

**Kent Woodlands Property Owners Association
Community Workshops
September 14, 2011 and October 3, 2011**

On September 14, 2011 and October 3, 2011 the Kent Woodlands Property Owners Association conducted community workshops to gather input on the subject of view restoration, trees, and privacy. During each forum a facilitator asked the members present to provide comments on the questions presented below. Each workshop was held independent of the other session and the results of the two meetings have been combined into a single report. The comments appear in no specific order. In addition, written comments that were provided by individual owners have been incorporated into the report by attachment.

Summary of Comments

1) What is an appropriate definition of views entitled to restoration?

- View that has been changed by (vegetation) growth
- Material or Important: Uninterrupted Ridge lines, Mt. Tam, Natural, water
- Realistic – cannot create a view
- Impact of restoration on privacy
- Time frame: Date view was established
 - Options: 1) ownership date 2) 1995 (current CC&R's recorded) 3) Start over today 4) view has been documented 5) views run with property not ownership,6)view you purchased
- Tree Health consideration
- Seller/buyer should be aware of neighbor's rights, impact
- Reasonable
- Consider landscape modifications which are now excluded from ARC review
- Features you purchased
- Views from Living area, deck, entertaining areas, bedrooms (if you had a view to begin with)
- Views of major features anywhere on the property (Mt. Tam, Bay, Ridge line)
- Views supported with photographic evidence
- View can be abandoned if not addressed (protected) in a timely manner

- Consider evidence other than photos such as arborist reports
- Cannot create a “new” view
- Can create a “new” view with cooperation from neighbors
- View restoration may impact more than one neighbor
- Panoramic view is not a protected view
- “Lot” is a description of property, not the definition of a view right
- Distance of view restoration (neighbors) not unrestricted
- Consider tree removals that expose (previously screened) home to neighbor
- What is the distance between homes for restoration (rights) applications?
- Clarification: Current view rights are stated in the section of the CC&R’s covering construction
- Reasonable expectations
- How do we enforce the planting of “spite” trees?
- Original CC&R’s identify owners are responsible for *planted* trees

2) What are your suggestions for the reconciliation process and the role of ARC?

- Process is only guideline, CC&R’s rule
- ARC has the ability to interpret and apply based on 1) CC&R’s and 2) ARC Guidelines
- Remove bias or impression of bias on ARC
- Fair decisions on view applications
- Community based representation on ARC
- ARC comprised of impartial members
- Fair procedures and fees (difference in application fee of \$500 and appeals fee of \$1,500)
- Fees – All parties of equal access to participate in the application hearing and the appeals process.
- Interested ARC committee members

- An ARC member recues themselves if they have a personal interest in decision or precedent. (Now or in the future).
- An ARC member with a conflict should be removed from the decision.
- Increase the size of the ARC membership – 5 members in the past
- Prioritize concerns (shade, parking, views, privacy, seclusion, collateral damage)
- Assess from different points of view (privacy, view, contiguous neighbors, impact on property value
- Reconcile disconnect (inconsistencies) between CC&Rs and ARC Guidelines
- Improve definitions
- See City of Sausalito guidelines for reference
- Consider Fire Safety, dead and diseased trees
- Also important: Fire department requirements and the needs of solar installations
- Maintain relationship with neighbor
- Develop a pre-amble for the Tree & View Restoration Guidelines
- Create an Ombudsman position to facilitate resolution of neighbor disputes
- Consider tree health (time of year for pruning) in context with view right
- Considering an arbitrating arborist to assist with disputes
- Establish a separate committee from ARC for tree & view issues
- Use a mediator to help resolve neighbor disputes
- Establish a process that encourages owners to take care of their own disputes
 - 1) Notification to neighbor with time requirement
 - 2) Refer to ARC if unable to resolve
 - 3) Refer to mediation
- Separate Enforcement and ARC Review
- Reconsider cost of appeals process to the owner of the trees

3) How should responsibility for remediation (cost) be determined?

- View beneficiary pays for remediation and costs

- Consider penalizing trespass by impacting future applications
- CC&R's state owner of trees pays (note: if association proceeds with the work)
- Is view restoration a CC&R violation? Should not cost tree owners.
- Cost of process should be fiscally prudent for KWPOA & owners
- Balance with need for tree maintenance and desire for privacy screen
- Look carefully at the CC&R's and whether they give KWPOA the right to allocate cost to tree owner, as a general rule

4) General Comments on view/privacy matters

- Publish past ARC decisions
- Develop a list of extenuating circumstances that would protect the tree owner
- Do some tree species have priority?
- Should trees that impact multiple views be a factor?
- Trees & plants that are favored (or disfavored) and impact enforcement
- Requirements for tree replacement – dead species
- Who should pay for fire safety?
- Maintain neighborly spirit of KWPOA. Do not over-regulate or create process that is costly to maintain.
- Request Board commitment to taking owner comments & formulating a process for an action plan.
- Privacy is very important – exposing houses
- Communicate issue with contiguous neighbors
- Owners should plant screens on their own property for privacy
- Protect property owners rights
- Difficult to determine individual definitions of privacy
- Not all neighbors are members in the Association – County land use policies (Need to remind County about requirements for all homes)
- Property owners own their own parcel not all of KWPOA

- Expand definition and treatment of native trees, non-native trees, and undesirable trees
- Consider Fire protection and sun exposure (available for solar)

End of Comments

Questions/Issues for KWPOA Trees/Views Forums

Perceived fairness of view restoration decisions

1. In recent past, a view restoration appeal was heard by some of the same people that made the original determination – this doesn't appear fair.
2. All view restoration appeals should be heard by new people (not those who issued the original decision).
3. Recently, members have become aware of some conflicts of interest in connection with view restoration matters.
4. KWPOA needs to adopt a conflicts of interest code to eliminate these types of situations, and thus regain members' trust that view restoration matters are being handled fairly for all concerned.
5. Last fall, there were proposed changes to the view restoration guidelines. These changes favored view owners, and were drafted by a view owner. In response to community outcry, these proposed changes were rescinded.
6. The composition of the committee making view restoration determinations until very recently was weighted toward view owners, and this committee's determinations seemed to favor view owners over tree owners.

Standards for view restoration

1. Recent view restoration decisions don't appear to be following the view restoration standards of the CC&Rs.
2. CC&Rs speak in terms of restoring a view when a tree materially obstructs a view, and that a view should not be unreasonably obstructed by tree.
3. However, a recent case seems to hold that any encroachment of a view is enough to merit view restoration, which would mean that a tree owner must cut trees quite frequently if any growth is sufficient justification for a view owner to apply for view restoration.
4. KWPOA Board needs to make sure that the standard being applied in view restoration cases follows the standards set forth in the CC&Rs. This is critical.

Who bears cost of view restoration?

1. Current interpretation by Board is that CC&Rs require tree owner to pay.
2. However, CC&Rs weren't interpreted this way in the past, and the current position is at odds with most other homeowners' associations.
3. Per KWPOA's attorney, most homeowners' associations provide that view owner pays for view restoration.
4. Per past KWPOA Boards, CC&Rs don't require tree owner to bear the cost of view restoration.
5. Per past KWPOA Boards, in the majority of cases, the view owner paid 100% of the cost, while in a small # of cases, the cost was split. In most cases, neighbors arrived at this themselves, without appealing to the Board.
6. Until recently, there were no cases in which the tree owner was required by the Board to pay all of the view restoration costs.

View restoration fees

1. Fee for a view owner to restore a view is only \$500 (application fee of \$100 plus \$400 reserve fee).
2. Fee for a tree owner to appeal an adverse view restoration determination is \$1,500 (application fee of \$1,000 plus \$500 reserve fee).
3. This fee structure is unfair to a tree owner, and extra fees to tree owner don't appear to be justified.

Notice of view restoration applications

1. Notice to neighboring properties when a view restoration application is filed should be "centered" on the property where the trees to be cut are, not "centered" on the view owner's property.
2. This will more accurately give notice to neighbors that may be affected by the cutting through loss of privacy, risk of landslide, or other issues.

Views and Trees Highlights

Background:

KWPOA Members have a conflict between our CC&R's tree covenant and our 2006 View and Tree Guidelines [rules]. We ought to resolve this conflict to gain clarity on the issue and restore equity between Members.

View protection is entirely a community decision, it's for us to decide what we want and then change the CC&R's covenant or Guidelines accordingly.

A deed covenant protects KWPOA Members' views by prohibiting 'unreasonable' view obstructions by other Members' trees. Since 1995, all trees are potential view obstructions and without a limiting definition of 'views,' all prospective views are protected from all trees' 'unreasonable' obstruction.

The CC&R covenant's enforcement provisions make tree owners bear cost of ensuring others' view thereby giving view claimants an all gain, no pain advantage.

2006 View and Tree [Architectural] Guidelines are contrary to the deed covenant: 'Views' are defined, and view restoration costs are made a view claimant's responsibility.

Tree owners rely on one document, view claimants the other and disputes arise.

What to do?

Trees and Views is an 'either or' proposition, a community can protect views or leave owners to reach private agreements. That's our Members' primary decision.

A. Scrap the view protection covenant and eliminate Members' potential liability?
View restoration would then be by mutual agreement between parties.

B. Continue to protect views?

Greater technical specificity is needed for fair enforcement:

- i. All views? Or specific views?
- ii. All trees subject to trimming?
 - a. Species priority ladder?
 - b. Trimming priority ladder?
- iii. Who is to adjudicate disputes?
 - a. KWPOA? [Governing authority (Sausalito) model]
 - b. Third Party: Mediation, arbitration or courts (if binding arbitration is refused)? [Santa Barbara or El Cerrito model]
- iv. View Restoration cost allocation: Who pays?

Our Views and Trees issue is an outgrowth of a simple covenant: You're responsible to keep your planted tree from obstructing another owner's view. Responsibility for one's acts [planting a tree] was, in 1995, transformed into responsibility for all one's trees being in someone's view. Do we want to continue on that path?

More information and discussion at:

<http://home.comcast.net/~trees-and-views/site/>

September 13, 2011

Comments on Trees and Views Issue: part 1

Nancy Praetzel

405 Crown Road, 461-2857, owned property since 1958

As a long time resident of Kentwoodlands, I have had extensive experience with this issue, as a 6 year member of the Architectural Review committee, a member of the "View Restoration Committee" that crafted the "Guidelines" and as a neighbor.

I welcome this long-overdue discussion of an issue that is complex, poorly understood, challenging and controversial, and I thank those who have taken the time and effort to put this forum together. What follows are my answers to some of your questions:

1. Should Kentwoodlands abandon its covenant that provides view protection and let neighbors their issues themselves?

In a perfect world where neighbors are reasonable, generous, and accomodating, this would work. However , this is not a perfect world and all neighbors do not fit that description. Beautiful views and great privacy are a big part of what makes property in KW so valuable. KW's cc&rs protect these values from the impacts of construction and development with strict and precise Architectural rules. Similar rules should protect these values from the impacts of growing vegetation . **KW should keep its CC&R on views, but possibly modify it to make it more representative of communities values.**

2. Should Kentwoodlands abandon its "Guidelines". ?

I think this is a flawed document. If it is to be retained it certainly should be modified.

3. Should any new rules or covenants reflect the different values of various species or the difference between "planted and natural growing". ?

First I think the word trees should be changed to "vegetation". A shrub or bush can grow to 20 or 30 feet and provide as much view impact as a tree,

depending upon where it is placed in relation to both the view and/or the spot from which the view is enjoyed. Second, I think all vegetation should be treated in the same manner. They all impact equally. There are very few "heritage trees" in Kentwoodlands. Redwood trees can grow 6-10 feet a year. My rule of thumb for trees and views would be:

A homeowner should not expect to expand his view beyond that which existed at time he purchased his property or in 1995, depending on which was the later date, if he wants to do so by reducing the vegetation that provided screening and privacy for his neighbor at that time. (nature of view should be verified by photos)
and, conversly,

A homowner should not expect to expand his privacy or screening beyond that which existed when he purchase his property or in 1995, whichever was later, if he wants to do so by planting or allowing vegetation to grow that will lessen his neighbor's views. (nature of privacy and/or screening should be verified by photos.)

4. Who should pay?

I believe that the neighbor who seeks to have his view restored or maintained should pay for those costs **except** that if he and his neighbor cannot agree amicably to a satisfactory solution and he has to seek help from KW and/or an outside source, the party that loses the dispute should pay the initial costs. From that point on the party that seeks view protection should be prepared to pay for the ongoing costs.

There are many other issues that have been brought up that I cannot respond to at this time. I would like the opportunity to do so as we progress. One final comment I make is that:

I believe that View- Privacy Issues are not Architectural Issues. They were referred to the Architectural Committee by the first Cc&Rs, and have been ever since, by default, because Kent Woodlands by-laws and CC&Rs; do not provide for a body to deal with violations of the Cc&Rs. If a neighbor violates the Cc&Rs by constructing a pool or a shed or a garage with out the required Architectural approval, or carries on a business that is not allowed, no one has to pay a fee to have such a violation addressed and hopefully

mitigated. If, on the other hand, a neighbor violates a CC&R by refusing to allow his neighbor to trim trees to protect a view, the neighbor who seeks view protection has to pay \$500.00. It is hard to imagine how there could be \$500.00 costs associated with the resolution of such a case. No professional services should be required. I think that any changes that are proposed to our existing View process should take this inequity into consideration. Perhaps Kent Woodlands need to instigate a Violations process that does not involve the Architectural Committee and its fees and processes.

With that in mind,, I hope to participate in your ongoing discussion and help in the crafting of any solutions.

Nancy Praetzel

To the board of the Kent Woodlands Property Owners Association:

We intended to address this message to the architectural committee, but are addressing it to board, as the email addresses of the members of the architectural committee (those who are not also board members) are not shown in the monthly news letter or on the website. We would like to see this published in the KWPOA monthly newsletter, and moreover, we'd like to see all the issues mentioned below taken up by the community.

The current concerns of the KWPOA and its architectural committee regarding trees are focused on the preservation of views and issues of privacy between immediate neighbors. The KWPOA treats all trees as equals, believes a homeowner's legitimate views are those that existed when the home was purchased (as though we all took photographs to document that), and ignores a number of serious issues. It also fails to consider that it's often the trees on properties hundreds of yards away, by their annual growth, that eventually affect a distant homeowner's available sunlight.

The KWPOA tree policy requires written approval for the removal of any tree regardless of species with a minimum diameter of 6" (measured at breast height). Contrasting this, Marin County's policy for unincorporated areas covers only species native to Marin, which are considered protected. The County policy limits the removal of native trees to five per year per parcel. Native trees with diameters at breast height below specified minimums are exempt. The County tree policy lists the minimum diameter by each of the 36 native species. These diameters vary from 6" to 10". The County also allows many exemptions, including diseased and unhealthy native trees.

The KWPOA policy fails to consider non-native species which are often invasive, crowding out native species, and, worse, are most often the host trees for the pathogen that causes sudden oak death. Common non-native species in the Woodlands include radiata (Monterey) pine, deodar cedars, ponderosa pine, ellepo pine (and many other pine species), as well as bay laurels (*L. nobilis*), big leaf maple, rhododendron, and toyon. The latter four (all hardwoods) are among those species that host the SOD pathogen

In all there are 47 native and non-native species that are recognized to host the SOD pathogen (along with a long list of associated hosts). Of the 47 species 11 are native to Marin. The County's position is to permit the removal of native as well as non-native host species to protect California live oaks and black oaks from SOD. Foremost among the County's native SOD hosts are the California bay laurels. In July 2011 the San Francisco Chronicle reported that Santa Cruz County is cutting down 250 California bay laurels to protect 39 signature oaks.

Other than the contrasting positions of Marin County and the KWPOA where the former regulates only native species, the KWPOA's policy generally does not consider such important issues as the effects of root systems on roads, water and sewage pipes, irrigation lines and overhead utilities. The policy does not recognize that all trees have a natural life span, which may be shortened without pruning, good maintenance, and the removal of non-native competing

species. Many non-native species in the Woodlands like the Monterey and Ponderosa pines are close to the ends of their normal life spans.

The home sites in the Woodlands were developed for the most part from the late 40s through the 50s. Almost all trees in today's Woodlands were planted at the time the homes were built as screening and ornamentation. A redwood seedling, planted for those purposes in 1955, is now 80 to 100 feet tall and growing at 3 - 5 feet per year.

Maintaining trees at an agreed height to protect a view is often impractical or impossible. Redwoods, Monterey pines and Ponderosa pines, for example, simply cannot be made to behave as a hedge. Allowing bay laurels and California bay laurels to grow like the weeds they are presents an environment that will destroy our beloved oaks.

We believe we need a community plan to address all these broader issues, and look forward to your comments.

Sincerely,
Bill & Doreen Gleason
104 South Ridgewood Rd.