

Dear Mesa Residents,

Included below is the monthly newsletter, which we send to provide as a courtesy to you. While there has been a lot of email traffic involving some of the residents related to the fence moves (see below for more information), there were only four non-board members at the last Board meeting on August 27, 2019. The board meetings are the best place to interact with your board members and to learn what is going on in your community. *****As a reminder, the Board cannot resolve issues via email and can only respond to your emails as a Board after a meeting. This is required by California law.*****

Meeting Minutes: They are available on the HOA Website (starlightmesa.org), and are posted on the cork board at the pool.

Annual Picnic: Sunday, September 15th from 4pm to 7pm. No additional payment required. Please RSVP to the evite that the board will send. Also, if you want to volunteer to help, please respond to this email.

Board seat vacancies: Asha Masurekar (Treasurer) has submitted her resignation, effective September 15. Devon Myers (President) has submitted her resignation, effective October 15. There are two people who are willing to fill these open seats, which we expect to do at the next Board meeting. If anyone else wants to apply, please respond to this email and the Board will consider your applications. We discourage anyone whose property is adjacent to the putting green from applying, however, because of the likely appearance or actual conflict of interest.

Trespassers at the pool: Please call the sheriff (818-248-3464) when you notice any trespassers at our pool. The board is getting an estimate to lengthen the tubes around the inside gate handles to further deter trespassers who gain access that way.

CC&R Revision Committee: If you want to join the committee, please email starlightmesahoa@gmail.com and damstarlighthoa@gmail.com.

The Fence Move Issue

A quick recap

Earlier in the year, three homeowners who live adjacent to the putting green applied to move their fences to align with or be closer to their property lines. Similar moves in other parts of the Mesa have been the source of significant conflict and almost resulted in a lawsuit. (Please see earlier newsletter correspondence/HOA website for earlier correspondence from the Board). As an initial matter, the Board requested the homeowners wait until the conclusion of the CC&R revision process but they wanted the Board to issue a decision and not delay. The Board tentatively approved their moves pending community input with the hope that, if it wasn't a significant concern, the moves could go forward without having to dig significantly into the legal issues. That was not the case, however, and numerous residents both emailed and attended a board meeting to object to the fence moves (this was also complicated because the Chang household put in flags for community review in a different place than what they had previewed for the board). So, after receiving community input, the Board denied the fence moves with the objective of trying to determine what the entire community wants by getting a vote on rules (including a rule for penalties if the homeowners installed their fences). Those households who wanted to move their fences

then put up signs pursuant to Cal. Civ. Code s. 1008 that read "Right to Pass By Permission and Subject to Control of Owner." Residents complained about these signs to the Board.

It was last Saturday (so barely a week ago), that it was brought to the Board's attention that fences had been installed. After inspection, it appears that the Hsu household installed a post and rail fence along their property line, the Garnic household installed a tall series of bushes along their property line, and the Chang household installed a post and rail fence in a location that they had previously proposed (within their property and not on the line) but that did not swerve away from their neighbor's, Michael Stark, property as they had previously agreed.

What Does All of this Mean?

Team Move Your Fence: In sum, this group of residents wants to move their fences up to or close to their property lines. It is area usually designated on maps as "common maintenance area" - so it belongs to the homeowner and has been maintained by the HOA. (This is different than "common area" - which all residents own a 1/90th share.) These homeowners assert that they are paying taxes on the property and should be able to use it. They also assert that they have liability concerns about someone injuring herself on the "common maintenance area." They are also concerned that the HOA will claim this land and prevent them from moving their fences (as best we understand it) - likely from a legal principle called a prescriptive easement.

Team Don't Move Your Fence: In sum, this group of residents wants the Mesa to remain as originally designed. (There is some belief that the "common maintenance area" is a legal requirement that is necessary to have the HOA be operative, but this does not seem to be a legally accurate belief.) They believe that it is a detriment to our community to move the fences and will interfere with the appearance of the putting green and other spaces.

What has the Board been doing?

Since these issues have been raised to the Board, among others, we have been regularly communicating with our counsel. Other issues have also come up, other than those identified above including: (1) does our counsel have a conflict of interest (short answer: no); (2) can a homeowner seek to hold the board criminally liable for moving a property marker - as asserted by the Changs (short answer: no, there was no intent); (3) should the households who want to move their fences obtain a property survey in advance of formalizing their proposals and is the Board being unreasonable in making this demand (short answers: yes and no). This, as well as an emergency conference call in June to discuss these issues since the homeowners who submitted their proposals insisted that they might move forward between July and September. We also met separately with these homeowners at the putting green to review their proposals at least twice, and then met with Michael Stark on July 4 and the following Sunday to understand his concerns and review the compromise he had worked out with the Changs at that time.

We have also been working with our counsel to understand the evolving legal issues including: (1) does the HOA have a prescriptive easement based on years of maintenance on the "common maintenance areas"; (2) if not, what rights do the homeowners have to move their fences as limited by the CC&Rs, if any?; as well as whether the Board can demand the homeowners take down their signs (we requested that they do so as a gesture of good faith at the last meeting given the animosity directed at the signs, they have refused.) These are the dominant questions, although there are a variety of smaller legal issues at play. We have also been reviewing the numerous emails being sent to the Board (as well as the other HOA requirements). (Indeed, legal counsel has indicated that we've submitted more than 20 legal issues to them.) Legal counsel also attended a Board meeting to understand community concerns and the issues that are presenting themselves.

Then, last Sunday, less than 24 hours after learning that the fences had been installed, we emailed our attorneys to inform them that some fences had been installed and to ask what legal remedies are available both through the existing CC&Rs and through other legal action. We are working with them so they know exactly what is going on and waiting on a response from them on what our options are related to the homeowners who moved their fences after the Board's denial. Part of that calculus is whether we'd likely be successful if a lawsuit were filed. As explained above, the property issues complicate addressing the homeowners' violation of the Board's ruling.

So, while it may appear that the Board is not acting, we updated those who attended the last Board meeting and we cannot respond to every email, as explained above. Additionally, all of this takes time - time to meet, time to work with our attorneys, and time to adjust our path as various issues arise. Moreover, we are required to act in the best interest of all homeowners, not just those who three who currently want to move/did move their fences and not just those approximately 20 households who oppose the moves - there are lots of residents who have not weighed in on the issue - we were hoping to gauge the community's view on this until the actual installation of the fences required us to pivot once again.

What's next

We are working with our attorneys to obtain a legal opinion that encompasses the various issues and advises us of our legal remedies and likely success thereof. In the meantime, we once again request that we all remain civil with one another. Acting (or typing) out of anger may feel cathartic, but it doesn't help us resolve anything and usually serves to make things worse. The Board generally does not feel that a lawsuit is the best way to resolve these issues given that it will encumber ALL of our properties. That said, if a lawsuit is necessary and likely to be successful then we will advise the community and solicit everyone's input. Once our attorneys have addressed this for us, their attention will revert to preparing a draft of the CC&Rs for review.