

directions that a corrected mittimus be issued reflecting that defendant was convicted only on the murder charge. As the State concedes that the judgment of conviction on the offense of armed violence should be vacated as a lesser-included offense of the murder charge (*People v. Donaldson* (1982), 91 Ill.2d 164, 61 Ill.Dec. 780, 435 N.E.2d 477; *People v. King* (1977), 66 Ill.2d 551, 6 Ill.Dec. 891, 363 N.E.2d 838, cert. denied (1977), 434 U.S. 894, 98 S.Ct. 273, 54 L.Ed.2d 181), the State's request for an assessment of costs against the defendant should be denied. As this court held in *People v. Smith* (1983), 113 Ill. App.3d 917, 68 Ill.Dec. 705, 446 N.E.2d 876, where a defendant has prevailed solely on his request for remandment with directions for the issuance of a corrected mittimus, he has prevailed on one of the issues raised on appeal and, therefore, the State's request for costs will be denied. (113 Ill.App.3d 917, 926, 68 Ill.Dec. 705, 446 N.E.2d 876.) Accordingly, this cause is remanded with directions that a corrected mittimus be issued to reflect the actual sentence imposed. The State's request for assessment of costs is denied.

For the reasons stated, the judgment of the circuit court of Lake County is affirmed. This cause is remanded with directions that a corrected mittimus be issued to delete the armed violence charge.

AFFIRMED IN PART AND REMANDED WITH DIRECTIONS.

SEIDENFELD, P.J., and REINHARD, J., concur.



121 Ill.App.3d 805

77 Ill.Dec. 68

**LAKELAND PROPERTY OWNERS
ASSOCIATION, Plaintiff-Appellant,**

v.

Robert LARSON, Defendant-Appellee.

No. 83-388.

Appellate Court of Illinois,
Second District.

Feb. 1, 1984.

Rehearing Denied March 6, 1984.

Property owners association brought action against individual lot owner who refused to pay dues assessed against him for repair and maintenance of common areas. The 19th Circuit Court, Lake County, Alvin Ira Singer, J., denied relief, finding that majority of lot owners did not have authority to impose covenant upon individual lot owner which was new and different from those covenants delineated in lot owner's deed. Association appealed. The Appellate Court, Unverzagt, J., held that: (1) provision in deed permitting change of covenants directed itself to changes of existing covenants, not to addition of new ones having no relation to the existing ones, and, hence, association could not impose new dues requirement; (2) association could not assess dues not otherwise required in restrictive covenants in deeds to subdivision lots against lot owner merely because owner had easement permitting him to use common areas; and (3) evidence did not warrant finding of implied covenant in deed to pay dues assessed for repair and maintenance of common areas in subdivision.

Judgment affirmed.

1. Appeal and Error ⇐497(1), 907(2)

Appellant has duty to present complete record on appeal so that reviewing court will be fully informed regarding issues in the case, and, absent adequate record on appeal, it will be presumed that trial court's judgment conforms to the law and has sufficient factual basis. S.H.A. ch. 110A, § 323.

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2. Appeal and Error ⇨553(1)

Statement of facts in an appellant's brief does not suffice to provide court with necessary facts where they are not supported in the record because they lie outside the record and thus cannot be considered. S.H.A. ch. 110A, § 323.

3. Appeal and Error ⇨611, 907(2)

Absence of report of proceedings deprives reviewing court only of basis for reviewing issues whose merits depend upon matters omitted, and it does not deprive reviewing court of jurisdiction to entertain the appeal; in such instances, lack of report of proceedings requires affirmance of those issues depending for resolution upon facts not in the record and mandates that any doubts arising from incomplete record must be resolved against appellant. S.H.A. ch. 110A, § 323.

4. Appeal and Error ⇨611

Since absence of report of proceedings deprives reviewing court only of basis of reviewing issues whose merits depend on omitted matters, where principal issue raised on appeal involves question of law, absence of report of proceedings does not bar review. S.H.A. ch. 110A, § 323.

5. Appeal and Error ⇨611

Inasmuch as construction of deed was question of law for the court to determine, there was sufficient basis to review the circuit court's judgment as to such construction, notwithstanding failure of appellants to submit report of proceedings or substitute therefor, particularly where memorandum of law filed by appellee in the trial court set forth stipulated facts which were basis of judgment appealed from. S.H.A. ch. 110A, § 323.

6. Deeds ⇨93

Primary object in considering a deed is to determine intent of parties which is ascertained from the deed as a whole and by words employed.

7. Deeds ⇨95

Parties are bound only by words of deed regardless of any secret or undisclosed intent.

8. Contracts ⇨143(3)

Court may not add provision to agreement simply to make it more equitable.

9. Covenants ⇨49

Where court must construe restrictive covenant found in deed, each case must be decided upon its own facts so as to give effect to actual intent of the parties at time covenant was made, and covenant should be construed most strongly against the covenant, with all doubts and ambiguities resolved in favor of natural rights and against restrictions.

10. Covenants ⇨49

Restrictive covenants which affect land, while not favored at law, will be enforced according to their plain and unambiguous language where reasonable, clear, and definite.

11. Covenants ⇨49

Where deed contains restrictive covenants but also permits their future alteration, language employed determines extent and scope of that provision.

12. Covenants ⇨68

Provision in deed permitting change of covenants upon approval of majority of lot owners in subdivision directed itself to changes of existing covenants, not additional of new ones having no relation to the existing covenants, and, hence, new restriction requiring lot owners to pay dues assessed against them for use of common areas was unenforceable.

13. Easements ⇨53

Where party has easement on servient tenement, it has duty to maintain and repair it.

14. Easements ⇨53

Where grantee has easement which he shares with others, his duty to repair and maintain it must be apportioned with all other easement holders based upon extent of individuals' use of easement; furthermore, duty to pay includes those repairs and maintenance requirements which are necessary and reasonable.

15. Easements ⇨53

Property owners association could not assess dues, not otherwise required in restrictive covenants in deeds to subdivision lots, against lot owner merely because owner had easement permitting him to use common area, absent evidence establishing extent of owner's use of easement, if any, that assessments would be applied to repair and maintain easements, that repair and maintenance requirements were necessary and reasonable, or, for that matter, whether association had authority to enforce owner's obligation to pay for repairs and maintenance.

16. Covenants ⇨68

Covenant in deed requiring membership in property owners association and payment of dues for repair and maintenance of common areas would be enforceable.

17. Covenants ⇨68

Just as courts will enforce changes of restrictive covenants made pursuant to provisions so permitting because grantees take title of property with notice of possibility that original restrictions may be changed, they should not enforce changes where grantee takes title without proper notice that majority of lot owners may impose assessment upon property at some future time; such grantee can only be bound by what he had notice of, not secret intentions of grantor.

18. Covenants ⇨8

Covenant will be implied only when court can clearly see that it was intention of parties to have such agreement or when it is necessary to effectuate purpose of agreement.

19. Covenants ⇨20, 122

Evidence did not establish that it was intention of parties to deeds that majority of lot owners in subdivision could impose dues upon individual lot owners at some time in the future for repair and maintenance of common areas, nor was it shown that method employed by property owners association was necessary to effectuate purpose of deed covenants and easements;

hence, no covenant to pay dues would be implied.

Foran, Wiss & Schultz, Chicago, for plaintiff-appellant.

Soffiatti Johnson Teegen & Phillips, Ltd., Howard R. Teegen, Fox Lake, for defendant-appellee.

UNVERZAGT, Justice:

This appeal concerns the construction of a deed conveying a parcel of land in Lakeland Estates Subdivision in Lake County to Robert Larson, defendant, which contains use and construction restrictive covenants but also authorizes changes of these covenants upon approval of the majority of the lot owners of the subdivision. An apparent majority of the lot owners filed a document entitled "1980 Revised Deed Restrictions," which included provisions permitting Lakeland Property Owners Association, Inc. (Association), plaintiff, to establish dues assessable against lot owners, the nonpayment of which would cause a lien upon the property, and to enforce other rules and regulations adopted by the Association. The Association assessed defendant's dues for 1980 to be \$110 and upon his refusal to pay this assessment, brought a small claims action against him for that amount in the circuit court of Lake County. The circuit court denied the Association's prayer for relief, finding that the majority of the lot owners did not have the authority to impose a covenant upon individual lot owners which was new and different from those covenants delineated in the lot owner's deed. The Association appeals.

The parties stipulated to the relevant facts, those being that the defendant purchased a lot in Robert Bartlett's Lakeland Estate Subdivision in 1960 by a deed from the original developer which was similar to other deeds for land in this subdivision subject to various restrictions and covenants relating to the use of the lots and permissible types of construction. Before

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delineating these covenants and restrictions, the deed provided:

"SUBJECT to such of the following covenants as refer to the real estate herein described which shall run with the land and shall be in force and effect and shall be binding on all parties and all persons claiming under them until January 1, 1980, at which time said covenants shall automatically extend for successive periods of ten years, unless by a vote of the majority of the then owners of the lots in said subdivision it is agreed to change the said covenants in whole or in part."

The deed also conveyed to the grantee easements to use two lakes in the subdivision and lots for ingress and egress.

The Association, a not for profit corporation, which began as a voluntary group and became active in the subdivision's affairs, caused the adoption by a majority of the then lot owners of the 1980 Revised Deed Restrictions, which contained the following new covenants:

"24. * The Lakeland Property Owners Association, Inc. shall have the right to establish dues from time to time assessable against lot owners and lots in the Subdivision. The dues assessed from time to time, if not paid within the calendar year they are assessed, shall constitute a lien against the lot upon the Association's filing a written claim for lien with the Recorder of Deeds of Lake County describing the lot and the nature and amount of the lien. Collection of dues may be sought in law or in equity and costs incurred by the Association, including attorney's fees and expenses and interest at the maximum legal rate from time to time shall be included in satisfaction of the assessed dues or lien claimed. *

29. * The by-laws, rules and regulations adopted by the Lakeland Property Owners Association, Inc., and the actions taken by the Board of Directors of said Association shall be binding upon all lot owners. *"

Pursuant to these provisions, dues were assessed on defendant's property. Upon his refusal to pay these dues, the Association brought the instant action.

The trial court entered a judgment for defendant and so informed the parties by letter in which he stated that: "the covenants * * * were not changes in the original covenants but rather entirely new and different in character. * * * [T]herefore * * * the Association had no power to make a binding assessment on the defendant as he had not agreed to be bound by the terms thereof."

[1,2] Before considering the merits of the Association's argument on appeal, defendant's request that this court affirm the trial court's judgment because the Association failed to submit to this court a report of proceedings or its substitutes as provided in Supreme Court Rule 323 (87 Ill.2d R. 323) must be addressed. He correctly states that an appellant has the duty to present a complete record on appeal so that the reviewing court will be fully informed regarding the issues in the case (*Coombs v. Wisconsin National Life Insurance Co.* (1982), 111 Ill.App.3d 745, 746, 67 Ill.Dec. 407, 444 N.E.2d 643; *Teitelbaum v. Reliable Welding Co.* (1982), 106 Ill.App.3d 651, 661, 62 Ill.Dec. 54, 435 N.E.2d 852; *Saint Joseph Hospital v. Downs* (1978), 63 Ill. App.3d 742, 744, 20 Ill.Dec. 551, 380 N.E.2d 529), and that absent an adequate record on appeal, it will be presumed that the trial court's judgment conforms to the law and has a sufficient factual basis. (*In re Estate of Rice* (1982), 108 Ill.App.3d 751, 762, 64 Ill.Dec. 456, 439 N.E.2d 1264; *Chicago City Bank & Trust Co. v. Wilson* (1980), 86 Ill.App.3d 452, 454, 41 Ill.Dec. 466, 407 N.E.2d 964.) A statement of facts in an appellant's brief, as found, in plaintiff's brief in the instant case, does not suffice to provide a court with the necessary facts where they are not supported in the record because they lie outside of the record and thus cannot be considered. *Coombs v. Wisconsin National Life Insurance Co.* (1982), 111 Ill.App.3d 745, 746, 67 Ill.Dec. 407, 444 N.E.2d 643; *Teitelbaum v. Relia-*

ble Welding Co. (1982), 106 Ill.App.3d 651, 661, 62 Ill.Dec. 54, 435 N.E.2d 852; *Saint Joseph Hospital v. Downs* (1978), 63 Ill.App.3d 742, 744, 20 Ill.Dec. 551, 380 N.E.2d 529.

[3] The absence of a report of proceedings, however, deprives a reviewing court only of a basis for reviewing issues whose merits depend upon the matters omitted; it does not deprive a reviewing court of jurisdiction to entertain the appeal. (111 Ill.App.3d 745, 746, 67 Ill.Dec. 407, 444 N.E.2d 643; *Rosenblatt v. Michigan Avenue National Bank* (1979), 70 Ill.App.3d 1039, 1042, 27 Ill.Dec. 370, 389 N.E.2d 182.) In these instances, the lack of a report of proceedings requires an affirmance of those issues which depend for resolution upon facts not in the record (70 Ill.App.3d 1039, 1042, 27 Ill.Dec. 370, 389 N.E.2d 182) and mandates that any doubts arising from the incomplete record must be resolved against the appellant. *Potts v. Madison County Mutual Automobile Insurance Co.* (1983), 112 Ill.App.3d 50, 52, 67 Ill.Dec. 741, 445 N.E.2d 33; *Teitelbaum v. Reliable Welding Co.* (1982), 106 Ill.App.3d 651, 661, 62 Ill.Dec. 54, 435 N.E.2d 852.

[4,5] Since the absence of a report of proceedings deprives a reviewing court only of a basis of reviewing issues whose merits depend on omitted matters, where the principal issue raised on appeal involves a question of law, the absence of the report of proceedings does not bar this court's review. (*Chicago City Bank & Trust Co. v. Wilson* (1980), 86 Ill.App.3d 452, 454, 41 Ill.Dec. 466, 407 N.E.2d 964.) The instant appeal raises an issue whose resolution depends upon the construction of a deed. Inasmuch as the construction of an instrument is a question of law for the court to determine (see *Wilson v. Illinois Benedictine College* (1983), 112 Ill.App.3d 932, 937, 68 Ill.Dec. 257, 445 N.E.2d 901; *Vigilante v. National Bank of Austin* (1982), 106 Ill.App.3d 820, 823, 62 Ill.Dec. 626, 436 N.E.2d 652), this court has a sufficient basis to review the circuit court's judgment.

We further note that defendant filed a memorandum of law in the trial court setting forth the stipulated facts which were the basis of the appealed from judgment. The record of a case tried upon stipulated facts is sufficient. *Kann v. Rosset* (1940), 307 Ill.App. 153, 168, 30 N.E.2d 204.

[6-8] The primary object in considering a deed is to determine the intent of the parties which is ascertained from the deed as a whole and by the words employed (*Gelfius v. Chapman* (1983), 118 Ill.App.3d 290, 292, 73 Ill.Dec. 798, 454 N.E.2d 1047; *Goin v. Eater* (1982), 107 Ill.App.3d 887, 890, 63 Ill.Dec. 496, 438 N.E.2d 234; see *Schoeneweis v. Herrin* (1982), 110 Ill.App.3d 800, 806, 66 Ill.Dec. 513, 443 N.E.2d 36); parties are bound only by the words of the deed regardless of any secret or undisclosed intent (*Cimino v. Dill* (1982), 108 Ill.App.3d 782, 785, 64 Ill.Dec. 315, 439 N.E.2d 980; *Vigilante v. National Bank of Austin* (1982), 106 Ill.App.3d 820, 823, 62 Ill.Dec. 626, 436 N.E.2d 652). A court may not add a provision simply to reach a more equitable agreement. *National Tea Co. v. American National Bank & Trust Co. of Chicago* (1981), 100 Ill.App.3d 1046, 1049, 56 Ill.Dec. 474, 427 N.E.2d 806.

[9-11] Where a court must construe a restrictive covenant found in a deed, each case must be decided upon its own facts so as to give effect to the actual intent of the parties at the time the covenant was made and a covenant should be construed most strongly against the covenantor with all doubts and ambiguities resolved in favor of natural rights and against restrictions. (*Cimino v. Dill* (1982), 108 Ill.App.3d 782, 786, 64 Ill.Dec. 315, 439 N.E.2d 980; *Moore v. McDaniel* (1977), 48 Ill.App.3d 152, 163, 5 Ill.Dec. 911, 362 N.E.2d 382; *Kessler v. Palmeri* (1972), 3 Ill.App.3d 901, 904, 278 N.E.2d 813.) Restrictive covenants which affect land, while not favored at law, will be enforced according to their plain and unambiguous language where reasonable, clear, and definite. (*Levitt Homes, Inc. v. Old Farm Homeowners' Association* (1982), 111 Ill.App.3d 300, 308, 67 Ill.Dec. 155, 444 N.E.2d 194; *Hawthorne Hills As-*

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sociation v. Lawrence (1980), 85 Ill.App.3d 377, 381, 40 Ill.Dec. 666, 406 N.E.2d 869; *Freehling v. Development Management Group, Inc.* (1979), 75 Ill.App.3d 243, 246, 30 Ill.Dec. 610, 393 N.E.2d 646.) Where a deed contains restrictive covenants but also permits their future alteration, the language employed determines the extent and scope of that provision. See *Levitt Homes, Inc. v. Old Farm Homeowners' Association* (1982), 111 Ill.App.3d 300, 308, 67 Ill. Dec. 155, 444 N.E.2d 194.

[12] The provision permitting the change of covenants found in the instant deed clearly directs itself to changes of existing covenants, not the adding of new covenants which have no relation to existing ones. This provision precedes the covenants, states that it permits changes to "the following covenants," and permits a majority of the lot owners to change "the said covenants." No other construction of this deed is permissible from this language, and thus the trial court did not err in denying the Association's prayer for relief.

The Association relies upon numerous cases from various jurisdictions. They are all inapposite and the Association's reliance upon them indicates that it misapprehends the issue on appeal. These cases may be grouped into three categories although some of them belong to more than one group. First, some address the issue of whether the change in the restrictions or covenants must be less restrictive than the original ones. (See *McMillan v. Iserman* (1982), 120 Mich.App. 785, 327 N.W.2d 559, 562 (holds changes may be more restrictive, a decision which is in contradiction to *Van Deusen v. Ruth* (1939), 343 Mo. 1096, 125 S.W.2d 1).) Other of these cases hold that adopted changes, all of which concerned existing or related restrictions, were proper. (See *Lehmann v. Revell* (1933), 354 Ill. 262, 188 N.E. 531 (building height restrictions could be amended); *Duffy v. Sunburst Farms East Mutual Water & Agricultural Co., Inc.* (1979), 124 Ariz. 413, 604 P.2d 1124 (mandatory association membership requirement could be revoked); *Ardmore Park Subdivision Association, Inc.*

v. Simon (1982), 117 Mich.App. 57, 323 N.W.2d 591 (where issue on appeal was whether an association could make a change binding subsequent purchasers who never agreed to the change, the association had prohibited the building of fences over four feet tall); *Warren v. Del Pizzo* (1980), 46 Or.App. 153, 611 P.2d 309 (change eliminated past height restrictions); *Byrant v. Lake Highlands Development Co. of Texas, Inc.* (Tex.Civ.App.1981), 618 S.W.2d 921 (amendment could permit previous single family townhome restriction to be changed to allow the building of fourplex units). Finally, the other cases raise issues not relevant here. (See *Duffy v. Sunburst Farm East Mutual Water & Agricultural Co., Inc.* (1979), 124 Ariz. 413, 604 P.2d 1124 (issue was whether sufficient majority existed to effectively revoke a covenant); *Ardmore Park Subdivision Association, Inc. v. Simon* (1982), 117 Mich.App. 57, 323 N.W.2d 591 (issue was whether changes could bind subsequent purchaser who never agreed to the change); *Bryant v. Lake Highlands Development Co. of Texas, Inc.* (Tex.Civ.App.1981), 618 S.W.2d 921 (whether changes must apply to all of the properties subject to the original restrictions).) Therefore, none of these cases aid in the resolution of this issue. See generally *Annot.*, 4 A.L.R.3d 570 (1965), (discusses effect of contractual provisions permitting future revocation or modification of covenants restricting use of real property).

[13-15] The Association urges that requiring the payment of an assessment does not constitute a new burden upon defendant because the deed conveyed to him included easements permitting him to use common area, the repair and maintenance of which, by law, must be paid by easement holders. While Illinois law recognizes that where a party has an easement on a servient tenement, it has the duty to maintain and repair it (*Triplett v. Beuckman* (1976), 40 Ill.App.3d 379, 381, 352 N.E.2d 458; *Andrews v. City of Springfield* (1965), 56 Ill.App.2d 201, 213, 205 N.E.2d 798), this duty to pay cannot be imposed in the instant case for several reasons. First, the

record does not indicate that the Association sought to assert this theory at trial, and thus waived it. Second, where a grantee has an easement which he shares with others, his duty to repair and maintain it must be apportioned with all other easement holders based upon the extent of the individuals' use of the easement. (*Barnard v. Gaumer* (1961), 146 Colo. 409, 361 P.2d 778, 781; *Lindhorst v. Wright* (Okla. App.1980), 616 P.2d 450, 455.) Furthermore, the duty to pay includes only those repairs and maintenance requirements which are necessary and reasonable. (616 P.2d 450, 454.) In the instant case, the record does not contain any evidence establishing the extent of defendant's use of the easement, if any, that the assessments would be applied to repair and maintain these easements, that the repair and maintenance requirements were necessary and reasonable, or, for that matter, whether the Association had the authority to enforce defendant's obligation to pay for repairs and maintenance. Therefore, based upon the record before this court, the Association's argument lacks merit.

[16, 17] The Association further argues, correctly, that had a covenant in the deed required membership in the Association and the payment of dues, a court would be obligated to enforce it. (See *Streams Sports Club, Ltd. v. Richmond* (1982), 109 Ill.App.3d 689, 694-95, 65 Ill.Dec. 248, 440 N.E.2d 1264; *aff'd* (1983), 99 Ill.2d 182, 75 Ill.Dec. 667, 457 N.E.2d 1226; *Fox Lake Hills Property Owners Association v. Fox Lake Hills, Inc.* (1970), 120 Ill.App.2d 139, 145-46, 256 N.E.2d 496; *Bessemer v. Gersten* (Fla.1980), 381 So.2d 1344, 1347; *William W. Bond, Jr. & Associates, Inc. v. Lake O'The Hills Maintenance Association* (Miss.1980), 381 So.2d 1043, 1044.) However, the instant deed does not contain such a covenant. Therefore, while it may have been wise and proper for the developer to include such a covenant because assessments of this nature serve an important function to insure that owners of individual lots may enjoy the use of their easements and maintain the value of their property (see *Boyle v. Lake Forest Property*

Owners Association, Inc. (S.D.Ala.1982), 538 F.Supp. 765, 770), the developer failed to so include a provision and defendant purchased the property without notice that such a provision may later be imposed upon him. Therefore, just as courts will enforce changes of restrictions made pursuant to a provision so permitting because the grantees take title of the property with notice of the possibility that the original restrictions may be changed (see *Warren v. Del Pizzo* (1980), 46 Or.App. 153, 611 P.2d 309, 311; *Bryant v. Lake Highlands Development Co. of Texas, Inc.* (Tex.Civ. App.1981), 618 S.W.2d 921, 923), they should not enforce changes where a grantee takes title without proper notice that a majority of the lot owners may impose an assessment upon his property at some future time. Such a grantee can only be bound by what he had notice of, not the secret intentions of the grantor. *Cimino v. Dill* (1982), 108 Ill.App.3d 782, 785, 64 Ill.Dec. 315, 439 N.E.2d 980.

[18, 19] It is recognized that courts may find an implied covenant in a deed. A covenant will be implied, however, only when the court can clearly see that it was the intention of the parties to have such an agreement or when it is necessary to effectuate the purpose of the agreement. (*Galich v. Catholic Bishop of Chicago* (1979), 75 Ill.App.3d 538, 544, 31 Ill.Dec. 370, 394 N.E.2d 572, *cert. denied* (1980), 445 U.S. 916, 100 S.Ct. 1277, 63 L.Ed.2d 600.) Based upon the record submitted to this court, it is not clear that it was the intention of the parties that a majority of the lot owners could impose dues upon individual lot owners at some time in the future. Furthermore, it has not been shown that the method employed by the Association is necessary to effectuate the purpose of the deed covenants and easements. Significantly, no copy of the declaration referred to in the deed and which apparently concerns the use of the easements has been made part of the record. Therefore, the Association's argument which attempts to obtain this court's approval of its conduct

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because of the alleged necessity of its imposition of assessments is rejected.

Contrary to the Association's contention, the trial court did not place form over substance. Rather, the trial court correctly construed a deed which failed to provide any authority for the Association to impose assessments upon individual lot owners. Lacking authority, the Association could not require an owner to pay the assessed dues. (See generally *Sinnissippi Apartments, Inc. v. Hubbard* (1983), 114 Ill. App.3d 151, 69 Ill.Dec. 889, 448 N.E.2d 607 (absent agreement by owner of unit in co-operative housing building, plaintiff could not require him to accept extra shares in building which would have resulted in increased assessments).) Hence, the judgment of the circuit court is affirmed.

The judgment of the circuit court of Lake County is affirmed.

JUDGMENT AFFIRMED.

SEIDENFELD, P.J., and VAN DEUSEN, J., concur.



121 Ill.App.3d 542
77 Ill.Dec. 75

PEOPLE of the State of Illinois,
Plaintiff-Appellee,

v.

John K. SMITH, Defendant-Appellant.

No. 3-83-0324.

Appellate Court of Illinois,
Third District.

Feb. 2, 1984.

Defendant was convicted in the Circuit Court, LaSalle County, James J. Wimbis-
cus, J., of reckless conduct, and he appeal-
ed. The Appellate Court, Alloy, J., held
that conviction would be reversed, there
being no indication in record that defendant

knowingly and understandingly waived his
right to jury, such as docket entry showing
jury waived or signed jury waiver docu-
ment, notwithstanding that defendant was
notified of date for bench trial and notwith-
standing absence of any argument or as-
sertion below by defendant that there was
no understanding waiver.

Reversed and remanded.

Heiple, J., dissented and filed opinion.

Criminal Law ¶1186.1

Conviction of reckless conduct ren-
dered after bench trial would be reversed,
there being no indication in record that
defendant knowingly and understandingly
waived his right to jury, such as docket
entry showing jury waived or signed jury
waiver document, notwithstanding that de-
fendant was notified of date for bench tri-
al, and notwithstanding absence of any ar-
gument or assertion below by defendant
that there was no understanding waiver.
S.H.A. ch. 38, ¶ 12-5(a); U.S.C.A. Const.
Amend. 6.

Jean Herigodt, Robert J. Agostinelli,
State's Attys., Appellate Service Commis-
sion, Ottawa, for defendant-appellant.

Gary L. Peterlin, State's Atty., Ottawa,
for plaintiff-appellee.

ALLOY, Justice:

John K. Smith appeals from his convic-
tion for reckless conduct [Ill.Rev.Stat.
(1981), ch. 38, par. 12-5(a)], following a
bench trial in the circuit court of LaSalle
County. We reverse the conviction and
remand for a new trial, based upon the
failure of the record to indicate that the
defendant knowingly and understandingly
waived his right to a jury.

The record indicates that the defendant
was charged by information on December
3, 1982, and his attorney entered an appear-
ance on December 7, 1982. A notice to
appear for bench trial was mailed to the
defendant and his counsel in December,
1982. A bench trial was held on February