

Covenants Committee Decision 2014-001

Background

This matter commenced when the Property Manager sent a letter to the Titleholder objecting to chickens being kept on the Titleholder's property, contrary to applicable community rules. The Property Manager followed up with a subsequent letter to the Titleholder which, in addition to continuing to object to the chickens, also informed the Titleholder that the chicken coop housing the chickens had not been submitted for the prior review and approval of the I'On Design Committee (IDC), as required by the community Covenants. The alleged infractions were not corrected or otherwise effectively responded to by the Titleholder and a \$50.00 fine was assessed. The Titleholder requested a hearing before the Covenants Committee, which was held on March 19, 2014.

This hearing requires the determination of two issues: 1) Whether chickens are "household pets," within the meaning of I'On Rule D-102; and 2) Whether the chicken coop housing the chickens is subject to IDC review under the Covenants.

The I'On Rules provide, "Household pets may be kept...". I'On Rules D-102 (emphasis added). And the I'On Declaration of Covenants instruct that, "No improvements shall be made, placed, constructed or installed on any Lot ...without prior approval of the I'On Design Committee...". Covenants of I'On 4-101(a).

Issue One: Whether chickens are "household pets" within the meaning of Rule D-102.

The Titleholder pointed out at the hearing that Rule D-102 does not define the term "household pet" and that, without a definition, the term is vague. She argued that the Rule does not specifically prohibit keeping chickens. She explained that she owns two chickens and, at various times, such as when the weather is cold, the chickens are kept in her house. She said that her children consider the chickens to be pets and frequently hold them. She compared the chickens to both dogs and cats, making the point that no one would ask her to get rid of her dogs and that cats can be more destructive than chickens. She claimed that no neighbor has complained about the presence of the chickens.

The Committee is sensitive to the fact that the Titleholder and her family are fond of the chickens at issue and treat them with affection. However, the same emotions could be directed towards a horse, yet no one would reasonably argue that a horse is a "household pet."

The Titleholder is correct that Rule D-102 does not provide a definition of the term "household pet;" therefore, this Committee must take the responsibility of interpreting the meaning of this term. The Covenants, to which Rule D-102 is an Exhibit, provide that they are to be "construed in favor of the party seeking to enforce its objectives and for the protection and enhancement of values, marketability and desirability of I'On and the overall quality of life for its residents." Covenants of I'On Article 11-104(b). Consistent with this instruction, this Committee must consider the question of how the marketability and desirability of I'On would be impacted if we interpreted the term "household pet" to include chickens. If we were to make such a determination, thereby allowing residents of I'On to keep chickens on their property, it is our opinion that the impact would be a negative one and that the value, marketability and desirability of I'On would be adversely effected. Thus, if we were to reach such a conclusion, we would not be fulfilling our stated responsibilities under the Covenants.

Further, if this Committee simply ascribes to the term "household pet" the normally understood meaning of the words, we find that chickens would not be included. The Committee believes that "household pet," for purposes of the Rule, is an animal that would be typically kept within a home in a suburban setting. Chickens are poultry; they are farm and barnyard animals. They are not typically kept in a home within a suburban setting such as I'On. Affection towards them does not change this fact. Unlike chickens, dogs and cats, to which the Titleholder attempts to compare her chickens, are universally regarded as "household pets," within the normally understood meaning of those words and are typically kept within suburban homes.

Finally, as to Titleholder's argument that no neighbor has complained about the chickens, the Committee finds this point to be neither relevant nor accurate. It is our understanding that neighbors have, in fact complained. And even if they had not, it is the responsibility of the Board of Trustees, and this Committee is an agent of the Board of Trustees, to enforce the Covenants and Rules of the neighborhood, with or without specific complaints from neighbors. See, Bylaws of I'On Assembly, Article 3-104(b)(ix).

Therefore, as to the first issue, the Committee finds that chickens are not "household pets" as that term is used in I'On Rule D-102 and that the Titleholder is keeping chickens on her property in violation of this Rule.

Issue Two: Whether the chicken coop housing the chickens is subject to IDC review under the Covenants.

At hearing, the Titleholder acknowledged that she had not submitted any plans for the chicken coop to the IDC. She explained that this is because the chicken coop is not a permanent structure. As a result, she reasoned that the chicken coop did not require IDC review and approval. She compared the chicken coop to a trampoline or patio furniture, saying that neither of these outdoor items would not require IDC review and approval.

Having reached our determination of the first issue, the question of whether to require IDC review and approval of a chicken coop becomes less important. Nevertheless, and in order to remove all doubt, the Committee finds the Covenants to be quite clear on this question. Per the Covenants, all construction of any kind occurring on any lot within I'On must be submitted for prior review of the IDC and built only after and consistent with IDC approval. The Committee does not find persuasive the notion that the chicken coop is somehow exempt from this requirement because it is not "permanent." All auxiliary structures: garages, sheds, car ports, swing sets, etc. are, to some extent, less than "permanent." However, each of these examples is clearly subject to IDC review. The Committee finds the comparison of the chicken coop to a trampoline or patio furniture to be without merit.

Therefore, as to the second issue, the Committee finds that prior IDC review and approval was required for the chicken coop and, lacking such approval, it is in violation of Article 4-101(a) of the Covenants.

At times, when a situation is presented in which IDC review and approval has been skipped, the Titleholder is instructed to submit plans to the IDC for approval after-the-fact. However, because a chicken coop is designed to house an animal that this Committee has determined may not be properly kept within the neighborhood, there is no point in the Titleholder taking this step.

Conclusion

In order for the two violations at issue in this matter to be cured, the chickens and the chicken coop must be removed from the Titleholder's property.

Respectfully submitted,
The Covenants Committee
March 24, 2014