

Before the  
Commission on Common Ownership Communities  
July 21, 1994

In the Matter of	x	
Seneca Forest Community Assoc.	x	
c/o The Management Group	x	
One Bank Street, #301	x	
Gaithersburg, MD 20878	x	
	x	
Complainant	x	
	x	Case 248-G
Vs.	x	
	x	
David Ramsey, Owner	x	
19108 Cherry Bend Drive	x	
Germantown, Maryland 20874	x	
	x	
Respondent	x	

Decision and Order

The above-entitled 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, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore this 21st day of July, 1994, found, determined and ordered as follows:

Background

On September 9, 1993, the Board of Directors, Seneca Forest Community Association, (hereinafter the "Complainant") filed a formal dispute with the Office of Common Ownership Communities in which they alleged that David Ramsey, owner of 19108 Cherry Bend Drive, Germantown, Maryland, (hereinafter the "Respondent"), violated the Association's ban on parking of commercial vehicles by parking his tow truck in the parking spaces near his townhome on a regular basis.

ISSUES

A. Preliminary Matter Personal Jurisdiction

Inasmuch as Respondent did not appear at the hearing, the Panel inquired into the issue of service of process upon the Respondent. It received testimony from Cynthia Bork, the assigned staff Investigator for the Commission on this matter and reviewed the record, particularly Commission Exhibit No. 1 with

respect to this issue. (References in this section are to this Exhibit, unless otherwise specified). The relevant findings of fact and conclusions of law are stated below.

#### Findings of Fact

1. Three separate mailings were sent to the Respondent as follows:

a) Notice of Public Hearing, dated April 13, 1994, sent by first class mail postage prepaid and certified mail return receipt requested each on April 13, 1994 (Exhibit 17). The receipt and the first class mail were not returned.

b) Summons to Appear at the hearing was issued to the Respondent on May 16, 1994. It was mailed by first class mail postage prepaid, and by certified mail return receipt requested on May 16, 1994 (Exhibit 19). The Office received a return receipt for this Summons which reasonably appears to contain the signature of David Ramsey according to the testimony received. The first class mail was not returned (Exhibit 19, page 129).

c) A second Summons was issued to the Respondent on June 6, 1994, requesting that certain documents and materials be brought to the hearing. This was mailed by first class mail postage prepaid and by certified mail return receipt requested (Exhibit 23). The receipt and the first class mail were not returned.

2. Each and every Notice and Summons described in Finding #1 above was addressed to the Respondent at 19108 Cherry Bend Drive, Germantown, Maryland 20874. (the "Address").

3. No testimony or evidence has been submitted which indicates that the foregoing address of the Respondent is incorrect. Each reference in the record and the testimony to the address of the Respondent is the same as the address stated in Finding #2. Moreover, Commission Exhibits 9b and 9c indicate that Respondent received and appeared at a hearing of the Complainant held in 1992 based on use of such Address. No evidence has been submitted that the address of the Respondent has changed since the time of that hearing.

## Conclusions of Law

Based on the record and the testimony received, particularly the signed return receipt for the Summons to Appear, it is the conclusion of this Panel; that the Respondent was properly served with notice of this proceeding, that the Commission has jurisdiction over the person of the Respondent and that in any event the Commission made reasonable and diligent efforts, which were reasonably calculated to obtain service upon the Respondent.

### B. Violation of Community's Governing Documents

#### Findings of Fact

Based on the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant is a community association consisting of 425 townhouses located in Germantown, Maryland and is governed by a Declaration of Covenants recorded at Liber 5928 Folio 87 on September 14, 1982 among the Land Records of Montgomery County, Maryland. The issues in this case involve the application of Article VII, Section 7(d) of the Declaration as well as Resolutions 5, 6, and 8 adopted by the Association's Board of Directors with effective dates, respectively, of (on or about) March 3, 1988, January 1, 1989, and February 1, 1991. These Sections govern the parking of commercial vehicles, including trucks, within the Property subject to control by the Association.

2. The Sections state pertinently as follows:

a) Declaration, Article VII, Section 7 - Prohibited uses and nuisances... Except with the prior written approval of the Architectural Control Committee, or as may be necessary in connection with reasonable and necessary repairs or maintenance to any dwelling or upon the common areas...

\* \* \*

(d) except as hereinelsewhere provided, no junk vehicle, motor vehicle not bearing current registration, trailer, truck, camper ... or other machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and

usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the common areas and community facilities) shall be kept upon the Property nor ... shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

b) Resolution No. 5, Article II, Paragraph 8; No vehicle shall be parked in such a way as to occupy more than one parking space or obstruct any other parking space, sidewalk, walkway, designated fire lane or any other portion of the common area.

c) Resolution No. 6, Article I, b.;  
Commercial Vehicles: Any motor vehicle and any trailer or semi-trailer designated or used for providing services in connection with any commercial enterprise or any vehicle displaying a commercial logo, wording, or advertising. [Exceptions omitted]

\* \* \*

Article II, Parking Regulation - 2.  
Commercial vehicle parking prohibited. No commercial vehicle or bus shall be parked in Seneca Forest, except when such vehicle is actually engaged in loading or unloading of passengers, merchandise or materials or making service or repairs to any property in Seneca Forest or after such vehicle has been granted a special exception by the Board of Directors.

d) Resolution No. 8, Commercial Vehicles

1. "Commercial Vehicle" shall mean: (i) any vehicle designed or equipped primarily for a commercial purpose, (ii) any vehicle which is normally equipped with externally exposed machinery, tools, building materials and the like, (iii) any vehicle displaying commercial logos, lettering or advertising, (iv) any vehicle with a roof line more than 7 1/2 feet from the ground, (v) any

vehicle more than 20 feet in length, or  
(vi) any vehicle with more than 2 axles  
or more than 2 wheels per axle.

2. Effective as of February 1, 1991, no  
Commercial Vehicle shall be parked on  
any common property within the Seneca  
Forest community. Any permission or  
approval previously given by the  
Association for the parking of any  
Commercial Vehicle within the community  
shall be revoked as of February 1, 1991.

3. Each of the Resolutions, quoted above, were duly adopted  
in accord with Article V of the Bylaws of the Association.

4. Each of these Resolutions was served upon the Respondent  
by first class mail postage prepaid at his Address of record on  
file with the Complainant, which was at all relevant times 19108  
Cherry Bend Drive, Germantown, Maryland 20874 (the "Unit").

5. Respondent David C. Ramsey settled on and took title to  
the Unit on or about March 28, 1986 at least 23 months prior to  
the effective date of each of Resolutions 5, 6, and 8.

6. The Unit is within the Property as that term is defined  
in the Declaration.

7. According to the testimony of Alan Seifert, the  
representative of the management association for the Complainant,  
in the ordinary course of business, the Respondent would have  
received a copy of the Declaration of Covenants on or about the  
time of settlement which was March 28, 1986. On December 17,  
1993 Respondent stated during a telephone conversation with the  
Office of Common Ownership Communities that to his knowledge  
there is nothing in the Association documents that would prohibit  
him from parking his truck within the Property of the  
Association.

8. On February 18, 1992, Respondent appeared at a hearing  
before the Board of the Complainant to decide on the nature and  
extent of the violation by Respondent and what if any further  
measures needed to be taken to remedy the parking of the tow  
truck within the Association property. At the hearing the  
Respondent stated that his tow truck had been vandalized when it  
was parked outside the community, that his employer prohibited  
parking the tow truck overnight on the employer's property, that  
he has helped neighbors out by starting vehicles and changing  
tires and that the only conflict over parking was that his  
neighbors did not want the tow truck parked in common parking  
spaces which they could use. As a result of the hearing, the  
Board ordered Mr. Ramsey to park the tow truck outside the

community and provided a 30 day grace period in which to do so. Respondent did not comply with this order of the Board, which prompted the Complainant to initiate this proceeding.

9. According to the testimony of Mr. Seifert which is not contradicted in the record, over the last four years he has personally observed the Respondent's tow truck driven, parked, and washed within the community property on approximately 20 occasions and he has received approximately 75 complaints about the use and parking of it within the Community; that the red Ford flat bed tow truck owned by the Respondent blocks 6-7 parking spaces. Mr. Seifert also testified that on 3-4 occasions he has attempted to contract with other tow truck operators to remove the vehicle, but each has been unwilling to do so, that the County government has been unwilling to enter private property to boot the vehicle and that the Association's inability to compel compliance has caused problems with other community members.

10. Resolution Nos. 5 and 6 of the Board each allowed an owner to apply for and receive a special exception to allow a commercial vehicle to park within the Community. (Article II, Section 2). While Respondent owned his unit, the special exception procedure was in place for almost three years, until the procedure was eliminated with certain exceptions by Resolution No. 8. During this period, at least one special exception was granted. At no time did the Respondent apply for or obtain such a special exception.

11. As stated in paragraph 2d above, Resolution No. 8 defines commercial vehicle as a vehicle which is a) designated or equipped primarily for a commercial purpose; b) normally equipped with externally exposed machinery or tools; c) painted with commercial logos, lettering, or advertising; d) more than 20 feet in length or a roof line in excess of 7 1/2 feet from the ground; and e) possesses more than 2 axles or more than two wheels per axle. According to Mr. Seifert, the Respondent's vehicle was designed and equipped as a red Ford flat bed tow truck, with the machinery and tools to perform that function; it had a logo which displayed a telephone number and the words "professional towing" on each side of the truck; it was approximately 24 feet in length and probably included more than two wheels per axle.

#### Conclusions of Law

1. Respondent received extensive legal and actual notice of the prohibition on parking commercial vehicles within the Community of Complainant.

2. The Respondent's flat bed tow truck is a commercial vehicle as defined in Resolution No. 8.

3. The Respondent's flat bed truck has been repeatedly parked within the Property of Seneca Forest Community in violation of Board Resolutions 5, 6, and 8 and of Article VII, Section 7 of the Declaration of Covenants.

ORDER

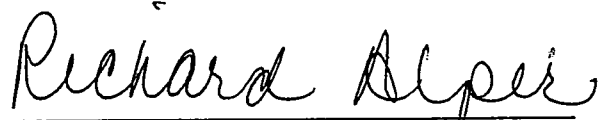
In view of the foregoing and based on the evidence of record, it is hereby ORDERED that:

1. The Respondent must remove the tow truck from the property of Seneca Forest Community Association within thirty (30) days from the date of this Order.

2. The Respondent is prohibited from parking any successor or replacement commercial vehicle on such Property.

The foregoing was concurred in by panel members Alper, Chester and Szajna.

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



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Richard Alper, Panel Chair  
Commission on Common Ownership  
Communities

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