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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2271**

Morgan Square, LLC,  
Respondent,

vs.

Lakeville Land, Ltd. Limited Partnership,  
Appellant,

Theresa Fleming, et al.,  
Defendants.

**Filed July 22, 2013  
Affirmed in part, reversed in part  
Ross, Judge**

Dakota County District Court  
File No. 19HA-CV-10-5763

James D. Bates, Prior Lake, Minnesota; and

Dean G. Gavin, Gavin Law Office, PLC, Chaska, Minnesota (for respondent)

Sten-Erik Hoidal, Mark W. Vyvyan, Fredrikson & Byron, P.A., Minneapolis, Minnesota  
(for appellant)

Considered and decided by Ross, Presiding Judge; Chutich, Judge; and Kirk,  
Judge.

## UNPUBLISHED OPINION

**ROSS**, Judge

This appeal requires us to construe the extent of approval authority contained in restrictive covenants encumbering real property in Lakeville. Lakeville Land, Ltd., appeals from the district court's judgment that it could not use its approval authority to disapprove an affordable-housing project proposed by the Dakota County Community Development Agency, arguing that the district court erroneously held that Lakeville Land's approval authority extended only to exterior features of commercial properties and that units with one-car garages met city standards. Because the restrictive covenants unambiguously give Lakeville Land approval authority over residential as well as commercial development, we reverse in part. But because the express terms of the restrictive covenants give Lakeville Land approval authority only as to structural and exterior features of property improvements and not to their floor plans, and because residential units with one-car garages meet city standards, we otherwise affirm the district court's judgment.

### FACTS

Lakeville Land owned a large tract of land abutting an interstate highway in Lakeville. In 1997, it recorded a restrictive covenant ("Original Declaration") prohibiting any improvements to be constructed "unless the plans and specifications for the construction . . . shall have been approved by Lakeville [Land]." It also required that "improvements . . . shall be of first quality," prohibited buildings having "[m]etal or plastic siding," mandated that truck loading areas be at the rear of buildings, and required

antennas, mechanical equipment, and utility meters to be concealed. In 1998, Lakeville Land recorded a “Second Declaration” allowing wood-frame construction on one segment of the land. In 2001, Morgan Square purchased a different segment to construct residential townhomes under a purchase agreement that emphasized both declarations but that required Lakeville Land to modify them to allow construction of wood-frame buildings with vinyl siding. Lakeville Land did not record the resulting “Corrective Declaration” for nine months, and when it did, it failed to record it as to the Morgan Square segment. Both the purchase agreement and the Corrective Declaration also specified that the townhomes must be constructed meeting city standards.

Following its approval authority in the Original Declaration, Lakeville Land expressly approved plans for construction of 111 wood-frame residential townhome units, with floor space ranging from 1,271 square feet to 1,497 square feet, 2 to 3 bedrooms, and 1.5 to 3 bathrooms. Morgan Square planned to build the townhomes in three phases. In 2003, a developer purchased a segment of Morgan Square’s land and, without receiving approval of Lakeville Land, built and sold twelve 3-bedroom townhomes with only one bathroom each. Two years later, another developer purchased a different segment of Morgan Square’s land to complete phase two of the planned development. The developer constructed townhomes following floorplans similar to the others and also constructed and sold the townhomes without obtaining Lakeville Land’s approval. Lakeville Land did not object to their construction. The second-phase developer went bankrupt before completing all the units, leaving a portion of the second-phase segment undeveloped.

Morgan Square sought more development in 2006 by submitting plans to the city for the third phase. The plans depicted units substantially the same as those constructed in the first phase of development, and Lakeville Land again raised no objections. But Morgan Square found no developer to complete the project. The property sat on the market for nearly three years, and only the Dakota County Community Development Agency (CDA) showed interest.

The CDA wanted to build housing units for low-income residents on the land previously designated for third-phase development. In 2009, however, the CDA issued a title objection letter, citing the Original and Second Declarations as title issues not contemplated in its purchase agreement with Morgan Square and asking Morgan Square to “take whatever steps are necessary to have these documents terminated as to the Property.” Morgan Square discovered that the Corrective Declaration had not been recorded against the property and asked Lakeville Land to re-execute it. Lakeville Land refused. Morgan Square and the CDA agreed to amend their purchase agreement extending the closing date and conditioning the sale on Lakeville Land’s approval or waiver of the CDA’s proposed development project.

The CDA’s development plans depicted units different from previous units in that they were smaller, had no basements, and had only one-car garages. Morgan Square and the CDA submitted the plans to Lakeville Land for approval, but Lakeville Land emphatically disapproved them, characterizing the proposed development as “junk” and “instant slums” and citing the proposed units’ size and bedroom-to-bathroom ratio as bases for its refusal. Morgan Square modified the plans to increase the size of the units,

but it made no other changes, and it cited the Corrective Declaration to support the notion that wood-frame units with vinyl siding were allowed. Lakeville Land again disapproved the plans, adding that the proposed construction was not of “first quality” as required by the Original Declaration.

Morgan Square sued in August 2010, seeking a declaratory judgment that Lakeville Land did not have the power to disapprove residential development plans that meet city requirements, that the CDA’s development plans comply with the terms of the declarations, and that the Corrective Declaration be recorded against Morgan Square’s land.

The district court conducted a bench trial in 2012. Lakeville Land owner William Cooley testified that he did not like rental housing but felt he could not block the CDA’s development plans on that basis alone. He opined that the CDA’s plans were not harmonious with other development on Lakeville Land’s surrounding properties and that they were not of “first quality” as required by the declarations. Cooley cited maintenance issues at other CDA properties, the lack of basements and two-car garages at the proposed units, the greater density of the proposed units, and the bedroom-to-bathroom ratios as support for his position that the CDA’s plans were not “first quality.”

The district court toured the Morgan Square property and several other properties operated by the CDA. It found that the CDA units and the existing Morgan Square units both had maintenance problems, and that the problems at the CDA units were not more severe than those at the units that Lakeville Land had already approved at Morgan Square. It said that the storage limits that would result from having only single-car

garages also existed at Morgan Square units with two-car garages. And it found evidence of drainage problems at Morgan Square indicating that “development with a basement is not ideal.” It noted that all the problems that Cooley cited as reasons for his opposition were either problems that already existed in the areas of Morgan Square where Lakeville Land had previously approved development or were known by Lakeville Land during its previous approval of Morgan Square development plans.

The district court attributed Lakeville Land’s opposition to the CDA project to improper motives. It found that the “first quality” requirement in the declarations originally addressed exterior design features and commercial structures only. It found that Lakeville Land had not “exercise[d] the same diligence and interest in other instances” and that it had approved or neglected to notice prior development efforts that had the same features that it now objected to; that the only significant differences between the CDA development plans and the plans Lakeville Land had previously approved were that the CDA plans were more uniform than previous developments and that the residents would be recipients of public-housing subsidies; that Lakeville Land’s inconsistent enforcement actions indicated that it was “motivated by considerations outside of the terms of the Declarations;” and that the application of “first quality” standards to address maintenance issues was a belated attempt by Lakeville Land to concoct a justification to oppose subsidized housing.

The district court held that the restrictions in the Original Declaration were valid, but that the Second Declaration did not apply to the Morgan Square land. It noted that Lakeville Land’s “inconsistent action” raised doubts about whether the Corrective

Declaration applied to the Morgan Square land, but it held that the purchase agreement between the parties and other evidence indicated that construction of wood-frame buildings with vinyl siding were allowed on the property, and it ordered that this relaxed restriction be recorded against all the Morgan Square land.

The district court also held that Lakeville Land's approval power under the Original Declaration "must be applied reasonably and in good faith," and it held that Lakeville Land's "after the fact justification for a rejection premised upon the end users of the property rather than the actual nature of the development," its objections to features it had previously approved, its new interest in interior features, its "novel" consideration of maintenance problems, and Cooley's dislike of publicly subsidized housing meant that Lakeville Land's disapproval of the CDA development plan was not reasonable and in good faith.

The district court also defined the meaning of "first quality" in the Original Declaration, holding that it unambiguously referred exclusively to commercial development because the specific features it addressed—"placement and screening of utility connections, loading docks, dumpsters, and rooftop mechanical equipment"—applied only to the external features of commercial structures. It held that Lakeville Land could not change its original intended use of the term to apply it to residential developments.

The district court granted the declaratory judgments requested by Morgan Square. Lakeville Land moved for amended findings or a new trial, and the district court summarily denied the motion.

Lakeville Land appeals.

## DECISION

### I

We are asked whether the district court accurately interpreted and applied the declarations. We focus first on the text of the Original Declaration. Lakeville Land argues that the district court erred by determining that the Original Declaration limited Lakeville Land's approval authority as applying only to the *external* elements of *commercial* structures. The argument is partially persuasive. We review the interpretation of restrictive covenants de novo. *See Swanson v. Parkway Estates Townhouse Ass'n*, 567 N.W.2d 767, 768 (Minn. App. 1997) (holding that operative documents governing townhome association are contracts); *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010) (reviewing interpretation of contract limits on property use de novo). Our goal when interpreting contracts is to give effect to the intentions of the parties. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012). To determine intent, we look to the unambiguous language of the contract. *Savela v. City of Duluth*, 806 N.W.2d 793, 796 (Minn. 2011). But we construe contractual limitations on the use of property narrowly, resolving any ambiguities in favor of unrestricted use. *Mission Covenant Church v. Nelson*, 253 Minn. 230, 233, 91 N.W.2d 440, 442 (1958).

The Original Declaration applies to all improvements, both commercial and residential. It states that “[n]o improvements shall be constructed” without Lakeville Land's approval, and it reiterates that “any . . . improvements” must be approved by Lakeville Land. The term “any” is unambiguous. The district court reasoned that because



the content of specific restrictions referred exclusively to elements found in commercial structures only, Lakeville Land intended only to restrict commercial improvements in the Original Declaration. But at least some of the restrictions in the Original Declaration, such as the limits on placements of utility meters and antennas, would apply to residential structures as well as to commercial ones. The district court also reasoned that the Original Declaration's prohibition on metal and plastic siding, combined with the Corrective Declaration's modification of that prohibition to allow construction of residential townhomes with vinyl siding, indicated that Lakeville Land believed that the Original Declaration did not apply to any residential improvements. But residential construction can also include brick or stucco exteriors. And commercial structures can be wood-frame, as shown by the wood-frame restaurant covered by the Second Declaration as modified by the Corrective Declaration. So we do not agree that the declarations necessarily imply the intent to restrict only commercial construction so as to disregard the broad, inclusive term "any." We therefore reverse the district court's declaratory judgment that Lakeville Land's approval authority in the Original Declaration applied only to commercial structures.

But the district court's conclusion that the Original Declaration gave Lakeville Land approval authority only over external elements is correct. The text of the Original Declaration does not suggest that Lakeville Land intended to restrict construction based on interior-design elements. Lakeville Land emphasizes that *some* previous developers submitted interior plans along with their requests for approval, but it provided no evidence or argument that these submissions were required or that Lakeville Land ever

treated them as relevant when exercising its approval authority. Interior-design elements also seem immaterial to Lakeville Land’s clear concerns for an appearance of harmonious development in the area. Most important, the declarations specifically focus on structural material and external details only. We consider the term “any” in this context. Narrowly construing the covenants, as we must, which expressly apply to structural and external elements of improvements, we affirm the district court’s holding that Lakeville Land could not exercise its approval authority to disapprove the CDA development based on its internal-design elements.

## II

Lakeville Land contends that its disapproval of the CDA development rests on an external-design element—one-car garages. It argues that the district court erred when it held that one-car garages met city standards, as required by the purchase agreement between Lakeville Land and Morgan Square as well as by the Corrective Declaration. The argument fails. Again, we construe the restrictions narrowly. *Mission Covenant Church*, 253 Minn. at 233, 91 N.W.2d at 442. Lakeville Land only required that residential developments meet city standards. It nowhere required that only residential units with two-car garages be allowed. Lakeville Land concedes that city standards allow for one-car garages. This resolves the issue. We are not persuaded otherwise by Lakeville Land’s assertion that one-car garages are allowed only for “affordable housing” projects and that the city otherwise requires two-car garages. Since the CDA development is an affordable-housing development, one-car garages do indeed meet city standards and the

covenant makes meeting these standards the prerequisite for the CDA development irrespective of the reason, as the district court determined.

### III

We decline to address several of Lakeville Land's challenges because they are moot. Lakeville Land disputes what it views as the district court's improper factual findings, arguing that it speculated outside the record when it discussed alleged drainage problems due to basements and existing residents' subjective beliefs about Lakeville Land's interest in interior-design elements. But because these so-called factual findings relate only to interior-design elements of the proposed CDA development and we have already held that Lakeville Land cannot disapprove a development based on interior design, Lakeville Land's challenges on these additional bases are no longer relevant.

Lakeville Land also contends that the district court erred when it determined that Lakeville Land did not use its approval authority reasonably and in good faith when it disapproved the CDA development plan, arguing that the district court impermissibly based its determination on its dislike of William Cooley's perceived improper motives. But because we affirm the district court's holding based on the objective language in the Declarations limiting the scope of Lakeville Land's approval authority solely to external elements of improvements, Cooley's motives, the district court's indictments of them, and Lakeville Land's defense of them, raise issues we need not address.

For a similar reason, we also decline to address Lakeville Land's argument that the district court erred by failing to provide a correct definition of "first quality" under the declarations. Whatever definition of "first quality" Lakeville Land uses (and the record

suggests that the term defies objective definition), its application of the term is constrained by the scope of its approval authority. And since Lakeville Land cannot apply the term (however defined) to *internal* design elements, it is not necessary to this appeal that we define it.

**Affirmed in part, reversed in part.**