

Declarations of Covenants, Conditions, and Restrictions
for
Will-O-Wisp
Filing Number One

1. Declaration

A. This declaration, made this 20th day of June, 1983, by Kenneth W. Hutchison and Charlotte S. Hutchison, hereinafter referred to as "Declarant".

B. Witnesseth: Whereas, Declarant is the owner of certain real property situated in the County of Park, State of Colorado, which real property is legally platted, subdivided, and described as follows: Will-O-Wisp, Filing Number One.

C. Now, therefore, Declarant hereby declared that all of the real property described above, except Lot 81, Tract 1 through 16, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions.

D. Said easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the above-described real property and shall run with the land and be binding hereafter on all parties having any right, title, and interest in and to said real property or any part thereof, their heirs, successors, and assigns. Said easements, restrictions, covenants, and conditions shall inure to the benefit of each owner as hereafter described.

E. The original Declarations of Covenants, Conditions, and Restrictions for Will-O-Wisp, Filing Number One were recorded by Harriet B. Anderson, Recorder, Park County on June 22, 1983. The recording was number 321791 made in Book 354, Pages 978 through 981.

TERMINOLOGY as defined by the ACC

Hereafter in this document, the term "District" refers to Will-O-Wisp Filing Number One within the Will-O-Wisp Metropolitan District. We make this distinction because the boundaries of the Will-O-Wisp Metropolitan District extend beyond the boundaries of Will-O-Wisp Filing Number One. The term "covenants" refers to the Declarations of Covenants, Conditions, and Restrictions for Will-O-Wisp Filing Number One. The term "residents" refers to residents of Will-O-Wisp Filing Number One. The phrase, "the Board", refers to the Will-O-Wisp Metropolitan District Board of Directors. The phrase Architectural Control Committee may be abbreviated as ACC.

Scope as defined by the ACC

In short, these interpretations are intended to clarify the covenants and help the ACC consistently enforce them. The better district residents understand and comply with the covenants, the less frustration and discontent we will find in our community. In addition, since ACC members must be residents of the district the ACC members will also gain a better understanding of how past Architectural Control Committees understood and interpreted the covenants. As a result, these interpretations will enable better and more consistent execution of the Architectural Control Committee's mission. In an effort to provide stability to these interpretations the members of the ACC must by majority vote approve modifications or additions; then, pending final approval of the Board Of Director's, said changes or additions can be made and enforced. This is a "living" document and as such, it may never be entirely comprehensive or complete. This document will evolve as both the residents and members of the Architectural Control Committee change over time.

Application Fee

There is a \$5.00 application fee. If application is not made to the ACC prior to starting the project the application fee is \$100.00

ACC Files

ACC files are public information and available for review by appointment only. All such requests are to be made in writing to the ACC.

2. Land Use and Building Type

A. No lot shall be used except for residential purposes.

B. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling and a private garage.

Int-2.1 Land

Land within the district can only be used for residential purposes (2A). Gardening and all around general maintenance of the common areas located in the district require district approval. Common areas described as but not limited to: The wet lands, pond areas, playgrounds and trails. Active participation in the maintenance of these areas is invited and welcome. Please contact the ACC for involvement.

Int-2.2 Trees

The ACC requires owners of trees infected with Pine Beetles or otherwise dead to cut down and properly disposed of them.

3. Architectural Control

A. The Architectural Control Committee is composed of three property owners appointed by the Board of Directors of the Will-O-Wisp Metropolitan District.

B. A majority of the committee may designate a representative to act for it.

C. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

Int-3.1 Architectural Control Committee Mission

1. The ACC's mission is enforcing the covenants to protect the value and desirability of the land and houses within the district.

Int-3.2 Architectural Control Committee Operation

The ACC consists of three district property owners. Only those who own, or are making payments toward the purchase of, a lot, with or without a house, may serve on the ACC. The Board of Directors appoints property owners to serve on the ACC. Those eligible and interested in serving on the ACC should submit a letter of interest to the board. Members of the ACC who no longer wish to serve on the ACC should notify the board, in writing, of their desire. This should be done at least one month prior to the last monthly board meeting that will occur before the effective date of resignation. A member of the ACC may be removed from the ACC, without cause or justification, by a majority vote of the board. The ACC may designate a representative to act for it. However, neither the members of the ACC nor its designated representative receive compensation for carrying out the ACC duties. However, the ACC has a budget and is authorized to pay persons or other entities to provide services required by the ACC. For example, the ACC may pay for legal services when necessary to enforce the covenants. Interpretations of the covenants made by the ACC must be approved by a majority vote of the Board of Directors. Such approved interpretations are added to this document. This document is available to district residents upon request.

1. The *Architectural Control* Committee is not an HOA. The ACC practices enforcement-by-complaint and does not actively tour the district looking for infractions. Furthermore, the ACC has no law enforcement privilege or ability: It cannot, in an enforcement effort, violate personal privacy. An ACC member may confront a property owner, state that a complaint has been lodged (and by whom), and, without encroaching on that owner's personal privacy, pose a question as to whether or not a violation which is not immediately and readily evident exists. If the owner's response is in the negative, then the issue is considered concluded: No violation can be presumed to exist if it is denied by the alleged offender and is not *immediately* apparent.
2. Similarly, though application must be made to the ACC for any structural or permitted modifications or additions to physical property, the ACC cannot entertain enforcement if such work is done out of plain view or internal to a structure, regardless of probable evidence outside such as the temporary existence of construction residue. The ACC does not have the right of probable cause for entry. If a permit violation is presumed to exist, that is under the purview of the county Building Department (or possibly one of the local fire districts), not the ACC.
3. The ACC has adopted the philosophy that this is a community in which people would desire to live, and as such should be limited through lifestyle restriction to the least degree possible. To that end, the ACC is (1) interpreting the covenants consistent with local law and letting local law enforcement handle infractions within their province, (2) practicing enforcement of the covenants which places

primary focus on architectural and structural properties as viewable from common areas, and (3) accepting and approving applications pursuant the changes, modifications and construction which benefit the property owner without encroaching upon rights or degrading the living conditions of neighbors or detracting from the overall appearance of the district.

4. The ACC will not act as a vehicle, weapon or instrument of vindictiveness or revenge to be used by one resident against another in the event of neighbor disputes. Should such egregious behavior become apparent or even suspected through received complaints, the ACC will immediately place the total burden of proof of the initial complaint completely upon the complainant, and any further complaints on the part of that party toward any district resident in any form shall be treated as suspect out of hand and will require the same degree of absolute proof of infraction be provided by the complainant indefinitely.

Int-3.3 Complaint Procedures

1. Residents of the community are strongly encouraged to address any issues or concerns directly with their neighbors. Often, this is the quickest and easiest way to resolve matters. Only complaints made in writing to the ACC will be considered official complaints. Any official complaint made to the ACC will be fully addressed and resolved as described in this document (see the section on enforcement). Anyone who files an official complaint with the ACC should receive a written response within 14 business days, confirming that the complaint has been received and is being addressed. Please keep in mind that the work and records of the ACC are public and are visible to all members of the district upon request.
2. If an alleged violation of the Covenants has been determined to be an illegal condition or activity which would fall under local, state or federal jurisdiction, the complainant will be instructed to redirect the complaint to the appropriate law enforcement agency. The ACC will not function as an intermediary or "middleman" between a complainant and law enforcement.
3. To the extent that the ACC is not a law enforcement agency, neither is it an investigative service. If the complainant is dissatisfied with an ACC response to a complaint, that complainant - not the ACC - must then provide irrefutable, physical proof of the infraction to the ACC (or to appropriate law enforcement if illegal) which can then be presented to the alleged violator as proof that his or her initial response has been determined to have been false. Alternatively, if dissatisfied with the findings of the ACC, the complainant can file a personal lawsuit against the alleged violator for infraction of the covenants and let the courts decide. Any and all costs incurred through this course of action shall be borne by the complainant: The District shall not be held liable.

D. No building shall be erected, placed, or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure have been approved by the Architectural Control Committee as to:

- 1) quality of workmanship and materials
- 2) harmony of external design with existing structures
- 3) location with respect to the topography and finish grade elevation.

Int-3.4 Buildings

1. Code compliance and district approval are required for any alteration, repair or construction of buildings/dwellings in the district as per section "105 Permits" of the "International Building Code."
2. Section 105 states: "Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit."
3. Part 2 Sub Part B of the covenants does not provide for group U occupancies such as sheds although the ACC does approve such projects when they comply with Section 312 of the International Building Code and local covenants.

4. Section 312.1 states: Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U includes but is not limited to Carports, Fences over 6' tall, Greenhouses, Garages, Retaining Walls and Sheds. The ACC will actively enforce these covenants and ensure code compliance in the district.

E. No fence or wall shall be erected, placed, or altered on any lot without prior approval from the Architectural Control Committee.

Int-3.5 Fences

1. As with all man-made structures addressed in the covenants, the goal is to have "harmony of external design". While we certainly do not want everything in the district to look identical, we do want to have structures to be similar enough to ensure there are no negative visual impacts. The construction or modification of any fence must be approved in writing by the ACC. Please inquire to the ACC for a complete list of acceptable fence types.

F. The committee's approval or disapproval as required in these covenants shall be in writing.

G. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it:

- 1) approval will not be required
- 2) the related covenants shall be deemed to have been fully complied with

4. Building Size and Completion

A. The ground floor area of any main dwelling structure shall contain not less than 600 square feet of finished living area for a one story dwelling exclusive of garages.

B. No dwelling shall be occupied unless and until a Certificate of Occupancy has been obtained from Park County.

5. Building Location

A. No building shall be located on any lot nearer to the front lot line, rear lot line, or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

B. With written approval of the Architectural Control Committee and the appropriate authorities of Park County, a dwelling or garage may be located nearer to the lot lines provided by the recorded plat.

6. Easements

A. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five feet of each lot.

B. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which:

- 1) may damage or interfere with the installation and maintenance of utilities
- 2) may change the direction of flow of drainage channels in the easements
- 3) may obstruct or retard the flow of water through drainage channels in the easements

C. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which public authority or utility company is responsible.

Int-6.1 Roads

1. Park County is responsible for maintaining and clearing snow from public roadways within the district. See also Part 9 of the Covenants and associated Interpretations.

7. Nuisances

- A.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Int-7.1 Illegal activity

- 1. Any nuisance, activity or condition construed as being in violation of local county, state or federal law shall come under the auspices of the appropriate law enforcement agency.

8. Temporary Structures

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

9. Automobiles

No inoperable automobiles or other vehicles or machinery without a valid license shall be placed upon any lot for longer than 10 days unless stored in a garage.

Int-9.1 Motor Vehicles

- 1. It is the ACC's intent to utilize covenant #9 to protect the aesthetic values located within the district by not having scores of campers, RV's, trailers, motorcycles, etc. and un-operable vehicles/machinery stored in open view.

Int-9.3 Speeding

- 1. Speeding is enforced in the district by Park County law enforcement and the Colorado Highway Patrol and monitored by our residents.

10. Signs and Antennas

- A.** No sign of any kind shall be displayed to the public view on any lot except:

- 1) One owner designated sign of not more than two square feet
- 2) One sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

- B.** There shall be no outside satellite dishes allowed in this subdivision.

- C.** Antennas must be approved by the Architectural Control Committee.

Int-10.1 Satellite Dishes

- 1. The ACC only approves small type dishes as seen on most houses within the district.

Int-10.2 Signs

- 1. The ACC approves real estate, construction, garage sale and gathering signs for reasonable amounts of time.

11. Oil and Mining Operations

- A.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot.

- B.** No oil wells, tanks tunnels, mineral excavations or shafts shall be permitted upon or in any lot.

- C.** No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

12. Street Lights

Will-O-Wisp Metropolitan District is responsible for the placement and payment of street lights.

13. Livestock and Poultry

A. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

C. All pets shall be fenced in or on a leash at all times.

Int-13.1 Pets

1. Number: At this time, Park County law allows ownership of three dogs. This does NOT mean you can own and keep three dogs in the district. The covenants state that only two pets are allowed per household. For example, this means only two dogs or two cats or one dog and one cat are allowed.
 - a. Normally caged or incarcerated pets (e.g., birds; aquarium and terrarium life; and small mammals such as hamsters, gerbils, chinchillas, guinea pigs, etc.) are exempt from this covenant.
 - b. In the event that a litter is born to a dog or cat covered by the covenants, an automatic 13-week exemption to the two-pet condition is granted to the owner of the pet for the purpose of providing necessary care, weaning, and disposition of the litter.
2. Fish and turtles aside, if you plan to have more than two pets, let the ACC know in writing and wait for approval before bringing more than two pets into your home.
3. Type: Livestock is not allowed in the district.
4. Control: Pets must be under control of the owner at all times. Animals are not allowed to roam freely outside of the house. Animals may roam on one's property if contained within a traditional or invisible fence. Animals allowed onto common areas of the district (such as roads, trails, woods, and open areas) must be controlled. For example, dogs and cats must be on a leash.
5. Nuisance: Pets that are not controlled are a nuisance to the community and wildlife (see the section Wildlife). Uncontrolled pets are not only a violation of the covenants, but are first a violation of local law. Therefore, complaints regarding uncontrolled pets are to be made to Park County Animal Control.

Int-13.2 Wildlife

1. The ACC supports Park County and the Department of Wildlife positions and recommendations regarding wildlife. Feeding smaller wildlife such as birds and squirrels is discouraged. However, feeding, attracting, and otherwise interacting with larger wildlife such as deer, elk, bears, and mountain lions is a nuisance to others in the district and is illegal according to local and other laws. Pets that attack, harass, or otherwise negatively interact with wildlife are a nuisance to the community and such behavior is illegal according to local and other laws.

Int-13.3 Garbage and Animals

1. Improper stowage of garbage, either on private property or awaiting roadside pickup, resulting in the attraction of animals seeking food, must be avoided. Situations resulting in the upset of trash containers and the consequential spreading or distribution of trash onto private and/or public property may result in penalties and fines assessed against residents failing to (1) prevent such upset of their respective containers, either through untimely setting out of containers for pickup, or (2) maintain such containers on private property in a manner which will prevent access by animals.

14. Garbage and Refuse Disposal

A. No lot shall be used or maintained as a dumping ground for rubbish.

B. Trash, garbage, or other waste shall not be kept, except in sanitary containers which shall be kept in a clean and sanitary condition.

Int-14.1 Trash

1. Trash placed out by the road for pick up should be placed at the edge of the road *on the day of pick up*.. Trash that is left outside should be in a hard and secured container. Any garbage or trash that is spilled or otherwise scattered about must be picked up immediately, regardless of where it is scattered. Garbage containers shall be maintained in such a manner as to preclude entry or access by wildlife or domestic animals, such as bears, raccoons, dogs, cats, or other animals determined to seek food from such receptacles. See "Int-13.3 Garbage and Animals" above. Trash is unsightly in our neighborhood and we encourage your help in keeping it clean.

Int-14.2 Pollution

1. Pollution is a nuisance to the district:
2. Hazardous Materials: Hazardous materials must be disposed of properly. Information regarding proper disposal can usually be obtained on the container or from Mountain View Waste Systems 800/571/8920. Improper disposal of hazardous materials is illegal and the penalties/fines are severe. Motor oil, gasoline, and some paints are examples of some hazardous materials commonly found at home. These substances must never be poured onto the soil, in our creek, down a drain, or into a toilet. Some of this illegal behavior has been detected within the district. If this problem continues, the district can have monitoring devices placed in the sewage pipes and locate the violator(s). The detection process is expensive, but this cost will be billed to those found doing this. Moreover, criminal charges will be filed against those found dumping hazardous materials. This behavior is irresponsible and may put the Will-O-Wisp water district at risk for lawsuits by those downstream and heavy fines by the State of Colorado.
3. Light: Excessive light generated from one's house during the period after sunset and before dawn is considered light pollution. Excessive light, or light pollution, is considered to be any incident light which radiates beyond the property boundary of the resident(s) utilizing such light, for a duration exceeding that specifically necessary for immediate safe movement in, access or ingress to, or egress from the illuminated area. The ACC recommends the use of lights with motion sensors.
4. Noise: It is considered the hours between 9:00pm in the evening and 8:00am in the morning are to be quiet restful ones. It is requested that power tool operating and music playing etc. be confined to the hours of 8:00am to 9:00pm at the latest to preserve quality of life in the district.
5. Odors: composts and pet waste can produce negative odors which could result in action from the ACC.

15. Water Supply

- A. No individual water supply system shall be permitted on any residential lot.
- B. There shall be no water used outside of the house for irrigation or any other purpose.

Int-15.1 Water Usage Outside

1. Is strictly prohibited unless acquired through the use of rain catch basins.

16. Sewage Disposal

No individual sewage disposal system shall be permitted on any lot.

17. Term

- A. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded.
- B. After which time, said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

18. Enforcement

A. Enforcement of these covenants, conditions, and restrictions by the Architectural Control Committee or any owner, shall be by a proceeding at law or a proceeding in equity against any person or persons violating or attempting to violate any covenant, condition, or restriction either to restrain such violation or attempted violation or to recover damages.

B. Failure by the Committee or by any owner to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

C. If suit is brought against any owner by another owner or the Architectural Control Committee, then the losing party will pay all court costs and attorney fees.

Int-18.1 Enforcement as prescribed by the ACC

1. The ACC shall provide notice to the lot owner of any violation of the Declaration of Covenants, Conditions and Restrictions ("Covenants") that exists on a lot. Such notice shall be in writing and shall inform the lot owner of the violation, and that the lot owner will be provided with an opportunity to be heard on the matter. The ACC also may provide notice to the occupants of the lot if other than the owner, also by written notice, but is not required to do so.
2. The notice will provide the date of the upcoming meeting of the Board of Directors at which the matter will be heard, and state that the matter will be on the agenda, and that the lot owner may address the matter at the meeting by appearing, submitting a written response, or sending a representative to address the matter on the lot owner's behalf. The notice will provide a contact name and telephone number to the lot owner in case the owner wishes to discuss the opportunity to be heard or make arrangements for any special needs. In cases presenting danger to public safety, the ACC may take appropriate action to protect the public, and the notice and hearing may necessarily follow such action.
3. The notice will advise the lot owner (1) that if the violation is not corrected, or settled in writing between the lot owner and the ACC by a predetermined deadline date for correction or removal of the infraction as stipulated by the ACC in the Notification of Violation, a daily fee may be assessed beginning on the day following deadline date and continuing until the issue has been resolved, (2) that, in the event that the violation has not been resolved by the deadline date, or through mediation, or through hearing procedures at the scheduled Board Meeting as set forth in the Violation Notice, the fee may be approved by the Board at the second upcoming Board meeting, (3) that the fee may be as much as \$50 per day, (4) that the fee will incur penalties at the same rate as the fees of the Will-O-Wisp Metropolitan District, and (5) that if the fee is not paid, a lien may be placed on the owner's property, and if the lien is not satisfied, a suit may be filed against the lot owner to foreclose the lien, and obtain any other legal or equitable relief available, including costs and attorney's fees.
4. If the ACC or the Board determines that mediation would be useful for a lot owner who responds by denying that there is a violation of the Covenants, and the lot owner agrees to participate in mediation, the ACC will also participate in such mediation prior to filing suit against the lot owner.
5. The members of the board who do not serve on the ACC will serve as the impartial decision maker with regard to any fees proposed by the ACC for covenant violations.