

MEMORANDUM

TO: HUNTINGTON ACRES HOMEOWNERS' ASSOCIATION

FROM: MATTHEW L. WINTON^{PLLC}

SUBJECT: OUTBUILDINGS AND REMEDIES AVAILABLE TO THE ASSOCIATION

DATE: SEPTEMBER 27, 2016

WINTON LAW

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Dear Association:

This is to respond to the Huntington Acres Homeowners' Association's (the Association) request for me to provide an opinion on outbuildings and enforcement remedies available to the Association within Huntington Acres, an addition to the City of Oklahoma City, Canadian County, State of Oklahoma (the Addition).

PRELIMINARY MATTERS

The Opinion is given subject to certain limitations.

1. **Documents reviewed for Opinion Letter.** For the purpose of this Opinion Letter and in connection with the opinions expressed below on the Matter, I reviewed only the following documents:
 - 1.1. **Plat.** File stamped Plat for the:
 - 1.1.1. **Final Plat of Huntington Acres** filed within the Canadian County Clerk's Office at Book 9, Page 133 (the Plat).
 - 1.2. **Real Property Covenants.** File stamped copy of the:
 - 1.2.1. **Declaration of Covenants, Conditions and Restrictions for Huntington Acres Addition** filed within the Canadian County Clerk's Office at Book 3037, Page 262 (the Declaration);
 - 1.2.2. **Certificate of Amendment to Declaration of Covenants, Conditions and Restrictions for Huntington Acres Addition** filed within the Canadian County Clerk's Office at Book 3423, Page 558 (the Amendment);¹
 - 1.2.3. **Warranty Deed** filed within the Canadian County Clerk's Office at Book 3667, Page 263 (the Warranty Deed).²
 - 1.3. **Corporate Documents:**
 - 1.3.1. **Huntington Acres Homeowners' Association** incorporated on February 25, 2008, with the Oklahoma Secretary of State.
(Collectively, the Governing Documents)

¹ Amends maximum assessment language and enforcement remedies for late assessments. Further research would determine whether this amendment was validly adopted and filed.

² Deeds Common Area "A" to the Association.

2. **Opining Jurisdiction.** The opinion expressed within this letter pertains to the laws of the State of Oklahoma.
3. **Definitions, Assumptions, Restrictions and Limitations of Opinion.** Capitalized terms within this Opinion not otherwise defined within this Opinion retain the definition supplied by the Declaration. I assume the certificate/articles of incorporation to the Association are silent on the issues relevant to this Opinion. The position expressed within this Opinion may be affected to the point of reversal or nullity by: changes in Federal, State, or local law, the correctness and accuracy of certain assumptions made based on the documents reviewed, un-filed amendments to the governing documents of the Association, inaccuracy or errors contained in the documents reviewed, positions or policies taken by the Association Board as may be, but not necessarily, reflected in minutes or resolutions, oral agreements, Bylaws or Articles not in my knowledge, facts not presented or before me at the time of the Opinion, res judicata or claim preclusion, and judicial or jury interpretation and judgment. This Opinion is written in and governed by the laws of the State of Oklahoma.

Any recipient of this Opinion should bear in mind that the precise language of the Declaration and Bylaws in question for this Opinion has not been litigated to a reported opinion in Oklahoma. **THIS OPINION IS OFFERED AND EXPRESSLY LIMITED ACCORDINGLY.**

SUBSTANTIVE MATTERS

1. **What steps may the Association take to enforce the Governing Documents?**
2. **What are the restrictions for constructing an outbuilding/accessory building?**
3. **What are the requirements for fences located on a lot?**

Applicable Governing Documents Sections

Section A of the Declaration provides:

Declarant owns a 80.29 acre tract of land, more, or less, located in Canadian County, Oklahoma. The tract (hereafter called "Property") consists of all the land described on Exhibit A attached hereto and made a part hereof and shown on the subdivision plat entitled Huntington Acres Addition.

Section B of the Declaration provides:

Declarant desires to subject the Property, and the Lots located therein (the "Lots") to the covenants, conditions, and restrictions set forth below which are for the purpose of protecting the value and desirability for the Property and the Lots.

Article I, Section 1 of the Declaration provides:

All lots in said addition are hereby designated as single family residential building lots. No structure shall be erected, altered, placed or permitted to remain on any such single family residential building lot other than one detached single family dwelling not to exceed two stories in height, and must contain a private garage for not less than two automobiles.

Article I, Section 6 of the Declaration provides:

No building shall be constructed within the limits of the building setback lines as shown on the plat. In any event, no building shall be located on any residential plot nearer than 40 feet to the front lot line, or nearer to the rear lot line than permitted by City ordinances. In no event shall the distance between residential buildings be less than 60 feet. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building, provided, however, that said items shall not be constructed to permit any portion of the building on a lot to encroach upon another lot.

Article I, Section 7 of the Declaration provides:

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

Article I, Section 8 of the Declaration provides:

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, except a structure or trailer may be used by the builder during construction and sales period.

Article I, Section 9 of the Declaration provides:

No fence shall be installed on the front of any lot in this subdivision between the front and the front building set back line, except that if split-rail or picket fencing of a decorative nature not to exceed 42 inches in height, shall be permitted, but must be well maintained. This shall also apply to corner lots. All fences on the side of the lot line of any lot shall be of wood, brick, vinyl, or masonry construction. Variance may be granted with written consent of the signers of this document. Portions of fencing that are visible from any street are to be well maintained and wood sealer applied in keeping with the natural color of the wood.

Article I, Section 10 of the Declaration provides:

No detached garage or other outbuilding shall be permitted in any easement reserved for utilities.

Article I, Section 11 of the Declaration provides:

All accessory buildings shall be constructed with materials in harmony with the residential dwellings. In no case shall there be any exposed non-painted exterior walls.

Article I, Section 16 of the Declaration provides:

No garage shall be converted to a living area unless the outside of the house and garage are left intact with no outer evidence of said conversion.

Article I, Section 24 of the Declaration provides:

If the undersigned party, or any of its successors, assigned, or any person or persons claiming under them, shall violate any of the covenants herein, it shall be lawful for any other person or entity owning any real property situated in this subdivision to prosecute and initiate proceedings at law or in equity against the party or entity violating or attempting to violate any such covenant.

Article II, Section 1(c) of the Declaration provides:

The Declarant hereby covenants, that each residence Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, and such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made [sic] Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Article II, Section 1(g) of the Declaration, as amended, provides:

Any assessment not paid within thirty (30) days after the due date shall bear a late fee of \$25.00 from the due date. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

Article II, Section 2 of the Declaration provides:

Should the Owner or Tenant of any block or lots or building sites in this addition violate any of the restrictive covenants or conditions contained herein, and thereafter refuse to correct same and to abide by said restrictions and conditions contained herein after reasonable notice, then in such event, the Association or any owner of any block, lot or building site in the addition may institute legal proceedings to enjoin, abate or correct such violation or violations. The Owner of the block, lot or lots, or building site permitting the violation of such restriction or conditions shall pay all attorneys' fees, court costs and other necessary expenses incurred by the person instituting such legal proceedings to maintain and enforce the aforesaid restrictions and conditions. Said attorneys' fees, court costs, and other expenses allowed and assessed by the Court, for the aforesaid violation or violations, shall become a lien upon the land as of the date legal proceeding were originally instituted, and said lien shall be subject to foreclosure in such action so brought to enforce such restrictions in the manner provided by law. Failure by the Association or by any owner to enforce any covenant or restriction here contained shall in no event be deemed a waiver of the right to do so thereafter.

Opinion

1. What steps may the Association take to enforce the Governing Documents?

The Governing Documents contain numerous enforcement provisions and expressly provides for Association enforcement of the Governing Documents. The Declaration also provides for recovery of attorney fees and court costs by the party bringing an action against an owner for violating the covenants. I have set out the various remedies and procedures for collection of assessments and for general covenant enforcement below.

Delinquent Assessments. To collect delinquent assessments, the Association may file a lawsuit in small claims court or district court for a money judgment against the delinquent owner. Pursuant to Article II, Section 1(c) of the Declaration, the Association may also file a lien against a lot and foreclose on such lien if an owner fails to pay any assessment levied by the Association. The Association may also collect interest, costs, and reasonable attorney's fees within such actions. See also Article II, Section 2 of the Declaration and Article II, Section 1(g) of the Declaration.

Pursuant to Article II, Section 1(g) of the Declaration, for any assessment not paid within thirty (30) days after the due date the Association may charge a \$25.00 late fee as of the due date.

Declaration and Covenant Violations. The Governing Documents require owners to comply with the covenants and restrictions contained therein. The enforcement clause within Article II, Section 2 of the Declaration affords any owner of property within the Addition the right to “institute legal proceedings to enjoin, abate or correct such violation or violations.” As an owner of common area within the Addition and given the rights set out in the Governing Documents the Association has standing to bring enforcement actions for covenant violations in its own name.

Article II, Section 2 of the Declaration also states that any attorney fees, court costs, and other expenses assessed by the court for an action for covenant violation, shall become a lien against the lot as of the date legal proceedings were instituted, and such lien shall be subject to foreclosure in a manner provided by law. Finally, Article II, Section 2 states that failure of any owner or the Association to enforce any of the restrictions shall not be deemed a waiver of the right to do so or to enforce other restrictions.

2. What are the restrictions for constructing an outbuilding/accessory building?

Article I, Section 1 of the Declaration states that all lots in the Addition are designated as single family residential building lots with a detached single family dwelling thereon. All other structures on a lot constitute outbuildings/accessory buildings.

The Governing Documents contain certain structural restrictions for outbuildings located on a lot. However, the Governing Documents do not designate an architectural review committee that typically interprets or administers structural restrictions. Therefore, the Association and the individual owners bear responsibility for interpreting and enforcing such restrictions.

Outbuildings must be within the setback requirements provided in Article I, Section 6 of the Declaration, and shall not be nearer than 40 feet to the front lot line, or nearer to the rear lot line than permitted by city ordinances. Pursuant to Article I, Section 8 of the Declaration, no outbuilding or any structure of temporary character on a lot shall be used as a residence, either temporarily or permanently. Article I, Section 7 of the Declaration forbids any business, trade or activity from being carried out on any residential lot. Accordingly, outbuildings could not be used for business purposes.

Finally, Article I, Section 11 of the Declaration requires all outbuildings to be constructed with materials that are in harmony with the residential dwellings. The Declaration lacks a definition of “In harmony.” A party seeking to interpret and enforce such standard must do so reasonably. Thus, “In harmony” likely does not require an outbuilding to be the same or exact building materials as the residence, but the outbuilding should to some extent resemble the residence on the lot (i.e. color, materials, shingle type).

3. What are the requirements for fences located on a lot?

Article I, Section 9 of the Declaration sets out the requirements and restrictions for fences located on a lot. Article I, Section 9 of the Declaration states “[n]o fence shall be installed on the front of any lot in this subdivision between the front and the front building set back line.” However, split-rail or picket fencing of a decorative nature, not to exceed 42 inches in height, are permitted between the front and the front building set back line. Therefore, if a fence is located between the front and the front building set back line, then the fence must be either a split-rail or picket fence of decorative nature. This provision does not specify whether such fences must be a particular color, but does state that such fences must be well maintained by the owners.

Pursuant to Article I, Section 9 of the Declaration, fences located on the side of a lot line must be of wood, brick, vinyl, or masonry construction. This provision also does not require the fence to be a particular color. However, any portion of a fence which is visible from the street must have wood sealer applied in keeping with the natural color of the wood. Therefore, any portion of a fence visible from the street must be natural color wood, which includes any portion of the fence on a side lot line that is visible from the street. Portions of a fence that are visible from the street must also be maintained.

Article I, Section 9 of the Declaration allows the Association express authority to grant variances to the fencing restrictions. Such variances must be in writing.

This concludes my review and opinion. Please contact me if the Association needs any follow-up to this review and opinion, or needs to meet with me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew L. Winton".

Matthew L. Winton^{PLLC}

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