

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 7.20 (p. 23): 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:

Antennas. Except with the prior written approval and authorization of the Board of Directors, no satellite dishes over 24" in diameter, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of a Lot or the improvements or structures located thereon.

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).

ISSUE #1

7.15. Temporary Structures. No structure of temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

7.16. Auxiliary Structures. No detached dog kennels, runs or enclosures shall be permitted unless design and location of same shall be approved by the Board of Directors No detached storage buildings shall be permitted except those approved by the Board of Directors as conforming in design and appearance to the dwelling.

7.17. Driveways. Driveways must be constructed of concrete, bituminous or other hard surface material. Material and installation shall be subject to approval of the Board of Directors. Driveways must be installed within one year of the date a Certificate of Occupancy issued for any dwelling constructed upon a Lot.

7.18. Exterior Lighting. All exterior lighting fixtures and standards shall be shown on submitted plans and shall comply with the overall lighting plan of the Declarant. All forms of exterior lighting shall be subject to approval of the Board of Directors.

7.19. Exterior Ornaments. Exterior ornaments, including but not limited to, precast concrete, plastic or wood figurines, wishing wells and windmills shall be prohibited unless approved by the Board of Directors prior to installation or construction.

7.20. Antennas. Except with the prior written approval and authorization of the Board of Directors, no satellite dishes over 24" in diameter, no exterior television or radio antenna of any sort shall be placed, allowed or maintained upon any portion of a Lot or the improvements or structures located thereon.

7.21. Completion of Construction of Improvements. All construction work shall, upon approval of plans by the Board of Directors, be carried on with dispatch; all improvements shall be constructed in conformity with the then existing building codes of The City of Lake Elmo, Minnesota; and all building plans shall be prepared by or under the supervision of a registered architect, a builder or a qualified design professional.

7.22. Minimum landscape plan. Each Owner is required to submit a landscape plan for approval. Owners shall be responsible for the maintenance or enhancement of natural plantings. In addition, all lots must be sodded, seeded or mulched within 60 days after substantial completion of the Dwelling except those Dwellings completed from November to March of each year shall have until the following June to complete the minimum landscape plan. Should an Owner fail to respect these duties, the Association reserves the right to seed, sod or plant an area and levy against such Lot for the costs incurred by the Association. All Lots shall be subject to easements over and across such premises to permit the Association to carry out the work described herein.

7.23. Mailboxes. Each Owner shall maintain a mailbox of the design and type initially installed by the Declarant or as on file with the Association. The mailboxes shall be on the public right-of-way, and may be located in groups of two (2) or more. The Association reserves the right to levy an Individual Lot Maintenance Assessment against a Lot, pursuant to the provisions of Article 6 hereof, should an Owner fail to maintain the mailbox.

7.24. Maintenance and Repair. In order to preserve the uniform and high-standard appearance of the Property, each Owner undertakes responsibility for maintenance and repair of the exterior of his Dwelling private yard area and private driveway on the Lot. Such responsibility for maintaining the Lot and improvements thereon shall include, but not be limited to the following: the maintenance and repair of exterior surfaces of all buildings on the Lot, including without limitation, the painting of the same as often as necessary, the replacement of trim and caulking, the maintenance or repair of roofs, gutters, downspouts and overhangs, the maintenance and repair of