

St. Charles Hills subdivision

Status report on changes to the Indentures (By-Laws) as of April 2007

In 1964 when the Charles F. Vaterott Land and Development Company began development of St. Charles Hills subdivision, the company's attorneys created the "Indentures" of the subdivision, otherwise called the "Conditions, Restrictions, Provisions, and Trusteeship". These indentures were designed as a guide to the governance of the subdivision by way of using "Trustees" who would reside in the subdivision. This document was placed on file with St. Charles County and became "law".

At that time, St. Charles was "out in the country" and at the western edge of St. Charles. In order to insure that the subdivision remained a suburban neighborhood as it was designed, and to make sure that residents did not treat the neighborhood as a farm in the country where anyone could build or store anything they please, specific restrictions were included in the Indentures. Some of these restrictions are now either unnecessary or overly restrictive due to the normal and reasonable changes in how residents live their lives and maintain their homes.

However, some of the Indentures may only seem to be overly restrictive if interpreted literally and if adjustments are not made to accommodate changes in terminology and the original intent of a particular indenture. It is the legal responsibility of the Trustees of St. Charles Hill subdivision to interpret and apply the Indentures, therefore some indentures may seem to be interpreted unfairly or inconsistently. This is the nature of St. Charles Hills governance. Trustees are elected from residents of the neighborhood and must use their judgement and knowledge of the neighborhood to do their job.

Unfortunately, some St. Charles Hills Trustees in the past have simply not done their job of interpreting, applying, and enforcing some of the indentures, therefore a number of homeowners for many years have had in place a number of structures that violate the Indentures, at least if interpreted literally. In practice, a violation of such an indenture is usually thought to be "grandfathered" after a number of years, and it would be difficult to enforce an indenture if the homeowner challenged the subdivision legally, therefore the Trustees seldom enforce such a violation unless it seems extreme in their judgement.

Over the years various Trustees have considered changing parts of the Indentures, but unfortunately, *the Indentures do not currently include any method whatsoever for amending them*. This fact was determined both by attorneys hired by the Trustees in late 1983 and by attorneys hired by the Trustees in early 2007. The attorneys in 2007 suggested that the only way that the Indentures could be amended was for the St. Charles County Courts (a Judge) to set forth provisions for amending the Indentures.

The Trustees have instructed the subdivision's attorneys to begin the process of requesting that a judge grant to the subdivision permission to amend the Indentures. However, this is not a common process, so the attorneys are currently investigating how best to do this, because if they are not well prepared, a judge may not grant this permission. It is also not known what restrictions if any a judge might put on the amendments.