



THE KEYS BREEZE

Issue Number 10

June/July 1984

NEWS FROM THE BOARD

● County Supervisor Susan Lacey attended a recent Board meeting to discuss the infamous Arundell Barranca and the County Flood Control District's responsibilities regarding silting at the entrance to our main channel. There will be no simple solution to the problem and certainly no one expected it to be resolved at this meeting. Money, as always, is a major obstacle. Another obstacle may be the precedent set by the decision in a recent court case in which the Flood Control District was held not to be responsible for flood damage downstream.

The Board's Waterways Committee plans to meet with Mrs. Lacey's technical people to investigate the problem in more depth, and some Board members and members of her staff are planning to walk the length of the Barranca to see what is coming from where and ending up in our back yard.

Mrs. Lacey may not have known what to expect from us when she agreed to the meeting, but we hope she left feeling that we are serious, calm, rational, and rather nice people. We appreciated the opportunity to tell her of our concerns and, although nothing concrete was accomplished, the meeting was invaluable in that it opened up what we intend to be permanent lines of communication and a good working relationship between our organization and our County Supervisor. Thank you for coming, Mrs. Lacey.

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NEIGHBORHOOD WATCH MEETING

The Keys Harbor Condominium Association of Harbor Boulevard is holding a Neighborhood Watch meeting on Wednesday evening, June 6, at 7:30 in the Outrigger Room at Harbortown Point. They have graciously invited all interested Keys residents to attend and hear the Ventura Police Department representative explain how we can better protect our property. Sounds like a good idea!

ALL QUIET ON THE WATERFRONT

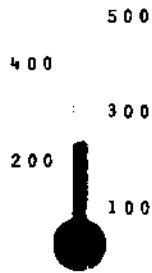
By Phyllis Grey (Reef Street)

Living in a water-oriented area is a privilege which carries with it certain responsibilities. One of these responsibilities was tested recently in our municipal court system. The result is that the skipper of the Monte Carlo is on probation for a period of two years.

On December 10, 1983 the Monte Carlo was chartered for a birthday party. Part of the evening's festivities included a tour into the Ventura Keys channels. That particular evening the music being played for the party was loud enough to cause some of the electrical fixtures in our home to vibrate, and it was impossible to carry on with an evening's usual routine. This continued over a period of at least one hour. I, therefore, phoned a complaint to the Harbor Patrol office. In spite of their efforts to intervene the music continued unabated. Since the channels are considered to be city streets, the Harbor Patrol then called the Ventura Police Department. An officer attempted to stop the Monte Carlo from our dock with the assist of the Harbor Patrol, to no avail. The result of the evening's activities was that the District Attorney's office decided to prosecute the case. The police officer and I testified in the case, and the skipper was found guilty of willfully disturbing the peace.

Certainly more serious crimes are committed than disturbing the peace. However, the judge equated the skipper's actions to renting a flatbed truck and cruising a small, defined area with a rock band blaring. It is not considerate and it is not acceptable. The customary sentence for an offense of this nature is a monetary fine. However, in view of the "willful" disrespect displayed that evening, the judge felt it would be more appropriate to place the skipper on probation. Therefore, if there is a complaint called in on the Monte Carlo within the next two years, the fine will be assessed and a new trial will be heard on any new complaint filed.

The purpose of this article is to share with Keys residents, and particularly with the waterfront residents, that the precedent has been established that it is not necessary to tolerate excessive noise on the waterways. Parties and festivities are pleasant, fun, and can be enjoyed by all, but not when they prohibit others from enjoying their own activities.



DID YOU FORGET YOUR DUES?

Fund drives always seem to have these thermometer-type graphs to illustrate their progress, so I decided we should have one, too. Many of you probably either forgot or just have not gotten around to sending in those checks. Remember, the dues are only \$15 payable to Ventura Keys Association, P.O. Box 1086, Ventura, CA 93002.

The membership drive is a good news/bad news situation. The good news is that all sorts of people have already paid: owners and renters, Keys residents and absentee owners, new owners and long-time owners, people who have never paid before and people who always pay. We have even received checks from a few people who own empty lots and from at least two owners whose properties are currently for sale. The bad news is that too many of you never pay your share.

Neighborhoods such as ours where we own common property normally have mandatory assessments to finance the operations of the association, but due to a serious oversight on the part of Pacesetter Homes, the Keys developer, our CC&Rs do not contain provisions for assessments. Consequently we have to go through this yearly ritual of practically begging for money.

All of the money for the Association's expenses comes from the dues. Special activities such as the annual barbeque and last year's shirt sale are not intended to be fund raisers but merely to be self supporting. Regular expenses include water and gardening for our landscaped areas, printing of the newsletter and other notices, postage (kept to a minimum by our hand delivery system), and insurance for the beaches. We must also try to maintain a surplus to cover major repairs and renovations and any legal fees which might be incurred.

Just for fun, here is a breakdown of how each street is doing in this year's membership drive. The numbers indicate how many paid members there are as of May 31 compared to the total number of properties on each street. Bayshore - 34%, Beachmont - 39%, Bonita Court - 50%, Clearview - 25%, Cove - 10%, Dolphin Court - 67%, Outrigger - 67%, Oyster - 57%, Peninsula - 37%, Reef - 80%, Sailor - 30%, Sand Court - 43%, Sandpiper Court - 40%, Seafarer - 48%, Seahorse - 34%, Seahorse Court - 17%, Seal Court - 50%, Seaside Court - 25%, Seaview - 50%, and Surfrider - 38%.

I must have heard every possible rationalization for not paying dues but, whether you use the beaches or not, your property value benefits from their existence, especially if they are well maintained. How can anyone think that \$15 is too much to pay for the privilege of living here?

ART JURY NEWS

By Bette Hawk

Due to several CC&R violations in the Keys tract, your Board and Art Jury members felt it necessary to obtain a legal opinion concerning the enforceability of our CC&Rs. The following is a report by Monte L. Widders, Attorney At Law for the firm of Myers, Widders & Gibson, a firm that is especially knowledgeable in the interpretation of CC&Rs.

The intent of the Pacesetter Homes, Inc. planners when composing the original Ventura Keys CC&Rs in 1964 was indeed for the "mutual benefit of the entire tract." It is therefore the responsibility of each property owner to uphold these declarations as they "run with the land" and are fully binding on each property owner.

Those who disregard these Covenants, Conditions and Restrictions for their own personal benefit not only help to lower our property values in the Keys but are also inviting legal action.

If you have any questions or would like a copy of your tract's CC&Rs, please let me know.

J. ROGER MYERS
MONTE L. WIDDERS
MELTON LEE GIBSON
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May 9, 1984

Members, Ventura Keys Art Jury:

Mr. Ronald G. Harrington
3066 Seahorse
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Mrs. Bette Hawk
1361 Beachmont Street
Ventura, California 93001

Mr. Byron J. Lawler
2947 Seahorse
Ventura, California 93001

Lady and Gentlemen:

You have requested that I review the Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "CC&Rs") of the Ventura Keys residential project (hereinafter referred to as the "Project") with respect to the enforceability of the CC&Rs' building restrictions and the Art Jury's ability to enforce those restrictions. You have also requested my opinion with respect to two alleged specific violations of the CC&Rs. The following are my responses:

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1. Enforceability of Building Restrictions.

The Project consists of seven separate tracts each of which has its own set of CC&Rs. The CC&Rs of each tract have few differences but those differences are significant with regard to building restrictions. The type of use and building restrictions contained in the CC&Rs are enforceable against all lot owners pursuant to California law either as covenants running with the land or as equitable servitudes. It appears to me that the CC&Rs in question would qualify as enforceable covenants running with the land pursuant to California Civil Code Section 1468. However, even if the technical requirements of Civil Code Section 1468 have not been satisfied, the recent trend of California courts has been to disregard the technical deviations and enforce the covenants as equitable servitudes.

Whether as covenants running with the land or equitable servitudes, the usual remedy for enforcement of such restrictions is an injunction against violation. Morgan v. Veach, 59 Cal. App. 2d 682, 692, 139 P.2d 976 (1943).

Not all restrictions or servitudes are enforceable, however. Only those restrictions which are reasonable are enforceable. Restrictions such as those contained in the CC&Rs involving use and building restrictions have generally been deemed by the courts in California to be reasonable. In Mock v. Shulman, 226 Cal. App. 2d 263, 38 Cal.Rptr. 39 (1964), a case involving similar tract restrictions, the Court observed:

"The court found that the restrictions were imposed upon all the lots in the tract in which the respective lots of the parties were located; they were for the mutual benefit of the entire tract and the owners of the several lots therein, ran with the land and were binding upon and enforceable by each lot owner as against all other lot owners. The restrictions were in the form that has often been held adequate to create mutual equitable servitudes, breach of which will be enjoined. . . ."

The Court in Mannula v. Hacienda Homes, 34 Cal.2d 442, 444-445, 211 P.2d 302 (1949), further observed that:

"Restrictions on the use of land will not be read into a restrictive covenant by implication, but if the parties have expressed their intention to limit the use, that intention should be carried out, for the primary object in construing restrictive covenants, as in construing all contracts, should be to effectuate the legitimate desires of the covenanting parties."

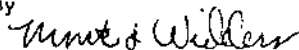
Those provisions of the CC&Rs which provides the Art Jury with its power to approve plans and architectural and construction drawings have been upheld by California courts as being beneficial and promotive of land use where a common scheme of development is contemplated by the original grantor. Mannula, supra.

Based upon the above, it is my opinion that the CC&Rs are valid and enforceable restrictions on each and every lot within the Project and are binding upon all owners of those lots and their successors and assigns. . . .

Very truly yours,

MYERS, WIDDERS & GIBSON

By



Monte L. Widders

NEWS FROM THE BOARD (Continued from p. 1)

- Jim Clark has informed us that a freeway onramp is planned at Peninsula. The Board checked this out and learned that the city has proposed to Caltrans that a freeway onramp and offramp be constructed at the end of Peninsula so that Seaward can be redesigned for increased safety and efficiency. The proposal is still in the talking stage, has not been approved as yet by Caltrans, and is not in Caltrans' 5-year plan. That does not mean it could not be put into the plan at any time, however. Although the Board is in favor of improving the traffic flow and safety on Seaward, we are not thrilled by this proposal and fear greatly increased traffic in the Keys. If you have strong feelings on the subject, please share them with us. We will certainly keep you informed on this matter.
- The Board is still working on plans to rejuvenate the Peninsula/Harbor entrance to the Keys as mentioned in the last issue. We need the cooperation of the apartment owners on both sides of the street in order to get water and electrical hook-ups. A special committee has also been appointed to review our beach landscaping and gardening needs. We intend to make our property look its very best.
- The 3rd Annual Keys Barbeque will be held sometime in late summer. Watch for details in the next issue.

CAUTION!

Our channels seem to be attracting liveaboards. Besides being against city ordinance and the Keys CC&Rs, liveaboards may present a health hazard. Summer is almost here, and those Keys residents who swim in the channels will surely not want to paddle around with raw sewage! As mentioned in the last issue of the newsletter, report violations to Ann Prinz in Code Enforcement at City Hall - 654-7800 ext 870.

KEYS BEAUTIFUL

One Keys resident (Bayshore) included the following note with his dues check:

"We need a pride of ownership campaign - Keys residents are their own worst enemies, to wit:

- 1) Motor homes parked on street
- 2) Palm trees not kept trimmed
- 3) Most yards a mess on Bayshore duplexes."

Our goal in this column specifically and the newsletter generally is to encourage exactly that pride of ownership he is talking about. Some people are just harder to convince than others, unfortunately.

The mention of palm trees in the above note reminded me that while walking on Peninsula the other day I noticed with amazement that the Baker's vacation home on the corner of Peninsula and Bayshore has eight palm trees in the front and side yards - all neatly trimmed. WOW!

This issue's noteworthy home improvement project is the Schulze's remodeled and relandscaped house at 2652 Bayshore. Just because Bill is a Board member does not mean he and Ginger should not get some recognition for their efforts.

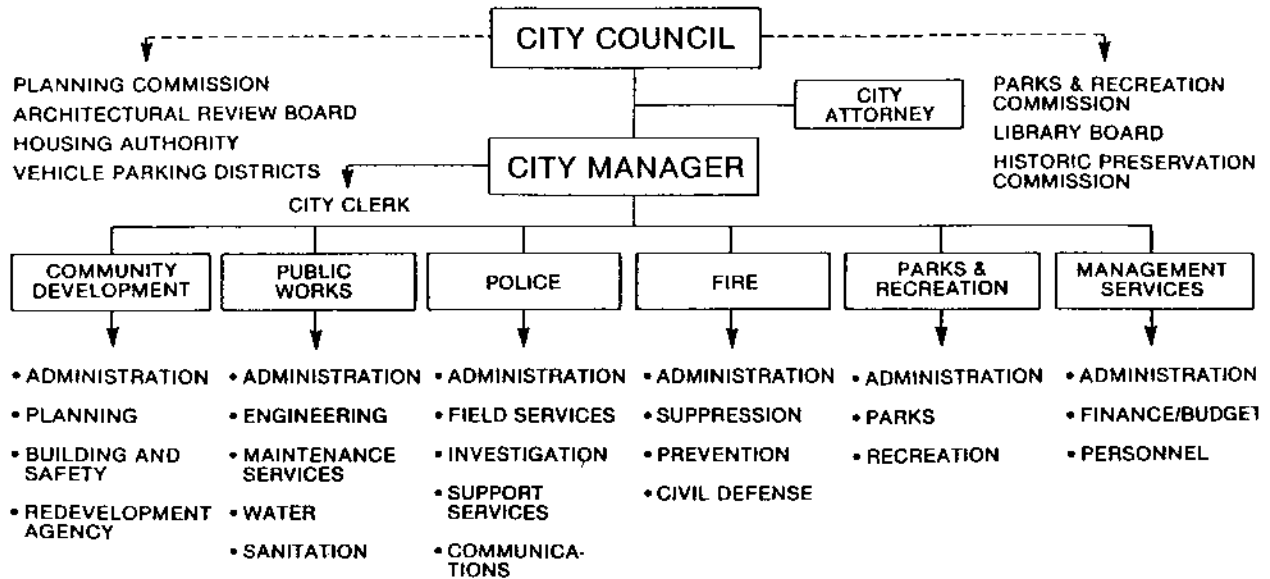
In the "Keys Beautiful" column of the last issue we honored the St. Clairs' duplex on Bayshore (seems like everything is about Bayshore this time - oh well), and we received a lovely thank you note in response. The St. Clairs wrote:

"Thank you so much for mentioning our duplex. It meant so much to us. When we bought on Bayshore I could see what a pretty street it was. I thought if other owners could see what could be done just maybe they would want to update their duplexes. I was happy at each change we made. But it was so nice to hear it from someone else."

THE KEYS BREEZE is the bimonthly newsletter of the Ventura Keys Association. Direct news items, comments, and questions to:
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FOR YOUR INFORMATION:

CITY OF SAN BUENAVENTURA



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