
Mark Donaldson <mark.donaldson@knoxmpc.org>

Tue, Nov 6, 2012 at 10:26 AM

To: Betty Jo Mahan <bettyjo.mahan@knoxmpc.org>, Buz Johnson <Buz.Johnson@knoxmpc.org>, Tom Brechko <Tom.Brechko@knoxmpc.org>, Dan Kelly <Dan.Kelly@knoxmpc.org>

----- Forwarded message -----

From: **Benjamin Moorman** <bmoorman@benchmark-assoc.com>

Date: Tue, Nov 6, 2012 at 9:08 AM

Subject: RE: Carol Phillips 10-D-12-UR

To: Richard Rawe <rawerc@comcast.net>

Cc: mark.donaldson@knoxmpc.org, tom.brechko@knoxmpc.org

Mr. Rawe:

In response to your e-mail, I will advise you that I have an engineer looking into the effects of our planned improvements regarding storm water runoff. You should know that based upon his preliminary review he does not think that the scope of our efforts will require review by Knoxville City Engineering or TDEC when considering their current requirements. However, I will gladly provide his final determinations once they are completed.

As for the adverse effects to adjacent property owners, I am at a loss. I provided the neighborhood with five options for moving forward with no response. At this point I have no idea what would be considered acceptable by the neighborhood, short of Ms. Phillips backing away and allowing the neighborhood to dictate her use of her property. I make this conclusion based upon past statements by community members in which they have implied they want no improvements but offer no other recourse.

Regarding our providing the Westmoreland Hills Homeowners Association (WHHA) with complete plans for Options 4 or 5, there are none. There will be none until a decision is made regarding which option will be pursued. We have provided MPC more information than what is required for Use-on-Review consideration in hopes of the community seeing that our planned improvements comply with all current zoning codes. It is only zoning codes that are being considered at this time and not recorded deed restrictions. However, as stated earlier, my review of the recorded deed restrictions represents that the zoning codes are the more restrictive of the two.

Sincerely,

Benjamin J. Moorman, RLS

President

Benchmark Associates, Inc.

PO Box 23892

Knoxville, Tennessee 37933

Benjamin Moorman

From: Benjamin Moorman
Sent: Tuesday, June 05, 2012 8:43 AM
To: 'Kely G. Hatley'
Subject: 1013 Bridgestone Place Meeting
Attachments: Scanned Image 00027.pdf

Kely:

Please find attached a letter recanting the events of our meeting on Friday, 01 June 2012. Within the letter, there are also some requests of you. I would appreciate a timely response to our requests.

Sincerely,

Benjamin J. Moorman, RLS

President

Benchmark Associates, Inc.

PO Box 23892

Knoxville, Tennessee 37933

Phone: (865)692-4090

Facsimile: (865)692-4091

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For further information about Benchmark Associates, Inc., please see our website at www.benchmark-assoc.com or refer to our office at 865-692-4090. Thank you.

04 June 2012

Kely:

Carol and I first wish to thank you and the member of the Planning Committee who came by to meet with Carol, myself and our potential contractor on Friday, 01 June 2012 for your time and consideration of our planned improvements. Unfortunately, the name of the Planning Committee member fails us at this time. Obviously, Carol and I are disappointed by the Planning Committee's decision to deny our planned improvements. As I represented during our meeting, it is our position that we feel our planned improvements comply with the Declaration of Restrictions for Westmoreland Hills, Unit Five, which are of record in Warranty Book 2074, Page 252 of the Register's Office of Knox County, Tennessee. We are also quite surprised that the planning committee has taken the position to deny our planned improvements without giving consideration to existing conditions within said Unit 5 that are similar to our planned improvements. Even more surprising is that you represented in our meeting that you were indifferent to any current uses within Westmoreland Hills that would mirror our plans. Therefore, in an effort to move forward and continue to comply with said restrictions, our first request would be that you provide Carol and myself with the name and formal position of the Planning Committee member who accompanied you.

During our meeting, you as a representative of the Planning Committee complimented both the quality and the integrity of our planned improvements. Unfortunately, both of you went on to express that our planned improvements do not comply with Articles 4 and 16 of the above referenced restrictions. However, our meeting concluded with you advising that, due to the Planning Committee not providing an approval within ten (10) days of our submittal, our request was denied. If there are other issues, which we have failed to represent, we would request that you provide us with that information in the very near future. We wish to present to the qualified residents of Westmoreland Hills a full account of the process to date along with full disclosure of Carol and my design plans for our planned improvement as we move forward with the review process.

Another request by Carol, as a contributing member of the Homeowner's Association for Westmoreland Hills, is that you provide a current detailed budget report for said Homeowner's Association. She would also like to receive a current list with contact information of all members of the Homeowner's Association Board of Directors.

Please know that it is not our intent to be controversial or be in any way non-compliant of the restrictions of record. However, we do not agree with the Planning Committee's interpretation of said restrictions and are being forced by said committee to take whatever actions are required to utilize Carol's property to the full benefit she is entitled. We sincerely hope the Board of Director's for Westmoreland Hills Homeowners' Association can appreciate our position.

We will anxiously await your timely response to our requests. At this point, time is of the essence due to our plans to merge our families in the near future.

Respectfully,

Carol of Hills
Benjamin A. Moore



Betty Jo Mahan <bettyjo.mahan@knoxmpc.org>

Fwd: File # 10-D-12-UR

1 message

Tom Brechko <tom.brechko@knoxmpc.org>
To: Betty Jo Mahan <bettyjo.mahan@knoxmpc.org>

Wed, Nov 7, 2012 at 11:21 AM

----- Forwarded message -----

From: **Benjamin Moorman** <bmoorman@benchmark-assoc.com>
Date: Tue, Nov 6, 2012 at 12:54 PM
Subject: File # 10-D-12-UR
To: tom.brechko@knoxmpc.org

Tom:

Given that fact that so many of the residents of Westmoreland Hills wish to refer to their restrictive covenants and our plans' non-compliance with same, I felt it may be beneficial for them to be made a part of the file. Also attached is correspondence between myself and Kely Hatley, who was acting president at the time of our submittal of plans for a "Carriage House". As I have mentioned before, I understand that a carriage house would be a non-conforming use and again wish to state that I have no intention of establishing an additional residence on the subject property. This appears to be the only concern Kely represented in his letter.

I fully recognize that neither MPC nor the City of Knoxville's Codes Enforcement office play no role in enforcing or interpreting subdivision restrictions. However, I am not sure that the residents of Westmoreland Hills understand this. I do feel that our current plans comply with both "City Code" and the "Westmoreland Hills, Unit 5 Declaration of Restrictions". Your report and staff recommendation represents that you agree with my feelings regarding "City Code".

I sincerely hope that the attached information will prove beneficial to the commissioners regarding the multiple references to the restrictive covenants. I would welcome their review of same.

I understand that the residents who adjoin the subject property are impacted by our plans. However, it is my position that the impact is limited to their current enjoyment of the subject property as it stands today. From my communication with some of the residents, it appears that realtors involved during their decision to purchase their homes may have represented the

subject property as "Green Space". Obviously, that was an erroneous representation. Given their situation, I have provided two options that would allow them to continue with their current use of the subject property. However, there has been no communication by them that would represent their intent to exercise either of the options. While I do sympathize with their situation, I do not feel that is adequate reason to further restrict the use of the subject property that the owner maintains and pays property taxes. All property owners should be provided full use of their property as defined within zoning codes and restrictive covenants. It is my position that our plans comply on both fronts.

I wish to thank you for your time and efforts to date on this matter. I also wish to apologize for the extra work associated with your review of many documents associated with personal feelings and concerns that lie outside of governing factors.

Sincerely,

Benjamin J. Moorman, RLS

President

Benchmark Associates, Inc.

PO Box 23892

Knoxville, Tennessee 37933

Phone: (865)692-4090

Facsimile: (865)692-4091

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For further information about Benchmark Associates, Inc., please see our website at www.benchmark-assoc.com or refer to our office at [865-692-4090](tel:865-692-4090). Thank you.

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Benjamin Moorman

From: Benjamin Moorman
Sent: Thursday, June 07, 2012 9:47 AM
To: 'Kely G. Hatley'
Subject: RE: Email answers

Kely:

Thank you for your reply. I completely understand that you are out of town and limited in your ability to provide information. Your response is excellent considering your situation. I would like to have an opportunity to follow up with you some time when you return. I sincerely hope you have a pleasant and safe trip.

Benny

From: Kely G. Hatley [<mailto:khatley@fbcknox.org>]
Sent: Thursday, June 07, 2012 8:33 AM
To: Benjamin Moorman
Subject: Email answers

Good morning Benny,

I thank you for the kind spirit of your letter. Richard Rawe is the member of the Board (property chair) of our neighborhood board. I don't have anything official that I can send you on paper until I return from this tour. I won't be able to do that until I return next week. I can attempt to answer some of your questions though since I know you would like to not wait for them.

1) You can obtain a current budget from Mary Frances Carlson, our financial secretary for the association. Carol can call her. She should have her telephone number in the current WMHHA phone directory that is in her gray notebook folder for the association.

2) The current board members are:

- Kely Hatley- President
- Bob Hawthorne- Vice-President
- Julie Lawler- Membership
- Lisa Stockton- Membership
- Mary Frances Carlson- Treasurer
- Liz McBee- Secretary
- Richard Rawe- Property
- Alex Bartlett- at large
- James Hurst- at large
- Connie Gonzalez- at large
- Geoff DeRohan- at large

The position that we tried to convey last week was that the plans submitted (while very nice) do not comply with the following sections of the covenants and restrictions of unit 5:

Para. 4 All numbered lots in the tract, excluding that portion shown on the recorded map for future development, shall be known and designated as residential lots. Except as otherwise provided herein, no structure shall be erected, altered or placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height plus a basement and a private garage and the usual domestic servants quarters.

Para. 6 Not more than one dwelling house may be erected on any lot as shown on the recorded map and no lot shown on said map may be subdivided or reduced in size by any device, voluntary, alienation, partition, judicial sale or other proceeds or process of any kind, except for the purpose of increasing the size of another lot, except Lot 7 and Lot 10 may be resubdivided into two (2) lots each if resubdividing is done before a house is placed on said lot. If said Lot 7 or Lot 10 is resubdivided into two lots, the resubdivision map must be approved by M. A. Schubert, Trustee or his successor.

Para. 16 No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary nature be used as a residence.

Really, the problem lies in that the intended plan for this carriage house is for its main purpose to be a residence for Carol's two daughters, and it is set up that way in the plans. We believe that all three of the restrictions cited above give reason to not approve the plans as submitted. I am not trying to appear obstinate or confrontational either. We are simply interpreting the restrictions as we understand them to be. The restrictions are very clear about only one single-family dwelling per lot, as well as that no other building detached from the main dwelling shall be used as a temporary or permanent residence. The denial was based on these restrictions. The denial was not based on the quality of your contractor or your architect. As I said in the meeting, the plans are beautiful, but they do include permanent residential living space and the above restrictions say no to any plans as such.

You are also concerned about the garage at the Farris home at the end of your street. I also mentioned in the meeting that I have no knowledge of who gave him that permission to build or whether it was built that way from day one of construction. If Mr. Farris was given a waiver to build it, then that is something that some other board, or perhaps Mr. Schubert had given a waiver. Either way, that waiver doesn't mean that every submission of plans in the future must be approved. That would be like saying that just because a policeman didn't give a driver a speeding ticket, but merely a warning, that the officer should always let every speeder off with a warning. No, situations such as these are decided individually. As long as I am president, then I will work to try to enforce the restrictions fairly and consistently, but I cannot change past events with other lots or builders.

Sincerely,
Kely Hatley

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THIS INSTRUMENT PREPARED BY:
Frances D. Frady
1601 Third Creek Road
Knoxville, TN 37921

DECLARATION OF RESTRICTIONS

WESTMORELAND HILLS, UNIT FIVE

WHEREAS, the undersigned, M. A. Schubert, Trustee, with full powers, of Knox County, Tennessee, is the owner of a tract of land situated in the Sixth Civil District of Knox County, Tennessee and in the 51st Ward of the City of Knoxville and known as WEST-MORELAND HILLS, UNIT FIVE, as shown on the maps of the same of record in Map Cabinet M, Slot 235-B, in the Register's Office for Knox County, Tennessee; and

WHEREAS, the said owner is desirous that certain restrictive covenants be declared and recorded, which covenants shall be binding on the present owner and all subsequent owners of any lot in said subdivision.

NOW, THEREFORE, in consideration of the premises and the mutual benefit to be derived by all parties concerned, the said M. A. SCHUBERT, Trustee, does hereby covenant and agree with all subsequent owners of the lots in said subdivision that the following restrictive covenants running with the land and shall be binding on all subsequent owners thereof and shall inure to the benefit of all owners of any of said lots in said subdivision.

1. These covenants are to take effect immediately and shall be binding on all parties and all persons claiming under them until 1 January 2012, at which time said covenants shall be automatically extended for successive periods of ten years unless the majority of the then owners of the lots vote to change said covenants in whole or in part.
2. If the parties hereto or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real estate situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants, and either to prevent him or them from so doing or to recover damages or other dues for such violation.
3. Invalidation of any one of these covenants by judgment or court order shall not in any way affect any of the other provisions which shall remain in full force and effect.
4. All numbered lots in the tract, excluding that portion shown on the recorded map for future development, shall be known and designated as residential lots. Except as otherwise provided herein, no structure shall be erected, altered, or placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height plus a basement and a private garage and the usual domestic servants quarters.
5. All buildings shall meet the setback lines to comply with the regulations of the City of Knoxville, unless the Planning Committee requires greater setbacks.



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- * 6. Not more than one dwelling house may be erected on any lot as shown on the recorded map and no lot shown on said map may be subdivided or reduced in size by any device, voluntary alienation, partition, judicial sale or other proceeds or process of any kind, except for the purpose of increasing the size of another lot, except LOT 7 and LOT 10 may be re-subdivided into two (2) lots each if resubdividing is done before a house is placed on said lot. If said LOT 7 or LOT 10 is resubdivided into two lots, the resubdivision map must be approved by M. A. Schubert, Trustee or his successor.
7. Fireplaces: All fireplaces shall be masonry construction unless otherwise approved by the Planning Committee.
8. All fencing and walls must be attractive and consistent with color and materials used on the house and must be approved by the Planning Committee. Chain link fences are prohibited unless approved by the Planning Committee.
9. No radio or television aerial or antenna, nor any other exterior electronic or electric equipment or devices of any kind shall be installed or maintained on the exterior of any structure located on a building lot or on any portion of any building lot not occupied by a building or other structure, unless approved by the Planning Committee.
10. Air conditioners and garbage cans shall be concealed from view by appropriate screening which must be approved by the Planning Committee.
11. Roof pitches shall be 8/12 or steeper, unless approved by the Planning Committee.
12. Tennis courts and swimming pools are permissible. Pools shall have attractive fencing around them. Tennis courts must have attractive shrubbery and screening around them and both must be approved by the Planning Committee.
13. All driveways to be paved with asphalt or concrete or other materials approved by Planning Committee.
14. Outside light poles, etc. have to be approved by Planning Committee.
15. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
- * 16. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.
17. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.
18. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale or signs of not more than five square feet used by the builder to advertise the property during the construction and sales period. Owners reserve the right to display signs of a larger size for promotion of the development.



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19. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, and other household pets may be kept provided they are not kept, bred, or maintained for commercial purposes, and are not a nuisance to the subdivision.
20. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage of such material shall be kept in a clean and sanitary condition, and shall be screened.
21. All above-ground exterior foundation walls shall be veneered with brick or stone.
22. No out-building such as pool houses, carports, or detached garages, shall be built unless approved by Planning Committee, and any such out-buildings shall be in substantial conformity with the architectural design used for the main dwelling.
23. All lots shall be subject to the following square footage requirements:
 - (a) Houses with one and one-half or two stories shall contain at least 1400 square feet on the ground floor and a total of at least 3400 square feet for both floors.
 - (b) Houses with one floor or one floor and a basement or split level houses shall contain at least 2800 square feet on the uppermost level.
24. The computations of square footage shall be exclusive of porches and garages.
25. No building shall be erected, placed, altered or permitted to remain on any building lot in the subdivision until the building plans and specifications and the lot plans showing the location of such building or alteration have been approved in writing as to conformity and harmony with the existing structures, in the subdivision by a committee composed of M. A. Schubert and one other member appointed by M. A. Schubert, said Committee to be known as the Planning Committee. M. A. Schubert shall have the authority to replace the other committee member at any time and for any reason. In the event of the death of M. A. Schubert, the executor(s) of his estate shall exercise his powers under this paragraph. In the event said committee fails to approve or disapprove such design and location within ten (10) days after said plans and specifications have been submitted to it, said plans shall be deemed disapproved. In the event said Planning Committee rejects plans submitted for approval under this paragraph, upon written request or application of 75% of the parties owning lots within a 600 foot radius of the lot in question at the time said approval is requested, stating that said owners of said property within the 600 foot radius desire the approval be given, the same shall be deemed approved by the Planning Committee. A complete set of plans and specifications of


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the house to be built shall be left with said Planning Committee during the time of construction.

26. All houses must have a minimum two-car garage that will accommodate at least two large size automobiles. The Planning Committee shall have authority to allow the two-car garage in a basement house to be located in the basement if in its opinion the house is large enough looking from the outside appearance and does not destroy the aesthetics of the house.
27. The Planning Committee shall have the sole and exclusive right at any time and from time to time to transfer and assign to, and to withdraw from, such person, firm or corporation as it shall select, any or all rights, powers, privileges, authorities, and reservations given to or reserved by it by any part or paragraph of these covenants and restrictions.
28. For the purpose of further insuring the development of said land as a residential area of highest quality and standards, and in order that all improvements on each building lot shall present an attractive and pleasing appearance from all sides and from all points of view, the Planning Committee has the exclusive power and discretion to control and approve all of the buildings, structures, and other improvements on each building lot in the manner and to the extent set forth herein. No residence or other building and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main residence, shall be commenced, placed, erected or allowed to remain on any building lot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building lot and approximate square footage, construction schedule, on-site sewage and water facilities, and such other information as the Planning Committee shall require, including, if so required, plans for the grading and landscaping of the building lot showing any changes proposed to be made in the elevation or surface contours of the land, have been submitted to and approved in writing by the Planning Committee and until a copy of all such plans and specifications, as finally approved by the Planning Committee, have been lodged permanently with the Planning Committee. The Planning Committee shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot grading and landscaping plans which are not suitable or desirable in its opinion, for any reason, including purely aesthetic reasons and reasons connected with future development plans for the owners of said land or contiguous lands. In passing upon such building plans and specifications and lot grading and landscaping plans, the Planning Committee may take into consideration the suitability and desirability of the proposed constructions and of the materials of which the same are proposed to be built to the building lot upon which it is proposed to erect the same, the quality of the proposed workmanship and materials, and the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such constructions as viewed from neighboring properties.



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29. The Planning Committee shall have the sole right (a) to amend these covenants and restrictions, but all such amendments shall conform to the general purpose and standards of the covenants and restrictions herein contained, (b) to amend these covenants and restrictions for the purpose of curing any ambiguity in any inconsistency between the provisions contained herein, (c) to include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the said land which do not lower the standards of the covenants and restrictions herein contained, and (d) to release any building lot from any part of the covenants and restrictions (including, without limiting the foregoing, building restriction lines and provisions hereof relating thereto) if the Planning Committee, in its sole judgment, determines that such release is reasonable and does not substantially affect any other building lot in an adverse manner.

IN WITNESS WHEREOF, the owner has executed this instrument on this the 5th day of June, 1992.

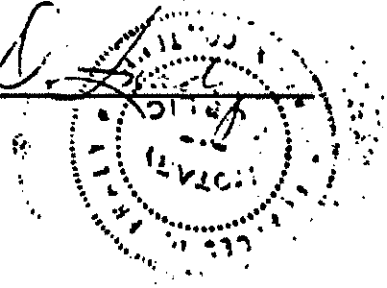
M. A. Schubert, Trustee
M. A. SCHUBERT, TRUSTEE

STATE OF TENNESSEE)
)SS:
COUNTY OF KNOX)

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State, M. A. SCHUBERT, the within named bargainer, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and official seal at office in Knox County, this 5th day of June, 1992.

James D. [Signature]
Notary Public



My Commission Expires: 11-27-95



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