

To: Cat Mountain HOA Board of Directors
From: Covenants, Conditions and Restrictions Committee
Date: October 10, 2005

Subject: Review of HOA Bylaws and Recommended Changes

Introduction

The Board of Directors established the CCR Committee for the primary purpose of revising the HOA Bylaws, if needed. A secondary goal was to review the Declaration of Covenants, Conditions and Restrictions. These however, cannot be revised until September 3, 2008. Therefore, the Committee has reviewed only the Bylaws, to which this report is directed.

The Committee solicited and received recommendations for changes to the Bylaws from the Board of Directors, as well as all Members of the Association. These were all carefully considered by the Committee as well their own recommendations. Some recommendations were accepted, some were rejected and some were given a “no opinion” leaving the decision up to the Board of Directors.

If the Board of Directors so desires, the Committee will review the Declaration of Covenants, Conditions and Restrictions for possible action in September 3, 2008.

Report On the Cat Mountain Bylaws

I. Recommendations Accepted

A. Article I, Members, Section 1.1 Members, Section 1.2 Voting Rights

There is a discrepancy between the Declaration and the Bylaws regarding the definitions of Members, a Lot, and an Owner. This should be clarified by revising the noted sections. Mr. Grant offered the following revisions which the Committee accepted, with the exception of his last sentence in item c. This sentence, “A spouse of a member shall also be a member.” was deleted since it is not in compliance with the Declaration.

Delete the current Sections 1.1 and 1.2 and insert the following:

1.1: DEFINITIONS

(a) “Association” shall mean and refer to the Cat Mountain Homeowners Association, Inc., a membership corporation organized under the Texas Non-Profit Membership Corporation Act.

(b) “Lot” shall mean and refer to a separate plot of land as shown on any recorded subdivision plat located within Cat Mountain Villas and subject to the Declaration of Covenants, Conditions and Restrictions (“Declaration”) of record in the Real Property Records of Travis County, Texas, Volume 5077, Page 1440 and all amendments and joinders thereto with the exception of the Common Areas. Said Declaration and all amendments and joinders thereto are hereby incorporated by reference herein for all purposes.

(c) “Member” shall mean and refer to each Owner of a lot. When more than one person owns an interest in any lot, all such persons shall be members.

(d) “Owner” shall mean and refer to the owner of record, whether one or more persons or entities, of the legal fee simple title to any Lot which is part of Cat Mountain Villas. A lienholder or mortgagee, trustee under a Deed of Trust, or owner of any mineral, right-of-way easement or similar interest, shall not, as such, be deemed to be the owner of record of the legal fee simple title of a portion of the subject property and shall not by reason of any such interest owned or held or acquired by it be or become a member of the Association. If any lienholder, mortgagee, or other party shall purchase or become the legal title holder (as contrasted to a lienholder) of a Lot upon foreclosure of a Lot, then such party shall become a member of the Association, so long as such party shall be a owner of record of the legal fee simple title of the Lot.

1.2: VOTING RIGHTS. The Owner of each Lot shall have such voting rights as are set forth in the Declaration and in all amendments and joinders thereto. The vote for each Lot shall be exercised as the members holding legal fee simple title to a Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

B. Article I Members, Section 1.3 Meetings, Items (b), (d), (e)

Several recommendations were made to clarify the meaning in the above items with which the Committee agreed.

1.3 (b) Modify line 2 by deleting “member of the Association” in the second line and inserting in its place “Owner of each lot at the address in the records of the Association”. Also, at the end of line 3, add....”Association’s web site and on the”.....

1.3 (d) Modify line 1 by adding the word “consisting” after the word “group” and deleting the word “member” and substitute “Owners representing Lots”. Also, on line 14 add....”the Association’s web site and” ...after the word “on”.

1.3 (e) In line 2, delete “members” and substitute “Owners representing Lots” for it. Also, modify line 5 by deleting (3) and substituting (30) for it.

C. Article II Directors, Section 2.1 Numbers

The Committee recommends that a quorum for the Board of Directors meetings be stated in the Bylaws. Add the following sentence, after sentence 1, in Section 2.1 Numbers. “A quorum for a Board of Director’s meeting shall be three (3) Directors”.

D. Article II Directors, Section 2.2 Election

It was recommended that the Board of Directors be prohibited from recommending candidates for election to the Board in the notice of the annual meeting. The Committee agreed with this recommendation which it reasons will give all candidates an equal chance of being elected.

Modify Section 2.2 as follows: in sentence 2, delete “and its recommendations”.

E. Article II Directors, Section 2.3 (b) Removal of Directors

It was recommended that the Board of Directors call a meeting within thirty (30) days instead of sixty (60) days for the intended purpose. The Committee agreed.

Modify 2.3 (b) as follows: in the second sentence, substitute “thirty (30)” for “sixty (60)”

F. Article II Directors, Section 2.3 (b) Removal of Directors

It was recommended that the notice of a meeting involving the removal of a Director be given to members according to Article I Members, Section 1.3 Meetings (b). The Committee agreed with this recommendation.

Modify Section 2.3 (b) as follows: In line 2, following the word notice, add “(according to Article I Members, Section 1.3 (b),)”.

G. Article II Directors, 2.3 Removal of Directors

It was recommended that any Board Member absent for three (3) consecutive board meetings or six (6) board meetings in any 12-month period be removed from serving on the Board of Directors. The Committee agreed with this recommendation.

Modify Section 2.3 by adding (e) below

(e) Any board Member who is absent for three (3) consecutive regular board meetings or six (6) regular board meetings in any 12-month period shall be removed from serving on the Board of Directors.

H. Article II Directors, Section 2.4 (b) Meetings

It was recommended that proposed drafts of the minutes of the Board of Director’s meetings be posted on the Association’s web site. The Committee agreed with this recommendation.

Modify Section 2.4 (b) as follows:

At the end of Section 2.4 (b), add the sentence..... “The proposed draft of the minutes shall also be posted on the Association’s web site”

I. Article II Directors, 2.6 Authority (a)

Mr. Grant recommended an addition to this Section, as below. The Committee defers to his legal background and accepts his recommendation.

Modify 2.6 (a) by adding a second sentence as follows:

“Except to the extent inconsistent with any provision of the Declaration, the Association’s Articles of Incorporation or the Association’s Bylaws, the Board shall have the authority to exercise the powers conveyed to it by statute, including, but not limited to Texas Property Code Section 204.010”

J. Article II Directors, Section 2.6 Authority (b)

It was recommended that this Section be modified to make clear that the Board of Directors authority includes appointing committee members, as well as creating committees and specifying the duties. The Committee agreed with the recommendation.

Modify 2.6 (b) as follows: In line 1 following the words ...create committees, add “appoint committee members”

K. Article II Directors, Section 2.6 Authority (d)

It was recommended that the wording of (d) be revised, as below. The Committee agreed with this recommendation.

(d) No loans shall be made by the Association to any entity.

L. Article III, Officers, Section 3.2 The duties of the officers of the corporation shall be as follows: Item(a)

It was recommended and the Committee agreed, that Section 3.2 (a) be modified as follows:

At the end of the third (3rd) sentence, add.....“as agreed to and approved by the Board of Directors”.

M. Article III Officers, Section 3.2 The duties of the officers of the corporation shall be as follows: Item (a)

It was recommended and the Committee agreed that a fourth sentence be added to Section 3.2 (a). That sentence is:

“The President is the spokesperson for the Board, unless he designates another Board Member, in all matters that require either written or verbal comments by the Board.”

N. Article III Officers, Section 3.2 The duties of the officers of the corporation shall be as follows: Item (d)

It was recommended by the Committee that it be made clear exactly where the Members of the Association can inspect the records of the Association.

Delete the last sentence of Section 3.2(d) and add the sentence:

“All books of accounts and all other records shall be kept at the principal office of the Corporation (6007 Mount Bonnell Road) and shall be open to inspection by any Member during normal business hours”.

O. Article IV Assessment, Section 4.4

It was recommended that the above Section 4.4 be revised as specified below. The Committee agreed.

In the first line, replace 45 with 30. In the second and third lines, delete the phrase “be entitled to be voted as a member of the corporation”, and replace it with the phrase----- “vote with respect to the subject Lot”.....

P. There were several recommendations regarding typographical, spelling and grammatical errors and minor corrections to the Bylaws which were accepted by the Committee. There are listed below.

- 1). The term Board of Directors should be capitalized throughout the Bylaws.
- 2). The term Bylaws or bylaws is not hyphenated. Since the term, in this case, refers to the HOA’s Bylaws, it should be capitalized throughout.
- 3). In the title of the Bylaws, the address of the Association’s principal office, 6007 Mount Bonnell Road, should be added below “Cat Mountain Homeowners Association, Inc.”.

- 4). In reference to Article I Members, Section 1.3 Meetings, Item (a), line 3: substitute “March” for February in the phrase ...last day of February..... This change will conform to the most recent timing of the annual meeting dates.
- 5). In Article II Directors, Section 2.2 Elections, The word “shall” is misspelled as “hall”. Correct.
- 6). In Article II Directors, Section 2.8 Use OF PROFESSIONAL SERVICES, LINE 4, substitute the word “shall” for the word “to’.
- 7). In Article III Officers, Section 3.2, The duties of the officers of the corporation shall be as follows: Item c, line 5 ...delete the symbol π in front of the word perform.

II. Rejected Recommendations

A. Article I Members Section 1.3 Meetings Item c.

It was recommended that a simple majority vote of the Members should be able to approve any amendment changes to the agenda at the Annual meeting. Currently, the requirement is two-thirds.

The Committee rejected this recommendation, reasoning that the higher standard is appropriate since Members have not had sufficient time for thoughtful evaluation of the changes.

B. Article II Directors, Section 2.4 Meeting, Item (a)

It was recommended that the required notice for a special Board of Directors Meeting be reduced from 2 days to 1 day preceding the meeting.

The Committee rejected this recommendation. Considering that the unpaid, Board Members have many other personal obligations, it appears to the Committee that a 2-day notice is a bare minimum to assure full attendance and participation of Board Members at a special meeting.

C. Article II Directors, Section 2.1 Numbers

It was recommended that a requirement of a candidate for an Association Officer be that the person must be a Member of the Association.

The Committee rejected this, since it already exists in Article II, Section 2.1

D. Article II Directors , Section 2.3 Removal of Directors, Item c

It was recommended that a vote of two-thirds of the “attendees” at a meeting be required to remove a Director from the Board. Proxies would not be counted.

The Committee rejected this recommendation reasoning that it is essential in such an important vote that a complete and full desire of all homeowners representing Lots be determine as nearly as possible.

E. Article II Directors, Section 2.6 Authority, Item (b)

It was recommended that the President of the Association be allowed to appoint members of committees.

The Committee rejected this recommendation reasoning that fairness and balance of committee membership is best maintained by the present system of Board approval. Three Board Members also agreed

F. Article VI Quorum and Actions by Members, Section 6.4

It was recommended that Board members not be listed in the proxy section of the ballot.

The Committee rejected this recommendation, reasoning that some members will want to designate their vote to a Board Member but won’t know who is currently on the Board.

III Recommendations on which the Committee had NO OPINION

A. Article I Members, Section 1.4 Notice

Jeff Kline wrote the following:

1.4 We should revise to include electronic notification once a signed form from the HOA to the HO has been completed and is on file at the assn. stating that the HO is willing to accept this form of notification. These

electronic notifications will need to be sent with an electronic “return receipt” time stamp that indicates if and when an HO has, in fact, opened this notice. (its the 21st century)

The Committee thinks that this may be a good recommendation, however the Committee members are not versed enough in the subject to render an opinion. Thus, it is suggested that the Board of Directors pursue this and incorporate it into the Bylaws if they agree with it.

B. It was recommended that a “standard annual meeting ballot” be adopted by the Board of Directors. The Committee leaves this recommendation to the discretion of the Board.

C. There were five recommendations made by members which were stated in the current Member Survey. While several of these appear to have merit, the Committee judged that none of these were appropriate for the Bylaws. Thus, they are stated below for the record; any action is deferred to the Board.

- 1) I am interested in maintaining good control over new houses being built, primarily hight (sic) restrictions.
- 2) Better communications of the process for making changes to home exterior or yard.
- 3) Putting by-laws on website for perusal would be nice.
- 4) Amending the declaration and by-laws to restrict street parking, especially overnight parking.
- 5) Perhaps a guest limit for the pool.

Respectfully submitted,

Covenants, Conditions and Restrictions Review Committee

Jack M. Otto
Tom Thomas
James Lloyd