't we put up a large greenhouse and offer plots to anyone interested? Then have community compost, some solar panels so we can have electric and heat through the winter. We already have water, so it just makes sense. That is the

only piece of this whole puzzle that I can and will totally support. In other words, I am against any and all covenants.

Do no harm, if it doesn't affect you, then leave it be. I'm not here to make friends. I'm here to create a quiet, nurturing and fulfilling environment so I can continue to smile every day and help others in any way that I can. My objective is not to control others to benefit my own agenda, which is what I feel the ETLOA is doing. I am glad that all of this came up before I built my house so that I can sell my property and find something way more beautiful in the mountains that I don't have a bunch of folks telling me how to live! A quote that I use quite a lot and that I feel is very fitting for a lot of these regulations and the ETLOA in general "When one makes decisions about something that they know nothing about is the ultimate form of ignorance." Live and let live.

3.

FEEDBACK:

First, globally--After much deliberation I have decided conclusively that I am AGAINST the entire concept of the East Twin Lakes Owners Association!

My reasoning is based on the following:

- 1) The history of the Association is sketchy at best as I have not been able to find that the Association has been annually registered, without interruption, with the State of Colorado, a requirement made by the State, and which if not performed as such, leaves the Association without any validity or power to enforce anything. At least two property owners have had the same result.
- 2) Sketchy because there are properties within the designated area of ETLOA that are NOT included on the list of persons indicated as falling under the guidelines and covenants of the Association. For example, at last count, on Reva Ridge Road there are at least (7) seven properties that are not included on the so called list of property owners affected by the covenants, if enforced. How can there be consistency if not ALL property owners are to be found under such covenants?

This Association has been developed and formed as an ex post facto operation and not initiated at the beginning or inception of the designated

area for the Association. Thus, the inconsistencies not only in "enforcing" the so-called covenants, but in payment of dues, and such.

3) I have tremendous difficulty in accepting the designated "powers" of the Architectural Control Committee!!! Who would these people be and what training, expertise, and education do they have to make decisions affecting the lives and properties of other people? Much of this, by the wording of the covenants, relies on what the Committee "deems" necessary. This strikes me as Personal Taste or Preference on the part of the committee. Such decisions, based on unfounded reasoning, and personal preferences, especially if one or more committee members holds a grudge or vendetta against another property owner, would lead to disastrous consequences.

As an added note, a family checking out the area for possible purchase of property and building, pointedly asked if there were an HOA. When told one is being developed, they categorically that they wanted nothing to do with moving here as their previous experience with an HOA was completely negative.

This speaks to some references being made as to the Association's influence in maintaining "property values." If persons do not want to move here because of the whimsies of an Association of this nature, then land values can go down. As is already accepted, properties are not readily selling as it is.

The Architectural Control Committee: this group falls under by main bone of contention. As it is being proposed, the Committee holds far too much power, to the point that I laughingly call it the Enforcement Committee. I, and a number of neighbors, have stated that they want NOTHING to do with it as it would create tensions and potential hostility between neighbors. Also, as mentioned previously, who would these persons be and what training or expertise do they hold besides personal preference and interpretation of what they like?

Likewise, the fact that they supposedly would be able to walk on another person's property at any time they so deem to "verify" compliance will be a

problem. I number of persons have categorically stated that they would consider physical force if anyone tried to trespass on their property without invitation as a neighbor.

Land Use and Building Type: Clearly stated in Article II--all lots and tracts are to be used exclusively for private residential purposes...as single family dwellings.

My question is how does this requirement shape up with the numerous Bed and Breakfasts (clearly a business, but one that I am willing to accept), lodges, and rental houses. These latter are clearly businesses not private residential purposes. The amount of traffic on our "private" roads, for example, Reva Ridge Road, has increased dramatically and exponentially--all types of vehicles including motorcycles, ATVs, Snow mobiles, and the increased vehicular traffic resulting multiple groups using these rental properties. Most of these have absolutely NO regard for posted speed limit signs, etc.

A. Preservation...

The ACC also has expertise to designate taps for electrical and telephone service? Who has this experience?

And, they can also determine what is proper landscaping?

E. Accessory Buildings: Again, sketchy and inconsistent. Many properties already are in violation of this clause. How is that to be resolved without antagonism?

H. Alternative...

The ACC has the power and expertise to determine the specifications for energy saving resources? Doubtful and highly questionable!

A? Fences

Some properties are already in violation of this. How would this be handled?

Article IV, C

Covenant is vague and highly questionable.

C. Outside Storage -- already violated: boats and trailers are already visible from main roads

D. Discharge of firearms -- already violated

Article VI, C

The very idea that the ETLOA could come onto another person's property and start to remove "anything" that they deem "unapproved" is absolutely an invasion of one's property and individual rights. The so-called fact that they could then initiate action for which the owner would be financially responsible without any recourse is an abomination. This sounds like something Hitler was doing in Germany between 1936-39. Check it out if you disbelieve this.

D. This statement is absolutely ludicrous! That the Association and ACC and their actions are not subject to decisions made by "judgment or court order" is totally illegal as has recently been proven in the state of Ohio, when the court ruled the local HOA had no right to impose restrictions on one certain property owner.

This statement and the one following (E.) mean that the ETLOA can pretty much do what it pleases without any consequences resulting from bad or ill founded decisions. Where in the world would you find this kind of privilege except in a dictatorial state?

Finally, two points:

1. Real Estate lawyer has looked over this document and his finding is that it is "unenforceable". Another lawyer has indicated that he "finds too many inconsistencies and vagaries" in the document.

2. I have a problem with the "proxy" vote, i.e., in many situations votes being made by persons who live far away, in Texas for example, and know little to nothing of what these covenants mean or their potential impact, except for what they might have been told by hearsay is a problem. The very fact that they do NOT live here and probably won't leaves their vote questionable.

Also, I have a problem with a so-called property owner, for example, Mr. Dennis O'Neil, who, I believe, owns 9 properties. He, to general knowledge, has no intention of building on those properties and owns them for real estate speculation. The fact that he controls 9 votes is preposterous.

In conclusion: I am avidly against any kind of HOA, unless it is developed without such dictatorial powers and has more consistency in the makeup of who would be a part of the Association versus those not.

4.

GLOBAL COMMENTS

1. These covenants overwhelm me due to the extensive regulations and restrictions they propose, most of which truly hamper the individuality and creativity of landowners in the area seeking to build a life here. Are we wanting to re-create an elite neighborhood such as those found in upper-crust suburbia or Aspen? Many of us came to the mountains and bought ample land to be able to create the kind of home environment that is suited to us, without excessive restraints. As a result, we have lovely and fairly diverse homes (including modular ones) and many looking lived in and enjoyed, as opposed to picture perfect. For example, why should we care if a family has a boat visible from the road? My first thought would be that the residents are able to truly enjoy our lakes! The same would apply to additional structures, such as a tree house for kids or grandkids. What fun!

2. I'm also concerned that in a given neighborhood, some homes and lots fall under the ETLOA umbrella and others don't. Those inconsistencies raise questions, as do the many current residents that are in violation of some of these covenants. Are they exempt or will they get a knock on the door from the Architectural Committee? And if they don't have to abide by the "rules", why should newcomers? I believe that covenants of any sort need to be established at the outset, not midstream.

3. Of greatest concern is that the Architectural Committee, per these covenants, has way too much power, and whoever they might be, it is unlikely they will be better qualified to cast judgment upon a neighbor's building plans. No one in their right mind should want the job, as such policing will cause ill will among neighbors, and more than likely lead to law suits which will cost the ETLOA huge amounts of money. Who will pay for such?

4. My first choice would be to abandon the proposed ETLOA covenants altogether, as I see nothing but tensions stemming from them. However, if it is the clearly expressed desire of the vast majority of the community to have an ETLOA, some far less restrictive guidelines would need to be drawn up, with the policing and trespassing aspects removed, or substituted by a more diplomatic means of communication. In Article I, the second item sums it all up, and would bring compliance from all landowners, who are by nature, nature lovers:

To preserve as far as practicable, the natural beauty, aesthetic value, and scenic views of each and every tract of such property so as to blend structures into the surroundings and

to prevent the erection of structures that negatively dwarf the natural, aesthetic, and scenic values.

This statement, plus the compliance with state and county codes and regulations, would be more than sufficient to preserve both the neighborhood and the creativity and individuality of those joining our community.

P.S. If we are going to be paying dues, and if the ETLOA really wants to do something to benefit all of the community, the issues of road maintenance and snow plowing need to be addressed. (In such case, non-members in the neighborhood would need to subscribe.) Dues toward that end would probably flow more readily than funds directed to ETLOA insurance, etc.

COMMENTS RELEVANT TO THE ARTICLES

Article II A.

The single-family dwellings stipulation is violated by the abundant Bed & Breakfasts in the area, and such usage adds extra strain on our roads and water supply. If Bed & Breakfasts and rental properties are allowed to remain (and I'm not proposing they should be shut down), then why ban other small businesses, such as someone working out of his/her garage making doors, woodcarvings, etc.? None of these would be disruptive or a bother to neighbors, and would certainly bring less traffic and wear and tear (at least on our road) from rentals and B&Bs.

Regarding modular homes: Nowadays, some of them are quite lovely, and from the exterior, one would not be able to guess they are modular. The same might be said of high-quality domed houses. I have seen some in Ester Park that are quite spectacular.

In the remaining articles, much deleting needs to be done, but those details are really covered under my Global Comment #1, so I'll not enumerate upon them at this time.

5.

Proposed Changes to the Existing ETLOA By-Laws and Covenants

General Comments

Since the idea of revising the ETLOA By-Laws and Covenants surfaced publically last June, I have been giving the whole issue a lot of thought. Despite support to the contrary on the grounds that the ETLOA effectively protects our property values, I have reached a very different conclusion – that the ETLOA, with or without the proposed revisions, is fundamentally unworkable and that it is, in any event, likely to do more harm than good. Therefore, I move that this issue be put to a vote at the next General Meeting in July and that, if there is the required 67 percent majority support for this view, that the ETLOA be immediately and permanently disbanded.

Barring the required consensus on this proposal, I move that we take a further vote of all those present to at least restrict the enforcement of what some would consider the more objectionable measures of the ETLOA by doing away with the Architectural Committee, by shifting from threats to persuasion to address particular issues or community concerns, and by not in other ways unnecessarily pitting our community group against the rights of individual property owners on what might be regarded as trivial, arbitrary, or minor issues.

Originally in favor of a strong ETLOA and its Architectural Committee, I have come to the opposite opinion for several reasons: 1) that the existing Covenants, whether in the revised version or not, are unnecessary and unenforceable; 2) that, even if they could be enforced, the harm done to us by having a small group of community members dictate to the rest of us on essentially personal issues such as architectural design and colors is inherently fractious and undesirable; 3) that many of the issues, such as set-backs and building heights, are already contained in the building codes for Lake County anyway and are, therefore, already covered; 4) that any attempts to enforce the ETLOA's Covenants through legal means is not likely to be successful because, we as a group, are not likely to approve and fund legal counsel to ensure this enforcement; and 5) that, even if we were all willing to chip in to pay for a lawyer to enforce these issues, we should not do so because it raises the issue of all of us being held jointly and severably liable for countersuit on these issues, which in my view is actually quite likely if we continue on our current path.

I guess, more than anything, however, I am now adamantly against the idea of a strong ETLOA and stricter community oversight because it runs against the grain of why I wanted to buy property in our area and live here in the first place. I am certainly attracted to Twin Lakes because of the peace and extraordinary scenic beauty. However, equally important is the promise of having a great deal of privacy and independence, and the hope of living on respectful and friendly terms with our neighbors. Again, I think that the ETLOA, especially the operations of the Architectural Committee, is inherently fractious and overly restrictive for the community in which we live. If we must have rules, let's at least let them be minimal and well understood by all.

Specific Changes

If we can't get a consensus on eliminating the ETLOA and the membership wants to proceed with an actual vote on the proposed changes to the existing By-Laws and Covenants, I move that we do hire a lawyer, just on a one-time basis, to look over these changes and to advise us on any necessary revisions so that: 1) we don't violate any state laws (there are certain aspects of the proposed amendments that may not be in compliance as currently worded); and 2) that we eliminate provisions that are unnecessary or that would expose the ETLOA and, by extension, all of us to avoidable legal liability or obligations.

Further, if my proposal to disband the ETLOA is not supported by the required 67 percent majority and we do go forward with a vote on these proposed changes, I move that we adopt the new By-Laws essentially as written but that we revise the proposed Covenants to address what I see as some of the more objectionable clauses. In particular, I recommend making the following three revisions to the proposed Covenants:

- a) **In Article I, Paragraph 4**, DELETE the following phrase in its entirety: “to prevent the building of houses or other structures that would unnecessarily limit scenic views of existing houses or potential future development on other tracts; (5).”

Discussion: Although this sounds reasonable, this clause is unnecessary and potentially highly problematic. The ETLOA should not be involved in dictating where a property owner can build or not as long as that owner is operating within the guidelines of existing easements and building envelopes relating to their specific property. This clause is vague, unenforceable, and violates the rights of property owners who acquired property on the basis of carefully determined understandings of where they could and could not build. It also unnecessarily exposes the ETLOA and all its members to potential liability.

- b) **In Article III, Section D**, AMEND the proposed section as follows:
“Maximum building heights *and setbacks from property lines* are as listed in Lake County’s Development Code. ~~The minimum building setback from the edge of the existing road easements is 20 feet. Where roads are not yet fully constructed, the minimum setback of 20 feet is from the most recent survey plat of the edge of the designated road easement width. Minimum side and rear lot line setbacks for Ross Subdivision are shown on the recorded plat (generally 40 feet). Any variance request because of unusual tract topography or special conditions shall be approved by the ETLOA prior to submission of owner’s variance application to the Lake County Planning and Zoning Board.~~

Discussion: The mention of minimum setbacks from designated road easements, and from side and back property lines is unnecessary in that it is already covered either on the existing plats or in Lake County’s existing Building Development Code. Since not all ETOLA members own property in any Ross Subdivision, why complicate matters by citing information that is specific to those subdivisions? The issue of seeking approval from the ETOLA before an individual can petition the County for a variance is also unnecessary. Not only is this an unwarranted intrusion into the rights of individual property owners but, again, the potential for litigation or conflict if the ETOLA’s guidelines conflict with those of the County or of existing plats unnecessarily exposes all members to potential legal liabilities and expense.

- c) **In Article III, Section F**, DELETE the phrase “Lake County regulations prohibit the use of recreational vehicles, camp trailers or tents on vacant lots.” and SUBSTITUTE “Temporary residence on a tract by recreational vehicle, camp trailer, or tent for seasonal vacations is permitted but should not to be continuous for over nine (9) months in any one year.”

Discussion: If it is really true that currently “Lake County regulations prohibit the use of recreational vehicles, camp trailers, or tents on vacant lots,” we would be surprised. However, if this is the case, we should all work together to repeal such a ridiculous law. Personally, I have never owned a recreational vehicle or camp trailer

but still do not see any reason why any Owner(s) should be prevented from using such a vehicle for recreational purposes only on their own property. Recreational camping, with or without tents, is also a legitimate use of each Owner's individual property and detracts little from those who are lucky enough to already own a home in our area. We think the main issue here is not having these recreational activities become permanent residences or parking lots for permanently storing recreational vehicles or trailers. This concern is best addressed by having Owners' use of recreational vehicles, camp trailers, or tents subject to a 9-month or less continuous occupancy rule. This protects the values of all of the properties without unnecessarily infringing on the rights of individual Owners to make reasonable use of their own properties in ways that do not impair the rights of others.

Lawyer's Comments

Finally, let me pass on part of my lawyer's responses to reading the proposed changes to the By-Laws and Covenants last summer.

"First, whoever drafted this has the process wrong. To amend a Declaration, the amendment must be approved by a majority (or higher amount up to 67% if set forth in the Declaration) of ALL owners, not just 67% of those owners that are present at a meeting. This makes it hard to amend a Declaration, which is the way it is supposed to be. On Page 1 of the Declaration, they state that the Amendment was approved by 67% of the owners present at the 7/18/15 meeting. Getting an affirmative vote of a quorum is not sufficient to amend a declaration. It must be 67% of all members, whether present or not at a meeting."

"Second, please keep in mind that the original Declaration only applies to certain lots in the ETL area, and that (these mandates) can't be extended by 'amending' the Declaration and claiming it applies to more property than the original does. What this Declaration needs (among many, many other things) is a list of the lots it applies to. Without that it just muddies the waters."

The covenants were amended on March 3, 2007 though not filed with Lake County by Dennis O'Neil until February 15, 2008. Both the original and the amended covenants have an identical clause under Article II, Sec. I Terms of Covenants, which reads in part:

*The owners of **Seventy-five percent** of the tracks subscribing to these covenants, their successors, heirs or assigns, may amend one or more of the provisions of this Article II, by executing and acknowledging an appropriate amendment in writing for such purposes and filing same for record in the office of the Clerk and Recorder of Lake County, Colorado.*

In addition, the first paragraph in this section also specifies that the covenants "shall run with and bind the land" unless "... **sixty percent** of the land owners subscribing to these covenants, their successors, heirs or assigns, shall execute and record a document repudiating these covenants and restrictions."

Is my reading correct then that it requires an affirmative vote by 75% of the HOA participants to amend the covenants (and presumably the By Laws), not the 50% to 67% cited in your statute?

“In 2005, Colorado passed a law that said any % over 67% was automatically reduced to 67. So it's 67.”