

Apache Shores Property Owners Association

Legal Opinion and Application of Statute House Bill 35 Regarding “adjacent lots” regulations

House Bill 35 Summary:

House Bill 35 amends the Property Code to prohibit a property owners’ association from adopting or enforcing a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes and “adjacent lot” owned by the property owner. The bill requires the owner to obtain the approval of the property owners’ association or, if applicable, an architectural committee established by the association or the association’s dedicatory instrument before owner begins the construction, placement, or erecting of a building, structure, or other improvements for “residential purposes” on an adjacent lot.

HB 35 requires an owner who elects to use an “adjacent lot” for “residential purposes”, on the sale or transfer of the lot containing the residence, to include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions or to restore the adjacent lot to the original condition before the addition of the authorized improvements to the extent that the lot would be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner. The bill authorize the owner to sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with the existing requirements in the dedicatory instrument unless the lot has been restored as described.

This Bill has eliminated the requirement that property owners join lots together through an “affidavit” in order to build improvements onto adjacent lots with the same legal owners.

The statute only governs the Association’s regulation of secondary residential use (residential purposes), like those named (garage, sidewalk, driveway, parking area, swing/playscape, septic system, swimming pool, water well, etc), but does not affect the ability of the Association to regulate the construction and occupancy of residential living space (like a garage apartment) or the ability to require a physical connection between the residential spaces for permanent structures.

Apache Shores Property Owners Association required actions and recording of adjacent lot improvements:

ASPOA cannot prohibit “residential use” on an adjacent lot owned by the same legal owner.

For non-permanent structures (sidewalks, driveways, fences, parking areas, swings/playscapes, etc) a “notice of non-conforming use” be noted in property records for a residential lot and all affected adjacent lots by property management so this status is known when preparing transfer fees &/or Resale Certs to check for compliance.

When a permanent structure is being put on an adjacent lot (garage, storage building, swimming pool, septic system, etc.)_the association requires an easement release processed and approved by Travis County.

Information/Notes:

- **HB 35 prevents enforcement of existing ASPOA rule against construction of improvements for “residential purposes” on “adjacent lot”.**
- **The existing “affidavit” requirement is no longer enforced. The new statute “sell with or restore” requirements makes the affidavit procedure unnecessary.**
- **ASPOA can regulate construction of a 2nd residence on a single lot and the newly-allowed “residential purposes” that cannot be prohibited on the adjacent lot. The new statute only governs regulation of “secondary residential uses” (garages, sidewalk, driveway, parking area, swing/playscape, septic system. Swimming pool, water well, etc.), but does not effect the ability to regulate the construction and occupancy of residential living space (like a garage apartment) or to require physical connection between the two residential spaces.**
- **HB 35 does not prohibit or restrict the association from requiring easement releases for “adjacent lot” improvements. Whether or not an additional structure is on a permanent foundation, and whether it is intended for use for a limited time, do not affect whether the additional structure is allowed.**
- **Adjacent lot must be owned by the same owner. That means the same person or legal entity, not related parties, family members or individuals with corresponding interest.**
- **Each adjacent lot may have one “other” (non-residence) building.**
- **A “temporary” building is defined as such by the duration of time that it exists at its location, not by the type of structure. The dictionary definition of the word “temporary” is “lasting for a limited time”. No structure existing on a lot for an indefinite or permanent time period would fall under that definition.**

- **There is no legal prohibition against publishing (requiring recording with Travis County) “notice of non-conforming uses of lots located within various sections under the “adjacent lot” provisions of Section 209.015, Texas Property Code (Texas Legislature HB 35) and noting on the construction permit or certification of completion issued and records maintained by the association property management company. ASPOA needs to take appropriate steps to guarantee the accuracy of such published notices.**

Reference:

- 1) **Kim D. Brown, Attorney, PLLC to Apache Shores, Dated January 14, 2014**
- 2) **Kim D. Brown, Attorney, PLLC to Apache Shores, Dated January 30, 2014**
- 3) **Texas Legislative Council, purpose of HB 35, Legislative Session: 83(R)
House Bill 35, Effective: 6-14-13, House Author: Menendez, Senate Sponsor:
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