

## Is Sole Discretion Absolute Authority?

Lane Marie Brown

Sage Lane Law, PLLC

Meadowlakes, Texas

[laniebrowntx@gmail.com](mailto:laniebrowntx@gmail.com)

When a builder sued a subdivision's Architectural Control Committee (the ACC) for rejecting its building design, one issue the El Paso Court of Appeals had to decide was whether the ACC's sole discretion to approve or deny an application was absolute authority. [\*Legacy Ests., LLC v. Signal Hill Ests. Homeowner Ass'n\*](#), No. 08-22-00134-CV, 2023 WL 3956215, at \*1 (Tex. App.—El Paso June 12, 2023, no pet.). The court rejected the ACC's argument of "absolute discretionary authority." *Id.* at \*12.

The builder who was denied alleged, among many complaints, that the ACC applied the restrictive covenants in an arbitrary and capricious manner in violation of [\*Texas Property Code § 202.004\*](#). *Id.* at \*5. The builder argued the ACC was not empowered with unlimited discretion in accepting or rejecting building applications and it persistently applied different standards to different builders' plans. *Id.* at \*7–8.

While the ACC maintained the builder's plans did not conform to the restrictive covenants, it argued that even if the plans did meet the requirements, the ACC was vested with "absolute discretionary authority" to approve or deny any homeowner's building plans and thus was not subject to review under the Texas Property Code. *Id.* at \*8. The ACC cited the Architectural Guidelines that gave general guidance on the subdivision's Texas Hill Country style, detailed specific building requirements, and concluded with the following ACC empowerment: "[T]o reject or accept a plan that does or does not meet these requirements, if in the ACC's *sole discretion*[,] the building would enhance, blend in, or detract from the general appearance of the neighborhood." *Id.* at \*10. Thus, the court had to determine whether the language of the Architectural Guidelines gave the ACC absolute authority. *Id.* at \*11.

Because restrictive covenants are mutual contracts among property owners, the court began by applying the general rules of contract construction to analyze the applicable language. *Id.* at \*9–10. Under these rules, the court must give the words chosen in restrictive covenants their commonly held meanings at the time the document was written without enlarging, extending, stretching, or changing the words. [\*Tarr v. Timberwood Park Owners Ass'n, Inc.\*](#), 556 S.W.3d 274, 280 (Tex. 2018). Here, the court consulted Merriam Webster's Collegiate Dictionary (the Dictionary) to discern the definitions of "sole" and "discretion" to conclude that "sole discretion" means "power to make decisions without . . . advice or consent." *Legacy Ests.*, 2023 WL 3956215, at \*11.

However, the court continued its analysis of the Architectural Guidelines by noting that the ACC's decision to accept or reject building plans is to be based on its evaluation that "the building would enhance, blend in, or detract from the general appearance of the neighborhood." *Id.* The court found that therefore the ACC's "sole discretion" is not absolute power because its authority is *qualified* by these required criteria. *Id.* at \*12.

Further, the court considered an Austin Court of Appeals case where a homeowners' association (HOA) was authorized with "*sole and absolute discretion*" to grant building variances. [\*La Ventana Ranch Owners' Ass'n, Inc. v. Davis\*](#), 363 S.W.3d 632, 646 (Tex. App.—Austin 2011, pet. denied). Again, consulting the Dictionary, the *Legacy Estates* court defined "absolute" as "having no restriction, exception, or qualification," which distinguished "sole and absolute" authority from mere "sole" discretion. *Legacy Estates*, 2023 WL 3956215, at \*12. Following the rules of contract construction, the court reasoned it could not add "absolute" to the "sole discretion" language in the Architectural Guidelines in the present case because this could enlarge, extend, stretch, or change the meaning of the chosen words. *Id.*

Thus, the court concluded the ACC's sole discretion to reject the builder's plans did have qualifications and, as such, was not absolute. *Id.* Therefore, it held the ACC's exercise of authority must be in accordance with [Texas Property Code § 202.004](#) that requires an HOA to act in a manner that is not arbitrary nor capricious and presumes the HOA's reasonableness. *Id.* at \*12–13.

To apply this case to practice, when reviewing an HOA board's or ACC's authority, carefully check the vesting language in the declarations and covenants. Is the governing body granted *sole discretion*? Is that sole discretion *qualified* by criteria that must be considered? Or is the power *sole and absolute*? While volunteer association leaders might exert much control over individual owners' property rights, sole discretion is not necessarily absolute authority.