

To: All Members

CCEHOA

Re: Restrictive Covenants

I hope this communication finds you all well as we head into another Autumn season.

Earlier this year the City of Calgary, following incentive payments by our Trudeau Liberal government, passed a far-reaching blanket rezoning by law which effectively changes the zoning of residential neighbourhoods within the City of Calgary to allow for the development of multi family dwellings within those communities. As you might imagine, this has caused concern for many residents who feel that the character of their heretofore single-family neighbourhoods will be forever altered.

In a bid to combat this certain communities have banded together to look at solutions to this problem. You may have read about efforts by various communities to thwart the City's new bylaws by having their members voluntarily register Restrictive Covenants against their titles prohibiting the construction of multi family dwellings on their respective properties. In particular the community of Lake Bonavista is far along in this process with about 20% of their members having opted to follow this path. We understand that the communities of Kelvin Grove, Eagle Ridge, Chinook Park and others are investigating the feasibility of this.

So, what is a Restrictive Covenant? From The Alberta Municipalities website an RC is defined as follows:

"Restrictive covenants are frequently used by municipalities, developers, and landowners to ensure land is developed in a manner that maintains or enhances the value of neighbouring properties.

A restrictive covenant *must meet the following requirements* for it to attach to land and bind future owners:

- The covenant must be a negative obligation, meaning it prevents a certain activity
- There must be a servient tenement (property that is subject to the restriction) and a dominant tenement (property that benefits from the restriction) identified in the covenant
- The covenant must "touch or concern" the land, meaning the restriction must benefit or enhance the value of the dominant tenement in some way

- The covenant must be attached to the land, which is accomplished by registering the restrictive covenant against title
- The instrument granting the restrictive covenant must be signed by the owner of the servient tenement.

If a restrictive covenant meets the above requirements, it *runs with the land*, meaning future owners of the servient tenement are bound to observe the restrictions and future owners of the dominant tenement can enforce the restrictive covenant if there is a breach. If a restrictive covenant does not meet the above requirements, it will be considered a personal obligation and will be unenforceable after the servient tenement is transferred to a new owner."

In practice Restrictive Covenants are easy to put on but tough to remove.

The CCEHOA Board is communicating this to you since it is timely and could affect the future use, appearance and value of your home/community. While we are not lawyers and have not sought out any formal legal advice on the subject our initial take on these initiatives is that for this to be effective there must be a clear majority of property owners within a community for this to have any hope of succeeding, as a means of defeating city of Calgary rezoning bylaws. If 20% of homeowners opt to do this (as is the case in Bonavista) the remaining 80% would be free to redevelop their properties in accordance with City of Calgary Blanket Rezoning By-laws. In practice if I were to place a Restrictive Covenant on my property (at a current cost of \$500.00 to me personally) but my neighbour did not, he could redevelop his property, but I could not.

The city has stated that where RCs are in place that contravene a city By-Law, the city would take the view that the Municipal By Laws and Local Area Plans would take precedence. So there is a possibility that the City could aggressively attack any such Restrictive Covenants in the future. Finally, we are aware that in the case of Lake Bonavista, the Law Firm handling this has asked for an indemnity which essentially says that "we will stick handle this for you at a cost of \$500.00 but if anything goes wrong, or you're being sued by the city, you're on your own, don't call us, we'll call you."

In conclusion, given the media buzz, we wanted to bring this issue to your attention, it is our view that unless an overwhelming number of community members were in favour of proceeding along this RC basis, it's not worth doing as a community.

As ever, we welcome your feedback and are happy to discuss. We will continue to monitor events as they unfold.