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Nancy Szakaly, President
Board of Directors
Winslow Farm Community Association, Inc.
P.O. Box 219
Nashville, IN 47448

Dear Nancy:

You have asked me about the authority of the Winslow Farm Community Association, Inc. to enforce restrictions on use of privately owned residential lots in Winslow Farm. I find surprisingly little basis for Association enforcement.

I would expect the Winslow Farm Covenants to be the primary source of enforcement authority. The Covenants are recorded in the property records, and bind all homeowners within the subdivision. The only provision I have located on enforcement of restrictions is Section 10.12. It states, in pertinent part, "... these covenants and restrictions may be enforced by any Owner..." No provision is made in 10.12 for enforcement by the Association. In an enforcement action by the Association an owner could defend in good faith that the Association has no enforcement authority. Such a defense might well be meritorious. This conclusion is further strengthened by Covenant Section 3.4, specifying that duties of the Board include "[m]anagement, maintenance, repair, replacement and upkeep of the Community Area." No enforcement duty with respect to lot restrictions is set forth. Section 3.5. authorizes the Board to adopt rules for operation of the Association or Common Areas, but does not authorize adoption of rules to control maintenance of real estate.

Turning to another document, I note that By-Laws Section 3.2.7 attempts to expand the Association's authority, authorizing adoption of "[r]ules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate." This expansion appears to extend the power of the Association beyond that allowed in the Covenants. I would consider the covenants to be the controlling document concerning such matters. Regardless, I understand that there are no rules adopted concerning such matters at this time. Adopting such rules now and applying them to conditions existing before the adoption of the rules would be highly inadvisable, in my view.

Applying these considerations to practical matters, I think the Board should be cautious about trying to enforce covenant restrictions, such as keeping a small flock of laying hens or publicly displaying a clothesline, both of which are barred in the covenants. These are clearly enforceable by owners. They are not clearly enforceable by the Association. Association attempts to enforce restrictions not set forth in the Covenants, such as the color of doors and power washing siding are particularly risky. While the law upholds covenants when properly enforced, the law also disfavors them as limitations on the use of property, if pushed too far.

The Board might want to consider the case of Castlewood Property Owners Ass'n, Inc. v. Trepton, 720 N.E.2d 10. (Ind.App.,1999), in which a homeowner's association was sued for improperly trying to restrict construction of an owner's home. The suit sought over \$175,000 in compensatory damages and over \$350,000 in punitive damages. The case subsequently settled out of court for \$2,000, and was followed by more litigation over whether the directors should have paid the \$2,000 settlement personally, with the Association paying an additional \$7,500 in attorney fees to the Directors, in addition to the \$2,000. This case is a good example of the difficulty with lawsuits among neighbors. They are particularly likely to get out of hand, and should be avoided, if reasonably possible.

My bottom line is that I would advise the Winslow Farm Community Association, Inc. against seeking to enforce land use restrictions against homeowners in Winslow Farm.

Respectfully yours,

Guy R. Loftman
Attorney at Law
Atty # 8877-53

GRL/ckl

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Thank you for the opportunity to assist with these matters.