counted. No residence or other building, and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purposes, whether attached to or detached from the main residence, shall be commenced, placed, erected, or allowed to remain on a building lot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building lot and approximate square footage, construction schedule, on-site sewage and water facilities, and such other information as the Declarant shall require, including, if so required, plans for the grading and landscaping of the building lot showing any changes proposed to be made in the elevation of surface contours of the land, have been submitted to and approved in writing by the Declarant and until a copy of all such plans and specifications, as finally approved by the Declarant have been lodged permanently with the Declarant. The Declarant shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons connected with future development plans of the Declarant of said land or contiguous lands. In passing upon such building plans and specifications and lot-grading and landscaping plans, the Declarant may take into consideration the suitability and desirability of the proposed construction and of the materials of which the same are proposed to be built to the building lot upon which it proposes to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from the neighboring properties. In the event the Declarant fails to approve or disapprove such building plans and specifications within thirty (30) days after the same have been submitted to it as required above, the approval of the Declarant shall be presumed and the provisions of this paragraph shall be deemed to have been complied with.

Section 4. All structures shall comply with all setback requirements and maximum build upon area per Lot within the subdivision as are set forth on the Plats. When consistent with local ordinance, the building line set-back as provided for in this paragraph may be varied by as much as ten (10) percent with the express consent of Declarant, which said consent document need not be on record in the Office of the Register of Deeds, Cumberland County, North Carolina.

Section 5. All fences must be approved in writing by the Declarant or Architectural Committee, which will be formed after the period of Declarant control. No wire (welded wire, "chicken wire", etc.) fences of any description shall be permitted. No fences made of concrete block shall be permitted anywhere on the lot. No chain link fences shall be permitted on any lot. Metal fences made from wrought iron or powder coated aluminum are permitted, not to exceed four (4) feet in height. Fences on the rear of the house situated on interior Lots must be attached to the rear corner of the house and must extend toward the side lines. Rear fences may be solid wood or vinyl, not to exceed six (6) feet in height. On corner lots, the fence must extend from the rear corner of the house closest to the side street and extend to the rear lot line.

ISSUE #1

Section 6. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee. Provided, however, an owner may install a

MARKUP #1 ->

MARKUP #1 · POTENTIAL FED LAW CONFLICT — BOARD & COUNSEL REVIEW

Sec. 6 (p. 18): FCC OTARD preemption conflict (47 C.F.R. § 1.4000): Outright antenna/satellite-dish prohibition, sub-1-meter diameter cap, mandatory cable-hookup removal, permit fee, or unqualified front-elevation/street-visibility ban is unenforceable as applied to covered <= 1-meter reception devices on exclusive-use property.

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

Statutory Comparison: Under the FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, including FCC 21-10), preemption applies to covered direct-broadcast satellite (DBS/DSS) dishes one meter (39.37 inches) or less in diameter, television broadcast antennas, and fixed wireless broadband antennas installed within areas under the owner's or occupant's exclusive use or control. Outright bans, sub-1-meter diameter caps, monetary permit fees, mandatory removal upon cable availability, and unqualified front-elevation or street-visibility prohibitions that preclude an acceptable quality signal are preempted unless justified by a documented safety objective (§ 1.4000(b)(1)) or a National Register historic site (§ 1.4000(b)(2)).

CURRENT WORDING IN DOCUMENT:

No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shal! be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee. Provided, however, an owner may install a il2082 Mokos satellite dish not exceeding twenty-two (22) inches without further approval provided said satellite dish is installed in the rear of the house or to the side of the house within five (5) feet of the rear corner of the house.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that for covered reception antennas and satellite dishes one meter (39.37 inches) or less in diameter installed within areas under the owner's or occupant's exclusive use or control, this provision shall be administered in accordance with 47 C.F.R. § 1.4000 without outright prohibition, permit fee, or placement/size limits that preclude an acceptable quality signal, while preserving association authority over shared common elements, dishes exceeding one meter, documented safety objectives (§ 1.4000(b)(1)), and historic preservation sites (§ 1.4000(b)(2)).