

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
June 30, 1994

In the Matter of	x	
Vinod D. Patel	x	
Complainant	x	
	x	
	x	
Vs.	x	Case No. 205-0
	x	
	x	
Hampton Estates HOA	x	
Respondent	x	

Decision and Order

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9 (a), 10B-10, 10-B-11 (e), 10B-12 and 10B-13 of the Montgomery County Code, 1984, as amended, of record, it is therefore, this 30th day of June, 1994, found, determined and ordered as follows:

BACKGROUND

On November 12, 1992, Vinod D. Patel, owner of 17811 Stoneridge Drive, Gaithersburg, Maryland, (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities in which he alleges that on October 7, 1991, he made application to the Architectural Control Committee to erect a basketball hoop and backboard on his property, and subsequently, the Board of Directors of Hampton Estates Homeowners Association, Inc., hereinafter the Respondent, failed to approve or disapprove his application within sixty (60) days, in violation of Article VI, Section 6.01 of the Declaration of Covenants, Conditions and Restrictions, and accordingly, approval is not required.

The Commission held a public hearing on this matter on April 27, 1994. The Complainant and his witnesses testified that the Complainant made application to the Association's Architectural Control Committee (ACC) to erect a basketball hoop and backboard at his property and that the ACC failed to approve or disapprove his application within sixty (60) days, as required by Article VI, Section 6.01 of the Declaration of Covenants, Conditions and Restrictions, and therefore, no approval is required. Testimony from the Respondent was that the Complainant's application to erect a basketball hoop and backboard was denied and the Complainant was so notified, in writing, within the sixty (60) days of application, and furthermore, that the Respondent's basketball hoop and backboard are in violation of Article VII, Section 7.02 of the Association's Declaration of Covenants, Conditions and Restrictions.

FINDINGS OF FACT

Based upon a preponderance of the evidence, including the stipulations of the parties, testimony, and other evidence of record, the Commission makes the following findings:

1. Vinod D. Patel, owner of a residence at 17811 Stoneridge Drive, Gaithersburg, Maryland 20878, hereinafter referred to as Complainant, is a member of the Hampton Estates Homeowners Association, Inc.

2. The Hampton Estates Homeowners Association, Inc., hereinafter referred to as Respondent, is composed of homeowners who reside in the community covered by the Declaration of Covenants, Conditions and Restrictions, governing the community.

3. The Complainant notified Respondent in a letter, dated August 30, 1991, that he had erected a pole for holding a basketball backboard and hoop, but not the backboard and hoop, in the front yard of his home, near his driveway.

4. Respondent, in a September 12, 1991 letter to Complainant, informed Complainant that: "As for the basketball hoop and pole, any homeowner must first apply to the Architectural Review and Building and Grounds Committee prior to the installation or construction of any improvements installed in the yard or made to the outside of the home. These improvements would include a basketball hoop, backboard and pole."

5. The Respondent's letter was sent to Complainant via regular mail and the Complainant admitted receiving it.

6. The Complainant, on September 30, 1991, sent the Respondent's Architectural Control Committee an Application for Exterior Alteration, requesting that he be permitted "to install basketball goal, 48" graphite board and net...south of driveway..."

7. The Minutes of the Architectural Committee's meeting of October 16, 1991 include the following reference: "Prem (Kannan) to write a letter to (Complainant) about the rejection of his application to install a Basketball board in the front(sic)."

8. Prem Kannan was at the time a member of the Architectural Committee, along with a Wayne Miller (sic), according to the October 16, 1991 Committee's Minutes. In error, the Minutes refer to Wayne Miller(sic), although his actual last name is "Mourer".

9. The investigative file contains a letter, dated October 21, 1991, addressed to the Complainant by Wayne Miller (sic), but signed for Mr. Miller (sic) by the then co-chairperson of the Architectural Committee, informing the Complainant that his request for

installation "of basketball board beside your driveway has been rejected." Further, the letter stated that "(l)awn furniture and play equipment shall be maintained only within that portion of a lot that is screened from public view", according to Section 7.02, subsection (n), of the covenants of the Association.

10. The Complainant testified that he never received the October 21, 1991 letter, that had been sent to him via regular mail according to testimony of the Respondent.

11. The Complainant testified at the hearing that he did not place the backboard and net on the pole located in the front yard of his home until January 12, 1992, or more than sixty (60) days after he applied to install the items near his home.

12. On January 20, 1992, the Architectural Control Committee sent a letter to the complainant, stating: "As per our original letter dated October 21, 1991, your request for installing the Basketball goal beside your driveway had been rejected." The Committee also informed the Complainant that he had sixty (60) days to remove the violating play items and that the play items were causing them concern "for the safety of (his) children as well as safety of all the children of the development."

13. The Complainant responded, in a January 27, 1992 memorandum, informing the Architectural Control Committee that, because it allegedly failed to act on his application within sixty (60) days of its receipt, Section 6.01 of the Covenants permits him to erect the involved play items in his front yard, in clear view of the public.

14. The then President of the Association wrote to the Complainant, on February 22, 1992, that other homeowners have been denied permission to erect similar equipment and that the tacit approval provision of the Covenants relied on by the Complainant to erect the play items in his front yard only applied to structures specifically allowed by the By-laws.

15. In the February 22, 1992 letter, the then President also erroneously stated that the Complainant could get the By-laws changed if he obtained signatures of "24 of the 47 properties" owners in the development.

16. Complainant circulated a petition among his neighbors, wherein 25 of the 47 homeowners indicated that "basketball poles" should be allowed within public view on the lots in the community.

CONCLUSIONS OF LAW

The Commission concludes that the Complainant's reliance on Section 6.01 of the Association's Covenants to justify his erection of a basketball goal in his front yard is misplaced. Section 6.01 "Architectural Change Approval", appears in the Association's Covenant under Article VI, Architectural Control. The section reads in pertinent part: "No building, wall, or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made...until submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the Property..."

The clear intent of this section is to control architectural changes to the property, such as alterations to the house or the erection of additional structures, e.g., decks, fences, or walls. The language "commenced, erected or maintained", is intended to cover whatever stage the addition or alteration to the property might be in at the time when the Association commences an action to enforce its Covenants. For example, the owner might be commencing an alteration, without prior written approval by the Association. Or, the owner could be erecting a wall but has not finished it. Or, the wall could have been completed and is now being maintained by the owner. If any of these situations exists without the prior approval of the Association, then the property owner would be in violation of the Association's Covenants.

Further, even if in violation of the Association's Covenants, the property owner may request in writing that the structure commenced, erected, or maintained on the property be approved by the Association. If the Board of Directors of the Association, "or its designated committee, fails to approve or disapprove such design and location (of the building, fence wall or other structure or of the addition, change or alteration) within sixty (60) days...approval will not be required and this Article will be deemed to have been fully complied with." Nothing in Article VI, including Section 6.01, however, applies to play equipment. Play equipment is regulated by Article VII of the Covenants. Article VII does not contain a tacit approval provision as is found in Article VI. Therefore, the Commission concludes that the Complainant cannot rely on Article VI to justify his failure to remove the basketball goal, as ordered by the Association.

The Commission concludes that Article VII, "Use Restrictions", Sections 7.02 (h), (n), and (t), relate to the placement or use of basketball goals. The mentioned sections make such goals temporarily placed or left overnight in and/or in public view from the front yard of a residence, violations of the Association's Covenants. Complainant's basketball goal is a temporary structure (Section 7.02 (h)), is not screened from public view (Section 7.02 (n)), and is allowed to remain overnight within his front yard (Section 7.02 (t)).

As mentioned, these conditions constitute violations of the Association's Covenants and must be remedied by Complainant.

Moreover, the Commission finds that the Association's Covenants place no time limit on the Association's responding to requests for changes to its "Use Restrictions" covered under Article VII of the Association's Covenants. Complainant contends otherwise, that is, because the Association failed to respond to his change request within 60 days of its receipt by the Association, his request automatically was approved. As previously stated, Complainant's contention is in error. The Association has no time limit for responding to requests regarding the use restrictions.

Complainant also raised the defense that the basketball goal in his front yard should not be removed, because he complied with instructions from the Board of Directors to obtain a petition from homeowners in the association indicating that a majority approved a declaration amendment permitting basketball hoops in front yards. The Complainant cannot prevail on this defense for the following reason:

The Commission concludes that the actions taken by the Board of Directors and its President (albeit, in a sincere effort to resolve the Complainant's failure to remove his basketball goal, after being ordered to do so by the legitimate procedure of the Association's Covenants) were, nevertheless, not sanctioned or in compliance with Article XII, which sets forth the procedure for amending the Covenants, as follows:

"This Declaration may be amended during the first twenty (20) year period pursuant to the vote of (at a duly called meeting of the members of the Association), or by an instrument signed by, not less than seventy-five percent (75%) of the Lot Owners, and thereafter, by the vote of (at a duly called meeting of the member of the Association), or by an instrument signed by, not less than sixty-six and two-thirds (66 2/3%) of the lot owners..."
See Article XII, Section 12.04.

At the time of the instant complaint, the Association had been in existence since 1988, or less than twenty (20) years. Thus, Article XII, Section 12.04, of the Association's Covenants could only be amended at the time of the incident giving rise to this complaint by either "...the vote of (at a duly called meeting of the Association), or by an instrument signed by, not less than seventy-five percent (75%) of the lot owners."

The petition indicating some neighborhood approval of the basketball goal simply does not meet the requirements of Section 12.04. Neither the President of the Association on his own volition nor the Board of Directors at its meeting could authorize or approve a process to amend the Association's Covenant not in accord with Article XII, Section 12.04, which requires 75% of the homeowners to

vote to amend the Declaration. Thus, the then President of the Association's letter, dated February 22, 1992, addressed to the Complainant, and the minutes of March 7, 1992 Board of Director's meeting, contained erroneous and improper advice about the number or percent of homeowner's signatures necessary to amend the Association's Covenants. The President's letter stated "24 of the 47 properties to gain approval", or 51 percent, of the homeowners; the minutes of the Board of Directors' meeting stated that 22 of the 43 property owners had to approve Complainant's petition. Ultimately, Complainant circulated a petition among the homeowners and received 25 approving signatures, or 53 percent, of the homeowners. Since his petition contained signatures of fewer than 75 percent of the homeowners, the Complainant's petition failed to gain the percentage of homeowner signatures necessary to amend the Association's Covenants, as required by Article XII, Section 12.04.

Later, another petition, circulated by the Board of Directors to the homeowners requesting their vote on this issue of basketball goals raised by Complainant, resulted in only 36.2 percent of the homeowners favoring amending the Covenants to allow basketball goals in the front yard. The petition failed to be approved by 75 percent of the homeowners, as required by Article XII, Section 12.04, the Association's Covenants regarding amendment of the Declaration.

Consequently, the Association's notification to Complainant, and received by Complainant, dated January 20, 1992, ordering him to remove the basketball goal "within 60 days of the receipt of this letter" remains in effect. Complainant's failure to comply with the order issued to him means that, at this time, he is in non-compliance with the Association's Covenants regarding basketball goals.

Finally, Complainant alleges that he did not receive the Association's October 21, 1991 letter, addressed and sent to him via regular mail. The record shows that Complainant did receive both oral and written notice from the Association, in 1992, that he was in violation of the Association's Covenants. Therefore, being currently in violation and having been informed by the Association of being in violation of the Association's Covenants by erecting a basketball pole in his front yard, whether Complainant received the Association's letter, dated October 21, 1991, is a moot issue.

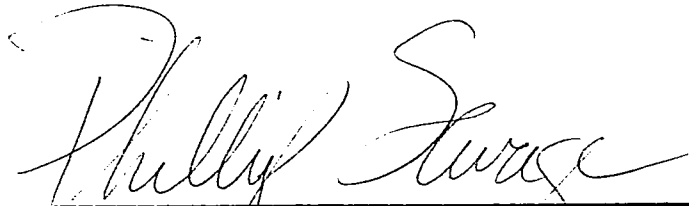
ORDER

In view of the foregoing, and based on the evidence of record, the Commission hereby issues the following order:

That the Complainant, Vinod D. Patel, at his expense, remove the basketball goal from his front yard, no later than sixty (60) days of the date of this decision.

The foregoing was concurred in by panel members Auvil, Szajna, and Savage.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Phillip Savage, Panel Chairperson
Commission on Common Ownership
Communities

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