

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-094018

01/08/2007

HON. MARK F. ACETO

CLERK OF THE COURT
T. Melius
Deputy

GOLDEN EAGLE ESTATES HOMEOWNERS
ASSOCIATION INC

CHARLES E MAXWELL

v.

DUSAN MILIC, et al.

DONALD A LOOSE

JUDGE WHITTEN

MINUTE ENTRY

On August 21, 2006, the Court issued a ruling regarding summary judgment motions. On August 30, Plaintiff filed a "Motion for Reconsideration". Through a minute entry dated October 23, the Court authorized further briefing regarding the port-a-john claim.

The pivotal question presented is this: Was the port-a-john which had been placed on Defendants' lot a "structure" for purposes of the CC&Rs?

Article II.C.2. of the CC&Rs prohibits the "erection" or "placement" of a "structure of any kind" absent prior written approval of the Committee of Architecture. The American Heritage College Dictionary defines structure alternatively as "something made up of a number of parts that are held or put together in a particular way" or "something constructed." When interpreting the word "structure" as used in CC&Rs, courts should use the normal meaning of the word, unless the CC&Rs disclose an intention to use a different meaning. *Horton v. Mitchell*, 200 Ariz. 523, 527 (App. 2001). While the port-a-john at issue may be a temporary structure, it is still a "structure" within the normal meaning of the word and within the intent of the CC&R's.

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Defendants argue that the applicable municipal code required the homeowners to provide an on-site restroom for construction employees. If true, under certain circumstances, unreasonable refusal to approve of placement of a port-a-john might be problematic. But Defendants suggest more. Defendants suggest that the existence of such a code provision precludes a homeowners association from enforcing its CC&R's relating to port-a-johns. In other words, Defendants suggest that a code provision making mandatory an on-site restroom for construction employees empowers a homeowner to place a port-a-john on his lot, no matter what the condition of the port-a-john. No legal or logical support has been provided for the argument.

Given the circumstances,

IT IS ORDERED granting Defendants' Motion for Reconsideration regarding the port-a-john claim. More specifically, IT IS ORDERED granting summary judgment in favor of Plaintiff regarding that claim.

/ s / HON. MARK F. ACETO

JUDICIAL OFFICER OF THE SUPERIOR COURT