

RESOLUTION NO. 1656

A RESOLUTION APPROVING A DECLARATION OF RESTRICTIVE COVENANT ON USE FOR A DRIVEWAY AT 4402 SE SWEETBRIAR LANE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. Francis L. and Dolores A. Guess own the real property located at 4402 SE Sweetbriar Lane and have constructed a second driveway on that property that is not fully in compliance with City standards.
2. The City does not want to impose financial hardship upon Mr. and Mrs. Guess by demanding immediate removal of the driveway but does want assurances that the driveway's use will be limited and will terminate when the Guess's transfer or vacate the property or within approximately five years, whichever occurs first.
3. The City and the Guess's have formalized an agreement as summarized above entitled "Declaration of Restrictive Covenant on Use."

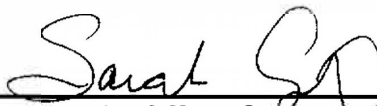
NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City Council approves the "Declaration of Restrictive Covenant on Use" between the City and Declarants Francis L. Guess and Dolores A. Guess which is attached hereto (Attachment 1) and made a part hereof.

Section 2. This resolution shall be effective upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0


Paul Thalhofer, Mayor
Dated: 5-30-03


Sarah Greif, Office Support Specialist
Adopted: 5-27-03

This Document not recorded per agreement between the parties.

See the language in the Declaration of Restrictive Covenant – Recital – E

After recording return to:

City of Troutdale
c/o City Recorder
104 SE Kibling Avenue
Troutdale, OR 97060

DECLARATION OF RESTRICTIVE COVENANT ON USE

THIS DECLARATION OF RESTRICTIVE COVENANT ON USE ("Declaration") is made as of this 27 day of May, 2003 by Francis L. Guess and Dolores A. Guess (the "Declarants"), for the benefit of the City of Troutdale, an Oregon Municipal Corporation (the "City").

RECITALS

A. The Declarants own the real property located at 4402 SE Sweetbriar Lane (the "Property") generally identified as Tax Lot 6914 on Multnomah County Tax Map 1S3E01DB, Willamette Meridian, City of Troutdale, Multnomah County, State of Oregon.

B. The City owns the public right-of-way that is adjacent to the western boundary of the Property.

C. The Declarants have constructed a second driveway (the "Driveway") on the northwest portion of the Property that is connected to the City right-of-way and that is not fully in compliance with City standards.

D. The Declarants would like to retain limited use of the Driveway for the duration of their ownership and occupancy of the Property.

E. The Declarants informed the City that if they record this Declaration they will be forced to pay the balance that is due on a loan that is secured by the Property and that they cannot afford to pay off the balance on the loan.

E. The City does not want to impose financial hardship upon the Declarants by demanding immediate removal of the Driveway, or by requiring the Declarants to record this Declaration and pay off their loan, but does want assurances that the Driveway's use will be limited and will terminate when Declarants' transfer or vacate the Property or by May 1, 2008, whichever occurs first.

AGREEMENT

1. Declarants agree that the Driveway will be used no more than six (6) times per year for the purpose of transporting a recreational vehicle (RV) to/from a paved storage pad adjacent to the house on the Property and for no other purpose. This is a perpetual restriction.

2. Declarants agree to install and maintain, at Declarants' sole expense, bollards or other physical barrier(s) acceptable to the City that will deter use of the Driveway for any purpose other than that identified in Paragraph 1 above. This obligation is perpetual.

3. Declarants agree to immediately repair or replace, at Declarants' sole expense, any portion of the City's sidewalk, including the wheel chair ramp, that is damaged as a result of Declarants' use.

4. Declarants agree that they will be liable for any injury or damage to persons or property resulting from the use of the Driveway.

5. Declarants agree that, so long as the Driveway remains, they will provide anyone that is interested in buying their property a copy of this Declaration before the Property is purchased, unless they have recorded the Declaration. Declarants further agree to record the Declaration as soon as they pay the balance on existing loans that are secured by the Property.

6. Declarants agree that prior to transferring ownership of or vacating the Property, Declarants shall, at Declarants' sole expense, remove all of the Driveway except for a walkway not to exceed five (5) feet in width.

7. Declarants agree that if they retain ownership of the property until May 1, 2008, they will remove the Driveway on or before that date.

8. Declarants agree that if the City takes legal action to enforce the terms of this Declaration, the City shall be entitled to recover its reasonable attorney fees and costs from the Declarants. Attorney fees and costs include, but are not limited to, the fees and costs associated with enforcing the terms of the Declaration at trial and on appeal. The term "action" shall be deemed to include any enforcement action as well as any action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction.

9. Declarants agree that this Declaration and the restrictive covenant or equitable servitude contained herein shall constitute a restriction and covenant or equitable servitude running with the land as to all of the real property that is burdened and benefited, and shall inure to the benefit of and shall be binding upon the Declarants and their respective heirs, successors, assigns, lessees, mortgagees, beneficiaries, or trustees.

IN WITNESS WHEREOF, Declarants have executed this Declaration and the City has joined in the execution as of the date first written above.

DECLARANT:
Francis L. Guess

DECLARANT:
Dolores A. Guess

Francis L. Guess
Signature

Dolores A. Guess
Signature

City of Troutdale, an Oregon Municipal Corporation

By: Erik Kvarsten
Name: Erik Kvarsten
Title: City Administrator

STATE OF OREGON)
)ss.
COUNTY OF MULTNOMAH)

Before me personally appeared the above named Declarants on the 16th day of May, 2003, and acknowledged the foregoing instrument to be the voluntary act and deed of the Declarants.

(seal)

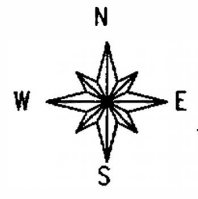
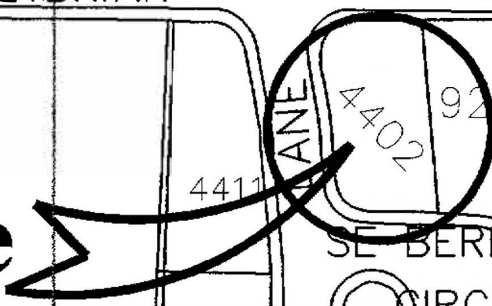


Marion Berg
Notary Public for Oregon
My commission Expires: 5-19-06

Exhibit A



Site



FILE NAME: TROUTBAS
 TITLE BLOCK: TB8X11
 EXTERNAL REFERENCES: NONE
 PLOT DATE: 05-12-2003
 BY: W.H.
 PREVIOUS REVISION DATE:

DEPARTMENT OF PUBLIC WORKS
CITY OF TROUTDALE
4402 SE Sweetbriar LN.
Site Map
 MULTNOMAH COUNTY, OREGON
 MAY 2003