

Deed-Restrictions-Points

In regard to any proposed building of duplexes, or any other multi family dwelling in the official platted area of Hide-A-Way Lake, Inc., development. Any building of multi-family dwellings are prohibited by Deed Restrictions.

DEED RESTRICTIONS PROTECT YOUR PROPERTY VALUES AND QUALITY OF LIFE!

If the proposed builder is connected with the Fair group, then the question: **Why would the Fair group want to apparently violate the very DEED RESTRICTIONS they impressed on the land?**

DEED RESTRICTIONS:

1. The combined Deed Restrictions of HAWL are (1) The 1969 (Vol. 1313 Page 582 et seq.) and (2)1995 (2007-R00004200) restrictions on file in Smith County. The above restrictions apply to ALL OF HAWL, by a court ruling.

1995 Deed Restrictions

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“C. No building shall be erected on any lot or lots other than one single-family dwelling with garage, if any, except for those outbuildings described in the HIDE-A-WAY LAKE CLUB BUILDING CODE.”

2. In 1995 the developer Hideaway Lake, Inc., (Fair) impressed additional Deed Restrictions on Unit #43 (Vol 3734 Page 840 et seq. 95-R0039525.) Unit #43 is within the bounds of the original development of Hide-A-Way Lake Club, Inc. See Vol 3734 Page 850 at Art. VIII, B. Specific Land Use at Par. 5, to wit:

“(5) No building shall be erected on any lot or lots other than one single-family dwelling, with garage. The floor area of any dwelling shall be not less than 1,400 square footage, exclusive of garage, porches and basement.”

The 1969 Deed Restrictions was impressed by Fair et al.

The 1995 HAWL Deed Restrictions was impressed by a vote of Hide-A-Way Lake Club, Inc., members.

The 1995 Unit #43 Deed Restrictions are impressed by Fair, et al.

Points:

1. One purpose of deed restrictions is to protect property values. Violations of deed restrictions most directly affect the value of adjoining lots. Cox v. Melson Fulsom, 956 S.W. 2nd791, (Tex App. Austin 1997, no writ).

2. An Owner burdens his own land with restrictions because of the fact that a like burden will be imposed on his neighbor's lot and this will be beneficial to both lots. Curleev. Walker, 244 S.W. 2 497, (Tex 1922).

3. The outcome of building multifamily dwellings in HAWL should FAIL, according to the following cases.

SKI MASTERS OF TEXAS No. 04-07-00721-CV
COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON
269 S.W.3d 662; 2008 Tex. App. LEXIS 9829

The doctrine of implied reciprocal negative easement applies when a developer sells a substantial number of lots within a subdivision by deeds containing the restrictive covenant, and the party against whom the restriction is sought to be enforced had notice of the restriction but the deed did not actually contain the restriction.

OVERVIEW: The residents wanted to enforce residential use only restrictions against appellants.

Ultimately, the trial court found in the residents' favor and the court affirmed. There was evidence of a general plan or scheme of development. The re-subdivision of one tract did not negate the existence of a general plan or scheme. The residents presented evidence that they purchased property within the subdivision based in part on the residential only restriction.

See this case: (Charles EVANS, et al., Petitioners, v. Thomas R. POLLOCK, et al., Respondents. No. C-8949. Supreme Court of Texas. June 13, 1990.)

4. Lanty Wylie and Patricia Wylie v. Hide-A-Way Lake Club, Inc. and Hide-A-Way Lake Community Church.

Court of Appeals of Texas. 12-12-00290-CV (Tex. App. 2013) Filed: December 20th, 2013. |

Precedential Status: Precedential

OVERVIEW: This case resolves STANDING (Affirmed) for each member of Hide-A-Way Lake Club, Inc., to sue for deed restrictions violations. (q.v.)

The court listed the various Deed Restrictions that HAWL violated and are now violating in regard to a non-member, the church. A church is listed as a business in Texas Law.

This case affirms various deed restrictions for the land development of Hide-A-Way Lake Club, Inc., and any DBA of HAWL. (q.v.) **The 1969 and 1995 Deed Restrictions apply to all of HAWL.**

5. GARDEN OAKS v. PETER, Appellees/Cross-Appellants

Court of Appeals of Texas, Houston (14th Dist.). NO. 14-16-00537-CV. Decided: November 14, 2017

In this case the HOA lost because they ABANDONED their deed restrictions, as they selectively enforced them.

At trial, the jury found that Chang failed to comply with the garage deed restriction. Additionally, the jury found: such failures were excused by **abandonment: the deed restriction** was waived.

6. July 9, 2010

Date: 07-09-2010, **Case Style:** John A. Bollier and Leslie J. Bollier v. Austin Gurdwara Sahib, Inc. d/b/a Gurdwara Sahib Austin **Case Number:** 03-09-00313-CV

Court: Texas Court of Appeals, Third District on appeal from the 353rd District Court of Travis County.

The Appeals Court over-tuned the Trial Court and **ordered the removal** of a Sikh Temple as it violated Deed Restrictions of a "**Single Family Dwelling.**"

2011 - Case Appealed - NO. 10-0863 IN THE SUPREME COURT OF TEXAS

7. Gray v. Key Ranch at the Polo Club Home Owners Ass'n, Inc., No. 03-09-00145, 2010 WL143421 *3 (Tex.App.—Austin, January 12, 2010, no pet.).

In this case the court ruled that a developer cannot transfer property in a development once they have deeded the property over to the HOA, or other title owner.

8. The Board: Ultimate responsibility for the enforcement of the Association's deed restrictions lies with the Board of Directors, Failure to act can have legal consequences – Attractive Nuisance – **Foreseeable Crime**

If, a building permit is issued, a copy must be made available to the members of HAWL.

9. Enforcement by a County – Texas Property Code Section 203 • County Attorney may sue to enforce restrictive covenants • Applies only to counties with a population in excess of 200,000

(Smith County, Texas has a population in excess of 200,000.)

10. Sec. 203.003 Texas Property Code: County attorney authorized to enforce restrictions. – (a) The county attorney may sue in a court of competent jurisdiction to enjoin or abate violations of a restriction contained or incorporated by reference in a properly recorded plan, plat, re-plat, or other instrument affecting a real property subdivision located in the county, regardless of the date on which the instrument was recorded.

11. Recovery of attorney's fees: The person/entity that brings an action to enforce restrictive covenants and prevails in that action shall be entitled to reasonable attorney's fees (5.006 Property Code)

12. Any violation of Deed Restrictions by the City of Hideaway, or HAWL the club, should be presented to the Smith County Appraisal District as a possible reduction of property values of HAWL.

13. See the City of Hideaway Ordinance #04-0909-02, September 9, 2002 regarding City approval or disapproval for Building Permits.

14. In my view, there is sufficient evidence to show that HAWL has abandoned certain Deed Restrictions. My (our) property value has been reduced by HAWL violating certain Deed Restrictions. This is a very serious matter to me and should be to all HAWL members.

15. A **deceptive trade practice** is activity by an individual or business that is meant to mislead or lure the public into purchasing a product or service.

16. I suggest you contact your lawyer, Smith County District Attorney, or The Texas Attorney General for guidance and advice.

Lanty Wylie
January 21, 2019