

Deed Restrictions Committee Meeting
4/1/2022

Members Present:

Jon Nelson, Chairman – Bob Price, Debbie Tanner, B.B. Brown, Sandra Jaynes, John Danna, Cathy Danna, Doug Lehr, and Jessica Swearingen

Members Absent:

Julie Belcik, Oz Canel, Cliff Budd, Gary Sanders, Loretta Gray

*John D. clarified that these are just general questions for the attorney. Jon responded that yes, when we meet with the attorney, his responses may lead us to have other questions.

*Jon explained that he intends to hold open community forums once we have better information about this process. The forum(s) will be held on the weekend to allow as many as possible that would like to attend to attend.

*B.B. – Asked that we clarify with the attorney that all building must be done on site – no modular buildings, etc.

*Doug – Referenced Cliff's question – item #5. What is the percentage required for passing any deed restriction changes (Cliff said 51%. Doug's question – Is it 50% + 1.)

*Bob – Typically in any election it is 50% plus 1.

*John – Is it 50% plus one percent of total owners or total lots?

*Sandra – Or is it 50% plus one percent of attendees at meeting?

*Doug – Do any special laws regarding Lake Livingston subdivisions trump local deed restrictions?

*Bob – I think that once Polk County hit 50,000, it no longer applies (clause in the law that counties exceeding 50,000 are exempt).

*Debbie – She mentioned that state legislature was reviewing one vote per lot versus one vote per landowner. She doesn't think anything has passed yet.

*John D. – Clarification of Title 11 of Texas Property Code.

*Sandra – Wants to make sure that the attorney is quoting legal precedent and not his opinion.

Meeting was adjourned.

Questions for Brody from meeting #1:

- 1) Cliff – Do questions have to be notarized? How many have to vote to approve it?
- 2) John – Do the fees have to be spelled out in the deed restrictions? What is the process for establishing fees and revising or adding fees (including permitting fees)?
- 3) Bob and John – Define the process for changing/clarifying our deed restrictions.
- 4) Jon and John – Need clarification about legal definition of majority referenced in our deed restrictions.
- 5) Cliff – Do we need everyone to vote or just 51% of those attending the annual HOA meeting.
- 6) Cliff – Do we have to write deeds for each section, or can we combine all into one deed restriction document with clarification for different sections?
- 7) John – Suggested possibly keeping section one different since they do have significantly different restrictions.

- 8) Debbie – How do we fall in line with the population change since we are now over 50,000?
- 9) Jon – Is it okay if sections are split out so that they are more topic specific (i.e., section 8)?
- 10) Jon – What are the responsibilities of the ARA based on the deed restrictions? We need to align to be compliant with new Texas law regarding ARA responsibilities.
- 11) B.B. – We would appreciate guidance on the commercial sections. Discussion about commercial enterprises seeking residential lots.
- 12) Doug – Is the majority vote based on votes by each section? If we combine to one document, would it be based on the majority vote of the TH property owners?
- 13) Doug – Asked Cliff about process for changing deed restrictions for The Point.

Questions generated via email process:

- 14) Since roads will be an ongoing expense for us, should we add this specifically to the DR's? Can we list an amount that will provide for annual increases like we have for the maintenance fee? Would we also need to include a statement that once all of the roads are turned over to the county, the fee would be adjusted down to cover maintenance cost of the roads?
- 15) We need to ask him about targeting collections in the DR's. Can we place more specific language "what we can do if you don't pay" in the DR's. We also need to include a payment plan in the DR's that covers all invoiced items not just the maintenance fee. Do we have to list what is able to go on a payment plan and what is not?
- 16) This question goes along with #9 above. Would it be beneficial to split out the sections for the DR's, or should we just have one document that would list each section within it for specific details? For example:
Split into sections:
Have sections 1-5 + waterfront blocks 2 + The Point + Reserves Sections 4 & 5

One document:
Cover all of the basic sections of the DR's and have a specific section to cover all of the above split sections listed.
- 17) Paragraph 3 of the Reservations gives the exclusive right of managing common areas to the architectural committee, now known as the ARA.
The swimming pool, tennis court and boat ramp areas shall be under supervision of the Architectural Committee of the hereinafter constituted Property Owners Association, which said Committee for purposes or improvements in the same manner as provided for residential tracts. The Architectural Committee shall be entitled to use all necessary and reasonable means in avoiding the use of said property, residential, commercial, or recreational areas by the public at large, and thereby restrict the use thereof and in the furtherance thereof such use shall remain subject to supervision of the Architectural Committee herein.
Has the THPOA board over-stepped in taking away this responsibility from the ARA?
- 18) Deed restriction 1 states that a majority of property owners may change the deed restrictions prior to 2027.

1. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until July 1st, 2027, A.D., at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the tract has been recorded, agreeing to change said covenants in whole or in part.

This is supplemental to what we discussed at our meeting on Friday. What exactly is the voting mechanism for this? Brody to advise...

19) Deed Restriction 3 states that the POA has the right to "prosecute" violators of the deed restrictions.

2. If the parties hereto, or any of the, or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the undersigned Owners, their heirs, administrators, or assigns, to enter and abate such violation without liability, or they, their heirs, administrators, or assigns, and any other persons owning any real property situated in said subdivision shall have the right to prosecute any proceeding at law or equity against the person or persons violating or attempting to violate such restrictions, and either to prevent him or them from doing, or to cause to be removed such violation, or to recover damages for such violation.

While part of this restrictions should stay in the DR document, it seems that most of it should be covered in the By-laws. Given that Texas property law is heavily biased towards property owners, and that new safeguards were included with SB 1588, I would like Brody to comment on where it best resides. Also, can he provide an outline for a process for dealing effectively with violations. The THPOA must be able to force collection of overdue fees and fines, which seems to be a more frequent occurrence now.

20) Deed Restriction 5 gives additional responsibility to the architectural committee (now our ARA):

5. The Architectural Committee shall have the same authority over the Community Center area and no structure or improvement shall be placed thereon except as a community project and upon approval of the Committee.

Same question as above on paragraph 3.

21) Deed restriction 6 deals with outside toilets:

6. No outside privies or toilets shall be permitted in this subdivision. All toilets shall be inside the houses and prior

Does this trump the display of repulsive toilets as yard art? While it seems farcical to have to actually deal with this situation, if we have to pay Brody for his time in deliberating it, so be it. Maybe his opinion will change minds.

22) Deed restriction 8 deals with commercial uses of property.

8. No tract other than the areas marked "Community Center" and "Boat Ramp" and "Reserve" shown on the plat of said subdivision filed for record, shall be used except for the residential purposes save and except those lots designated as "Commercial" as in paragraph 13 herein below mentioned. The term "residential purposes" as used herein shall be held and construed to exclude hospitals, clinics, duplex houses, apartment houses, boarding houses, hotels, and all other commercial uses and all such uses of said property are hereby expressly prohibited. No building shall be erected, altered, placed or permitted to remain on any residence tract other than one detached single family dwelling and private garage for not more than three cars.

How does this relate to the use of property for weekend rentals (e.g., AirBnB, etc)? I would like Brody to comment on this vis-a-vis weekend rental properties.

Loretta tag on: This restriction has a Texas Property Code/law change (I may not be calling it by its appropriate name here) attached to it specific to Air B&B's. My question to Brody is should we seek council from an attorney who specializes in this field to review this DR and the new law.

23) Deed restriction 11 deals with the presence of rubbish and junk on property.

11. No rubbish, brush, junk or old cars, or anything shall be stored, or left standing on any tract that would offend anyone with normal sensitivity.

I believe the intent of this restriction was to maintain a visually pleasing appearance within Twin Harbors, generally. Some residences have a lot of this stuff in their backyards and while it is not within 30 feet of the street, it is visible from the street. Privacy fencing may be a solution. I would like Brody to provide commentary and guidance on interpretation of this restriction.

24) Deed restriction 13 deals with commercial tracts.

Lots 30, 31, 32, 33, Block 1, Section 3, are hereby designated as "Commercial" and the purchasers of which may operate such retail or other commercial establishments as may be in harmony with the subdivision and provided approval of such operation is first obtained by the Architectural Control Committee.

If the current day care center and framing shop change ownership, what is the mechanism for ensuring that the new owners do not build an undesirable business on these lots? Obviously, (at least I hope it is obvious) that an SOB (sexually oriented business) or bar on these premises would be undesirable for our subdivision. It is not clear to me how the ARA or board control the review and approval / rejection of new businesses. How would the new owners know to inform the THPOA of their intentions, which would trigger the review process?

25) Deed restriction 14 deals with animals being raised on a lot:

14. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential tract, except dogs, cats, or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purposes.

Given that we have property owners with chickens running freely on their lots, and apparently a state COVID-era law that allows a property owner to have up to 6 chickens on their lot, but no roosters, I would like Brody to provide guidance on what the deed restrictions can regulate regarding poultry, coops, etc. Also, what happens to those chickens and coops if that state law is revoked by a future session of the Texas legislature?

26) Deed restriction 15 deals with signs in yards.

15. No sign of any kind shall be displayed to the public view except signs used by the developers in the original sale of lots in said subdivision or signs used by builders to advertise the property during the construction and sales period.

Some POA members have recently mentioned to me that bona-fide security signage should not be restricted. I am in this group. Obviously, signage with a pistol image and text such as "we ain't callin' 911", while funny, is not bona-fide security signage. On the other hand, ADT and similar signage is. I don't know if we need Brody's input on this. Perhaps we just need to create our signage addendum to the ARA guidelines.

27) Deed restriction 18 deals with the timeframe for completion of construction through dry-in.

18. Outside construction of all residences shall be completed within four (4) months from date of beginning construction unless such period is extended in writing by Architectural Committee.

Do we have a definition of "beginning of construction"? I'll bet 3 of us would answer this question in 3 different ways. For example, should it be from the start of lot clearing or the start of the residential structure? Let's ask Brody to provide guidance on this.

28) Deed restriction 22 deals with the annual maintenance fee of \$60 per lot.

22. All lot purchasers, excluding developer, shall pay to and become liable to the Property Owners Association for the sum of \$60 per year per lot purchased, for the purpose of created the Twin Harbors, "on Lake Livingston" Maintenance Fund. The aforementioned payment, (hereinafter called "Maintenance Fund") shall be due and payable to the Maintenance Fund in installments of \$5.00 per month beginning the month after the lot purchaser executes the Contract for Deed, or in the event no Contract for Deed is executed, delivery of the General Warranty Deed. The Maintenance Fee shall constitute

While part of this restriction should stay in the DR document, it seems that most of it should be covered in the By-laws, especially since this fee can be subject to increases by future boards, and enforcement of fines associated with it are the responsibility of the THPOA board. I would like Brody's guidance on this.

Deed restrictions 23 (mowing and rubbish) and 24 (temporary structures such as campers and motorhomes). Same comment as for 22.

29) Cliff – For #5 should be, Do we have to write...