

STATE OF NEW MEXICO
COUNTY OF LOS ALAMOS
FIRST JUDICIAL DISTRICT COURT

JV

No. D-132-CV-2012-00015

PAJARITO ACRES HOME OWNERS ASSOCIATION,
A New Mexico non-profit corporation,

Plaintiff,

v.

MARLENE MILLER, STEVEN C. PORTER, and
IRENE A. PORTER,

Defendants.

FINAL JUDGMENT

THIS MATTER having come before the Court for a bench trial on the merits on May 21-23, 2012; Plaintiff appearing in person and through Rubin, Katz, Ahern, Herdman & MacGillivray, P. A. (Janice M. Ahern, Esq.); Defendants appearing in person and through Armijo & Armijo, P. C. (Margaret P. Armijo, Esq.); and the Court having received evidence, conducted a site visit, and heard argument on behalf of both parties, having stated its findings and ruling at the conclusion of trial on May 23, 2012, and being fully informed and advised in the premises:

THE COURT HEREBY ORDERS, ADJUDGES AND DECREES as follows:

1. Pajarito Acres Subdivision is described on the subdivision plats for Pajarito Acres, filed for record on July 22, 1964, in Plat Book 1, Page 51 and filed for record on November 15, 1965 in Plat Book 1 at page 70, records of Los Alamos County.
2. Ownership of lots in Pajarito Acres Subdivision is governed by the Protective Covenants for the Pajarito Acres Subdivision dated July 22, 1964, and filed for record as

Document No. 3111 in Book Misc. 4 at page 215 and Book Misc. 4 at page 1000, records of Los Alamos County, New Mexico (Covenants).

3. Defendant Marlene Miller acquired the real property known as 234 Rio Bravo, and described as Lot No. 109, in Pajarito Acres Subdivision. Defendant Marlene Miller thereafter conveyed Lot 109 to herself and Defendants Steven C. Porter and Irene A. Porter.

4. Section C-1-B (a) of the Covenants, under "LAND USE RESTRICTIONS" provides, in pertinent part: "No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height, a private garage for not more than three cars and outbuildings commensurate with, the uses allowed by these covenants."

5. Section C-1-A (f) of the Covenants states, in pertinent part, that "No more than one accessory building may be erected for any one general object or purpose and then only if it is no higher than 12 feet above the natural ground level at the building site, encloses an area not greater than 2,400 square feet, and is not in conflict with the architectural harmony of the main dwelling and character of the subdivision . . ."

6. There has not been a radical change in the neighborhood of Pajarito Acres Subdivision that would render enforcement of the Covenants inequitable.

7. There has not been a radical change in the neighborhood of Pajarito Acres Subdivision that would render enforcement of the particular covenant restricting accessory buildings set forth in the Covenants inequitable.

8. The Pajarito Acres Subdivision neighborhood still maintains the same essential character that it had when it was initially formed. The lots are large lots by comparison to other lots and subdivisions in the neighboring area. The land is open and rural. What the

original developers were trying to obtain when the Covenants were prepared and when they conceived of this area is still captured by the area.

9. There are no failures by Plaintiff to enforce the Covenants that are material to the restriction at issue in this case that would be considered acquiescence. Over the decades, the Boards of Pajarito Acres Home Owners Association have enforced the Covenants. There is no evidence or showing of acquiescence.

10. The Covenants continue to provide a benefit to the Pajarito Acres Subdivision neighborhood so that these Covenants may not be properly set aside, in whole or in part.

11. The intention of the parties, ascertained from the language used in the Covenants, the circumstances surrounding the creation of the Covenants, and the purpose for which the Covenants were created indicate that the intention of the Covenants was to measure accessory buildings by inclusion of everything that was covered by a roof and to include porch space within the square footage area of accessory buildings.

12. The Defendants submitted plans to the Board of Pajarito Acres Home Owners Association in 2009. The evidence is uncontested that what was approved in 2009 would have exceeded 2,400 square feet because the front porch was not included within the measurement that the Board of Plaintiff relied upon. Plaintiff agrees that it is estopped from denying that those 2009 plans were given approval.

13. In 2010 Defendants presented copies of plans for stamping (2010 plans). Plaintiff is estopped from denying that the stamping of the 2010 plans was evidence of Plaintiff's approval. Further, representatives of Plaintiff testified that they intended for Defendants to build based on the plans submitted and stamped approved. Even if the 2010 plans reflected an accessory building that exceeded the size limitation, with an additional

covered porch in the rear off the breakfast room, the Defendants had a right to build, based upon the stamped 2010 plans.

14. In August, 2010, the Defendants then requested approval of two additional roof extensions and porches. At this point, the Board, on behalf of Plaintiff, clearly denied the request on the basis that the accessory building would exceed the size limitation in the Covenants. The action of the Board of Plaintiff was consistent with the historical intention of the Covenants governing measuring the size of an accessory building.

15. The Defendants breached the Covenants by installing the two additional roofs and porches following the Board's express denial of approval of these additional roofs and porches under the terms of the Covenants.

16. Plaintiff's request for injunctive relief requiring Defendants to permanently remove all construction that does not comport with the plans approved by Plaintiff in 2009 is hereby denied.

17. Plaintiff's request for injunctive relief prohibiting Defendants from using the new construction as a permanently occupied separate single family residence is hereby denied.

18. Plaintiff is hereby granted judgment against Defendants as follows:

a. Directing the Defendants to remove the roofs and two porches off the bedrooms or otherwise described in their request for approval for two additional roof extensions and porches in August, 2010 within one hundred twenty (120) days following entry of this Final Judgment;

b. Directing the Defendants to permit inspection of the accessory building on Lot 109 by representatives of Plaintiff, within ninety (90) days following entry of this Final Judgment, for the purpose of verification of compliance with this Final Judgment;

c. Awarding Plaintiff its costs in compliance with Rule 1-054 NMRA.


SARAH M. SINGLETON
District Judge

Modified from proposal [sms]
Submitted by:

Rubin Katz Ahern Herdman &
MacGillivray, P.A.

Not [sms] Approved as to form:
Counter proposal considered and incorporated
where deemed appropriate. [sms]
Armijo & Armijo, P.C.

By: /s/ Janice M. Ahern

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