



Antonio Pantalones <245road@gmail.com>

Compliance Achieved: Wareham Covenant Violation #3, #3.7, #3.8, #8, #21

1 message

MAY <245road@gmail.com>

Wed, Jan 17, 2018 at 10:06 AM

To: Landon Anderson <landon@anderson-structural.com>, Jen & Andrew Bisharat <andrewbisharat@gmail.com>, Kyle Whitaker <kyle.whitaker@state.co.us>, Tony May <245road@gmail.com>, Tony May <af245@hotmail.com>, Justin Wareham <wareham_justin@yahoo.com>

Cc: Amy Luetke <amy@propertyshopinc.com>, Sherry Whitaker <whitaker621@comcast.net>

Justin and ACC members,

I want to thank Justin on taking the initiative to comply with the TEHRA covenants and the ACC variance decision to remove his unapproved temporary structure. No fines will be assessed and the subject of the violation of Covenant 8 is now closed.

Regards,

+Tony May

President, ACC member, Three Elk Run Homeowners Association

970-274-0078

245road@gmail.com

AF245@hotmail.com (plan to migrate to this address as primary email in 2018)

On Mon, Jan 8, 2018 at 2:13 PM, MAY <245road@gmail.com> wrote:

Justin,

This is a follow up reply to the Whitaker's input to continue the discussion into this thread.

The request for variance to exercise the use of a temporary building has been denied by the TERHA ACC by majority. The decision is final.

If the temporary structure is not removed, fines start 1-14-2018 (30 days after variance request).

Each one of the ACC members has completed their review of your 12/14/17 variance request. Three of the four ACC members have voted to deny the variance for the temporary structure, one member did not vote. The ACC has considered the request for variance to seek approval for the temporary structure that has been installed but not approved by the ACC because the justification does not meet the intent of TERHA covenants.

While not all ACC members or TERHA homeowners will arrive at the same conclusion, the community as a whole has spoken to conserve and uphold the TERHA covenants.

As a community TERHA has extensively discussed and resolved this topic in 2013, 2014 and 2015.

Summary reference to covenants applied to the outstanding violation, please see full Covenants [here](#).

Covenant 3 defines Limitations on Structures designed to blend into and complement the natural surroundings.

Covenant 3.1 Buildings are to be approved by the ACC.

Covenant 3.7 New construction only.

Covenant 3.8 Exterior is either brick, stone, lumber, stucco, or combination. Roofs must be non combustible roofing material. Must be submitted to ACC for approval.

Covenant 8 No Temporary Structures. Allows for a temporary structure for no more that 9 months IF there is construction of a (new) dwelling on the lot. the intent of the temporary building covenant is to provide for shelter during the construction of a dwelling on the lot. As only one dwelling is permitted and that dwelling currently exists on the lot then there is no need for a temporary structure. It is a far stretch and not expressly implied to extend the requirement to interior remodel projects. We also have not seen any documentation to show compliance with Garfield County Regulations as required in the covenant.

Covenant 12.3 Screening to conceal from view of neighboring lots and streets.

Covenant 21.1 No construction of any kind unless approved by ACC.

Covenant 21.2 ACC has the right to exercise judgement on construction and that the improvement harmonize with the environment.

Covenant 21.3 Plans must be submitted.

Please comply with the TERHA covenants and remove the temporary structure.

All homeowners are aware of the covenants as part of the acquisition of their property and rely on these covenants to mitigate risk to protect property values.

The temporary structure is a clear violation of TERHA covenants and TERHA as a community will follow through with enforcement of the covenants.

REMINDER: Fines Start 1-14-2018 (30 days after variance request)

Covenant 16, Enforcement of Covenants and Restrictions, defines the action TERHA will take if the violation is ignored. After the 30 period a penalty of \$50 per day will be levied until the temporary structure is removed. That's about \$1500 per month and \$18,250 per year.

Covenant 15, Collection of Assessments: Enforcement, defines when levies go unpaid. In this case if the temporary structure is not removed, and fines go unpaid, a lien will be placed on your property each quarter including any fees associated with interest of 1.5% per month. TERHA also has the right to take this to small claims court where TERHA would be entitled to any attorney's fees. From past TERHA legal discussions, the State of Colorado courts and legislation stand behind Colorado homeowners associations. A TERHA precedent is already in place to collect on liens. TERHA has exercised placing a lien on a property and collected upon sale of the property as Colorado state law is in favor of prioritizing lien payout prior to disbursement of funds.

Covenant 26, Notice to Lot owners, defines methods of written notices to include first class mail and email delivery.

Homeowners are welcome and aware that they can propose and supply new verbiage to change Covenant 8, or verbiage for any covenant. Any changes will need to be reviewed by the TERHA homeowners and would need a 67% (11 of 15 lots) affirmative vote to pass and about \$500 in legal fees, plus about \$35 Garfield County registration fees and personal time of a few people to assemble tasks.

Regards,

+Tony May

President, ACC member, Three Elk Run Homeowners Association

970-274-0078

245road@gmail.com

AF245@hotmail.com (plan to migrate to this address as primary email in 2018)

On Thu, Dec 14, 2017 at 8:54 AM, Justin Wareham <wareham_justin@yahoo.com> wrote:

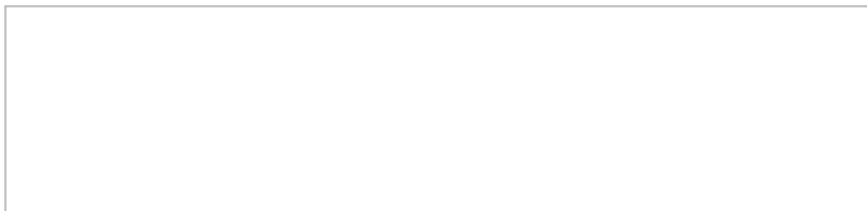
Tony,

I appreciate your due diligence and vigilance with enforcement of the HOA covenants. I absolutely agree that it's in everyone's interest to protect property values and I'm constantly working towards my home and property improvement with resale in mind. Unfortunately at times things need to get worse before they get better.

This is a truly concerning matter and I'm sure an amiable solution can be reached. I have included with my response to you, my formal request for ACC review to grant a variance for the disputed temporary shelter on my property. I hope it will be sufficient for them to reach a conclusion on that matter. If not, I look forward to their response. Please see attachment for further details.

You are absolutely correct in that I dropped the ball regarding the issue of temporary structures. Thank you for reminding me and I'm disappointed that it was not addressed at the last HOA meeting. It must have slipped your mind as well to bring it up so we could move towards a solution. Especially since Mr. Cross was present and would have been able to directly contribute to the discussion. With that said, I have spoken with Mr. Cross regarding his shed and he welcomes addressing this matter to be in compliance.

I would like to point out covenant [3.1] Limitations on Structures, actually allow for additional structures on properties with ACC approval.



This seems clear to me that “except for other building(s)” implies all of the following thereafter to be acceptable. To further explore the issue at hand regarding covenant [8] temporary structures – my structure or tent in this case, should certainly be allowed for the temporary basis not to exceed nine (9) months.



These two covenants are somewhat contradictory and leave debate what would constitute a permanent or temporary structure? According to 3.1: recreational buildings, workshops, vehicle storage, guest quarters, and others are all permitted; whereas, in covenant 8, a basement is listed as a temporary structure. It is not clearly defined in the covenants what would make a shed, such as Mr. Cross’s, a permanent structure other than ACC approval, of which, the exterior qualities are addressed and in his case, the shed matches his house paint and roofing material.

To summarize, the previous debate was that temporary structures were not allowed without a variance. However, covenant 3.1 lists several structures that are acceptable under ACC approval. The solution to these issues is simply ACC approval of both structures. The attachment I’ve included is my formal request and explanation for the use of a temporary structure. I’m sure Mr. Cross can produce a formal request to the ACC as well, if he has not already done so. If further debate needs to surround how a shed rests on the ground to be considered a permanent item, then we can simply formulate an amendment to the covenant for a suitable and achievable resolution to these matters.

Sincerely,

Justin Wareham

From: MAY <245road@gmail.com>

To: Justin Wareham <wareham_justin@yahoo.com>

Cc: Amy Luetke <amy@propertyshopinc.com>; Landon Anderson <landon@anderson-structural.com>; Jen & Andrew Bisharat <andrewbisharat@gmail.com>; Sherry & Kyle Whitaker <whitaker621@comcast.net>

Sent: Friday, December 8, 2017 2:31 PM

Subject: Wareham Covenant Violation #3, #3.7, #3.8, #8, #21

Justin,

On 11/27/2017, as president of TERHA, I sent you a letter (attached) to immediately remove the temporary structure that is in violation of TERHA covenants from your property. Tracking here: usps.com

We talked about this topic on 12/5 and you gave explanation.

During the 2016 TERHA annual meeting you wanted to propose a change to the covenants to address temporary structures but didn't follow through with a proposal.

You have established that you knew about the covenant rule that prohibits temporary structures prior to installing the structure and still elected to construct without ACC approval.

<snip from 2016 TERHA annual meeting> found [here](#)

10. New Business

-Justin to provide a proposal to TERHA on changing the covenants to include temporary detached structures.

Please comply with the TERHA covenants and remove the temporary structure.

All homeowners are aware of the covenants as part of the acquisition of their property and rely on these covenants to to mitigate risk to protect property values.

The temporary structure is a clear violation of TERHA covenants and TERHA as a community will follow through with enforcement of the covenants.

TERHA covenant #16 outlines the action TERHA will take if the violation is ignored. After the 30 period a penalty of \$50 will be levied until the temporary structure is removed. That's about \$1500 per month and \$18,250 per year. If these levies go unpaid, a lien will be placed on your property each quarter including any fees associated. TERHA also has the right to take this to small claims court where TERHA would be entitled to any attorney's fees. From past TERHA legal discussions, the State of Colorado courts stand behind homeowners associations.

Regards,
+Tony May
President Three Elk Run Homeowners Association
[970-274-0078](tel:970-274-0078)

CC: to ACC Committee: Landon Anderson, Kyle Whitaker, Andrew Bisharat, Tony May

Sent from my iPhone