

Board of Directors

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# Applewood Heights Homeowners Association

July 17, 2017

Re: 2017 Summer Newsletter

Dear Association Members,

As you might know, the Applewood Heights subdivision is divided into three phases and is governed by three separate covenants. Specifically, Phase I (lots 1–213) is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated November 4, 1980, as amended on November 4, 1981 and January 17, 2012 (the “**Phase I Covenants**”); Phase II (lots 215–365) is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated September 4, 1984, as amended on July 21, 1988 and January 17, 2012 (the “**Phase II Covenants**”); and Phase III (lots 366–523) is governed by that certain Declaration of Covenants, Conditions and Restrictions, dated September 1987, as amended on July 21, 1988 and January 17, 2012 (the “**Phase III Covenants**” and collectively with the Phase I Covenants and the Phase II Covenants, the “**Original Covenants**”).

The Original Covenants were written while the subdivision was being developed between 1980 and 1988. As they were adopted at different times and under different circumstances, the Original Covenants are not uniform across the three phases. For instance, some covenants that apply to Phases I and II do not apply to Phase III. The two most prominent examples of this inconsistency relates to trees and fences:

*Trees:* The Phase I Covenants and the Phase II Covenants require that each lot contain at least two trees, with at least one tree in the front yard. Moreover, the Phase I Covenants require that such trees must be one of the following varieties: Greenspire Linden, Marshall Seedless Ash, Skyline Honeylocust or Emerald Ash;<sup>1</sup> the Phase II Covenants require only that such trees must be “of the deciduous variety.”<sup>2</sup> The Phase III Covenants, on the other hand, have no requirement as to the number or type of trees that must be planted on any lot.<sup>3</sup>

*Fences:* The Phase I Covenants and Phase II Covenants provide that fences can only be constructed of “wood, brick or stone.”<sup>4</sup> On the other hand, the Phase III Covenants do not contain the same restriction; instead fences in Phase III can be

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<sup>1</sup> Amendment to Phase I Covenants, dated November 4, 1981, amending Article III(W).

<sup>2</sup> Phase II Covenants at Article III(W).

<sup>3</sup> Phase III Covenants at Article III(X).

<sup>4</sup> Phase I Covenants at Article III(F); Phase II Covenants at Article III(F).

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constructed of any material pre-approved by the Architectural Control Committee (except for wire or chain-link fences).<sup>5</sup>

Naturally, this lack of uniformity has created a lot of confusion and unfairly restricts and/or benefits some lot owners in the subdivision over others.

There are also several outdated provisions in the Original Covenants. Most significantly, is the provision for the storage of vehicles. The Original Covenants provide that:

“No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored outside of the garage. For purposes of the preceding provision, ‘stored outside of the garage’ shall mean, parking the vehicle or trailer overnight on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days.”<sup>6</sup>

As you can see, the foregoing 7-day vehicle storage rule is nonsensical. First, it doesn’t distinguish between parking a vehicle driven every day, such as a car, from a trailer, RV, boat, camper, etc. that is parked on a long-term basis. Second, the restriction on storing the vehicle for seven consecutive days can be easily averted. Essentially, a lot owner can store his vehicle outside of the garage for six consecutive days. On the seventh day, he or she can simply move the vehicle inside the garage or off the lot and then the 7-day consecutive window resets, whereby he or she can again store the vehicle outside of the garage for another six consecutive days. Clearly, this was not the intent of this provision. Instead, this provision was intended to prohibit the long-term storage of trailers, RVs, boats, campers, etc. on the lots. In sum, the Original Covenants do not distinguish between vehicles driven on a regular basis and those that are stored for long periods of time, and they allow for the almost perpetual storage of trailers, RVs, boats, campers, etc. Limiting the storage of such types of vehicles to a set number of days is what other homeowner associations have done. For instance, in Cimarron Woods, the storage of trailers, RVs, boats, campers, etc. is limited to 48 hours in a calendar year,<sup>7</sup> and in Armbrust Acres, the storage of trailers, RVs, boats, campers, etc. is limited to 20 days in a calendar year.<sup>8</sup>

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<sup>5</sup> Phase III Covenants at Article III(H).

<sup>6</sup> Phase I Covenants at Article III(M); Phase II Covenants at Article III(M); Phase III Covenants at Article III(N).

<sup>7</sup> Declaration of Covenants, Conditions, Restrictions and Easements of Cimarron Woods West in Sarpy County, Nebraska at Article I(8) (“**Cimarron Woods Covenants**”). Available at [www.cimarronwoodswest-hoa.org/docs/Covenants.pdf](http://www.cimarronwoodswest-hoa.org/docs/Covenants.pdf).

<sup>8</sup> First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of the Armbrust Acres Subdivision, Douglas County, Nebraska at Article I(8) (“**Armbrust Acres Covenants**”). Available at <http://armbrustacres.org/docs/Declaration%20of%20Covenants%20-%20Armbrust%20Acres.pdf>.

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There is also the confusing issue regarding covenant amendment and termination provisions. The Original Covenants provide that they can only be amended with the written consent of seventy-five percent (75%) of the lot owners.<sup>9</sup> Ironically, the Original Covenants can be terminated with the written consent of a majority of the lot owners. It is not clear why the drafters of the Original Covenants made it harder to amend the covenants than to revoke them. On a comparative basis, the covenants governing Cimarron Woods can be amended by seventy-five (75%) of the lots owners while the covenants governing Armburst Acres can be amended by sixty (60%) of the lot owners.<sup>10</sup>

The Board of Directors (the “**Board**”) strongly believes that the Applewood Height Homeowners Association (the “**Association**”) needs to amend and update the covenants for it to remain a relevant entity and, more importantly, for Applewood Heights to remain an attractive subdivision. In the Fall of 2014, the Board adopted those certain Amended and Restated Covenants, Conditions and Restrictions for Applewood Heights Lots 1 Through 523 Inclusive (the “**Amended Covenants**”), and the Amended Covenants were submitted to the Association’s members for a vote. The Amended Covenants addressed the above matters and more. The Association received 335 completed ballots out of a total of 523. Of the 335 ballots completed, 282 voted “For” for the Amended Covenants and 53 voted “Against” the Amended Covenants. While 84.2% of the members who returned a ballot voted “For” the Amended Covenants, the Amended Covenants did not pass because the existing covenants may only be amended by the affirmative vote of 75% of the Association’s members as a whole. Therefore, while there was overwhelming support for amending the covenants, there was not sufficient participation in the voting process.

The Board hopes to present another draft of amended and restated covenants to the Association for a vote in the foreseeable future. If you would like to participate in the covenant amendment process, the Board created a group on Nextdoor ([www.Nextdoor.com](http://www.Nextdoor.com)) titled “Covenant Amendment Committee” that we invite you to join. This committee will work with the Board to amend and restate the Original Covenants and ultimately present them to the Association’s members for a vote. After roughly 30 years, the Board believes it is time for the Association to have clear, uniform and updated covenants.

As we wrote in May, the Association serves four purposes: (i) common area maintenance; (ii) architectural control; (iii) covenant enforcement; and (iv) social welfare. Therefore, the Board’s actions will be consistent with these purposes. In support of social welfare, the Board is prepared to sponsor social events organized by the members. The Association has sufficient funds available for this purpose (up to \$5,000), so if you or your neighbors would like to organize a block party, happy hour,

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<sup>9</sup> Phase I Covenants at Article VI(B); Phase II Covenants at Article VI(B); Phase III Covenants at Article VI(B).

<sup>10</sup> Cimarron Wood Covenants at Article V(4); Armburst Acres Covenants at Article IV(2).

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kids carnival, etc., feel free to submit your plans and budget to the Board via the Association's Manager ([manager@applewoodhoa.com](mailto:manager@applewoodhoa.com)).

Finally, the Board met on June 28, 2017 and appointed Jeremy Maskel to fill the recently vacated Board position. We have also posted recent Board resolutions, meeting minutes, and the Association's financial statements to the Association's website ([applewoodhoa.com](http://applewoodhoa.com)). The Association has a strong balance sheet and favorable operating income year-to-date. The Board purposely cut back on mowing services this year to save resources for the upcoming 108<sup>th</sup> Street-widening project. While we expect that portions of the perimeter fence will be removed and replaced at the City's expense, we anticipate that the Association will be responsible for rebuilding any entrance islands and monuments that are displaced during the construction process. Therefore, we are building our reserve funds to account for these and any other unforeseen expenses.

As always, if you have any questions feel free to contact the Association's Manager or any one of the Board members. We hope you all have an enjoyable summer.

Sincerely,

Applewood Heights Board of Directors