

Owner Prevails Over Association and is Allowed to Keep Her Storage Barn
by [Lawrence Szabo, Esq.](#) | Oct 7, 2022 | [Case Decisions](#), [Governing Documents](#)

This case involved a dispute between a homeowner's association ("Association") and an owner/member of the Association ("Owner") over Owner's right to construct and maintain a "storage barn" on her property. Association contended that Owner's construction of the 10'x14' storage barn, which Owner had constructed on her property to store a snow thrower and other inter items, was in violation of Association's restrictive covenants that prohibited structures other than single-family residences. After Owner refused to remove the barn from her property, Association filed a lawsuit to compel the removal of the barn and to enjoin Owner from placing another shed on her property in the future. Owner defended the case by contending that the restrictive covenant was not enforceable because it was ambiguous, and that Association had waived enforcement of the restrictive covenant by failing to enforce prior violations.

The restrictive covenant in question prohibits buildings or structures other than single family dwellings with attached garage, "except swimming pool, tennis court, badminton court, walls or fences and such other auxiliary construction." Owner contended that the words "auxiliary construction" were ambiguous and that the ambiguity rendered the restrictive covenant unenforceable.

The trial court granted summary judgment in favor of Owner after finding that the restrictive covenant was ambiguous, and thus, unenforceable. The trial court also found that Association had waived enforcement of the covenant. Association appealed the trial court's ruling.

In its appeal, Association contended that the words "auxiliary construction" in the subject restrictive covenant were not ambiguous. The appellate court agreed that the words were not ambiguous but found that the storage barn constructed by Owner was an "auxiliary construction" that was permitted by the plain and unambiguous language of the restrictive covenant. The court found that the storage shed, which was used to complement and supplement Owner's single-family home, was an auxiliary structure. The appellate court also found that Association had permitted the construction of various other types of "auxiliary construction" such as dog kennels, children's playhouses, and structures used to store firewood, and since Owner's storage shed was just another type of auxiliary construction, Association's acceptance of the other structures operated as a waiver of enforcement of the covenant.

The appellate court concluded that the trial court had erred by finding that the restrictive covenant was ambiguous, but that it reached the right result by granting summary judgment in favor of Owner. Thus, the appellate court upheld the trial court's decision in favor of Owner based on the law that, "A trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason."

Unpublished Michigan Appellate Court decision (September 29, 2022)

See case decision: [Crestwood Homeowners Assn v. Pawlanta](#)