

072005

GOPY

Drafters Intent Mobile Homes

Amended and Restated Declarations of Covenants, Conditions and

Restrictions of Sections

One, Two, Three, and Five of Cedar Point

Filed for record with Polk County Texas

2007-1559-443 to 496

FILED FOR RECORD
2010 JUN 28 PM 3:32
Polk County Clerk
K. L. ...

The above referenced documents were a modification approved by the membership as required of the original restrictions which were written and filed for record in 1983. The 2006 modifications are wide ranging in effect and designed to protect the property values of Cedar Point, promote an increase in said values, create a safe friendly family environment, and provide a clear prohibition of any type of Mobile Homes.

The term "Mobile home" is used here in these documents to describe a generic list of evolutionary and technological changes to a class of homes that are built off site and transported in one or more pieces to the homesite and not stick built on site including but not limited to all factory-built or off site built residential structures regardless of industry or regulatory name.

The drafter of these modification restrictions required their approved prior to investment in and purchase of Cedar Point. The subdivision prior to 2006 suffered in a state of disrepair, high crime, drugs, and declining property values most of which was created by the large number of mobile homes.

The drafter's intention was to clearly prohibit any type of home that is mobile in nature which drafter felt was not conducive to appreciation of property values. These prohibited homes were internally described as manufactured, home built, or factory built elsewhere and brought in or assembled on site with temporary or permanent foundation regardless of the term used by an industry to describe it.

However, there are some who in good faith now question the description of 'mobile home' as used in the DCCR documents and if it includes various technological variations. As NO SUCH STRUCTURE has yet been installed or purchased drafter seeks by filing of this document to clarify any potential ambiguity prior to investment by a property owner in a particular housing type. The intent is to insure all property owners and potential property owners fully understand the definition of 'mobile home' as intended by the drafter and to clearly word the restrictive covenant to insure it is unambiguous.

The term 'mobile home' is generally used in society to describe factory-built or off site built residential structures. The courts have held that the terminology used to describe these structures continues to evolve in an effort to reflect innovations in technology and design. The original term generally associated with such housing was "trailer house" and or "house trailer." As the Texas Supreme Court observed in Wilmoth, 734 S.W.2d 658, "In the late 1960's the term 'mobile home' began to replace the term 'house trailer.' In the late 1970's the industry applied the term 'manufactured homes' to the products, replacing the name 'mobile home'.

The manufactured home industry in an effort to avoid the negative connotations associated with factory-built housing by the public continues to make design improvements and use different names. There have also been numerous legislative changes required to reflect the new industry terminology. See Dempsey, 737 S.W.2d at 592. Legislation has continued to evolve to protect consumers and the terms 'manufactured homes,' 'modular homes,' 'industrialized housing,' 'park model,' 'pre-fab,' and many more have been created."

In an effort to maintain control and protect the public as the manufactured home industry continues to evolve its terms used to describe the ever changing variety of factory and offsite-built housing, the regulation of such structures has become highly complex. Currently, modular homes are regulated by the Texas Department of Licensing and Regulation (TDLR), while park models are regulated by the Texas Department of Transportation (TXDOT) and the Texas Department of Public Safety (TDPS), and manufactured housing is regulated by the Texas Department of Housing and Community Affairs (TDHCA). However, Courts have recognized that, while a statutory scheme has evolved that

differentiates mobile homes, manufactured homes, and modular homes, “the differences between them are technical and minor.”

Because there was no way when we were drafting the covenants to anticipate the generic successors, with their minor changes in construction technology, design, or descriptive terms we purposely chose the generic term ‘mobile home’ to describe any and all variations of factory and off site-built homes. Had we as drafters attempted to list every know variation in 2006 it would have been quickly out of date, and perhaps construed as an exclusive list, depriving the community the stability required for continued improvement.

Texas courts have in held, “To do anything else would require drafters of restrictive covenants to foresee an infinite array of technological advances, name changes, and legal descriptions that might take place in the future and to draft a restriction prohibiting structures described by terminology that does not yet exist.”

“If this were the case all restrictive covenants would be rendered meaningless if they could be implicitly subverted by legislatively or industrially changing the name of that which is prohibited.”

Many in the factory-built industry pride themselves on a constant evolution of terms, sizes, and descriptions to thwart effective protection from their product lines. Governmental agencies, and political subdivisions are constantly forced to amend their rules due to these changes such as the 2016 HUD proposed rules against ‘park models’ and ‘tiny homes’.

This constant evolution of factory-built homes and the continued expansion of the types of structures continues to morph in ways that could not be anticipated in 1983, 2006, or 2018. Drafter chose the generic term ‘mobile home’ in 2006 to describe all this class of residential dwelling units. The term was selected as it’s the common public name regardless of the myriad of industry names and its previous use to describe only one type of structure was replaced prior to 2006 by the term ‘manufactured housing’. Therefore, the term ‘mobile home (s)’ was specifically chosen to describe a generic list of evolutionary and technological changes to a class of homes that are built off site and transported in one or more pieces to the homestate and not stick built on site.

Today a partial list of these evolutionary changes has created mobile homes, manufactured homes, modular homes, double wide’s, triple wide’s, park models, tiny homes, FEMA trailers, industrial housing, quasit huts, storage container homes, storage sheds, yurts, homes made from culverts, decommissioned aircraft, box cars, cabooses, buses, boats, and even box trucks. There is no limit to the changes which may occur in terminology in the future. It is and was at the time of writing the specific intention of these restrictions to be inclusive of any new terminology. It was and continues to be the intent of these restrictions to prohibit all of these and future evolutions under the generic term ‘mobile home’.

While cars today are vastly different due to technology and naming protocols from the original model T they are still generally known to the public as cars or motor vehicles. What was once a minivan is now a small SUV, cars now have motors that run on gas, diesel, electrical, LP and natural gas. Cars of the future may be driverless, manned, onboard or centrally computer controlled, however they will likely still be considered by the public as ‘cars’. A Rolls Royce and a Ford Pinto are both cars although they have vastly different economic and social values assigned to them and little in common from an aesthetic standpoint. We hold the same is true with ‘mobile homes’.

Further, it was the specific intent of the drafter to avoid placing language in the restrictions which would allow future Boards of the POA to make judgment calls as to what is and is not covered. Drafter worked diligently to ensure that a POA Board would never be allowed under these restrictions to decide this ‘mobile home’ is ok but this one is not. Therefore, intentionally all evolutions of ‘mobile homes’ were prohibited.

If the community at large wishes to amend this and change the definition of ‘mobile home’ to allow one or more evolutionary versions of this type of housing, then there is a process in place that would allow this by amending the DCCR themselves. This cannot be an individual decision as it would unfairly affect the property values of all other members.

In the above referenced DCCR’s Section 1.9 describes improvement which includes structures without limitation.

Section 3.1 specifically addresses the term “single family residential use” to prohibit the use of lots for camping trailers, motor homes, mobile homes, duplex houses, garage apartments or apartment houses.



The intent of this restriction includes the ever-evolving list of existing definitions of manufactured housing. The DCCR cannot anticipate future names or classifications of this type of housing but was clearly intended to prohibit all but site-built homes totally constructed within Cedar Point on a foundation, with a garage or replacement of existing 'mobile homes' with new ones.

This has been the consistent position of the POA since inception in December of 2006. Not one new 'mobile home' to include all the evolutions as described here has been allowed to enter unless it was to replace a grandfathered 'mobile home'. These rules are for the continued health, safety and retention of property values. No distinction has been made in grandfathered structure replacement since inception i.e. a 'trailer home' has been replaced with a 'manufactured home' (259 Pear), a 'manufactured home' has been replaced with a 'modular home' (461 Bluebonnet) as all are treated as 'mobile home(s)' under the restrictions. A grandfathered RV can be replaced by a new RV but not a new 'mobile home'.

Section 3.23 further describes pre-existing Camping vehicles to include 'mobile homes'. It was again the drafter's intent to classify any home that could be mobile in nature i.e. built in one location and delivered here as a 'mobile home' regardless of the shifting use of names designed to circumvent these types of restrictions.

Section 3.22 was in an overabundance of caution purposely located just before 3.23 to give emphasis to the reader of the words as they pertain to 3.23 which clearly states, "If this Declaration any word, clause, sentence, paragraph, or other part thereof shall be susceptible of one or more conflicting interpretation which is most nearly in accord with the general purposes and objectives of this declaration shall govern". Drafters intent by this placement was to insure that members and potential members clearly understood that if they had a question about what was the interpretation of 3.23 that they should ask prior to purchase. Drafter did not wish to hide this language in the closing sections where only a lawyer might see it, as in this case drafters intended to clearly prohibit anything other than new site-built homes and prohibit any homes regardless of evolving description to be brought in in pieces.

Section 8.5 further addresses this point as does 8.6

Given for the record, the date of filing with Polk County

Charles Von Schmidt

"Drafter"

WATERFRONT DEVELOPMENT, LLC,

A Texas limited liability company

BY: WATERFRONT DEVELOPMENT, LLC,

A Texas limited liability company, its Member

BY: VACATION HOME BUILDERS, INC.,

a Texas corporation, its Member

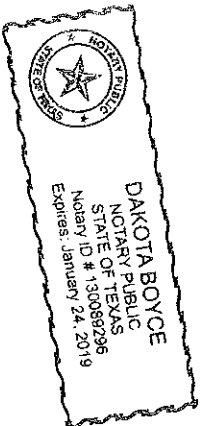
BY: _____
Charles Von Schmidt
President


THE STATE OF TEXAS

COUNTY OF POLK

BEFORE ME, the undersigned authority, on this day personally appeared, Charles Von Schmidt, known to me to be the person whose name is subscribed to the foregoing instrument, as the President of VACATION HOME BUILDERS, INC., a Texas corporation, Member of Waterfront Development, LLC, a Texas limited liability company, and acknowledged to me that he executed the same for the purposes and consideration therein expresses, on behalf of and as a deed of said corporation, and limited liability company.

Given under my hand and seal of office this 28 day of June 2018




Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Waterfront Development
185 Cedar Point Drive
Livingston, Texas 77351

