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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF DOUGLAS

DENNIS D. BOWMAN and ANN
 BOWMAN,
 Plaintiffs,

vs

DECISION

DON T. and PEGGY HALL TRUST,
 THOMAS J. HALL, Trustee, JERRY
 W. HALL, JAMES H. DARBY, INC.,
 and DOES I through XXX,
 Defendants.

This action came on for trial before the Court on October 9, 1981. The plaintiff was present and was represented by Richard Glasson, Esq. The defendant Hall was present and was represented by David Hagen, Esq. The defendant Darby was present and was represented by Lester Berkson, Esq. The Court having considered the evidence presented at the trial together with the evidence presented at the hearing for a preliminary injunction held September 8, 1981, and having subsequent to the trial viewed the property at the request of the parties, and being fully advised, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The plaintiffs are the owners of Lot 2, Kingsbury Heights Subdivision, Douglas County, Nevada.
2. The defendant Darby is the owner of Lot 6, Kingsbury Heights Subdivision, which lot is located east of and uphill from plaintiffs' property.
3. The defendant Hall Trust was the developer of the Kingsbury Heights Subdivision and is the declarant under the declaration of Covenants, Conditions and Restrictions (hereinafter CC&R's) which are applicable to the Kingsbury Heights

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 DISTRICT CLERK
 DOUGLAS COUNTY
 COURTHOUSE
 W. NEEN, NEVADA 89001

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1 Subdivision. The defendant Jerry Hall is the manager of the Hall
2 Trust and held himself out to be the architectural review com-
3 mittee under the provisions of the CC&R's.

4 4. The portion of the declarations of covenants, conditions
5 and restrictions (Ex. 1) which are relevant to the issues before
6 this Court provide that no structure may be placed on those areas
7 delineated "open spaces" on the recorded Subdivision map. The
8 map of the Kingsbury Heights Subdivision was recorded in the
9 Douglas County Recorder's Office on October 20, 1977. (Ex. 12).

10 5. The recorded CC&R's provide for amendment by declarant's
11 declaration executed, acknowledged and recorded in Douglas County
12 Nevada.

13 6. The requirement that certain areas be designated "open
14 spaces" under the map was imposed by the Tahoe Regional Planning
15 Agency to comply with the land coverage requirements. Neither
16 Douglas County nor the declarant Hall required such reservations
17 of "open spaces".

18 7. The plaintiffs requested and secured the approval of the
19 Tahoe Regional Planning Agency to allow the plaintiffs to con-
20 struct a home in a portion of the area designated "open space"
21 on the recorded map. The defendant Darby, at the time he pur-
22 chased his lot, had requested and secured approval by the TRPA
23 of a modification of the "open space" designation on his lot.
24 Darby requested the change to determine if the TRPA would allow
25 such changes in the designated open areas and to allow for the
26 future construction of his home.

27 8. Prior to constructing their home, the plaintiffs sub-
28 mitted their construction plans to the Douglas County Building
29 Department. These plans contained the signature of Jerry Hall
30 showing approval of the architectural review committee under the
31 CC&R's.

32 9. Prior to the construction of their home, the plaintiffs
and Jerry Hall met with the defendant Darby and advised him of

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1 plaintiffs' desire to construct a home in the area designated
2 "open space" on the recorded map. The defendant Darby advised
3 plaintiff that the defendant had no objection to the location of
4 plaintiffs' home in the "open space" area as long as the location
5 of plaintiffs' home did not obstruct defendant's view of Lake Tahoe.

6 10. After receiving the consent of the defendant and what
7 plaintiffs believed to be the consent of the architectural review
8 committee and the approval of the Tahoe Regional Planning Agency,
9 plaintiffs commenced construction of their home in the area desig-
10 nated on the map as "open space". In constructing the home, the
11 plaintiffs removed numerous pine trees. The Court finds that
12 these trees obstructed the view that the defendant had of Lake
13 Tahoe as to the garage and that portion of defendant's home con-
14 structed over the garage. The house constructed by the plaintiffs
15 did not appreciably change the view that the defendant had of Lake
16 Tahoe, but primarily modified his view of the pine trees. In this
17 connection, the Court has the benefit of the testimony of the par-
18 ties together with personal observations of the property as a re-
19 sult of two views of the property taken with the permission of the
20 parties.

21 11. Since the defendant Darby has not completed the construc-
22 tion of his home, the Court was unable to determine with certainty
23 if the position of plaintiffs' house would obstruct the Lake view
24 the defendant would have from the other floors of the home to be
25 constructed by the defendant. However, the evidence which was pre-
26 sented to the Court indicates that the remainder of defendant's
27 home is to be constructed on levels above those presently constructed.
28 Therefore, it does not appear that plaintiffs' home will obstruct
29 defendant's view of Lake Tahoe.

30 CONCLUSIONS OF LAW

31 Based on the preceding Findings of Fact, this Court states
32 the following Conclusions of Law:

1. The declarant Hall Trust has the authority to amend the
CCGR's under the provisions of Paragraph 11 of Exhibit 1. The

1 declarant agreed to amend the CC&R's as the same related to the
2 "open space" designation on Lot 2 of the Kingsbury Heights Sub-
3 division provided no objections were made to declarants. Neither
4 the Tahoe Regional Planning Agency nor Douglas County objected
5 to the modification. No property owners objected to the pro-
6 posed amendment by plaintiff. The defendant Darby consented to
7 the amendment provided the structure did not block his view of
8 Lake Tahoe.

9 2. The plaintiffs, in constructing their home on Lot 2,
10 did not materially breach their agreement with the defendant
11 Darby to avoid a blockage of defendant's view of Lake Tahoe.

12 3. The plaintiffs did not conceal any material facts from
13 the defendant which plaintiffs were bound in good faith to
14 disclose.

15 4. The designated representative of the Hall Trust signed
16 the plaintiffs' building plans after receiving the approval of
17 plaintiffs and the defendant Darby.

18 5. While there has not been strict compliance with the re-
19 quirements for amending a recorded subdivision plat, all of the
20 parties who have an interest in the modification as to Lot 2
21 of the Kingsbury Heights Subdivision are before the Court and are,
22 on the basis of their conduct and agreements, estopped from
23 asserting the "open space" requirements under the recorded Sub-
24 division Plat recorded October 20, 1977, as a basis for injunctive
25 relief.

26 6. The Court finds that the Subdivision Plat of the Kings-
27 bury Heights Subdivision recorded October 20, 1977, (Ex. 12) may
28 be amended, pursuant to NRS 278.477(2)(e) to reflect the relocated
29 building envelope as agreed upon by the parties

30 7. Since the CC&R's prohibit building in areas delineated
31 "open space" on the recorded Subdivision map, they will not have
32 to be amended once the map is modified in accordance with the
agreement of the parties and the order of this Court.

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Now, Therefore, good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

1. The Kingsbury Heights Subdivision Map recorded in the Douglas County Recorder's Office on October 20, 1977, in Book 1077, page 1205, as Document No. 14200 shall be amended in accordance with the provisions of NRS 278.477(2)(c) to reflect the redesignated "open space" of Lot 2 of said Subdivision. The cost of preparing the amended map under NRS 278.477 shall be borne by the plaintiffs.

2. The defendant Darby's Application for Injunctive Relief is DENIED.

3. Each party shall bear his own costs and fees.

DATED this 18th day of March, 1982.

Howard D. White
DISTRICT JUDGE

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

February 3, 1983
J. Bernard Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas

By *Anne Bowen* Deputy

SEAL

Copies served by mail this 22nd day of March, 1982, to: Richard Glasson, Esq., P.O. Box 55, Zephyr Cove, Nv 89443; Lester Berkson, Esq., P.O. Box 349, Zephyr Cove, Nv 89448; David Hagen, Esq., 102 Roff Way, Reno, Nv 89501.

B. Newell

HOWARD D. WHITE
DISTRICT JUDGE
DOUGLAS COUNTY
RENO, NEVADA

MANOUKIAN, SCARPELLO & ALLING, LTD.

ATTORNEYS AT LAW

CARSON CITY OFFICE
303 EAST PROCTOR STREET
CARSON CITY, NEVADA 89701
TELEPHONE (702) 682-4377

LAKE TAHOE OFFICE
ROUND HILL PROFESSIONAL BUILDING
P. O. BOX 32
ZEPHYR COVE, NEVADA 89448
TELEPHONE (702) 388-6876

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Richard Glosson

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CARSON CITY, NEVADA 89701

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