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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

HI-COUNTRY HOMEOWNERS ASSOCIATION, a Utah Corporation, Plaintiff, vs. STEVEN MAXFIELD, RICHARD JAMES, PAUL STROH and FRED KWIATKOWSKI, Defendants.	PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES ON DISPUTED LEGAL ISSUES Case No. C84-5500 Judge Timothy Hansen

COMES NOW the plaintiff, by and through its attorney of record, Robert A. Bentley, who pursuant to Court order submits this Memorandum of Points and Authorities on Disputed Legal Issues.

FACTS

Hi-Country Estates, Phase I is a planned residential subdivision consisting of one hundred twenty (120) lots covering six hundred sixty (660) acres in the rural unincorporated area of Salt Lake County, near Riverton. The subdivision created in January of 1972 was intended to be an exclusive area preserving a "country" living life style and lots size was restricted to five acre minimum. Entrance to the subdivision is possible at only one point which is controlled by an electronic security gate, one must know the combination which is periodically changed in order to gain access. The over five miles of interior roads are improved and paved but remain private having never been dedicated to the county. There are also miles of bridle

paths for horseback riding. The county provides no services to the subdivision other than police and fire protection and so the homeowners must cooperatively maintain the roads, provide snow removal, maintain the fence and electronic gate, dispose of garbage and other refuse, insure an adequate water supply and delivery system, and pay for legal fees incurred on projects of mutual benefit.

The plaintiff, Hi-Country Estates Homeowner's Association, a non-profit corporation, was created on May 17, 1973 by the filing of Articles of Incorporation and Bylaws, a copy of which are attached hereto as Exhibits "A" and "B" respectively. The Restrictive Covenants (Exhibit C) although dated April 6, 1973 were not recorded until March 22, 1974. On or about September 25, 1979 the original developer deeded the roads and common areas to the plaintiff. A copy of that deed is attached hereto as Exhibit "D".

This dispute concerns the levy of annual assessments by the plaintiff Association upon lot owners in the subject subdivision. Every February 28th, the Association holds its annual meeting at which all lot owners, as members, are eligible to attend, speak and vote. A line-item budget (a copy of the 1987 budget is attached hereto as Exhibit "E" for illustration) is presented to the members for ratification and approval of the required assessment to meet the budgeted expenditures. Prior to the filing of this action, the four defendants, two of whom had previously served as directors of the plaintiff Association, refused to pay their annual $115.00 assessments (increased to $120.00 per year in 1986). The Association brought suit in the Small Claims Division of the 7th Precinct Justice Court for Salt Lake County, State of Utah, and prevailed in obtaining

judgments against the defendants from which they have subsequently appealed to this Court. The four previously separate cases were consolidated for convenient consideration here and an Amended Complaint, Answer and Counterclaim were subsequently filed.

By way of background to the following legal arguments a quick summary of the nature and purpose of homeowner's associations may be helpful. The following comes from the Wake Forest Law Review 12:915-77, Winter 1976.

> . . . In initially considering the nature and purpose of the association, one should bear in mind that both the condominium and homeowner's association are mandatory membership associations. With the purchase of each unit or lot, the new owner accepts the deed which is subject to either a declaration of condominium or a declaration of covenants, conditions and restrictions. By his acceptance, the purchaser automatically becomes a member of the association created by the declaration and submits to the authority of the association and to the restrictions upon the use and enjoyment of the property contained in the declaration. Because each owner automatically becomes a member of the association upon taking title and because the association is empowered to levy and collect assessments, to make and enforce rules, and to permit or to deny certain uses of the property, the association has the power, and in may cases the obligation, to assert tremendous influence on the bundle of rights normally enjoyed as a co-concomitant part of the simple ownership of property.
>
> The association has two distinct roles. In appreciation of both, it is necessary to understand the questions of liability involved in the development and administration of the project. First the association provides a vehicle for individual owners to work together "as a privately owned and operated vehicle of service to a specific community". The other essential rule directly relates to the association regulatory power and upon analysis of the associations functions, one clearly sees the association as a quasi governmental entity paralleling almost in every case the powers,

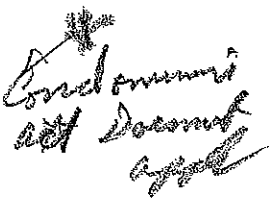
> duties, and responsibilities of a municipal government. As a "mini-government" the association provides to its members, in almost every case utility services, road maintenance, street and area lighting, and refuse removal. In many cases, it also provides security services and various forms of communication within the community. There is, more over, clear analogy to the municipal police and public safety functions. All of these functions are financed through assessments or taxes levied upon the members of the community, with powers vested in the board of directors, council of co-owners, board of managers, or other similar body clearly analogous to the governing body of a municipality . . . (Emphasis added) Ibid at 917-18.

I. MEMBERSHIP IN THE PLAINTIFF'S HOMEOWNER'S ASSOCIATION IS MANDATORY AND THE DEFENDANTS ARE LIABLE FOR ASSESSMENTS.

Addressed under this point are the first five disputed issues identified in Plaintiff's List of Facts and Legal Issues dated May 15, 1987 and previously filed herein pursuant to Court Order. Specifically: number one Is membership mandatory? number two; Are plaintiff's estopped from denying they are members? number three; Can homeowners resign from the association? number four; Does the association have the power to levy assessments? and number five; Can the association sue lot owners for non-payment?

There is a scarcity of legal authority on the mandatory membership issue nationwide and particularly in Utah. Most Courts, scholars and commentators appear to take it for granted that mandatory membership is inherent to the very concept of homeowner associations. Illustrative is

> Condominium and Homeowner's Association Practice: Community Association Law, ALI - ABA Committee on Professional Education, 1985 . . . The first characteristic that gives rise to the unique roll of the association is its nature as a mandatory membership association. Upon taking title each property owner automatically



> becomes a member of the association and is subject to the obligations of membership as set out in the declaration, bylaws, rules and regulations and articles of incorporation, if applicable. Clearly individual owners could not be compelled to be active members of the association, but just as clearly they can be compelled to comply with the rules and regulations and to satisfy their financial obligations to the association . . . Ibid at 35.

The source of this mandatory ownership obligation is not an presumed and illusory obligation but rather a real and binding obligation created by contract and the operation of law. The following is non-exclusive list of the various ways this obligations comes into existence.

(a) Articles of Incorporation, Bylaws and Protective Covenants.

As noted above, the plaintiff is a nonprofit corporation and accordingly, pursuant to state law, has Articles of Incorporation and Bylaws. Those Articles executed in January, 1972, predate the defendants acquisition of their property by deed and state in relevant part of Article III, that the purpose of the association is to:

> . . . provide for the maintenance, upkeep and preservation of the streets, roads and common areas within that certain track of property described as Hi-Country Estates, located in Salt Lake County, State of Utah, Phase I, . . . this association is also formed to promote health, safety and welfare of the residence within Hi-Country Estates . . .

The Articles further provide on page 3:

> . . . every member or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants or record by assessment to the association, including purchasers under contract, shall be a member of the association. . . . Membership shall be appurtenant to and may not be separated from

> ownership of any lot which is subject to assessment by the association . . . (Emphasis added)

Further the Articles specifically create the ability to levy and enforce levy assessments. Article III, (B) dealing with the powers of the association provide as follows:

> . . . Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Protective Covenants as amended and as provided in the Bylaws adopted by the association; to pay all expenses in connection herewith and all office and other expenses incident to the conduct of business of the association, including all licenses, taxes, or governmental charges levied or imposed against the property of the association . . .

A reasonable reading of the Articles indicate that the developer clearly and unequivably intended, and did in fact, create a homeowner's association in which membership was mandatory for Hi-Country Estate, Phase I lot owners.

The Bylaws of the association also referred to mandatory membership and the ability of the association to levy assessments. Article II, section 6 defines member as ". . . those persons entitled to membership as provided in the Protective Covenants and Certificate of Incorporation". The Articles of Incorporation have already been discussed above. No specific definition is included in the Protective Covenants although they refer to "owners of the heretofore described property". The definition of owner in Section 4 of the Bylaws is ". . . the record owner, whether one or more persons or entities of the fee simple title to any lot which is a part of the property, including person or entities purchasing a lot under contract". Further in Section 2, the Bylaws impose a duty upon the Board of Directors to fix an amount of annual assessment against each lot, notify each owner

subject to the assessment and to bring a legal action against the owner personally obligated to pay the assessment in the event of non-payment. Article II makes clear that:

> "each member is obligated to pay the association annual and special assessments which are secured by a continuing lien against the property against which the assessment is made. Any assessments which are not paid when due are delinquent. . . . The association may bring a action at law against the owner personally obligated to pay the same or forclose the lien against the property and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape the liability for the assessment provided for herein by non-use of the common area roads or abandonment of his lot."

A subsequent amendment to the bylaws states that "each grantee or lot owner for himself, his assigns agrees to pay his annual pro rata of the share of his cost to maintain the roads, common areas . . . grantee's assessment in this regard shall be paid promptly when the same comes due as provided in the bylaws of the homeowner's association and the grantee failure to pay promptly constitute a lien on the owners premises and the same may be enforced in equity or at law as in the case of a lien foreclosure".

Although the usual way to expedite the levy of assessments is through separate covenants, nothing requires the covenants to be in a document specifically labeled as Protective Covenants. Indeed the courts have found valid covenants in a variety of documents: In warranty deeds, St. Paul Title Ins. Corp., v. Bowen, 452 So.2d 482 (Alabama, 1984), lease agreements Moore v. McCaleb, Inc., v. Gaines, 489 So.2d 491 (Mississippi, 1986), Condemnation Decrees, Commissioner of Highways and Towns of Annawana v. U.S. 653 Fed.2d 292 (C.A. Ill, 1981), and Bylaws, Lovering v. Seabrook Island Property Owners

Association, 344 S.E. 862, 289 S.C. 77 affirmed as modified 352 S.E. 2d 702 (S.C. App. (1986)).

In order to be binding the covenant must be real and run with the land. This requires the following conditions be met:

> (i) the covenant must touch or concern land; (ii) there must be privity of estate between the promisee and the promisor and (iii) there must be an intent that the grantor or grantee intended to covenant to run with the land. Restatement of Property §534.

In regards to the first requirement it is clear that the obligations and duties contained in the Articles and Bylaws touch upon and concern the land. The Articles and Bylaws contain covenants which involve negative and positive duties which substantially affects the use and ownership of land. As to privity of estate, the coventor must be shown to have some estate, title or interest in or position of the subject property; this mutuality is required to make the covenants run with the land, however, there need not be privity as far as the party trying to enforce the covenants is concerned; a mere beneficiary may enforce the covenants. Neponsit Property Owners Association v. Emigrant Industrial Savings Bank, 278 New York 248, 15 N.E. 2d 793 (1938). There is clear privity of estate in our case as the covenants in the Articles and Bylaws were propounded by the original developers from whom all subsequent property owners took title. The final requirement that there be an intent that the covenant run with the land may be shown from the language of the declaration creating the covenant and from surrounding circumstances. Nicholson v. 300 Broadway Reality Corp., 7 New York 2d 240, 164 N.E. 2d 832, (1959). As noted above the Articles effect every person who is a "record owner of a fee or undivided fee interest in any lot" . .

membership shall be appurtenant to and may not be separated from ownership of land lot is subject to assessment by the association". The parties clearly intended that the covenants in the Articles and Bylaws run with the land.

Thus covenants creating mandatory membership in the association may be found in Articles of Incorporation and Bylaws. Although protective covenants have been filed on the subject property, they do not create a mandatory membership obligation in the association and are discussed in Point III below in regards to the arguments of collateral estoppel and res judicata.

Even if we assume, that the obligations created in the Articles and Bylaws are not covenants which run with the land, still they create equitable servitudes upon the property. "Even when a covenant does not run with the land, equity will enforce the obligation by an injunction against breach. The burden of the covenant thus becomes a "equitable easement or servitude" upon the land of the covenants. Privity between the parties is not required for an equitable servitude to be enforced. The real basis for the enforcement of equitable servitudes is the doctrine that one who takes land with notice of a restriction therefrom cannot in good conscience be permitted to violate that restriction. Summary of Utah Real Property Law, volume 1, chapter 4, pg. 136. (Brigham Young University legal studies, 1978).

(b) Property Deeds.

This concept of mandatory membership have shown an evolution over time. In one of the earliest cases Rochelle Park v. Insinger, 138 Appellate Division 81, 122 N.Y.S. 556 (1910), wherein a subsequent grantee of property whose deed was made subject to a covenant in the

original deed requiring membership in a homeowner's association was held not to be liable for dues. The Court reasoned that the subject dues were only made "subject" to the covenants and restrictions in the original deed, but since they did not specifically contain those covenants and restrictions in their respective text, the subsequent grantees did not have proper notice. The Court found that the covenant requiring membership was personal to the original grantee, who affirmatively agreed to join the association and the subsequent grantees did not affirmatively agree to the covenants.

Subsequently the same Court in the landmark case of Lawrence Park Reality Co., v. Crichton, 218 Appellate Division 374, 218 N.Y.S. 278 (New York, 1926), held that a covenant in deeds requiring payment by grantees for the maintenance and repairs for roads, roadways, walks, sewers, drains, and street lights run with the land. The Court distinguished its ruling from that in Rochelle Park on the grounds that the covenant was enforceable in the grantor; and any neglect in the maintenance and repairs would materially affect the use and enjoyment of the general improvements; and the covenants materially touched upon and concerned the property demised; and, in general it would be unjust and inequitable to permit the defendant to accept the benefits of the covenants without accepting responsibilities on his part. Perhaps the siminal case is Nesponit Property Owners Association v. the Emigrant Industrial Savings Bank (supra) in which it was held the covenants in deeds subjecting homeowners to annual charges for improvements, including roads, parks, beach and sewers, which were maintained by homeowner's

Issued after purchase

association ran with the land and were enforceable against the defendant, which had foreclosed on to the property.

All of the defendant's deeds (which the exception of defendant Stroh) require membership in the association by reference to the Articles of Incorporation. Copies of the deeds for each defendant are attached as exhibits (Maxfield, dated June 23, 1978, Exhibit "F", Kwiatkoski, dated August 26, 1975, Exhibit "G", and James, dated August 21, 1972, exhibit "H").

(c) Common Plan.

The developer in carrying out a uniform plan and development for residential subdivision, may arrange for the provision of services to the subdivision or for the maintenance of facilities for the common use, and may bind the purchasers of homes there to pay for them. Wood v. McElvey, 296 So.2d 106 (Florida, 1974).

The Articles, Bylaws and Protective covenants relevant to this action clearly demonstrate the existence of a common plan. The Protective Covenants limit lot size, building type, location, provide for the imposition of easements, abates nuisances, prevents temporary structures, signs, oil and mining operations, limits the possession of livestock and poultry, and deals with garbage disposal, water supply and landscaping. An architectural committee is further created in order to create uniformity in design and construction.

Sold Mined Land

"Developers satisfactorily established a general plan or common scheme to render restriction covenants, requiring property owners to pay monthly or annual fees for maintenance of subdivision common area or amenities was enforceable were the plat showing residential lots and common area was duly filed and reported". Selected Lands

Corp., v. Speich, 702 So.W.2d 197, supplemented 709 So.W. 2d 1 (Texas, 1985). This common scheme and purpose is further illustrated by the developer conveying all of the common areas including miles of undedicated road to the homeowner's association.

(c) Mutual Benefit.

Some Courts in fashioning the associations ability to enforce covenants and levy assessments when faced with the lack of specific authority have forged the theory of implied covenants through mutual benefits. In essence, much like the common scheme theory, the Court has found the inherent nature of the homeowner's association by the mutual benefit it conferres upon its members, implies a restrictive covenant, mandatory membership and the right to levy assessments. "Were money raised by the homeowner's association lease of unfenced land was spent on road maintenance, rather than on the maintenance of pastures and open spaces as required by protective covenants, special assessment to replenish the pasture fund was not required were expenditures on roads benefited that all individual lot owners, and neither the subdivision as a whole nor any lot owner was damaged thereby." Wilson v. Goldman, 699 P.2d 420 (Colorado, App., 1985). In like regard is Perry v. Bridge Town Community Association, Inc., which provided "requirement of assessment for reasonable maintenance of common property was within contemplation of covenant of homeowner's association and there was an implied covenant for such an assessment by necessity. 486 So.2d 1230 (Mississippi, 1986).

Such a theory has application to the instant facts. As noted above, the homeowner's association is charged with a wide range of duties including the maintenance of roads, snow removal, refuse and

garbage disposal, electronic gate maintenance and other duties. These services cannot be reasonable provided by the individual homeowners. In the cases of roads alone, individual property owners may have to drive over several miles of homeowners's association roads to reach their individual units, County garbage removal is also not available, and only one entity can reasonable be in charge of the maintaining and changing the combination on the security gate. For all of the services provided for by the association (others enumerated in the association budget at Exhibit "E"), the individual homeowners are only now assessed $120.00 per year. The great scope of the services rendered and the minor amount of the assessment indicates the creation of a constructive trust with an implied covenant due to the mutual benefit incurred.

(e) Successor in Interest.

It is important to keep in mind that the plaintiff association is the successor in interest to the original developer/grantor. The original developer at one time had possession of the whole of the property, including the common areas roads, bridal paths, et cetera, which were designated on the subdivision plat. After conveying specified certain lots, the developers conveyed to the homeowner's association all of the common areas and the plaintiff association thus became the successor in interest to the original developer. As such the plaintiff association was entitled to certain benefits such as the right to restrict, regulate and limit the use of the common areas but to also incurred certain obligations such as the tax burden on the common areas. A specific item of the plaintiff's association budget involves the payment of property taxes on common areas and a

Not so

representative sample of a tax assessment on common areas is attached hereto as Exhibit "I". This obligation entitles the plaintiff to enforce assessments against lot owners to recover the reasonable costs of maintaining the common areas. "It is appropriate for the successor in interest to the grantor, as the party with the duty of paying rent on the recreational land, to enforce the covenant against a lot owner". Bessemer v. Gersten, 381 So.2d 1344 (Florida, 1980).

Finally, plaintiff allege that defendant not only cannot resign from membership in the association, they should be estopped from alleging that they are not members. If membership is mandatory, it stands to reason that the defendants cannot resign. Membership and assessment liability is tied to lot ownership. The only way a member can voluntarily resign is by selling his lot. The Bylaws, as cited alone, make it clear that mere non use of services is not a defense to liability for the assessment. Even if defendants can resign, they would still be liable for all assesments incurred up to the time of their resignations, which would render them still liable for the amounts sued upon herein.

"Under the doctrine of estoppel in pais one may be his acts or conduct away from Court prevent himself from denying in Court the effect or result of those acts. Grover v. Garn, 464 P.2d 595, 23 Ut 2d441 (Utah, 1970). Each of the defendants for years have represented that they are members of the asociation, they attended meetings, voted and paid assessments. Defendants Maxfield and James have even served as Directors of the association. By their actions and conduct they induced the association to incur expenses and liabilities based on their votes and claims to memebership. The

defendants having engaged in a pattern of membership for years, should now be prevented from disavowing the only logical conclusion from their conduct i.e., that they are members and thus liable for assessments.

II. PLAINTIFFS CAN RECOVER ON A THEORY OF RESTITUTION IN QUASI-CONTRACT.

Addressed under this point are disputed legal issues number six; Can plaintiff charge lot owners for services under the theory of quantum meruit? and number seven; If plaintiff proceeds under the theory of quantum meruit must there be a showing of the exact value of the services rendered for each individual?

The Restatement of Restitution, Section 1 sets out the premises: "a person who has been unjustly enriched at the expense of another is required to make restitution to another". The Utah Supreme Court has specifically adopted this principle in Harline v. Daines, 562 P.2d 1120 (Utah, 1977). In a later case, the Court observed that "unjust enrichment occurs whenever a person has and retains money or benefits which justly and equitably belong to another". L & A Drywall v. Whitmore Construction Co., 608 P.2d 626 (630) (Utah, 1980). (Finding on the facts of the case there was no showing of unjust enrichment).

The Utah Supreme Court has indicated that restitution is appropriate for "the provision of property or services in circumstances of exigency, for benefits which the recipient has requested or has acquiesced in their benefits, creates an implied contract to pay their reasonable cost. General Leasing Company v. Manivest Corp., 667 P.2d 596 (Utah, 1983). In fact recovery may be

had for both implied in fact contracts and implied in law (or quasi contracts). The implied in fact contract exists where the conduct of the parties bears evidence a contract although no express agreement is reached. For example see Quality Performance v. Yoho Automotive, Inc., 609 P.2d 1340, (Utah, 1980)". Quasi-contracts exist only were there is no contract express or implied. In actions involving services rendered the action lays in quantum meruit. The Court will award the market value of the services irrespective of its value to the defendant. Restatement of Restitution §152. See generally, County of Champaign v. Hanks, 41 IL. App 3d 679, 353 N.E. 2d 405 (1976).

The Utah Courts have set out the specific elements which must be established in order to entitle someone to recovery in unjust enrichment. Those elements are: (1) A benefit conferred on one person by another, (2) appreciation or knowledge by the conferee of the benefit, and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment for its value. Berrett v. Stevens, 690 P.2d 553 (Utah, 1984).

Those elements are clearly applicable to our facts. Plaintiffs conferred a significant benefit upon the defendants. Plaintiffs maintain the electrical security gate and notified the owners of changes in the access code providing security for the homeowners and enhanced property values. Plaintiff maintains and improves miles of private road providing costly snow removal in the winter. Plaintiff provides garbage and refuse removal, it is engaged in negotiation and legal actions to obtain a reasonable and adequate water supply and is engaged in a broad range of activities to promote the health,

safety and welfare of residents within Hi-Country Estates as directed by the Articles of Incorporation. Defendants are aware of the benefits provided for they use the gates and roads daily and get benefits from their maintenance. It is inequitable for defendants to retain benefits for the use of the roads, access to garbage disposal and legal representation on issues of common interest without paying for their value.

Each of the defendants in prior affidavits have indicated that they do not desire any of the services offered by the association. That position is convient but is mere subterfuge. The defendants neglect to make mention that they continue to use the private roads owned by the association to reach their respective properties. It is easy to look at services provided by government or associations and reject those that have little meaning to you as an individual. Many might chose to not have their taxes support national defense or social programs that they do not support or utilize, however, the essence of citizenship and membership in an association is that the individual is liable for the expenses which benefit the majority. As noted in the fact statement quoting the Wake Forest Law Review, a homeowner's association provide a quasi-governmental function paralleling in almost every case the powers, duties, and responsibilities of a municipal government. All of these functions are financed through assessments or taxes levied upon the members of the community with powers vested in the board of directors a body clearly analogous to the governing body of the municipality.

If there were no homeowner's association and the subdivision was within an incorporated area the services provided by the plaintiff

would be assumed and discharged by a municipality. It is difficult to believe that in such a case the defendants would retain the advantages of exclusivity of their present development or that they would receive the same services for the extremely small amount the homeowner's association charges them.

In providing the services mandated by the Articles, Bylaws and Protective Convenants, plaintiff has to be prepared to make them available to all property owners. It is impracticle in providing services such as gate access, road maintenance and snow removal to carve out and exclude certain non-participating lot owners. Defendants have access to all services and mere fact that they opt to perform certain services, such as garbage removal, themselves, does not excuse them from the uniform levy. In fact the specific type of service - garbage removal - has been litigated elsewhere between residents who desired to perform the service themselves and the municipality charged with providing it. The Missiouri Supreme Court in Craig v. City of Macon, 543 S.W.2d 772 (1976), held that although the city resident did not avail himself to the city provided garbage removal he nonetheless would be liable for the uniform cost of the service. The Court reasoned that the City was providing the service to all residents and that the resident even if he did not utilize the service received benefit of enhance proprety value and greater health and safety due to the removal of garbage and refuse. "The public health is menaced and endangered by the aggrevation of filth and refuse of the entire district, and is not limited to accumulation thereof upon or about each separate lot or tract of ground located therein. The same result requiring mandatory payment of waste

disposal charges has been reached in other jurisdictions". (citations omitted) Ibid at 775. In like regard are cases holding that one is liable for uniform school levies despite the fact that ones children attend private schools or that one does not have any children in the public school system.

In determining the value of the services rendered the appropriate measure is the market value of the services, rather than its particular value to the defendant. Utah Remedies Guide, Donald N. Zellmen, editor, University of College of Law, 1985 pg. 408. See also County of Champaign v. Hanks, 41 Ill App. 3d 679 353 N.E. 2d 405 (1976). In homeowner's association cases it would be difficult to make a showing that the exact value of each service rendered for each individual due to the the vast number of variables involved. For example, those living farthest from the entrance gate get a greater benefit from the existence and maintenance of the private roads then an individual living right next to the gate since they travel greater distances upon them. The reasonable value of the services can be demonstrated most equitably by taking the total of all approved budget amounts and dividing that number by the number of occupied residences. Of course, as a corollary the association should be prepared to demonstrate that the budgetary process is fair, equitable and democratic.

III. PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE EQUITABLE DOCTRINES OF RES JUDICATA OR COLLATERAL ESTOPPEL.

This point discusses legal issues number eight; the defense res judicata and number nine; collateral estoppel. Defendant's Answer raised each as separate affirmative defense to plaintiff's claims.

In order to determine which, or if either, of these doctrines is to be properly applied, one must focus on whether the second claim, demand or cause of action claimed to be barred is different from its alleged predecessor:

> In order for res judicata to apply both suits must involve the same parties or their privies and also the same cause of action; and if it applies, it precludes the relitigation of all issues that could have been litigated as well as those that were litigated in the prior action . . .
>
> Collateral estoppel on the other hand rises from a different cause of action and prevents parties or their privies from relitigating facts and issues in a second suit that were fully litigated in a prior different cause of action Searle Brothers v. Searle, Utah 588 P.2d 689, 690 (1978)(citations omitted).

"Thus it is important to recognize that although the doctrine of res judicata and collateral estoppel are closely related, they are usually mutually exclusive. Where the claim, demand, or cause of action are the same in both cases, res judicata applies. But were the claim, demand, or cause of action is different in the two cases, then collateral estoppel is applicable. "Schaer v. State by and through Utah Department, Utah, 657 P.2d 1337, 1340 (1983). The defendants have plead both defenses and should be forced to elect one rather than forcing opposing counsel and the Court to differentiate their defense.

Defendants claims are based upon a prior proceeding, James et al., v. Davies et al., filed in November of 1981 in the Third District Court of Salt Lake County, State of Utah, Civil No. C81-8560 and assigned to Judge Daniels. Copies of the relevant pleadings are attached hereto as exhibits, the Second Amended Complaint as Exhibit

"J", the Answer and Counterclaim as Exhibit "K", and Findings of Fact and Conclusions of Law as Exhibit "L", the Judgment as Exhibit "M" and the Transcript of Ruling as Exhibit "N".

A review of the Complaint in that action reveals that it does not concern the same cause of action as the instant case. James v. Davies concerned alleged irregularities in the election of certain directors, and the enforcement of land use restrictions in the Protective Covenants. Although there was no issues raised by the pleadings as to homeowner's assessments, the Court looked to the amended covenants as a source of mandatory membership as that was one of its provisions but mandatory membership was not an issue in that litigation. The amended covenants declared invalid in that action are not cited or relied upon here. The original covenants relied upon herein were expressly found to be valid. The only way res judicata could apply to this action would be if the Court stretched the requirement that the prior action involved the same issues that "could or should have been raised therein", Krofcheck v. Downy State Bank, 580 P.2d 243 (Utah, 1978), Wheadon v. Pierson, 14 Utah 2d 45, 376 P.2d 946 (1962). Res judicata was never intended to play "what could have been" but rather what did occur. At the time Davies case was filed in 1981, none of the defendants were delinquent in their homeowner's assessments. It would not have been possible for plaintiff to raise this issue nor had any individual against whom the association had levied assessments in 1981 or previously raise this particular issue. Without the opportunity for the issue to come before the Court, res judicata could not apply.

In regards to the collateral estoppel "a prior decision may be used against the party to preclude further litigation of the issue by him only when four questions are answered in the affirmative: (1) was the issue decided in the prior ajudication identical with the one presented in the action in question?, (2) Was there a final judgment on the merits?, (3) Was the party against whom the plea is asserted a party or in privity with the party in the prior adjucation and (4) Was the issue in the first case completely, fully and fairly litigated? White Pine Ranchs v. Osguthorpe, 731 P.2d 1076 (Utah, 1986).

The first requirement; that the issue decided in the prior adjucation be identical with the one presented in the action in question, is not met here. As argued above with regards to res judicata, the issue in the prior adjucation was not the ability of the association to levy assessments and sue to collect them, but rather procedural matters in regards to the elections of directors and the use of the Protective Covenants by the association rather than individual lot owners to enforce alleged violations. The issues are not even remotely similar to those presented herein. The only area of convergence between both actions is that the five parties herein where numbered among the 49 in the prior action. However, even if one is assumes that there was some similarity between the issues sufficient to satisfy the first requirement, the fourth requirement that the issues in the first case be completely, fully and fairly litigated cannot be satisfied.

Judge Daniels in his oral ruling (Exhibit "N") recognized that the association continued as a viable enity and could take action

outside the Protective Covenants to collect for its services rendered to the lot owners. His suggestion that the homeowners preclude nonpayers from using the roads is not practical or equitable but does indicate that the issue of the mandatory nature of assessment was not adressed or completely and fully litigated. Since the issue of assesments was not before the Court it could not rule on that issue. For this reason the doctrine of collateral estoppel should not apply.

SUMMARY

The very purpose and nature of homeowner's associations is to require mandatory membership and the ability to levy assessments. A homeowner's association would not be created unless it could reasonable expect to levy assessments against all lot owners. A voluntary association would lack the means to generate adequate and consistent funds to meet common needs and would result in chaos and anarchy. Membership in the association insofar as its subjects one to levies for reasonable and uniform assessments is required by the Articles of Incorporation, the Bylaws, property deeds, the common plan, implied/mutual benefits and plaintiff's role as successor in interest to the original grantor.

Even should plaintiff fail in its attempts to have a basis at law to collect the assessments, it can still recover against defendants in equity on the theory of quatum meruit, recognizing that the equitable recovery may, and probable would be more than the uniform assessments, since the market value of the service may exceed the cost of the service to the association due to the economies it can obtain by reason of its greater size and economy of operation.

Finally, although some of the parties to this action have been involved in other litigations involving the property and the association there is not a sufficient identity of issues between the actions to justify the imposition of the doctrine of res judicata or collateral estoppel.

DATED this 20th day of August, 1987.

Robert Bentley
ROBERT A. BENTLEY
Attorney for Plaintiff

CERTIFICATE OF HAND DELIVERY

I hereby certify that I hand delivered a true and correct copy of the foregoing Plaintiff's Memorandum of Points and Authorities to R. Clark Arnold, PARSON AND CROWTHER, 455 South 300 East, Salt Lake City, UT 84111 on this 20 day of August, 1987.

Robert Bentley

CERTIFICATE OF INCORPORATION

OF

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

KNOW ALL MEN BY THESE PRESENTS:

I, CHARLES E. LEWTON, acting as the incorporator of a corporation under the Utah act governing the formation of non-profit corporations, do hereby adopt the following Certificate of Incorporation for such corporation:

FIRST: The name of this Corporation is Hi-Country Estates Homeowners Association, hereafter called the "Association."

SECOND: The term of existence of this Association will be perpetual.

THIRD: This Association is not organized for pecuniary profit or gain to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, upkeep and preservation of the streets, roads and common area within that certain tract of property described as:

> Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1,

and also to include additional phases of Hi-Country Estates and the homeowners located within such additional subdivisions as may be mutually beneficial for the members hereof and the homeowners of the adjoining subdivisions. This Association is also formed to promote the health, safety and welfare of the residents within Hi-Country Estates and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that cer-

EVERETT E. DAHL
ATTORNEY AT LAW
750 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84047

EXHIBIT A

tain Protective Covenants for Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, as amended, which is applicable to the property, and as the same may be amended from time to time as therein provided;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Protective Covenants, as amended, and as provided in the By-Laws adopted by the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire by gift, purchase or otherwise own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association,

(d) Borrow money, and with the assent of two-thirds of the members mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the common area or road system to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

(f) Participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property, road systems and common area, for any contiguous areas;

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Utah may now or hereafter have or exercise;

(h) The Association shall have no capital stock and no divi-

dends or other pecuniary profits shall be declared or paid to any member or director of the Association as such;

(i) The Association has no power to carry on propaganda attempt to influence legislation, or take part in a political campaign.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants or record to assessment by the Association, including purchasers under contract, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, such as Mortgagees. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

Members shall be entitled to one vote for each Lot owned. A Lot shall mean any Lot as platted and/or divided as provided in the protective covenants. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

The affairs of this Association shall be managed by a Board of three Directors, who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

Name	Address
Charles E. Lawton	P. O. Box 1901 Jackson, Wyoming
Keith Spencer	Casper, Wyoming
Tony Mascaro	4505 West 12600 South Riverton, Utah

At the first annual meeting the members shall elect three Directors for a term of one year, and at each annual meeting thereafter the members shall elect the number of Directors provided in the By-Laws for a term of one year.

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds of all members; provided, however, that the assets must then be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created, or in the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

The address of this Association's registered office in the State of Utah is P.O. Box 14, Riverton, Utah, and the name of its registered agent and his address is, Everett E. Dahl, Attorney at Law, 760 East Center Street, Midvale, Utah 84047.

Amendment of this Certificate shall require the assent of seventy-five percent of the entire membership.

The name and address of the Incorporator is: Charles E. Lewton, P.O. Box 1901, Jackson, Wyoming.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 1972.

Charles E. Lewton

STATE OF UTAH)
:ss.
County of Salt Lake)

I hereby certify that on the 30th day of January, 1972, CHARLES E. LEWTON, personally appeared before me, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

WITNESS my hand and notarial seal the day and year last above written.

Everetts Tidwell
NOTARY PUBLIC

My commission expires:

Sept 3, 1973

Residing at:

Midvale, Utah

ARTICLE I
Name and Location

The name of the Association is Hi-Country Estates Homeowners Association, hereinafter referred to as the "Association." The principal office of the Association shall be located at 13300 South 7370 West, Salt Lake City, Utah, but meetings of members and directors may be held at such places within or without the State of Utah, as may be designated by the Board of Directors.

ARTICLE II
Definitions

Section 1. "Association" shall mean and refer to Hi-Country Estates Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property known as Hi-Country Estates, located in Salt Lake County, State of Utah, Phase 1, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and the enjoyment of the Owners, to include the road and street system, and the common areas used for mail delivery, garbage collection and school bus pickup.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including persons or entities purchasing a lot under contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Protective Covenants" shall mean and refer to the Declaration of Protective Covenants applicable to the property, as the same may be amended from time to time.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in the Protective Covenants, Certificate of Incorporation, and these By-Laws.

ARTICLE III
MEETING OF MEMBERS

Section 1. ANNUAL MEETINGS. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 8:00 o'clock P.M. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. SPECIAL MEETINGS. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request by not less than one-fourth of the members.

Section 3. NOTICE OF MEETINGS. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting the purpose of the meeting.

Section 4. QUORUM. The presence at the meeting of members entitled to cast, in person or by proxy, one-tenth of the votes shall constitute a quorum for any action except as otherwise provided in the Certificate of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. PROXIES. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

EXHIBIT B

Section 1. NUMBER. The affairs of this Association shall be managed by a Board of Three Directors, who need not be members of the Association.

Section 2. TERM OF OFFICE. Each Director shall serve a three-year term, none of which shall be concurrent. This was enacted so that one Director would be elected each year at the Annual Meeting, replacing the outgoing Director whose term has expired, as was established by amendment as voted on by the members in the Annual Meeting held October 23, 1975.

Section 3. REMOVAL. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. COMPENSATION. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. ACTION TAKEN WITHOUT A MEETING. The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V
Nomination and Election of Directors

Section 1. NOMINATION. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for the Board of Directors as it shall, in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. ELECTION Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI
Meetings of Directors

Section 1. REGULAR MEETINGS. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. SPECIAL MEETINGS. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors, after no less than three days notice to each Director.

Section 3. QUORUM. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII
Powers and Duties of the Board of Directors

Section 1. POWERS. The Board of Directors shall have power to:

(a) Adopt and publish rules and regulations governing the use of roads, streets, common area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a member during any period in which such members shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty days for infraction of published rules and regulations;

[redacted] of the Protective Covenants.

(h) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three consecutive regular meetings of the Board of Directors;

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. DUTIES. It shall be the duty of the Board of Directors to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by not less than one-fourth of members who are entitled to vote.

(b) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) As more fully provided in the Protective Covenants, as amended, to:

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) Send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;

(g) Cause the common area and road system to be maintained.

ARTICLE VIII
Officers and Their Duties

Section 1. ENUMERATION OF OFFICES. The officers of this Association shall by a President and Vice-President, who at all times will be members of the Board of Directors, a Secretary, a Treasurer, and such other officers as the Board may from time to time by resolution create. The Secretary and Treasurer may be the same person.

Section 2. ELECTION OF OFFICERS. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. TERM. The officers of this Association shall be elected annually by the Board and each shall hold office for one year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. SPECIAL APPOINTMENTS. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. RESIGNATION AND REMOVAL. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. COMBINATION OF OFFICES. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. DUTIES. The duties of the officers are as follows:

(a) PRESIDENT. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) VICE-PRESIDENT. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) SECRETARY. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) TREASURER. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a Public Accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX
Committees

The Association shall have the right to appoint members of the Architectural Control Committee, as provided in the Protective Covenants, at such time as all Lots in the Tract have been sold by the Grantor, as stated in Protective Covenants. The Board shall also have the right to appoint a Nominating Committee, as provided in these By-Laws, and in addition thereto shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE X
Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Protective Covenants, Certificate of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
Assessments

As more fully provided in the Protective Covenants, as amended, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of seven (7) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area, roads or abondoment of his Lot.

ARTICLE XII
Corporate Seal

The Association shall have a seal in circular form having within its circumstance the words "Hi-Country Estates Homeowners Association."

[redacted]

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Protective Covenants and these By-Laws, the Protective Covenants shall control.

ARTICLE XIV
Fiscal Year

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, We, being all of the Directors of Hi-Country Estates Homeowners Association, have hereunto set our hands this _____ day of _____, 1976.

_____

_____

_____

AMENDMENT TO BY-LAWS

OF

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION

Each Grantee and lot owner for himself, his heirs, executors, and assigns, covenants and agrees to pay annually his pro-rata share of the costs to maintain the roads, streets and common areas, including but not limited to, the common areas set aside for the delivery and pickup of mail, the pickup of children for school by school buses and other vehicles, and an area for garbage collection. Grantee's assessment in this regard shall be paid promptly when the same becomes due as provided in the By-Laws of the Homeowners Association, and the Grantee's failure to pay same promptly when due shall constitute a lien upon the owner's premises and the same may be enforced in equity or at law as in the case of any lien foreclosure. Such annual assessment shall not commence until adoption, and the first assessment shall be in the amount of $(to be determined) per lot owned, said amount to be placed in an account and to be used exclusively by the Homeowner's Association for the purpose hereinabove mentioned, and for such other services as are deemed important to the development and preservation of an attractive community and to further maintain the privacy and general safety of the residential communities located in Hi-Country Estates. From and after adoption, the annual payment may be increased each year up to five (5%) percent of the maximum authorized payment for the previous year. The Homeowners Association is obligated to provide maintenance and all other services stated above only to the extent that such maintenance and services can be provided with the proceeds of such annual payments. The foregoing annual fee may be increased by an amount greater than five percent (5%) of the maximum authorized payment for the previous year, by the written consent of a majority of the lot owners. At such time as any pu lic body shall undertake to maintain the roads and streets and provide the other services contemplated herein, this covenant shall cease, terminate, and be held for naught.

Protective Covenants for Hi-Country Estates,
Located in Salt Lake County, State of Utah
Phase I

KNOW ALL MEN BY THESE PRESENTS:

That the said owners of the heretofore described property, hereby subject said property to the following covenants, restrictions and conditions; and the acceptance of any deed or conveyance thereof by the grantee or grantees therein, and their, and each of their heirs, executors, administrators, successors, and assigns, shall constitute their covenant and agreement with the undersigned, and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants, restrictions and conditions, as follows, to-wit:

ARTICLE I

GENERAL RESTRICTIONS

1. Land Used and Building Type: The heretofore described property shall be designated as a single family residential lot, except that each lot may be divided one (1) time with the approval of the architectural control committee, and in accordance with Salt Lake County Zoning Regulations.

A single family residence is a dwelling for one family alone, within which no person may be lodged for hire at any time, provided that reasonable quarters may be built and maintained in connection therewith for the use and occupancy of servants or guests of said family and that such quarters may be built and maintained as a part of the detached accessory building or buildings on the same lot, provided said accessory buildings be not at any time rented or let to persons outside the said family and that they may be occupied and used only by persons who are employed by members of or are guests of said family.

No other buildings shall be erected, altered, placed, or permitted to remain on any lot, other than one barn to be used in stabling horses and a private garage for not more than three cars.

2. Architectural Control: No building shall be erected, placed, or altered on any lot nor any lot divided without the approval by the architectural control committee and compliance with the provisions of Section 6, Article II, of these covenants.

EXHIBIT C

No fence, wall, swimming pool or other construction shall be erected, placed or altered on any lot without approval of the architectural control committee.

3. Building Location: No building shall be located on any lot nearer to the front line than fifty (50) feet therefrom, measured to the foundation of such building; nor nearer than fifty (50) feet to the rear lot line; nor nearer than fifty (50) feet to a side lot line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps, or open porches, to encroach upon another lot.

4. Easement: Easements for installation and maintenance of utilities and drainage facilities and roads are reserved as shown by the plat, labeled Exhibit "B", and attached to these covenants. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for these improvements for which a public authority or utility company is responsible.

There is reserved to electric power, gas, water and other public utilities the right to construct, maintain and operate long, upon and across all present streets, easements and roadways on said property.

5. Nuisances: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be cone thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. Temporary and Other Structures: No structures of a temporary nature, trailer, basement house, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on said property at any time. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivision, shall be new construction of good quality

workmanship and materials.

7. Signs: No billboard of any character shall be erected, posted, painted or displayed upon or about any of said property. No sign shall be erected or displayed upon or about said property unless and until the form and design of said sign has been submitted to and approved by the architectural control committee. No "For Sale" signs shall be displayed upon or about said property without approval of the architectural control committee.

8. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

9. Livestock-Poultry Agriculture: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats, or other household pets and horses may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. No animal may be kept which constitutes an annoyance or nuisance to the area. All animals shall be restricted to their owner's property.

10. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any lot.

11. Water Supply: Whenever a residence is constructed on said property and there is a culinary water line available to serve said residence by being located in an adjoining street or road, the said property owner shall connect to and utilize the water services of said line. No other water supply system shall be used or permitted on any lot or group of lots unless such

system is located, constructed and equipped in accordance with the requirements, standards and recommendations of both the State Health Department and the State Water Engineer.

12. Trees: No cutting of trees shall be permitted on the premises at any time, except for the sole purpose of making land available for improvements.

13. Landscaping: No landscaping shall be begun on said property nor planting of trees take place until the plans and specifications therefor have been first approved in writing by the architectural supervising committee.

14. Diligence in Building: When the erection of any residence or other structure is once begun, work thereon must be prosecuted diligently and it must be completed within a reasonable length of time.

ARTICLE II

DURATION, ENFORCEMENT, AMENDMENT

1. Duration of Restrictions: All of the conditions, covenants and reservations set forth in this declaration of restrictions shall continue and remain in full force and effect at all times against said property in Exhibit "B" and the owners thereof, subject to the right of change or modification provided for in Sections 2 and 3 of this Article, until twenty-five (25) years, and shall as then in force be continued for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation, unless, within the six months prior to 1992 or within the six months prior to the expiration of any successive twenty-year period thereafter, a written agreement executed by the then record owners of more than three-fourths in area of said property, exclusive of streets, parks, and open spaces, be placed on record in the office of the County Recorder of Salt Lake County, by the terms of which agreement any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided. In the event

that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy per cent (70%) of the then owners of record title of said property (including the mortgagees under record mortgages and the trustees under recorded deeds of trust), duly executed and placed of record in the office of the County Recorder of Salt Lake County, Utah, provided, however, that no change or modification shall be made without the written consent duly executed and recorded of the owners of record of not less than two-third (2/3's) in area of all lands which are a part of said property and which are held in private ownership within five hundred (500) feet in any direction from any direction from the exterior boundaries of the property concerning which a change or modification is sought to be made.

2. Enforcement: Each and all of said conditions, covenants and reservations is and are for the benefit of each owner of land (or any interest therein) in said property and they and each thereof shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of a deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner the said restrictions, conditions and covenants shall be covenants running with the land and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the

conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. Violation Constitutes Nuisance: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Grantor or its successors in interest and/or by any lot owner; and such remedy shall be deemed cumulative and not exclusive.

4. Construction and Validity of Restrictions: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. Right to Enforce: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner, or owners of any portion of said property, their and each of their legal representatives, heirs, successors and assigns, and failure by Grantor, or any property owner, or their legal representative, heirs, successors, or assigns to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

6. Architectural Committee: The architectural committee which is vested with the powers described herein shall consist of three persons appointed by the Grantor. Prior to the commencement of any excavations, construction or remodeling or adding to any structure, theretofore completed, there shall first

be filed with the architectural committee two complete sets of building plans and specifications therefor, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the architectural committee shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The second set of said plans shall be filed as a permanent record with the architectural control committee. In the event said committee fails to approve or disapprove in writing said plans within fifteen (15) days after their submission, then said approval shall not be required. When all lots in said tract have been sold by Grantor, said plans and specifications shall be approved by an architectural committee approved by a majority of owners of lots in the property herein described and only owners of said lots shall be privileged to vote for said architectural committee. The Grantor shall have the right to appoint members of the architectural committee until such time as all lots in the tract have been sold by the Grantor.

7. Assignment of Powers: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successor in interest of the Grantor.

8. Invalidity: It is expressly agreed that in the event any covenant or condition or restriction hereinbefore contained, or any portion thereof is held invalid or void, such invalidity or voidness shall in no way affect any valid covenant, condition or restriction.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the _____ day of June, 1970.

HI-COUNTRY ESTATES

By _____
Charles Lewton, Manager
Seller

_____
Buyer

_____
Buyer

JAN 19 1976

Recorded at Request of Ace Homerville - To Dayton Bank

at [illegible] Book Page Ref.

by Deputy

Mail tax notice to Address 903 E. 1250 So. Dayton, Ut. 84020

2778217

QUIT-CLAIM DEED

[CORPORATION FORM]

HI-COUNTRY ESTATES, INC., and ZIONS FIRST NATIONAL BANK, Trustee, a corporation organized and existing under the laws of the State of Utah, with its principal office at of County of Salt Lake, State of Utah, grantor, hereby QUIT CLAIMS to

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah non-profit Corporation (Phase I),

grantee, for the sum of DOLLARS, good and valuable consideration, the following described tract of land in Salt Lake County, State of Utah:

All roads, easements and common areas, shown on the plat of Hi-Country Estates, Phase I, as recorded in the office of the Salt Lake County Recorder.

Subject to water line and other utilities along and under the road.

PROOF HEAD

The officers who sign this deed hereby certify that this deed and the transfer represented thereby was duly authorized under a resolution duly adopted by the board of directors of the grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this day of , A. D. 19

Attest: Secretary.

HI-COUNTRY ESTATES, INC. Company

By President.

ZIONS FIRST NATIONAL BANK

By

STATE OF UTAH, County of Salt Lake.

On the 25th day of September 1975, A. D. personally appeared before me Charles E. Lawton and D. Kleth Spencer who being by me duly sworn did say, each for himself, that he, the said Charles E. Lawton is the president, and he, the said D. Kleth Spencer is the secretary of HI-COUNTRY ESTATES, INC. Company, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Charles E. Lawton and D. Kleth Spencer each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Notary Public.

My commission expires August 24, 1976 My residence is Salt Lake, Utah

EXHIBIT D

BOOK 4082 PAGE 47

1986 PROPOSED BUDGET HI-COUNTRY ESTATES HOMEOWNERS ASSOC.

FEBRUARY 28, 1986

	1985 PROPOSED	1985 EXPENDITURES	1986 PROPOSED
A. UTAH POWER & LIGHT	$550.00	$599.58	$600.00
B. ATTOURNEYS & LEGAL FEES	$3500.00	$3875.50	$14,000.00
C. PRINTING & OFFICE SUPPLIES	$150.00	$322.08	$250.00
D. PROPERTY TAXES	$40.00	$49.14	$50.00
E. STATE & FEDRAL TAXES	-0-	$416.82	-0-
F. ROAD INSURANCE	$200.00	$190.00	$200.00
G. DIRECTORS LIABILITY INSURANCE	$750.00	$650.46	$650.00
H. SECRETARIAL SERVICES	$850.00	$1063.14	$1200.00
I. POSTAGE	$500.00	$144.14	INC IN ABOVE
J. LIONS CLUB RENTAL	$50.00 DON.	-0-	$50.00
K. TYPE WRITER REPAIR	$50.00	-0-	-0-
L. ANNUAL MEETING REFRESHMENTS	$20.00	-0-	-0-
M. SIGN INSTALLATION & REPAIR	$175.00	$76.19	$100.00
N. MAIL & SHELTER IMPROVEMENTS	$300.00	-0-	$100.00
O. WEED CUTTING	$150.00	-0-	-0-
P. SNOW REMOVAL	$4000.00	$1275.00	$2000.00
Q. ROAD MAINTENANCE	$8000.00	$2345.00	$6500.00
R. GATE MAINTENANCE	$1000.00	$611.80	$750.00
S. GARBAGE REMOVAL	$2600.00	$2600.00	$2600.00
T. SUPPLIES	-0-	-0-	-0-
U. WATER SYSTEM REPAIRS	-0-	$973.09	-0-
V. PHASE 2 WATER SYSTEM CONNECTION	-0-	$3385.09	-0-

EXHIBIT E

1986 PROPOSED BUDGET HI-COUNTRY ESTATES HOMEOWNERS ASSOC. (PAGE 2)

	1985 PROPOSED	1985 EXPENDITURES	1986 PROPOSED
W. ASSESSMENT COLLECTION COSTS	-0-	$240.96	-0-
X. TAX AUDIT	-0-	$127.50	-0-
Y. ENGINEERING EXPENSE	-0-	$181.00	$300.00
TOTALS	$22,885.00	$19,126.49	$29,350.00

CHECKBOOK BALANCE 1-1-85 = $2,291.18

AMOUNT DEPOSITED 1985 = $17,660.63

TOTAL = $19,951.81

1985 EXPENDITURES = $19,126.49

CHECKBOOK BALANCE 1-1-86 = $825.32

AUDITED BY: Elvira Totorica
ELVIRA TOTORICA

JoAnn Rassmussen
JOANN RASSMUSSEN

Arlene Turner
ARLENE TURNER

DATE: FEBRUARY 27,1986

APPROVED BY THE BOARD OF DIRECTORS - HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION.

W. NORMAN SIMS - PRESIDENT

R.S. FARNELL - SECRETARY

MIKE ANDERSON - TREASURER

Recorded ... 10:32
Request of SECURITY TITLE Company
Fee Paid KATIE L. Dixon
Recorder, Salt Lake County, Utah
4.00 Edward T. Mix ... Deputy

SECURITY TITLE COMPANY

3133334

TRUSTEES

SPECIAL WARRANTY DEED

ZIONS FIRST NATIONAL BANK, a National Banking Association, as Trustee, of Salt Lake City, Utah, Grantor, hereby conveys and warrants against the acts of the Grantor only, to Steven K. Maxfield and Susan E. Maxfield, his wife, as Joint Tenants with Full Rights of Survivorship

Grantees,

for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land situated in SALT LAKE County, State of UTAH

"Lot #91, HI-COUNTRY ESTATES, a subdivision according to the official plat thereof recorded in the office of the County Recorder of said County, together with a right of way over and across the private roads, located within said subdivision."

"Subject to the protective covenants and the articles of the homeowners association."

PROOF READ

SECURITY TITLE CO. ABS No. 45 DOF

PROOF READ

IN WITNESS WHEREOF, the Grantor this 23rd day of June, 19 78 has caused these presents to be executed in its corporate name, as trustee, and under its corporate seal, as trustee, by two of its Vice Presidents hereunto duly authorized.

ZIONS FIRST NATIONAL BANK, a National Banking Association, as Trustee

WITNESS:

Senior Vice President

Vice President

STATE OF UTAH
COUNTY OF SALT LAKE } SS.

On the 23rd day of June A.D. 1978, personally appeared before me Noell Bennett and Anderson, who being by me duly sworn did say they are Vice Presidents of said First National Bank, a National Banking Association, and that said instrument was signed in behalf of said Association, as Trustee, by resolution of its Board of Directors and said ... acknowledged to me that said Association executed the same, as Trustee.

NOTARY PUBLIC

Notary Public

My commission Expires ... Residing at Salt Lake City, Utah

4547547 BK 5275 PG 525

EXHIBIT F

Zions First National Bank
Trust Department
P. O. Box 240
Salt Lake City, Utah 84110

JAN 13 1976

Recorded at Request of

at 1:54 P.M. Fee Paid $ 4.00 KATE L. DIXON, Salt Lake County, Recorder

by Dep. Book Page Ref.

Mail tax notice to Address

2776638

QUIT-CLAIM DEED

HI-COUNTRY ESTATES, SECOND, a Utah Limited Partnership, grantor of Riverton, County of Salt Lake, State of Utah, hereby QUIT-CLAIMS to

KWIATKOWSKI
Frederick M. and Anne H. KWIATKOWSKI,
his wife, as joint tenants

of grantee for the sum of TEN ($10.00) and other good and valuable consideration. DOLLARS, the following described tract of land in Salt Lake County, State of Utah:

Lot #82, HI-COUNTRY ESTATES, a subdivision according to the official plat thereof recorded in the office of the County Recorder of said County, together with a right of way over and across the private roads located within said subdivision.

Subject to the protective covenants and the articles of the homeowners association.

Also described as:
Beginning at a point South 2788.69 feet and East 1352.59 feet from the Northwest corner of Section 5, Township 4 South, Range 2 West, Salt Lake Base and Meridian and running thence North 72° 00' West 962.94 feet; thence North 45°00' East 130.00 feet to a point of a 325.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 209.88 feet to a point of tangency; thence North 82°00' East 125.00 feet to the point of a 400.00 foot radius curve to the left; thence Northeasterly along the arc of said curve 223.40 feet; thence South 30°52'45" East 011.10 feet; thence South 0°23'47" East 64.13 feet to the point of beginning. Contains 5.701 acres.

WITNESS the hand of said grantor, this Twenty-sixth day of August, A. D. one thousand nine hundred and seventy five.

Signed in the presence of

HI-COUNTRY ESTATES, SECOND

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 26th day of August, A.D. 1975, personally appeared before me Charles E. Leutenegger who by me duly sworn did say that he is a General Partner of the firm of HI-COUNTRY ESTATES, SECOND, a Utah Limited Partnership, and that the foregoing instrument was signed in behalf of said Limited Partnership by authority of the Articles of said Limited Partnership, and the said Charles E. Leutenegger acknowledged to me that said Limited Partnership executed the same.

My Commission Expires:

NOTARY PUBLIC
Residing in Salt Lake City, Utah.

EXHIBIT 6

EXHIBIT

EXHIBIT

PROOF READ

BOOK 4077 PAGE 188

2484371

SPECIAL WARRANTY DEED

ZIONS FIRST NATIONAL BANK, a National Banking Association, of Salt Lake City, Utah, as successor to Zion's Savings Bank and Trust Company, a Utah State Banking Corporation, Grantor, of Salt Lake City, Utah, hereby conveys and warrants against the acts of the Grantor only, to

RICHARD L. JAMES and KATHLEEN A. JAMES, his wife, as joint tenants with full rights of survivorship, and not as tenants in common,

the sum of TEN ($10.00) DOLLARS and other good and valuable consideration Dollars

the following described tract of land in Salt Lake County, State of UTAH:

Lot 90, HI-CC.REST ESTATES, a subdivision according to the official plat thereof recorded in the office of the County Recorder of said County, together with a right of way over and across the private roads located within said subdivision.

Subject to the protective covenants and the articles of the homeowners association.

Recorded SEP 13 1972 at 12:11 P
Request of SECURITY TITLE COMPANY
Fee Paid, JEAN DAN MARTIN
Recorder, Salt Lake County, Utah
By _____ Deputy

Said Zion's Savings Bank & Trust Company (herein called State Bank) was heretofore merged into and with Zions First National Bank (herein called National Bank) under the charter of said National Bank, whereupon by operation of law (12 U.S.C. Sec. 34B 86 St. 599), all property and interests in and to every type of property, real, personal and mixed, of said State Bank, were transferred to and vested in said National Bank without deed or transfer.

IN WITNESS WHEREOF, the Grantor this 21st day of August, 19 72 has caused these presents to be executed in its corporate name and under its corporate seal by two of its Vice Presidents hereunto duly authorized.

ZIONS FIRST NATIONAL BANK, a National Banking Association

WITNESS:

Vice President

Vice President

STATE OF UTAH
COUNTY OF SALT LAKE } ss.

On the 21st day of August, A.D. 1972, personally appeared before me JAY R. JEPPSEN and Noall J. Bennett, who being by me duly sworn did say they are Vice Presidents of Zions First National Bank, a National Banking Association, and that said instrument was signed in behalf of said Association, by resolution of its Board of Directors and said Jay R. Jeppsen and Noall J. Bennett acknowledged to me that said Association executed the same.

My Commission Expires:
June 24, 1975

Notary Public

BOOK 3152 PAGE 431

EXHIBIT G

EXHIBIT H

EXHIBIT G

ARTHUR L. MONSON
SALT LAKE COUNTY TREASURER

1985 VALUATION AND TAX NOTICE

PROPERTY VALUATION

PROPERTY ASSESSED		MARKET VALUE	ASSESSED VALUE
REAL ESTATE	RESIDENTIAL COM/IND-SEC. RES. AGRICULTURAL	5,090	815
BUILDINGS	RESIDENTIAL COM/IND-SEC. RES. AGRICULTURAL	265,810	42,530
	MOTOR VEHICLES		
	TOTALS	270,900	43,345

TAX DISTRICT 41U
PARCEL NO
32-05-151-001-0000
MH NO.

IMPORTANT INFORMATION
PLEASE READ CAREFULLY
BOARD OF EQUALIZATION

Appeal of the valuation shown hereon s: be filed with the County Board of Equaliz. on AUGUST 1, 2[illegible] but in no case later than August 15, 1985. ure to do so may forfeit the right to relief excessive or erroneous assessment. Appeals be filed on forms provided by the Count: may be acquired in Room 306 - City and C: Building. Real estate and building assessmen shown separately within the valuation s: when improvements exists. Please notify the of Equalization if both do not appear, applicable.

SEE INSTRUCTIONS ON REVERSE SI:

RTY ASSESSED TO: HI COUNTRY ESTATES HOMEOWNERS
32-05-151-001-0000 2519917

C/O TURNER, BILL
75 W HIGH COUNTRY RD
RIVERTON, UT 84065

RTY DESCRIPTION AND LOCATION: 90 W CANYON RD
-COUNTRY ESTATES WATER TANK LOTS. 0.75 AC 4433-0804
73-1997
50-1262 5664-1060 THRU 1064

.D FOR A PRIOR TAX*
.INCUENT TAXES ARE -
: FOR A PRIOR YEAR
NTACT TREASURERS
ICE FOR AMOUNT DUE

PLEASE NOTE
COUNTY TREASURER ONLY COLLECTS S DOES NOT ASSESS PROPERTY VA ATIONS SET RATES OR GRANT EXEMP. S AND HAS NO AUTHORITY TO MAKE NGES ON THE TAX ROLL
SE REFER TO BOARD OF EQUALIZA. INSTRUCTIONS ABOVE IN GREY AREA

1985 PROPERTY TAXES

DISTRIBUTION OF GENERAL TAXES

TAXING DISTRICT	MILL LEVY	AMOUNT
JORDAN SCHOOL DISTRICT	45.39	1,967.43
SL COUNTY GENERAL FUND	14.21	615.93
SL COUNTY BOND INT & SINK	1.07	46.38
SL COUNTY FLOOD CONTROL	3.86	167.31
SL COUNTY GOV'T IMMUNITY	.07	3.03
SL COUNTY HEALTH DEPARTMT	1.32	57.22
SL COUNTY LIBRARY	3.25	140.87
SL COUNTY MUNICIPAL SERV	10.10	437.78
SL COUNTY HANSEN PLANETAR	.20	8.67
SL COUNTY HOGLE ZOO FUND	.22	9.54
CNTY PORTION $1,486.73		
S L CO WATER CONS DIST	1.89	81.92
CENTRAL UT WATER CON DIST .	1.97	85.39
TAX ADMINISTRATION LEVY	1.90	82.36

GENERAL TAXES	TOTAL ASSESSED VALUE	43,345
	TOTAL MILL LEVY	85.46
	GENERAL TAXES	3,703.83
1985 TAXES, ON THIS PARCEL ARE 1.4 % OF MARKET VALUE		
	ATTACHED PERSONAL PROPERTY	
	TOTAL TAXES	3,703.83

LESS CREDITS	CIRCUIT BREAKER	
	BLIND ABATEMENT	
	INDIGENT ABATEMENT	
	VETERAN ABATEMENT	
	BOARD ABATEMENT	
	SANITATION ABATEMENT	
	PREPAID TAXES	
	TOTAL CREDITS	

EXHIBIT 1

32-05-151-001-0000 2519917

FILMED

Rosemary McDonnell

RAY M. HARDING
HARDING & HARDING
ATTORNEYS AT LAW
306 West Main Street
American Fork, Utah 84003
Telephone: 756-7888

Attorneys for PLAINTIFFS

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RICHARD L. JAMES, SHIRLENE A. JAMES, BRYCE DEAN, CAMILLA DEAN, STEVEN K. MAXFIELD, SUSAN MAXFIELD, William Millgate, Betty L. Millgate, Paul E. Stroh, Susan Stroh, Mary K. Graves, Ronald Mackay, Marie Mackay, Rebecca M. Kirby, Edwin W. Kirby, Dr. Charles Hagan, Wayne Tondro, Sheila M. Tondro, Keith Curr, Boyd Prescott, Vaun Prescott, Mike B. White, Ann G. White, James Tobbs, Emily Tebbs, Bonnie White, Fred Kwiatkowski, Anne H. Kwiatkowski, Darwin W. Colton, Lynda G. Colton, Kenneth Norton, Belva Norton, Larry Beagley, Esther Beagley, John Beagley, Sadie Beagley, Stan Tacy, Patracia Tacy, Ronald Vincent, Bonnie Vincent, Jay P. James, Emogene L. James Plaintiffs, vs. JOHN W. DAVIES, ROBERT MILLARD, JOHN C. THOMAS, and JOANN ABPLANALP, and HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a non-profit Utah Corporation, Defendants.	SECOND AMENDED VERIFIED COMPLAINT Civil No. C-81-8560

COME NOW, the Plaintiffs and for causes of action against the Defendants assert, allege and complain as follows:

1. The Plaintiffs are residents of Salt Lake County, State of Utah.

2. The Defendants, John W. Davies, Robert Millard, John C. Thomas, and Joanne Abplanalp, are residents of Salt Lake County, State of Utah.

3. The Defendant, Hi-Country Estates Homeowners Association, is a non-profit corporation formed under the laws of

EXHIBIT J

the State of Utah with its principal place of business in the County of Salt Lake, State of Utah.

4. Each of the Plaintiffs is a member of the Defendant, Hi-Country Homeowners Association.

FIRST CAUSE OF ACTION

5. Plaintiffs' incorporate herein by reference the allegations made in paragraphs 1, 2, 3, and 4 of this Amended Verified Complaint.

6. On October 15, 1980, a special meeting was called of the members of the Hi-Country Estates Homeowners Association for the purpose of electing a new Director.

7. After said meeting, Robert Millard was appointed as the new director.

8. Robert Millard was not duly elected at said meeting on October 15, 1980 by reason of the fact that absentee ballots had been illegally used.

9. Robert Millard is currently serving as a Director of the Hi-Country Estates Homeowners Association and has no legal authority to do so.

10. Robert Millard should be enjoined from taking any further action as a Director of the Hi-County Estates Homeowners Association, and unless he is so enjoined, the Plaintiffs will suffer immediate and irreparable injury.

SECOND CAUSE OF ACTION

11. Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1, 2, 3, and 4 of this Amended Verified Complaint.

12. On February 28, 1981, an annual meeting of the Hi-Country Estates Homeowners Association was held for the purpose of electing three new directors.

13. As a result of said meeting, John W. Davies, Robert Millard and John C. Thomas were installed as Directors of the Hi-Country Estates Homeowners Association and are currently serving in that capacity.

14. The above Defendants were not legally elected as the new directors for the reason that Richard L. James, the lawful holder of seven (7) proxy votes, one (1) given to him by John Beagley and six (6) given to him by Larry Beagley, was denied the use of the proxy votes.

15. Had Richard L. James been allowed to use said seven (7) proxy votes, the Defendants would not have had sufficient votes to be elected as Directors.

16. The above Defendants were not legally elected for the reason that many of the proxy votes cast in favor of said Defendants had not been legally obtained and voted.

17. But for the use of said illegal proxy votes cast in favor of the Defendants, the Defendants would not have had sufficient votes to be elected as Directors.

18. The above Defendants were not legally elected for the reason that the By-Laws of the Hi-County Estates Homeowners Association prohibit a Director from serving concurrent terms, which the Defendants are now doing.

19. John W. Davies, Robert Millard, and John C. Thomas should be enjoined from taking any further action as Directors of the Hi-County Estates Homeowners Association, and unless they are so enjoined, the Plaintiffs will suffer immediate and irreparable injury.

THIRD CAUSE OF ACTION

20. The Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1, 2, 3, and 4 of this Amended Verified Complaint.

21. The Hi-Country Estates Homeowners Association has taken legal action to enforce certain protective covenants of the Hi-Country Estates Subdivision upon individual members of the Hi-Country Estates Homeowners Association.

22. The Hi-Country Estates Homeowners Association has expended the funds of the Association in taking said legal action.

23. The Hi-Country Estates Homeowners Association was formed for the express purpose of maintaining and providing for the common areas, including roads and streets.

24. The Hi-Country Estates Homeowners Association has no authority to enforce the protective covenants of the subdivision against individual members.

25. Said actions to enforce the restrictive covenants are ultra vires and the Hi-Country Estates Homeowners Association should be restrained from taken any further action to enforce said covenants against the individual members, and unless the Association is so restrained, the Plaintiffs will suffer immediate and irreparable injury.

FOURTH CAUSE OF ACTION

26. The Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1, 2, 3, and 4 of this Amended Verified Complaint.

27. There presently exists on record certain protective covenants against the property contained in the Hi-Country Estates Subdivision.

28. Said protective covenants are illegal and void because they were not properly enacted and because they are vague.

29. There presently exists on record an amendment to the protective covenants mentioned above.

30. Said amendment is illegal and void because it was not properly enacted pursuant to the terms of the original protective covenants and because the amendment is also vague.

FIFTH CAUSE OF ACTION

37. The Plaintiffs incorporate herein by reference the allegations made in Paragraphs 1, 2, 3, and 4 of this Amended Verified Complaint.

38. An application has been filed with the Salt Lake Planning Commission seeking a zoning change for the Hi-Country Estates Subdivision for which application hearings have been scheduled in the near future.

39. The Hi-Country Estates Homeowners Association and its current Directors intend in the future to participate in said hearings.

40. Such participation by the Hi-Country Estates Homesowners Association is expressly prohibited by its certificate of incorporation. Unless the Hi-Country Estates Homeowners Association and its current Directors are prohibited from participating in the scheduled hearings before the Salt Lake Planning Commission, the members of the Association will suffer immediate and irreparable harm.

SIXTH CAUSE OF ACTION

42. The Plaintiffs incorporate herein, by reference, the allegations made in Paragraphs 1 through 25 of this Amended Verified Complaint.

43. The Defendants, John W. Davies, Robert Millard and John C. Thomas have illegally and wrongfully acted as Directors of the Hi-Country Estates Homeowners Association by attempting to enforce protective covenants against members of the Association.

44. The Defendants, John W. Davies, Robert Millard and John C. Thomas have illegally acted as Directors of the Hi-Country Estates Homeowners Association by expending funds of the Association in attempting to enforce protective covenants against its members.

45. The Defendants, John W. Davies, Robert Millard, and Joanne Abplanalp have illegally and wrongfully acted as Directors of the Hi-Country Estates Homeowners Association in their conduct of the elections which took place on October 15, 1980, and February 28, 1981, as set forth above.

46. The Plaintiffs have made a demand on the Defendants to redress the wrongs complained of herein, but the Defendants failed and refused, and still fail and refuse, to comply with the Plaintiffs' demand.

47. By reason of the unlawful acts of the Defendants John W. Davies, Robert Millard, and Joanne Abplanalp the Defendant Hi-Country Estates Homeowners Association has been damaged in the sum of THIRTY THOUSAND DOLLARS ($30,000.00)

48. The Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

1. Pursuant to Plaintiffs' First and Second Causes of Action, for an Order determining that the current Directors of the Hi-Country Estates Homeowners Association were not lawfully elected or appointed and enjoining such Directors from taking any further actions on behalf of the Association.

2. Pursuant to the Plaintiffs' Third Cause of Action, for an Order determining that the Hi-Country Estates Homeowners Association has no authority to enforce protective covenants of the Hi-Country Estates Subdivision upon individual members of the Association and enjoining the Association from any further enforcement or expenditure of monies therefor.

3. Pursuant to the Plaintiffs' Fourth Cause of Action, for an Order determining that the protective covenants and amendments thereto filed against the Hi-Country Estates Subdivision are unlawful and shall be removed.

4. Pursuant to the Plaintiffs' Fifth Cause of Action, for an Order determining that the Hi-Country Estates Homeowners

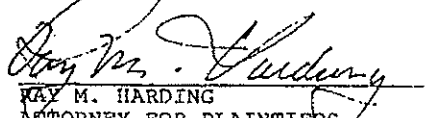
Assocaition has no authority to participate on behalf of its members in the hearings before the Salt Lake Planning Commission with respect to a zoning change for the Hi-Country Estates Subdivision and for an Order enjoining any such actions by the Assocaition or its Directors.

5. Pursuant to the Plaintiff's Sixth Cause of Action, for Judgment in favor of the Defendant, Hi-Country Estates Homeowners Association, and against the Defendants, John W. Davies, Robert Millard, John C. Thomas, and Joanne Abplanalp in the sum of THIRTY THOUSAND DOLLARS ($30,000.00).

6. For attorney's fees, costs of court and for such further relief as to the Court appears just and equitable in the premises.

DATED this 1st day of November, 1981.

HARDING & HARDING
ATTORNEYS AT LAW



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CON KOSTOPULOS
Attorney for Defendants
1095 East 2100 South, Suite 235
Salt Lake City, UT 84106
Telephone: (801) 487-5777

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

RICHARD L. JAMES, SHIRLENE A. JAMES, BRYCE DEAN, CAMILLA DEAN, STEVEN K. MAXFIELD, SUSAN MAXFIELD, WILLIAM MILLGATE, BETTY L. MILLGATE, PAUL E. STROH, SUSAN STROH, MARY K. GRAVES, RONALD MACKAY, MARIE MACKAY, REBECCA M. KIRBY, EDWIN W. KIRBY, DR. CHARLES HAGAN, WAYNE TONORO, SHEILA M. TONDRO, KEITH GURR, BOYD PRESCOTT, VAUN PRESCOTT, MIKE B. WHITE, ANN G. WHITE, JAMES TEBBS, EMILY TEBBS, BONNIE WHITE, FRED KWIATKOWSKI, ANNE H. KWIATKOWSKI, DARWYN W. COLTON, LYNDA G. COLTON, KENNETH NORTON, BELVA NORTON, LARRY BEAGLEY, ESTHER BEAGLEY, JOHN BEAGLEY, SADIE BEAGLEY, STAN TACY, PATRICIA TACY, RONALD VINCENT, BONNIE VINCENT, JAY P. JAMES, EMOGENE L. JAMES, Plaintiffs, vs. JOHN W. DAVIES, ROBERT MILLARD, JOHN C. THOMAS, and JOANN ABPLANALP, and HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a non-profit Utah Corporation, Defendants.	FIRST AMENDED ANSWER AND COUNTERCLAIMS Civil No. C-81-8360

Defendants, by and through their attorney of record, answer Plaintiffs' Second Amended Verified Complaint and Counterclaim against Plaintiffs as follows:

ANSWER

1. Admit the allegations contained in paragraphs 1 through 4, inclusive, of Plaintiffs' Complaint.

2. Deny that Larry, Esther, John and Sadie Beagley are members of Hi-Country Homeowners Association, but admit the remainder of paragraph 4 of Plaintiffs' Complaint.

3. Admit paragraph 5.

4. Deny paragraph 6.

EXHIBIT K

5. Admit paragraph 7.

6. Deny paragraph 8

7. Admit that Robert Millard is currently serving as a Director but deny each and every other allegation of paragraph 9.

8. Deny paragraph 10.

9. Admit paragraph 11.

10. Admit that an annual meeting was held on February 28, 1981 but deny each and every other allegation of paragraph 12.

11. Admit paragraph 13.

12. Deny paragraphs 14 through 19, inclusive.

13. Admit paragraphs 20 through 21, inclusive.

14. Deny paragraphs 22 through 25, inclusive.

15. Admit paragraphs 26 through 27, inclusive.

16. Deny paragraph 28.

17. Admit paragraph 29.

18. Deny paragraph 30.

19. State for the record that Plaintiffs' Complaint has no paragraphs numbered 31 through 36, inclusive.

20. Admit paragraphs 37 through 39, inclusive.

21. Deny paragraph 40.

22. State for the record that Plaintiffs' Complaint has no paragraph numbered 41.

23. Admit paragraph 42.

24. Deny paragraphs 43 through 48, inclusive.

FIRST DEFENSE

Plaintiffs' Complaint fails to state a cause of action for which relief can be granted.

SECOND DEFENSE

The actions of Defendants alleged in the Complaint, if any such actions took place, did not result in any actual injury or damage to Plaintiffs.

THIRD DEFENSE

Defendants allege, upon information and belief, that Plaintiffs

inscituted this action for the improper purpose of harassing, annoying and defaming Defendants. By virtue of their acts, Plaintiffs are guilty of unclean hands and are now barred from seeking equitable relief as claimed in their Complaint.

FOURTH DEFENSE

Any claim for relief or causes of action set forth in Plaintiffs' Complaint are barred by the doctrines of laches and estoppel.

FIFTH DEFENSE

Defendants' conduct regarding appointment and election of Directors, efforts to enforce protective covenants and representation of the Association were legally justified by the facts and circumstances surrounding their occurence.

SIXTH DEFENSE

Each and every act complained of by Plaintiffs against the individual Defendants, to wit: JOHN W. DAVIES, JOHN C. THOMAS, ROBERT MILLARD and JOANN ABPLANALP, was duly performed by them in their corporate capacities and in the course of the performance of their respective corporate responsibilities, as Directors and/or officers of HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, a Utah Non-Profit Corporation. As a result, each of the individual Defendants is entitled to the protection of the corporate shield of HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, and each is entitled to have Plaintiffs claims dismissed as against them personally.

COUNTERCLAIMS

COUNT I

Defendant HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION, for its Counterclaim against Plaintiffs, alleges as follows:

1. Hi-Country is a Utah non-profit Corporation duly incorporated, with its principle place of business in Salt Lake City, Utah.

2. Defendants, and each of them are residents of Salt Lake County, State of Utah.

3. Throughout October and November, 1981, Plaintiffs Richard L. James, Shirlene A. James, Bryce Dean, Camilla Dean, Steven K. Maxfield and

Susan Maxfield, in particular, together with other Plaintiffs named herein, in the presence and hearing of each other and third parties, did maliciously speak of and concering Hi-Country by alleging the following faults and defamatory words, or words to the following effect: That Hi-Country Estates Homeowners Association, by and through its present and former directors, did conduct elections and appointments in illegal manner; that Hi-Country Estates Homeowners Association, by and through its present and former Directors, did unlawfully and illegally attempt to enforce certain protective covenants relating to the Hi-Country Estates Subdivisions; and that Hi-Country, by and through its present and former directors, had no authority to represent members of its association at a Salt Lake County Zoning meeting nor at any other meetings.

4. That Plaintiffs knew that said words were untrue and in making said defamatory statements, Plaintiffs acted with malice towards Defendant Hi-Country.

5. Defendant Hi-Country has always enjoyed a good reputation relative to its authority to represent its members, lawfully electing and appointing officers and directors, and lawfully enforcing protective covenants.

6. As a result of Plaintiffs' defamatory statements, Defendant Hi-Country has been damaged to the extent of at least $25,000.00.

COUNT II

7. Defendant Hi-Country realleges the allegations contained in Paragraphs 1 and 2 of Count I above.

8. On or about November, 1981, Plaintiffs commenced a civil action against Defendant in the above-entitled Court, which action was commenced and prosected by Plaintiffs maliciously and without probable cause.

9. By reason of Plaintiffs' actions, Defendant Hi-Country suffered injury to its ability to effectively represent its members and to its reputation, all to its damage in the sum of $25,000.00, together with attorney's fees incurred to defend said malicious action, and Defendant

specifically reserves the right to prosecute Plaintiffs for said malicious prosecution upon Defendant's successful defense.

COUNT III

10. Defendant Hi-Country realleges the allegations contained in Paragraphs 1 and 2 of Count I above.

11. Defendant Hi-Country exists for the express purpose, among others, to promote the health, safety and welfare of the residents within Hi-Country Estates, which purpose includes the enforcement of protective covenants, the appointment and election of members of its Board of Directors and representing its membership in matters of common interest to such members.

12. Plaintiffs, with full knowledge of said contractual obligations of Defendant Hi-Country, and intending to harass, annoy, persecute, injur, destroy, and otherwise interefere with the due prosecution of Defendant's Hi-Country lawful business did wrongfully, intentionally, maliciously and fraudulently retain a Temporary Restraining Order against Defendant Hi-Country, which Restraining Order and injunction prevented Defendant Hi-Country from performing its contractual obligations to its membership.

13. That, as a consequence of Plaintiffs' interference with Defendant Hi-Country's contractual obligations, Defendant Hi-Country has been damaged in the sum of $25,000.00.

COUNT IV

14. Defendant realleges the allegations contained in Paragraphs 1 and 2 of Count I above.

15. Plaintiffs, by instituting their action against Defendant Hi-Country, in which action Plaintiffs attack the validity of certain protective covenants relative to Hi-Country Estates Subdivision, have clouded title to lands held by Defendant Hi-Country.

16. Said cloud was instituted by Plaintiffs for no legitimate purpose and only to harass, annoy, injur and persecute Defendant Hi-Country, all to Defendant Hi-Country's damage in the sum of $25,000.00.

17. The individual Defendants herein, to wit: John W. Davies, Robert Millard, John C. Thomas, and Joann Applanalp, expressly reserve their respective rights to file their own actions against Plaintiffs sounding in defamation, interference with contract, malicious prosecution, cloud of title and fraud.

18. All Defendants herein expressly reserve their right to add additional Counts as Counterclaims as and when discovery procedures reveal facts justifying same.

WHEREFORE, Defendants pray as follows:

1. That Plaintiff's complaint be dismissed with prejudice and that the Court enter judgment for the Defendants on the merits. Defendants further pray for an award of appropriate attorney's fees and for their costs of Court incurred in connection with this action.

2. For Judgment against Plaintiffs and in favor of Hi-Country under Count I of Defendants' Counterclaim in the amount of $25,000.00.

3. For Judgment against Plaintiffs and in favor of Hi-Country under Count II of Defendants' Counterclaim in the amount of $25,000.00.

4. For Judgment against Plaintiffs and in favor of Hi-Country under Count III of Defendants' Counterclaim in the amount of $25,000.00.

5. For Judgment against Plaintiffs and in favor of Hi-Country under Count IV of Defendants' Counterclaim in the amount of $25,000.00.

6. For punitive damages under each of Defendants' Counterclaims in amounts to be determined by the Court.

7. For such other and further relief as the Court deems equitable in the premises.

DATED this 21st day of January, 1982.

CON KOSTOPULOS
Attorney for Defendants

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9-1-48

JAN 20 1984

R. CLARK ARNOLD
Lowe & Arnold
Attorney for Plaintiff
Valley Tower, Fourth Floor
50 West Broadway
Salt Lake City, Utah 84101

Telephone: (801) 521-5466

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RICHARD L. JAMES, et al., Plaintiffs, vs. JOHN W. DAVIES, et al., Defendants, vs. BAGLEY & COMPANY, et al., Third Party Defendants.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. C-81-8560 Assigned to Judge Daniels

The above-entitled matter came on for hearing on Monday, January 9, 1984, at the hour of 10:00 a.m. Various of the plaintiffs were present and were represented by their attorney, R. Clark Arnold. Mr. Arnold did not represent all of the plaintiffs, however, some of them representing themselves individually; to wit: Edwin Kirby, Dr. Charles Hagen, Keith Gurr, Stan and Patricia Tacy, Emily Tebbs, and Sheila Tondro. Of the individual plaintiffs appearing pro se, only Keith Gurr appeared representing himself. The defendants were present and represented by their attorney, Con Kostopulos. The trial con-

EXHIBIT L

EXHIBIT

tinued until January 17, 1984, at which time both parties rested. During the course of the trial, both parties presented witnesses and submitted evidence in support of their respective positions. Upon the closing of this matter, the Court continued until February 10, and later continued until February 17, 1984, closing arguments. In the interim, the parties submitted a Memorandum of Points and Authorities in support of their respective positions. The matter having finally been closed, and the Court having considered all of the evidence presented, and being fully advised in the premises, now makes and enters the following finding of fact and conclusions of law.

FINDINGS OF FACT

Findings With Regard to Jurisdiction of Venue

1. The Court finds that the plaintiffs and defendants were residents of Salt Lake County, State of Utah.

2. The Court finds that the property in dispute in this matter is situated in Salt Lake County, State of Utah.

3. The Court finds that the Hi-Country Estates, Phase I Homeowners Association is a non-profit corporation organized under the laws of the State of Utah with its principal place of business being in Salt Lake County, Utah.

4. All of the actions complained of in plaintiffs' Complaint and all actions complained of in defendants' Counterclaims occurred in Salt Lake County, Utah.

Findings With Regard to Plaintiffs' First Cause of Action

5. With regard to the plaintiffs' allegations in their first cause of action regarding the election of Mr. Robert Millard as a director of the Homeowners Association at the October 15, 1980 special meeting, the Court finds that Mr. Millard was subsequently properly appointed and/or elected on at

least one occasion as a director of the Association and therefore the complaints raised in plaintiffs' first cause of action are moot.

6 The Court finds that plaintiffs' have suffered no damages as a result of any alleged improper election of Mr. Millard as a director at the October 15, 1980 special meeting.

Findings With Regard to Plaintiffs' Second Cause of Action

7. With regard to the plaintiffs' second cause of action, the Court finds that John W. Davies, Robert Millard and John C. Thomas, defendants herein, were properly elected as directors of the Homeowners Association and therefore the allegations raised in the plaintiffs' second cause of action are moot.

8. The Court finds that the plaintiffs have suffered no damage as a result of any alleged improper election of Messrs Davies, Millard and Thomas at the February 28, 1981 annual meeting.

Findings With Regard to Plaintiffs's Third Cause of Action

9. The Court finds that the Hi-Country Estates, Phase I Homeowners Association has taken action to enforce the protective covenants upon owners of property in Hi-Country Estates, Phase I, to wit: filing various lawsuits, including a lawsuit against Shirlene and Richard James and has threatened to file lawsuits against other property owners.

10. The Court finds that the Association has expended no funds in taking such action.

11. The Court finds that the word "owner of property" as that term is used in the protective covenants, was not intended to include the homeowner's association as an owner such as would entitled it to bring action against another owner of property for violation of the covenants.

12. The Court finds that the purposes for which the Hi-Country Estates, Phase I Homeowners Association was incorporated do not include enforcement of the protective covenants.

13. The Court finds that unless the Association is restrained and enjoined from enforcing the protective covenants, the plaintiffs will suffer injury for which they have no adequate remedy at law.

Findings With Regard to Plaintiffs' Fourth Cause of Action

14. The Court finds that protective covenants were recorded against the property located in Hi-Country Estates, Phase I in two separate documents, both recorded on March 22, 1974, to wit: a basic set of covenants containing general restrictions and an amendment to that basic set of covenants.

15. The Court finds that the basic set of covenants was executed on the date it bears, June 15, 1970.

16. The Court finds that the amendment to the covenants was executed on the date it bears, April 6, 1973.

17. The Court finds that the basic set of covenants was prepared at a time when the grantor therein was the equitable owner of the property located within Phase I.

18. The Court finds that at the time the amendment to covenants was prepared, April 6, 1973, the purported grantor was not the equitable owner of a majority of the property located in Hi-County Estates Phase I.

19. The Court finds that the protective covenants prepared on June 15, 1970 are not vague or ambiguous in their content.

20. The Court finds that the covenants executed June 15, 1970 by their terms, prohibit amendment for a period of twenty-five years following their execution.

21. The Court finds that the amendment dated April 6, 1973 was intended to take effect immediately thereafter and

therefore sooner than 25 years after the execution of the basic covenants.

Findings With Regard to Plaintiffs' Fifth Cause of Action

22. The Court finds that the Articles of Incorporation of Hi-County Estates Phase I Homeowners Association do not include a specific grant of authority allowing the Association to appear at zoning hearings to represent the members.

23. The Court finds that the Articles of Incorporation of Hi-County Estates Phase I Homeowners Association do not include as a purpose of the Association, acting in a representative capacity on behalf of the members of the Association at zoning hearings.

Findings With Regard to Plaintiffs' Sixth Cause of Action

24. The Court finds that the Articles of Incorporation and the Bylaws of the Hi-County Estates Phase I Homeowners Association do not provide a grant of authority for the directors to take action to enforce the protective covenants against owners of property in Hi-County Estates Phase I.

25. The Court finds that the actions by directors in attempting to enforce the covenants in the name of the Association against property owners in Hi-County Estates Phase I, as found above, was ultra vires to the power of the Association.

26. The Court finds that although the Association did take action in an attempt to enforce the covenants against individual property owners, no funds of the Association were expended in doing so and therefore there has been no damage suffered by the Association by reason of such actions.

Findings With Regard to Defendants' Counterclaims

27. The Court finds that the defendants voluntarily abandoned their counterclaims against the plaintiffs without presenting evidence thereon.

Findings With Regard to Attorneys' Fees

28. The Court finds that both the plaintiffs and defendants presented their various claims in this lawsuit in good faith and did so based upon a legitimate belief in the correctness of their position.

Findings With Regard To JoAnn Abplanalp.

29. The Court finds that the only claims against the Defendant JoAnn Abplanalp involved the elections referenced in the First and Second causes of action. Inasmuch as the court has found those to be moot, all claims against Abplanalp are also moot.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court now enters the following conclusions of law.

1. Jurisdiction and venue are properly before this Court to hear the Plaintiff's and Defendant's complaints against each other and to render relief thereon.

2. The plaintiffs' first cause of action should be dismissed with prejudice.

3. The plaintiffs' second cause of action should be dismissed with prejudice.

4. The plaintiffs should be granted relief on their third cause of action against the defendant Hi-Country Estates Phase I Homeowner's Association and the defendant directors thereof, and the Hi-County Estates Phase I Homeowners Association and the directors thereof, in their capacity as directors, should be permanently restrained and enjoined from attempting to enforce the protective covenants.

5. The defendants are entitled to a judgment by the Court declaring that the basic protective covenants executed on June 15, 1970 and recorded on March 22, 1974 are not vague or ambiguous and do constitute a present and continuing servitude upon

the property located within Hi-County Estates Phase I; however, the plaintiffs are entitled to a judgment of the Court declaring that the amendment to said protective covenants, prepared April 6, 1973 and recorded March 22, 1974, was improperly enacted and is void.

6. The plaintiffs are entitled to a judgment by the Court that the directors of the Homeowners Association are prohibited from representing the association or members thereof at zoning hearings and a permanent restraining order should issue against the Association and directors thereof from participating in such hearings.

7. The plaintiffs are entitled to a judgment by the Court that the defendants acted ultra vires in attempting to enforce the protective covenants against property owners in Hi-Country Estates Phase I. The restraining order heretofore provided with regard to the plaintiffs' third cause of action should also be entered with regard to the sixth cause of action. No monetary damage should be awarded to plaintiffs on this cause of action.

8. The defendants' Counterclaims against the Defendants should be dismissed with prejudice.

9. All claims against JoAnne Abplanalp should be dismissed with prejudice.

10. Each party should bear their own costs and attorneys' fees incurred herein.

DATED this 22 day of March, 1984.

Scott Daniels

SCOTT DANIELS
District Judge

APPROVED AS TO FORM AND CONTENT:

ATTEST
H. [illegible]
Clerk
By [signature]
Deputy Clerk

STATE OF UTAH)
COUNTY OF SALT LAKE) ss

I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 14th DAY OF [illegible] 19[illegible]
H. DIXON HINCKLEY, CLERK
BY [signature] DEPUTY

FILED

MAR 22 1984

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Lowe & Arnold
Attorney for Plaintiff
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50 West Broadway
Salt Lake City, Utah 84101

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RICHARD L. JAMES, et al., Plaintiffs,	)	
vs.	)	J U D G M E N T
JOHN W. DAVIES, et al., Defendants,	)	
vs.	)	
BAGLEY & COMPANY, et al., Third Party Defendants.	)	Civil No. C-81-8560 Assigned to Judge Daniels

The above-entitled matter came on for hearing on Monday, January 9, 1984, at the hour of 10:00 a.m. Various of the plaintiffs were present and were represented by their attorney, R. Clark Arnold. Mr. Arnold did not represent all of the plaintiffs, however, some of them representing themselves individually; to wit: Edwin Kirby, Dr. Charles Hagen, Keith Gurr, Stan and Patricia Tacy, Emily Tebbs, and Sheila Tondro. Of the individual plaintiffs appearing pro se, only Keith Gurr appeared representing himself. The defendants were present and represented by their attorney, Con Kostopulos. The trial con-

EXHIBIT M

tinued until January 17, 1984, at which time both parties rested. During the course of the trial, both parties presented witnesses and submitted evidence in support of their respective positions. Upon the closing of this matter, the Court continued until February 10, and later continued until February 17, 1984, closing arguments. In the interim, the parties submitted Memorandum of Points and Authorities in support of their respective positions. The matter having finally been closed, and the Court having considered all of the evidence and memorandum presented, and being fully advised in the premises, and having heretofore signed and filed its findings of fact and conclusions of law, Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The plaintiffs' first cause of action is hereby dismissed with prejudice.

2. The plaintiffs' second cause of action is hereby dismissed with prejudice.

3. The plaintiffs are hereby granted judgment against the defendants on their third cause of action, and the Defendant Homeowners Association and the Directors thereof, individually in their capacity as Directors, are hereby permanently restrained and enjoined from taking action or expending funds of the Association to attempt to enforce the protective covenants against property owners of property located in Hi-County Estates, Phase I.

4. The defendants are hereby granted a judgment against the plaintiffs on the plaintiffs' fourth cause of action to the extent that the Court hereby declares that the protective covenants executed June 15, 1970 and recorded on March 22, 1974 to be valid and enforcible restrictions and servitudes on the property located in Hi-County Estates, Phase I. The plaintiffs, however,

are hereby granted judgment against the defendants on said fourth cause of action to the extent that the Court hereby declares that the amendment to said protective covenants prepared April 6, 1973 and recorded March 22, 1974, is void and unenforcible.

5. The plaintiffs are hereby granted judgment against the defendants on their fifth cause of action and the Directors of the Hi-Country Estates Phase I Homeowners Association, in their capacity as directors are hereby permanently restrained and enjoined from appearing at Planning Commission or zoning meetings or hearings in a representative capacity on behalf of the association or of the individual property owners of property in Hi-County Estates, Phase I.

6. The plaintiffs are hereby granted judgment against the defendants on their sixth cause of action and the Hi-Country Estates Phase I Homeowners Association and the Directors thereof, in their capacity as Directors, are hereby permanently restrained and enjoined from taking any action or expending any Association funds to enforce or attempt to enforce the protective covenants against property owners of property located in Hi-County Estates, Phase I.

7. All claims against the Defendant JoAnn Abplanalp are hereby dismissed with prejudice.

8. The defendants having abandoned their counterclaims against the plaintiffs, the same are hereby dismissed with prejudice.

9. Each part is hereby ordered to assume their own costs and attorneys' fees incurred herein.

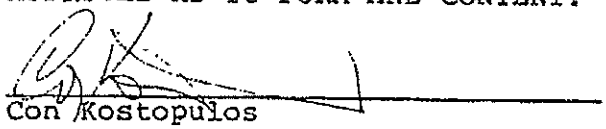
DATED this 22 day of March, 1984.

Scott Daniels

SCOTT DANIELS
District Judge

ATTEST
H. DIXON HINDLEY
Clerk
By [illegible]
Deputy Clerk

APPROVED AS TO FORM AND CONTENT:



Con Kostopulos
Attorney for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

RICHARD L. JAMES, ET. AL.,	*	
Plaintiffs,	*	Civil No. C-81-8560
vs.	*	COURT'S RULING
JOHN W. DAVIES, ET. AL.,	*	
Defendants.	*	

BE IT REMEMBERED that on the 17th day of February, 1984, in the above-entitled court at Salt Lake City, Utah, commencing at the hour of 9:00 a.m. the above-entitled matter came on for hearing before the Honorable Scott Daniels sitting without a jury, and the following proceedings were had.

APPEARANCES:

For the Plaintiffs: R. Clark Arnold, Esq.
Lowe & Arnold
Valley Tower, Fourth Floor
50 West Broadway
Salt Lake City, Utah 84101

For the Defendants: Con Kostopulos, Esq.
Attorney at Law
1095 East 2100 South, Suite 235
Salt Lake City, Utah 84106

EXHIBIT M

EXHIBIT L

PROCEEDINGS

(Excerpt of proceedings)

THE COURT: This is the case of Richard L. James and others verses John W. Davies and others, C-81-8560.

First cause of action related to the election and it was dismissed.

The second cause of action related to the election of officers, and it was also dismissed.

The third cause of action relates to authority to enforce the covenants.

As I have read the covenants in light of the testimony that's been presented, I'm of the opinion that the type of homeownership that the Homeowners Association has is not a type of homeownership or land ownership contemplated in the restrictive covenants and rule that the Homeowners Association has no authority to enforce the restrictive covenants.

On the fourth cause of action, the first portion relating to the covenants themselves was dismissed.

The second relating to the amendment, I think I'm compelled to rule that the amendment was not properly enacted. First of all I just can't really read the restrictive covenants themselves in such a way as to allow amendment before the expiration of that term in 1995. But even if there were some method to do that, I think it requires the consent of the equitable owners of the property. So on either ground I rule that the amendment is not properly enacted; it is void.

The fifth cause of action relating to the ability of the Homeowners Association to appear and present its views in the zoning actions, I've read the cases cited and the rule cited, and I'm of the opinion that based upon the language in the articles of incorporation, the Homeowners Association does not have the right to hear zoning hearings.

On the sixth cause of action which relates to ultra vires as well as I find as a matter of fact that there were no funds used of the Homeowners Association used to prosecute actions to enforce the covenants. Therefore, I rule for the Defendants on that particular claim.

The third part of the sixth cause of action relating to the elections is moot and is dismissed based upon the fact that the first cause of actions were dismissed because of the election question I find to be moot.

I do find that the directors acted in an ultra vires matter in attempting to enforce the restrictive covenants. And I suppose the issue of judgement they can't do that, but I really find no damages in that respect since they didn't use any Homeowner Association funds.

I think that the action was prosecuted on both sides in good faith and both sides honestly felt they had a legitimate position to take and do not feel that attorney fees are appropriately awarded to either side in this case. And really since I ruled in favor of the Plaintiffs on some of the issues and in favor for the defendants on others, it's difficult to see how there's a prevalent party, and therefore, award no costs.

Now, did I cover everything or did I leave something out?

MR. ARNOLD: No, Your Honor, just clarifying on the judgement. The judgement would be that the permanent restraining order would issue against enforcement of the covenants?

THE COURT: I think that's probably appropriate. Any problem with the form of that procedure?

MR. KOSTOPULOS: No, Your Honor.

The only additional question I might ask, the Court may decline to respond, it being not perhaps properly before the Court at the present time is this: In as much as the Court has ruled that the amendment to the covenants is invalid in as far as it being improperly enacted and in as much as the amendment to the covenants is the source of mandatory membership in the association itself, and in as much as we are coming up very quickly to the February 28th anual meeting of the association, I wonder if the Court would address the issue of whether or not that meeting should go forth or if there's any point in doing anything with it or whether the association should simply be dissolved at this point?

THE COURT: Well, I'm of the opinion that the amendment was improperly enacted which seems to be the source of mandatory participation in the association. I don't see any reason why the association can't continue to hold its meetings do what it wants to do, maybe even tell people if they can't be members, they can't drive on the roads or something. But as I read the documents, I just see no -- I just cannot come to the conclusion that that amendment was validly enacted.

And I don't know if I can tell you what the next step is. I really don't think it was --

MR. ARNOLD: I will prepare the findings.

THE COURT: Would you submit those to Mr. Kostopulos?

MR. ARNOLD: I will, Your Honor.

THE COURT: All right. Again, I appreciate the way it was handled. It was a very well tried case and the areas that were submitted were presented very well.

(Whereupon, the proceedings were concluded.)

CERTIFICATE

STATE OF UTAH)
: ss
COUNTY OF SALT LAKE)

I, Susan S. Sprouse, do hereby certify that I am a Certified Shorthand Reporter and Notary Public in and for the State of Utah;

That as such Reporter, I attended the hearing of the foregoing matter and thereafter reported in Stenotype all of the testimony and proceedings had, and caused said notes to be transcribed into typewriting, and the foregoing pages numbered from 2 to 5 inclusive, constitute a full, true, and correct report of the same.

DATED at Salt Lake City, Utah, this 23rd day of February, 1984.

Susan S. Sprouse, CSR/RPR

My commission expires:
November 1987