MEMORANDUM OF LAW

DATE: September 22, 1987

TO: Councilwoman Judy McCarty, via Citizens Assistance

FROM: City Attorney

SUBJECT: Deed Restrictions in the College Area

By route slip dated August 3, 1987, you provided this office with a copy of a Declaration of Restrictions entered into in 1949 between Robley and Mariliz Veall, Phi Lambda XI Alumni Association, and Harvey and Joyce Urban, with regard to certain property in College Park Unit No. 3. You asked the following questions:

1) What addresses do the attached restrictions refer to?
2) Is there any committee such as the one referred to?
3) Are these restrictions valid at this time, in particular Nos. 5, 9, 10, 11, 19 and 20?
4) Would these restrictions themselves prevent fraternities from being built on any lots other than 8 and 9 of Block 17?

The City of San Diego is not a party to the agreement and, therefore, has no power to enforce the agreement if the agreement is, in fact, still in effect.

There are a variety of reasons why the courts may not enforce the Declaration of Restrictions. If the character of the restricted property has changed to such an extent that the original purpose of the restrictions has become obsolete, the restrictions will not be enforced. Key v. McCabe, 54 Cal.2d 736, 8 Cal.Rptr. 425, 356 P.2d 169 (1960). Also, if the party seeking the enforcement of a restriction has materially violated the restriction himself, the courts will not enforce the restriction on behalf of such a party. Bryant v. Whitney, 178 Cal.640, 174 P.32 (1918). Acquiescence by parties seeking enforcement to previous violations will generally preclude enforcement by such person. Johnstone v. Bettencourt, 195 Cal.App.2d 538, 16 Cal.Rptr. 6 (1961). If the restrictions have been repeatedly violated such fact may create sufficient change in the character of the property to render the restriction unenforceable by anyone. Seligman v. Tucker, 6 Cal.App.3d 691, 86 Cal.Rptr. 187 (1970). An unreasonable delay in attempting to enforce restrictions may result in a defense of "laches" where such delay

so prejudices the party against whom enforcement is sought so that enforcement would be inequitable. Butler v. Holman, 146 Cal.App.2d 22, 303 P.2d 573 (1956).

Attached is a map showing (in yellow) the area originally subject to the restrictions. The area circled in red represents the Phi Lambda XI Alumni Association Lot 9 and the area in green is Lot 8, the owner of which apparently refused to sign the restrictions. You will note the properties are on Hardy and Lindo Paseo between 55th Street and Campanile Drive.

This office has no way of ascertaining whether or not a committee still exists. However, a review of the subject addresses in the Polk Directory indicates that certain of the lots are used for multi-family residential purposes, and others are apparently used for office purposes, both uses which, of course, would be prohibited if the restrictions had been enforced. Therefore, it appears unlikely that the restrictions are valid at this time since failure to enforce such restrictions over a substantial period of time has the legal effect of making them unenforceable.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

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Attachments
ML-87-99