

Thank you to all the Homeowners who read the deed restrictions and those who came out to share opinions, ask questions, engage in spirited dialogue, and express genuine interest in protecting and preserving this slice of heaven here in Tonkawa Springs. For those of you who were unable to attend or are curious about topics that arose in those meetings, we've created the following question and answer document to summarize topics raised during and across all four sessions.

UPDATE: In response to the feedback in the Community sessions, hosted by the Board May 15-17, 2022, the TSHOA Board has decided to delay the vote on the proposed deed restrictions until later in the year. We look forward to sharing next steps and hearing more from the Community in our upcoming survey and meetings.

Deed Restrictions Question and Answers

General

Question (Q): Are the deed restrictions required to be changed?

Answer (A): *No. However, Senate Bill 1588 introduced new rules/requirements regarding "architectural review authority" appeals under section 209.00505. Including these rules/requirements within the deed restrictions provides a clear and single reference source for this material (reference proposed sections 3 and 33).*

In addition, the neighborhood has been operating under four separate sets of deed restrictions and these documents are 40+ years old. The world and technology has evolved since the deed restrictions were created, rendering some restrictions outdated and deserving of a change.

As an example, many people can operate a home-based business (e.g. consultants) with nothing more than a laptop computer and internet connectivity – all without any visible signs of business activity. Under the current deed restrictions, this is expressly disallowed (per item 1 of every subdivision's deed restrictions: "...and no part of any tract shall ever be used for a business or commercial purpose or for carrying on a trade or profession."). Working from home, whether by choice or due to a pandemic, violates this deed restriction.

The law changes resulting from Senate Bill 1588, coupled with examples like the above, and having four highly similar (but different) sets of deed restrictions resulted in the objective to generate a single, common set of deed restrictions that covers the entire neighborhood.

Q: How were the proposed deed restrictions distributed to the community for review and vote?

A: *An Explainer document was emailed to Homeowners with an email address on file on May 5, 2022 summarizing the deed restrictions. The Explainer document included the proposed deed restriction language (with the exception of the preamble). The proposed set of deed restrictions were hand-delivered to Homeowners May 10-11, 2022.*

Q: What was the process for drafting the proposed Deed Restrictions?

A: *A Deed Restrictions committee was established February 9, 2021 during the Board meeting in response to the community raising concerns about the 40+ year old documents. Dan Isenhour volunteered to chair the committee. An update was shared with the Board at the subsequent Board meetings, May 11, 2021 and September 7, 2021. On October 29, 2021 the proposed deed restrictions were posted on the tonkawasprings.org website for community feedback. Several members of the community shared feedback. Much of which were incorporated. Some of which sparked some spirited conversations.*

Q: I was told there was an amendment to the deed restrictions being circulated around the neighborhood. Could I get a copy?

A: *There isn't a deed restrictions amendment being circulated and consequently a copy is not available. We are aware of a document being circulated by a handful of unidentified homeowners containing inaccurate information about the proposed deed restrictions.. This Q&A refutes the inaccurate information as well as responding to questions arising from the four meetings the Board held.*

Q: Are fines included in the proposed Deed Restrictions?

A: *No, but example fines were included with the "explainer" document. In 2013 the TSHOA Board proposed and the community voted and passed new bylaws for the community that included the adoption of a fine policy. The community voted and passed a new set of bylaws in 2019 updating the fine policy.*

Q: Can we move the vote for the proposed deed restrictions out to allow for additional time for the community to review and more fully understand what they are voting on?

A: *Yes. In fact, as a direct result of the Q&A meetings, the TSHOA Board has decided to table the vote for now. The Board is considering three items:*

- 1. Seek additional feedback from the community through certain polling mechanisms,*
- 2. Seek outside counsel for draft deed restriction review and make any recommended changes, and*
- 3. Make appropriate changes to the draft deed restrictions based on the feedback from homeowners during the Q&A sessions*

This will of course allow more time for consideration of the proposed deed restrictions by homeowners as well.

Q: What is our new management company's (Goodwin) role in enforcing violations?

A: *TSHOA Board has contracted with Goodwin to drive through the neighborhood monthly to identify deed restriction violations and continue to collect neighbor complaints of deed restriction violations. Before any notifications are mailed to Homeowners, the TSHOA ACC committee (a volunteer committee no longer affiliated with the Board as a result of SB1588) reviews the proposed violations. After review, investigation, in many cases a discussion with neighbors and determination that violation exists, ACC makes a recommendation to the Board. The Board then approves Goodwin to mail a letter to the Homeowner in violation (with a reasonable timeline to cure the violation), thereby beginning the remediation process.*

Q: Do these new deed restrictions grant additional powers to the Board? Will these new deed restrictions protect the homeowners from an unreasonable Board in the future?

A: *No, the new deed restrictions do not grant additional powers to the Board. The HOA bylaws already require property owners to provide written notice to the ACC to review proposed construction or placement activities for deed restriction compliance.*

In accordance with Senate Bill 1588, the new deed restrictions do give individual homeowners a mechanism to arbitrate ACC decisions via the Board without having to go through legal channels. Senate Bill 1588 requires membership separation of the ACC from the Board – they are two wholly separate groups. If a homeowner appeals an ACC decision, Senate Bill 1588 allows the homeowner to appeal the unfavorable ACC decision and the Board has the ability to concur with or overrule the ACC decision. This separation of powers resulting from the Senate Bill helps protect homeowners from an unreasonable ACC or an unreasonable Board.

Remember, this Board is a body of elected individuals. Homeowners have the power to determine who sits on our Board each year. You have a voice. If the Board is truly unreasonable, officers and directors can be removed in accordance with our HOA Bylaws. The HOA as a whole is always looking for neighborhood participation in the Board and the various committees (including ACC). If neighbors feel that some or all Board/committee members are unreasonable, we strongly recommend volunteering for committee positions or running for one of the officer/director positions to adjust the composition.

Q: Are these deed restrictions specific enough to not create more ambiguity?

A: *Probably not as no legal document is perfect, even the Constitution of the United States. The new deed restrictions have been relaxed (vs the original) in many areas with respect to what homeowners can do with their property and supports property usage flexibility in others. The new deed restrictions are now unambiguous that exterior improvements be cleared through the ACC (and is consistent with the HOA Bylaws) so that the homeowner is protected from an inadvertent misunderstanding of the deed restrictions (and before homeowner money gets spent). The new deed restrictions are also unambiguous as to how a homeowner can appeal the ACC review decision (reference section 33) without having to immediately go through legal channels - this is consistent with the HOA Bylaws and Senate Bill 1588.*

Q: What if one or more subdivisions votes not to approve the proposed deed restrictions?

A: *If one or more subdivisions vote not to approve, the TSHOA will continue to be responsible for managing multiple deed restrictions (i.e. the proposed deed restrictions that are approved by the subdivisions and the current deed restrictions for the subdivisions for those voting not to approve). Of the four subdivisions within our neighborhood, Tonkawa Lake requires 100% approval for a deed restrictions change; all others require 51%.*

Q: It was stated that these proposed deed restrictions offer greater freedom. Is that a true statement if we must request permission from the ACC to do many things?

A: *Wider discretion is indeed allowed in choice of materials, building standards and other factors not imagined 40 years ago. While these will result in a greater freedom of interpretation in many areas, certain actions may also result in creating negative effects on*

neighbors. The ACC oversight is included to identify potential issues early, prevent mistakes from being implemented (and potentially costly to fix).

Q: Can we state in the proposed deed restrictions that the existing structures are grandfathered?

A: *We could. However, prospective adherence (i.e. applying to future acts) and enforcement is implied, as a matter of basic due process. This means that exterior improvements built prior to the new deed restrictions do not come under their jurisdiction, and are therefore not affected.*

Q: Why is 51% of the community required to vote “yes” for approval and not a majority vote?

A: *This is written into the current deed restrictions for most subdivisions. Tonkawa Lake is the exception, requiring 100% approval.*

Q: If we change deed restrictions, does that affect the title policy of each home? Does that mean title policies must be changed?

A: *No. Per the Texas Department of Insurance, title insurance insures against financial loss caused by defects in title to real estate and protects you against losses from problems that arose before you bought the property.*

Q: If these deed restrictions are approved, will they be recorded with the county and each individual property?

A: *Yes, the new deed restrictions, when approved, will be filed with the county.*

1. Property Use

Q: Do the proposed deed restrictions allow families to use their properties for short-term swaps for cost effective family travel?

A: *A “swap” is not clearly stated in this section and to our knowledge would not qualify as a rental (short or long term) since there is no exchange of money.*

Q: Why are we required to share tenant information with the TSHOA?

A: *In accordance with Senate Bill 1588, the TSHOA can request tenant contact information and lease term. We do not have to include this language within the new deed restriction as the TSHOA will retain the right to request the information (per SB 1588). Including this language within the new deed restrictions simply ensures awareness.*

Q: What about seller leasebacks? Are these permitted?

A: *Yes, seller leasebacks are permitted. We will add clarifying verbiage about this with respect to the prohibition on short-term leasing.*

Q: What about deliveries to the residence (i.e. FedEx, Amazon or food delivery)? Are these permitted?

A: *Yes, deliveries to a residence are permitted.*

2. Re-Subdivision

Q: Why do we now want to allow subdividing of lots and create more density?

A: *Subdividing is not new and the proposed deed restrictions reduce density. There is currently an inconsistency amongst the four sets of deed restrictions that the new deed restrictions harmonize. Two of the subdivisions currently allow for re-subdivision down to about a half acre lot. One subdivision currently allows for re-subdivision of $\frac{3}{4}$ of an acre. And the fourth does not allow any re-subdivision. The new deed restrictions limit re-subdivision to a final lot size of a one acre minimum.*

3. Structures and Improvements

Q: Is it possible to add the term “new” to reduce any confusion around putting up a fence for example? Or remove the term “fences” in the last sentence?

A: *We will include the word “new” before “fences” in item vii.*

6. Separate Structures

Q: Can sheds face the front or do they have to face the side also?

A: *The proposed deed restrictions, consistent with the current deed restrictions, do not specify how the shed must face.*

Q: If I put something in my yard that no one else can see (i.e. shed, treehouse, chicken coop, etc.), does it need to be approved by ACC?

A: *Yes.*

9. Setback Requirements

Q: Why are we reducing the setback requirements from 15 feet to 10 feet?

A: *In the past, many homeowners had requested variances via the ACC for a 10 foot setback on their property. This codifies what has already happened for many homeowners and provides flexibility for other homeowners.*

13. Fences

Q: Is there any intent to pursue violation notices against lots with a fence that is taller than 6’ or made of masonry?

A: *No, existing structures are grandfathered and therefore exempt from the proposed deed restrictions.*

19. Parking

Q: My kids park on the grass when they visit. What happens if that continues?

A: *The last sentence in the provision allows for temporary exceptions for holiday, family and similar gatherings and occasions. The proposed deed restrictions are consistent with the original deed restrictions in all other aspects.*

20. Boats, Trailers and Recreational Vehicles

Q: Why are we now allowing RVs in the community? A 6' fence will not remove the RV from visibility at the street or from neighbors on either side.

A: *We have allowed boats, trailers and Recreational Vehicles for a number of years already, provided that they are behind certain points on your lot, and out of full view of the street. The only real change is that we better define what "out of full view" means by dictating that that actually should be a gate or fence, at least 6' tall, made of impervious material.*

Q: How are campers going to be enforced going forward?

A: *Same as boats and RVs described above.*

Q: Is a camper considered a structure?

A: *No, a camper or recreational vehicle is not considered a structure. Recreational vehicles will need to comply with the proposed deed restrictions if passed.*

22. Pets and Animals

Q: We are Round Rock ETJ, why the reference to the City of Round Rock?

A: *We will remove the reference to the city of Round Rock. The original verbiage was intended to be all encompassing in the case that Tonkawa Springs is ever annexed into the City, as local government pet control provisions trump TSHOA.*

Q: Can we remove the reference to "geese" as they are a wild animal and not a "kept large animal on a lot"?

A: *Yes, we will remove the reference to geese.*

25. Channel Easement

Q: The last sentence references "no changes or alterations on dams..." Does that include repair to a formerly existing dam that was washed out by mother nature? Would that require the Board's written consent?

A: *No, the Board would not need to authorize a repair to an existing structure. A change or alteration is intended to be new and not something already in place.*

Q: Could we include "exclusive of repairs" to this paragraph to be more explicit?

A: *Yes, we could include something like "or as caused by an act of nature."*

26. Community and Shared features, Ponds, Facilities and Areas

Q: The term "Shared" as it relates to this section seems to imply that everyone in the neighborhood would have access to the private bodies of water in Tonkawa Springs. Is that the intent?

A: *Absolutely not. The term "shared" is being used as a descriptor acknowledging the shared nature of the private bodies of water with the specific homeowners that "share" that body of water because their homes are built around it.*

Q: Would you consider removing the 2nd paragraph in its entirety?

A: *No. We specifically intend to protect the rights of pond owners to be able to enjoy the ownership of their portion of the pond and to protect them from any hazardous or harmful action on the part of another pond owner that may have a negative effect on the pond. The second paragraph specifically states that restriction.*

Q: What's the "intent" behind initiatives proposed by previous Boards to control the algae?

A: *We cannot speak to the intent of prior Boards. This 2022 Board is committed to maintaining the existing water features that we enjoy in Tonkawa Springs. We have formed a water committee, chaired by Tony Garrant. The committee is investigating reasonable ways to protect our beautiful water features and will be making a recommendation to the Board for consideration. This recommendation will be discussed in our open Board meetings. Please reach out to Tony or our Board for more information on how you can get involved.*

Q: The reference to "managed by HOA" seems more onerous than the prior deed restrictions. Can you help me understand why this is necessary?

A: *We believe as a TSHOA Board we have a responsibility to serve as good stewards of the community. This includes preserving the water features that enhance our community and our property values. We acknowledge the word "managed" may imply a level of control that is not intended. We will replace "managed" with "protected" or another similar word.*

Q: Could the Board merely serve to resolve conflict between neighbors or act as the arbiter in situations where two Homeowners have a dispute over changes or alterations to the water features?

A: *Yes, but through the mechanism of a complaint being filed by/with the ACC and the due process it implies.*

Q: There's a reference to "catching and removing fish... is prohibited." This seems to be in conflict with the State of Texas that says you can fish on your own property. Can you help me understand the intent here?

A: *That section specifically references "community water bodies", which is the body of water next to the community park. A prohibition on the "catching and removing of fish" does not apply in the case of private water-front property.*

Q: Under these proposed deed restrictions, can homeowners pump water from the bodies of water for personal use in watering their lawn or other uses?

A: *In order to do so, the Homeowner must obtain a permit to appropriate water from the governing agency (the TCEQ), or qualify for a permitting exemption.*

Q: Why should the entire neighborhood be responsible for paying for the ponds? Ponds should be pond owners' responsibility.

A: *The HOA owns a portion of the pond referred to in some documents as Beaver Creek or Beaver Lake that is on the west side of the bridge along Tonkawa Trail. This ownership is not new. The entire neighborhood is responsible for the HOA's portion of that pond between the dams*

27. Public Nuisance

Q: With the current market conditions and impact on the supply chain, is “not to exceed ten (10) days” necessary?

A: *Similar to existing processes today for requests to the ACC, we just ask that we are notified of any delays outside the control of the Homeowner that impacts their ability to remedy a nuisance. The notification will allow the ACC to inform other neighbors who may raise concerns.*

28. Private Nuisance

Q: Why the new language regarding “private nuisance”? This was not included in the previous version of deed restrictions.

A: *The original deed restrictions stated “no noxious or offensive activity” under the heading “Noxious Activity” without any additional clarification. The original deed restrictions are extremely subjective and ambiguous here. Use of “public nuisance” (for #27) and “private nuisance” (and the examples) were intended to clarify some of the ambiguity. Private nuisances (in contrast to public nuisances) interfere with the right of a specific person (i.e. a neighbor) as opposed to the general public.*

Q: With the current market conditions and impact on the supply chain, is “not to exceed ten (10) days” necessary?

A: *Similar to existing processes today for requests to the ACC, we just ask that we are notified of any delays outside the control of the Homeowner that impacts their ability to remedy a nuisance. The notification will allow the ACC to inform other neighbors who may raise concerns.*

Q: In the first sentence, could we replace the term “unreasonably” with the term “substantially”?

A: *Both terms are equally subjective. We do not see a benefit (or disadvantage) of one term over the other and will keep the original verbiage for the time being.*

31. Maintenance Fund

Q: Why do the new deed restrictions include language for a maximum maintenance fund increase to \$360/year over the current \$180/year?

A: *In two words, inflation protection. The original deed restrictions were capped at an allowable maximum maintenance assessment of \$180/year for the last forty years. In 1982 (forty years ago), the national average price of gasoline was \$1.28/gal per the US Bureau of Labor and Statistics. This week, the local gas stations are well over \$4.00/gallon, basically an approximate factor of 3 increase. No one knows how much inflation will impact personal and HOA costs in the future. Including this provisional increase to the maximum maintenance assessment now supports HOA solvency in the future.*

Q: The proposed language now reads that the maintenance fund may be increased by a majority vote of the TSHOA Board, why does it no longer read that the Owners would vote on this?

A: *Thank you to the Homeowner that noted this oversight. It was not our intent to alter this language. We will update the proposed deed restrictions before the vote.*

Q: If one subdivision approves the new deed restrictions and another does not, what happens with the maintenance fund increase?

A: *From a technical perspective, one could (but should not) assume that a select subdivision(s) could have higher assessments than another subdivision. The reality is the assessment increase is subject to a neighborhood vote governed by the HOA Bylaws and the assessment is common across the neighborhood. So, if one subdivision does not approve the new deed restrictions, then the maximum allowable assessment will consequently be capped at the current \$180/year as we have equal rules (excluding deed restrictions) for the neighborhood.*

33. Enforcement of Property Restrictions and Reservations

Q: What is the process for submitting a request to the ACC?

A: *Homeowners may submit a request to the ACC using the TownSquare app or by contacting Goodwin.*

Q: In how many days can I expect to have the ACC review my request and respond back to me?

A: *Homeowners should expect a response from the ACC within 30 days. In general, we believe the review/response will happen well within two weeks. As ACC members are volunteers, there may be some instances where 30 days are needed.*

Q: Is there a TSHOA Hearing Policy and where can I locate a copy?

A: *A copy of the TSHOA Hearing Policy can be found at www.tonkawasprings.org.*

Q: Do homeowners want to add the power to levy fines now?

A: *State law and the HOA Bylaws already provide the power for fines. This is not a new power. The new deed restrictions are simply tying them together for clarity.*

COMMUNITY-SPECIFIC

Q: By consolidating all 4 deed restrictions into a single set of restrictions, are we minimizing the voice for Tonkawa Lake?

A: *It is not the intent to minimize the voice of anyone with a single set of deed restrictions. As Tonkawa Lake has six residences vs the other subdivisions having much more, we can see how a "voice minimization" could be perceived. The Board believes there is a benefit to updating and consolidating the deed restrictions. Each subdivision is free to approve (or not) the new deed restrictions as they see fit.*

Q: There is a reference to a cul-de-sac in Tonkawa Lake in Attachment B, however, no such cul-de-sac exists. Could we consider removing this reference, understanding it was included in the prior version?

A: *Yes, we will remove the reference from the draft deed restrictions.*

Q: Is the Board aware that to pass new deed restrictions for Tonkawa Lake, a 100% approval is required?

A: *Yes, we are aware of the current deed restrictions language.*