MARKUP #1 · POTENTIAL FED LAW CONFLICT

BOARD & COUNSEL REVIEW

Sec. LAT LAV (p. 6): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas on exclusive-use property 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 (39.37 inches) 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. Under 47 C.F.R. § 1.4000(a)-(b), associations may only restrict installations on shared/general common elements, dishes exceeding 1 meter in diameter, or where necessary for a specific documented safety objective (§ 1.4000(b)(1)) or a National Register of Historic Places site (§ 1.4000(b)(2)).

CURRENT WORDING IN DOCUMENT:

No satellite television reception dish of greater diameter shall be erected, placed or allowed to No television antennae or radio antennae in be erected on any structure on Any satellite television reception dish no greater than inch diameter or any television antennae or radio antennae not in excess of 10 feet in height shall be, to the extent possible, hidden from view from the street in front of the dwelling.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000), subject only to restrictions on shared common elements, dishes exceeding one meter in diameter, documented safety objectives (§ 1.4000(b)(1)), or historic preservation requirements (§ 1.4000(b)(2)).

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22. The covenants and restrictions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of one (1) year. This Declaration may be amended in full or part by an instrument signed by not less that eighty percent (80%) of the Lot Owners provided, that no amendment shall alter any obligation to pay assessments to benefit the Common Use Areas, as herein provided, affect any lien for the payment of same or alter any rights reserved by Declarant. To be effective any amendment must be recorded in the Office of the Register of Deeds of Pitt County, North Carolina and a marginal entry of same must be signified on the face of this document.

23. Declarant reserves the right to incorporate such part or all of the remainder of the property described those deeds of record in Book 124 at page 415 and in Book 296 at page 674 of the Pitt County Registry into the "property" to be subjected to the terms of this instrument as if originally described herein by recording an instrument or instruments to that effect in the Pitt County Registry at any time before January 1, 2010.

24. No satellite television reception dish of greater than 24 inch diameter shall be erected, placed or allowed to remain on any lot. No television antennae or radio antennae in excess of 10 feet in height may be erected on any structure on any lot. Any satellite television reception dish no greater than 24 inch diameter or any television antennae or radio antennae not in excess of 10 feet in height shall be, to the extent possible, hidden from view from the street in front of the dwelling.

25. No building, fence, wall, stormdoor, screendoor, mailbox, or other structure shall be commenced, erected or maintained upon such area, nor shall any exterior addition or change (including a change of materials, but not including a change of color) to any structure be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the architectural committee of three or more persons appointed by the Declarant during the "Declarant Control Period" as hereafter defined, and after the "Declarant Control Period", by the Board of Directors.

26. During the "Declarant Control Period", as hereafter defined, the Declarant shall have the following rights: to maintain sales offices, management offices, models and signs advertising the project; to use easements through the common elements; to elect, appoint or remove members of the Architectural Committee during the declarant control period; to

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ISSUE #1

Book 706, Page 457, File Number

MARKED-UP PAGE 6: 1 COMPLIANCE ISSUE (#1) - SEE REDLINE COMMENTS AT RIGHT ->