

CAUSE NO. 2019-33333

TANGLEWOOD HOMES  
ASSOCIATION, INC.  
Plaintiff,

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

WMJK, LTD.

Defendant.

133RD JUDICIAL DISTRICT

**WMJK, LTD.'S AMENDED ANSWER AND  
REQUEST FOR DECLARATORY RELIEF**

Defendant WMJK, Ltd. ("Miller Family"), files this Amended Answer and Request for Declaratory Relief to Tanglewood Homes Association, Inc.'s First Amended Original Petition ("Association") and shows the following:

**INTRODUCTION**

The Association's admission that "[t]he Tanglewood development has been a remarkable success" is completely accurate. However, this is where the merit of the Association's Petition ends. The Association's attempt to retroactively and improperly impose restrictions on the Miller Family's business property fronting San Felipe ("1661 Tanglewood Blvd.") is not only contrary to the original developer's intent, but it is also contrary to the express Reservations, Restrictions, and Covenants (the "Restrictive Covenants")<sup>1</sup> and the law. The true explanation for the Association's claims against the Miller Family is that the Association hopes that the lawsuit will scare off any potential buyer for what undisputedly has become very valuable commercial real estate.

The Miller Family is made up of William Giddings Farrington's four grandchildren. Mr. Farrington was the original visionary and developer of Tanglewood Subdivision. Beginning in

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<sup>1</sup> As explained below there are multiple sections of Tanglewood each with its own restrictive covenants. The term "Restrictive Covenants" refers to them globally. When referring to a specific section's Restrictive Covenants, it will be noted.

1948, Mr. Farrington undertook the development of a first-class planned community. He had been involved in the development of Houston for years but bringing Tanglewood to fruition would become one of his most distinguished accomplishments. He cherished the opportunity to develop the area with purpose and forethought.

Tanglewood was developed in phases and is ultimately made up of 23 different sections. With each section, the Tanglewood Corporation, which was run by Mr. Farrington for the majority of the development, carefully crafted and recorded subdivision plats and restrictive covenants to establish the intended land use scheme for the subdivision. That land use scheme is clear and unambiguous. Mr. Farrington took care to ensure that both the Association and the individual property owners retained enforcement rights. He felt so strongly that his carefully planned land use scheme be perpetual, the Restrictive Covenants do not contain any end to their applicability nor any provision allowing for amendment or modification.

Plaintiff's Petition purposefully buries the lede. This is not a case where the restrictions are ambiguous as to whether property can be used for commercial purposes. Quite the opposite. For sure the Restrictive Covenants make the residential purpose of Tanglewood clear, but the Section 7 Restrictive Covenants also make it clear that 1661 Tanglewood Blvd. is different. The Section 7 Restrictive Covenants state in no uncertain terms that **1661 Tanglewood Blvd. can be used for either residential or commercial purposes.** Moreover, the provision goes further to state that none of the other restrictions in Section 7 apply to 1661 Tanglewood Blvd.:

This property shall be used for residence purposes only, **with the exception of lot four (4), block thirty-two (32) which lot may be used for commercial purposes,** however, such use shall not emit obnoxious odors or loud noises, and no structures of a temporary nature may be placed or erected thereon, **and no other restrictions herein set forth shall affect this lot four (4), block thirty-two (32).**<sup>2</sup>

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<sup>2</sup> 1661 Tanglewood Blvd. was platted from the raw land in the plat of Tanglewood Section 7 as Lot 4 of Block 32.

TANGLEWOOD RESERVATIONS, RESTRICTIONS, AND COVENANTS IN SECTION 7, which is attached as Exhibit A and incorporated herein (emphasis added).

The Association is now asking the Court to ignore this express reservation. However, its newly and curiously-timed alleged “outrage” over the use of 1661 Tanglewood Blvd. for commercial purposes is surprising to say the least. It is no secret that 1661 Tanglewood Blvd. was different than the rest of the Tanglewood properties. Again, Section 7 expressly states as much. Moreover, 1661 Tanglewood Blvd. has never been used for residential purposes and has always been used for commercial purposes, including after the alleged 2002 and 2018 amendments to the Restrictive Covenants. Almost 70 years ago, in February 1951, at the same time the Section 7 Restrictive Covenants were being drafted and filed in the property records, Mr. Farrington signed a contract to build office space for the Wm. G. Farrington Company on the property. The building was constructed soon thereafter and is still in use today as the offices of WMJK, Ltd.

The Association is correct to highlight that Mr. Farrington “respected restrictions.” However, why the Association thinks this supports its claim is beyond us. If anything, it reinforces that Mr. Farrington knew exactly what he was doing when he crafted the Restrictive Covenants and expressly stated that 1661 Tanglewood Blvd. could be used and developed for commercial purposes and was not subject to any of the other restrictions in Section 7. The reality is that it is not the Miller Family, but instead the Association that is refusing to respect the Restrictive Covenants. The various declarations the Association seeks would do violence to Mr. Farrington’s vision for the Tanglewood’s land use plan, a plan for which he took great care to ensure was clearly and unambiguously set out in the Restrictive Covenants.

The Association is trying to shove a square peg through a round hole. Its only hope of distorting the clear intent of the Restrictive Covenants is to attempt to rewrite them. This is not and should not be allowed. The Restrictive Covenants and the law are clear—the Miller Family

and subsequent purchasers are entitled to rely on the perpetual Section 7 Restrictive Covenants and continue to use and further develop the property at 1661 Tanglewood Blvd. for commercial purposes. Just because the surrounding property owners now wish that the Restrictive Covenants stated something different cannot make it so. Accordingly, beyond denying the Association's allegations, the Miller Family requests declarations that:

- 1661 Tanglewood Blvd. is subject only to the Section 7 plat;
- the original Section 7 restrictive covenants apply, including that 1661 Tanglewood Blvd. can be used for commercial purposes;
- no other restrictive covenants applicable to Tanglewood generally apply to this property, including the Section 5 Restrictive Covenants;
- the 2002 and 2018 amendments of record to the Restrictive Covenants are invalid as to all Tanglewood Properties, and specifically as to 1661 Tanglewood Blvd.; and
- the project described in the First Amended Original Petition is permitted.

#### **RESPONSE TO THE ASSOCIATION'S PETITION**

##### **A. The Tanglewood land use plan is clear and unambiguous.**

Mr. Farrington and Tanglewood Corporation developed Tanglewood beginning in the late 1940's as a high-quality planned neighborhood. Tanglewood was developed in phases, each with a separate recorded subdivision plat and a separate recorded restrictive covenant document. The Restrictive Covenants apply only section by section, not over the entirety of Tanglewood. However, a single owners association (the Association) acts for each section of Tanglewood. The Restrictive Covenants were filed in the Real Property Records of Harris County, Texas. A total of 23 sections now contain over 1,100 platted lots.

The Restrictive Covenants were similar in format. In each recorded restrictive covenant, the Association was given authority to enforce the Restrictive Covenants. The land use plan for Tanglewood was set forth exclusively in the recorded plats and Restrictive Covenants. There was

no intent for a common law implied scheme of development. Mr. Farrington and Tanglewood Corporation intended that the Tanglewood land use plan survive in perpetuity. Therefore, there are no time limits on the existence of the Restrictive Covenants nor provisions for amendment or modification. *See* Exhibit A.

**B. Section 7 Restrictive Covenants expressly reserve the right to use 1661 Tanglewood Blvd. for commercial purposes.**

1661 Tanglewood Blvd. was platted for the first and only time in the Tanglewood Section 7 plat (Lot 4, Block 32, Tanglewood Section 7 plat). Section 7 Restrictive Covenants are similar to the Restrictive Covenants for the other sections in Tanglewood, with the significant exception that they explicitly state that Lot 4, Block 32 may be used for not only residential purposes, but also for commercial purposes, and further that the property is not subject to any other restrictions set forth in the Section 7 Restrictive Covenants:

This property shall be used for residence purposes only, *with the exception of lot four (4), block thirty-two (32) which lot may be used for commercial purposes*, however, such use shall not emit obnoxious odors or loud noises, and no structures of a temporary nature may be placed or erected thereon, *and no other restrictions herein set forth shall affect this lot four (4), block thirty-two (32)*.

Exhibit A (emphasis added).<sup>3</sup> As with the Restrictive Covenants for the other sections, there is no provision in Section 7 for amending or modifying the Restrictive Covenants and there is no term or time limit for their application. As such, the Restrictive Covenants are controlling and could not be more clear and unambiguous—1661 Tanglewood Blvd. can be used and developed for a commercial purpose.

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<sup>3</sup> Section 7 Restrictive Covenants were filed under Harris County Clerk's File No. 7864296 filed on April 2, 1951.

**C. The Association's attempts to rewrite the Restrictive Covenants that have applied to 1661 Tanglewood Blvd. for close to 70 years, are invalid.**

**1. The Association's attempts to amend or modify Tanglewood's Restrictive Covenants as they applied to 1661 Tanglewood Blvd. do not prevent the commercial use of and proposed redevelopment of 1661 Tanglewood Blvd.**

In 2002 and again in 2018, the Association attempted to invoke a Texas Property Code Chapter 204 ("Chapter 204") amendment process to amend the Restrictive Covenants in all of the Tanglewood's sections. The Association tried to use this statutory process because the Tanglewood Restrictive Covenants lack a contractual amendment process. Importantly though, the Chapter 204 amendments in 2002 and 2018 do not apply to 1661 Tanglewood Blvd., nor should they.

As a threshold issue, the 2002 and 2018 amendments are wholly invalid because the amendment process as outlined by the statute was not followed. Regardless, the clear terms of Texas Property Code section 204.002(c) exempt 1661 Tanglewood Blvd. from being subject to any amendments passed pursuant to Chapter 204. Section 204.002 expressly states that:

***(c) [Chapter 204] does not apply to portions of a subdivision that are zoned for or that contain a commercial structure, an industrial structure, an apartment complex or a condominium development governed by Title 7 Property Code.***

TEX. PROP. CODE § 204.002 (emphasis added). The statutory process was authorized by the Texas Legislature to provide limited rights in limited areas where residentially restricted neighborhoods have a legitimate need to update antiquated restrictions in the residential area. It was not intended and cannot be used to reverse vested property rights of business owners. Business owners who have been using their property for commercial purposes have every reason to rely on existing restrictions and covenants that permit them to operate their business. Surrounding homeowners, especially those who are on notice of the commercial nature of the property, should not be

permitted to effectively evict a business simply by sheer force of numbers. This would be the antithesis of protecting the rights of property owners.

Here, it is beyond dispute that 1661 Tanglewood Blvd. has always been used for a commercial purpose and has contained a commercial structure since 1951. As mentioned, Mr. Farrington built the building on 1661 Tanglewood for the express purpose of housing his business office. It then later became the corporate headquarters for Tanglewood Corporation and the headquarters of WMJK, Ltd. This building was not designed nor constructed as a residential structure. It does not have a kitchen or accommodations for sleeping or eating. It has a formal reception area, designated men's and women's restrooms, water fountains, a large conference room, and a line of offices off a central spine. Nor has it ever been utilized as a residential structure.<sup>4</sup> As such, 1661 Tanglewood Blvd. is excluded from the application of Texas Property Code Chapter 204 and therefore neither the 2002 nor 2018 amendments are applicable to 1661 Tanglewood Blvd.

Again, the Section 7 Restrictive Covenants could not be clearer—the owners of 1661 Tanglewood Blvd. are permitted to use their property for commercial purposes and have always done so. Texas law does not and should not permit surrounding property owners to try and change this 70 years later.

## **2. The Association wrongly claims that Section 5 applies to 1661 Tanglewood Blvd.**

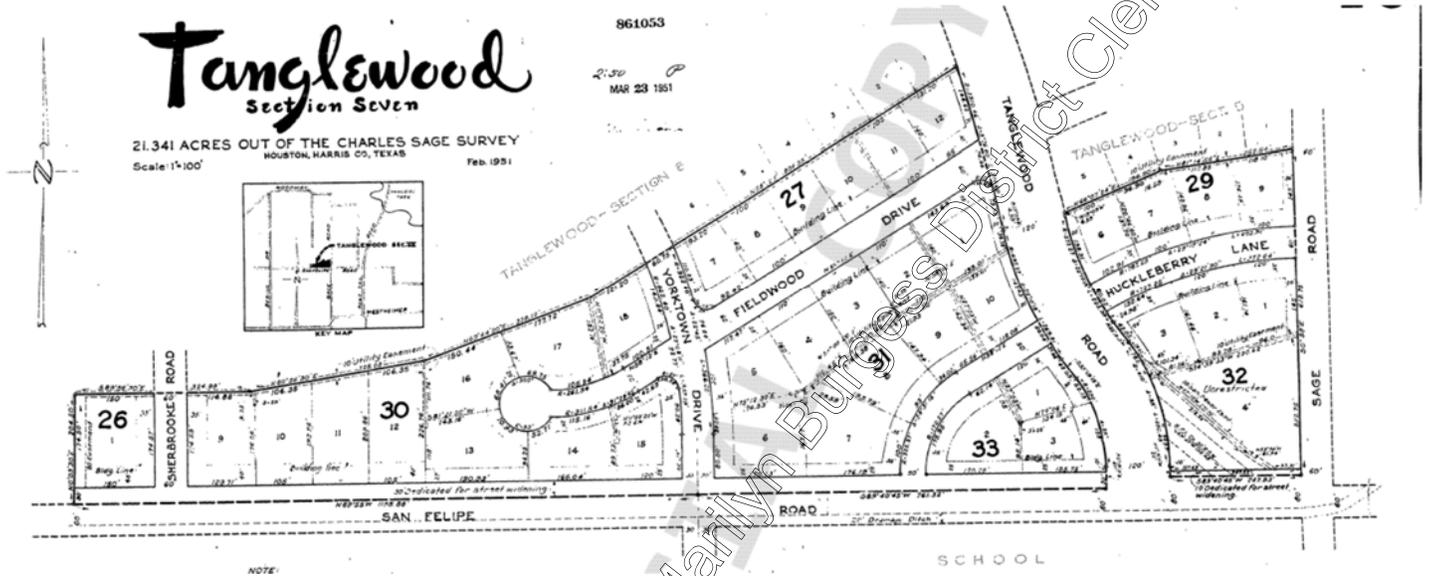
Perhaps because the Association realizes that Section 7 is still controlling, the Association now alleges, using creative machinations that would make M.C. Escher<sup>5</sup> proud, that the Section 5

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<sup>4</sup> The sum total of the Association's retort to the fact that the building at 1661 Tanglewood is being used for a commercial purpose is that "the contrast between the current residential style structure at 1661 Tanglewood Boulevard and the proposed tower is stark."

<sup>5</sup> M.C. Escher is a world-renowned graphic artist famous for his impossible construction drawings, such as "The Waterfall," "Up and Down," "Convex and Concave," and "Ascending and Descending."

Restrictive Covenants somehow apply to 1661 Tanglewood Blvd. Nothing could be farther from the truth. The Section 5 plat specifically excludes 1661 Tanglewood Blvd. while the Section 7 plat clearly and unambiguously includes it, as shown below. This was the first and only plat of 1661 Tanglewood Blvd.:



See Exhibit A. In addition, as discussed above, the Section 7 Restrictive Covenants contain a specific provision referencing 1661 Tanglewood Blvd. Accordingly, the Association’s claim that Section 5 applies to 1661 Tanglewood Blvd. is nonsense and cannot solve its problem that Section 7 expressly permits 1661 Tanglewood Blvd. to be used and developed for a commercial purpose.

**REQUEST FOR DECLARATORY RELIEF**

As detailed above, the applicable Restrictive Covenants for 1661 Tanglewood Blvd. permit residential or commercial use. As such, not only should Plaintiff’s request for declaratory relief be denied, but to the contrary, the Court should enter declarations clarifying that the Miller Family and subsequent property owners may continue to use and develop the property for commercial purposes. Accordingly, pursuant to the Texas Declaratory Judgment Act, the Miller Family requests Declaratory Judgment regarding its property at 1661 Tanglewood Blvd. as follows:

1. 1661 Tanglewood Blvd. is subject only to the Section 7 Tanglewood plat, and specifically, not subject to the Section 5 Tanglewood plat;
2. 1661 Tanglewood Blvd. is subject only to the Restrictive Covenants for Tanglewood Section 7 recorded under Clerk's File No. 7864296, and, there are no implied restrictive covenants or common scheme of development applicable;
3. The Restrictive Covenants for Tanglewood Section 5 do not apply to 1661 Tanglewood Blvd.;
4. The 2002 and 2018 amendments to Tanglewood's Restrictive Covenants are void as to all Tanglewood properties for failure to follow the statutory requirements;
5. The 2002 and 2018 amendments do not apply to 1661 Tanglewood Blvd.; and
6. The proposed project described in the First Amended Original Petition does not violate the applicable restrictive covenants.

Finally, the Court should award the Miller Family costs and reasonable and necessary attorney's fees as are equitable and just under Texas Civil Practice and Remedies Code Section 37.009.<sup>6</sup>

#### **GENERAL DENIAL**

The Miller Family generally denies all of Plaintiff's allegations.

#### **OTHER DEFENSES**

The Miller Family is not liable to Plaintiff because of the Plaintiff's waiver of any violation of the Restrictive Covenants.

The Miller Family is not liable to Plaintiff because Plaintiff is estopped from enforcing any violation of the Restrictive Covenants.

The Miller Family is not liable to Plaintiff because Plaintiff's claim is barred by the relevant statute of limitations.

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<sup>6</sup> This request is in response to Plaintiff's request for declaratory relief and is also made as part of the Miller Family's independent request for declaratory relief.

The Miller Family is not liable to Plaintiff as a result of ambiguity.

The Miller Family is not liable to Plaintiff due to consent.

The Miller Family is not liable to Plaintiff due to mistake.

The Miller Family is not liable to Plaintiff due to ratification.

**RIGHT TO AMEND**

The Miller Family reserves the right to amend this Answer in accordance with the Texas Rules of Civil Procedure and any scheduling order of the Court.

**JURY DEMAND**

If the Court determines that there are genuine issues of material facts in issue, then the Miller Family demands a jury trial.

**PRAYER**

For these reasons, Defendant WMJK, Ltd. requests that the Court: (i) deny Plaintiff's claims and requests for declaratory relief; (2) dismiss Plaintiff's claims with prejudice; (3) enter judgment that Plaintiff take nothing as to each of its claims against Defendant; (4) grant Defendant WMJK, Ltd.'s request for declaratory relief and enter judgment as set forth above; (5) award Defendant WMJK, Ltd.'s costs and reasonable and necessary attorney's fees against Plaintiff; and (6) award Defendant WMJK, Ltd. all other relief, special and general, to which Defendant is entitled, at law and equity.

Respectfully submitted,

RUSTY HARDIN & ASSOCIATES, LLP

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### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all parties and/or counsel of record on August 23, 2019, pursuant to the Texas Rules of Civil Procedure.

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