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March 26, 2026

VIA EMAIL TO pasojackw@gmail.com

Board of Directors
GREAT HILLS HOMEOWNERS ASSOCIATION, INC.
P.O. Box 461
East Sandwich, MA 02537

RE: Inapplicability of Session Laws Acts of 2024 Chapter 150 (“An Act Relative to the Affordable Homes Act”) to GHHA’s Restrictive Covenants

Dear Members of the Board:

Please accept this memorandum in response to Jack Walker’s March 26, 2026 request for a legal opinion concerning the applicability of Chapter 150 of the Commonwealth of Massachusetts Session Laws Acts of 2024 (“An Act Relative to the Affordable Homes Act”) to GHHA’s ability to enforce its private, restrictive covenants as concerns an Owner’s proposal to construct or install an Accessory Dwelling Unit (“ADU”).

This memorandum is based upon our review of Chapter 150 and interpretive case law and opinions of the Massachusetts Attorney General, GHHA’s governing documents, including the GHHA’s organizational documents, by-laws, and restrictive covenants. It does not separately address title-chain issues beyond the materials reviewed.

Questions Presented

1. Whether GHHA may regulate or deny a proposed unattached accessory dwelling unit (“ADU”) under the recorded restrictive covenants.
2. Whether Chapter 150 of the Acts of 2024 deprives GHHA of that authority.
3. What is the procedural posture should GHHA deny any such proposal.

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Short Answer

In my view, yes: GHHA has a substantial basis to privately regulate any ADU proposal under the restrictive covenants and GHHA’s governing documents. The quoted covenant language is broad and directly addresses both use restrictions and architectural approval.

In particular, Section 2.4 of the GHHA Restrictive Covenants limits the use of each lot to a single-family residential dwelling unless specially permitted by the Board, and Section 3.2 thereof expressly requires prior submission and approval of plans before any residence, accessory building, or other structure may be constructed, placed, or maintained. Similarly, GHHA’s organizational documents are consistent with that reading: GHHA exists in part to enforce restrictive provisions applicable to Great Hills, and the Architectural Control Committee (“ACC”) is charged with enforcing GHHA’s architectural and use restrictions.

Chapter 150, by contrast, is directed at *municipal zoning*. Section 8 of Chapter 150 added language to G.L. c. 40A, § 3, the Massachusetts Zoning Act, which now provides that no municipal zoning ordinance or municipal by-law may prohibit, unreasonably restrict, or require discretionary zoning approval for a single ADU in a single-family residential zoning district, while still allowing reasonable municipal regulation. **Notably, Chapter 150 does not address homeowners’ associations, whereby an HOA may privately allow or restrict ADUs under its own rules regardless of the Town’s approval.**

For example, while the Town under Chapter 150 may not prohibit an ADU that is detached from the principal dwelling, Chapter 150 does not prohibit GHHA from enforcing its private restrictive covenants, which are best read as prohibiting, absent prior Board approval, a detached second dwelling unit on a lot; and because Section 3.2 separately imposes a 750-square-foot minimum for every dwelling, any proposed ADU of less square footage that is detached from the principal dwelling appears noncompliant on its face.

Analysis

1. GHHA has a substantial covenant-based basis to regulate ADUs.

Any proposal to construct or install an ADU implicates at least two separate, covenant-based restrictions which GHHA is obligated to enforce.

First, **Section 2.4 limits lot use to a single-family residential dwelling** (singular) unless otherwise specially permitted by the Board. A detached, self-contained ADU intended for habitation is not just a minor appurtenance such as a shed or pool; rather, a detached ADU is by definition a dwelling unit. See 760 CMR 71.02. Although a detached

ADU may be permissible under municipal zoning, GHHA's restrictive covenants are separately enforceable under law and prohibit more than one dwelling unit on a lot that is detached from the principal dwelling unit.

Second, **Section 3.2** is even more direct. It states that no **residence, accessory building, swimming pool, tennis court, or other structure** shall be constructed, placed, or maintained unless complete plans and specifications are submitted and approved. The same section also imposes substantive requirements, including minimum ground-floor living area, continuous concrete or cement-block foundation, and garage requirements. GHHA therefore has authority not only to require prior submission and review, but also to deny a proposal that does not satisfy the covenant standards.

That reading is reinforced by GHHA's own governance documents. The Articles of Organization state that one of GHHA's purposes is to enforce restrictive provisions applicable to Great Hills and to represent owners in dealing with the Town on matters related to those purposes. The by-laws likewise provide that the ACC is to oversee enforcement of the architectural restrictions described in the covenants, approve conforming construction and exterior changes, and deny requests that do not meet those restrictions. Accordingly, GHHA is an "interested person" concerning any application to the Town of Sandwich is entitled to notice and an opportunity to be heard, failure of which gives GHHA standing to appeal any permit issued by the Town of Sandwich.

2. Chapter 150 limits only municipal zoning, not HOA enforcement of its private covenants.

Chapter 150, known as "The Affordable Homes Act", Section 7 and 8, amended G.L. c. 40A, §§ 1A and 3 to allow ADU's under 900 square feet to be built "by right" in single-family zoning districts. However, and more broadly, the stated purposes of Chapter 150 confirm that the Act is directed to *public* housing policy, housing production, and municipal/state regulation, not to the elimination of *private* covenant rights. Indeed, 760 CMR 71.00, *et seq.*, reaffirms the "public" purposes of Chapter 150 and establishes definitions, standards, and limitations to assist in the municipal administration of Chapter 150 under G.L. c. 40A. These regulations and definitions concern only requirements imposed by a *municipality* on the current or future use or occupancy of an ADU, and the ability of cities and towns to regulate ADU's to protect the health, safety, and general welfare of inhabitants. Nowhere in Chapter 150, G.L. c. 40A, or 760 CMR 71.00 is an HOA prohibited from enforcing its private covenants that may affect the use of property located within the HOA, including ADUs.

In particular, Section 1 describes Chapter 150 as a measure to rehabilitate, produce, and modernize *state-aided* public housing developments; preserve affordability and income mix in *state-assisted* multifamily developments; support homeownership and

rental opportunities for low- and moderate-income citizens; combat urban blight through housing stabilization programs; support housing for the elderly, disabled, and homeless; develop facilities for early care and out-of-school programs; and promote economic reinvestment through infrastructure improvements. **Those stated purposes are public and governmental in character, not private-HOA in character.**

Chapter 150's ADU provisions operate within that same public-law framework. Section 8 speaks in expressly *governmental* terms: **"No zoning ordinance or by-law"** shall prohibit, unreasonably restrict, or require special permit or other discretionary zoning approval for a single ADU in a single-family residential zoning district, while allowing reasonable regulations such as Title 5 compliance, site plan review, setbacks, and bulk/height requirements. **Nothing in that text purports to invalidate or preempt private deed restrictions, restrictive covenants, or HOA architectural-review requirements.**

Not surprisingly, the official state guidance points in the same direction. Mass.gov's ADU FAQ states that the ADU law **"does not address Homeowners' Associations (HOAs)"** and that an HOA may allow or restrict development of an ADU under its own rules. While this is not a judicial decision, it is the clearest official statement on the question of GHHA's ability to privately enforce its restrictive covenants.

Recent Attorney General bylaw-review decisions likewise reinforce that Chapter 150 is being applied to *municipal* regulation. In 2025, the AG disapproved the Town of Leicester's across-the-board ADU parking requirement because it conflicted with G.L. c. 40A, § 3 and 760 CMR 71.00, and disapproved the Town of Chelmsford's special-permit requirement for certain ADUs on the same basis. Those decisions are directed to town zoning by-laws, not to private associations or recorded private covenants.

3. No Massachusetts case law supports Chapter 150 preemption theory against an HOA.

There is little to no reported appellate authority discussing Chapter 150, let alone an HOA's enforcement of restrictive covenants concerning ADU's. The only reported Massachusetts appellate decision I found discussing Chapter 150 is Cline v. Planning Board of Framingham (Appeals Court, 2025). But Cline was not an ADU/HOA case; rather, the Appeals Court addressed the issue of retroactivity of separate amendments to G.L. c. 40A, § 17, and the Appeals Court expressly stated that it was offering **"no further opinion on the substance of those amendments."**

Accordingly, it does not appear that any reported Massachusetts appellate or Land Court decision holds that Chapter 150 preempts private HOA restrictive covenants or deprives an HOA of authority to enforce an architectural-approval regime against a proposed ADU. On the present state of the reported law, any Owner

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claiming that Chapter 150 preempts GHHA's ability to enforce its restrictive covenants concerning an ADU would be asserting a novel preemption theory, not relying on established precedent.

4. If GHHA denies the request, the Owner's recourse is to pursue a legal challenge to that denial, not to proceed unilaterally.

If the Board and/or ACC concludes that a proposed detached ADU is not permitted under the restrictive covenants, the proper course is to deny the request in writing, state the covenant grounds with reasonable specificity, and reserve all rights. At that point, the Owner is left with three practical options:

- (1) withdraw the proposal;
- (2) submit a materially revised proposal that complies with the covenants or pursue any available amendment/waiver route; OR
- (3) commence legal action seeking declaratory and/or injunctive relief against GHHA.

In other words, GHHA's denial does not permanently end the matter, but it shifts the burden to the Owner to obtain judicial relief if the Owner wishes to challenge GHHA's interpretation or enforceability position and without any reported Chapter 150 authority squarely supporting the proposition that municipal ADU protections override private HOA covenants.

5. Conflict and process issues should be handled formally and documented.

The Board should handle the review of any application formally and document the process with care. Notably, GHHA's By-laws provide that Directors shall abstain from voting on questions that might involve a conflict of interest, and the ACC structure includes an alternate to serve where a regular ACC member has a conflict. Accordingly, before the application is considered, the Board should confirm that the matter is being reviewed by disinterested decisionmakers, record any required recusal in the minutes, and use the ACC alternate where appropriate.

Importantly, the fact that GHHA may not be listed on a municipal permit application does not waive GHHA's private rights. GHHA's authority arises from the recorded covenants and its governing documents, not from being named as an "interested party" on a Town form. The Town's municipal review and GHHA's private covenant review are separate issues.

Recommended Immediate Steps

I recommend that the Board do the following:

1. Send immediate written notice that GHHA has **not approved** any proposed unattached ADU and reserves all rights under the restrictive covenants, by-laws, and applicable law.
2. Require prompt submission of a full package of plans/specifications, site plan, elevations, foundation details, utilities/septic details, delivery schedule, and copies of any municipal applications or approvals.
3. Have the ACC and Board consider each application **without participation** by any interested Board/ACC member, with the recusal clearly recorded.
4. If the proposal does not comply with the restrictive covenants as written, issue a formal denial letter identifying the principal grounds, including at minimum:
 - a. the single-family-use restriction in Section 2.4;
 - b. the prior approval requirement in Section 3.2 for any residence/accessory building/other structure; AND
 - c. any specific noncompliance with the substantive construction standards set forth in Section 3.2.
5. If delivery or installation is imminent despite the lack of approval, authorize a cease-and-desist / reservation-of-rights letter and engage counsel to prepare for and pursue injunctive relief if necessary.
6. If installation has occurred despite lack of approval, issue notice to the Owner of the fines as permitted under the restrictive covenants and engage counsel to pursue enforcement action, including a mandatory injunction to remove the ADU and to recover the Board's legal fees.

Board of Directors
GREAT HILLS HOMEOWNERS ASSOCIATION, INC.

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Conclusion

My present opinion is that GHHA has a substantial basis to regulate—and, if the covenants so require, deny—the proposed detached ADU under its restrictive covenants. Chapter 150 does not read as a repeal of private covenants; it is directed at municipal zoning restrictions and reasonable municipal regulation of ADUs. The Commonwealth’s own FAQ treats HOAs separately, and I have not located reported Massachusetts case law supporting the proposition that Chapter 150 strips GHHA of the power to enforce its restrictive covenants against a proposed ADU. If GHHA denies the request, the Owner’s remedy is to challenge that denial through legal action, not to assume that municipal permitting alone defeats GHHA’s private rights.

Yours very truly,

A handwritten signature in blue ink, appearing to read "RHTJ", with a stylized flourish at the end.

Raymond H. Tomlinson, Jr.

RHT/