

Xeriscaping Defined – Ridgepoint at Bear Creek

In light of C.R.S. 37-60-126, clarification has been requested on what is allowed and/or required for landscaping lots in Ridgepoint at Bear Creek. Homeowners are not required to use turf grass on 75% of the unimproved area of their front yard and back yard. The revised statute listed above allows the use of xeriscape elements for up to 51% of the unimproved (non-concrete/house) area of the front yard and back yard. Xeriscape elements are defined as the following:

The application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.

It is important to note that rock is NOT considered an element of xeriscaping. Owners may choose to xeriscape up to 51% of their lots. A maximum of 25% of the unimproved area of each lot may be landscaped with a combination of non-living durable landscape materials and short lived landscape materials. (See Section 17.15 of the Declarations of Covenants, Conditions, Restrictions and Easements of Ridgepoint at Bear Creek.) This has always been part of the covenants at Ridgepoint, and it is not in violation of the revised statute. A minimum of 75% of each lot shall be landscaped utilizing long-lived ground cover such as bluegrass, brome fescue, shrubs and trees. Part of this area can be xeriscape elements as defined above. While the covenants are not in violation of C.R.S. 37-120-126, further research has been done to verify this point. In addition, the Board of Directors has determined that delineating areas between front yards and back yards (as originally prescribed in the Covenants) is not necessary and may not prove to be enforceable. The revised statute does not address front yards separately from back yards; rather, the entire lot is addressed as a whole.

For purposes of interpretation at Ridgepoint at Bear Creek, the following guidelines and examples are provided by the Association:

- 1) Shrubs and bushes that are green year-round will be considered to be acceptable xeriscape elements (i.e. evergreen or pine shrubs)
- 2) Flower beds that are clearly defined by borders or edging, and not lined with rock, but rather lined with mulch or dirt, are considered to be acceptable xeriscape elements. The flowers planted in such beds need to be perennial varieties, or varieties that come up year after year, not annual flowers that need to be replanted each year.
- 3) Deciduous trees will not be counted as xeriscaping for purposes of the area measurement. Evergreen trees (i.e. blue spruce, Austrian pine) will be considered part of the xeriscape area.
- 4) Annual shrubs and flower plants are not considered xeriscape elements and will be considered part of the non-living area, which is limited to 25% of the area of the lot.

The following article, posted online at http://imakenews.com/ortenhindman/e_article001080244.cfm is very informative and contains more details regarding the revised Colorado statute concerning water conservation and xeriscaping. The article is listed here in its entirety for your reference.

Water Restrictions and Xeriscaping

By Trisha K. Harris, Esq.

While the intense drought of a few years ago has waned, many municipalities in the Front Range area still impose mandatory or voluntary watering restrictions. Even if your city or water district does not impose mandatory restrictions, there are many things residents and your association can do to reduce the amount of water needed to keep landscaping green throughout the summer months, including:

- Water during the evening or night hours to avoid evaporation of water during the heat of the day
- Adjust watering times per zone to shorten the amount of time per cycle during cooler spring and fall months
- Adjust sprinkler heads so they are not spraying onto sidewalks and driveways
- Install rain-sensors so sprinklers do not run when it is raining
- Hand water where possible
- Install a drip irrigation system for flowers and shrubs
- Install drought tolerant plant materials (xeriscape)

Following the drought of 2002 in Colorado, the issue of water conservation took center stage. As most board members and managers are aware, as part of a much broader water conservation and drought mitigation plan, in 2005 the Colorado legislature took action to regulate the types of landscapes that may be required by community associations. So, if an owner applies for permission to install xeriscaping, what is the Association to do?

Section 37-60-126(11)(a) of the Colorado Revised Statutes provides that "Any section of a restrictive covenant that prohibits or limits xeriscape, prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass is hereby declared contrary to public policy and, on that basis, that section of the covenant shall be unenforceable." In the statute, a "restrictive covenant" is broadly defined as "any covenant, restriction, bylaw, executive board policy or practice, or condition applicable to real property for the purpose of controlling land use, but does not include any covenant, restriction, or condition imposed on such real property by any governmental entity."

In practical terms, what does this statutory provision mean? First, it means that associations cannot require residents to install landscapes made up of more than 50% turf grass. Turf grass is defined by statute as "continuous plant coverage consisting of hybridized grasses that, when regularly mowed, form a dense growth of leaf blades and roots." Second, associations cannot require the installation of landscapes that do not permit the use of drought-tolerant vegetation. Third, associations can regulate the use of things like concrete, asphalt, rock and artificial turf since they are not considered xeriscape materials. Fourth, associations can require residents wishing to install a xeriscape - or to change an existing landscape to a xeriscape - to follow the association's architectural submission and approval requirements. The requirements for

traditional landscapes and xeriscapes should be consistent. Finally, associations are permitted to require residents to adequately water all landscapes, including xeriscapes, unless a water restriction is in place. Upon the lifting or expiration of a water restriction, associations must provide residents with a reasonable period of time to revive turf grass. If turf is not able to be revived, an association is permitted to require residents to replace the turf grass.

For more information on xeriscaping and Colorado law regulating the manner in which associations are permitted to control landscaping and xeriscaping, visit our blog, HOA Legi-Slate, at www.hoalegislate.com.