Columbia Association Council Rep Report
April 30, 2023

This Thursday was my final CD Board meeting and it was a very productive one because at last an updated Ethics Policy was passed. Andy Stack and Dick Bolton worked hard for many years on this, there were many drafts that they shared with the Board, attorney and staff until the final few edits were debated and passed.

We heard a talk by John Healy that was very well received but with the limited time it left open lots of questions I have included the complete talk from the November 2nd 2022 presentation he made at the Hawthorn Center.

The board passed a resolutions Recognizing Gun Violence Awareness Day on June 2nd.

This year eventually turned out good with the highlights being……

1. The approval of the Sixpence Circle tot lot and the Oakland Mills committee to look into the future of tot lots,
2. Clarifying that the Board will have the final say on the WSSI Lake Elkhorn Project
3. The beginnings of a plan to address invasive plants and restore open space.

This week I toured the Sixpence Circle tot lot with Jervis Dorton from Oakland Mills, Jervis is one of the original Columbia planners that Rouse hired in 1969, his last project was the extension of the mall from Macy's to Northstrom. Although Jervis felt the colors of the equipment could of been chosen to blend more he felt that it was a great step forward as we start to reimagined tot lots that include all members of the community. Personally I would like to see a native plant meadows and a community gardens at tot lots.

The next CA Board meeting is May 11th and it will be an organizational meeting. I wish Skye and the Hickory Ridge Board all best in the coming year.

Brian England

November 1, 2022. The Covenants and the People Tree

A Talk by John Healy, Esq. regarding Columbia's Covenants and Restrictions

Restrictive covenants on property use are often utilized in developments to maintain the character of the neighborhood in accord with the development plan and to protect property values.1 When restrictive covenants are created for the mutual benefit of all of the properties within a development, they may be enforced by each of the property owners against the other.2 While at common law, restrictive covenants on land use were categorized as either "real covenants" or "equitable servitudes" depending on whether they were enforced in law or equity,
The modern trend, as represented by the Restatement (Third) of Property: Servitudes,3 is to refer to both real covenants and equitable servitudes simply as servitudes.

Columbia is a classic example of the application of reciprocal negative servitudes (restrictions) sometimes referred to as a "common scheme of development" that was created for the mutual benefit and protection of all property owners in the Columbia New Town. The mosaic of

covenants that concern the land in Columbia are written to satisfy all the legal requirements to irrefutably vest these reciprocal rights and obligations to all owners. Below are five (5) of the legal requirements:

(1) There is a common grantor (The Howard Research and Development Corporation in this case) of property who has a general plan or scheme of development (the Preliminary Development Plan) for the property;

(2) the common grantor conveys parcels or lots in the development subject to servitudes (restrictive covenants) designed to mutually benefit the properties in the development and advance the plan of development;

See, generally, Restatement (Third) of Property: Servitudes § 2.14, comment a. (2000); Citizens for Cov. Comp. v. Anderson, 12 Cal. 4th 345, 352, 906 P.2d 1314, 1318, 47 Cal. Rptr. 2d 898, 902 (1995) ("modern subdivisions are often built according to a general plan containing restrictions that each owner must abide by for the benefit of all").

See, Plumb v. Ruffin, 213 Neb. 335, 328 N.W.2d 792 (1983); Reed v. Williamson, 164 Neb. 99, 82 N.W.2d 18 (1957). See, generally, Restatement, Richard R. Powell & Michael Allan Wolf, Powell on Real Property § 60.01[5] at 60-11 See, generally, id., § 60.01[4] and [5]; Thompson on Real Property §§ 61.02(b) and (c) and 61.05 (David A. Thomas 2d ed. 2006); 1 Restatement, supra note 6, §§ 1.4 and 2.1, comment a.; Citizens for Cov. Comp. v. Anderson, 12 Cal. 4th at 348, 906 P.2d at 1316, 47 Cal. Rptr. 2d at 900 (referring to law of real covenants and equitable servitudes as "'the most complex and archaic body of American property law remaining in the twentieth century'" and as "'an unspeakable quagmire'").

See, 1 Restatement, supra note 6, §§ 1.3 and 1.4; 9 Powell & Wolf, supra note 8, § 60.01[6]. See, also, generally, Lawrence Berger, Integration of the Law of Easements, Real Covenants and Equitable Servitudes, 43 Wash. & Lee L. Rev. 337 (1986); Uriel Reichman, Toward a Unified Concept of Servitudes, 55 S. Cal. L. Rev. 1177 (1982); Ralph A. Newman & Frank R. Losey, Covenants Running with the Land, and Equitable Servitudes; Two Concepts, or One?, 21 Hastings L.J. 1319 (1970).

(3) it can be reasonably inferred, based on the common grantor's conduct, representations, and other oral and written materials such as slide shows or advertisements, that the grantor intended the property against which the servitude is imposed to be subject to the same servitudes imposed on all of the properties within the plan of development against which the servitude is imposed to be subject to what is said in Skyline Woods Homeowners Assn. v. Broekemeier that a grantor's intent to create a plan of development may be proved "from the conduct of parties or from the language used in deeds, plats, maps, or general building development plans" and by looking "'to matters extrinsic to related written documents, including conduct, conversation, and correspondence."

Determining which properties are included within a plan of development is relatively easy where land is platted or subdivided, because "[i]n the absence of other evidence, the inference is normally justified that all of the land within a platted subdivision is subject to the general plan, and that land outside the subdivision is not included. Thus, where property is subdivided or platted pursuant to a plan of development, a presumption arises that the plan of development includes only those properties in the plat or subdivision.

In contrast to the express multi-lateral imposition of reciprocal negative servitudes as one court explained: implied negative reciprocal easement or servitude doctrine arose before the advent of comprehensive zoning (which is not the case in Columbia) in order to provide a measure of protection for those who bought lots in what they reasonably expected was a general

development in which all of the lots would be equally burdened and benefitted. In those early days, it was uncommon for the developer to evidence the development or impose uniform restrictions through a recorded Declaration that would later be incorporated in individual deeds. They often filed subdivision plats of one kind or another but did not take the extra step of using one instrument to impose the restrictions. The common, almost universal, practice, instead, was for the developer to place the restrictions in the deeds to individual lots and, sometimes, to represent to the purchasers of those lots that the same restrictions would be placed in subsequent deeds to the other lots. Litigation arose most frequently when the developer then neglected to include the restrictions in one or more of the subsequent deeds and those buyers proceeded or proposed to use their property in a manner that would not be allowed by the restrictions. Because developers historically restricted properties as part of their plan of development on a deed-by- deed basis, the doctrine was created to fill the gap where a property was conveyed without restrictions in the deed. But a common practice today is for developers to place restrictions on an entire development all at once as was done in 1965 in Columbia where the Preliminary Development plan adopted is clear and establishment of the servitude is necessary to avoid injustice. The implied-reciprocal-servitude doctrine comes into play only when the developer does not follow the practice of recording a declaration of servitudes applicable to the entire subdivision or other general-plan area.

See Black's Law Dictionary 495 (10th ed. 2014)
(defining "declaration of restrictions" as "statement of all the covenants, conditions, and restrictions affecting a parcel of land, usu[ally] imposed and recorded by a developer of a subdivision. The restrictions usu[ally] promote a general plan of development by requiring all lot owners to comply with the specified standards, esp[ecially] for buildings. The restrictions run with the land"

same servitudes imposed on all of the properties within the plan of development (Numerous examples and evidence of this abound).

(4) the property owner against whom the restriction is enforced has actual or constructive notice of the imposed servitude (all declarations of covenants and restriction are recorded in the land records);

(5) the party seeking to enforce the restriction possesses an interest in property in the development that is subject to the servitude and has relied upon the representations or the express or implied representations of the common grantor that other properties within the general scheme of development will be subject to the servitude.

Conclusion:

The New Town Columbia development meets all of the requirements for a "common scheme of development. " That means that collectively the covenants and restriction are for the mutual benefit of all Columbia property owners and they can rely on them.