

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

I. Other Presentations In Which Either The Date And /
Or Sponsoring Organization Is Missing

5. Market Analysis/Urban Economics/Real Estate
Process

- i. "Comments on Neighborhood Associations",
no date

Comments on Neighborhood Associations

- I. An important design element for subdivisions and Planned Unit Developments can be the Homeowners' Association. It offers a variety of benefits to a variety of people.
 - A. The homeowner gains a device for participating in the maintaining of the general neighborhood appearance and cooperating with his neighbors in a structured way to accomplish collective purposes.
 - B. The developer gains a captive buyer for unbuildable pieces of ground and amenities which everybody wants but nobody wants to manage.
 - C. The local government avoids responsibility for neighborhood services not provided throughout the community and freedom from involvement in many little matters that spring up among neighbors.
- II. The association or condominium format does offer some really tough problems in practical application.
 - A. How do you draft for firm control while providing flexibility for changing conditions?
 - B. How do you generate neighborhood participation without sowing the seeds for neighborly warfare or collective action against the developer?
 - C. How do you collect money for association programs in terms of assessments on individual owners and users?
- III. The legal draftsmanship required demands both clairvoyance, common sense, and resignation to change.
 - A. Land-use controls once took the form of thou shalt not. (Forbidding chicken coops, fences, and out buildings in the late 1940's but failing to anticipate wide spread ownership of camping trailers and boats in the back yard. The Monona case with a residential only restraint in 1912, 30 year statutory limit plus 30 year common law limit so that despite C-1 zoning in the shopping center area, the owner is enjoined against building a commercial building).
 - B. The next step was to provide requirements that the lot owner must do something - require some sort of behavior from him such as submitting blue prints for approval etc. and existing owners must provide a committee to review them etc. (The Madison case where the committee no longer existed and the developer had retired to Phoenix but the loan couldn't be closed until somebody convened the committee or found the developer).
 - C. However, an architectural control covenant is not only concerned with initial architectural integrity but with continuation of these over-all qualities for esthetic satisfaction of the residents and enhancement of property values. That means continuing enforcement by some committee backed up by some board of directors or trustees. The problem is a restriction may be inflexible or unreasonable and

therefore unenforceable.

- D. A declaration prohibited roof-top antennas even though the community was in a fringe area where reception was poor, cable TV unavailable, and no master antenna system provided. Thus the problem began with a constraint which many buyers would like to ignore. The problem was made worse by:
- a. Developer and sales staff did not emphasize this restriction the development.
 - b. The early residents themselves didn't object and didn't take control of the board of directors until later.
 - c. When the residents did control the board of directors, they received pressure from both sides. Those who ignored the rule thought it was unreasonable and shouldn't be enforced. Others noted, correctly, that if the board did not enforce the rule consistently they would undermine the basic argument of mutual consideration on which all covenants depended.
 - d. Eventually the board hired an attorney and experts and went to a full court procedure. The judge concluded everybody had TV and without high antennas, TV sets would be no better than a radio and dismissed the provision as unreasonable.
 - e. As a result the board of directors has its over-all authority undermined, those who thought the rule unenforceable were mad about the money spent for legal fees and refusing to pay their assessments, while the developer is upset about the troubled image his project has in the market. (Sudley Square Townhouse Association vs. Quigley).
- E. In Applewood Hill we provided for control of flexibility
- a. For example the architectural control committee was required to publish a list of its criteria from time to time. These criteria included a requirement of a wood-shingled roof for all slope roofs and control of detailing of window fenestration, garages were to face away from the street wherever possible or be screened by landscaping. We also established a device called a license for control of exterior items such as aerials, trailers, or outdoor storage of any equipment.
 - b. ~~←~~ To provide further control, as developers we learn to stall on the acceptance of offer to purchase until we have seen plans for the house (unwilling to sue first owner who did not follow his own plans).
 - c. Where the developer establishes standards and enforces them he becomes guilty of fascism enforcing his taste on other property owners. What about the subdivision that requires contemporary design only - removal of the by-plain from the driveway or any exterior as long as it's earthy-stained wood? What about standards like minimum square footage, attached garages, or minimum price?

- IV. Involving home owners in management of the association creates a variety of problems for the developer.
- A. Those homeowners who are most aggressive in looking for responsibility may be too pushy to have much acceptance among the homeowners or may have an axe to grind against the developer.
 - B. Homeowners don't want responsibility for functions which can inconvenience their neighbors or forces adverse decisions. For example, running a community water system has the potential of mechanical breakdown at inconvenient times plus complaints from neighbors.
 - C. Some associations are not planned to be big enough to afford professional management but nevertheless offer a variety of amenities which require continual detail such as swimming pool maintenance, landscaping care, etc.
- V. Setting budgets and collecting money is the toughest problem for association board of directors.
- A. First there is the problem of on-going programs when the majority of people don't use the pool or don't want to spend money for posies or planter boxes. What balance should be struck between users and non-users.
 - B. The association will have to collect replacement reserves to anticipate replacement of paved walks, swimming pool equipment or furnishings or decorating of clubhouse. However, the Internal Revenue Service has ruled that associations must pay income taxes so that a surplus of collections over expenditures produces taxable income. The association may have no depreciation because it did not directly pay for its depreciable equipment. What's worse a water utility might not have historical outlays to justify water rates etc.
 - C. Collection of assessments by a fellow homeowner is an embarrassing and difficult task and people may not regard it as being equally important to a mortgage payment or a doctor's bill. A lean on a future sale doesn't balance the cash budget. Some developers included assessment as part of monthly payment to lender but that only works where all loans are with a single lender.
 - D. For a small association, Crestwood has a good idea. The developer included in the sale of each lot \$300 or \$400 which was deposited in a perpetual maintenance fund like that of cemeteries. Now at the annual meeting everyone comes together to decide on a program to spend money. While their budget is small, they can afford a summer playground director for their little park and a variety of small little improvement projects from time to time.