
From: AF 245

Sent: Wednesday, October 10, 2018 8:00 AM

To: Dean Cross; lauralecross@yahoo.com

Cc: AF 245; amy@propertyshopinc.com; andrewbisharat@gmail.com; barbaraaccm@gmail.com; lyonsservicesinc@gmail.com; chandellemay@gmail.com; 3elkcreek@gmail.com; cindyleebrien@gmail.com; dgreene@garfieldre2.net; jgotz89@yahoo.com; jvennon@gmail.com; jim@townofgypsum.com; judyhaptonstall@centurylink.net; wareham_justin@yahoo.com; wareham_justin@yahoo.com; landon@anderson-structural.com; richie@actionappraisalinc.net; shaunaross2011@gmail.com; trusfab@yahoo.com; Bill Gibson; tony.may@protonmail.com

Subject: TERHA: Addressing Covenant Violations - Lot 5, Cross

Mr. and Mrs. Cross,

Regrettably, TERHA ACC has resolve to address repeated formal complaints regarding the covenant violations listed below. Our homeowners all follow the ideals of the covenants and they wish to preserve and legally uphold binding covenants for all lots. The homeowners conveyed their wishes of compliance during the 2013 annual meeting. Please consider complying with the covenants as soon as possible. Thank you.

The ACC would like to address your request to have TERHA “vote on storage sheds or a postponement of disposal of our shed until HOA meeting”.

A motion will be entered on your behalf to the 2018 TERHA Annual Meeting minutes to “Propose a change in TERHA Covenant #8 to specifically ALLOW temporary structures”. Sounds pretty fair.

The motion will need to be seconded, and then 67% of ALL homeowners would need to vote YES to allow Temporary Structures. If the motion is passed, a second motion will need to be entered and seconded to appropriate funds of \$500 for legal services and \$35 for Garfield County filing fees.

The ACC does realize that if a homeowner has outgrown TERHA’s covenants, it is then a homeowners decision to either comply with covenants, propose a new set of covenants, actively violate the covenants and incur fines, or vacate the property. The personal decision to disregard compliance with covenants certainly takes calculation, this letter provides a remedy to resolve each covenant violation.

On-going Lot 5 History

The ACC fairly granted Lot 5 a variance to the Temporary Structure covenant 8 violation on 1-02-2018 because Lot 5 committed to new construction starting in April of 2018 and submitted plans for a garage that would remove the temporary shed as per Covenant 8.

Moving forward.

Formal complaints have been communicated to me, and now the ACC and the homeowners, regarding multiple TERHA covenant violations regarding your property. A letter was sent to you on 9-22-2018 requesting the status of your proposed construction. A letter was sent to the ACC on 9-23-2018 outlining these covenant violations with feedback to proceed to action. A second letter was sent to the ACC on 10-6-2018 drafting this letter.

#1. NOTICE OF VIOLATION: The large landscaping effort that was done last year without approval from the ACC which would have been required under section 21 due to the size and it being in site from the street. Please provide a timeline to project completion including the removal of clutter.

You have a few options with Covenants 3, 12.1, 21, violations.

- Submit plans with dates to finish landscaping and Remove the clutter and cut trees by 11-15-2018.
- Propose a change in TERHA covenants, specifically Covenants 3, 12.1, 21, if you believe that you can convince 67% of the homeowners to change these covenants.
- Decline landscaping clean up and decline submitting Plan with end dates, and incur fines of \$50 per day as per covenant guidelines.

Fines Start 11-15-2018

#2. NOTICE OF VIOLATION: Construction equipment stored on your property will need to be removed from the property within 30 days of the date of this notice (10-15-2018). If the violation exists or continues after the expiration of the 30 day period, a separate \$50 (fifty dollar) per day levy will be enforced.

You have a few options with Covenants 9, 12.3, 13.2 violations.

- Remove the equipment and trailers by 11-15-2018
- Propose a change in TERHA covenants, specifically Covenants 9, 12.3, 13.2, if you believe that you can convince 67% of the homeowners to change these covenants.
- Keep the equipment and incur fines of \$50 per day as per covenant guidelines.

Fines Start 11-15-2018

#3. NOTICE OF VIOLATION: The shed will need to be removed from the property within 30 days of the date of the TERHA Annual Meeting on 11-06-2018 unless 67% of the homeowners vote to allow Temporary Buildings during the annual meeting. If the violation exists or continues after the expiration of the 30 day period, a separate \$50 (fifty dollar) per day levy will be enforced.

You have a few options with the Covenant 8 violation.

- Remove the shed, temporary structure, by 12-06-2018.
- Immediately start construction as promised that provided a variance and remove the temporary structure within 6 months.
- Keep the structure and incur fines of \$50 per day as per covenant guidelines.

Fines Start 11-15-2018

Referenced covenants applied to the outstanding violations, please see full Covenants found [here](#) and [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 9 No Commercial Use. There shall not be permitted or maintained upon any lot or any part thereof any trade, business, or industry, accept “in house or cottage business” whose employees are limited to the immediate family of the owner, shall be permitted that when not required for the owners use.

Covenant 12.1 The owner of each lot shall keep the same clear and free of rubbish and trash and shall keep the structures thereon in good repair doing such maintenance as may be required for this purpose.

Covenant 12.3 In the event of clothes lines, equipment, garbage cans, service yards, woodpiles, or storage areas are not screened from view by natural elements the ACC may require screening by planting or construction to conceal the same from view of neighboring lots and streets.

Covenant 13.2 No vehicles, boats, campers, trailers, snowmobiles, or other such recreational vehicles or devices shall be stored or permitted to remain for more that three (3) continuous days on any lot unless the same are stored in a garage or screened for view.

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 equipment, trailers, and 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.

These are violations of TERHA covenants and TERHA as a community will follow through with enforcement of the covenants.

Fines Start 11-15-2018

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 will be levied per covenant violation until the violations have been corrected. That's about \$1500 per month and \$18,250 per year for a single covenant violation. The fines compound with multiple covenant violations.

Covenant 15, Collection of Assessments: Enforcement, defines when levies 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 stand behind homeowners associations. A precedent is already in place to collect on lien. TERHA has exercised placing a lien on a property and collected upon sale of the property as 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.

Regards,

+Tony May

President, ACC member, Three Elk Run Homeowners Association

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