



CCOC Communicator

ANNUAL FORUM ISSUE

The CCOC's Annual Forum took place on October 1, 2008, and it brought together in one room for perhaps the first time representatives of all the County agencies that affect our communities. In this Issue, we will present summaries of the advice that they gave. We also include the remarks made at the Forum by one of the County's leading practitioners of common ownership community law.

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Current Issues Facing Community Associations

Rockville attorney Jack McCabe presented the opening address at the CCOC's 2008 Annual Forum, after having been presented with the CCOC's Distinguished Service Award. Mr. McCabe has been a volunteer Panel Chair for the CCOC for 15 years and has written several of the CCOC's most important decisions. Mr. McCabe highlighted what he sees as the most important trends affecting common ownership communities today:

Collections & Foreclosures. It comes as no surprise that the number of foreclosures on first mortgages in community associations is up greatly. Equity in units being foreclosed is down and there are fewer and fewer foreclosures where there are surplus proceeds. Thus there are no funds to pay the subordinate liens and judgments of community associations. As a result, community associations need to explore ways to keep residents in the units. One solution is to freeze delinquencies and extend payments so that the association can maintain cash flow and the resident can meet the obligation of the current assessments. It does not help the association if the resident loses a unit and it remains vacant. At the same time, the association must protect itself. Filing a lien is now a better option,

since the association will have 12 years to foreclose.

Rental Percentages. McCabe pointed out that more community associations, in particular condominiums, are exploring amendments to their documents to limit the percentage of units that can be rented. There are various reasons for this, not all of which are empirically verified. The theory in general is that owner-occupied units are better maintained and that resident owners take a greater interest in the community. The downside is that absentee owners may be forced to sell units if they can no longer rent, but this is very difficult in the current market.

Condominium Insurance. The recent *Anderson* case [see the Summer, 2008 CCOC Communicator] resolved some questions about a condominium's insurance liability under state law but has raised new questions about a condominium's liability under its own governing documents. These problems arise when the governing documents create broader insurance obligations than are required by the law. For example, if the governing documents still require the condominium to insure repairs to the private units, who is responsible for paying the insurance deducti-

ble for the repairs to the private units? Under *Anderson*, it is not clear whether the condominium can now pass that deductible on to the unit owner and only be liable for the cost of repairs in excess of the deductible. Condominiums must consult carefully with their insurers to verify that their casualty coverage complies with their own governing documents because those documents remain in effect until they are properly amended to take advantage of the *Anderson* ruling.

Peace Orders. McCabe noted that there is a procedure in Maryland District Courts that allows individuals to obtain protection from harassment by other individuals. We are seeing more instances where board members seek peace orders for protection from unit owners, and unit owners seek peace orders for protection from managers or board members. These cases can arise from the enforcement, sometimes aggressive enforcement, of community association rules and regulations. Owners who feel threatened or harassed also feel that they must resort to protection from the courts against each other and against the members of the governing bodies of their association. Members of governing bodies sometimes feel threatened by unit owners because of unpopular but necessary decisions.

Current Issues Facing Community Associations

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The CCOC's Automatic Stay Under Chapter 10B. The CCOC should consider amendments to Chapter 10B that include a revision of the conditions for granting a stay when there is a complaint filed before the CCOC. Sometimes, complaints are filed before the CCOC that result in a stay of otherwise routine activities of an association, such as elections, adoption of budgets, and execution of contracts. McCabe feels that there should be a mechanism whereby the use of this automatic stay is not abused. At the same time unit owners are entitled to protections from enforcement during the time that they are pursuing their rights to have a hearing. The balance may be to follow a procedure more like that followed by courts for temporary injunctions, and weigh the complainant's likelihood of success before granting injunctive relief.

Renewable Energy Devices. Both the State and the County have enacted laws to allow the installation of certain renewable energy improvements such as solar panels. Associations will be bound by these statutory requirements. [Editor's note: see page 3 of the CCOC Summer, 2008 *Communicator* for a summary of the laws.] Just as happened when the Federal Communications Commission adopted over-the-air TV reception device rules, associations will have to harmonize their architectural rule enforcement with the permissions granted by law to unit and lot owners to install such improvements. These laws preempt the governing documents.

Fire Marshal Fees. The CCOC and community associations have been working with the Department of Fire and Rescue Services to reach a fair process for assessing costs against associations for inspections by the Fire Marshal. Executive Regulation 5-06AM allows assessment of costs for routine Fire Code inspections.

In some cases these costs are not in proportion to the inspection work being done or the benefits received. Routine inspection of fire protection elements for any community association is a vital part of protecting the health and safety of County residents. However, the cost for doing so must be fair and fairly allocated.

Multi-language Residents. More association communications are being circulated in languages other than English. Additionally, residents are making requests to have interpreters at association meetings and hearings. Associations will have to reach an accommodation that recognizes the rights of individuals to participate and at the same time that is not so costly as to be prohibitive. Human rights laws at the Federal, State, and County level may apply to such requests.

Aging Communities. As some of the communities in Montgomery County reach 10, 15 and 20 years of age, boards must face the fiduciary obligation to maintain and repair the physical elements. Unfortunately it is at this point that certain construction defects also appear. Developers are often gone, or due to statutes of limitations and statutes of repose associations can no longer make claims against them. As a result, unit owners must pay out of their assessments. This leads to special assessments to meet often large construction obligations. Sometimes these maintenance and repair problems

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Consumer Protection in Your Communities

"The Montgomery County Office of Consumer Protection (OCP) provides many services that directly benefit the members of common ownership communities," according to Eric Friedman, OCP Director.

Chief among these is probably the assistance it can provide to prevent and resolve home improvement complaints. The Office will give information on the complaint records of home improvement contractors, plumbers, electricians, tree surgeons, lawn care contractors and others; and will help customers to find licensed contractors in each field. Selecting a licensed contractor is probably one of the most useful steps a customer can take to protect himself and avoid problems. Communities can help by regularly reminding their members to deal only with licensed contractors.

The Office also can give advice on mortgages and refinancings and refer those threatened with foreclosures to agencies specializing in foreclosure assistance. Citizens can also turn to the Office for assistance dealing with a wide variety of other issues, including new home warranties, auto repairs, auto sales, vocational schools, and other consumer purchases generally. The Office is

also charged with enforcing other County laws such as those dealing with contracts for domestic workers and property tax disclosures on home sales. There is no fee for these services.

In addition to investigating and resolving individual consumer complaints, OCP also actively seeks to educate the public on the rights and responsibilities of consumers and merchants in the marketplace. As part of this consumer education effort, the office provides speakers to community organizations, businesses, and civic groups on such topics as automobile sales and service, credit and collection practices, telemarketing scams, home improvement contracts, and identity theft.

OCP also offers two other services which may be of interest to your community group. You can sign up to receive periodic "Consumer Alerts" by email containing the latest consumer news, warnings, and press releases. And it can send you news articles to include in your organization's newsletter or website.

The Office's phone number is 240-777-3636, and it is online at www.montgomerycountymd.gov/consumer.

WHAT COMMUNITIES SHOULD KNOW ABOUT THE DEPARTMENT OF PERMITTING SERVICES

Reginald Jetter, Chief of the Division of Casework Management of the County's Department of Permitting Services (DPS), spoke about the services and responsibilities of his department.

Home improvements and other new construction: One of the major duties of DPS is the regulation of new construction, including additions to existing homes, fences, sheds, and decks. DPS issues permits for such work and inspects them for compliance with the County's building code. Jetter advises that homeowners in HOAs first obtain written approval from their HOA before applying for a permit from DPS. While DPS can issue a permit without such approval, DPS approval does not release the homeowner from also having to comply with the HOA's architectural requirements. DPS does not enforce the HOA's requirements.

DPS can investigate complaints that new construction is taking place without a permit, and it can also investigate whether businesses are being conducted in residential areas without proper County approval. It also investigates whether new construction is too close to the property line. To ask for such an investigation, call 240-777-6259. DPS is also responsible for enforcing County laws on sediment control, zoning, and construction in the right of way.

What should HOA's know prior to transfer of a developer's responsibilities to the HOA? Jetter says that it is imperative for the HOA's representatives to walk the site with the developer prior to transfer to make sure that the developer has complied with all the plans for the property and has performed all required repairs. If the subdivision plans were approved by M-NCPPC, DPS's Site Plan Enforcement Unit will inspect the area for compliance by the developer. The HOA's representatives can contact the Site Plan Enforcement Unit prior to transfer to review their concerns and to find out if there are any outstanding issues concerning compliance with the approved plans. Site plans govern the property forever, and HOA's should not make any changes in the property that are regulated by the site plans (for example, construction of a new fence where there was no fence before) without prior approval from M-NCPPC. HOA's wishing to make changes to their properties should first contact the Site Plan Enforcement Unit at 240-777-6321 to find out if approval will be needed.

Mr. Jetter also reviewed some of the most common questions received by his office:

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appear suddenly and therefore no reserve has been created for them. The directors have a fiduciary duty to maintain the community and to perform reserve studies regularly. But at the same time, the unit owners are being financially stretched. As a result, financing these costly improvements has become a major and divisive issue.

According to McCabe, these are just a few of the recent issues, and if nothing else, they show us that there are difficult challenges for all of us in this field to work together to confront and resolve in the years ahead.

When do repairs require a site plan amendment? Regular maintenance and repairs to a structure—for example, a timber retaining wall—do not require an amendment to the site plan so long as the repairs use the same material as the original construction and the wall remains in the same place. However, such a project may require a building code permit.

What about playground repairs? M-NCPPC allows an HOA to replace old, damaged or unsafe playground equipment only after the HOA completes a "Recreational Equipment Substitution Request Form," which is available online at www.MontgomeryPlanning.org. The plan will be reviewed and acted upon by the M-NCPPC Site Plan Review Division. Changes to the size or location of the playground may require a site plan amendment.

Can an HOA replace dead trees on private or common property? HOAs should first contact the Forest Conservation Program at M-NCPPC (301-495-4540) or the DPS Permitting Services Division (240-777-6321) to ask for an inspection of the site and for a decision on whether it is allowed to remove or replace trees.

Can an HOA repair damaged sidewalks on common property? Yes, and it does not need a permit to do so. If there are any questions about this, the HOA should contact the DPS Permitting Services Division.

How can an HOA learn more about DPS? HOAs and County citizens can subscribe to the DPS "eSubscription" bulletins at <https://ext01.montgomerycountymd.gov/entp/s1p/esubpublic/newssubscriber.do> and zoning information is also available online at <http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp>



Tips From The County Police



Lieutenant Zane George of the Montgomery County Police offered several useful tips for the audience at the Annual Forum.

Noise: The Police are frequently called out on noise complaints. Under County law, "quiet hours" for weekdays run from 9pm to 7 am, and on weekends from 9pm to 9 am. During "quiet hours" the maximum decibel level is 55 dBA, which is the volume of sound needed to carry on an ordinary conversation between two people 10 feet apart. The penalty for excessive noise during "quiet hours" is \$500 or \$750 for a second offence. The Police recommend that TV's and stereos be kept to conversational levels, that owners do not use power tools during "quiet hours," that pet owners be diligent to control dog barking, and that all residents make special efforts to keep sound down during "quiet hours." Complaints should be sent to the Department of Environmental Protection at 240-777-7700.

Theft: A common cause of theft is leaving valuable items on display inside automobiles, such as laptops, cell phones, packages, etc. These should be taken inside the house or locked out of sight in the vehicle's trunk. Likewise, open garages are a source of temptation to theft, and should be kept closed and locked.

Suspicious activity: The Police strongly encourage residents to call and report suspicious activity such as strangers driving a neighbor's car or suspected drug activity.

Evictions of drug dealers: The Police work with the State's Attorney to help obtain expedited evictions of drug dealers from rental property, but it may take time to gather the necessary evidence to succeed in court.

What Associations can do: The Police strongly encourage Associations, in their newsletters and other mailings, to distribute crime prevention advice to their members. Much information is available through their website: www.montgomerycountymd.gov/police

A farewell....

As a result of service cutbacks due to the County Government's budget problems, the Commission is losing the services of Kathy Schaefer, an administrative aide in the Office of Consumer Protection, who is being transferred to another agency. The Commission appreciates her many services and kindnesses and wishes her well in her new job.



TRANSPORTATION DEPARTMENT SERVICES AND YOUR COMMUNITY



Arthur Holmes, director of the newly-reorganized Department of Transportation (DOT), offered one of the most popular presentations to the Annual Forum.

DOT was created this summer as a result of the division of the former Department of Public Works and Transportation. The reorganization allows the department to concentrate on its 5 principal functions: Highway Services (maintenance of County roads, sidewalks, rights-of-way, bike paths, street lights, trees in the rights-of-way, snow removal, and storm drains); Traffic Engineering (including the installation of stop signs and crosswalks and neighborhood traffic controls), Parking Management (meters and garages, and handicapped parking spaces), Transportation Engineering (construction of roads, bridges, sidewalks and bike-ways) and Transit Services (Ride-On, regulation of taxicabs). For more information and the forms needed to request service, go to the DOT website at www.montgomerycountymd.gov/mcdot.

Of special interest to common ownership communities is the Highway Services Reimbursement Program. Normally, such communities bear

the burden of maintaining their own streets, but if those streets are open to and commonly used by the public, then such communities may be eligible for financial assistance to maintain them.

DOT will plant and maintain trees along public roads but residents can ask for approval to plant their own trees. Residents can also petition for the installation of new stop lights and stop signs.

DOT encourages community associations to distribute copies of its Residents Guide to Services brochure to all their members. To obtain bulk copies, call 240-777-7155.

2009 CAI EXPO

Please join us at the annual Community Associations Institute Annual Conference & Expo
Saturday, March 28, 2009, from 9 a.m. to 3:30 p.m.
at the Washington Convention Center, Washington, D.C.

ADMISSION IS FREE

801 Mount Vernon Place, NW, Washington, D.C. 20001

202.249.3000 800.368.9000

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SELECTED SUMMARIES OF CCOC FINAL PANEL DECISIONS



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Zich v. Decoverly I HOA, #73-07 (August 22, 2008) (Panel: Fleischer, Kali, Whelan): Mr. Zich complained that two members of the board had a conflict of interest and should have recused themselves from voting on each other's architectural disputes. The two members ran simultaneously for election when the board was expanded from 5 to 7 members, and subsequently voted in favor of each other's architectural applications when those applications came before the board for review (although they each recused themselves for voting on their own applications). One application passed, the other failed. The panel upheld the board, noting that the two members had run for office on platforms that criticized the current board's strict enforcement of the architectural rules, so that they had some rational basis for their votes, and also because Zich failed to produce any evidence, beyond the votes themselves, to show agreement or collusion between the two members.

Simons v. Fair Hill Farm HOA, #77-07 (October 22, 2008) (Panel: Alkon, Perlingiero, Vergagni): In 2004, the board of the HOA decided to cut costs by not painting unit numbers on the reserved parking spaces, overturning the previous parking policy. When Mr. Simons found other vehicles trespassing on his reserved spot, he could not get assistance because the towing company refused to tow unless the unit numbers were on the parking space at issue. He painted his number on his spot but the board repainted the spot, fined him \$25, and billed him for the repainting costs of \$420. The panel overturned the board's decisions because the board could not document that its 2004 decision had been properly adopted, because the new policy made it impossible for Mr. Simons to enforce his right to his reserved parking spot, because the board admitted that painting unit numbers was probably cheaper than painting the word "Reserved," and because while the case was pending before the CCOC, the HOA reversed itself and began repainting unit numbers on all the spots. The panel ordered the HOA to refund the \$445 it had assessed against Mr. Simons.

Yeshaneh v. Redland Crossing HOA, #79-07 (December 3, 2008) (Panel: Koenig, Negro, Whelan). The unit owner challenged the towing of his taxicab as a "commercial vehicle" because it had magnetic taxicab signs that he removed when he parked it so that it appeared to be an ordinary sedan. However, the car still had "Hire" tags, and under the rules, such tags made it a commercial vehicle. The panel upheld the HOA's right

to tow the car. However, the panel also found that the HOA had violated the "automatic stay" requirements of Chapter 10B because the Board ruled that the vehicle was in violation and immediately enforced its decision by having the vehicle towed off the lot. Under Chapter 10B the Board should have notified the owner in writing and given him 14 days to appeal the decision to the CCOC before it took any action against him. The panel ordered the HOA to revise its procedures.

Livingstone v. Parkside Community Association #23-08 (October 28, 2008) (Panel: Fleischer, Gannon, Vergagni): When the homeowner bought her home in the HOA, its rules allowed day-care centers; she applied for the proper licenses, spent \$7000 to prepare her home as a day-care center, and then notified the HOA of her intention to operate a day-care center pursuant to the rules. As a result of her applications other owners requested that the Bylaws be amended to prohibit all day-care centers, and this proposal went to a special meeting, where it was adopted by a 22-2 membership vote. The homeowner persisted in opening her day-care center and filed a complaint with the CCOC. The panel upheld the HOA. Section 11B-111.1 of the HOA Act specifically allows HOAs to prohibit day-care centers if they follow certain procedures for doing so, and the HOA did so; it also concluded that the law applied both to day-care centers already in operation and those not yet operating. Significantly, the panel also ordered the homeowner to pay \$2450 in attorney fees to the HOA, finding her complaint to be frivolous and in bad faith since she did not present any substantial argument against the validity of the HOA's decision. (It did, however, reduce the fee request from \$14,000 to \$2450, finding the lower sum to be reasonable for this case.)

Doral HOA v. Akhigbe #36-07 (November 26, 2008) (Panel: Dymowski, Farrar, Oxendine) The lot owner constructed a large combination playhouse/animal shelter without permission, and argued that it was not a "shed" prohibited by the HOA rules. The panel reviewed the rules and decided that whether or not the building was a "shed" it was certainly a "structure," and as such clearly regulated by the governing document controls over all structures. The panel ordered the owner to remove the shed. [NOTE: this ruling is now on appeal to the Circuit Court.]



Useful County Phone Numbers for Common Ownership Communities

Office of Consumer Protection (240) 777-3636
 Commission on Common Ownership Communities (240) 777-3766
 Department of Housing and Community Affairs (240) 777-3600
 Landlord-Tenant (240) 777-3609
 Licensing & Registration (240) 777-3799
 Housing Code Enforcement (240) 777-3785
 Cable TV Office (240) 777-2288
 Circuit Court (240) 777-9400
 Community Use of Public Facilities (240) 777-2706
 County Council (240) 777-7900
 County Executive (240) 777-2500

Department of Permitting Services
 Zoning Information (240) 777-6240
 Stormwater Inspections (240) 777-6266
 General Information (240) 777-1000
 Housing Opportunities Commission (301) 929-6700
 Human Rights Commission (240) 777-8450
 Libraries (240) 777-0002
 Park and Planning Commission (301) 495-4600
 Police Department (non-emergency) (301) 279-8000
 Abandoned Autos (301) 840-2455
 Community Outreach (301) 840-2715
 Department of Public Works & Transportation (240) 777-7170
 Traffic Operations (240) 777-2190

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www.montgomerycountymd.gov/ccoc

MAJOR CHANGE IN TV BROADCASTING TO START JUNE 12!

Beginning *June 12, 2009*, your television set will no longer receive the traditional “analog” signals from the local stations. On that day, all stations across the country will begin broadcasting only in digital signals. (Currently, they are broadcasting in both analog and digital signals.) Digital signals will bring better picture images and allow more program options.

If your TV set is an older model that only receives analog signals, you will not receive any over-the-air TV signals after June 12 unless you buy a “converter box” that will allow you to turn the new digital signals into the traditional analog signals that your set can use. The newer digital TV sets are not affected by the change and will continue to operate normally.

Residents with analog TV sets will have 3 choices if they wish to continue to receive TV broadcasts: 1. buy a converter box at a TV or electronics store; 2. change to paid satellite or cable TV service; or 3. buy a TV with a digital tuner.

To help consumers obtain converter boxes the government has created a program that offers every household *two* coupons worth \$40 each towards the purchase of converter boxes. To obtain your coupons, visit the official website at www.dtv2009.gov or call **1-888-DTV-2009**. (As of February 6, however, the supply of coupons is very limited and there is a long waiting list for them. The contacts listed above will give you the current status of the availability of coupons.)