

## October 2022 ACC NEWSLETTER

As usual, there is a lot of false information that has been recently spread in the community.

**Falsehood:** The ACC sued a homeowner and have won \$43,000 because the owner disagreed with them and did not get permission to change their landscaping.

**Truth:** It is true that the ACC sued Kaz and Drummond and has been awarded \$43,000, but this is an issue that has been going on for several years that has absolutely nothing to do with landscaping.

The violations of the CC&Rs were that Kaz and Drummond increased the height of the walls around three lots they owned in the F section of Dixie Springs, without the ACC's approval, as required by the CC&Rs.

In March of 2018, Kaz/Drummond went to the Planning Commission to get approval for a block wall they wanted to put around their three lots. They requested permission to put a 6-foot wall around their three lots. There was concern by the Planning Commission about the sight triangle at the street corner of the lots. They needed approval because the City code states that no fence exceeding 4 feet shall be erected in the front yard unless they receive permission from the Planning Commission. As part of the meeting minutes, there is a diagram that shows where the wall is supposed to be placed. Kaz/Drummond's request also stated they would build a 6-foot wall that would be placed 8 feet from the sidewalk.

The documentation from the City of Hurricane can be seen at this link:

<http://www.dixiespringsacc.org/docs/20200908KazDrummondHurricaneCityWallDocs.pdf>

The maximum wall height allowed in a back yard by the City of Hurricane ordinances is 6 feet.

The maximum wall height allowed by the Dixie Springs CC&Rs is 6 feet.

In November of 2019, the City of Hurricane sent an email to Kaz and Drummond about the addition of height to the wall. They stated:

“Our inspectors have been approached while working in Dixie Springs about the apparent new additions to the block wall in your back yard. As you know, you were approved for a 6’ wall in the front yard in 2018 because that is the maximum height allowed in a back yard. That code has not changed so you are not allowed a greater height in any part of your yard.

Adding this greater height is a violation of the land use code and the building codes. Please bring your wall height back to the permitted 6’ height within 30 days to avoid further enforcement action.”

You can see this letter in the City of Hurricane documentation.

Late in 2019, the ACC received an anonymous complaint about the height of the wall, and they investigated the issue. The anonymous complaint can be seen in the City documentation packet. The ACC saw that the wall clearly violated the height restrictions in the CC&Rs, and also violated the CC&Rs in that no approval was asked of the ACC for the change in wall height. If Kaz and Drummond would have asked for approval before they made the change, they would have been told that they could not increase the height.

The ACC members went to the home of Kaz and Drummond late in 2019 to discuss the issue before any action was taken. Kaz and Drummond made it clear they would not reduce the height of the wall. The ACC had no choice but to take legal action.

Kaz and Drummond have been fighting the ACC in court for several years. They sold one of their lots last year. At their request and before they sold the lot, the ACC worked in good faith (and in conjunction with the potential purchaser) to prepare a settlement agreement to settle the lawsuit, and the ACC signed the agreement. Then, without any notice, the lot was sold to someone else and Kaz and Drummond wouldn't sign the

agreement. The ACC wanted to settle the lawsuit as quickly and with as little legal action as possible.

The ACC **strongly** prefers that any issues be resolved without having to take legal action. The ACC asked Kaz and Drummond before any legal action was taken to reduce the height of the wall and gates to 6 feet in order to comply with the CC&Rs. If they had done so, no further action would have been taken.

The Court ruled against Kaz and Drummond, concluding that they had violated the CC&Rs by not getting the ACC's approval before heightening the wall, and the Court recently awarded legal fees to the ACC. These fees are simply the amount that the ACC was forced to spend. There is no interest or fines included.

Falsehood: The ACC is an HOA.

Truth: The ACC is not an HOA. We will never have an HOA in Dixie Springs. Creating an HOA would require that 100% of the property owners agree to create an HOA. See this information from the ACC attorney:

<http://dixiespringsacc.org/docs/20201019DixieSpringsACCAttorneyResponse.pdf>

Truth: Changing the CC&Rs as proposed will make the CC&Rs far more difficult to enforce.

The City of Hurricane will not enforce the Dixie Springs CC&Rs. The City of Hurricane will not and cannot legally enforce any the CC&Rs of any community in Hurricane. Often, the City of Hurricane does not even enforce their own ordinances consistently. Eliminating the ACC would mean that residents of Dixie Springs will only be able to enforce the CC&Rs through a very expensive and time-consuming neighbor-against-neighbor lawsuits. The advantage of having the ACC enforce the CC&Rs is they have the ability to assess fines – individual owners can only sue. Also, most residents do not want to have to sue their

neighbors and would rather have the ACC handle the issue.

Amending the CC&Rs to eliminate the ACC would also prevent any review of home plans before homes are built to ensure homes won't violate the CC&Rs. For example, a lot owner could build a 900 square foot house. The City of Hurricane would allow it. To enforce the minimum-square-footage requirement in the CC&Rs, a lawsuit against the lot owner by another resident or residents would be required, and by the time that was resolved, the house would long be built.

Without the ACC to enforce the CC&Rs, who would stop residents from painting colored stripes on their homes, parking anything they want on empty lots or lots with homes, having livestock in their backyards, etc.?

The Dixie Springs CC&Rs are not overly restrictive and strive to keep the community looking nice.

By eliminating the ACC, you would essentially be getting rid of the CC&Rs because they are practically unenforceable without the ACC. It is highly unlikely that someone will spend the time and money to sue a neighbor over CC&R violations. Therefore, changing the CC&Rs to eliminate the ACC would makes the CC&Rs practically ineffective.

Falsehood: The ACC is fining everyone with a 1-ton truck in their driveway.

Truth: The ACC has sent letters to people parking vehicles, trailers and other equipment on empty lots, or parking large commercial heavy-duty trucks used for business purposes on their property. The ACC has never sent a letter to anyone for having an F-150, F-250, etc., in their driveway.

Truth: Without effective enforcement of the CC&Rs, property values will go down. If the ACC does not address violations, the whole community will be hurt.

The ACC only asks that you seek the truth. If you have any questions, please email us at [acc@dixiespringsacc.org](mailto:acc@dixiespringsacc.org)