

Response to Concerned Former Art Jurors

Unfortunately, this letter presents statements that are misinformed, incorrect or issues that have been addressed by California Law.

1. "The prohibition of the construction of Ranch Type houses."
There has been absolutely no action taken by the Board of Directors to prohibit the construction of Ranch type houses.
2. "Wood siding will no longer be permitted on homes that have a predominance of wood siding, board and batten, etc."
The most recent proposed regulation, proposed by the Building Commissioner not the Board of Directors, regarding materials does not prohibit the use of wood siding. In fact, the proposed regulation specifically allows the use of wood siding to match the exterior of existing homes. It also allows the use of wood siding, in limited amount, on new construction. The limitation is on the use of wood siding on additions to homes in excess of 25% of the existing homes area.
3. "The inclusion of tennis courts and swimming pools in measuring the coverage of structures or buildings on the property."
The Art Jury only considered buildings in measuring lot coverage. The language of the Protective Covenant is clear that "structures" are to be included in this measurement. Under any definition of structure, tennis courts, swimming pools and other constructed items are structures. (Structure is defined as "manner in which a building or organism or other complete whole is constructed;" "thing constructed." O.E.D.) The Art Jury has discretion to decide certain matters but not to ignore the clear language of the Covenant.
4. "The insertion of two board members as "liaison" to the Art Jury." A committee is defined as a body of persons appointed for a specific function by, usually, a larger body. (O.E.D.) Members of the Art Jury are appointed by the President of the Association and the Art Jury is de facto a committee. Other than the Board of Directors only two entities are named in the Protective Covenant: the Art Jury and the Park and Recreation Board, there is no definition of a committee in the Covenant. Mandatory committees are defined in legal commentary to the Davis-Sterling Act as those established by the association's governing documents. "The most common example of a mandatory committee is the Architectural Committee."
5. "[Liaisons] have no standing to be on the Art Jury." The liaisons are not on the Art Jury. They take no part in the decision-making process that is within the Art Jury's jurisdiction. The liaisons, and there are liaisons associated with every committee in the Association, facilitate the relationship between the Board of Directors and the Art Jury.
6. "[The liaisons] have been intrusive in Art Jury meetings." Contrary to this opinion, I have been thanked by Art Jury members, presidents of the Art Jury, the Building Commissioner and the manager of the Association, for my contribution to the ongoing work of the Art Jury. I would add that one person's opinion is just that.

Enclosures

1. To my knowledge there are no “regulations” governing the establishment and conduct of Board liaisons.
2. Conflict of interest laws prohibit interested board members from voting on any matter in which there is a conflict. (National Council of Non-Profits). Liaisons do not participate in Art Jury meetings, they do not vote on any matter. Art Jury meetings are open meetings and every Association member can attend. Listening to an Art Jury meeting does not make a liaison “interested” and presents no conflict with hearing a matter on appeal.
3. The Board of Directors has not “recently adopted a new appeal procedure.” By operation of California Law, Civil Code Section 5910, the Association must have an internal dispute resolution policy. This addresses a situation where there is a dispute between an association and its members. This does not replace the appeals procedure, for example, the policy relates to a member, not directly affected by an Art Jury decision, who has a dispute with an Art Jury decision.
4. There is no recently adopted appeals procedure.
5. The Building Commissioner has presented the Board with an informational draft of interpretation of certain covenant provisions. The informational draft was written with full participation of the Art Jury members, the Art Jury president, and the Art Jury consulting architect. When, and if, a proposed regulation is presented it would be presented for public comment for the specified period of time ... , as are all proposed regulations.

There are no proposed regulations in any form that attempt to remove the discretion of the Art Jury. However, the broad power granted to the Art Jury to interpret and implement the provisions of the Protective Covenant, is not unfettered and is subject to the Board’s oversight and supervision. The Association is a Common Interest Development and is subject to the Davis-Sterling Act and Corporations Code section 7210 which provides in part “the board may delegate the management of activities of the corporation to any ... committee however composed, provided that the activities and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.”

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