



**WILDER MCGEE, P.C.**

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January 14, 2020

*Sent Via E-Mail [randy@baysfirm.com](mailto:randy@baysfirm.com)*

*Sent Via Regular Mail*

The Bays Firm  
Attn: Randy Bays  
1503 Hailey  
Conroe, TX 77301

***Re: TRES Architectural Control Committee response to 12/2/2019 Correspondence***

Dear Mr. Bays,

As you know, my firm, Wilder McGee, P.C., represents Ken Bitgood, Jennifer Cole, Paul Torretti, and the TRES Architectural Control Committee (collectively referred to herein as "TRES ACC"). Thank you for giving me the opportunity to conduct my own independent research on this matter. Also, thank you for providing me with a copy of your client's deed. My goal is to provide a response to each of the items set forth in your December 2, 2019 correspondence. As has been the case from the beginning, my clients would like to remain amicable in this process and look forward to respectful decorum as we move forward.

Generally, your first point of contention is that TRES ACC's actions "clearly encumber the Martin tract." According to my records, the address of the 1.00 acre tract at issue is 9230 Lake Conroe Drive, Conroe, Texas 77304 (the "Property"). Any applicable deed restrictions at issue should have been known to the Martins prior to their purchase of the Property. As prudent purchasers, I am sure your client purchased title insurance making them aware of the restrictive covenants that affected their land. I am requesting that your clients provide me with a copy of the title policy they were issued in conjunction with their purchase. My guess is that deed restrictions were outlined in the title policy, giving the Martins sufficient notice of applicable covenants and restrictions pertaining to their Property. However, without reviewing the title policy, I cannot assume what they were notified of prior to their purchase. Further, given TRES ACC's compliance with the Texas Property Code (hereinafter "TPC"), it is within their authority to ensure compliance with those deed restrictions and covenants.

You are correct in your rendition of my clients' actions taken in filing the Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019

(Clerk's File Number 2019014421) and the Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019 (Clerk's File Number 2019084861) ("Current Restrictions"). The community as a whole is immensely lucky to have such diligent and thorough ACC members whose goals and intentions are to keep the neighborhood in line with the original developer's plan and overall intent for the community. They provide their services on a volunteer basis and do it out of true care and concern for the community they love. Further, in accordance with the requirements set forth in Section 204.011 of the TPC, the Current Restrictions reduced the prior successions in writing, and the Current Restrictions are recorded in the county where the properties at issue are situated, thus meeting the requirements of the statute. There is nothing in the statute that states that each succession must be drafted and recorded separately; it merely provides that the successions must be in writing and recorded, which is exactly the case here. In determining this position, several attorneys were consulted as well as a former civil judge.

However, you are incorrect in your assertion that these filings were unauthorized or that they encumber your clients' Property so as to violate the Rule Against Perpetuities. The TPC, specifically Section 204.011 is clear as day as to the validity of my client's actions relating to the prior succession of TRES ACC and their current authority as members of TRES ACC. While I understand your clients may not like that certain restrictions and requirements to obtain approval from TRES ACC are applicable to them, that is something they should have been aware of when they purchased the Property. Also, with respect to your comment about "community uproar," any and all uproar that occurred was seeded by your clients. It is truly unfortunate that they have brought this matter to such a negative and combative place. Their conduct in the community meeting was atrocious, to put it mildly. Then, to make matters worse, they are going door to door and trying to form some sort of vigilante army to take down TRES ACC.

While you mention the "some twenty-five deeds" in the TRES Subdivision and that each property is subject to a different set of restrictions, the only property your clients should be concerned with is their own. They can pursue a claim against their title company if they were not adequately warned about applicable restrictions affecting their use and enjoyment of their Property. While you are correct that it is unusual that each conveyance made by Bill D'Amico contained certain restrictions for certain parcels of land, but again, the only conveyance and property your client should be worried about is their own. I am concerned that your clients are having buyer's remorse, potentially overpaid for their land, and want to point the finger of blame wherever possible. Further, they hope that they can solve all of their alleged issues by attempting to dismantle TRES ACC, which is not going to happen. There is nothing they can do at this point to change the deed restrictions that are applicable to the Property they purchased, or that TRES ACC has the authority to ensure compliance of said restrictions. However, as has always been the case, your clients can always decide to comply with the Current Restrictions and begin the application process for whatever improvements they intend to make on their Property. I can assure you, TRES ACC wants nothing more than to assist neighbors, including your clients, with their building plans and do what they can, within the guidelines and restrictions, to approve proposed construction activity. To indicate otherwise is simply untrue.

Briefly, with respect to your assertion that TRES ACC is "unlawful," it is simply existing as it was drafted and designed by Bill D'Amico when he developed the community. A succession of appointed members can be clearly outlined by following the succession narrative as set forth in

the Current Restrictions. Further, we have written affidavits and other documentation to back up the succession narrative set forth in the Current Restrictions. Although the additional documentation is not necessary, we do have it in the case your clients decide they want to pursue this matter further. As you know, all that is required is that the succession be documented in writing and recorded in the real property records of the county of the affected properties. That is precisely what was done by way of the September 1, 2019 amended filing. Thus, in compliance with the TPC, TRES ACC is valid, lawful and in compliance with the statutory requirements set forth in Section 204.011.

Regarding your client's assertion that the "unauthorized deeds slander his title," again, I believe this all relates to your clients not obtaining title insurance prior to purchasing the Property, or that they are suffering from a serious case of buyer's remorse. Again, if insurance was purchased and the restrictions were not mentioned, a strong claim exists against the title company. Also, an issue of contention I believe your clients are facing relates to the boat house currently on their Property which was constructed prior to their purchase without necessary approvals from the San Jacinto River Authority (SJRA). I also believe the septic system is not compliant with SJRA permitting requirements. However, these are issues they will have to take up with the SJRA and are outside of the scope of the matters discussed herein. To further complicate their situation, the Martins are not in compliance with the Current Restrictions as stated below:

*(H) No housing for garage, servant's quarters, or other service function of the dwelling establishment shall be erected or placed upon any building site until construction of the dwelling proper has been started and is actually underway. All residences must be completed within one year of starting date, and builders must be of good standing in their profession, must be known to do quality work and be approved by the Architectural Control Committee. Owner is to allow a five-foot easement on side lines of subject homesite for underground utilities*

To date, a garage dwelling exists on your client's Property, and my understanding is that it was already there when the Property was purchased (non-compliant as of purchase date). Also, they are in violation for failure to complete construction of a dwelling on their Property within one year of construction commencing, as required by the Current Restrictions. Unfortunately, trying to dismantle TRES ACC to avoid these issues is not going to be an option for your clients.

Last issue relates to your attack on the integrity of the TRES ACC by falsely assuming that they are intentionally thwarting the Martins' efforts by filing the Current Restrictions, is far reaching and untrue. The goal of TRES ACC has been and continues to be to protect the integrity and overall composition of the neighborhood. At no point have they indicated that they are acting in a self-serving manner to protect their views of the lake. To suspect otherwise is short-sighted. In fact, at one point when Mr. Bitgood was having his own plans reviewed, he recused himself to ensure the process remain unbiased. Further, labeling the ACC's activity as malicious and fraudulent is just plain wrong. If you had evidence to bring criminal charges that rise to fraud, you would have already submitted it to the District Attorney's office for prosecution. The fact that your clients do not like the restrictions applicable to them is one thing, but for them to falsely suggest that my clients are self-dealing takes it to another level. With respect to your threat that my clients will suffer "financial ruin" if they continue acting within their capacity as members of the TRES ACC, I do not even know how to respond to this except to reiterate my request that we remain

respectful in our decorum with one another. Wishing and threatening anyone's financial ruin does not fall in line with respectful decorum.

Going forward, I strongly advise your clients to discontinue spreading false information pertaining to my clients' authority to govern and ensure compliance with the restrictions, and they should focus their energy on filing an application with the TRES ACC for any improvements they wish to construct on the Property. If you have any further questions or concerns for me, please do not hesitate to reach out.

Very truly yours,

**WILDER-McGEE, P.C.**



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