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Blue Ribbon Farms Property Owners Association
c/o Mark Cheney, President
PO Box 3141
Sequim, WA 98382

Re: Enforcement of Covenants

Dear Owners Association:

You have requested my opinion as to enforcement of the restrictive covenants that apply to Blue Ribbon Farms Subdivision – Divisions 1 & 2.

Question #1: *Who is responsible for determining and enforcing possible violations regarding access/use of the 60' general easements? Is the Association Board legally liable for taking action on an easement violation?*

Each property owner may enforce the covenants. The Association, after a two-thirds vote of the Board of Directors, also may enforce the covenants. The Association is not required to enforce or investigate alleged violations. (See Section 3 of Article VI).

Question #2: *Do the covenants restrict parking of recreational vehicles?*

The covenants specifically allow parking of recreational vehicles, subject to zoning code building setback requirements.

Current setbacks in the Clallam County Code for Rural (R1) zones are:

(a) Front yard – forty-five (45) feet from a local access street, fifty (50) feet from an arterial street, sixty (60) feet from a highway.
(b) Side yard – ten (10) feet (forty (40) feet from the centerline of the right-of-way of a side street).
(c) Rear yard – fifteen (15) feet (forty (40) feet from the centerline of the right-of-way of a rear street).

Current setbacks in the Clallam County Code for Rural Neighborhood Conservation (NC) zones are:

(a) Front yard: 45 feet from a local access street, 50 feet from an arterial street, 60 feet from a highway.

(b) Side yard: 10 feet or 40 feet from the centerline of the right-of-way of a side street, whichever is greater. Private streets must serve three or more parcels.
(c) Rear yard: 15 feet or 40 feet from the centerline of the right-of-way of a rear street, whichever is greater. Private streets must serve three or more parcels.
(d) From Commercial Forest and Agriculture Retention Resource Zones: 50 feet (20 feet for accessory structures).

The covenants state that recreational vehicles may be used for temporary housing during construction activities, or for temporary housing of a house guest. The covenants also state that parking and use of recreational vehicles shall not adversely affect neighboring property owners. Since this is a subjective standard, I would leave enforcement of that covenant to individual owners who feel they are adversely affected by the parking and use of recreational vehicles.

Question #3: *Is the 120' "building setback" from the airstrip indicated on the surveys of record enforceable?*

The building setback is a notation on the survey, but is not mentioned in any other recorded documents that I can find. In Washington, all real property interests including easements must be conveyed by written deed. Neither the restrictive covenants nor the survey map contain language granting or reserving easements. The developers did record a separate easement granting all property owners an easement over the 60' general easement depicted on the survey, but did not do so with respect to the 120' building set back from the runway. The covenants do specifically give each property owner to use the "aircraft landing facility" on Parcel 39, but does not mention the 120' building setback. My opinion is that there is no enforceable restriction on that 120' setback area.

Question #4: *Do construction limitations ("all dwellings, garages and aircraft hangars shall be constructed by built in place methods . . . and shall be in compliance with county codes") apply to other storage structures?*

The covenants not specifically address any other types of storage buildings or structures. Since they are not prohibited, my opinion is that sheds and other structures are not prohibited if they comply with county codes.

Question #5: *Paint colors; is paint color enforceable as written?*

The covenants state: ". . . to preserve the natural beauty of the landscape, and the rural character of the area and promote visual harmony in building form and color, owners/builders are required to use non-reflective subdued natural colors". The dictionary defines natural as "existing or formed by nature"; and subdued as "not very bright". Almost any color can be found in nature (flowers, birds, minerals). Whether it is "subdued" seems very subjective. If an owner and any other association member disagree on the definition of "subdued natural color" only a judge can make a determination. The color of the other homes in the subdivision would come into play also as the purpose is stated to "promote visual harmony in building form and color".

Question #6: *Is there a timeframe the board (or owner) must act within to enforce a covenant violation?*

Restrictive covenants may be deemed to have been terminated by abandonment where the "common plan" has broken down due to substantial unchecked prior violations of the restrictions. Washington case law has held that a few violations do not suffice to constitute an abandonment; the plan must have been habitually and substantially violated to create the impression it has been abandoned.
Another defense that courts have recognized is "acquiescence" where the plaintiff has previously failed to enforce a restriction against other persons and now seeks to enforce the same type of restriction against the defendant.

There is no set time limit, but the longer a violation remains unenforced, and the more owners are violating the restriction, the more likely a court will hold that it has been abandoned or is not enforceable.

In summary, in most instances, my recommendation to the Board of Directors would be to let individual property owners enforce alleged covenant violations. Litigation can be very expensive. The cost of litigation is entirely dependent upon the vigorousness of the defense. It would not be uncommon for the cost to each party to be in the tens of thousands of dollars. The covenants do contain an attorney's fees clause that states that in any action brought by the association, the prevailing party is entitled to its reasonable attorney's fees. That is a two-edged sword that could make an offending property owner more likely to settle by complying, rather than incur their own attorney's fees and be liable for the association's fees if the association prevailed. Likewise, the association could be liable for paying the owner's attorney's fees if the owner were the prevailing party. The covenants do not have a similar provision for an action by an individual owner.

Sincerely,

Alan E. Millet