

**Before the
Commission on Common Ownership Communities**

In the Matter of

Lee Suschinski (Tenant)	x	
and	x	
Charlene Rivera and	x	
Charles W. Stansfield (Owners)	x	
10620 Muirfield Drive	x	
Potomac, MD 20854,	x	
	x	
Complainants,	x	
	x	
v.	x	Case No 371-0
	x	July 2, 1998
Inverness North Homeowners Association	x	
10642 Muirfield Drive	x	
Potomac, MD 20854,	x	
	x	
Respondent.	x	

DECISION AND ORDER

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission, having considered the testimony and evidence of record, finds, determines and orders, as follows:

Background

On or about August 22, 1997, Lee Suschinski, a tenant at 10620 Muirfield Drive, Potomac, Maryland, a property covered by the covenants of the Inverness North Homeowners Association (hereafter Inverness North or Respondent), filed a complaint with the Commission on Common Ownership Communities alleging that the application and enforcement of parking restrictions by the Board of Directors of Inverness North to his pickup truck was unreasonable and arbitrary. On or about August 27, 1997, Ms. Charlene Rivera and Mr. Charles W. Stansfield, owners of the house rented by Mr. Suschinski, joined in this complaint. Complainants request that the Commission overturn the interpretation or application of the parking restriction to Mr. Suschinski's truck.

Mr. Harry Lebedun, President of the Inverness North Homeowners Association responded to the complaint denying that the restriction

against parking of trucks in the community was interpreted or applied in either an unreasonable or an arbitrary manner to Mr. Suschinski's truck.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) on January 7, 1998, and the Commission voted that it was a matter within the Commission's jurisdiction. The matter was scheduled for public hearing on February 18, 1998, but was continued to May 20, 1998, at the request of the Complainants with the consent of the Respondent.

Findings of Fact

1. Inverness North Homeowners' Association is a non-stock Maryland corporation of 124 houses in Potomac, Maryland, governed by a Declaration of Covenants, Conditions and Restrictions, including amendments, and Bylaws filed with the Montgomery County Clerk on December 29, 1988.

2. Mr. Suschinski rented the house at 10620 Muirfield Drive from Ms Rivera and Mr. Stansfield and moved in on October 1, 1996. Prior to signing a lease, Mr. Suschinski had reviewed the community documents which were in the possession of his landlords. Mr. Stansfield testified that the records he and Ms Rivera had did not include Resolutions 1 and 5. Mr Suschinski's lease includes an acknowledgment that he has had the opportunity to review the community documents and an agreement to comply with them.

3. Mr. Suschinski testified that he had purchased the pickup truck he is currently driving in May 1996 and that he has owned pickup trucks in the past. Mr. Suschinski further testified that he had driven around the community prior to signing his lease and had seen two pickup trucks parked on the community property during this drive around inspection. Thus, he had assumed that the covenant prohibiting keeping trucks on community property did not apply to pickup trucks. Ms. Rivera testified that she had lived in the community from 1979 to 1983 and believed that the prohibition against keeping trucks in the covenants had not been interpreted to include pickup trucks because she had seen pickup trucks parked in the community. Mr. Stansfield who had never lived at Inverness North also believed that pickup trucks were not prohibited because he has been a member of a governing board in another community in which pickup trucks were not prohibited.

4. The Declaration of Covenants, Conditions and Restrictions promulgated for Inverness North Homeowners Association on May 10,

1976, and amended on November 22, 1976, includes at Article VIII, Section 3, subsection (d) 1., the following language:

Except as herein provided, no junk vehicle, commercial vehicle, trailer, truck, house trailer, or the like shall be kept upon The Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

5. The Bylaws for Inverness North Homeowners Association include at Article VII, Section 1, Subsection (a) that the Board of Directors shall have the power to adopt and publish rules and regulations governing the use of the Common Area and Facilities and to establish penalties for violations of those rules.

6. The Declaration of Covenants, Conditions and Restrictions with amendments and the Bylaws were filed with the Montgomery County Clerk on December 29, 1988.

7. In July 1982, the Board of Directors published to the community a copy of Resolution No. 1, "Parking Rules and Enforcement Procedures". This regulation repeated the language in the Declaration and described the procedure for the enforcement of this prohibition. It does not mention pickup trucks specifically. This Resolution was filed with the County Clerk on December 29, 1988.

8. In July 1991, Resolution No. 3 was sent out to all homeowners in Inverness North Homeowners' Association. There is no indication in the record that this resolution has been filed with the County Clerk. The resolution again sets out the language in the Declaration quoted above, without specific reference to pickup trucks, and a procedure for the enforcement of that provision. The covering letter indicates that the reason for this resolution is to comply with changes to the Montgomery County Codes. The Resolution language states that it is to revise rules and enforcement procedures adopted in Resolution No. 2 and that Resolution No. 2 is hereby repealed. Resolution No. 2, which was filed with the County Clerk on November 29, 1989, addresses the subject of "Unit Maintenance".

9. In November 1992, Resolution No. 5 was circulated to the Inverness North Homeowners' Association members. The Resolution is dated November 9, 1992 and signed by Bret Hollander. The covering letter and the minutes of the October 28, 1992 Board meeting indicate that the Resolution clarifies the meaning or definition of the word truck as used in the Association's documents and that on

January 1, 1993, "the grace period will be over and towing will be enforced". There was no testimony offered as to the meaning of "the grace period" at the hearing. This Resolution was recorded by the County Clerk on December 29, 1997. This resolution does explicitly include pickup trucks as within the definition of prohibited trucks.

10. Mr. Harry Lebedun, President of the Homeowners' Association, testified on behalf of the Association. Mr. Lebedun testified that he had been an owner and resident in Inverness North since May 1977, he had been a member of the Board of Directors from May 1982 until May 1992, and had served as President from 1988 to 1992. He had become a member of the Board again in September of 1994, remained so since then, and is currently President.

11. Mr. Lebedun testified that the developer, John J. Walker, IV, provided the community's management until 1986, that Armstrong Management Services had provided management services from 1986 until 1995, and that Community Association Service had been the management company for Inverness North since 1995.

12. Mr. Lebedun testified that to the best of his knowledge the Inverness North Homeowners' Association had always interpreted the Declaration Covenant prohibiting keeping a truck on the property to include pickup trucks. He testified that prohibited vehicles had been a continuing problem in the community, and that pickup trucks had represented a significant number of those problems, as long as he had been on the Board. He also testified that one owner of a pickup truck had been granted a waiver from the prohibition for the life of that truck on advice of counsel based on an unusual fact situation.

13. A number of documents in which vehicular problems were referenced were introduced during Mr. Lebedun's testimony. Among the documents introduced as evidence of the Board's actions in enforcing this Covenant in which reference in the document is made to pickup trucks are: a 1984 letter sent to a homeowner in which the issue had been described as parking a pickup truck in the community; December 1989 Board meeting minutes which refer to the issue of a pickup truck as a parking problem and a letter to that homeowner indicating that a pickup truck which has been parked in the community is in violation of the Declaration; and a January 1990 letter from the management company to a resident at a different address indicated that parking a pickup truck in the community was in violation of the Declaration. The record includes several other communications from the management company for the Board of Directors indicating that parking pickup trucks in the community was a violation of the Declaration.

Discussion

Complainants' view of this matter is that the adoption of Resolution No. 5 was not in accordance with applicable law and thus there was no effective prohibition against keeping a pickup truck in the Inverness North community. They also advocated a number of definitions of truck which did not conclusively include Mr. Suschinski's pickup truck as more reasonable definitions than that chosen by the Inverness North Board of Directors. Apparently, since Mr. Suschinski's experience is that there are a number of situations that a prohibition against trucks does not extend to pickup trucks, he assumes that a prohibition against trucks which does not specifically enumerate pickup trucks as being included in the prohibition in fact does not apply to pickup trucks.

Respondents, on the other hand, have included pickup trucks in their definition of "trucks" as used in the Declaration Covenant prohibiting keeping trucks in the community from the beginning of the enforcement of that Covenant. This inclusion seemed to be self-evident. It did not occur to them that owners of pickup trucks might need special notice of their inclusion under the prohibition.

There has been a waiver for the life of one pickup truck and the community has needed to exert regular and persistent efforts to enforce the Covenant prohibition. For these reasons and because the presence of a pickup truck is not evidence of its being kept in the community, the fact that Mr. Suschinski saw some pickup trucks in the community on his inspection tour does not justify his conclusion that pickup trucks were not included in the prohibition against keeping trucks in the community.

The testimony of Mr. Lebedun and documents which were introduced as part of that testimony indicate that the community has included pickup trucks in the definition of trucks at least since the early 1980's and that the Board and management companies employed by the community have consistently worked to preclude pickup trucks from being kept in the community as part of the enforcement of the prohibitions included in the Declaration.

Conclusions of Law

Inclusion of pickup trucks in the definition of the word truck as it appears in the prohibition in the Inverness North Declaration is reasonable. It is not appropriate for the Commission to substitute its judgment for that of the elected Board of Directors

of the Inverness North Homeowners' Association on the definition of a term in the community's Declaration, when the interpretation of the Board is reasonable and not arbitrary or capricious.

The record in this case is adequate to support the argument made on behalf of the community that the definition of truck as used by this community in this context has not changed at least since the early 1980's and that the efforts to enforce the Covenant prohibition have been consistent.

The Inverness North Homeowners' Association Board interpretation of the Declaration Covenant prohibiting keeping trucks on community property to include pickup trucks and the efforts to enforce that Covenant with regard to Mr. Suschinski's truck are reasonable, in accordance with applicable law, and not arbitrary. The Board's determination and enforcement efforts are upheld.

Resolution No. 5 as it related to pickup trucks was an articulation of the long-term interpretation of the Covenant and the enforcement practice of the Board. While Homeowner Associations are not required to circulate proposed rules prior to adoption, it might be a beneficial practice to do so, with an explanation of the history and reasons for the proposed new rule. It also may be beneficial to provide the community with more detailed information about Board activities and concerns in the minutes of meetings or in newsletters.

The use of trucks has changed in the 30 years Inverness North has been a homeowners' association and so have attitudes toward them. There are other reasonable definitions of truck which would not include Mr. Suschinski's pickup truck in the prohibition against keeping trucks in the community. However, a change from one reasonable definition to another must be a decision made in the community. Complainants need to appeal their cause to the Board of Directors and the community in order to get a new interpretation of the Declaration.

Order

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

The Respondent Board's interpretation of the Inverness North Homeowners' Association Covenant prohibition against keeping a truck on the property to apply to Mr. Suschinski's pickup truck is reasonable and consistent

with the historical interpretation and their effort to enforce the prohibition is within the authority of the Board. Mr. Suschinki may not keep his pickup truck on the Inverness North property for more than thirty (30) days after the date of this decision without agreement from the Inverness North Board of Directors.

The foregoing was concurred in by panel members Glancy, Skobel and Stevens.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities