

No. 12-24-00247-CV

**In the Twelfth Court of Appeals
Tyler, Texas**

Southern Cornerstone, Inc. and
RaceTrac, Inc. d/b/a RaceTrac #2469,
Appellants,

v.

Crown Colony Improvement Association, Inc.,
Appellee.

Appellee's Brief

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ORAL ARGUMENT REQUESTED

Contents

Authorities	5
Statement of the Case	11
Statement of Facts	12
Summary of Argument	15
Argument	18
I. Standard of Review	18
A. Temporary-injunction orders are reviewed for abuse of discretion.....	18
B. The trial court’s factual determinations merit deference	19
II. CCIA has standing to enforce Section I’s Restrictions.....	20
A. CCIA has associational standing to enforce the Restrictions if CCIA’s member landowners would have such standing	20
B. All Crown Colony lot owners would have standing to enforce Section I’s Restrictions because the Restrictions were intended to benefit them.....	22
1. In determining who is entitled to benefit from, and thus may enforce, a restrictive covenant, grantor intent controls.....	23
2. All owners in Crown Colony Subdivision are intended beneficiaries who can enforce the Section I Restrictions.....	27
a. An unchallenged finding establishes that the Section I Restrictions were intended to benefit all sections of Crown Colony, and thus establishes CCIA’s standing.....	27
b. Record proof supports the trial court’s intent finding.....	27
c. RaceTrac’s opposing arguments don’t begin to negate the intent to benefit the other Crown Colony lot owners	32
C. Because the Subdivision, including Section I, was developed under a general plan, the lot owners would have standing	33
1. General plan, a fact-driven issue, merits appellate deference	36

- 2. The intent for and scope of a general plan can be proved in a variety of ways 36
- 3. The facts support the finding of a general plan encompassing the entire Crown Colony Subdivision..... 37
 - a. CCIA’s proof makes a compelling case for the plan 37
 - b. The trial court was entitled to reconcile RaceTrac’s proof..... 45
- 4. The trial court also correctly rejected RaceTrac’s other arguments on the general plan issue 47
 - a. RaceTrac’s two-grantor argument places form over substance..... 47
 - b. RaceTrac’s attacks on the trial court’s finding fall flat 48
 - c. Without justification, RaceTrac ignores material findings 52
 - d. RaceTrac also applies an inapplicable legal test 54
 - e. RaceTrac’s exemplar cases don’t fit..... 56
- III. RaceTrac’s argument on permitting attacks a ruling the trial court never made 60
- IV. Blue Hole’s attempted release of the 1971 Restrictions and 1976 Amendments was ineffective 60
 - A. Less than a majority of the owners signed the release 60
 - B. Blue Hole purported to release only its own property 64
 - C. The partial release was executed outside the time window permitted by the 1971 Restrictions 65
 - D. The trial court’s alternative conclusion is unchallenged 66
- V. The trial court acted within its discretion in holding that the members of the “Section II” ACC could be considered members of the Section I ACC..... 66
 - A. RaceTrac’s argument is waived and immaterial 66
 - B. The trial court’s action has record support..... 67

C. The trial court’s actions makes sense, but RaceTrac’s position doesn’t	68
D. CCIA’s pleadings support the injunction.....	71
Conclusion and Prayer.....	72
Certificates of Compliance	73
Certificate of Service	73

Authorities

Cases

<i>Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions</i> , 610 S.W.3d 911 (Tex. 2020).....	18, 19
<i>Albert v. Fort Worth</i> , 690 S.W.3d 92 (Tex. 2024).....	22
<i>Allison v. Roock</i> , 239 N.E.3d 852 (Ind. Ct. App. 2024).....	65
<i>Andeson v. New Prop. Owners' Ass'n of Newport, Inc.</i> , 122 S.W.3d 378 (Tex. App.—Texarkana 2003, pet. denied)	20
<i>Avas Sales Lead Servs. v. Jane Doe</i> , 2022 U.S. Dist. LEXIS 167163 (D. Del. 2022)	51
<i>Barnard v. Barnard</i> , 133 S.W.3d 782 (Tex. App.—Fort Worth 2004, pet. denied).....	49
<i>Baywood Estates Prop. Owners Ass'n v. Caolo</i> , 392 S.W.3d 776 (Tex. App.—Tyler 2012, no pet.)	33, 36
<i>Big Rock Investors Ass'n v. Big Rock Petroleum, Inc.</i> , 409 S.W.3d 845 (Tex. App.—Fort Worth 2013, pet. denied)	22
<i>Butnaru v. Ford Motor Co.</i> , 84 S.W.3d 198 (Tex. 2002)	18, 70
<i>Campbell v. State</i> , 382 S.W.3d 545 (Tex. App.—Austin 2012, no pet.)	49
<i>Cieri v. Gorton</i> , 587 P.2d 14 (Mont. 1978).....	62
<i>Cleaver v. Cundiff</i> , 203 S.W.3d 373 (Tex. App.—Eastland 2006, pet. denied).....	52
<i>Clint Indep. Sch. Dist. v. Marquez</i> , 487 S.W.3d 538 (Tex. 2016).....	67, 71
<i>Combs v. Health Care Servs. Corp.</i> , 401 S.W.3d 623 (Tex. 2013)	63
<i>Concerned Owners of Thistle Hill v. Ryan Road Mgmt.</i> , 2014 Tex. App. LEXIS 3929(Tex. App.—Fort Worth 2014, no pet.).....	46

<i>Country Cmty. Timberlake Vill. LP v. HMW Special Util. Dist.</i> , 438 S.W.3d 661 (Tex. App.-Houston [1 st Dist.] 2014, pet. denied)	32, 56, 57, 58
<i>Davis v. Huey</i> , 571 S.W.3d 859 (Tex. 1978)	18, 19
<i>Davis v. Skipper</i> , 83 S.W.2d 318 (Tex. 1935).....	22
<i>Dealer Computer Servs. v. DCT Hollister RD, LLC</i> , 574 S.W.3d 610 (Tex. App.—Houston [14 th Dist.] 2019, no pet.).....	56, 59
<i>Densmore v. McCarley</i> , 2020 Tex. App. LEXIS 2304 (Tex. App.—Fort Worth Mar. 19, 2020, no pet.)	70
<i>Duffy v. Sunburst Farms E. Mut. Water & Agric. Co.</i> , 604 P.2d 1124 (Ariz. 1979)	62
<i>Duvall v. Ford Leasing Dev. Corp.</i> , 255 S.E.2d 470 (Va. 1979).....	59
<i>EWB-I, LLC v. PlazaAmericas Mall Tex., LLC.</i> , 527 S.W.3d 447 (Tex. App.—Houston [1 st Dist.] 2017, pet. denied)	23, 24, 26, 27
<i>Evans v. Pollock</i> , 796 S.W.2d 465 (Tex. 1990).....	36, 55-56
<i>Exec. Tele-Communication Sys., Inc., v. Buchbaum</i> , 669 S.W.2d 400 (Tex. App.—Dallas 1984, no writ)	19
<i>Fairfield Indus. v. EP Energy E&P Co., LP</i> , 531 S.W.3d 234 (Tex. App.-Houston [14 th Dist.] 2017, pet. denied)	62
<i>Fox v. Tropical Warehouses, Inc.</i> , 121 S.W.3d 853 (Tex. App.—Fort Worth 2003, no pet.).....	19
<i>French v. Diamond Hill—Jarvis Civic League</i> , 724 S.W.2d 921 (Tex. App.—Fort Worth 1987, writ ref'd n.r.e.)	62
<i>Garden Oaks Maint. Org. v. Chang</i> , 542 S.W.3d 117 (Tex. App.—Houston [14 th Dist.] 2017, no pet.).....	23
<i>Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.</i> , 789 S.W.2d 569 (Tex. 1990).....	60

<i>Girsh v. St. John</i> , 218 S.W.3d 921 (Tex. App.—Beaumont 2007, no pet.).....	23
<i>Hahn v. Love</i> , 321 S.W.3d 517 (Tex. App.—Houston [1 st Dist.] 2009, pet. denied)	20
<i>Hansard v. Pepsi-Cola Metropolitan Bottling Co., Inc.</i> , 865 F.2d 1461 (5th Cir. 1989).....	49
<i>Hartsfield v. Country Club Vill. Cmty. Committee</i> , 2005 Tex. App. LEXIS 3006 (Tex. App.—Corpus Christi April 21, 2005, no pet.).....	23, 30
<i>Hays County v. Hays County Water Planning P’ship</i> , 106 S.W.3d 349 (Tex. App.—Austin 2003, no pet.).....	21
<i>Henry v. Cox</i> , 520 S.W.3d 28 (Tex. 2017)	18
<i>Hooper v. Lottman</i> , 171 S.W. 270 (Tex. Civ. App.—El Paso 1914, no writ).....	passim
<i>In re H.S.</i> , 550 S.W.3d 151 (Tex. 2018)	20, 27
<i>Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.</i> , 354 S.W.3d 887 (Tex. App.—Houston [1 st Dist.] 2011, no pet.).....	19
<i>Johnson v. Johnson</i> , 2005 Tex. App. LEXIS 10458 (Tex. App.—Austin Dec. 16, 2005, no pet.).....	44
<i>Johnson v. Linton</i> , 491 S.W.2d 189 (Tex. Civ. App.—Dallas 1973, no writ).....	70
<i>Jones v. Schoelkopf</i> , 122 P.3d 844 (N.M. Ct. App. 2005).....	67
<i>Kohl v. Legoullon</i> , 936 P.2d 514 (Ak. 1997).....	65
<i>Lehmann v. Wallace</i> , 510 S.W.2d 675 (Tex. Civ. App.—San Antonio 1974, writ ref’d n.r.e.).....	34
<i>Lockhill Ventures, LLC v. Ard Mor, Inc.</i> , 2015 Tex. App. LEXIS 6975 (Tex. App.—San Antonio 2015, pet. denied).....	36, 44, 56, 57

<i>Lovelace v. Bandera Cemetery Ass'n</i> , 545 S.W.2d 194 (Tex. Civ. App.—San Antonio 1976, writ ref'd n.r.e.).....	66
<i>Med. Towers, Ltd. v. St. Luke's Episcopal Hosp.</i> , 750 S.W.2d 820 (Tex. App.—Houston [14 th Dist.] 1988, writ denied)	69
<i>Miller v. Sandwick</i> , 921 S.W.2d 517 (Tex. App.—Amarillo 1996, writ denied).....	61, 62, 65
<i>Moseley v. Arnold</i> , 486 S.W.3d 656 (Tex. App.—Texarkana 2015, no pet.).....	23-25
<i>Moulagiannis v. City of Cleveland Bd. of Zoning Appeals</i> , 2005 Ohio App. LEXIS 2100 (Ohio Ct. App. May 5, 2005)	51
<i>Nootsie, Ltd v. Williamson Cnty. Appr. Dist.</i> , 925 S.W.2d 659 (Tex. 1996).....	20
<i>Nordstrom v. Guindon</i> , 17 P.3d 287 (Idaho 2000).....	62
<i>Operation Rescue-National v. Planned Parenthood</i> , 937 S.W.2d 60 (Tex. App.—Houston [14 th Dist.] 1996) <i>aff'd as modified</i> , 975 S.W.2d 546 (Tex. 1998)	68
<i>Pietrowski v. Dufrane</i> , 634 N.W.2d 109 (Wis. Ct. App. 2001).....	67
<i>Pilarcik v. Emmons</i> , 966 S.W.2d 474 (Tex. 1998).....	60
<i>River Plantation Cmty. Improvement Ass'n v. River Plantation Props., LLC</i> , 698 S.W.3d 226 (Tex. 2014).....	22, 55
<i>Roddy v. Holly Lake Ranch Ass'n</i> , 589 S.W.3d 336 (Tex. App.—Tyler 2019, no pet.)	63
<i>RSL Funding, LLC v. Newsome</i> , 569 S.W.3d 116 (Tex. 2018).....	20
<i>Russell Realty Co. v. Hall</i> , 233 S.W. 996 (Tex. Civ. App.—Dallas 1921, writ dism'd w.o.j.).....	22, 24
<i>Simpson v. Afton Oaks Civic Club, Inc.</i> , 155 S.W.3d 674 (Tex. App.—Texarkana 2005, pet. denied).....	65

<i>Smith v. Cooper</i> , 541 S.W.2d 274 (Tex. Civ. App.-Texarkana 1976, no writ).....	71
<i>Syx v. LTG Vegan Ltd.</i> , 2006 Tex. App. LEXIS 6633 (Tex. App.—Dallas 2006, pet. denied).....	65
<i>Tarr v. Timberwood Park Owners Ass’n</i> , 556 S.W.3d 274 (Tex. 2018)	30, 61
<i>Teal Trading & Dev. LP v. Champee Springs Ranches Prop. Owners Ass’n</i> , 534 S.W.3d 558, 585 (Tex. App.—San Antonio 2017), <i>aff’d</i> , 593 S.W.3d 324 (Tex. 2020)	64
<i>Tex. Ass’n of Bus. v. Tex. Air Control Bd.</i> , 852 S.W.2d 440 (Tex. 1983).....	19, 21
<i>Trethewey v. Collins</i> , 2009 Tex. App. LEXIS 2059 (Tex. App.—Austin Mar. 27, 2009, no pet.).....	65
<i>Turner v. KTRK Television, Inc.</i> , 38 S.W.3d 103 (Tex. 2000).....	50
<i>Vista Grande Homeowners Ass’n v. Brand</i> , 2023 Tex. App. LEXIS 877 (Tex. App.—Austin Nov. 22, 2023, no pet.).....	61
<i>Wasson Interests, Ltd. v. Adams</i> , 405 S.W.3d 971 (Tex. App.—Tyler 2013, no pet.).....	22
<i>Webb v. Voga</i> , 316 S.W.3d 809 (Tex. App.—Dallas 2010, no pet.).....	23
<i>Zent v. Murrow</i> , 476 S.W.2d 875 (Tex. Civ. App.—Austin 1972, no writ).....	64

Rules and Statutes

TEX. PROP. CODE §202.004(b).....	20
TEX. R. APP. P. 38.1(i).....	66
TEX. R. EVID. 201.....	44
TEX. R. EVID. 701.....	49
TEX. R. EVID. 802.....	50

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BLACK’S LAW DICTIONARY (8 TH ED).....	40
4 A.L.R.3d 570, 582 (1965).....	64
Merriam-Webster Dictionary, merriam- webster.com/dictionary/majority	61
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RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, §8.1.....	22, 24
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Wikipedia, https://en.wikipedia.org>wiki>Majority	61

Statement of the Case

Nature of the Case

This is an interlocutory appeal from a temporary injunction. In the underlying suit, the Crown Colony Improvement Association (CCIA), on behalf of its member lot owners, seeks to enforce restrictive covenants burdening the lots within Section I of the Crown Colony Subdivision. RaceTrac bought three such lots in 2023, intending to install a sprawling, 24-hour, 8,000 square-foot truckstop across them. It did this despite knowing its project couldn't pass muster under the restrictive covenants that had been in place for fifty years, requiring a greenbelt and generous building setbacks between lots—covenants included expressly to ensure and protect Crown Colony's character as an upscale neighborhood.

Trial Court

Hon. Michael Mayes, sitting by designation in the 217th Judicial District Court, Angelina County, Texas.

Course of Proceedings

Temporary injunction granted. After briefing and an evidentiary hearing, the trial court signed an order that (1) enjoined RaceTrac from continuing construction of the proposed truckstop unless and until its plans are reviewed and approved by the Crown Colony Architectural Control Committees (ACCs), which approval shall not be withheld unreasonably, and (2) ordered that the current members of CCIA's existing, active Architectural Control Committee be considered as the members of the Section I Architectural Control Committee as well. 2CR177-178.

Statement of Facts

The Parties

Appellee CCIA is a non-profit organization formed to promote the welfare of residents of Lufkin's Crown Colony Subdivision. PX101.

Appellant RaceTrac, Inc., an Atlanta, Georgia corporation, builds and operates convenience stores and truck stops across the US. 2RR271, 283. Appellant Southern Cornerstone is RaceTrac's wholly-owned real-estate development arm. 2RR277-278.

The Subdivision

Crown Colony Subdivision is an upscale, master-planned, mixed-use development. 2RR40; 2RR76; PX8. Divided into sections, it contains hundreds of single-family homes, a golf course, 2RR89, country club, 2RR89, apartments, 2RR48-49, and sundry other features found in similar communities. It is the creation of Arthur Temple, Jr., the then-President of Temple Industries. 2RR23-24; PX4.

The Proposed Truckstop

In August 2023, Southern Cornerstone bought lots 2, 3, and 4 in Crown Colony Subdivision—Section One. 2RR277-278. Without notifying CCIA or any ACC, 2RR286-289, RaceTrac has stripped the lots of the mature timber and most vegetation, 2RR230, 134, to facilitate a planned truckstop. 2RR272-77. The 24-hour business would include seventeen parking spots for 18-wheelers to remain overnight indefinitely, and would abut several of the subdivision's single-family homes. 2RR272-277.

The Restrictions

The lots on which RaceTrac seeks to build its truck stop are burdened by restrictive covenants in two recorded instruments: the 1971 Restrictions (PX4) and the 1976 agreement modifying them (PX7). The 1971 Restrictions not only recite that imposing restrictions on RaceTrac’s lots “is desirable ... for the benefit of ... persons purchasing lots in said Subdivision” but the Restrictions’ operative provisions say Temple Industries is establishing the “restrictions of Crown Colony Subdivision—Section One, to be covenants running with the land, and to inure to the use and benefit of [Temple], its successors and assigns, and each and every person purchasing or owning land in said Subdivision [i.e., in Crown Colony Subdivision].”

The 1976 agreement modified the Paragraph 1 of the 1971 Restrictions, PX7, but otherwise left the Restrictions intact, including the greenbelt and setback requirements in the Restrictions’ Paragraph 2 and a restriction precluding any activity considered “noxious or offensive” to the neighborhood. PX4 §§ 2, 4. RaceTrac doesn’t contest that these instruments, if effective, preclude its proposed truck stop.

RaceTrac bought the lots knowing of the 1971 and 1976 instruments, which had appeared in its title search. 2RR281.

The Injunction Hearing

Among other witnesses, Rayford Faircloth, 2RR74, a longtime employee of Temple Industries and then Sabine Investment Company,¹ had worked on Crown Colony from its inception. 2RR74-75, 2RR121. He testified:

- From the beginning, “we” had a plan for Crown Colony and that was for a single master-planned community. 2RR76-77.
- PX8, a Sabine map entitled “Crown Colony Master Plan,” 2RR77-78, clearly includes Section I and depicts “an overall master plan for approximately 700 acres that is Crown Colony Subdivision ... a mixed-use development ... we developed ... in stages ... as the market allowed ... from Section I around the clockwise Section II, III, IV, and so on” *Id.* at 77-78.
- The Section I lots were always a part of Crown Colony, as proved by its “kidney” shape depicted on the original plat, including a curved boundary to accommodate the “planned loop of Champions Drive on the backside, ... because [Section I] was part of the master plan.” 2RR80-81, 84.
- “Every map ... [Faircloth had] seen [of] Crown Colony ... always included Section I.” 2RR140.

¹ Sabine, a wholly-owned subsidiary of Temple, 2RR75, created for tax reasons as Temple’s real-estate-development arm, developed the remainder of Crown Colony Subdivision after Section I. 2RR129-130; PX8.

- It was “always in the plan,” “included in the maps,” and reflected in Arthur Temple’s “words” that Arthur Temple and Faircloth intended Section I to be part of the Crown Colony development. 2RR141-43.
- The “Section II [architectural control] committee took over for the Section I committee on the Section I property.” 2RR150, 153; *accord* 2RR145.

So, the trial court, finding CCIA had standing and a probable right to relief, and temporarily enjoined RaceTrac from constructing its truck stop. 2CR171-78.

Summary of Argument

The trial court determined that CCIA’s proof meets all requirements for a temporary injunction. In its appeal, RaceTrac challenges only one of the temporary-injunction elements—the probable-right-to-relief element. But RaceTrac’s brief barely touches on the issue that will predominate at trial—whether the applicable restrictive covenants would conceivably allow a truckstop within Crown Colony’s confines. Instead, the brief focuses almost entirely upon CCIA’s standing. Both the attack on standing and the pretense of an argument on the project’s permissibility are negated factually and legally.

Standing. Under law that RaceTrac does not dispute, CCIA will have associational standing to oppose RaceTrac’s truckstop if CCIA’s member lot owners would have standing. Here, those members would have standing, and thus CCIA has standing, upon two grounds: *First*, under an intent-to-benefit doctrine recognized as

both the general Texas rule and the American rule, a property owner has standing to enforce another property's restrictive covenants if record proof shows that the subject property's grantor intended its restrictive covenants to benefit that person or entity, regardless of any general plan. Here, the evidence—including the restrictive covenants' own text—shows that the developer, Temple Industries, specifically intended the Crown Colony Subdivision Section I Restrictions to benefit *all* Crown Colony's property owners, not just the Section I lot owners.

Additionally, a property owner will have standing to enforce another property's restrictive covenants where both properties have been developed under the same general plan or scheme. This doesn't require that the properties be subject to the same restrictions, but only that they are subject to the same general development plan. A variety of proof—including (i) a master-plan map, (ii) the shape of Section I's "backside" boundary (dictated by the developer's general plan for a loop road), (iii) the configurations of the individual Section I lots, and (iv) vivid testimony by Rayford Faircloth, who from the outset was involved with Arthur Temple in developing Crown Colony—all goes to prove the required general plan in this case. Moreover, although not necessary, the record proves that this general or master plan was marketed as including Section I and an unchallenged finding shows that persons buying in the subdivision relied on this.

The merits. After challenging standing, RaceTrac argues that its truckstop is authorized because its seller, 2007 Blue Hole Partners, in 2023, attempted unilaterally

to release the RaceTrac lots from the Section I restrictions. The attempted release is invalid, for three reasons: *First*, and foremost, the 1971 Section I restrictions require that any instrument purporting to amend or revoke them must be signed by “a majority or the then lot owners.” The record proves there are three owners of Section I property. Yet only Blue Hole signed the attempted revocation. *Second*, Texas law requires that any attempted amendment of restrictive covenants apply to all similarly-situated properties. Blue Hole’s purported revocation applied only to the RaceTrac lots. *And third*, under the restrictions’ provision for their automatic renewal at ten-year intervals, a valid revocation couldn’t occur until 2031, because the 1971 restrictions had automatically renewed in 2021.

RaceTrac also makes a one-paragraph argument about the permitting of its project with the City of Lufkin. The argument is immaterial. The trial court’s injunction order doesn’t mention or otherwise rely on any challenge to permitting. And no such challenge is a part of CCIA’s positions on appeal.

Finally, RaceTrac challenges the trial court’s determination that the members of ACC applicable to the remainder of Crown Colony may serve as the members of the Section I ACC. RaceTrac claims the Section I ACC vanished when its original members died. This position goes nowhere. The trial court’s equitable powers, a common-law rule for implying missing terms, and cases explicitly rejecting arguments like RaceTrac’s all support the trial court’s exercise of its discretionary powers. And regardless how the

committee's membership is reconstituted, the Section I ACC cannot approve a truckstop that so clearly violates the Section I restrictive covenants.

Argument

I. Standard of Review.

A. Temporary-injunction orders are reviewed for abuse of discretion.

The issue at a temporary-injunction hearing is whether to preserve the status quo pending trial. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain such an injunction, the proponent need only plead and show (1) a cause of action, (2) a probable right to relief, and (3) a probable imminent and irreparable injury. *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 916 (Tex. 2020). Here, of the three temporary-injunction elements, only the probable-right-to-relief element is in issue.

In reviewing the trial court's injunction, the Court does not review the merits. *Davis v. Huey*, 571 S.W.3d 859, 861 (Tex. 1978). Rather, it determines whether the trial court has abused its sound discretion in finding the injunction elements. *Butnaru*, 84 S.W.3d at 204.

Under the abuse-of-discretion standard, in turn, an appellate court may not disturb the trial court's decision "unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion." *Id.* A temporary-injunction ruling must be upheld if it is reasonably supported by some evidence, even if that evidence is conflicting. *Henry v. Cox*, 520 S.W.3d 28, 33-34 (Tex. 2017). An abuse of discretion does

not exist if evidence appears in the record that reasonably supports the trial court's decision. *Davis*, 571 S.W.2d at 862.

B. The trial court's factual determinations merit deference.

While this Court reviews legal questions of standing de novo, it still must afford deference to the trial court's determination of underlying factual issues. As *Abbott v. Anti-Defamation League* states, under the abuse-of-discretion standard that applies in temporary-injunction appeals, the court should uphold all such findings if there is "some evidence" supporting them. *Abbott*, 610 S.W.3d at 916. And, as the Court knows, under the abuse-of-discretion standard, the Court reviews the proof in the light most favorable to the trial court's ruling, drawing all legitimate inferences from the evidence and deferring to the trial court's resolution of conflicting evidence. *Fox v. Tropical Warehouses, Inc.*, 121 S.W.3d 853, 857 (Tex. App.—Fort Worth 2003, no pet.).

In proving a probable right to relief, the applicant's evidentiary burden is limited. *Exec. Tele-Communication Sys., Inc., v. Buchbaum*, 669 S.W.2d 400, 402 (Tex. App.—Dallas 1984, no writ). The party must merely offer some evidence of this element. *See Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 891 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Here, RaceTrac's primary challenge to CCIA's probable right of relief is an attack on CCIA's standing. In assessing issues of standing, the court reviews the entire record to determine if there is any evidence of standing. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445-46 (Tex. 1983). And, when the trial court issues findings of

fact relevant to the plaintiff's standing, as occurred here, the Court defers to all unchallenged findings and findings that are supported by some evidence. *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018) (deferring to unchallenged findings regarding standing under Family Code). Questions of what a developer intends, when they go beyond merely interpreting operative documents, are fact questions meriting deference. *Hahn v. Love*, 321 S.W.3d 517, 525-26 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). Such deference is especially apt here, where the trial court spent around two-hundred hours analyzing the case, 2RR14; *accord* 2RR340, and published detailed findings in its injunction order. 2CR171-78.

II. CCIA has standing to enforce Section I's Restrictions.²

A. CCIA has associational standing to enforce the Restrictions if CCIA's member landowners would have such standing.

CCIA asserts associational standing to enforce the Section I Restrictions because its members would have standing. A homeowners' association enjoys such standing whenever (1) its members would have standing, (2) the litigated interests are germane to the association's purpose, and (3) neither the claim asserted nor the relief requested

² Racetrac's statement of case claims it also challenges CCIA's capacity. Brief at ix. But any challenge to capacity has been doubly waived—in the trial court, by failing to raise it in a verified pleading, and in the appellate brief, by failing to furnish any argument supported by authority. *See, e.g., Nootsie, Ltd v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996)(capacity must be raised by verified pleading or it is waived); *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 126 (Tex. 2018)(issue not briefed with citation to authority is waived). The challenge to capacity is also meritless. *See* TEX. PROP. CODE §202.004(b); *Andeson v. New Prop. Owners' Ass'n of Newport, Inc.*, 122 S.W.3d 378, 388 (Tex. App.—Texarkana 2003, pet. denied).

requires that the members participate directly. *Tex. Ass'n of Bus.*, 852 S.W.2d at 447. RaceTrac challenges the first of these elements. It is not a high hurdle and “should not be interpreted to impose unreasonable obstacles to associational representation.” *Id.* The element’s purpose “is to simply weed out plaintiffs who ... manufactur[e] allegations of standing that lack any real foundation.” *Id.*

There are at least two ways a landowner (and thus an association representing his interests) can have standing to enforce the restrictive covenants imposed on another’s land, and they both focus on grantor intent.

First, when the instrument containing the restrictions and surrounding circumstances combine to prove grantor intent that the restrictions benefit certain persons, those persons may enforce the covenants. *Infra* II(B).

And second, when a developer develops a subdivision according to a general plan, any owner within the general-plan area (here, all Crown Colony property owners) can enforce the restrictions burdening any other general-plan property. *Infra* II(C). Neither of these jurisdictional bases requires privity of estate or requires that Section I owners like RaceTrac be CCIA members. *Cf.* RaceTrac’s Brief at 19.³ Both jurisdictional grounds exist here.

³ If it mattered, CCIA easily meets the second and third requirements of associational standing. The interest CCIA seeks to protect by enforcing the Restrictions is the kind of interest HOAs are intended to serve. *See Hays County v. Hays County Water Planning P’ship*, 106 S.W.3d 349, 357 (Tex. App.—Austin 2003, no pet.) (partnership satisfied second element of associational standing because it was “created to deal specifically with these kinds of issues”). CCIA member and local realtor Kathy Barrett explained that but for CCIA’s enforcement of the Restrictions, the truckstop would threaten

B. All Crown Colony lot owners would have standing to enforce Section I's Restrictions, because the Restrictions were intended to benefit them.

“[W]here parties [assert standing] to enforce a restrictive covenant,” their burden is simply “to establish that the covenant was imposed on defendant’s land for the benefit of land owned by them.” *Davis v. Skipper*, 83 S.W.2d 318, 321-22 (Tex. 1935); *see also Wasson Interests, Ltd. v. Adams*, 405 S.W.3d 971, 974 (Tex. App.—Tyler 2013, no pet.)(recognizing general principle). This is the general American rule. *See* RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, §8.1 (“A person who holds the benefit of a servitude ... has legal right to enforce the servitude.”)⁴; AM. JR. 2D COVENANTS, CONDITIONS, AND RESTRICTIONS §247 (2005). It has been Texas law for over one hundred years. *See Russell Realty Co. v. Hall*, 233 S.W. 996, 999 (Tex. Civ. App.—Dallas 1921, writ dism’d w.o.j.). And it remains the general Texas rule today.

CCIA’s members with: increased crime, noise, and light pollution and would harm their properties’ marketability. 2RR187-88. Collective enforcement of such restrictions by a community association is a chief function of such associations and a chief benefit to its members. RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, §6.8, cmt. a. And, by CCIA suing, it spreads the litigation costs and relieves individual landowners of the tough task of confronting an adjacent landowner. *Id.*

An association meets the third requirement if it seeks prospective equitable relief (such as an injunction) and the members’ individual circumstances need not be proved to obtain that relief. *See Big Rock Investors Ass’n v. Big Rock Petroleum, Inc.*, 409 S.W.3d 845, 850 (Tex. App.—Fort Worth 2013, pet. denied). Here, CCIA sought an injunction, 1CR10, to enforce restrictions that should legally bind Racetrac without regard for the individual circumstances of any CCIA member.

⁴ While the Texas supreme court hasn’t opined specifically on Restatement Section 8.1, it has favorably cited other Restatement sections *in restrictive covenant cases*. *See, e.g., River Plantation Cmty. Improvement Ass’n v. River Plantation Props., LLC*, 698 S.W.3d 226, 231 n. 5 (Tex. 2024)(citing Section 1.3 for definition of servitude); *Albert v. Fort Worth*, 690 S.W.3d 92, 99 (Tex. 2024)(citing Section 5.1 regarding appurtenant benefits).

E.g., EWB-I, LLC v. PlazaAmericas Mall Tex., LLC, 527 S.W.3d 447, 472 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)(reversing dismissal granted on lack-of-standing grounds, because there was “at least some evidence” that restrictions governing the Mall conferred a benefit on the adjacent lot owners); *accord Hartsfield v. Country Club Vill. Cmty. Committee*, 2005 Tex. App. LEXIS 3006, *9-10 (Tex. App.—Corpus Christi April 21, 2005, no pet.)(stating general rule that “[o]rdinarily, any person entitled to benefit under a restrictive covenant may enforce it,” and holding that Country Club Village was intended to benefit from, and thus the committee had standing to enforce, restrictions on an adjacent parcel precluding its use as a used car lot).⁵ In fact, the principle is so engrained in Texas law as to be called “wholly unremarkable” by one commentator. *See* Robert K. Wise, *First-Refusal Rights Under Texas Law*, 62 BAYLOR L. REV. 433, 501 (Spring 2010).

1. In determining who is entitled to benefit from, and thus may enforce, a restrictive covenant, grantor intent controls.

When determining who is entitled to benefit from a restrictive covenant, the grantor’s intent controls. *Hooper v. Lottman*, 171 S.W. 270, 272 (Tex. Civ. App.—El Paso

⁵ *See also Garden Oaks Maint. Org. v. Chang*, 542 S.W.3d 117, 138 (Tex. App.—Houston [14th Dist.] 2017, no pet.)(maintenance organization met the first prong of associational standing because “[o]rdinarily, any person entitled to benefit under a restrictive covenant may enforce it.”); *Moseley*, 486 S.W.3d at 662 (“[A]ny person entitled to benefit under the terms of a restrictive covenant may enforce it.”); *Webb v. Voga*, 316 S.W.3d 809, 813 (Tex. App.—Dallas 2010, no pet.); *Girsh v. St. John*, 218 S.W.3d 921, 923 (Tex. App.—Beaumont 2007, no pet.)(homeowner had standing to enforce restrictive covenant because “[g]enerally, any person entitled to benefit under the terms of a restrictive covenant may enforce it.”).

1914, no writ); *Moseley v. Arnold*, 486 S.W.3d 656, 662 (Tex. App.—Texarkana 2015, no pet.); RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, §8.1, cmt. b, *Beneficiaries entitled to enforce servitudes* (the beneficiaries are persons who the creator of the servitude intended to benefit from the servitude). As with intent generally, this is a fact issue, determined by the recorded instrument in light of all the facts of the case.

Whether a person not a party to a restrictive covenant has the right to enforce it depends upon the intention of the parties in imposing it. This intention is to be ascertained from the language of the deed itself, construed in connection with the circumstances existing at the time it was executed. The vendor’s object in imposing restrictions must in general be gathered from all the circumstances of the case. *Hooper*, 171 S.W. at 271.

Accord Russell, 233 S.W. at 999; *Moseley*, 486 S.W.3d at 662 (“The resolution of this issue, then, requires us to construe the intent of the parties, as expressed in the restrictive covenant agreement, to determine whether Arnold, as the successor of the Gormans’ interest ... is an intended beneficiary who is entitled to benefit under the terms of the restrictive covenant agreement”).

Qualifying Proof. The burden of proof on this issue is modest, merely requiring some evidence of the requisite intent. *EWB-I, LLC*, 527 S.W.3d at 473. If the record otherwise reflects the developer’s intent to benefit a property, it is *not* necessary that the parties’ properties also be under any general plan or even that there was such a plan. *See* RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES, §8.1, Reporter’s Note, *Only Current Beneficiaries Have Standing*, Comment b (while a general plan “is useful to identify

intended beneficiaries of servitudes” lack of such a plan “has no effect” on enforcement rights of servitude beneficiaries who are otherwise identified).

Moseley and *EWB-I, LLC* illustrate the intent-to-benefit doctrine in practice.

In *Moseley*, the court analyzed whether the owner of a 5-acre tract had standing to enforce restrictive covenants against the owner of a 6.379-acre tract across the road. *Moseley*, 486 S.W.3d at 658. Both tracts were once owned by Moseley before he sold the 5-acre tract to the Gormans. As part of that sale, the 5-acres was benefitted by a restrictive covenant stating the 6.379-acre tract couldn’t be used as a truck stop. *Id.* at 658-59. A dispute arose between Moseley and Arnold, who had bought the 5-acre tract from the Gormans. Moseley, like RaceTrac does here, argued that Arnold lacked standing to enforce the covenant. *Id.* at 660.

The court in *Moseley* framed the standing inquiry as whether Arnold was an intended beneficiary entitled to benefit under the restrictive-covenant agreement. *Id.* at 662. In finding standing, the court relied on three clauses in the agreement: (i) a clause the covenant’s purpose was to benefit the Gormans, their successors, and assigns, (ii) a clause stating the covenant was intended to protect the desirability of the Gormans’ tract, and (iii) a clause that the covenant runs with the land. *Id.* at 662-63.

The 1971 Section I Restrictions are similar to the restrictive covenants that Arnold had standing to enforce in *Moseley*. Both instruments specified that the covenants run with the land. *Compare* PX4 §6.3 with *Moseley*, 486 S.W.3d at 663 (“Finally, the operative clause expresses the parties’ intent that the restrictive covenant run with

the land ...”). Both instruments said their restrictions were for the benefit of certain persons. *Compare* PX4 (“... inure to the benefit of ... every person purchasing or owning land in said Subdivision”) with *Moseley*, 486 S.W.3d at 662 (“First, it states the purpose of the restrictive covenant is to benefit the Gormans, their successors, and assigns”). And, oddly enough, in both cases the issue was standing to preclude construction of a truckstop.

As in *Moseley*, the issue in *EWB-I, LLC* was standing. There, the owners of overflow parking lots for the Sharpstown Mall sought to enforce restrictive covenants against the Mall. The restrictions had been agreed between the mall’s developer and its initial anchor-tenants (Montgomery Ward, J.C. Penney, and Foley’s). *EWB-I, LLC*, 527 S.W.3d at 452-53. Ownership of the various sections of the shopping mall changed hands. In 2004, for the first time, the overflow lots were owned by an entity lacking a property interest in the Mall. *Id.* at 454. When this entity sought to enforce the covenants, the Mall owners challenged standing. The trial court agreed but the appellate court reversed, because there was “some evidence” that the restrictive covenants conferred a benefit on the overflow lots that supported standing. *Id.* at 473. So it is here, too.

2. **All owners in Crown Colony Subdivision are intended beneficiaries who can enforce the Section I Restrictions.**
 - a. **An unchallenged finding establishes that the Section I Restrictions were intended to benefit all sections of Crown Colony, and thus establishes CCIA's standing.**

Because the trial court issued findings of fact, and RaceTrac has failed to challenge most of them, the Court should defer to the unchallenged findings so long as they are supported by some evidence, even in the standing context. *See In re H.S.*, 550 S.W.3d at 155 (“[W]e defer to those unchallenged findings *that are supported by some evidence.*”)(emphasis added).

The temporary-injunction order includes a finding (¶9) that “the above original [Section I] Restrictions, Amendment of Subdivision Restrictions and [1976] Correction of Declaration of Covenants were imposed for the benefit of the grantors and of all property owners and grantees in the referenced Sections *as well as the entire Crown Colony subdivision.*” CR172 ¶9 (emphasis added). Appellants have not challenged this finding. And, it is supported by the evidence. *Supra* II(B)(2)(b). So this Court should defer to it, *In re H.S.*, 550 S.W.3d at 155, thereby triggering the intent-to-benefit doctrine and CCIA’s associational standing under that doctrine. *See EWB-I, LLC*, 527 S.W.3d at 472.

- b. **Record proof supports the trial court’s intent finding.**

The finding in the order’s paragraph 9, that the Section I Restrictions were intended to benefit the entire Crown Colony Subdivision, 2CR172 ¶9, is entitled to

deference because there is some evidence (more than ample evidence) supporting it, including:

- the 1971 Restrictions’ unambiguous language,
- testimony about Arthur Temple’s intent and plan for Crown Colony,
- testimony by past and present ACC members, and
- Crown Colony Subdivision maps and sales materials.

The Section I Restrictions expressly state the intent to benefit all of Crown Colony.

Per the Restrictions’ language, all lot owners in all sections of Crown Colony were intended to benefit from the Section I Restrictions. The Restrictions, signed by Arthur Temple, state that restricting the uses of the Section I lots “is desirable and advisable for the benefit of the ... persons purchasing lots in said Subdivision ...” PX4 pg.1. The instrument elsewhere declares the restrictions to be “covenants running with the land.” PX4 §6.3. Then, underscoring the relevant intent, the instrument says the Restrictions “inure to the benefit of ... every person purchasing or owning land in said Subdivision.” PX4 pg.1.

RaceTrac declares that *said Subdivision* in this last proviso means Section I. Brief at 28-29. But that’s just not so. Racetrac has identified the wrong noun object. *Said Subdivision* references the entire Crown Colony Subdivision, not just its component Section I.

Every time the Restrictions use the term *subdivision*, the reference is to the entire master-planned community. In the Restrictions’ first sentence, for example, the Subdivision is identified as “CROWN COLONY SUBDIVISION” and distinguished from the smaller area being restricted, which the Restrictions identify as “SECTION ONE.” These ideas’ separateness (a subdivision versus its subsumed section) also is denoted graphically, via a dash. PX4 (“WHEREAS, Temple Industries, Inc., the owners and developers of CROWN COLONY SUBDIVISION—SECTION ONE, ...”). If, in contrast, Temple had intended Section One as “said Subdivision,” the instrument should have stated “CROWN COLONY SECTION ONE SUBDIVISION.” To just ignore the punctuation, as RaceTrac does, is not an option. After all, punctuation is all that distinguishes “Lets eat, Grandma” from the macabre “Lets eat Grandma.” *See State v. Holcomb*, 886 N.W.2d 100 (Wisc. Ct. App. 2016).

When the Restrictions intend to reference only Section I, they do so specifically, referencing either *this section* (stating, for example, “Lots 1 and 2 of this section are restricted Lot #3 of this section”, PX4 §1.5), or through the more formal *CROWN COLONY SUBDIVISION—SECTION ONE*. *E.g.*, PX4 §3. If, as RaceTrac claims, the term *said Subdivision* referenced Section I, there would have been no purpose for the contrasting references to “this section.”

So, when the Restrictions say they are intended “to inure to the use and benefit of” “each and every person purchasing or owning land in said Subdivision,” PX4 pg.1, the term *said Subdivision* must by default reference the only subdivision identified in the

document—the greater Crown Colony Subdivision—and the phrase “each and every person” confirms this intended scope. For this reason, RaceTrac’s construction of *said Subdivision* violates the requirement to construe the instrument according to the plain meaning of its terms. *See Tarr v. Timberwood Park Owners Ass’n*, 556 S.W.3d 274, 280 (Tex. 2018).

*The Restrictions’ prohibitions corroborate
the intent to benefit all of Crown Colony.*

The Restrictions indicate an intent to benefit all Crown Colony lot owners not only directly, but indirectly also, through a series of covenants obviously intended to ensure an initial impression fitting the high-end, master-planned community Temple sought to create. *E.g.*, PX4 §2 (requiring greenbelts and lot-line setbacks, including generous interior-lot-line setbacks); PX4 §4 (restricting noxious or offensive activities that may be or become an annoyance or nuisance “to the neighborhood”). *Hartsfield* recognizes this as probative of grantor intent.

While this business-restricting provision itself did not explicitly mention the Country Club Village, it was among a list of restrictions intended to benefit the Country Club Village by restricting the potential activities and development on the commercial parcel. The language of the covenants demonstrates that the restrictive covenants were intended by the parties to benefit the Country Club Village parcel. *Hartsfield*, 2005 Tex. App. LEXIS 3006 at *9-10.

As Rayford Faircloth testified, 2RR142, and the trial court was entitled to find, but for an intent to benefit the greater master-planned community, there wasn’t much reason for Temple to insist on such classic planned-community restrictions as

greenbelts and setbacks. And, even more telling, Temple’s express intent to benefit “the neighborhood” by inserting a noxious-or-offensive-activity restriction surely refers to benefitting the Crown Colony Subdivision; Section I, of itself, lacks the hallmarks of anything that might typically be termed a neighborhood—*i.e.*, internal streets, single-family residences, and the like. *See* [Dictionary.cambridge.org/us/dictionary/english/neighborhood](https://dictionary.cambridge.org/us/dictionary/english/neighborhood) (defining *neighborhood* as “the area of town that surrounds someone’s home, or the people who live in this area.”). Kathy Barrett, a current Crown Colony resident and member of the ACC, classified the entire Crown Colony development as the neighborhood. 2RR188 (stating that developing a truck stop raised concerns “to the rest of the neighborhood”).

Moreover, the additional proof, discussed later, that Temple had intended all of Crown Colony to fit within an overarching general plan (including testimony from Faircloth, maps depicting Crown Colony Subdivision as including Section One, and the curved orientation of Section One’s east boundary so as to accommodate a planned subdivision “loop road”) likewise supports the finding that Temple intended all Crown Colony to benefit from the Section One restrictions. *See Hooper*, 171 S.W. at 272 (stating the “most familiar cases” upholding this right to enforce covenants are those “in which it has appeared that a general building scheme or plan for the development of a tract of land has been adopted”).

Because the intent to benefit all Crown Colony owners is reflected in the Restrictions, is logical, and is in keeping with the intent for an upscale, master-planned

community, the trial court was within its discretion to find such intent as a factual matter and, legally, to conclude that this supports CCIA's standing.

c. RaceTrac's opposing arguments don't begin to negate the intent to benefit the other Crown Colony lot owners.

RaceTrac's argument on intent to benefit invokes *Country Community*. Brief at 29. There, owners of subdivision lots sought to enforce restrictions applying to the "Small Tract" located outside the subdivision. *Country Cmty. Timberlake Vill. LP v. HMW Special Util. Dist. of Harris & Montgomery Counties*, 438 S.W.3d 661, 671 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). In arguing that they had standing to do so, the subdivision owners relied, in part, on the declaration's recitals. *Id.* at 669. Those recitals did indeed say one reason for executing the Small Tract declaration was to benefit the subdivision. *Id.* But the court in that case, unlike ours, was precluded from giving the recitals effect because two operative clauses not present in our case indicated an opposite intent to benefit only the Small Tract. These clauses (i) said the Declaration would inure to each owner of any part of the *Small Tract*, and (ii) expressly gave enforcement powers only to the Small-Tract owners. *Country Community* thus is authority that operative clauses control over recitals and that clauses expressly stating who can and can't enforce a restriction will be enforced. *Id.* But neither of those matters is relevant here, because the 1971 Restrictions:

- through their "said Subdivision" proviso, state an intent that the restrictions inure to the benefit of all Crown Colony lot owners;

- omit any operative provision, such as the one on *Country Community*, that would affirmatively exclude the Crown Colony lot owners' enforcement powers;
- include restrictive covenants expressly identifying other parts of the Crown Colony Subdivision for benefit (*i.e.*, the “neighborhood”); and
- state individual prohibitions clearly intended to primarily benefit the other lot owners. PX4, §§2, 4.

Accordingly, the evidence of intent lacking in *Country Community* is present here.

C. Independently, because the Subdivision, including Section I, was developed under one general plan, the other lot owners would have standing.

When properties are developed under a general plan or scheme, the owner of any property within the plan area may enforce restrictions applicable to any other in-plan property who bought their property with notice (actual or constructive) of the plan. *Hooper*, 171 S.W. at 272; accord *Baywood Estates Prop. Owners Ass'n v. Caolo*, 392 S.W.3d 776, 783 (Tex. App.—Tyler 2012, no pet.) (“Where an owner of a tract subdivides and sells subdivided parcels ..., imposing restrictions on ... each parcel pursuant to a general plan or scheme of development, each grantee may enforce the restrictions against each other grantee”). The trial court’s order finds such a plan, finds notice, finds that the plan formed an inducement to lot owners’ purchases, and states and applies *Hooper’s* rule. 2CR171-173, ¶¶1, 3, 10-12, 15-17, 21, 24-25, 29-31, 40, 46-47, 77.

In determining the existence and extent of such a plan, the key, as with the intent-to-benefit doctrine, once again is developer intent. *Lehmann v. Wallace*, 510 S.W.2d 675, 680 (Tex. Civ. App.—San Antonio 1974, writ ref'd n.r.e.) (“[T]he most common test of the existence of a general ... scheme is an intent that the protection of the restrictive covenant inure to the benefit of the purchasers of the lots in the tract.”); *see also Evans v. Pollock*, 796 S.W.2d 465, 472 (Tex. 1990)(endorsing cases holding that “whether Tract B was part of the restricted area under the plan of development was a fact question of what was intended to be covered by the restrictions”). The intended general plan need not be limited arbitrarily, to only one section of a subdivision but may encompass properties with different restrictions and platted at different times. *See Evans*, 796 S.W.2d at 466 (concluding, from “the weight of authority,” that a single subdivision can include smaller “restricted district[s]”); *id.* at 471-72 (citing out-of-state cases as supporting “[t]he language from the Texas cases suggesting that the restricted district need not be the whole subdivision.”). This is especially so with master-planned, multi-use developments.

A slavish uniformity may be the goal when plant a monoculture cornfield. But when planning a multi-use community, different areas within the project can have different functions and restrictions, intentionally, and still fit within one preconceived general plan. *Hooper*, 171 S.W. at 272. Indeed, differentiated restrictions and uses can be *essential* to such a plan. *Hooper* anticipated this. After recognizing “[u]niformity in the restrictions” as “one of the strongest proofs ... of a building scheme,” *Hooper*

recognized that master-planned developments can include variations in restrictions “without destroying the integrity of the scheme ... as a whole”:

“[T]here may, however, be departures from the usual restrictions in individual cases without destroying the integrity of the scheme of development as a whole. A want of absolute uniformity for reasons readily apparent does not militate against the view that the restrictions in the deed were in pursuance of a general scheme for improvement of the property. *Hooper*, 171 S.W. at 272.

So uniformity can support finding a plan, but it is only evidentiary; uniformity isn’t necessary to such a plan. *Hooper* illustrates this. There, because a general plan was established, a waterworks company had standing to enforce another property’s residential restrictions even though the company’s own property wasn’t similarly burdened. *Id.* at 272-273.

Given the rule of *Hooper*—a case RaceTrac’s authorities call “seminal,” *Country Cmty.*, 438 S.W.3d at 667—it is a mistake to presume, as RaceTrac does, Brief at 11, that “any deviation from uniformity” or effort to develop Crown “in separate sections,” must defeat a general plan. That bright-line position ignores reality and contradicts developer intent. When, as here, it’s contemplated that the subdivision will take a decade or more to fully develop, it makes sense to maintain flexibility in specifics and yet adopt a general or master plan at the outset. Our record shows Temple contemplated such flexibility as an advantage of its plan. PX104 at CC001196 (stating that “[t]his flexibility could make a tremendous difference in the final profit of the overall project.”).

1. General plan, being a fact-driven issue, merits appellate deference.

As this Court recognizes, whether a general plan exists is a fact-driven, highly case-specific issue meriting appellate-court deference. *Baywood Estates*, 392 S.W.3d at 783. RaceTrac’s authorities agree. *Lockhill*, 2015 Tex. App. LEXIS 6975 at *8. *Hooper* goes farther, condemning as a fool’s errand any attempt at deciding such cases by matching facts with exemplar cases. *Hooper*, 171 S.W. at 271 (because they “abound in fine and subtle distinctions,” “individual cases [on general-plan issues] are without value as precedents, except as general principles are recognized”).⁶ And yet an attempted factual comparison with *Lockhill*, *Country Community*, and *Dealer Computer* is RaceTrac’s primary tactic.

2. The intent for and scope of a general plan can be proved in a variety of ways.

Factually proving intent for a general plan need not be onerous. Under the Texas courts’ liberal approach, existence and scope of such a plan can be proved in various ways such as, for example, by a developer’s “course of conduct,” “by implication from a filed map, or by parol representations in sales brochures, maps, advertising, and oral statements.” *Baywood Estates*, 392 S.W.3d at 783. RaceTrac’s authority, *Country Community*, agrees. 438 S.W.3d at 668. Here, all these types of proof support the trial court’s findings of a common scheme.

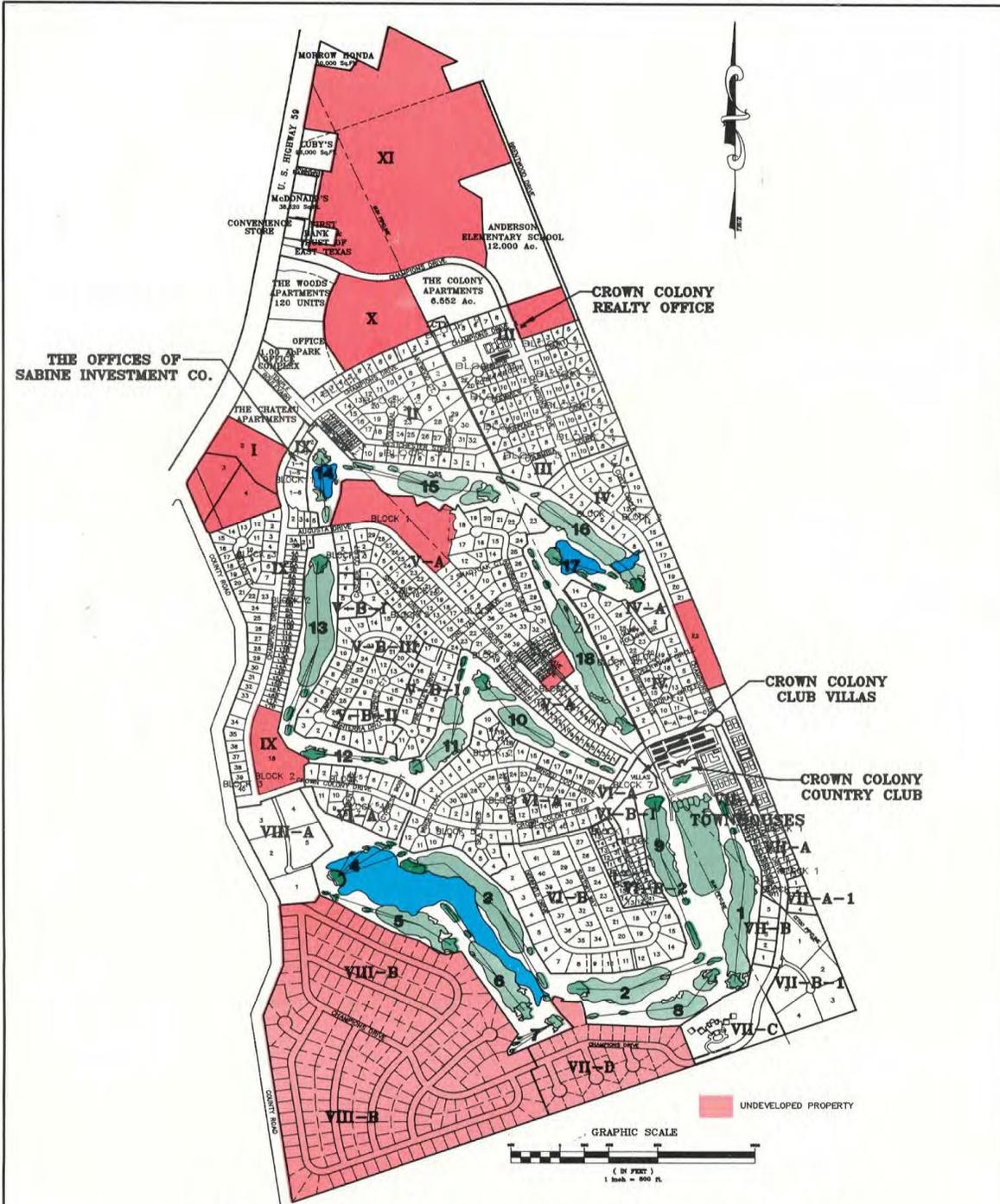
⁶ *Accord Evans*, 796 S.W.2d at 470 (cautioning against reading statements from opinions in this area “out of the context of the case”).

3. The facts support a general plan encompassing the entire Crown Colony subdivision.

a. CCIA's proof

Not only do the Restrictions and their covenants objectively reflect a general plan, as the trial court has declared, 2CR172 ¶10, but a cornucopia of other proof corroborates the plan.

The master-plan map: Long before RaceTrac bought its lots and before any hint of litigation, Sabine published a “Crown Colony Master Plan” map (PX8). It's proof from the horse's mouth that Section I is, and always was, within the Crown Colony Subdivision general plan. The map depicts all subdivision sections—including Section I—inside the plan boundaries. PX8. It treats Section I in all other respects like the remaining master-plan areas: in shading, enumeration, etc. PX8. This is telling, because Sabine had no motive to misrepresent Section I as “in” the plan when it was “out,” or to have reassigned Section I to “in” if it initially was “out.” Indeed, nothing about Section I changed in time since it was platted until RaceTrac came along with its truckstop scheme.



CROWN COLONY MASTER PLAN

SABINE
INVESTMENT COMPANY OF TEXAS, INC.
A SUBSIDIARY OF TEMPLE-INLAND
FOREST PRODUCTS CORPORATION

Rayford Faircloth testified that PX8 depicted Section I as within the master-plan's boundaries. 2RR78. While this iteration of the master-plan map was apparently created after Faircloth had left Sabine, 2RR87, it nonetheless was the type of map Faircloth had referenced in his time at Sabine, that Sabine sales personnel showed customers as depicting the master plan, and that purchasers relied on. 2RR88-89. Importantly, Faircloth—who had worked with Arthur Temple on Crown's development from the beginning and was involved in developing all sections of the project up to 1983, 2RR74-75, 112, 121, 123—confirmed that “[e]very” Crown map he had ever seen “always included Section I, everything out to [US] 59.” 2RR140.

Section I's “backside” curvature: Not only does PX8 put Section I within the master-plan area. It also shows, by shape, that Section I fit the preformed subdivision plan like a glove. As Faircloth explained and PX8 depicts, Section I was “kidney”-shaped, with a curved backside rather than the straight-line typifying most commercial lots, not because of anything inherent in Section I's topography or use, but because it accommodated the plan's intent for a “loop” road, Champions Drive. 2RR80-81 (“because it [*i.e.*, Section I] was part of the master plan That's the reason that Section I is shaped like it is”); *accord* 2RR84 (“this is kidney-shaped ... because it was part of the master plan”). What better proof of a plan could there be than this percipient-witness testimony, by one of the Subdivision's initial planners, corroborated visually by a map (and the initial recorded Section I plat)? If there were no overarching plan including Section I, the Section's lots should have been box-shaped, like the commercial lots that

PX8 depicts farther along the highway right-of-way, which lots Faircloth said hadn't been within the plan. 2RR96.

Just as any puzzle piece, by its shape, vouches that it's part of a planned whole, Section I's backside curvature is persuasive proof—a smoking gun—that Section I always was within Crown Colony's general plan. The Section I plat, recorded in 1971, confirms this kidney-shape always was the plan. PX5.

The Restrictions' naming convention: While RaceTrac calls it “immaterial,” Brief at 28, the Restrictions' naming convention (“CROWN COLONY SUBDIVISION--Section ONE”) is significant and reflects the preformed idea of a plan including Section I. As stated, and contrary to the name discussed in RaceTrac's case, *Dealer Computer* (“Northwest Crossing section 1”), the words *subdivision* and *section* in the Section I Restrictions denote a plan for a “Crown Colony Subdivision” with Section I being just a first installment. This is the objective intent, reflected in the plain meaning and usage of the word *Subdivision* and the word *section*, which, of course, means a “distinct part or division of” a larger object.⁷ As a bonus, the dash underscores the preformed intent that Section I is not itself the subdivision but is within the subdivision.

This usage is consistent throughout the Restrictions, which use *subdivision* only when referencing the larger master-planned development and *section* only when referencing the four-lot Section I. *E.g.*, PX4 §1.5 (“Lots 1 and 2 of *this section* are

⁷ See Black's Law Dictionary, 8th Ed., “section”; accord B. Garner, A Dictionary of Modern Legal Usage (2d ed., 1995).

restricted Lot #3 of *this section*”)(emphasis added).⁸ Under RaceTrac’s opposing view, this distinction is pointless and the Restrictions’ terminology becomes muddled and misleading.

RaceTrac’s related claim—that *said Subdivision* in the Restrictions cannot denote the larger subdivision because only Section I was then platted—is a sidestep. Because other proof shows (and the trial court found, 2CR171-173, ¶¶1, 12, 15-16, 29-31) a general plan from the outset, there should be nothing odd about Temple recognizing this in the Restrictions’ terms.

Faircloth’s testimony: Besides highlighting the section’s kidney-shape, Mr. Faircloth gave other compelling testimony of a plan including Section I. Faircloth, who had been charged with Crown Colony’s real-estate planning and development, 2RR75-76, and had planned the street and lot layouts, *id.*, explained that the configurations of lots 2, 3, and 4 in Section I was a part of the plan: Their boundaries were configured such that lot 3, the only lot on which the 1971 Restrictions allowed for a “local business” such as a “filling station,” 2RR93-94, would be screened from the subdivision’s single-family homes by a “buffer” of lots 2 and 4. 2RR94; *see also* PX4. As Faircloth explained, it’s “not a good idea ever to put almost unrestricted commercial property adjacent to single-family dwellings without sufficient screening.” 2RR93.

⁸ Moreover, the Section II declarations—recorded when even RaceTrac agrees there was a plan, follow a similar convention, complete with punctuation separating *Crown Colony* and *section*. DX5 at 10 (referencing “the plat of Crown Colony, Section II”).

In all respects, Faircloth spoke of a single development with a preexisting plan, testifying, for example, that “[w]e” began developing Crown Colony with Section I and developed it north and east from there, in an orderly fashion. 2RR76; *accord id.* at 78 (“[T]his is an overall master plan for approximately 700 acres that is Crown Colony Subdivision ... it was developed from Section I around the clockwise ...”). He even testified that “preliminary master plans” were prepared “several years before.” 2RR77. And Faircloth categorically denied there was ever any “intent for any of the sections to split off on their own.” 2RR79. He underscored this when questioned by the court.

The Court: “Forget the fact that it’s called now Section I, ... has that corner of land ... – was it always in the plan?”

Faircloth: “I think so.”

The Court: “That’s the way Arthur Temple wanted it?”

Faircloth: “Yeah.”

The Court: “That’s the way you wanted it?”

Faircloth: “Uh-huh.” ...

The Court: “... Was there ever a time that that corner was not included in this plan of commercial, residential, whatever you want to call it, the clump of land, was it always included, that corner?”

Faircloth: “It was always in part of it, yeah.”

The Court: “Was there ever discussion amongst you and the boss man and the troops, let’s not put in that corner there, let’s not include that in this plan?”

Faircloth: “No.” ...

The Court: “[W]hen this idea was birthed, when we sit around the coffee table and draw on napkins kind of stuff. That corner was always included in the master plan?”

Faircloth: “It was included in the maps, yeah.”

The Court: “And in Arthur Temple’s head?”

Faircloth: “Yeah.”

The Court: “His words? Yes?”

Faircloth: “Yes.” 2RR141-43.

The Court: “That area down there, was it in y’all’s mind considered, if we are going to have commercial, that’s where it’s going to be?”

Faircloth: “Right.” 2RR146-47.

Had Section I not been part of the plan, Faircloth said, they wouldn’t have recorded restrictions on that section but would have “just let it go.” 2RR142.

As the years passed, there were some revisions to streets and lot sizes. 2RR126-27. But, Faircloth agreed, they “weren’t changing which sections constituted Crown Colony.” *Id.* That “stayed the same.” *Id.*

The trial court was entitled to take Faircloth’s testimony as proof that the general plan was formed first, then the buildout was in stages. But this is not all.

Other corroborating proof: John Doyal, who formed the partnership that built and initially owned the Lot 1 apartments, likewise testified that those apartments (and thus Section I) were “definitely a part of” the Crown Colony Subdivision, “right up in front,” providing the “initial impression.” 2RR48-49.

Realtor, Crown resident, and ACC member, Kathy Barrett, testified:

- all Crown maps she has seen include Section I, 2RR166;
 - the ACC has oversight over all Crown sections, including Section I, 2RR175-176;
- and
- the 2017 Consolidated Restrictions, albeit unrecorded, included Section I. 2RR181; *accord* PX14.

Horace Stubblefield, who was Sabine’s initial president, PX25, was on both the initial, Section I ACC and the ACC established in the Section II covenants in yet another tie in to the general plan. *See* 2RR131.

And, CCIA’s Management Certificates⁹, which were recorded and were required by law to include the recording data for the declarations pertinent to the managed

⁹ The management certificates are evidentiary because they were recognized by the court, are in the clerk’s record, and are not disputed by RaceTrac. *See Lockbill*, 2015 Tex. App. LEXIS 6975 at *3 n. 2; TEX. R. EVID. 201 (court may take notice of facts “not subject to reasonable dispute”); *Johnson v. Johnson*, 2005 Tex. App. LEXIS 10458, 2005 WL 3440773, *5-6 (Tex. App.—Austin Dec. 16, 2005, no pet.)(court could take notice of recorded deed).

properties, TEX. PROP. CODE § 209.004(a), recite the recording data for every Crown section, including Section I. 1CR156-62; *see also* 2RR220; 2CR175 ¶¶44.

RaceTrac’s cases involve no such body of proof.

b. The trial court correctly reconciled RaceTrac’s proof.

The internal Sabine memo: Rather than address the proof supporting the trial court’s findings, as the standard of review would require, *supra* §I, RaceTrac cites a letter and attached memo¹⁰ that the trial court was entitled to reconcile with the finding of a general plan. *See Fox*, 121 S.W.3d at 857. The cited letter and memo speak of a “preliminary plan” for Crown Colony’s *residential* areas. PX104 at CC001192-96. RaceTrac claims this shows “that any common plan ... is limited to Section II” and later-developed areas. Brief at 20. But in this instance the court had good reason to reject RaceTrac’s subjective interpretation of the letter and memo, not only because that interpretation contradicts the remaining proof but also because it is entirely natural that a memo addressed to the yet-undeveloped residential areas would speak in future tense. While the memo doesn’t address Section I (and why would it?), neither does it deny the plan or call out Section I as outside the plan.

At most, the Sabine memo confirms the intent that the subdivision’s actual development would be phased, as is sensible for a project the scale of Crown Colony.

¹⁰ RaceTrac cites DX102. But no such exhibit was admitted. *See* RR Master Index. The memo is part of PX104.

See 2RR78. In any event, the memo was merely one item of proof. It was not necessary that all the proof support the trial court's decision.

CCIA's governing documents: RaceTrac observes that CCIA's articles of incorporation don't mention authority over Section I or identify its owners as CCIA members. RaceTrac also notes that CCIA wasn't formed until Section II was platted. Brief at 30. So? CCIA's standing doesn't require that the Section I lots be within its control, because this case isn't about CCIA representing the Section I owners' interests. CCIA is representing the other sections' owners, seeking to enforce the Section I restrictions for their benefit. CCIA's articles are not inconsistent with this cognizable interest. So long as (1) the Section II owners have a right to enforce the Restrictions and (2) CCIA in turn has associational standing to assert those owners' rights, CCIA may enforce the restrictions on the owners' behalf. *Concerned Owners of Thistle Hill v. Ryan Road Mgmt.*, 2014 Tex. App. LEXIS 3929, *12 (Tex. App.—Fort Worth 2014, no pet.) (“associational standing is not based on the association’s direct, independent standing; it is based from the standing of the individual members of the association”).¹¹

Alternately, RaceTrac claims CCIA's articles state a purpose to “create” a residential subdivision. Brief at 32. Not so. The articles never use that term or anything

¹¹ If it matters, the trial court was not required to agree with RaceTrac's claim (Brief at 34) that it proved the Section I owners never paid CCIA dues. The testimony was simply that the witnesses didn't know whether such dues had been assessed or paid. 2RR132 (Faircloth, testifying he didn't “think” the Section I owners had paid); 2RR193-94 (Barnett, agreeing she lacked knowledge of whether any Section I owner had paid).

similar. What the articles do state, in contrast, is a purpose of “promot[ing] the health, safety, and welfare, and provid[ing] for” *the residents of Crown Colony Subdivision* (which would include all the Subdivision’s residents, including the apartment dwellers on Lot 1). CCIA’s articles also comport with the other instruments and the general plan by denoting the only subdivision as the “Crown Colony Subdivision.”

As for RaceTrac’s commentary on the timing of CCIA’s formation: That CCIA wasn’t formed with the platting of Section I’s mere four lots, when for some fifty years only one of those lots wasn’t developer-owned, is not surprising. There is no proof that the Lot 1 owners needed HOA protection. So, the timing of CCIA’s formation doesn’t indicate anything significant about the general plan, the Subdivision’s scope, or CCIA’s standing to oppose RaceTrac’s truck-stop.

4. The trial court also correctly rejected RaceTrac’s other arguments on the general-plan issue.

a. RaceTrac’s two-grantor argument puts form over substance.

RaceTrac pushes a “common grantor” requirement, arguing that the Subdivision’s handoff from Temple to Sabine in the 1970s precludes finding a general plan. Brief at 27. Nonsense. This form-over-substance argument is out of sorts here, both because, *first*, Sabine—a subsidiary created for tax reasons, to handle all real-estate development, 2RR128-30—should, for our issue, be considered an extension of Temple, and because, *second*, the evidence shows a general plan for all of Crown was intact before Sabine came on the scene. E.g., 2RR76-77. RaceTrac has cited no authority

even suggesting that an existing general plan would be nullified by the developer forming a subsidiary to continue the build-out of the parent's already-planned developments. Such a restructuring simply is not material to, let alone determinative of, existence of a general plan, especially not where other evidence strongly supports finding a consistent plan. *See Hooper* 171 S.W. at 272 (noting that water company was developer's wholly-owned subsidiary). Here, this rings especially true because even after the handoff to Sabine, Crown still was being developed by the same people as before. 2RR79. Upon that handoff, Faircloth changed his business card, but nothing else. 2RR130. He retained the "same boss." *Id.*

b. RaceTrac's attacks on the trial court's findings fall flat.

The attack on John Doyal's testimony: The court has merely credited Doyal with testimony that "Section I was the initial impression ... and what set the tone for Crown Colony as being the most upscale community in Lufkin." 2CR171 ¶2. Doyal had a firsthand basis for this testimony, because he had:

- spent his career in the real-estate business, 2RR21-22,
- been a member of Crown Colony Country Club, 2RR23,
- put together the partnership for the Lot 1 apartment project, 2RR23,
- chose that location because he deemed Crown Colony an upscale community, 2RR23-25, and

- negotiated the purchase of Lot 1 and the project’s architectural approval directly with Arthur Temple. 2RR26-27.

Moreover, while the trial court didn’t cite to it, Doyal’s interactions with Arthur Temple, as one deal participant to another, gave him a valid foundation for testifying to Temple’s intent “to be sure it was well-protected insofar as an upscale community.” 2RR31. Doyal’s testimony certainly cleared the low bar for relevance (RaceTrac’s challenge to Doyal’s testimony is relevance). *See Campbell v. State*, 382 S.W.3d 545, 549 (Tex. App.—Austin 2012, no pet.).

Further, Doyal's testimony is admissible lay opinion because it is “(a) rationally based on the witness’s perception,” through a course of direct dealings in which Temple's business interest was to accurately express the company's plans and it is “(b) helpful to clearly understanding Doyal's testimony or to determining a fact in issue.” TEX. R. EVID. 701. As the Fifth Circuit has recognized, “[c]ourts often have permitted lay witnesses to express opinions about the motivation or intent of a particular person if the witness has an adequate opportunity to observe the underlying circumstances.” *Hansard v. Pepsi-Cola Metropolitan Bottling Co., Inc.*, 865 F.2d 1461, 1466 (5th Cir. 1989).

In any event, given this was a bench-tried matter, the court is presumed to have considered only the properly admissible evidence and only for permissible purposes. *Barnard v. Barnard*, 133 S.W.3d 782, 788 (Tex. App.—Fort Worth 2004, pet. denied).

The attack on Rayford Faircloth’s testimony: Despite RaceTrac’s accusation, Brief at 37, Faircloth didn’t seek to vary any document terms. As explained elsewhere,

§II(B)(2)(c), unlike in RaceTrac’s cases, in which the Covenants stated who could enforce them, the 1971 Restrictions don’t include any such operative provision for Faircloth to contradict. RaceTrac’s alternative request to “discount” Faircloth’s testimony simply because he lives in Crown Colony, Brief at 37, is an impermissible ask. As factfinder, the trial court was the exclusive judge of the facts, credibility, and weight. *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 120 (Tex. 2000).

The challenge to historical interviews: Without asserting harm, RaceTrac grumbles about the admission in evidence of interviews with local historical figures. Brief at 40. But, as RaceTrac concedes, the trial court didn’t reference these interviews in its detailed order (or at hearing, for that matter). And there is no other indication it relied on them.

We think the interviews are properly in evidence. TEX. R. EVID. 802 (5) (recorded recollection) & (16) (ancient documents over 20 years old). But the more important points are that ample other proof supports the trial court’s order and, as noted, the court is deemed to have relied only upon the properly-admitted evidence. *Barnard*, 133 S.W.3d at 788.

The attack on the finding on the declarations’ similarity: The trial court’s finding on similarity of restrictions (2CR172, ¶14) is immaterial because, as already proved, a valid general plan may encompass properties with differing restrictions if there are sensible reasons for the differences. *See Hooper*, 171 S.W. at 272. Such reasons exist here due to mixed-use nature of Crown Colony, its size, and the different

characteristics of the different parts of the property. Lot 3 in Section I, for example, not only has highway frontage but it is “buffer[ed]” from the subdivision’s residences (by Lots 2 and 4), making it uniquely suitable to for a “local business.”

The attack on the 1971 Restrictions: As stated, Section I’s restrictions, embracing Lufkin’s 1963 zoning, authorized a “local business” for Lot 3, and that categorization included automobile filling stations PX3 §§ X, XI. But not a multi-lot, 8,000 square-foot truck stop. Neither RaceTrac nor its proposed truck-stop is a “local” business. *See Avas Sales Lead Servs. v. Jane Doe*, 2022 U.S. Dist. LEXIS 167163, *10 (D. Del. 2022) (“the Neuenhaus Declaration implicitly confirms that Plaintiff is not a local flower business by stating that plaintiff operates its business nationwide”); *Moulagiannis v. City of Cleveland Bd. of Zoning Appeals*, 2005 Ohio App. LEXIS 2100, par. 12 (Ohio Ct. App. May 5, 2005) (Zoning Code defined “local retail business district” as including businesses focused on the goods or services “normally required for the daily local retail business needs of the residents of the locality only”).

Worse here, RaceTrac seeks to abut its truckstop to single-family homes, an apartment complex, and one of the development’s main internal roadways (Champions Drive)—exactly the sort of incompatible use the general plan was intended to preclude, not only to benefit the Lot 1 apartments but the residents of the nearby Section II and the abutting Section IX. *See* PX4 §§2, 4 (setback restriction and noxious activity restriction, respectively).

The attack on the finding of RaceTrac’s knowledge: RaceTrac says the finding that it knew of Temple’s plan (2CR174, ¶37) isn’t supported. Brief at 39-40. But that can’t be so, for three reasons. *First*, the Section I plat, with its general-plan-inspired kidney shape, was recorded. *Second*, RaceTrac was deemed on notice of everything a physical inspection would reveal—including the open-and-obvious fact of how that shape fit into the subdivision’s overall design. *See Cleaver v. Cundiff*, 203 S.W.3d 373, 378-79 (Tex. App.—Eastland 2006, pet. denied) (landowners were not bona fide purchasers due to notice of easement; road was visible and the landowners never asked adjoining landowners about the road). *And third*, finding 37 is likewise supported by RaceTrac’s admitted knowledge of the Section I Restrictions, which declare a single “Crown Colony Subdivision.” PX4. Worse for RaceTrac, the finding of RaceTrac’s knowledge isn’t necessary to the finding of a general plan or to CCIA’s standing.

c. Without justification, RaceTrac ignores material findings.

In the temporary-injunction order, the trial court states a detailed listing of factual and legal determinations. 2CR171-78. In the span of about four pages, RaceTrac’s brief challenges a few of those findings. Otherwise, RaceTrac ignores them. Some, but by no means all, of the findings RaceTrac thus concedes are:

- The Section I Restrictions, their Amendment, and the Section II Correction of Declaration of Covenants all were intended to benefit not only the grantors but “all property owners and grantees in the ... entire Crown Colony subdivision.” 2CR172, ¶9.

- “[T]he material provisions of the restrictive covenants evidence a general plan or scheme for the development of the Crown Colony subdivision.” 2CR172, ¶10.
- “[T]he common scheme and plan of restrictive covenants was designed to make it more attractive for residential purposes . . . , and this formed an inducement to purchasers to buy and pay an enhanced price” for the subdivision’s lots. 2CR172, ¶12.
- “[S]ubsequent development followed the intent and desire of the original owner and developer.” 2CR172, ¶16.
- “[T]he main theme of the common scheme . . . was the creation of Architectural Control Committee(s) to oversee, control, dictate and enforce the common plans, designs and construction details of the ongoing development of the subdivision.” 2CR172, ¶17.
- Both the Architectural Control Committee created in Section I’s original Covenants and the like committee created in Section II’s Correction of Declaration of Covenants included a common member, Horace Stubblefield, Jr. 2CR172, ¶¶18 & 19.
- The creation of ACCs both including Mr. Stubblefield “supported a common scheme allowing the ACCs to impose additional . . . restrictions in the various sections . . . and this became a part of the consideration enjoyed by all owners within the entire subdivision.” 2CR172-73, ¶¶21 & 22.

- The Amendment of Subdivision Restrictions for Section I specified that no structure could be erected until the plans and specifications “shall have been reviewed and approved by” the ACC. 2CR174, ¶33.
- CCIA’s Articles of Incorporation, which were filed of record, state a purpose “to promote the health, safety and welfare ... [of] the residents of Crown Colony Subdivision ... and ... to do all other things necessary to accomplish these purposes.” 2CR174, ¶35.
- Unlike in cases decided under the Implied Reciprocal Negative Easement theory, “this is not a case where no restrictions were included in the original deeds and covenants ... or where the Plaintiff sought to create, imply and impose new and original restrictions”; “rather, in this case restrictions were included in the original deeds and covenants of the subdivision property now owned by Defendants that were never challenged until Defendants did so 50 years later in a Partial Release filed as to 1 single Lot and parts of 2 other Lots in one Section of the Crown Colony subdivision.” 2CR176, ¶62.

These findings, when combined with the applicable law, assure CCIA’s standing and ensure the temporary injunction was within the trial court’s discretion to issue.

d. RaceTrac also applies an inapplicable legal test.

RaceTrac’s statement of the general-plan elements, Brief at 20-21, applies the wrong law. RaceTrac’s elements are those necessary to imply a “negative reciprocal

easement” upon unencumbered property. But they are not necessary to the task of proving a general plan in a case like ours, where a party seeks to enforce existing restrictions. To pretend otherwise, as RaceTrac does, gets matters backwards. Texas Supreme Court authority, including *Evans v. Pollock* and *River Plantation Cmty. Improvement Ass’n v. River Plantation Props., LLC*, proves this. E.g., *River Plantation*, 698 S.W.3d 226, 233 (Tex. 2014)(quoting *Evans* for its “reasonably accurate general statement of the [INRE] doctrine and stating: “But a general development plan is not the only element of an implied reciprocal negative easement claim.”).

As *River Plantation* explains, INREs are a gap-filler constituting a “narrow exception to the general rule that an express restriction is required to limit a property owner’s permissible uses of its property.” *Id.* at 233. Being a situation where one party seeks to newly burden another’s property with implied restrictions, the exacting requirements in INRE cases make sense. But where a party seeks to enforce *existing* restrictions, as here, different considerations apply.

The INRE rule stated in *Evans* and discussed in *River Plantation* derives from the *Curlee* case, which *Evans* recognized as also an INRE case. *Evans* recognized that the general-plan concept is “frequently connected to” the INRE doctrine and can even be a “central issue” in an INRE case. 796 S.W.2d at 466. But it didn’t say the two were one and the same. Just the opposite. *Evans* applied the rigorous INRE elements because *Evans* was an INRE case, in which the owners of lakeside lots that were expressly impressed with residential-use-only restrictions sought to imply similar restrictions on

the developer's unrestricted hillside lots, so as to block a marina and resort. *Evans*, 796 S.W.2d at 471. The hillside lots' deeds included no express reservation. And no one challenged standing.

Per *Evans*, Texas law won't brink *inferring* restrictions under the INRE doctrine except within areas of "certain well-defined similarly situated lots." But this doesn't affect the outcome of a case like ours, that doesn't involve INRE. CCIA litigates express restrictions that have been in place for fifty years. All CCIA asks is that restrictions expressly applying to RaceTrac's lots, which RaceTrac admits knowing,¹² would be enforced.

e. RaceTrac's exemplar cases don't fit.

Not only is reliance on factual exemplars ill-advised in this area, *supra* §II(C)(1), but RaceTrac's exemplar cases—*Lockhill*, *Country Community*, and *Dealer Computer*—are factually *inapt*. In each of those cases, the restrictions included operative provisions expressly identifying who could enforce them. *Lockhill*, 2015 Tex. App. LEXIS 6975 at *13; *Country Community*, 438 S.W.3d at 669; *Dealer Computer Servs. v. DCT Hollister RD, LLC*, 574 S.W.3d 610, 616-17 (Tex. App.—Houston [14th Dist.] 2019, no pet.). So, those cases rightly applied a rule that operative terms control recitals. There, particular operative provisions stating who could enforce them were strong evidence the developer didn't intend to confer enforcement rights on anyone not so specified. Here,

¹² RaceTrac's representative admitted the requisite knowledge. 2RR280, 313.

moreover, CCIA is by no means relying solely or even mostly on a recital as to the developer's intent.

Racetrac's exemplar cases also lack the kinds of proof of intent for a planned community present in our case. *Supra* §II(B)(2)(b). In *Lockhill* and *Country Community*, moreover, the entire analysis is suspect because the courts visibly mistook the INRE elements as requirements for proving a general plan. *Lockhill*, 2015 Tex. App. LEXIS 6975 at *8 (mistakenly concluding that the claimant "must establish" the INRE elements); *Country Community*, 438 S.W.3d at 668 (same).

Lockhill. Unlike in our case, *Lockhill* involved two tiny commercial properties, neither of which was divided into lots or had any residential use. Rather than indicate a general plan, the declaration covering the subject 3.079-acre tract merely stated that the developer's intent was to provide for the subject tract's "systematic, orderly development." *Lockhill*, 2015 Tex. App. LEXIS 6975 at *17. All it said about any adjoining property was an intent "to ensure its use and development was not incompatible with any adjoining commercial properties and residential neighborhoods." *Id.* This didn't distinguish between the developer's adjoining property and those other adjoining properties owned by unaffiliated persons and it all but negated any plan extending beyond the 3.079 acres by (i) expressly limiting the "systematic, orderly development" to only the 3.079-acre tract and (ii) stating an intent (the mere intent not "to be incompatible with" other tracts' uses) which is the opposite of a development plan covering multiple tracts.

Country Community. This case (which is not to be confused with our cited case, *Hartsfield v. Country Club Village*) didn't concern enforcing restrictions but litigated an issue of condemnation damages governed by the Property Code. There, residents of a gated community and the community's HOA sought to share in condemnation damages awarded to the owner of a property lying outside the subdivision. It doesn't appear that anyone claimed this property was ever a part of the subdivision. *Country Cmty*, 438 S.W.3d at 664. In any event, the appellate court held that the HOA and homeowners, not being themselves owners of any interest in the condemned property, lacked a property interest under the governing statutory framework and so couldn't share in the condemnation recovery. *Id.* at 671-672. To the extent the court opined on the issue enforcing covenants, it is dictum.

RaceTrac further misses the mark when it cites *Country Community* for an observation that "the imposition of restrictions on only one piece of property or one portion of a larger parcel is evidence of a general scheme covering only the restricted land." This is a statement of what is evidentiary, not any mandatory rule. It doesn't apply in our case, since all Crown Colony properties are subject to restrictions. And if the observation would have been meant as a statement of the law determining intent for a general plan, it would be the wrong law, because it contradicts *Evans's* recognition that a general plan's scope can extend beyond any particular restricted area. *Evans*, 796 S.W.2d at 471-72.

Dealer Computer. This case is likewise distinguishable on both the law and the facts. On the law, *Dealer* cited to the Virginia Supreme Court's decision in *Duwall v. Ford Leasing Dev. Corp.*, 255 S.E.2d 470 (Va. 1979), calling it the "*Duwall* rationale" "that each stage of development is a separate and distinct subdivision ..." *Dealer*, 574 S.W.3d at 619. But that is not even the *Duwall* court's rationale, and certainly not the rationale of the Texas Supreme Court. *Duwall* actually looked to evidence of the developer's course of conduct for evidence of intent. *Duwall*, 255 S.E.2d at 473 ("[T]he course of conduct pursued by the developer did not indicate an intention to establish, as among the owners of lots in the different sections, reciprocal benefits and obligations entitling the owner of the property in one section to enforce a restriction against the owner of property in another section.").

Factually, *Dealer* lacked any of the kinds of general-plan proof present in this case. In fact, even the claimants' own proof conceded the development's various sections to be "separate subdivisions." 574 S.W.3d at 619. So, *Dealer's* outcome was inevitable.

RaceTrac further says there is no recorded document making Section I subject to the "Section II ACC or to the CCIA." Brief at 13. This is the wrong analysis. While proof of such membership would conclusively establish CCIA's standing, the trial court's decision rests on different footings: the developer's intent to benefit the other Sections and the Subdivision's development under one general plan. 2CR172 ¶¶9, 10, 15.

III. RaceTrac's argument on permitting attacks a ruling the trial court never made.

RaceTrac challenges CCIA's standing to complain about permitting. Brief at 42. Yet the trial court made no finding or conclusion about permitting. Nor was any such pronouncement needed. Regardless of Lufkin's permitting decisions, RaceTrac had to comply with the Section I Restrictions and CCIA may challenge its failure to do so. Any appellate ruling about RaceTrac's permits would be an advisory opinion. *See Gen. Land Office of State of Tex. v. OXY U.S.A., Inc.*, 789 S.W.2d 569, 570 (Tex. 1990).

IV. Blue Hole's attempted release of the 1971 Restrictions and 1976 Amendments was ineffective.

As it must, RaceTrac claims that its seller, Blue Hole Partners, released RaceTrac's lots from the Section I restrictions. The attempted release was ineffective, for three reasons:

- Contrary to the 1971 Restrictions' express mechanism for revocation or amendment, less than a majority of the Section I lot owners signed the release,
- Contrary to Texas law, the release purported to remove the restrictions on only part of Section I, and
- the release occurred outside the time window for modification allowed in the 1971 Restrictions.

A. Less than a majority of the lot owners signed the release.

Courts construe restrictive covenants under the principles of contract construction. *Pilarcik v. Emmons*, 966 S.W.2d 474, 478 (Tex. 1998). The goal is to give

effect to the drafter’s objective intent as stated by the plain meaning of the covenants’ terms, discerned in context of the entire instrument and the circumstances surrounding the covenants’ execution. *Id.*; accord *Tarr*, 556 S.W.3d at 280.

Here, the 1971 Restrictions, in their section 6.3, state an objective intent that they could be modified or revoked only by an instrument “signed by a majority of the then owners of lots” PX4 §6.3. This proviso’s plain meaning is that a release is ineffective unless signed by *more than* 50 percent of the then owners. Anything less wouldn’t be a majority, as RaceTrac’s representative conceded. 2RR299; *see also* Merriam-Webster [merriam-webster.com/dictionary/majority](https://www.merriam-webster.com/dictionary/majority) (*majority* means “a number or percentage equaling more than half of a total”); <https://en.wikipedia.org/wiki/Majority> (in parliamentary procedure, a majority always means precisely “more than half”). The term’s plain meaning is certainly not what RaceTrac proposes—that one entity, if it happens to own the majority of lots, can unilaterally modify the restrictions. Case law agrees. *E.g.*, *Miller v. Sandwick*, 921 S.W.2d 517, 522 (Tex. App.—Amarillo 1996, writ denied)(language mandating that any modification be signed by “two-thirds (2/3) of the then owners of building sites” “mean[s] what it says, *i.e.*, two-thirds of the then owners of the lots, not the owners of the majority of the lots”)¹³; *Vista Grande Homeowners Ass’n v. Brand*, 2023 Tex. App. LEXIS 8777, *5, 16 (Tex. App.—Austin Nov. 22, 2023, no pet.) (acknowledgment by owners of two of the four lots in Section Two did not

¹³ RaceTrac claims that *Miller* was “poorly reasoned.” Brief at 47, n.10. RaceTrac never explains why.

constitute a majority of the owners of lots as required by covenant stating that an effective amendment must be “signed by the majority of the then owners of the lots ...”); *French v. Diamond Hill—Jarvis Civic League*, 724 S.W.2d 921, 923 (Tex. App.—Fort Worth 1987, writ ref’d n.r.e.) (“We construe the language of the covenants to mean what it says, *i.e.*, ‘a majority of the then owners of the lots,’ not the owners of the majority of the lots. ... [W]e are in agreement with the courts of other states which have construed the same or similar language.”).¹⁴

Here, as everyone agrees, Section I has four lots and at least three owners (because parts of lots 2 and 3 are owned by the state). PX15; DX29; 2RR299. Yet, only RaceTrac’s seller, 2007 Blue Hole Partners, signed the purported release. PX17. Consequently, the release, having been signed by a minority, and not a majority, of the Section I lot owners fails the Section 6.3 requirement and is ineffective. *See Miller*, 921 S.W.2d at 522; 2CR176, ¶¶56-59.

RaceTrac counters with a shot-in-the-dark claim that this plain meaning construction is “form over substance” and produces an absurd result. Brief at 48. Not so. Texas jurisprudence “reserves the ‘absurdity safety valve’ for truly exceptional cases.” *Fairfield Indus. v. EP Energy E&P Co., LP*, 531 S.W.3d 234, 248 (Tex. App.—Houston [14th Dist.] 2017, pet. denied). Under the demanding absurdity standard, it

¹⁴ RaceTrac cites two out-of-state cases to support its construction of Section 6.3. Brief at 47, n.10. Yet a majority of out-of-state cases appears to support the trial court’s construction. *See, e.g., Nordstrom v. Guindon*, 17 P.3d 287, 291-292 (Idaho 2000); *Duffy v. Sunburst Farms E. Mut. Water & Agric. Co.*, 604 P.2d 1124, 1127 (Ariz. 1979); *Cieri v. Gorton*, 587 P.2d 14, 16 (Mont. 1978).

must be “quite impossible” that a rational person could have intended such a result. *Id.* As the cited cases attest, it is not “quite impossible” to intend that more than 50 percent of lot owners agree in writing in order to change a property’s restrictions. RaceTrac cites no Texas case for its contrary claim.

Instead, RaceTrac complains that someone could game the system by dividing a lot’s ownership into fractional interests. It cites no instance where this has occurred in real life. That a party can conjure an extreme hypothetical does not make an agreement absurd. Absurdity is a far higher threshold than a possibility of the occasional inequitable result. *See Combs v. Health Care Servs. Corp.*, 401 S.W.3d 623, 630 (Tex. 2013). What is more, RaceTrac’s own proposal is subject to its own, equally extreme, hypotheticals—such as the possibility a developer would create a 100-lot residential subdivision, sell 49 perimeter lots for residential purposes, then, as owner of the remaining majority of lots, change the restrictions on the remaining 51 lots to allow a motocross park. Here, had Arthur Temple wanted each lot to have one vote, it would have been simple enough to say so in the Restrictions. *See, e.g., Roddy v. Holly Lake Ranch Ass’n*, 589 S.W.3d 336, 341 (Tex. App.—Tyler 2019, no pet.) (restrictive covenant stated it could be amended by a majority vote of the lot owners in the subdivision with each then existing lot entitling its owner to one vote). But he didn’t. His objective intent should be enforced, as written.

B. Blue Hole purported to release only its own property.

Blue Hole’s attempted release would have affected only its Section I property. 2RR304; *see* PX17 (“Majority Owner releases only the Property [defined as Lots 2-4] from the Restrictions. Lot No. One (1) of the Subdivision remains subject to the Restrictions”). This is legally impermissible.

[T]he rule appears established ... “any action taken by property owners to alter, extend, or revoke existing restrictions must apply to all of the properties which are subject to them.’ ... A rule that would permit the majority of the lot owners to alter or revoke the restrictions as to a few lots only, and to continue the covenants as to all other property in the section, would invite foreseeable mischiefs not within the original purposes of the subdividers *Zent v. Murrow*, 476 S.W.2d 875, 878 (Tex. Civ. App.—Austin 1972, no writ), citing 4 A.L.R.3d 570, 582 (1965).

RaceTrac nonetheless claims that “none of the cases CCIA cites” support this position. Brief at 52. And yet *Zent*’s holding is the acknowledged governing rule in Texas. *See Teal Trading & Dev. LP v. Champee Springs Ranches Prop. Owners Ass’n*, 534 S.W.3d 558, 585 (Tex. App.—San Antonio 2017), *aff’d*, 593 S.W.3d 324 (Tex. 2020) (stating the “holding in *Zent* has been recognized by numerous appellate courts in Texas as well as by courts in other jurisdictions”). RaceTrac alternatively claims that “the cases [CCIA cites] do not address situations where the restrictions themselves provided a methodology for their amendment.” Brief at 52. Yet, in *Zent*, the restrictions stated such a methodology similar to the one at issue here: “[t]hese covenants ... shall be binding ... until January 1, 1970, and thereafter for successive periods of ten year, unless by a majority vote of

the then owners ... said covenants ... are revoked or amended” *Zent*, 476 S.W.2d at 877-878.

C. The partial release was executed outside the time window permitted by the 1971 Restrictions.

“To be effective, the amendments must be made in the precise manner provided for in the original instrument.” *Syx v. LTG Vegan Ltd.*, 2006 Tex. App. LEXIS 6633 *2 (Tex. App.—Dallas 2006, pet. denied); accord *Miller*, 921 S.W.2d at 522. When restrictive covenants permit amendments only at certain times, any amendments outside the relevant time window are not effective. *Syx*, 2006 Tex. App. LEXIS 6633 at *6 (holding that renewal provision similar to ours to mean that “[a]ny amendment would necessarily have to occur on the expiration of a ten-year period and before the provisions were automatically extended”).¹⁵ Per the 1971 Restrictions’ renewal provision, which tracks the provision in *Syx* and provides that the Restrictions were established for an initial period of twenty years and renewed automatically in ten-year intervals thereafter, Blue Hole’s 2023 attempted release shouldn’t become effective until 2031. PX4 §6.3.

RaceTrac relies on *Trethewey* for its opposing position. Brief at 51-52. But the relevant provision there is materially different from Section 6.3, stating: “Any of these covenants may be amended in whole or in part *at any time* ...” *Trethewey v. Collins*, 2009

¹⁵ See also *Simpson v. Afton Oaks Civic Club, Inc.*, 155 S.W.3d 674, 675-76 (Tex. App.—Texarkana 2005, pet. denied); *Allison v. Roock*, 239 N.E.3d 852, 856 (Ind. Ct. App. 2024)(construing a similar provision similarly); *Kobl v. Legoullon*, 936 P.2d 514, 517 (Ak. 1997)(rejecting modification of subdivision covenants eight years after they were adopted because the covenants stated they “shall be binding on all parties for a period of twenty-five (25) years” and automatically extended every ten years).

Tex. App. LEXIS 2059, *3 (Tex. App.—Austin Mar. 27, 2009, no pet.)(emphasis added). Section 6.3 has no such language.

D. The trial court’s alternative conclusion is unchallenged.

The trial court made the alternative conclusion of law that the Restrictions’ paragraph 6.3 requires a majority vote of the then owners of all lots *of all sections of the Crown Colony subdivision in existence at the time of the vote.* 2CR175 ¶53. RaceTrac has not challenged this conclusion. And it makes sense, given Arthur Temple’s intent for a master-planned community.

V. The trial court acted within its discretion in holding that the members of the “Section II” ACC could be considered members of the Section I ACC.

A. RaceTrac’s argument is waived and immaterial.

Before addressing the substance of RaceTrac’s last argument, two points merit mention. *First*, RaceTrac, which has the burden to support its issue with authority, TEX. R. APP. P. 38.1(i), has committed briefing waiver by failing to cite any such authority supporting its challenge to, in RaceTrac’s words, the Section II ACC functioning as the Section I ACC. Brief at 54.

Second, RaceTrac’s complaint about ACC membership is at bottom immaterial. The restrictions’ provision for an ACC is ancillary to the operative covenants. The existence or not of the ACC doesn’t begin to impugn these covenants or deny CCIA’s standing to enforce them. *See, e.g., Lovelace v. Bandera Cemetery Ass’n*, 545 S.W.2d 194, 197 (Tex. Civ. App.—San Antonio 1976, writ ref’d n.r.e.)(“[T]he existence or non-existence

of the [Building Plan] Committee would not have any bearing on the validity of the subdivision restrictions.”); accord *Pietrowski v. Dufrane*, 634 N.W.2d 109, 115 (Wis. Ct. App. 2001). If anything, the requirement that an ACC approve the plans is an *additional* hurdle the restrictions impose on a building project, not a means for circumventing them. *Clint Indep. Sch. Dist.*, 487 S.W.3d at 555.

Neither the 1971 Restrictions nor the 1976 Amendment empowers the ACC to effectively void the Restrictions or to grant a “variance” so sweeping as to greenlight a massive truckstop thumbing its nose at the Restrictions’ required greenbelt, setbacks *between* lots 2, 3 and 4 that combined preclude structures within 30-foot-wide swaths, and prohibition against uses noxious to the neighborhood. PX4 §§2, 4. Blue Hole impliedly conceded the impossibility of fitting RaceTrac’s truckstop within these requirements when, in 2023, it tried to revoke the Restrictions respecting lots 2-4. PX17. Even an ACC specifically authorized to grant variances (the Section I ACC isn’t, PX4) still must act reasonably and not grant those variances “in a way that would ‘destroy the general scheme or plan of development.’” *Jones v. Schoelkopf*, 138 N.M. 477, 485, 122 P.3d 844, 852 (N.M. Ct. App. 2005). In sum, because RaceTrac proposes a forbidden use that no ACC in good conscience could approve, RaceTrac’s issue about the ACC’s composition should be moot.

B. The trial court’s action has record support.

The trial court’s decree is supported by an implied finding that the ACC in the Section II Covenants was effectively a continuation of and replacement for the Section

I committee. *See Operation Rescue-National v. Planned Parenthood*, 937 S.W.2d 60, 82 (Tex. App.—Houston [14th Dist.] 1996) *aff'd as modified*, 975 S.W.2d 546 (Tex. 1998).

Record proof supports such a finding.

- As initially composed, the ACCs had overlapping members. 2RR131.
- There was specific testimony that the one was a continuation of the other. 2RR151.
- The 1971 Restrictions explicitly stated that its restrictions were for the benefit of all Crown Colony Subdivision residents. PX4 pg.1.
- The CCIA management certificates gave notice that CCIA presided over all Crown Colony sections. 2CR156-165.
- Neither the 1971 Restrictions nor the Section II Declarations states anything that would prohibit such a finding. *See* PX4 & PX25.

C. The trial court’s action makes sense, but Racetrac’s stance doesn’t.

While the 1971 Restrictions state a mechanism for replacing *one* committee member,¹⁶ they are silent on replenishing the membership when, as here, all members have died while the committee lay dormant (because there was then no occasion calling for the committee to act). RaceTrac says the requirement to submit its plans for ACC

¹⁶ And because there was no stated procedure for this circumstance, RaceTrac’s claim of “no evidence” the proper procedures for replacing members were followed goes nowhere.

approval just evaporates in this circumstance. But the Restrictions don't suggest that or suggest that the committee couldn't be reconstituted.

At bottom, this is a missing-contract-term situation—a circumstance where the law specifically authorized the trial court to infer a reasonable term. *Med. Towers, Ltd. v. St. Luke's Episcopal Hosp.*, 750 S.W.2d 820, 822 (Tex. App.—Houston [14th Dist.] 1988, writ denied). And that's what the court did, latching onto what is surely the most sensible solution given that Section I and the rest of Crown Colony are complimentary parts of a single general plan.

Here, the trial court was in equity authorized to determine that, in all parties' interests, the functioning Section II ACC may perform the Section I Restrictions' review function. That is what equity courts do.

RaceTrac's contrary position: The happenstance that the initial ACC members all died cannot reasonably mean the Section I ACC was abandoned, cannot mean that the Section I properties will nevermore be subject to an ACC's oversight, and certainly cannot mean RaceTrac gets to build a truckstop that the Restrictions so clearly foreclose.

Alternatively, even if this Court disapproved of the trial court's reconstituted ACC, the remainder of that court's order should be unaffected. To support a temporary injunction halting construction, CCIA need only show that the record includes proof supporting the determination that CCIA will likely prevail at trial on the invalidity of Blue Hole's attempt at revoking the Restrictions and on the failure of RaceTrac's

planned truck stop to satisfy the valid Restrictions. *See Butnaru*, 84 S.W.3d at 204. The trial court’s allowance for RaceTrac to secure the ACC’s approval doesn’t bear on this but, as stated, was simply a lifeline that RaceTrac has rejected.

RaceTrac’s argument that the ACC mechanism has been abandoned fails for yet other reasons. First, abandonment is an affirmative defense that RaceTrac had the burden to plead and prove. *See Densmore v. McCarley*, 2020 Tex. App. LEXIS 2304, *12 (Tex. App.—Fort Worth Mar. 19, 2020, no pet.). It didn't try. Here, there is no evidence of intent by any owner or developer to abandon the committee and no proof of any occasion where the Section I ACC ever failed to act when called upon. (As is undisputed, the only time it was called upon, in the early 1970s, the committee had approved the apartments constructed on Lot 1.)

Second, RaceTrac's abandonment argument contradicts the Restrictions’ status as covenants running with the land. PX4 §6.3. If restrictions that run with the land provide for a committee to assure the continuity of architectural styles and the like, this mechanism—the mechanism of an ACC—must be construed to endure for a similar duration as the restrictions. *See Johnson v. Linton*, 491 S.W.2d 189, 195 (Tex. Civ. App.--Dallas 1973, no writ) (“The restrictive covenants are to run with the land so that it is only reasonable that the machinery set up in the restrictive covenants concerning approval of plans by a committee must likewise continue to parallel the duration of the covenants.”).

D. CCIA’s pleadings support the injunction against construction.

RaceTrac complains that CCIA, in its pleadings, didn’t ask the trial court to let the Section II ACC “to function as the Section I ACC.” Brief at 54. And yet CCIA’s injunction application requested not only an injunction but all necessary or proper ancillary relief. 1CR31 (praying not only for “Injunctive relief against Defendants” but also for “[s]uch other relief to which Plaintiff may be justly entitled”). In this case, that should include the dependent proviso that RaceTrac, if it wanted to resume construction before trial, could get its plans approved by an ACC comprising the Section II ACC members. *See Smith v. Cooper*, 541 S.W.2d 274, 276 (Tex. Civ. App.—Texarkana 1976, no writ)(prayer for partition plus “such other relief” as plaintiff might show herself entitled to was construed as encompassing both partition and “equitable relief incidental to partition”).

In any event, CCIA need not have pled for any relief other than what CCIA sought, and that was a temporary injunction preserving the status quo ante—relief that is proper without any added proviso allowing RaceTrac a means to undercut the injunction if it could somehow convince an ACC to approve its plans. *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 555 (Tex. 2016). The latter proviso is *for RaceTrac’s benefit*, not CCIA’s. Consequently, if anyone should have needed to plead it, that should have been RaceTrac.

Conclusion and Prayer

Because CCIA has associational standing and because the record shows it will likely prevail at trial, the Court should affirm the temporary injunction. Alternatively, if the Court determines that any part of the injunction is invalid, the Court should reform and affirm the injunction.

Respectfully submitted,

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Dated: December 9, 2024

/s/ Gregory D. Smith

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