

ISSUE #1

accordance with the terms hereof and with all applicable codes and ordinances of the local governing agency issuing permits for construction or land alteration in effect at the time of such proposed construction or alteration. The Committee shall have the right, in its sole discretion based upon these Covenants and Restrictions, to approve or disapprove any Lot improvement, including but not limited to building, fence, wall, screened enclosure, grading, floor elevation, drainage plan, mailbox, solar energy device, posts, antennas, fountains, decorative building features, landscape plan, landscape device or object, yard decorations, or other improvement, whether as new construction or additions, modifications or alterations to Lots.

(e) In the event any required approvals are not obtained prior to commencement of improvements, or in the event improvements are made which vary from those approved, it shall be deemed that no approvals were given and that a violation and/or breach of this Declaration has occurred. A fine of \$50.00 per occurrence shall be assessed against the Lot and shall accrue with interest as provided in Article VI until the fine is paid and approval is obtained or improvements corrected to comply with an approval given. If after 60 (sixty) days from the date the first fine is assessed and the non-compliance has not been corrected, the Committee may re-asses the \$50.00 fine as a second occurrence of the same violation and may continue to do so every 120 days until the violation has been corrected.

Section 3. Clearing.

No clearing of trees within the island preserve of Tract “B”, the private stormwater/preservation tract “F”, or any common area is permitted without prior approval of the Committee and the City of Melbourne, with the exception of dead or diseased trees which are a hazard to residents. It is the intent of the subdivision to preserve hardwood trees on individual homesites whenever possible. For any Lot fronting a lake, the Owner of same shall also be responsible for sodding and maintaining areas between his property line and the water’s edge, if any.

If any unauthorized clearing takes place on any Lot or Common Areas, restoration of said Lot or Common Areas to their original condition must be made. The restoration plans as to location of plant material, size and type must be submitted to the Committee for approval. If the Owner of any Lot (or his contractors, agent or invitees) that has been cleared without written authorization of the Committee fails to restore said Lot or Common Area damaged by the Owner (or his contractors, agent or invitees) within (30) days of receipt of written notice from the Committee, then the Committee may make such restoration, the cost of which shall be a lien against the Lot and a debt of Owner which may be enforced in the same manner as enforcement of Assessments as set forth herein.

Section 4. Grading, Drainage, and Floor Elevations.

i.) Each Lot shall be filled and graded to elevations as defined in this document and as designed by Lee Engineering, Inc. and as approved by the City of Melbourne. Drainage of each Lot shall be accomplished by grading Lots so runoff from one Lot does not drain onto another Lot. Grading of each lot shall comply with the grading plan approved by the City of Melbourne.

ii.) Sidewalks for each Lot shall be constructed at the time of home construction and shall be graded so as not to impound water in the Lot or on the sidewalk as it shall be slanted toward the street to assure proper drainage. The property line side of the sidewalk shall be two inches higher than the back of the curb elevation and blend in smoothly with the finished sodded yard of each lot.

iii.) Finish floor elevations must comply with the City of Melbourne requirement and shall be a minimum of 18 inches and a maximum of 24 inches above the centerline of the road as measured from the center of the lot or greater if required by the City of Melbourne or other government agency.

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 2. (p. 7): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

drainage plan, mailbox, solar energy device, posts, antennas, fountains, decorative building features, landscape plan, landscape device or object, yard decorations, or other improvement, whether as new construction or additions, modifications or alterations to Lots.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).