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1 CASE NO. 12149

2 DEPT. NO. 1

BY D. KINCADE

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

8 DENNIS D. BOWMAN and
9 ANN BOWMAN,

10 Plaintiffs,

11 vs.

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

15 Defendants.

ORDER APPROVING PETITION
FOR AMENDMENT TO SUBDIVISION
OF KINGSBURY HEIGHTS
SUBDIVISION UNIT #3,
DOUGLAS COUNTY, NEVADA

16 BE IT REMEMBERED that on June 26, 1984, a hearing was held
17 in connection with a petition which was filed by the plaintiffs
18 herein, consistent with this Court's decision filed herein on
19 March 22, 1982, which Decision ordered, adjudged and decreed
20 that the Kingsbury Heights Subdivision Map, recorded in the
21 Douglas County Recorder's Office on October 20, 1977, in Book
22 1077, Page 1205, as Document No. 14200 shall be amended in
23 accordance with the provisions of NRS 278.477(2)(e) to reflect
24 the redesignated "open space" of Lot 2 of said subdivision.
25 Prior to the plaintiffs preparing such map, defendant JAMES H.
26 DARBY, INC. appealed this Court's decision to the Nevada
27 Supreme Court. Following the Supreme Court's entry of its
28 decision in favor of the plaintiffs, plaintiffs prepared an
29 amendment to said map and have petitioned the Court for
30 approval pursuant to the aforesaid statute.

31 At the hearing on plaintiff's petition for approval of the
32 amended map, plaintiff were represented by RICHARD GLASSON,
ESQ. of MANOUKIAN, SCARPELLO & ALLING, LTD. Defendant DON T.

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MANOUKIAN, SCARPELLO & ALLING, LTD.

ATTORNEYS AT LAW

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1 and PEGGY HALL TRUST and was present through its trustee,
2 defendant THOMAS J. HALL. Defendant JAMES H. DARBY, INC. was
3 present through its President, JAMES H. DARBY and its attorney
4 LESTER BERKSON, ESQ. Having considered the evidence offered at
5 such hearing, and having full knowledge of the evidence
6 presented at the trial held October 9, 1981, and hearing for
7 preliminary injunction held September 8, 1981, and having
8 subsequent to he trial viewed the real property in question at
9 the request of the parties, and being fully advised, this Court
10 makes the following findings of fact, conclusions of law and
11 order in the premises:

12 FINDINGS OF FACT

13 1. Plaintiff has prepared a proposed amendment to the
14 recorded subdivision map for the Kingsbury Heights Subdivision,
15 Unit No. 3, in accordance with this Court's Decision dated
16 March 18, 1982, and filed herein on March 22, 1982.

17 2. Following the dismissal of JAMES H. DARBY's appeal to
18 the Nevada Supreme Court of the aforesaid Decision, plaintiffs
19 retained the engineering firm of Jones & Turner, Inc. to
20 prepare such an amendment, a reduced size copy of such proposed
21 amendment having been attached to plaintiff's petition for
22 approval of proposed amendment to subdivision map.

23 3. Each and every owner of real property in the
24 aforesaid subdivision was notified by certified mail of
25 plaintiff's said petition.

26 4. A bonafide effort was made to communicate with all
27 necessary persons concerned with said property and all persons
28 who have responded to such communication have consented
29 thereto, and that any amendment of the Kingsbury Heights
30 Subdivision Map, Unit No. 3 as set forth in this Order does
31 not adversely affect the persons who did not respond.

32 5. Gary Leroy Burgin of Stockton, California is a legal

1 owner of Lot 7 in Kingsbury Heights Subdivision, Unit No. 3.

2 6. JAMES H. DARBY, INC. is the owner of Lot 6 of the
3 Kingsbury Heights Subdivision, Unit No. 3.

4 7. THOMAS J. HALL is the Trustee of the DON T. and PEGGY
5 HALL TRUST. Mr. Thomas J. Hall developed the Kingsbury Heights
6 Subdivision, Unit No. 3, and was the declarant under the
7 conditions, covenants and restrictions of record.

8 8. Gary Leroy Burgin, James H. Darby, and Thomas J. Hall
9 appeared at the aforesaid hearing regarding plaintiff's peti-
10 tion for approval of a subdivision map amendment and attempted
11 to object to plaintiff's petition.

12 9. Consistent with the decision of this Court rendered
13 March 22, 1982, this Court finds that DON T. and PEGGY HALL
14 TRUST, and the Trustees in connection with that Trust, waived
15 the rights they may have had in connection with objecting to
16 the proposed subdivision map change, in that they were involved
17 with, consented to and knew of plaintiff's proposed building
18 envelope change.

19 10. The Court finds that JAMES H. DARBY has waived any
20 rights that he may have had in connection with the proposed
21 change to the subdivision map in that he was involved with
22 plaintiff's change of his building envelope. That JAMES H.
23 DARBY had also requested and secured approval for modification
24 of the open space designation on his lot and he was aware of
25 the plans and changes proposed in connection with the
26 construction of a home by the plaintiffs.

27 11. Gary Leroy Burgin was aware of plaintiff's
28 construction of their home outside of their designated building
29 envelope at the time plaintiffs were building their home. The
30 construction of that house by plaintiffs in no way impaired
31 Gary Leroy Burgin's view of affected his ability to either
32 resale his lot or ultimately build upon his lot. Mr. Burgin's

1 only concern with regard to the requested subdivision map
2 change was an academic concern about maintaining the integrity
3 of the subdivision map, the original designation of open
4 spaces.

5 CONCLUSIONS OF LAW

6 1. Plaintiffs have constructed a home in the area
7 originally designated "open space" on their Lot 2 of the
8 Kingsbury Heights Subdivision, Unit No. 3. During the time
9 such home as being constructed, defendant JAMES H. DARBY, INC.,
10 sought injunctive relief from this Court to stop such building,
11 which injunctive relief was denied pursuant to this Court's
12 Decision entered March 22, 1982. In connection therewith this
13 Court ordered that such subdivision map be amended to reflect
14 the redesignated "open space". It is necessary that the
15 subdivision map be amended so as to accurately reflect the
16 status the "open space" and "building site" areas on said Lot
17 2.

18 2. Defendant DARBY, defendant HALL and defendant HALL
19 TRUST has slept on their rights and are now estopped legally
20 and equitably and cannot now be heard to complain about the
21 proposed change of the subdivision map under NRS 278.477.

22 3. Gary Leroy Burgin is not affected in any way by
23 having this Court conform the subdivision map to the realities
24 which exist regarding Lot 2 of Kingsbury Heights Subdivision
25 Unit No. 3. Mr. Burgin's academic concern regarding
26 maintaining the integrity of the original subdivision map is de
27 minimis, and this Court may exercise its discretion under NRS
28 278.477(2) to equitably weigh the concerns of Mr. Burgin
29 against those of the plaintiffs, and this Court concludes that
30 plaintiffs proposed change of the subdivision map will in no
31 way have any effect on Mr. Burgin.

32 NOW THEREFORE, good cause appearing, IT IS HEREBY ORDERED,

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1 ADJUDGED AND DECREED that:

2 1. The Kingsbury Heights subdivision map be, and is
3 hereby amended to reflect the change of open space and building
4 site in Lot 2 thereof, as is more particularly set forth on the
5 tentative first amended plat of Kingsbury Heights Subdivision
6 Unit No. 3.

7 2. Plaintiffs shall circulate the original, full scale
8 tentative first amended plat of Kingsbury Heights Subdivision
9 Unit No. 3, for execution by their surveyor RONALD W. TURNER
10 and to this Court for its signature, following which the Clerk
11 of this Court is directed to cause same to be recorded in the
12 Office of the County Recorder for the County of Douglas,
13 plaintiffs to bear any costs associated with such recordation.

14 DATED this 12th day of October, 1984.

15
16 *Howard D. Miller*

17 DISTRICT COURT JUDGE

28 CERTIFIED COPY

29 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.

30 SEAL

31 DATE: November 1, 1984
Bernard Clerk of the 9th Judicial District Court
of the State of Nevada, in and for the County of Douglas.

32 By *Janelle Sheaffer* Deputy

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COOPY

REQUESTED BY
Manoukian, Scarpello, et al
IN OFFICE RECORDS OF
SUSAN B. ...

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SUZAN B. ...
RECORDS
\$10.00 *Bh* DEPUTY

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