BEFORE THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND

Carmen O. Logan, 9112 September Lane Silver Spring, MD 20901 Complainant	
vs.	Case No. 502-0 (Hearing Date: 6/12/02)
Montgomery Knolls Community Association, c/o Elizabeth L. Hileman, Esq. Chadwick, Washington, Olters, et al. 7979 Old Georgetown Road, Suite 600 Bethesda, MD 20814 Respondent	

DECISION AND ORDER

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on June 12, 2002, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, and the duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

BACKGROUND

This is a complaint brought by the owner of a lot in a Maryland homeowners association against the Association. Pursuant to the Pre-Hearing Order dated April 24, 2002 (Commission Exhibit 2), and subsequent agreement of the parties by letter dated May 31, 2002 (Commission Exhibit 3) the issues presented are:

1. Was the assignment of second parking spaces pursuant to a decision of the Board of Directors on June 8, 1999, so that each townhouse now has two reserved parking spaces, done reasonably and fairly and in accordance with the authorities of the Association?

2. Is the Association allowing commercial vehicles to be parked in its common areas in violation of its documents? (This issue pertains only to the parking of taxi cabs in the reserved

spaces assigned to each unit.)

FINDINGS OF FACT

1. Montgomery Knolls is a townhouse community consisting of 44 townhouse units. The townhouse units are each assigned two parking spaces. There are also unassigned visitor spaces in the parking area. The parking area is a common area.

2. Carmen O. Logan is the owner of one of the townhouse units in Montgomery Knolls and is thereby a member of Montgomery Knolls Community Association, Inc.

3. Montgomery Knolls Community Association, Inc. (the "Association") is a homeowners association which is the governing body of Montgomery Knolls. Its members are the owners of the 44 townhouse units within Montgomery Knolls.

4. Montgomery Knolls Community Association, Inc. is subject to a Declaration of Covenants dated February 13, 1981 and recorded February 18, 1981 among the Land Records of Montgomery County, Maryland.

5. Article IV of the Declaration of Covenants provides that every member of the Association shall have a right and easement of enjoyment in and to the common areas and community facilities, subject to the right of the Association to adopt reasonable rules respecting the use of the common areas and community facilities. Article IV, Section 1(d).

6. Article IV, Section 1(i) of the Declaration of Covenants provides that the right and easement of enjoyment in and to the common areas and community facilities is subject to the rights of the owners of the lots "for reasonable ingress and egress to and from any dwelling through and over the common areas and community facilities."

7. The By-laws of Montgomery Knolls Community Association, Inc., provide that the Board of Directors of the Association has the power and duty, among other things, to promulgate and enforce rules and regulations regarding the use, occupancy and maintenance of the common areas and community facilities. By-laws, Article V, Section 3(d).

8. On May 25, 1996 Montgomery Knolls Community Association, Inc. adopted a

parking policy effective as of August 21, 1996 assigning to each townhouse unit one reserved parking space in the common areas.

9. On June 8, 1999 Montgomery Knolls Community Association, Inc. Board of Directors revised the parking policy to assign each townhouse unit a second parking space in the common areas.

10. Complainant's space was the last "second" space to be assigned (Space #18). Complainant contends that the assignment of her second space is unreasonable because it is located so far from her unit and not within the line of sight from her unit.

11. Complainant did not receive notice of this assignment until it was actually done. Other members of the community had the opportunity to discuss with the Board the assignment of their second spaces prior to the assignment. Complainant objected to the assignment of her second space but the assignment has not been changed.

12. The Association has not deposited in the depository in the clerk's office for the Circuit Court for Montgomery County, Maryland, pursuant to Section 11B-112, Real Property Article, any resolutions, assignment charts, plats, diagrams or other information comprising the decisions of the Association to assign parking spaces.

13. The Declaration of Covenants provides in Article VII, Section 7(d) that no commercial vehicles may be kept within Montgomery Knolls.

14. The Association has sent notices to unit owners regarding the above restriction or commercial vehicles, but it has never taken any other measures to enforce the restriction.

15. The testimony of record established that at any given time there are approximately seven taxi cabs parked in the common areas of the Association.

16. Both parties agreed that taxi cabs are commercial vehicles.

17. The Association has taken no measures pursuant to Article VII of the Declaration to establish an Architectural and Environmental Control Committee, to give prior written approval for the parking of commercial vehicles, or to provide for a suitable area designated for the parking of

commercial vehicles.

18. While the Association has been studying the adoption of a parking policy for over one year, it has not adopted any such policy.

CONCLUSIONS OF LAW

The Hearing Panel reaches the following conclusions of law based upon the above Findings of Fact:

1. None of the actions of the Association in assigning or reassigning the first and second parking spaces is enforceable until proper written documentation is deposited in the depository pursuant to Section 11B-112 Real Property Annotated Code of Maryland.

2. The test by which the hearing panel evaluates such actions as the establishment of a reserved parking program is the reasonableness test set forth in Kirkley v. Siepelt, 212 Md 127 128 A.2d 430 (1957). The Hearing Panel may not decide on the basis of how it would assign the parking spaces but only on the basis of whether reasonable minds would or would not differ as to the manner in which the Association has assigned the parking spaces.

3. The assignment of Complainant's second parking space, space number 18, was not so unreasonable as to be arbitrary and capricious. However, it is within the authority of the Hearing Panel to order the Association to reassess the assignment. This does not mean that the Association must come to a different result, nor does the Hearing Panel express any opinion as to what the result should be. The Hearing Panel, however, believes that it is appropriate to reassess the assignment to assure that it has been fair.

4. The Association has a duty to enforce the restrictions of its Declaration of Covenants with respect to the prohibition of commercial vehicles. Taxi cabs are commercial vehicles and therefore may not be kept in the community.

5. There are provisions in the Declaration of Covenants which the Association might implement to allow the parking of commercial vehicles, but the Association has not implemented any of those provisions and therefore there are no rules or policies in place at this time to allow

commercial vehicles.

6. The Association has failed to establish an Architectural and Environmental Control Committee, either as a separate committee or as a committee which is comprised of the entire Board of Directors. It must do so in order to enforce its restrictive covenants.

7. While the Association must accommodate the legitimate needs of handicapped persons with respect to assigning parking spaces, this does not mean that the Association must rearrange its entire parking space assignment each time a unit owner requests the assignment of a space based upon handicap. The reasonable accommodation should be made with the minimal disruption to the assignment then in place. Therefore, any assignment formula must be evaluated not only in light of its apparent fairness in the first instance, but also as a precedent that the community may well be called upon to repeat each and every time another request for a handicapped parking space must be accommodated.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is this 6th day of Sept., 2002 ordered:

1. The current parking space assignment of the Association is unenforceable until it is recorded in the depository in the clerk's office of the Circuit Court for Montgomery County, Maryland. If it denies to have legally enforceable parking space assignments, the Association must record both a plat and a chart showing the assignment of spaces and record revisions of the same each time the assignment is changed.

2. The Association is ordered to reassess the assignment of the Complainant's second space, space 18, and any other spaces which may be appropriate, within 60 days from the date of this order. The Association is not instructed to come to a different result nor does the hearing panel express any opinion as to what the result should be. However the Association is ordered to make a good faith reassessment.

3. The Association must enforce its restrictive covenants with respect to the prohibition

of commercial vehicles or adopt rules, regulations and policies, in accordance with those covenants, to allow the parking of those vehicles, if that is possible. Enforcement must begin by means reasonably calculated to remove prohibited vehicles and keep them from returning to the community. This may include legal action in court, complaints before this Commission, towing or other measures. Any parking policy must be properly adopted by the Board and deposited in the depository in the office of the clerk of the Circuit Court for Montgomery County, Maryland in accordance with Chapter 30C of the Montgomery County Code and any applicable laws. Enforcement must begin within 60 days from the date of this order.

The decision of the Panel is unanimous. Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days after the date of entry of this Order in accordance with the Maryland Rules of Procedure.

John F. McCabe, Jr., Panel Chair
Commission on Common Ownership
Communities