

Covenants (continued from page 4)

The paragraph about "no business nor noxious activity" is ambiguous and because the developer, representing the ownership and/or Architectural Control Committee which had total authority over development, verbally approved the auto repair activity, he could not have meant "no business" except if it were also a noxious activity.

There were also allegations at trial that rubbish, trash, waste, etc., had been present on certain lots but that had been fairly well remedied by the time of the trial.

In his closing, plaintiff's attorney Dan White cited *Keller v. Branton* (1983 WY 76, 667 P.2d 650). He told the judge that this case contradicted defendants contention that a requirement for plans to be approved by a "committee" of one sort or another before additional buildings could be constructed could meet compliance if that committee did not approve or disapprove timely.

While this Supreme Court opinion may provide a convincing argument that the covenant regarding additional buildings at Monterey Ranchettes has been abandoned because of the number of such buildings now in place, it also provides support for those two businesses operating in the subdivision.

Keller v. Branton involved a dispute about the additional of a front yard fence and a carport which affected the neighbor's drainage. The district court ruled and the supreme court affirmed the ruling that the fence was prohibited specifically in the covenants and that, in spite of numerous other neighbors already having a front yard fence of one type or another, the defendants would have to be torn down.

The carport was another matter.

Justice Brown of the Wyoming Supreme Court wrote in 1983: "Although the trial court found that the carport was wrongfully constructed, appellants (defendants) for equitable reasons, were not required to remove it. The court disposed of this matter in a sensible way. It determined that the cost of constructing the carport and the cost of its removal outweighed the harm resulting to appellees (plaintiffs)." He then wrote: "We agree with the result reached by the trial court."

This decision's wording concerning a structure wrongfully constructed in violation of the covenants should also apply if Judge K. determines that the two "businesses" are in violation of the covenants. There can be no argument that the harm which would be caused the two property owners (if they have to cease their activities) would far outweigh the harm done to Chris Olsen if they continue.

The 1983 opinion does not have all of the language of those covenants to compare to the covenants for Monterey Ranchettes. Words provided are sometimes identical in both sets of covenants and courts ruled in 1983 that the covenants did not allow construction of additional structures without architectural control committee approval and that the "proceed on tardy response" did not apply to additional structures, just the original house and garage.

As distasteful, painful, costly, inconvenient, objectionable and hurtful as having a new neighbor take action against you over covenants which he himself has violated since bring the lawsuit, covenants run with the land and can be enforced at any time, by any property owner within the subdivision. These Monterey Ranchettes covenants will be amended next April. In response to a comment about the type neighbor Chris Olsen is, Judge Kalokathis said: "Nobody would want Chris Olsen as a neighbor." Amen.

Will the City approve a transfer of a liquor license with tax and other State/Federal liens against the transferring owner?

At the October 8, 2007 City Council meeting, a public hearing was held concerning the transfer of a liquor license. There was no public comment nor any comments from members of the governing body. The transfer application was referred to the Finance Committee.

At the October 16, 2007 Finance Committee meeting, the agenda item passed without comment.

Final reading on transferring the liquor license back to John Lambousis, principal of Cheyenne Club, Inc., from Scott Meadows, president of Steamers, Inc., will be Monday night, October 22, 2007.

The Cheyenne Herald has come into possession of data which may affect that transfer. Perhaps the governing body is aware of the issues and have chosen to proceed without considering the ramifications of their actions. Perhaps proper documentation was not provided for their consideration and they will making a final decision lacking that information.

We will make the governing body aware of our findings in this story. They can do with the information as they wish.

Documents in the City liquor license file for this establishment is sometimes confusing and other times contradictory - as it relates to the operation of and transfer request for Liquor License No. 12.

There are documents signed by Scott Meadows showing him to be president of Steamers, Inc. and a letter which refers to an "Application for Transfer of Ownership of City of Cheyenne Liquor License Number 12 (Steamers, Inc. to Cheyenne Club, Inc.) in which he signs without title on letterhead of Cheyenne Club, Inc., a Wyoming corporation, d/b/a Cheyenne Club. These documents make it appear that the transferor of the liquor license is signing as the transferee as well.

A CERTIFICATE OF LIEN SEARCH is a part of the file also. In the introduction of this document, rubber stamped for Laramie County Clerk Debra K. Lathrop by her Deputy, Rhonda Bush, it says: "A search of the records of this office indicates the listing below is a record of the presently effective Financing Statements and Statements of Assignment which we

found on record for STEAMERS, INC." The clerk's office provides the caveat that, basically, they have not done an "absolutely exhaustive and correct" search and the document is provided for "the sole purpose ... to accommodate persons who are unable or unwilling to personally examine the aforesaid records."

In the area provided for specifics, it says there are no UCC liens, but "SEE ATTACHED FOR FEDERAL OR STATE TAX LIENS." There is no attachment of tax liens.

A copy of the "AGREEMENT TO TERMINATE COMMERCIAL BUILDING LEASE; TRADENAME USE AGREEMENT; PURCHASE AGREEMENT AND OPTION TO PURCHASE" was not in the file at the City Clerk's office but does exist. It is dated September 5, 2007 and one of the conditions of the Agreement is that the seller "Pay to the Wyoming Department of Revenue from the proceeds of the resale of the liquor inventory all sales taxes attributable to his operation of the business in the premises; ..."

Why are delinquent sales tax liabilities important? Because under W.S. §12-2-306, if "any licensee is sixty (60) or more days delinquent in paying sales taxes, the liquor commission shall not sell alcoholic beverages to the licensee ..." And, W.S. §12-7-103, "Suspension of license by licensing authorities for failure to pay sales tax," should have prompted the City to suspend the license, not transfer it.

While there was no attachment showing Federal or State Tax Liens, we can report that there are several. There is a sales tax lien for the period of 6/1/2007 through 7/31/2007 in the amount of \$3517.41 which was recorded 10/10/07 in the County Clerk's office. There is also an IRS lien in the amount of \$3885.78 for withholding taxes in 2005, recorded 8/24/2007; a State of Wyoming unemployment tax lien in the amount of \$506.49 recorded 8/09/2007; and a State of Wyoming worker's comp lien in the amount of \$968.12 recorded 7/13/2007. None of the liens had been released as of 10/15/07.

A Sept. 5, 2007 letter to the City Clerk's office, signed by Scott Meadows, says: "No liens or UCC security agreements have been filed encumbering the license."

2007 Schedule - Cheyenne Herald

Now published on Thursday
 Thursday, November 1
 Thursday, November 15
 Thursday, November 29
 Thursday, December 13
 Thursday, December 27

GAY WOODHOUSE
 Law Office

Liberty & Justice for All

Gay Woodhouse has 29 years Legal Experience and is

President of the Wyoming Bar Association

e-mail: GayWoodhouseLaw@aol.com

"Dedicated to the protection of your rights."

211 W. 19th St. ❖ 432-9399



The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise.

SANDWICH SPECIAL

Two Chili Dogs w/cheese
 Large Drink
 Large Fries

Burger Inn **\$5.99**
 Pershing & Snyder plus tax

MAXIE MONDAYS - \$1.25

E-MAIL ... CHEYENNEHERALD@BRESNAN.NET