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Case No. 3654-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RONALD LAWHON and BOBBI LAWHON,	:	
Plaintiffs,	:	
v.	:	**C.A. No. 3654-VCN**
WINDING RIDGE HOMEOWNERS ASSOCIATION, INC.,	:	
Defendant.	:	

MEMORANDUM OPINION

Date Submitted: July 24, 2008
Date Decided: December 31, 2008

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NOBLE, Vice Chancellor

Before entering into a contract for the construction of a residence (or a placement of a modular home), it is prudent, first, to be certain that the proposed improvements comply with the restrictions governing the subdivision. That is the unfortunate, but fundamental, lesson for the Plaintiffs who, now unhappily, are contractually obligated to pay for a modular home that they are, at least as of now, unable to force the other homeowners to allow in the subdivision where they purchased a lot for their new home.

I. BACKGROUND

Plaintiffs Ronald and Bobbi Lawhon ("the Lawhons") want to place a new Palm Harbor brand modular home on their lot at 142 Winding Ridge Road near Dover, Delaware.[1] The Lawhons first picked out the home, finding the price reasonable and the ability to personalize the design desirable; the Plaintiffs needed a home built entirely on one level, with two master suites because the couple cared for an elderly, and disabled, parent.[2] After finding a home that met their needs, the couple searched for a parcel for its placement. They enlisted the assistance of Dorothy Burton ("Burton"), a licensed real estate agent.[3] With Burton's help, the couple found their lot in the Winding Ridge Subdivision, overlooking the community's pond.

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[1] The lot is described both as 142 Winding Ridge Road and 144 Winding Ridge Road. *Compare* Compl. ¶5; PX 16; Pre-Trial Order ¶ 1 *with* PX 13; Tr. at 8; PX 1 (Dorothy Burton's Affidavit) ¶¶ 1, 2.

[2] Tr. at 47.

[3] *Id.* at 48.

Burton was aware that the parcel was subject to certain covenants and restrictions outlined in a Declaration of Restrictions (the "Declarations") imposed by Winding Ridge Development Corp. ("Development Corp."), the developer of the subdivision.[4] Because the Lawhons did not intend to build an attached garage as a part of their new home and because the Declarations required that all homes have an attached garage,[5] Burton sought out Brian McClafferty ("McClafferty"), the President of the Winding Ridge Homeowners Association (the "Homeowners Association" or "HOA"). Burton met with McClafferty around August 28, 2007, to request the HOA's permission to build a home without an attached garage; the Declarations provide that, with the proper permission, this requirement might be waived.[6] She carried with her sketches of the property and a few photographs of the proposed home.[7] It appears that McClafferty did not find the home nearly as attractive as the Lawhons did. He made it clear to Burton, and later to the Lawhons, that, garage or no garage, this modular home would not be allowed in the Winding Ridge subdivision.

As for the garage, precedent was on McClafferty's side, as prior attempts to skirt the Declarations' attached garage requirement had not been successful.[8] He

[4] PX 7 (the Declarations). The Declarations are dated September 14, 1992.
[5] Declarations ¶ 3 ("All houses constructed shall have an attached garage.").
[6] Tr. at 9, 12; Declarations ¶ 4 ("No unattached garage shall be erected unless owner obtains written permission of Declarant or its assigns.").
[7] Tr. at 12.
[8] *Id.* at 178.

felt equally confident the same would be true in this case. Nevertheless, he committed to presenting Burton's request to the HOA.[9] Burton left at least two photos with McClafferty, her business card, and a brochure from Palm Harbor describing the home.[10] She followed up with a short letter confirming her visit and her hopes that the HOA would approve her client's request.[11] McClafferty never presented any of this material to the Homeowners Association.

Neither Burton nor the Lawhons received any response from McClafferty or the HOA. Having been informed by Burton that approval of a home without a garage was unlikely, Mr. Lawhon arranged for a friend experienced in construction work to assist him in building a garage that would both satisfy the HOA and keep costs at a minimum.[12] Assuming all was well, particularly with the addition of an attached garage to their construction plans, the Lawhons went forward with the purchase of their lot in Winding Ridge in early November 2007.[13] Shortly thereafter, the Lawhons entered into a contract with Palm Harbor for their home, and Palm Harbor began preparing the lot for the arrival of the Lawhons new modular home.[14] The Lawhons, however, apparently failed to appreciate the full

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[9] *Id.* at 13, 27. McClafferty remembers the exchange differently and believes that Burton understood that approval of the home, as presented to him, was unlikely and presentation to the HOA unnecessary. *Id.* at 223.
[10] *Id.* at 14, 23.
[11] PX 2.
[12] Tr. at 48.
[13] *Id.* at 50.
[14] *Id.* at 51.

scope of the Declarations. The Declarations not only restricted the erection of a dwelling without an attached garage, but they also required that all construction plans be submitted for prior architectural review approval:

> 1. No building, driveway, structure, fence, wall, or other erection shall be commenced, nor shall any addition to or change be made upon any of the lands conveyed by this deed until complete and comprehensive plans and specifications showing the nature, kind, shape, height, materials, floor plans, exterior color scheme, location, driveway and frontage on the lot of such building or other erections, type and location of septic system, and the name of builder, shall have been submitted to and approved, in writing, by Winding Ridge Development Corp. or its Building Approval Committee. Winding Ridge Development Corp. or said Building Approval Committee shall have the right to refuse to approve any such building plans and specifications which are not, in its sole judgment, desirable for aesthetic or other reasons, and in so passing upon such location, plans, specifications, and builders it may consider, to the extent or alteration the harmony thereof with the surroundings and upon the outlook from and enjoyment of adjacent or neighboring properties.[15]

Thus, the Lawhons had embarked upon their project without first having obtained the required architectural review approval.

During the very early stages of Palm Harbor's site work, Mr. Lawhon received a call from the construction manager in charge of preparing the property for the home's arrival—the day before the home was to be set—informing him that a rope had been tied across the entrance to the site.[16] The roped-off driveway came

[15] Declarations ¶ 1.
[16] Tr. at 51-52.

with a command to stop construction and directions to contact McClafferty.[17] Mr. Lawhon did just that, his first contact with McClafferty, and was told that his home would not be permitted in Winding Ridge.[18] No reasons were given why the home would not be allowed, and Mr. Lawhon did not ask.[19] Because the call came in mid-December, Mr. Lawhon requested McClafferty not to call back, for fear his wife would receive the bad news and be upset during the Holiday Season.[20] Mr. Lawhon contacted an attorney.

Mr. Lawhon phoned McClafferty after the holidays, at his lawyer's request, to discover the reason his home would not be allowed. McClafferty read to Mr. Lawhon the Declarations' architectural review provision. Mr. Lawhon mailed the drawings of the proposed home prepared by Palm Harbor to McClafferty.[21] McClafferty responded with a letter on January 11, 2008, stating that "the Winding Ridge Homeowners Association does not approve of the Palm Harbor plans submitted for approval."[22]

After receiving McClafferty's letter denying approval, the Lawhons' attorney contacted McClafferty and the HOA, by letter dated January 31, 2008,

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[17] *Id.*
[18] *Id.* at 52.
[19] *Id.* at 54.
[20] *Id.* at 55.
[21] These plans did not show any modification to include an attached garage. *Id.* at 149, 187; DX 1.
[22] PX 12.

seeking to resolve the disagreement outside of litigation.[23] The Lawhons' attorney suggested meeting the following week in order to "work out a mutually agreeable arrangement."[24] McClafferty did not give a copy of that letter to the other members of the HOA;[25] however he recalls discussing the letter's contents with them.[26] Neither the HOA nor McClafferty responded to the letter.[27] After several weeks without a response, Mr. Lawhon again telephoned McClafferty, in late-February or early-March. Mr. Lawhon informed McClafferty that he now had updated drawings of the home, which included an attached garage and the addition of a small gable over the front door.[28] Mr. Lawhon offered to send those new drawings to McClafferty and the HOA.[29] According to Mr. Lawhon's recollection of the conversation, McClafferty found that unnecessary, and stated that no matter what changes were made, the home would not be approved.[30] McClafferty denies making such a statement, yet recalls virtually nothing of what the two men discussed during their conversation.[31] The Lawhons brought suit against the HOA on March 25, 2008.

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[23] Tr at 61; PX 13.
[24] PX 13.
[25] Tr. at 210.
[26] *Id.* at 225.
[27] *Id.* at 212.
[28] *Id.* at 62.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 193-94.

It seems that nothing further of substance occurred until mid-May when, by letter dated May 13, 2008, McClafferty called a special meeting of the HOA to discuss the proposed Lawhon home.[32] The letter was sent to all members of the HOA, including Mr. Lawhon, a member by virtue of his ownership of property within the subdivision.[33] The meeting was held in the garage of a second HOA member, Paul Huffman, on Sunday afternoon, May 25, 2008.[34]

HOA members in attendance were informed about the Lawhons' lawsuit, an action that upset many of them,[35] and were allowed an opportunity to discuss the proposed home. The general consensus among the members was that they did not like the color of the Lawhons' home or its proposed orientation on the property.[36] However, it appeared that the membership was willing to work toward compromise with the Lawhons. Those in attendance suggested a change in the home's color and orientation on the property.[37] There was also a suggestion that the Lawhons be given additional land to facilitate a repositioning of the home.[38] Nonetheless, no compromise was reached. Following the meeting, Mr. Lawhon provided additional documentation concerning the proposed home to Huffman.[39]

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[32] PX 15.
[33] Tr. at 194.
[34] PX 15.
[35] Tr. at 228-29.
[36] *Id.* at 66, 96-97.
[37] *Id.* at 68-69.
[38] *Id.*
[39] *Id.* at 222.

To be certain, the Lawhons' home would materially differ from the other homes in Winding Ridge. First, it would be a color unlike the rest—a deep red instead of the earth tones of yellow, clay, white and beige.[40] Second, the Lawhons' home would sit perpendicular to the road instead of facing it as the other Winding Ridge homes do. Finally, the Lawhons' home would not include gables, a feature common to the other homes in Winding Ridge. For these reasons, members of the HOA contended that the then-present state of the Lawhons' proposal could never satisfy the architectural review process. However, it appears the HOA has yet to take any official action concerning the Lawhons' home other than McClafferty's initial, and apparently unilateral, rejection letter. No further action has been taken because, according to trial testimony, both the HOA and the Lawhons each expected the other to initiate further contact, the Lawhons under the impression that they awaited a final decision on approval and the HOA, or at least Huffman and McClafferty, under the impression that a complete and formal request for approval still had not been made.[41]

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The Homeowners Association was formed on September 30, 1992, in accordance with the Declaration of Maintenance Obligations (the "Maintenance

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[40] *Id.* at 102.
[41] *Id.* at 163.

Obligation") adopted by Development Corp.[42] The Maintenance Obligation imposed covenants concerning the sharing of the costs of maintaining the community pond and open spaces. It additionally contemplated the transfer of all management authority to the HOA upon the conveyance of title to the open areas and pond by Development Corp. to the HOA and the sale by Development Corp. of its last lot in Winding Ridge. Development Corp. was dissolved in 1996. The HOA claims that it succeeded to all rights exercised by Development Corp. under the Declarations, including the right to conduct architectural review of improvements in Winding Ridge; a right the HOA has exercised since 1995.

* * *

Before the Court is the Lawhons' request for a permanent injunction preventing the application of this architectural review covenant because the HOA does not have the proper authority to enforce it, has enforced it in an arbitrary and capricious manner, or alternatively, must be barred from enforcing it against the Lawhons for laches, equitable estoppel, and/or waiver. The Lawhons additionally request a declaratory judgment finding the same, and an award of damages.[43]

This is the Court's decision after trial.

[42] PX 6 at 157. The Maintenance Obligation was also executed on September 30, 1992.

[43] The Homeowners Association did not seek affirmative relief against the Lawhons.

II. ANALYSIS

A. *A Few Words About Restrictive Covenants*

Restrictive covenants, because they limit the "'free use of property,' must be strictly construed."[44] However, the potentially negative consequences of restrictive covenants for individual landowners may be outweighed by the benefits they provide to a group of landowners seeking to preserve the nature and character of their community. Restrictive covenants will be upheld so long as they serve a legitimate purpose, provide burdened parties with adequate notice of what constitutes proper conduct, and demonstrate a clear intent to burden the property.[45]

Architectural review covenants, those demanding prior review and approval of land improvements, are neither new nor uncommon in Delaware and are generally upheld as valid.[46] These covenants, however, must be carefully evaluated because their arguably subjective nature introduces the risk of arbitrary and capricious application.[47] They will be upheld if they present clear, precise, and

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[44] *Tusi v. Mruz*, 2002 WL 31499312, at *3 (Del. Ch. Oct. 31, 2002) (citing *Seabreak Homeowners Ass'n, Inc. v. Gresser*, 517 A.2d 263, 269 (Del. Ch. 1986), *aff'd*, 538 A.2d 1113 (Del. 1988)); *Alliegro v. Home Owners of Edgewood Hills, Inc.*, 122 A.2d 910 (Del. Ch. 1956).
[45] *See generally Mendenhall Village Single Homes Ass'n v. Harrington*, 1993 WL 257377 (Del. Ch. 1993).
[46] *Hollingsworth v. Szczesiak*, 84 A.2d 816 (Del. Ch. 1951).
[47] *Seabreak Homeowners Ass'n, Inc.*, 517 A.2d at 268; *Chambers v. Centerville Tract No. 2 Maint. Corp.*, 1984 WL 19485, at * 2 (Del. Ch. May 31, 1984) (architectural review covenants are "particularly suspect").

fixed standards of application.[48] Fixed standards constrain subjectivity and promote even-handed application.

The Court's examination of architectural review covenants is guided by well-settled principles. First, restrictions based on abstract aesthetic desirability are impermissible.[49] An individual's, or a committee's, opinion of what is tasteful does not constitute an objectively fair and reasonably ascertainable standard. Nevertheless, decisions may be influenced by aesthetic considerations while still subject to objective standards. For example, our courts regularly enforce architectural review provisions designed to ensure the overall harmony of appearance within a community, when that community possesses a "sufficiently coherent visual style" enabling fair and even-handed application.[50]

The demand that architectural review decisions be tied to fixed standards renders them more administrative, and thus less discretionary, in nature. Not only does this reduce the risk of arbitrary and capricious, or even discriminatory, decision-making, it also serves an important notice function. The command that a prospective land purchaser be given adequate notice of a burdensome restriction

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[48] *Seabreak Homeowners Ass'n, Inc.*, 517 A.2d at 268.

[49] *Chambers*, 1984 WL 19485; *Seabreak Homeowners Ass'n*, 517 A.2d at 268; *Wuthnow v. Goff*, 1990 WL 212310 (Del. Ch. Dec. 17, 1990) *Welshire Civic Ass'n, Inc. v. Stiles*, 1993 WL 488244, at *3 (Del. Ch. Nov. 19, 1993).

[50] *Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 1252351, at *4 (Del. Ch. May 12, 2005) (approving visual harmony as a standard); *see also Service Corp. of Westover Hills v. Guzzetta*, 2007 WL 1792508, at *5 (Del. Ch. June 13, 2007) (outlook from adjacent property an acceptable standard).

necessarily includes notice of what is restricted. Adequate notice means communicating the demands of compliance; whether that be a 10-foot-setback or a certain architectural style.[51] Restrictive covenants which are too vague to serve these functions of notice and fairness are unenforceable.

B. *The HOA's Authority for Architectural Review*

The Lawhons first argue that the HOA lacks the authority to conduct architectural review, and, therefore, interference with improvements at 142 Winding Ridge Road was wrongful. Neither party disputes that the architectural review authority was properly created and vested in Development Corp. by the Declarations. Instead, the Lawhons argue that this power was never transferred to the HOA, and, in light of the 1996 dissolution of Development Corp., no entity holds the right to exercise any architectural review of their proposed improvements.

The Homeowners Association claims the right to exercise architectural review authority by virtue of the Maintenance Obligation. The HOA argues that two sentences found within the Maintenance Obligation provide a sufficient transfer of the approval power from Development Corp. to them. Those two sentences provide that:

> At such time as Declarant [Development Corp.] has conveyed the last lot in Winding Ridge and has conveyed any open space areas and the

[51] *See Dolan*, 2005 WL 1252351, at *1.

> pond area to the association, *the association shall succeed to any and all powers previously held or exercised by Declarant*, even though such powers or rights may not have been specifically spelled out in this instrument or specifically assigned or delegated to the association.[52]

Whether or not this provision was intended to transfer, *inter alia*, architectural review power is a question of contract interpretation.[53] The provision will be construed by seeking to determine original intent from the plain and ordinary meaning of the words chosen.[54] If that language is unambiguous then no other evidence is necessary to determine intent. However, if the language is ambiguous—i.e. reasonably susceptible of different interpretations—the Court may consider extrinsic evidence to determine grantor intent at the time of its execution.[55]

Whether the language of the Maintenance Obligation is ambiguous is question for the Court to resolve as a matter of law.[56] In making this determination, "the court ascribes to the words their common or ordinary meaning, and interprets them as would an objectively reasonable third-party observer."[57] A document is not ambiguous merely because the parties do not agree as to its

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[52] PX 6 at 161-62 (emphasis added).
[53] *See, e.g.*, *The Cove on Herring Creek Homeowners' Ass'n, Inc. v. Riggs*, 2003 WL 1903472, at *3 (Del. Ch. Apr. 9, 2003).
[54] *See Andrews v. McCafferty*, 275 A.2d 571, 573 (Del. 1971).
[55] *Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch. 2003).
[56] *HIFN, Inc. v. Intel Corp.*, 2007 WL1309376, at *9 (Del. Ch. May 2, 2007) (citing *Reardon v. Exch. Furniture Store, Inc.*, 188 A. 704, 707 (Del. 1936)).
[57] *Sassano v. CIBC World Markets Corp.*, 948 A.2d 453, 461 (Del. Ch. 2008); *see also PharmAthene, Inc. v. Siga Tech., Inc.*, 2008 WL 151855 (Del. Ch. Jan. 16, 2008).

interpretation.[58] The Court finds the Maintenance Obligation to be unambiguous in this regard, and, accordingly, need not consider any extrinsic evidence in determining its meaning.[59] The shared intent of the parties to the Maintenance Obligation was to arrange for the transfer of all supervisory powers possessed by Development Corp., including architectural review authority, to the HOA at such time as the conditions precedent to that transfer had been satisfied.

In this regard context is helpful. The Maintenance Obligation was executed sixteen days following the execution of the Declarations. The majority of the Maintenance Obligation concerns itself with two purposes: establishing the HOA, and burdening the land within Winding Ridge with an additional covenant, one not found in the Declarations, requiring lot owners to share in costs related to the maintenance of the open areas within the subdivision. The Lawhons argue that the Maintenance Obligation's discriminate focus on maintenance issues necessitates a conclusion that no other powers were transferred to the HOA by the Maintenance Obligation. However, even if the Lawhons were correct that there is room for such an interpretive approach to ascertaining the intent of the Maintenance Obligation, the better inference would be that the creation of the HOA and the imposition of

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[58] *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992).

[59] The Court notes that the only extrinsic evidence presented on the issue at trial would support the HOA's interpretation. Three letters between the former president of the HOA and a realtor involved with the development of Winding Ridge, demonstrate an understanding that approval authority was transferred to the HOA by way of the Maintenance Obligation. Tr. at 100-02; DX 3-5. The Court, in reaching its conclusion, does not rely upon this correspondence.

the maintenance covenants were given greater treatment in the Maintenance Obligation because they were being addressed initially and expressly, and thus, there was special need for proper notice of (and focus on) these new aspects. That same need did not relate to the already existing covenants, such as the architectural review covenant, which had been properly imposed and noticed in the Declarations executed and recorded only several days earlier. The broad catchall language purporting to transfer previously conferred powers, as with all contractual language, must be given meaning, if possible. The Lawhons' reading would have the Court render the broad transfer provision illusory. This, the Court should not do.[60]

Having thus created a Homeowners Association, the Maintenance Obligation purports to vest that Homeowners Association with all authority held by Development Corp. The scope of that authority is at the heart of the parties' dispute. The parties do not dispute that the architectural review power was "previously held or exercised by" Development Corp.,[61] and this unambiguous language must be given its intended effect. The Court, therefore, finds that the

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[60] *Seabreak Homeowners Ass'n, Inc.*, 517 A.2d at 269.

[61] The Lawhons argue that the Maintenance Obligation transfers powers held by Development Corp. in its capacity as "Declarant only" and that somehow such powers would differ from those otherwise held by Development Corp. Pls.' Post-Trial Mem. at 3. The "Declarant" in both the Maintenance Obligation and the original Declaration is the same entity, Development Corp., and no basis exists to draw a distinction between its "individual" powers and those held as "Declarant only." PX 6-7.

Maintenance Obligation provided for the transfer of the architectural review power from Development Corp. to the HOA.

That transfer, however, is expressly conditioned on the satisfaction of two conditions: (1) the conveyance by Development Corp. of the final lot in Winding Ridge, and (2) the transfer of any open space areas and the pond to the HOA. The only evidence presented at trial on these two conditions tends to support a finding that they have been satisfied, and the HOA now properly possesses the approval power.[62] The HOA has the power to enforce the covenants found in the original Declaration, including the architectural review covenant.[63] In any event, any uncertainty as to the satisfaction of these two conditions precedent to the transfer

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[62] Huffman testified that the open areas and pond have been conveyed to the HOA and that he "assume[s]" that a deed was executed representing that transfer. Tr. at 103. The greater weight of the evidence presented at trial also suggests that Development Corp. transferred all of its remaining property interests prior to dissolution. The evidence however, is far from overwhelming.

[63] The transfer of the power to enforce declarations of restrictions from the developer to the association of homeowners can be problematic. *See, e.g.*, *T & R Land Co. v. Wootten*, 2006 WL 2640962 (Del. Ch. Sept. 7, 2006). The homeowners may reasonably believe that their development is subject to restrictions that protect the value of their homes and their neighbors' homes. They may buy in the subdivision in reliance upon the restrictions. Indeed, in this instance, the Lawhons acquired their lot apparently believing that it was subject to the Declarations.

The better social policy, of course, is to meet the reasonable expectations of the community that the homeowners association has authority to enforce the restrictions. That social policy, however desirable, cannot, by itself, bridge the gap if there is nothing of record to support a transfer of enforcement power. Indeed, in this case, it may be critical that the Lawhons bear the burden of proof. They did not establish that the restrictions, which everyone believed and accepted as in effect, could not be fully enforced because of some defect in the transfer of enforcement authority. If, by contrast, the burden had been on the HOA, to prove that there had been a transfer of enforcement authority to it, because, for example, it was seeking to enforce the Declarations, then this might have been a closer case.

of the architectural review authority must be resolved against the Lawhons, because they bear the burden of proving their claim that the HOA does not posses the review power.[64]

In addition, the architectural review provision is valid and enforceable, and the Lawhons had adequate notice of its demands. A decade ago in *Dawejko v. Grunewald*, this Court observed that prior approval covenants must possess, "some method or procedure for obtaining such approval, including an identification of the person(s) or entity(ies) from whom approval must be sought" to be enforceable.[65]

The Declarations' architectural review provision satisfies the minimum requirements outlined in *Dawejko*, by expressly establishing, with sufficient clarity, the proper procedure by which one may seek approval for a land improvement and to whom such a request should be directed. One must present, in writing, plans and specifications that demonstrate several clearly enumerated factors reasonably calculated to provide an objective basis for rendering an approval decision.[66] The provision clearly vested in Development Corp. the architectural review power, which was transferred to the HOA. Indeed, the Lawhons were aware of the HOA's authority and sought out in advance of their

[64] *See Zayatz v. Anderson-Stokes, Inc.*, 1988 WL 77724, at *2 (Del. Super. Jul. 16, 1988) (Plaintiffs bear the burden of proof of the allegations in their complaint.).
[65] 1988 WL 140225, at *5 (Del. Ch. Dec. 27, 1988).
[66] The facts demonstrate the Lawhons failed to satisfy these clearly outlined requirements at least until they delivered plans to Huffman on May 25, 2008. At that point they had already commenced this litigation.

purchase, through the auspices of their agent, permission to avoid the covenant requiring an attached garage. The Lawhons were on sufficient notice as to how,[67] and from whom, to seek approval of any land improvements. The burden of compliance belongs to them, and this provision is unobjectionable.

C. *Enforcement Was Neither Arbitrary Nor Capricious*

The Lawhons next argue that, even if the architectural review covenant is valid, its enforcement against them was arbitrary and capricious. This claim also fails.[68]

The Lawhons assert that their application was "poisoned from its inception" and that their failure to receive prior approval must be the result of arbitrary and capricious behavior on the part of the HOA or, at least, McClafferty.[69] Although the record suggests that McClafferty opposed the Lawhons' home from his first encounter with Burton, it is impossible to conclude from the facts presented at trial that the rejection of the Lawhons' home was driven by personal animus or

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[67] Both the Declarations and Maintenance Obligation were duly recorded among the land records of Kent County, Delaware.

[68] This dispute has been marked by poor communication and misunderstanding. The Lawhons complain about the absence of reasons provided by the HOA for having failed to approve their plans. The HOA complains that a complete and appropriate application for the home the Lawhons want to place was never submitted. Once litigation was commenced, the solution became more complicated.

At the core of this dispute lies a simple fact: the Lawhons bought a Palm Harbor modular home without first having obtained architectural review approval. Why that economic commitment was made without first having obtained the HOA's approval is not clear. That the Lawhons have already made their commitment for a particular home has elevated the level of frustration among the parties.

[69] Pls.' Post-Trial Mem. at 4.

impermissible aesthetic subjectivity instead of rational, objective, and permissible factors pertinent to the decision of whether or not the Lawhon home would survive the scrutiny of architectural review. The design, as initially presented to McClafferty, did not have an attached garage, and, based on the history of Winding Ridge, his view that no dwelling would be approved without an attached garage was reasonable. In other words, the Lawhons failed to prove that McClafferty's opposition was based on something other than the objective criteria found in the Declarations.

Furthermore, there is no indication that the Lawhons' home would satisfy architectural review but for the alleged impermissible aesthetic subjectivity or personal animus. The architectural review provision expressly notes community harmony and outlook as factors to be considered when evaluating proposed land improvements in Winding Ridge. Delaware case law approves of evaluations made with those criteria.[70] The Lawhons' home fails an objective consideration based solely on those standards. The home's color is disharmonious with a presently well-developed common scheme, and its proposed perpendicular orientation would create an incongruous appearance. Those differences are material, and disapproval of the Lawhons' home would be justified, and legally permissible.

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[70] *See supra* note 50.

Finally, much of the Lawhons' difficulty can be attributed to their own noncompliance with the Declarations. It seems clear that, at least prior to the delivery of additional documentation to Huffman following the May, 25, 2008, homeowners meeting, the Lawhons never presented a complete, formal request for architectural review of their home. As a result, it is unclear whether the HOA was ever given the opportunity, prior to litigation, to render an informed decision. Although the facts indicate that McClafferty's initial rejection of the Lawhons' home was unilateral, it is equally clear that the Lawhons had not properly complied with the Declarations. In addition, that the HOA may have, in the past, worked more cooperatively with landowners in resolving deficiencies in their applications by requesting additional documentation before reaching a conclusion cannot be said to create the legal obligation to do so in this case, and will not excuse the Lawhons' noncompliance.[71]

The Lawhons failed to comply with the architectural review covenant before commencing this litigation. The home they propose cannot be reconciled with the overall balance of the surrounding neighborhood. In undertaking a fully informed review of the proposed improvements the HOA would be well within the

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[71] This is particularly true given the fact that evidence of such requests for additional documentation came only during the term of a former President of the HOA. Tr. at 131. This is the first architectural review undertaken in McClafferty's tenure. *Id.* at 174, 220. Nevertheless, there is an indication that the Lawhons would have received such a request themselves, but for this litigation. Huffman testified that the HOA was preparing to send a request for further documentation when the Lawhons commenced this proceeding. *Id.* at 137.

permissible limits of our law in denying the application. Because the Court finds that the Lawhon home could reasonably be deemed to fail objective standards governing the community, and because the Lawhons have failed to prove an absence of approval based on impermissible factors, the HOA cannot be found liable of arbitrary and capricious enforcement of the architectural review covenant.

D. *The HOA is Not Barred From Enforcing the Restrictions As a Result of Equitable Estoppel, Waiver, or Laches*

The Lawhons finally invoke several equitable precepts in an effort to obtain a declaration that the HOA may not enforce the Declarations against them.

First, they look to equitable estoppel. Equitable estoppel arises when "a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment."[72] To prove equitable estoppel, a party must show by clear and convincing evidence that it (1) lacked knowledge of the truth of the facts in question, (2) relied on the other party's conduct, and (3) suffered prejudice as a result of such reliance.[73] Furthermore, a person's

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[72] *Wilson v. American Ins. Co.*, 209 A.2d 902, 903-04 (Del. 1965); *See also* DONALD J. WOLFE, JR. & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 11.01[d], at 11-11 (2008).

[73] *Wilson*, 209 A.2d at 904; *See also Employers' Liability Assurance Corp. v. Madric*, 183 A.2d 182, 188 (Del. 1962) (clear and convincing burden).

reliance on the other party's actions must be reasonable, and that individual must not have misled himself through his own negligence.[74]

The Lawhons' estoppel claim fails for several reasons. Given their repeated assertion that McClafferty made clear, from the outset, that their home would never be approved for construction in Winding Ridge, it is unclear what they could have relied upon. Nevertheless, the Lawhons now claim to have been "led into a false sense of security" by McClafferty and the HOA.[75] The Lawhons, however, were aware of the requirements that any improvement to property in Winding Ridge be first submitted for architectural review and approval.[76] At no point during this ordeal did any member of the HOA signal to the Lawhons, in any manner, that approval of their home would be forthcoming. Indeed, the opposite is true. The Lawhons were told repeatedly that their home would not be approved. The Lawhons did not reasonably rely upon any representations made by the HOA.

Moreover, even if the silence that followed Burton's initial meeting with McClafferty could be found to have induced the Lawhons' reliance, such reliance

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[74] *See, e.g.*, *American Family Mortgage Corp. v. Acierno*, 640 A.2d 655 (TABLE), 1994 WL 144591, at *5 (Del. 1994) ("One cannot bury one's head and hope that equitable estoppel will prevent the assertion of another's right.").

[75] Pls.' Post-Trial Mem. at 9.

[76] The acts of their agent Burton to find a way around the requirement of an attached garage demonstrate knowledge of the Declarations. Notice of a fact that an agent knows, or has reason to know, is imputed to the principal if knowledge of the fact is material to the agent's duties to the principal. RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006). The Lawhons were also on record notice of the architectural review covenant by virtue of its filling on the public record. *Acierno v. Goldstein*, 2005 WL 3111993, at *8 n.114 (Del. Ch. Nov. 16, 2005).

cannot be said to have been reasonable. It strains credulity that anyone would rely on McClafferty's lack of follow up, particularly in light of his clear statement of disapproval, in making the major decisions to purchase not only the lot but also the home as well.[77] The Lawhons are not entitled to relief based on the doctrine of equitable estoppel.

Second, with regard to the Lawhons' assertion of laches, the Court concludes that the Homeowners Association did not unreasonably delay in enforcing the architectural review covenant, nor were the Lawhons prejudiced by any delay that may be assumed to have occurred.[78] The HOA gave the Lawhons ample time to seek prior approval for their construction before intervening. Indeed, the HOA moved to enforce the restrictions only after the Lawhons began construction without approval, and did so immediately thereafter.[79] Because the Lawhons never properly complied with the formalities required to receive

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[77] There is no evidence that the HOA was aware that the Lawhons were purchasing the Palm Harbor home in reliance upon what the HOA had done (or had not done). The first knowledge that can be ascribed to the HOA with regard to actual improvements or the Lawhon's lot involves preliminary site work. The HOA reacted immediately.

[78] The essential elements of laches here are: (1) a defendant with knowledge of a right and (2) prejudice to the plaintiff arising from an unreasonable delay in exercising that right. *See e.g., U.S. Bank Nat'l Ass'n v. U.S. Timberlands Klamath Falls, L.L.C.*, 864 A.2d 930, 951 (Del Ch. 2004), *vacated on other grounds*, 875 A.2d 632 (Del. 2005) (TABLE).

[79] McClafferty left that initial meeting with a request for a dwelling without a garage. In the absence of a specific waiver of that requirement, there would be no reason to give any further consideration to the balance of the plans because a dwelling without a garage was not going to receive approval.

architectural approval, they cannot now claim that the HOA took too long to deny it.[80]

Finally, the Lawhons' waiver argument similarly fails. Generally, the accusation that a homeowners association has waived its right to enforce covenants results from widespread acquiescence to violations of those restrictions.[81] The Lawhons do not plead such widespread acquiescence here. Instead, they merely recast their laches and estoppel arguments under the guise of waiver, claiming that the failure to enforce the architectural review covenant against them must result in the loss of the right to enforce it. The party claiming waiver has the burden of proof to establish acquiescence, and the Lawhons have failed to do so here.[82] As stated above, and under any label, the argument that the HOA's behavior induced or misled the Lawhons into proceeding with their improvements at 142 Winding Ridge Road fails. There are no facts before the Court to indicate that the HOA has neglected to enforce the architectural review covenant in the past, or that similarly disharmonious construction has been allowed in Winding Ridge.

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[80] One period of delay is worth mention here. Mr. Lawhon asked for no further contact over the Holiday Season for fear his wife would become upset at the news of the home's rejection. Tr. at 55. If the HOA took no action during this period, the delay is clearly attributable to the Lawhons.

[81] *Welshire Civic Ass'n v. Stile*, 1993 WL 488244, at *3 (Del. Ch. Nov. 19, 1993).

[82] *Christine Manor Civic Ass'n v. Gullo*, 2007 WL 3301024, at *2 n.12 (Del. Ch. Nov. 2, 2007).

III. CONCLUSION

The Lawhons both knew when they purchased the land and when they began construction that architectural review and approval was required, and that they had not received such approval. Indeed, they should have known that any submissions in pursuit of such approval were plainly deficient. They therefore began construction at their own risk. Immediately after construction began they were alerted as to their failure to comply with the architectural review covenant. Only after the commencement of this litigation did the Lawhons (at least arguably) properly comply with the documentation requirements for prior architectural review and approval. The HOA has not approved of the Lawhons' home, and this lack of approval is sufficiently based on objective criteria to survive judicial review. Although their present situation may make the Lawhons sympathetic plaintiffs, they have not proved an entitlement to any relief.

Accordingly, judgment will be entered in favor of the Defendant and against the Plaintiffs.[83] Costs are assessed against the Plaintiffs.

[83] Nothing set forth in this Memorandum Opinion shall be deemed to preclude (or otherwise limit) any subsequent, formal submittal by the Lawhons to the HOA under the architectural review provision of the Declarations.