

# R-2 and R-2A Overview

## Zoning Districts in Question:

*The following definitions are taken directly from the Lincoln Twp Zoning Ordinance.*

**R-2: Medium Density Residential District:** This district provides opportunities for single-family and two-family residential development patterns and lifestyles of a higher density than that of the R-1 district and of more a suburban and/or urban character.

**R-2A: Medium Density Recreation Residential District:** This district provides opportunities for single-family and two-family residential development patterns and lifestyles of a similar character to that of the R-2 district, except for an emphasis on recreation-based neighborhoods with recreational camping opportunities and the appropriate maintenance thereof.

*(R-2A was originally created for and continues only to apply to White Birch Lakes Recreational Association (no other area in Lincoln Twp has this designation outside of White Birch).*

## The Proposed Change by Lincoln Twp

The Lincoln Twp Planning Commission is considering eliminating the R-2A zoning designation. Last year, Lincoln Twp changed its camping ordinance to be uniform throughout both R-2 and R-2A. Since there are no longer differences in camping restrictions between these two districts, some feel that R-2A is no longer necessary. You can view the Planning Commission meeting minutes for more information about the R-2A discussion [here](#).

## Impact on WBLRA

WBLRA has reached out to our attorney to ask for their opinion about whether the removal of R-2A will negatively impact the community. Answers from the attorney can be found on page 2 (scroll down). WBLRA's Board of Directors may need to present a stance for or against the removal of R-2A to Lincoln Twp. To see what discussions the board has had about this issue so far, please see page 5 of the August minutes [here](#), page 9 of the September minutes [here](#), and page 3 of the October minutes [here](#).

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September 9, 2022

Mr. Tim Boos  
President  
White Birch Lakes  
Recreational Association  
[ecoffice@whitebirch.org](mailto:ecoffice@whitebirch.org)

Via Email

**Re: Zoning Ordinance**

Dear Mr. Boos:

I was informed that the township was considering changing the zoning of White Birch Lakes subdivision from an "R-2A" to an "R-2" district, and you were seeking my input. My understanding is that the R-2 district basically permits higher density residential development of a more "suburban/urban" character than the more recreationally oriented R-2A district. I was also given a copy of a Clare County Circuit Court order from 1988 setting out terms for permissible camping in the subdivision under the supervision of the White Birch board.

The question is whether a new zoning classification will affect the historical character of the development. The short answer is it will not, unless White Birch wishes to change its own restrictive covenants.

As a general rule, property owners may privately contract for more restrictive provisions than are required for property owners at large by the government, so long as those restrictions do not violate other statutory rights (for example, one cannot discriminate in housing on the basis of race, so an agreement that a property purchaser will not later sell the property to certain races is invalid and unenforceable). The covenants for White Birch do not violate any such rights, and as such will effectively restrict the lots within the development to a higher degree than an R-2 district would.

Per a recent unpublished opinion in the Michigan Court of Appeals:

"Zoning laws determine property owners' obligations to the community at large but do not determine the rights and obligations of parties to a private

contract." *Rofe v Robinson*, 415 Mich. 345, 351; 329 N.W.2d 704 (1982). Defendant [City] cannot affect the operation of a restrictive covenant through a definition in a zoning ordinance. "To so consider it would be to permit the legislative authority of the city to impair the obligation of the contract entered in to between the parties to the conveyance." *Phillips v Lawler*, 259 Mich. 567, 570; 244 NW 165 (1932). BLOOMFIELD ESTATES IMPROVEMENT Ass'n, INC v CITY OF BIRMINGHAM, \_\_\_ NW2d \_\_\_; 2006 Mich. App. LEXIS 634, at \*5-6 (Ct App, Mar. 14, 2006).

This means that even if the township did change the zoning to permit broader uses within the development area, the narrower contractual provisions of the White Birch covenants will still control. These covenants are in the chain of title of the individual owners and cannot be wiped out by a new zoning ordinance. Owners would still be required to comply with all the recorded building and use restrictions that affect their title.

The owners may of course vote *at any time* to amend the covenants; for example, to expand permissible development in line with an R-2 district. So long as the vote complies with the amendment requirements of the recorded covenants, the owners can change whatever they want. The court in its 1988 order acknowledged this simple fact when it noted the order would hold until the covenants are "lawfully revised or rescinded by a vote of the residents or other lawful means."

But assuming the owners do not wish to change the character of the development if there is no change to the recorded covenants, a change to the local zoning will not expand permissible uses beyond the limits of the recorded covenants and the court order.

I am available to discuss this matter further at your convenience.

Sincerely,

/s/

Paul A. Blanco