

AMENDED TO ORIGINAL # 950012736

RESTRICTIONS AND PROTECTIVE COVENANTS

HIGHLAND OAKS, PLAT # 1081, 1126, 1147

The Homeowners Association imposes the following restrictions & protective covenants upon each lot within the plat of Highland Oaks Subdivision for the mutual benefit of all persons, firms, & corporations who may now or hereafter have a vested interest, legal or equitable, in a lot within subdivision.

1. Primary Use Restrictions

No lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except on single family dwelling designed for the occupancy of one (1) family (including any domestic servants living on the premises), not to exceed two and one-half (2 1/2) stories in height and containing a private garage for the sole use of the owner and occupants of the lot. Private professional business for in home use is allowed but Subject to Floyd County zoning approval.

2. Approval of Construction and Landscape Plans

No structure may be erected, placed or altered on any lot until plans are submitted showing the (a) location of improvements on the lot; (b) the grade elevation (including rear, front, and side elevations); (c) the type of exterior material, and (d) the location and size of the driveway (which shall be concrete within six months of completion of construction), shall have been approved in writing by the Homeowners Association (HOA).

In addition to the plans referred to in the previous paragraph, a landscape plan shall be submitted to the HOA for its approval in writing, which plan shall show trees, shrubs, and other plantings. Minimum of two trees and six shrubs per lot. All front and side yards to be sodded. References to "structure" in this paragraph shall include any building (including a garage), a fence, or wall.

3. Building Materials, Roof Builder

(a) The exterior building materials of all structures shall extend to minimum of twelve (12) inches above ground level and shall be either brick, stone, brick veneer or stone veneer or a combination of the same. However, HOA recognizes that the appearance of other exterior building materials (such as stucco or wood siding) may be attractive and innovative, and reserves the right to approve in writing the use of other exterior building materials.

(b) The roof pitch of any residential structure shall not be less than six (6) inches vertical for every (12) inches horizontal for one (1) story structures.

(c) The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one (1) year and must have supervised the construction of or built a minimum of six (6) homes. HOA makes this requirement to maintain high quality of construction within the subdivision, and reserves the right of construction within the subdivision, and reserves the right to waive these standards of experience.

4. Setbacks

A setback is a distance from the curb, property line or structure within which building is prohibited. Setbacks are normally provided for the ordinances, building codes or restrictions as shown on the recorded plat. No structures shall be located on any lot nearer to the front lot line or the side street line than the minimum building setback lines shown on the recorded plat.

5. Minimum Floor Areas

(a) The ground floor area of a one (1) story house shall be a minimum of 1400 square feet, exclusive of the garage.

(b) Finished basement areas, garages, and open porches shall not be included in computing total floor plan area of any residential structures, measured at the center line of the foundation, exclusive of any porches and garages.

6. Style of Home

(a) All houses to be constructed within the subdivision shall be approved by the HOA.

(b) No underground, berm, or pre-manufactured homes allowed.

(c) All homes to have a basement unless approved in writing by HOA.

7. Completion Time Requirements for Construction

(a) Once under construction, all residence shall be completed within one (1) year.

(b) After the construction of a residence, the lot owner shall grade and seed or sod the lot within six (6) months, in accordance with the Floyd County Erosion Control outlines.

(c) Upon owner's failure to comply with the provisions of this Paragraphs 7, HOA may take action as necessary to comply therewith, and the owner shall immediately upon demand, reimburse HOA or other performing party for all expense incurred in so doing.

8. Garages, Swimming Pools, Driveways, Sidewalks, Satellites, Gas lights

- (a) All lots shall have at least a two (2) car garage but not more than a three (3) car garage unless otherwise approved in writing by the HOA.
- (b) Garages, as separate structures, are subject to prior plan approval under Section 2 hereof
- (c) No carports shall be constructed on any lot.
- (d) *All swimming pools must be in ground and approved in writing by the HOA.*
- (e) Driveways shorter than forty (40) feet shall be double width, a minimum of sixteen (16) feet wide at its most narrow point. A turnaround or parking area may be substituted for the double wide restriction
- (f) Sidewalks are to be constructed by builder upon completion of house. A four foot concrete sidewalk, 4 in thick, shall be constructed by builder by completion of the home. Said sidewalk to be placed 4 feet back from the curb.
- (g) No aerial antenna or satellite dish exceeding 30" in width permitted in yard, no satellites to be attached to any part of the front elevation of any dwelling.
- (h) A black gas or electric light must be placed in the front yard of each dwelling
- (i) *No outside clotheslines shall be erected or placed on any lot*
- (j) *All fencing plans must be approved by the HOA. Any chain link fence is discouraged but must be vinyl coated.*
- (k) *Any portable or permanent basketball goal visible from the street must be maintained to include complete paint and intact backboards.*

9. Nuisance

No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

10. Use of Other Structures and Vehicles

(a) No structure or a temporary character shall be permitted on any lot except temporary tool sheds, field offices used by a builder, which shall be removed when construction or development is completed.

(b) No out-building, trailer, basement, tent, shack, garage, barn, or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot any time unless housed in a garage or basement or parked to the rear of the improvements located on any lot so that same shall not be visible to the public from any street located in the subdivision, or additions thereto. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street. No trailer, boat, truck, or other vehicle, except automobile, shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in a *day*.

(d) No automobile shall be continuously or habitually parked on any street or public right-of-way.

11. Underground Utility Service and Fuel Tanks

(a) Utility service lines serving each lot shall be underground and shall be located only in those areas reserved on the plat for utility easements. The utility easements shown on the plat shall be maintained and preserved in their present condition and no encroachment therein, and no change in the grade or elevation thereof, shall be made by any person, firm, or corporation owning any legal or equitable interest in any lot in the subdivision without the expressed consent in writing of the utility service companies providing utility service to the subdivision.

(b) All tanks used for any purpose, be it heating of a single-family dwelling or in-ground pools, shall be screened from street view. Pool pumps and filtering systems shall not be visible from roadway nor from the windows or porches of adjacent properties.

(c) No solar unit may be visible from the street of said subdivision.

(d) Wherever a public combined or sanitary sewer becomes available and is within fifty (50) feet of the property line of the residential or business property, served by a private sewage disposal system or privy, situated within the County of Floyd, State of Indiana, a direction connection shall be made to said sewer system makes necessary easement to the property, and septic tanks, outhouses, privy pits and similar sewage disposal and treatment facilities shall be abandoned and filled in a safe and sanitary manner if an unsafe and insanitary condition exists. This Ordinance is being attached to these covenants with the understanding that said Ordinance No. 1967-2. Section 208 applies to all developments.

12. Animals

(a) No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, and other household pets in this geographic area may be kept provided that they are not kept, bred or maintained for any commercial or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pets. All animals must be kept on a leash. Homeowners are responsible for pet waste disposal on all property areas within subdivision.

13. Duty to Maintain Lot

Before the date of construction of a single-family residence is started, it shall be the duty of each lot owner to keep and maintain the grass at a level not to exceed twelve (12) inches in height. From and after the date construction of a single-family residence is started, it shall be the duty of each lot owner to keep and maintain the grass on the lot properly cut, to keep the lot free and clear from all weeds and trash, (other than normal building materials used during construction) and to keep it otherwise neat and attractive in appearance. Should any owner fail to do so, the HOA may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive and the owner shall immediately upon demand reimburse HOA for all costs incurred in taking action.

If a lot is purchased by an adjacent homeowner:

- (a) the lot cannot be built on for five (5) years unless sold back to developer.
- (b) lot must be maintained in a fashion to constitute a finished yard.
- (c) lot must have a sidewalk within 30 days after transfer of deed.

14. Erosion Control

Prior to the construction of a single-family residence on each individual lot, it shall be the responsibility of the homeowner or his assigns to maintain erosion control on each lot to prevent erosion slide into any road or curb improvement. Should any homeowner fail to do so, then HOA may take such actions as it deems appropriate, and immediately upon demand reimburse HOA for all expenses incurred in so doing.

15. Signs

No sign for advertising or any other purpose shall be displayed on any lot or on a building or a structure on any lot, except the one sign advertising the sale or rent thereof, which shall not be greater than nine (9) square feet: provided. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulations.

16. Drainage

Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision.

17. Disposal of Trash

No lot shall be used to be maintained as a dumping ground for rubbish, trash, or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers.

18. Homeowners Association

(a) Membership and Voting Rights

(i) Every owner of a lot which is subject to assessment shall be a member of this Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

(i i) The Association shall have one class of voting membership

When more than one person owns an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional votes nor shall more than one vote be cast with respect for any lot. Each vote cast for a lot shall be presumptively valid. But if such vote is questioned by a member holding any interest in such lots, if any such members are not in agreement, the vote of such lot which is questioned shall not be counted.

(i i i) The owner of any lot within the Development by acceptance of a Deed to any such lot, whether or not it shall be expressed in such Deed, is deemed to covenant and agrees to pay to the Association an annual assessment or charge which is in the sum of \$150 per lot due the every January 1. The annual assessment, together with interest, cost, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property on which such assessment is made. Each assessment together with interest, cost and reasonable attorneys fees shall also be the personal obligation of the person who was the owner of such property at the time the assessments are due. The personal obligations for delinquent assessments shall not pass to his successors in title unless expressly assumed by them in the Deed to such lot.

(iv) The purpose of the assessments levied by the Association shall be exclusively to promote the recreation, health, safety, and welfare of the residents of the development and for the improvements and maintenance of the Commons Area, any taxes or assessments imposed upon the common grounds and Highland Oaks Homeowners Association's insurance premiums.

(v) The Homeowners Association, by vote of the majority of the member of said Association, may increase the annual assessment. However, the HOA board reserves the right of fiduciary responsibility to increase dues or levy a special assessment to maintain a sound operating budget as a last resort.

(vi) Effect of non-payment of assessments: remedies of the Association: any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Fifty Percent (50%) per annum. The Association may bring an action at law against the owner primarily to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area of abandonment of such lot.

(vii) Subordination of the lien and mortgages. The lien of any first mortgage in existence at the time that the assessment becomes a lien. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to any mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for the assessment thereafter becoming due or from the lien thereof

(viii) Exempt property. All properties dedicated to and accepted by a local public authority and the Common Area shall be exempt from the assessment created herein, except no land improvements devoted to dwelling use shall be exempt from the said assessments.

(ix) Notice and quorum for any action. Written notice of any meetings called for the purpose of taking any action shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. Methods to obtain quorum include physical attendance at the meeting or the submission of a valid absentee ballot, which would be included with the written notice. At the first meeting called, the presence of the members or of absentee ballots entitled to cast sixty (60%) percent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement. A required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting. A majority vote of quorum shall be required to take any action.

(x) Directors and incorporation: The Homeowners Association is an unincorporated entity and has not been incorporated. The Homeowners Association pursuant to the regulations as set forth herein may take by proper vote the action to incorporate the Homeowners Association or they may decide to stay as an unincorporated entity. They may also take action of appointing a Board of Directors to act on behalf of the Association, and set forth by-laws to guide the Association and/or its Directors.

(xi) Owners easements and rights of enjoyment: Every owner shall have the right and easement of enjoyment in and to the Common Area which right and easement shall be appurtenant to and shall pass with the title to every lot subject to the following provision:

Homeowners shall abide by Common Area Rules as posted. They include:

(a) Play at your own risk – children under 6 years of age must be accompanied by an adult

(b) Absolutely no motorized vehicles on park grounds or track

(c) Hours of enjoyment are 5 AM to 11PM

(d) All organized camp-outs must be approved by the HOA board

(e) Violators will be asked to leave the premises

The right of the Association to dedicate or transfer shall be effective unless an instrument of non-agreement to such dedication or transfer is signed by two-thirds (2/3) of the members has been recorded.

(xii) There is hereby reserved, a right-of-way across the 5.698 acre Common Area by the Homeowners Association for purposes of vehicular and/or pedestrian access to and/or through the Common Area. A dedication of right-of-way by the Homeowners Association shall be made at such time as such is demanded by the City or County, Such right-of-way shall be a minimum of 50' wide and connected to McGregor Place. The final design and location shall be subject to City or County approval.

19. Restrictions Run with Land

Unless altered or amended under the provisions of this Paragraph, (except for # 17 (xiii) which may not be terminated by anyone other than the county or city of New Albany); these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of twenty-five (25) years from the date this document is recorded, after which time they shall be renewed by Homeowners Association by majority vote to alter and/or continued.

Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violation of any of these restrictions, or to proceed for restraint of violation shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

20. Enforcement

Enforcement of these restrictions, excepting Paragraph 22, shall be by proceeding at law or in equity, brought by any owner of real property in Highland Oaks Subdivision within any development phase against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration, or to recover damages.

In the event, a homeowner is found to be in violation of aforementioned covenants, a written notice will be mailed to the homeowner requesting action to be taken the address the violation within 5 days. If the violation remains unaddressed, a second written notice will be sent requesting reparative action within 10 days as well as the levy of a \$25 fine due immediately. After 15 days and 2 written notices, a certified letter will be forwarded notifying the homeowner of a \$500 lien against his/her property.

Damages, expenses of litigation, including reasonable attorney's fees may also be recuperated. Once the violation is corrected, the lien will be retracted. The lien process does not absolve the homeowner from appropriate measures to correct the violation.

21. House Numbers and Mail Boxes

All homes shall display a house number in an appropriately placed position: and all homes must have a brick mailbox. If lettered, they are to be lettered in a professional manner or have attached thereto an appropriate name plate. Construction of mailboxes to must meet HOA board approval.

22. Invalidation

Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

Prepared by: FRANK LAPILUSA

The HOHA Board of Directors

Amended 09-2008

Signed by the Vice President

I AFFIRM, UNDER THE PENALTIES FOR PERJURY,
THAT I HAVE TAKEN REASONABLE CARE TO REDACT
EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT,
UNLESS REQUIRED BY LAW.

NAME Frank Lapilusa

Frank Lapilusa
Frank Lapilusa

Date: 04/08/2009

County of Floyd
State of Indiana

Before me, Shawn Berry, notary public, personally appeared Frank Lapilusa,
personally known to me, on April 8, 2009.

Shawn M Berry
my Commission expires March 29, 2015

