

Sent via Email

Ms. Gloria Sciara
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May 6, 2021

Dear Gloria,

Thank you for looking into the status of the CC&Rs restricting my property and the other properties within the Lafayette Industrial Park. I still must insist that we hold a meeting between you, me, my attorney, and the City's attorney at least two days prior to the hearing next Wednesday, preferably on this Friday, because the messages you and Rebecca have sent me do not adequately resolve my issues, and I intend to file suit to enjoin the project if I cannot get assurances my interests will be protected.

1. Still-valid CC&Rs continue to bar the existing development:

(1) Contrary to the City's and Developer's assertions, the Lafayette Industrial Park CC&Rs (recorded in 1976, amended in 1997, and purportedly terminated in 2019) remains valid and forbids the development; and

(2) The City has not addressed the fact that the Lafayette Park Venture CC&Rs (recorded in 1979), which nobody even purports to have terminated, establish that all owners have a responsibility to maintain the "common driveways," which includes the driveways over which I have asserted my prescriptive easement. I continue to request that the City include a condition of approval requiring the developer to respect this provision of the CC&Rs, which will, in turn, help protect my prescriptive driveway rights.

A. Purported November 2019 Termination of Lafayette Industrial Park CC&Rs is ineffective, because it ignores Section 5.2 of the CC&Rs.

If, as the developer of 2354 Calle Del Mundo urges, section 5.1 of the Lafayette Industrial Park CC&Rs allows termination of the CC&R restrictions with the written approval of the owners of only 66.66% of the property within the development, then sections 5.1 and 5.2 of the CC&Rs are inconsistent to the point of directly contradicting one another. This reading renders the CC&Rs nonsensical and/or requires jettisoning the provisions of section 5.2 entirely.

Section 5.1 provides the CC&Rs remain in effect until 1990 and then for successive, subsequent periods of ten years UNLESS within one year of the beginning of any new ten year period (January 1, 1990; January 1, 2000; January 1, 2020), Owners of 2/3 of the square footage in the Industrial Park sign and record a notice of termination. This right to terminate is "subject to the right to amend and repeal as provided for herein."

Section 5.2 provides "the right to amend and repeal as provided for herein." The CC&Rs may be "terminated, extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of the owners of at least seventy-five (75%) percent of the property subject to these restrictions...."

The only way the two standards for terminating the CC&Rs (75% written approval in §5.2 vs. 66.66% written approval in §5.1) can be reconciled is by requiring 75% written approval as a threshold to allowing the once-every-ten-years 66.66% termination vote. As such, the purported termination in 2019 is ineffective.

The CC&Rs remain a binding contract that runs with the land, and I have a right to enforce the restrictions that benefit my property. *Knox v. Streatfield*, 79 Cal. App. 3d 565, 576 (1978). The CC&Rs protect owners by ensuring that 75% of them condone the termination of the restrictions that mutually protect them all. The email you sent to me was the first notice I had of any purported termination of my rights, and I intend to challenge this termination. The developer needs to obtain approval from the owners of at least 75% of the property before it can eliminate my rights.

B. The entirely separate Lafayette Park Venture CC&Rs (recorded in 1979 and applicable to a subset of the Lafayette Industrial Park properties) authorize the Condition of Approval I have requested.

As I explained in my earlier email, the 1979 CC&Rs still provide "a map showing the location of certain **common** driveways ("Driveways)" (Emphasis added).

Paragraph 8 of the 1979 CC&Rs further provides further that each owner governed by the 1979 CC&Rs

"shall have the obligation, at its sole cost and expense, to maintain any Driveways ... in a first-class manner and condition, including not only maintenance but, to the extent required, replacement thereof from time to time as necessary. Further, there shall be no relocation of any Driveways without the prior written consent and approval of both the Architectural Control Agent and the City of Santa Clara."

Section 7 of these CC&Rs states the restrictions run in perpetuity or until terminated by the written consent of 75% of the owners within the subset of owners subject to these additional CC&Rs. Your response to my prior email did not indicate that these CC&Rs had been terminated and failed to address this point at all.

The City has the power (and obligation), independent of my individual claim to a prescriptive easement, to require the developer to retain and maintain the other Lafayette Park Venture owners' free access to the "common driveways" on Developer's property.

At the very least, please confirm that, in reliance upon the Lafayette Park Venture CC&R provisions, which undisputedly remain in force, in the face of the Developer's disparagement of my rights, City will condition approval of the project (and any future projects within the affected

area) upon the Developer continuing to abide by the CC&RS by continuing to protect and maintain the "common driveways" to the south and east of the proposed new building.

2. I intend to file suit to quiet title to my prescriptive easements and to enjoin the development of 2354 Calle Del Mundo in the event the City approves the proposed project without adequate safeguards for me and my property.

It would benefit the City and the developer to meet with me to settle these issues *before* holding a meeting to approve a development that, in its current incarnation, I intend to oppose. I am attaching a draft copy of the *complaint and lis pendens I have prepared* and which I intend to file if I cannot obtain assurances that my rights will otherwise be protected by the City imposing upon the developer of 2354 Calle Del Mundo the conditions I have requested:

- (1) Developer shall continue to maintain fully accessible ingress and egress easements as described in my complaint;
- (2) Developer shall continue to provide me with full access to my recorded parking easement across the area currently proposed for landscaping;
- (3) Developer shall include in disclosures to all tenants and/or buyers an explicit warning that loud noises and unpleasant exhaust will emanate from my property at unpredictable hours;
- (4) Developer shall fund a 6 foot tall semi-transparent fence, chosen and installed by me (or my agents) to surround the front and side yard of my property to prevent short cutters and partiers from trespassing.

I appreciate the condition you have already proposed that will protect my parking easement from being covered in material incompatible with parking.

Regards,

Dr. Ron Patrick