

Hell hath no fury Like a woman scorned. Or a disgruntled neighbor with a Lot of money and plenty of time.

Covenants (like zoning regulations) can be a property owner's best friend. Or their worst enemy. Permanent as a tattoo and sometimes as unwelcome as a bubble in a child's pool, covenants can come back to haunt neighbors decades after their implementation - after years with no disputes about the enforcement.

Covenants "run with the land" and often have an initial 25 year life, with automatic ten year renewals - often with a provision for a Homeowner's Association to amend or terminate them.

Developers with land but no experience in development market their land with covenants, often for no reason other than others have done the same thing and they want to appear to be "with it." They think ahead only as far as the closing of the sale.

Wyoming case law provides examples of the imposition of enforcement and/or abandonment of covenants.

Laramie County District Court Judge Nicholas Kalokathis recently presided over the latest neighbor vs neighbors lawsuit involving covenants. It's not the first and it won't be the last.

This litigation drove home some very basic points about human nature. And it reminded all involved, and that is why I'm providing this report on the dispute, of how critical it is to recognize just what covenants can do to you and cannot do for you as a property owner. The bottom line is that you may be in compliance with zoning regulations and not offending your neighbor but still run afoul of covenant provisions.

Chris Olsen purchased a home in Monterey Ranchettes, a subdivision north of the city which was plotted in the early 1970s and transferred the deed in June 2004. When he subsequently attempted to open a commercial pheasant farm, he was opposed by neighbors and ultimately the district court and Wyoming Supreme Court prevented that action.

He, whether retaliatory or for just reasons, filed a lawsuit against his neighbors. Testimony elicited that there are 39 lots at Monterey Ranchettes and his lawsuit named 34 separate defendants. Many of the defendants retained Gay Woodhouse as counsel. Some acted pro se but did not participate in the suit by calling witnesses or examining other's witnesses.

The bench trial took up parts of three days. Judge K. handled the trial with fairness, humor and expediency, even touring the subdivision upon completion of testimony and closing arguments. Both attorneys, Gay and Dan White for plaintiff Chris Olsen, represented their clients well.

The dispute hinges on whether the covenants have been abandoned or, at minimum, whether specific paragraphs of the covenants have been abandoned or violated. If any have been violated, Judge K. can issue an order or an injunction, requiring correction or cessation of the violation. If they have been abandoned in his judgment, he can so decree.

In reading other court rulings involving covenants, the documents themselves seem pretty boilerplate - developers just Xerox covenants used earlier and make minor changes to satisfy their own needs.

On occasion, covenants contain a provision which is stricken by subsequent law. For example, there were covenants from the 1940s here in Cheyenne that prohibited the sale of the property to "people of color." Civil Rights action in the 1960s struck down that archaic restriction. But it was in place until shortly before the covenants now disputed were enacted.

Testimony in the case focused on alleged violations, which could lead to abandonment.

Was Paragraph 4 abandoned? It says that: "No structure other than one private single family dwelling together with a private garage and suitable barn or shed for horses for use in the connection with said single family dwelling shall be erected, placed or permitted to remain on any of the residential lots."

Ms. Woodhouse argued for the defendants, many of whom have one or more outbuildings which is/are not a barn(s) for horses, that Paragraph 3 of the covenants serves to cancel Paragraph 4. Basically, Paragraph 3 says that additional buildings cannot be constructed on the lots until an Architectural Control Committee (seemingly nonexistent for decades at Monterey Ranchettes) approves the plans. "In the event the committee or its designated representative fails to approve or disapprove within 30 days ... **OR** in the event no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with." No [law]suit was ever filed against or during the construction of any of the cited buildings.

Was Paragraph 8 violated or abandoned? It says: "No business nor activity of a noxious nature may be conducted upon any lot in this subdivision, ..." The plaintiff argued that two in-home businesses, unknown to be operating by most neighbors in Monterey Ranchettes and having no signage, violate the covenants. Ms. Woodhouse argued that the language must be taken together - that it means the same as if the wording were: "No business activity of a noxious nature ..."

One of the first lot owners, who has operated an auto repair business in his family garage for over three decades, testified that he spoke with the developer about his plans before buying the lot in 1973 and was told it was okay. Neighbors at the time also agreed what he had in mind would not be a problem. Had the developer intended that "no business" be conducted in the subdivision, he had a duty to inform the potential buyer that an auto repair enterprise would be in violation of the covenants and prohibited. It is likely, considering the mix of property owners at Monterey Ranchettes, that others have conducted "business" from their homes.

The plaintiff may schedule appointments, field complaints or calculate bids for his asphalt business. From home. Is he conducting business under Paragraph 8? If he is, plaintiff would have to cease those activities as well, if he prevails in this suit.

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