



# KAMAN & CUSIMANO <sup>LIC</sup>

COMMUNITY ASSOCIATION ATTORNEYS

Andrew F. Meinert, Esq.  
[ameinert@kamancus.com](mailto:ameinert@kamancus.com)  
513-878-1771

4695 Lake Forest Drive, Suite 300  
Cincinnati, Ohio 45242  
Fax: 513-898-1221

February 13, 2025

***Attorney/Client Privileged Information***

**VIA ELECTRONIC MAIL ONLY:** [joseph@pmibuckeyeservices.com](mailto:joseph@pmibuckeyeservices.com)

Monroe Crossings HOA  
c/o Joseph DiTommaso, Community Association Manager  
PMI Buckeye Services  
4605 Duke Drive, Suite 115  
Mason, Ohio 45040

Re: Sheds and Outbuildings

Dear Mr. DiTommaso:

On behalf of the Board of Directors for the Monroe Crossings Homeowners Association, Inc., you requested our opinion on several questions related to the approval of sheds and similar outbuildings in the community. My response to this request is based on my review of the information received, review of the Monroe Crossings Declaration and Bylaws, including amendments we have received, research and review of the Ohio Planned Community Act, and pertinent case law, research and review of the Butler County Records, and on our experience in representing community associations throughout Ohio. Permit me to address each of the Board's questions, in turn.

**Does section 9.2.16 Other Structures - of the MCHOA Declaration of Covenants, Restrictions and Reservation of Easements allow or prohibit the community to have Sheds? If 9.2.16. does not prohibit Sheds and Other Structures from being built, then the Board assumes it does not need a 75% vote of the community to establish Architectural Guidelines for the community to adhere to when requesting to build such a structure. Is this true, please explain why?**

Declaration Article IX, Section 9.2.16. states:

No structure of a temporary character, trailer, or shack shall be permitted on any Lot. Barns, storage sheds or other outbuildings must have prior approval in

accordance with Section 9.2. Construction trailers and/or storage sheds shall be permitted only during construction. Declarant reserves the right to prohibit all such structures and the right to prohibit such structures on certain lots.

The second sentence provides that barns, storage sheds and other outbuildings *may* be permitted if approved by the Declarant, or the Association when it assumes architectural control. The third sentence, though, only allows “storage sheds” during construction despite the prior sentence authorizing them with architectural approval. When read as a whole, I interpret the use of the term “storage sheds” in the third sentence to reference sheds used for storing construction materials or in some other way related to construction. So, while “storage sheds” may only be permitted during construction, “barns” and “other outbuildings” may be approved at any time, and the Board may clarify the definitions of these terms as I will later explain.

Declaration Article IX, Section 9.2.1.2. provides the Declarant will prepare a set of Design Guidelines to govern architectural requests in the community, and states that “the Declarant and/or Association shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner.” Section 9.2.1.4. provides more context, stating the Association will be responsible for plan approval after the Declarant’s right to approve plans expires, and also that the Declarant may assign their right of plan approval to the Association. While not stated explicitly, the Association’s right to amend the Design Guidelines would naturally begin when the Declarant’s plan approval rights cease (or even before so long as the Declarant does not dispute the modification). To that end, Declaration Article IX, Section 9.2.1.1. states that the Declarant’s right of plan approval “shall exist for as long as Declarant owns any Lot in the Properties.”

My review of the Butler County Records indicates Monroe Crossings, Inc. does not own any lots in the community. Accordingly, the Declarant’s right of plan approval appears to have expired, and the Association now assumes the right to approve plans and modify the Design Guidelines without an owner vote, as authorized by Declaration Article IX, Section 9.2.1.1.

**If 9.2.16. does not prohibit Sheds and Other Structures from being built, and the above bullet (i) is true, then the board believes the contents and instructions set forth in section 9.2 allows for the Board to Draft, Create, and Publish a set of Design Guidelines to which Sheds and Other Structures would have to adhere to for construction, without requiring the input or vote (75%) of the community. Is this true, please explain why?**

Correct. See above explanation.

**Does section 9.2.2. Dwelling Type, have any bearing on restricting or prohibiting the construction or installation of storage Sheds, outbuildings, storage buildings? If not, can you please explain why?**

No. While this provision states only single-family dwellings may be permitted on a lot, the specific language of Declaration Article IX, Section 9.2.16. affirmatively allows certain outbuildings with prior approval. Ohio courts have indicated that they consider community association governing documents “in the nature of contracts,” and one principle of contract interpretation is that all provisions and language in a contract must have meaning (i.e. it wouldn’t be in the contract if it wasn’t intentional). So, when interpreting the interaction of Sections 9.2.2.

and 9.2.16., a court will find the specific language permitting certain outbuildings supersedes the more general prohibition on non-dwellings, otherwise there would be no reason for Section 9.2.16. to have been included in the Declaration. Additionally, Ohio courts typically construe contract language “against the drafter” and in favor of the free use of land, meaning if there is ambiguity, courts will interpret the language in a way that favors the use of land that isn’t clearly restricted. As a result, I do not interpret Section 9.2.2. as limiting the Board’s ability to modify the Design Guidelines and approve outbuildings in its discretion.

**Can the MCHOA Board make changes to the current MCHOA Architectural Restrictions and Design Development Guidelines, Revised February 15, 2017, without requiring the vote (75%) of the Community? Current Guidelines include a provision for Pool Pump Buildings, Sheds, and Storage Buildings, in which it notes “Storage Sheds, outbuildings, storage buildings, whether attached or unattached, shall not be permitted”. Can the Board amend the current document to remove this wording from this section, and establish new guidelines for such storage sheds, outbuildings, and storage buildings, without needing a vote (75%) of the community?**

Yes. Again, Declaration Article IX, Section 9.2.1.2. states that the Association may modify the Design Guidelines without the consent of the owners, and Section 9.2.1.4. places responsibility for plan approval on the Association once the Declarant’s right to approve plans expires.

I also want to note that, because of the use of the term “storage sheds” in Declaration Article IX, Section 9.2.16. as only being allowed during construction, if the Board desires to allow outbuildings, it should modify the Design Guidelines by defining “storage sheds” in a very limited way. For example, they could be defined as “outbuildings whose sole purpose is the storage of construction-related materials or equipment during building construction.” This way, the argument isn’t made that outbuildings approved by the Board are “storage sheds” that may only be permitted during construction, and are instead simply considered “outbuildings.”

**ARC Application - The MCHOA Board utilizes an Architectural Improvement/Modification Plan Application for all such actions described in the MCHOA Architectural Restrictions and Design Development Guidelines. Can the Board modify and publish a new version of this application without the vote (75%) of the community?**

Yes. Declaration Article IX, Section 9.2.1.2. states:

The Declarant shall prepare and, on behalf of itself and the Association, shall promulgate design and development guidelines governing construction within the Properties, *which shall include application and review procedures to be followed in submitting an application* for approval hereunder ("Design Guidelines"). (Emphasis added.)

Accordingly, the application itself is a part of the Design Guidelines and may be modified by the Board in its discretion.

**The Plan Application mirrors the Architectural Restrictions and Design Development Guidelines and states that No “Storage Sheds, outbuildings, storage buildings, whether attached or unattached, shall not be permitted”. If the above bullets (1, 2) allow, can the board update this**

**Plan Application to mirror the potential new Guidelines that can be established, to allow for the submittal for approval to construct such a structure?**

Yes.

**Future Boards Ability to Remove, Reverse or Alter - If the current MCHOA board establishes guidelines to allow for the construction of Storage Sheds, outbuildings, storage buildings, -- Can a future board change/remove the guidelines that once again prohibit such structures? What considerations/options would such a board need to take with potential existing structures that may have already been built?**

In theory yes, future Boards will have the authority to modify the Design Guidelines the same way the current Board may modify them. That said, the Design Guidelines must be “reasonable” to be enforceable, and a court will not find a rule requiring a previously approved outbuilding to be removed reasonable. So, outbuildings that would have already been constructed in this scenario would effectively be an exception to the newly established Design Guidelines. For example, if the current Board established 6 color palettes that are permitted for outbuildings, and a future Board modified the Design Guidelines to only allow 3 of the color palettes, then existing outbuildings that do not conform to the new Design Guidelines would not be required to update their colors, unless some sort of maintenance work on the outbuilding was necessary, similar to the requirement to update to new building codes. So, any future Board will have to work within the framework of the existing outbuildings and, while it may modify the Design Guidelines pertaining to outbuildings, it cannot require immediate modifications to the existing outbuildings. Future Boards would also need to reasonably justify their decision if they revert back to not permitting outbuildings altogether.

**Regards to Declarant - 9.2.16. Other Structures - of the MCHOA Declaration of Covenants, Restrictions and Reservation of Easements notes “Declarant reserves the right to prohibit all such structures and the right to prohibit such structures on certain Lots.” With Schmidt Builders taking over Monroe Crossings LLC II, as the new developer/owner of existing and future lots in Monroe Crossings, does Schmidt Builders (Alan Schmidt Sr) assume the rights as the Declarant, and thus maintain the right to continue to prohibit such structures? Or, because the Monroe Crossings HOA is now community run and believed to be “turned over” does a Declarant still exist? If so, who would that Declarant be, and what controls do they still possess?**

The Declaration is written in a way that is not consistent with respect to the Declarant’s authority. To illustrate, recall Declaration Article IX, Section 9.2.1.1. states the Declarant’s right of plan approval “shall exist for as long as Declarant owns any Lot in the Properties.” This language is specific to the right to approve architectural plans and, by extension, modify the Design Guidelines, but not other Declarant authority. Separately, Declaration Article XIII, Section 13.3.1., as amended, states that the Declarant has authority to appoint and remove Board members and officers during the Declarant Control Period, which ends no later than 60 days after Monroe Crossings, Inc. transferred 75% of its lots in the community. This is the “turnover” process whereby the owners within the community assume control of the Association through the Board, which I understand has already occurred.

Further, Declaration Article XII establishes certain “Development Rights,” and Article XIII establishes “Special Declarant Rights.” Notably, Article XIII does not provide for the transfer or

assignment of Special Declarant Rights, although Section 13.3.3 permits the Declarant to voluntarily waive their Special Declarant Rights before their control period ends. On the other hand, Article XII, Section 12.4 allows the Declarant to assign its Development Rights to another entity, but the language requires it be done through a document recorded with Butler County. Further, the Development Rights contained in Article XII do not pertain to architectural review or the Design Guidelines.

In reviewing these 3 general categories of Declarant authority, it appears neither Monroe Crossings LLC II, nor Schmidt Builders have been designated as an assignee. The right to approve architectural plans and modify the Design Guidelines were not assignable, and neither were the Special Declarant Rights. Further, my review of the Butler County Records did not reveal a document assigning the Declarant's Development Rights to either of those entities. As a result, it appears there is no longer a Declarant and the Declarant rights in the Declaration have expired. This also aligns with Schmidt Builders not taking any actions to exercise Declarant or architectural control rights as a practical matter.

I trust the above responds to the Board's request. If you or any of the Board members have any questions or would like to discuss this matter further, do not hesitate to contact me.

Sincerely yours,



ANDREW F. MEINERT

AFM:bns