

## Court: Covenants Have Limits

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RALEIGH

In a potentially significant ruling, the N.C. Supreme Court has restricted the power of homeowners' associations to amend their covenants. In a decision, the court held that any revisions must be "reasonable," given the purpose of the original declaration of covenants.

The ruling, on Aug. 18, came in a case involving an association that gave itself unlimited authority to impose assessments despite the original covenants providing for only limited powers for the association.

In 1988, the Vogel Development Corporation started work on the subdivision The Ledges of Hidden Hills. Situated in Henderson County, the Ledges eventually consisted of 49 lots. The plat does not include common areas or amenities. Vogel established a homeowners' association before

any lots were sold primarily to relieve it from having to administer the subdivision's architectural control covenants. There was no provision in the original declaration of restrictive covenants for the collection of dues or assessments.

Sometime later, Vogel decided to put in a lighted sign at the entrance to the subcommunity. Not wishing to pay for the electricity indefinitely, the company amended the covenants to have homeowners split the cost via an assessment.

The homeowners' association adopted bylaws in 1995, and soon amended its covenants to include a provision for placing a lien on properties that did not pay their assessments.

Assessments were \$80 to \$100 a year. The association was doing more than merely paying for power to light a sign; it also paid for mowing along the roadside of the main street, despite it being private property, and for snow removal, despite all streets in the development being state-maintained.

In June 2003, a property owner, Vivian Armstrong, challenged the propriety of the assessments for items beyond the light, requested a refund, and asked that the matter be placed on the agenda for the association meeting.

In response, the association changed its bylaws, giving it greatly expanded authority.

In October 2003, Robert and Vivian

Armstrong and two other homeowners sought a declaratory judgment to, among other things, prevent the association from enforcing its recent bylaw changes.

A month later, the association went further, and amended the association's covenants to include a general provision allowing assessments for "common expenses" that "shall be used for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board." Among other changes, the revised declaration prohibited rentals for periods of less than six months.

The Armstrongs and others amended their lawsuit, and asked that the new covenants be declared unenforceable.

In October 2004, Superior Court Judge J. Marlene Hyatt sided with the Ledges. The N.C. Court of Appeals also ruled against the Armstrongs, holding that the declaration could be amended in any manner as long as the majority of homeowners in the subdivision approved.

The Armstrongs asked the Supreme Court to hear the case. Under state law, the high court is not required to take a case if the decision by the three-judge Court of Appeals panel, as it was in this case, is unanimous. The Supreme Court agreed to hear the case, and in its ruling established a new standard for determining the appropriateness of covenant amendments.

"In the same way that the powers of a homeowners' association are limited to those powers granted to it by the original declaration, an amendment should not exceed the purpose of the original declaration," Justice George Wainwright wrote for the court.

The Supreme Court also cited with approval a portion of the Nebraska Supreme Court's holding in a 1994 case called *Boyles v. Hausmann*: "The law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes in existing covenants."

The case is *Armstrong v. Homeowners Assoc.* (<http://www.aoc.state.nc.us/www/public/sc/opinions/2006/640-05-1.htm>)

CJ

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Justice George Wainwright  
N.C. Supreme Court

## Commentary

### Incentives Are For the Lazy

Communities across North Carolina spend an inordinate amount of time focusing on economic development. It has become the desperate exercise of rural towns and urban areas to escalate the arms race of incentives as a proxy for making better communities.

The desire for job growth has taken a back seat to dealing with the real issues that affect quality of life. If we're not careful, the long-term effects of incentives over substance might cost us far more in the future.

Economic developers will tell you that the cornerstones (there are literally four) of corporate recruiting are: infrastructure, health care, crime, and education. That sounds simplistic, but this axiom is backed up by chambers of commerce, EDC documents, and almost every study published on the subject.

So, why would economic development corporations, city councils, and county commissioners focus so much on incentives? Another simple answer, because it requires very little work: If we cut the tax rate for the guy with lots of jobs, then we don't have to worry that our schools aren't great, that the crime rate is abysmal, or that the water and sewer systems are in need of redesign. The creation of jobs is a quick fix, grabs headlines, and feels good.

Instead, I propose a greater vision, or challenge (depending on your perspective), for localities statewide. Embrace, at the community level, the need to address the cornerstones, and job creation will beat a path to your door. Now, lest you think I have delusions of grandeur, it can be done.

Let's start with health care. Many of the communities across North Carolina do have good health care. Some even have great health care or proximity to it. Look around your community, do you have good doctors and proximity to a good hospital? As more folks hit retirement age over the next few years, this is a huge factor. If retirees are moving to your area, this can be a boom for the housing market. Fewer schools must be built, because retirees have empty nests.

Then we look at crime. Wilmington has been an amazing story on the crime front. Having been one of the most unsafe cities in the state, city officials hired a charismatic police chief, who involved citizens, went on the warpath educating folks about crime, and turned Wilmington into a safer community. That is great news for folks with families looking to move or start a business.

Then there's infrastructure, and that's problematic for many communities. Roads are a start. If you're not near a metro area, you should hope your water and sewer systems are well-designed and can handle growth. The better-managed and more-efficient you are on this

front, the more likely you will be able to accommodate a growing business's needs. Overall, North Carolina's roads have fallen into national disgrace, going from fifth best in the nation to 45th, according to some recent reports.

One of the most challenging issues statewide is education, both primary and secondary. Primary public education is in shambles statewide even though expenditures, after adjustment for inflation, continue to rise. Community colleges often produce more GEDs than high schools produce diplomas. There is no simple answer here, but community leaders should aspire to be better. We need to stop thinking government can solve this by itself. Deciding at the community level to promote volunteerism in the schools, to get citizens involved, and to refuse to tolerate failure would be a start.

In the end, the casual ease with which we dole out incentives does little to improve communities. It does not strengthen schools, hospitals or solve crime. But dealing with those issues is the greatest economic development foundation any community can make, and the citizens will be better for it. CJ



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