

Covenant Feedback

Report #2

December 31, 2015

[Names have not been included, with the exception of one couple that wished to be named. Comments 1-5 were in Report #1. This report posts comments 6-12.]

6.

Proposed covenants as-is are very convoluted and seem unenforceable. More rules will just require more rules. An organization staffed by volunteers many of whom are non-local does not realistically have the capacity to enforce it.

Previous feedback report has revealed several recurring themes.

Many of the rules in the covenants like home businesses, mobile homes, and overnight camping are Lake County ordinances per the zoning restrictions of these properties. This needs to be either:

- 1) Removed from the document
- OR
- 2) Moved into a separate section for clarity that these are county ordinances and not things the HOA is proposing to enforce. Those interested should contact Lake County to understand compliance.

In a somewhat established and fairly rural community the HOA should emerge primarily to provide services to the community and secondarily to enforce restrictions and fines in severe cases.

- A) A lean set of covenants would be best since many existing households are likely already out of compliance of a complicated set being applied retroactively.
- B) Above and beyond the ordinance of Lake County and any current or future municipality, covenant rules should enforce basic courtesy and regard to neighbors and the community. A few examples:
 - a. Keep the noise down, especially after dark
 - b. Be respectful of views and ambiance of your neighbors
 - c. Be courteous of the impact compost, livestock, and pets can have on your neighbors.
 - d. If you're not certain, ask your neighbors and be considerate of their requests.
- C) Architectural Control Committee should be renamed. No one likes the word "Control" and many do not like "Committee". Should largely perform a

service for the community rather than enforce rules. Since the entity doesn't really exist at present it's fair to suggest its role:

- a. Provide guidance on landscaping for the native terroir
- b. Discourage introduction of noxious weeds or unsuitable plants for the area
- c. Advise as to setback from property lines, easements, drainage considerations
- d. Only deny in cases of serious and obviously flagrant disruptions of points in "B" and/or Lake County ordinances.

D) Basic services the HOA should provide:

- a. Snow removal and general road maintenance not provided by Lake County
- b. Trash pickup or community disposal locations (dumpsters, etc)
- c. Communication of news and events
- d. Forum for suggestions and criticism
- e. Transparent process and procedures
- f. Communal space of sorts not provided already locally by local, state or federal government that is desirable, affordable, and beneficial to the community per majority vote.

E) Article VI Section C Paragraph 2 obviously cannot happen and sets a bad precedent for the organization as a whole.

7.

After reading the feedback comments on the ETLOA website, I feel compelled to send my own perspective on the matter. Please include my comments in the feedback.

1. Dennis ONeill established the EE Hill and Ross subdivisions on his property and originally sold those lots to individuals who either resold or still maintain their ownership. Dennis sold the lots with the understanding that the area's scenic value would be maintained through an HOA.
2. Each of us purchased our properties with the understanding that an HOA would govern the common interests of the combined properties. The documents for that understanding were provided when we purchased our properties as part of the same package of documents that secure our water rights for residential wells.

3. My purchase of an expensive property and my decision to build a nice custom home on that property was based on the legal guarantees of the HOA By-laws and covenants. I made several design compromises at substantial cost in good faith that those covenants would also be honored by my neighbors.
4. Unlike some of my neighbors, I have had several excellent experiences with HOAs in mountain communities – those HOAs have kept fees low and provided outstanding maintenance of common interests while preserving quality of life in the subdivision. HOAs are not meant to be dictatorial (although some fail that test); they are meant to govern with fairness to all property owners while establishing and maintaining a minimum set of standards for quality of living.
5. Not surprisingly, many of my values are closely aligned with those who wrote in opposition to the proposed amended covenants. I hope for a continued serene environment, low fees, scenic beauty, low light pollution, and safe areas for pets. I support alternative energy sources and home businesses that are compatible with that environment. It is because we share these values that I believe we can find a set of covenants that is acceptable to all of us.
6. I personally drafted the proposed amended covenants that the previous respondents reviewed. I attempted to honor Dennis' original intent and preserve as much of the covenants that we all signed up to when I made the draft. I admit there are flaws in that draft that must be addressed, while noting that most of the opposing feedback is related to items that were in the original version that each of us acknowledged when we purchased. That alone is good reason for us to come together and produce an updated version of our covenants.
7. Our HOA has a solid legal basis, but it needs some work to bring it up to date and properly represent the current group of owners. This is a great time for us to pull together, make known our concerns, and work to publish an updated set of covenants that protect our individual interests while preserving this amazing area in which we reside.

8.

Regarding the documents we have reviewed so far (Amended and Restated Declaration of Protective Covenants, Conditions, and Restrictions and the Covenant Feedback Report #1) we would like to make the following statements:

When we purchased our original land (E E Hill – Parcel 2, Tract 11) from Dennis O’Neill in 1996, we decided to build on this land and have our house completed by June of 2001. Before we built we received a document from Dennis O’Neill which was an HOA agreement. After reading this document we decided to confer with a lawyer before we signed. The lawyer said that under no circumstances were we to agree and sign this HOA as it gave Dennis O’Neill all the power and control over our land. We refused to sign and trashed the agreement. We never heard back from Dennis O’Neill regarding the fact that we did not sign the agreement.

The second piece of property that we purchased from Dennis O’Neill was a vacant lot (E E Hill – Parcel 1-A, Tract 26) which is located on the other side of Riva Ridge. We purchased this lot within a year of purchasing the first parcel of land. We had no intention to build on this lot. Again, at a much later date, we received a statement from Dennis O’Neill asking for \$25.00 as dues to an HOA. We called Dennis O’Neill and asked him about this HOA, which we had never heard of, and he said that he was putting it together and needed the money to implement it. We proceed to ignore the bill and trashed it. We never head back from Dennis O’Neill regarding this proposed HOA. Now we are being informed that an HOA is being formed to institute covenants. We received an email from Dennis Couture while we were in Europe about our vote regarding the bylaws of this HOA. We asked him to clarify what exactly he was talking about and what property of ours he was including. He sent us a brief explanation and stated that it had to do with our vacant land on the other side of Riva Ridge. We told him to go ahead and use the vote to put in place bylaws to set up the organization. It was never explained to us that it had anything to do with a Declaration of Protective Covenants, Conditions, and Restrictions.

Now we are being told that this covenant does include our land on the lake side of Twin Lakes (E E Hill – Parcel 2, Tract 11) which is the address of our house: 130 Mackinaw Dr. We are also being told that not everyone is included in this HOA and that some neighbors are exempt. But why some are included and some are exempt is not clarified. After reading the Declaration and the Feedback let us state the following:

We think the Declaration is excessive in the extreme and not at all sure if it has any legal status. We will not give you a lot of feedback for your Feedback Report as much of what is already stated in the Feedback Report we agree with. What we will not agree to is that our home, 130 Mackinaw Dr., will be a part of this HOA. We purchased our land in 1996 and built our house in 2001. Since that time we have made many improvements to the house and the land. We have also expended a lot of work, time, and cost on the road (Mackinaw Drive) with no help from anyone else who has property bordering this road (that includes neighbors, Dennis O’Neill, and Lake County).

We find it rather presumptuous that anyone can think that they can come up with the idea of an HOA and then try to force a set of rules and regulations on homeowners who have

occupied their property for many years. And in fact many years before the originators of this HOA even lived in this neighborhood. And we are adamant that, if our neighbors try to force this HOA on us, we will vigorously fight it.

What we will also refuse to do is to pay any dues to this association as fees. We feel that we already are paying taxes to the Lake County for which we get pretty much nothing in return. We are not at all open to paying more money for our property in fees assessed by another entity.

Regarding our other piece of property (E E Hill – Parcel 1-A, Tract 26) on the other side of Riva Ridge, we are open to including it in an HOA as long as some of the covenants, conditions, and restrictions are modified according to the Feedback Report #1.

9.

Review Comments Pertaining to the ETLOA

General Comments:

Keeping this simple, we can summarize our review of this HOA agreement, and the specific paragraphs of written terms, as generally breaking down into one, or more, of three categories, all of which we feel are objectionable.

1. Items which require the involvement or approval of an ACC.
2. Items which disregard basic landowner rights.
3. Items which reflect the wishes and desires of a third party, are highly subjective, open to interpretation, and difficult to enforce.

Following our review of the “Amended and Restated, Dated July 19, 2015”, we are left with the overwhelming question as to how this document is going to “protect” the value of our property, or future improvements to such property. To the contrary, the “risks” would seem to outweigh any “rewards”. Being included in the “membership” of a group such as this, whether by choice or not, subjects all members to the potential damages which could be awarded to a group or individual who feels they are or have been harmed as a result of the burdensome, subjective, and rather arbitrary requirements which are set-forth.

We have owned a vacant lot in this area for a number of years. Our decision to purchase the property was significantly influenced by the simple nature of the covenants which were attached to the property. We knew that we could eventually build a house, a detached garage, a shed, and perhaps a guest house. The lot is spacious, with varying terrain, and could quite easily accommodate numerous structures. This abundant space also lends itself to a more distributed building theme, rather than creating a larger, single structure containing everything. This freedom of individual choice is precisely what establishes its “value” to us.

Specific Comments:

Article III

- A. This article is unnecessary, random, subjective, and in violation of basic landowner rights. Moving, relocating, eliminating or adding rocks, trees, shrubs, etc., whether covered by moss, dirt, algae or moon dust is a basic choice each landowner is

capable of making on his/her own without formal approval or other interference from a committee. Attempting to control colors by stating they shall “blend” with the natural surroundings is completely subjective and impossible to enforce. Every color in the rainbow is present, from time-to-time, depending on time of year, snow conditions, flower blooming activity, etc.

- B. This paragraph rambles on with unnecessary verbiage essentially suggesting that the “Association” should be hired by landowners to design ones excavation project, just to be sure it will be viewed as “acceptable”, and to avoid the additional time, expense and burden imposed by such a requirement. (Case in point: “If an owner has any doubt as to what is acceptable...”).
- C. The “Association” should not be empowered to require of any landowner, a “program of landscaping” that it deems or determines to be “necessary and desirable”. This creates a random, subjective, and potentially harmful situation, and represents a violation of basic landowner rights. Restoring disturbed vegetation is one thing, dictating a subjective “program of landscaping” is entirely unacceptable.
- D. This is currently and adequately addressed by Lake County Development codes and the “Association” does not need to be involved.
- E. Improvements to any given lot are currently and adequately addressed by Lake County Building Codes. These codes, and any restrictions set forth, have been taken into consideration by landowners, prior to the purchase of such land. Any further or additional restrictions put forth by this “Association” are potentially damaging to landowners. This includes any attempts to limit an owner’s rights to build a home, cabin, detached guest house, detached garage, shop, shed, etc. Again, Lake County Building Codes have addressed this, and continue to address this issue adequately.
- F. It is unclear whether or not this paragraph is referring to the use of a camper as a form of “permanent” residency. Prohibiting “residency” in a tent or camper is not objectionable, and we believe it is addressed by the original covenant or Lake County Codes, rendering this paragraph unnecessary and redundant. Some landowners own campers and it should not be prohibitive to park a camper on a lot, whether the lot is improved with a house, or not. The spirit and intent of purchasing and owning land in a recreational environment, such as this, also encourages the ownership and use of recreational equipment (campers, tents, boats, bikes, etc.). It can be debated that the building of a home on this land is more damaging to the natural surroundings than the visual impact of a car, truck, boat or camper, which can be moved, suggesting that the only solution is to not build anything and donate the land to a conservancy.
- G. No comment.
- H. Regarding location/sighting of alternative energy structures, this is subjective, arbitrary, and unenforceable. I believe landowners are capable of making choices regarding locating these structures.
- I. No comments, although this paragraph is lengthy and subject to interpretation.

Article IV

- A. Any suggested use of an ACC should, in the sincere best interest of each and every landowner, without preference or prejudice, fully establish and list the professional qualifications of its members or constituents, deemed to make them qualified and capable of performing such duties as are being proposed. In that a multitude of issues are being proposed as being subject to the personal biases, preferences,

desires and wishes of the ACC, it becomes necessary and critical to insure that some minimum level of education and/or professional certification is held by each member comprising the ACC. There also needs to be established, a clear means by which an owner can expect to appeal a disputed condition, request, or demand being imposed by the ACC.

- B. It should be the duty of the ACC to establish a means by which they receive plans for review through the Lake County Building Department, rather than creating another layer of work, or an additional process of submitting plans for reviews by landowners. A burdensome process is not conducive to maintaining property values as prospective buyers tend to avoid such nuisances, and are less likely to purchase property subject to such requirements.
- C. This paragraph, intending to define the “ACC review process”, does not adequately address details of the review process. It is also silent as to any dispute resolution process, and does not have the best interest of the landowners in mind.

Article V

- A. No comments.
- B. No comments.
- C. The comment about “poultry”, suggesting that poultry (or chickens?) are acceptable seems odd. Was this added as a favor to someone?
- D. This paragraph relating to pets is unnecessary. Existing laws and regulations exist, relating to what pets are allowed, and that they cannot be neglected and abused.
- E. This paragraph regarding signage, appears to be unnecessary. For example, if a landowner wishes to erect a “no trespassing” sign, I believe they have the right to do so, regardless of the wishes of the “association”. This is a basic landowner right, and this paragraph is potentially in direct conflict with such rights.
- F. **External Lighting** – no comments.
- G. **Exercise and Play Equipment** – Difficult if not impossible to enforce.
- H. **Outside Storage** – This paragraph infers that minimizing visual recognition of trailers, boats, etc. is good, however limiting square footage of storage sheds, and garages may preclude one from doing so. This creates the appearance of a conflict as to the true “wishes and desires” of the drafter(s) of this document.
- I. **Discharge of Firearms** – Seems that this is best addressed by the local Sheriff, not an HOA.
- J. **Outdoor Burning** – This paragraph should be limited to addressing “trash burning”, although trash burning may already be addressed by Lake County. The HOA does not need to address campfire embers.
- K. **Wildfire Mitigation** – This paragraph is unnecessary. Wildfire mitigation practices are best established and disseminated to landowners by fire professionals.

Article VI

Comments related to paragraphs in this section:

It is unclear as to who, or how many landowners are in the prescribed area which is outlined in “legal form” within this document. In that acceptance and amendment of this document requires a prescribed percentage of affirmative voting action, it is in the sincere best interest of each and every landowner to be provided with a written list of all landowners, containing the landowner name (individual or entity), and address of record. It is also in the best interest of

landowners to insure that each one has a level of knowledge and understanding of exactly what is being proposed, so that a maximum participation rate of informed land owners can be had. We do not believe this has happened thus far in the process, which leads to this process becoming nothing more than the biased wishes and desires of a minority to be projected on an un-informed majority.

I question the legal truth behind the statement that a 67% vote is required of only those who happen to show up to establish a binding vote of acceptance by all.

I also question the stated intent of the “association” to potentially trespass on private land in order to remedy an alleged violation. This, at best, is viewed as a recipe for disaster.

Conclusion

This document, taken in its entirety, appears to be an ill-conceived effort to achieve its stated intention of “protecting land values”. Instead, it goes largely against basic landowner rights, adds a layer of burden to each landowner, flies in the face of the spirit and intent of owning this recreational-oriented property, potentially creating an atmosphere where disputes, claims, and lawsuits may dominate and override the enjoyment of living and/or recreating here.

Furthermore, the cumbersome requirement of this HOA material can be viewed as being objectionable to prospective buyers, and can result in deterring prospective buyers.

We believe each landowner is capable, and sufficiently motivated to use some consideration toward the environment, neighbors, and land value when making choices relating to developing and improving their lots. We are strongly in favor of abandoning any ideas of introducing an ACC, and recommend that a simple covenant be maintained.

Respectfully,

Kirk Weiss, P.E.

Corine Weiss, R.A.

Attachment

ETLOA Document, Dated July 19, 2015

10.

Hi Laila and Christi,

Please see my comments concerning the ETLOA proposed covenants below;

1.) I understand the value of an HOA and it's purpose to protect the quality of life that we all came here for. Dennis O'Neil, as the developer, created the original HOA with covenants so that future property owners could count on a development that was consistent with their vision. The covenants give potential owners (buyers) the confidence they need to buy

property, knowing there are certain restrictions on what may be built in their neighborhood. Without covenants, our shared vision of a mountain community might turn into a hodgepodge of various dwellings that do not compliment one another and take away from the standard of living that we all currently enjoy. I believe in diversity, but I would rather not live next to family living in a yurt or a double wide trailer house.

2.). I understand that there are some who object to the language in the proposed covenants. If there is certain language that is determined to be unacceptable, then it should be modified or eliminated. For example, it may be determined that modular homes be allowed if they meet certain architectural standards.

3.). The architectural control committee should be formed by a process that is approved by the HOA membership. I think that an appeal process could be established so that the architectural control committee does not have absolute power, but acts as representatives of the HOA to preserve the character of the area. If the approval of the architectural control committee of a proposed building or structure cannot be obtained by the property owner, then he or she might appeal to the HOA board of directors, or some other authority.

4.) The proposed covenants gives the HOA authority to enter private property to enforce certain restrictions. This clause is a stretch, and needs to be revisited.

5.) I bought property in the area covered by the ETLOA and the covenants that were presented to me, at the time of the purchase, gave me confidence to invest in a new home here. I was led to believe that there were restrictions on what size and type of dwelling could be built in my new neighborhood. My family and I do not want to lose the guarantee that this development will stay consistent with our vision of a mountain community with the quality of life we were promised.

Thanks much for your efforts to coordinate and post the various comments, we appreciate you.

11.

General Feedback

First let me preface this feedback with the 2 disclosures, first that I've had very negative experiences with a condo HOA in the past and second I'm a former ETLOA board member,

however I will endeavor to keep those experiences from discoloring my feedback.

We, my wife and I, lived in TL for 10 years under an HOA developed by Dennis O'Neal but it was virtually inactive, with the exception of the "architectural committee" which consisted of Dennis O' Neal. This type of HOA, with minimal intrusion, structure and implementation was sufficient for the existing homes and properties. This coupled with the fact that some homes and properties were part of the HOA and some were not made this a somewhat loose association. Consequently there was little need for anything further.

Things have changed considerably in our neighborhood. With the opening of 20+ new properties and multiple new homes being built the need for a more comprehensive set of covenants seems necessary to insure everyone's interests and needs are considered and property values maintained. I do not think however, that the covenants need to be black and white and fixed in perpetuity. My hope is that we, as a COMMUNITY OF NEIGHBORS, can create a set of "guidelines" (read covenants) which will allow us to be open, reasonable and flexible and still protect the preferences of the home owners and the general property values of the area. I would like to see a simple and fair process whereby individuals can "petition" the HOA to consider proposals that may in some way conflict with the covenants and not decided solely by the Board of Directors.

Specific Feedback

Article II Residential Uses (B) Commercial Uses: We would like to see vacation rentals (VRBO) specifically mentioned in this section along with Home Office and B&Bs as long as they do not create a nuisance for the community.

Article III Building Restrictions Section E Accessory Buildings: First we would like to have existing structures which may or may not comply with the final decision on number and size of out-buildings be "grandfathered" in. Secondly we think this section be modified or amended to read that specific proposals which may exceed stated limitations be considered.

12.

December 15, 2015

ETLOA,

As we read through your provisions, it makes us feel as if we would have no control of our own home and our investment. It feels like ETLOA was to be in

majority control of our dream of building and living out here in Twin Lakes. If we were to agree to these provisions, we feel that we are giving up freedoms on topics that we, ourselves have dreamed of, worked for and paid for. We would like to see that home owners still have the power, being they are the ones paying for their homes and not leaving so much power in the hands of a group of people who may or may not have a personal issue with you. We do not agree with Directors having the opportunity to trespass on homeowner's property and/or allowing themselves into buildings that do not belong to them.

As far as the outside storage clause, we live in a beautiful, mountainous area where recreation is a top activity enjoyed by locals as well as tourists. Lake County has always had locals who enjoy fishing (boats), hunting (UTV's and ATV's), winter activities (snowmobiles, skis, etc.), camping (motor homes and campers), and we feel that if these types of recreational tools are parked at a home then that is just fine. Why would we have to pay for storage when we have already paid for the property, home and taxes? This is what makes living in the mountains evermore awesome, we get to get out and enjoy our surroundings. We would be against "junk yard" storage, against broken down snowmobiles that are not getting repaired or RV's that are in the same condition. Items that just sit and rust should be taken care of, not stored and considered an eye sore.

And what is the deal with the basketball backboard? Many of us have children or grandchildren and we interact with them and playing basketball is one way. How

would this offend neighbors? If our kids are outside enjoying fresh air and exercising it is far better than playing video games indoors when there is so much being offered outside.

What is your plan for the family that has lived here for several years or decades? Do you plan on coming to inspect each home? We worry about this type of approach dividing and offending neighbors.

We are all living out here because we absolutely love it! We deal with the extra drive into town because we are all trying to live out our dream and do the best we can whether we have a 400 sq. foot home or 4,000 square foot home.

Sometimes we need a little extra time to save up to do the next improvement. Sometimes we need to stop and think what's next for that neighbor, they keep improving, maybe not as fast as others, but definitely improvements have been a priority.

Lastly what happens if a home owner disagrees with ACC? Who will do the inspecting and is that person qualified to do so? How were members of the ACC picked? Were they voted in? If so, by whom? Why, after 20 years is this being brought forward?

We all have our personalities and our homes represent that. Our homes are a very personal area and we build them to please us, not our neighbors. Some of us need a place for our dogs to run and be safe. Others need a tree house for

the kids and grandchildren to play in. Yet others need a boat sitting outside so they can take off and de-stress from the weeks work. Please respect all the personalities of all the neighbors. We all want our property to go up in value, not down, however, individual freedoms should not be overpowered.