

## MEMORANDUM

To: John Hendley  
From: Joe Farrell  
Sharika Zutshi  
Date: March 8, 2021  
Re: LOOP HOA: Responses to 2/10/2021 Email

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Hello John:

You asked us to respond to questions posed in your 2/10/2021 email:

1. What is the value in having the Covenants/Bylaws re-written to specifically name the board, rather than the declarant language currently used?

**Response:** The rights of the Declarant have expired and should not hinder the HOA. The Covenants were recorded on June 19, 1992. That date is significant for the Covenants because the Declarant lost the right to unilaterally annex additional property seven years after the Covenants were recorded. Covenants, Art. IX, Sect. 1(a). To restate, the Declarant lost the right to unilaterally annex additional property on June 18, 1999. The right to annex additional property is important because the Declarant loses the right to unilaterally amend the Covenants when the Declarant can no longer unilaterally annex additional property. Covenants, Art. XII, Sect. 4. Further, the Covenants can be amended only after upon the vote of 2/3 of owners of lots and the consent of the Declarant so long as the Declarant owns any property or has the right to unilaterally annex additional property. From our review the public records, it appears that the Declarant sold its last lot in 1998 and dissolved in 2005.

2. Fences: Are we able to hold the position, as the HOA, to be very specific about fences we can share cost with or is it all or nothing? Example: Fences within the neighborhood, which are visible to all residents as they line property owned by the HOA, or are along interior roads within the HOA, NOT fences in between resident yards or fences that are on the perimeter of the neighborhood and abut the public road. Are we setting a precedent if we cover half the cost with the "neighborhood visible" fences, but will not contribute to

the perimeter fences? These are ALL fences original to the neighborhood placed by the builder.

**Response:** The HOA has no obligation to maintain any fences in the neighborhood under the Covenants that are not Common Property or “entry features.” All fences, including party fences, are to be maintained by the owners. However, Article V, Section 1 states that “...the Association shall have the right, but not the obligation, to maintain other property not owned by the Association; whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.” If the Board does not think an Owner is properly maintaining their fence, the Board can give written notice to the Owner to perform the necessary maintenance or repair at the Owner’s expense. If the Owner does not comply with the written notice within ten (10) days, the Board may perform such maintenance and bill the Owner for it as part of the assessment. Section 19 of Article VI states that the ARC can issue guidelines detailing acceptable fence styles and specifications.

I would not recommend that the HOA repair any fences. Instead, I would recommend either (1) requesting the ARC to issue specifications for fences that are “neighborhood visible” and mandate Owners comply with those specifications; (2) issue an Addendum to the Covenants that addresses “neighborhood visible” fences and the HOA’s specifications for such fences; or (3) immediately send notices to the Owners whose fences are neighborhood visible informing them of any maintenance they need to perform on these fences. In all of these situations, the Owners would bear the costs of such repairs or maintenance. However, the HOA’s payment for fence repairs could lead to the accusations of favoritism against the HOA. It may also create a slippery slope in the future as to (1) who is responsible for the fence maintenance and repairs and (2) which Owners can receive money for fence maintenance and repairs. The only fences that should be maintained by the HOA are those that fall under Article VI Section 15, which are those that need to be maintained to permit safe sight across the street corners. The Board should avoid tendering any money for fence maintenance and should, instead, pursue one of the three aforementioned options.

3. Does "party fence", as currently written in our covenants, apply to a fence that sits 3 ft on a resident property, but the shared property is owned by the HOA? I know GA has no specific fence laws, but this is a huge source of contention in our neighborhood that I would love to get more feedback on

**Response:** A party fence, as written in the Covenants Article V Section 3, is a fence that “serves and separates any two (2) adjoining Lots.” A party fence is a fence that is on the boundary line of two lots, not a fence that separates a lot from Common Property. A fence which separates a lot from the Common Property and is on that lot Owner’s land is under the authority of that Owner, not the HOA.

4. We also have homeowners that recently purchased a home claiming that they were unaware that a dilapidated fence is on their property and thus their responsibility. What is the best way to prove the fence is theirs to repair/replace?

Under the Covenants, the maintenance of fences is the responsibility of the Owner of the land where the fence is located. Article V Section 2 clearly states that the maintenance of “all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner.” The HOA is only responsible for the maintenance of the Common Property and certain other exceptions, none of which include a fence that is located on an Owner’s land. If the homeowners still assert they are not responsible for the maintenance of the dilapidated fence in question, I recommend sending them the ten (10) day notice letter under Article V Section 2. If there is an issue regarding whether the fence is on the homeowners’ property, a survey may be ordered.

Thank you for allowing us to assist you with this project.

Joe Farrell  
Sharika Zutshi