

DISTRICT COURT, JEFFERSON COUNTY, COLORADO

Case No. 96CV2755, Division 4

ORDER

ALBERT S. ANDERSON, et al.,

Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON,
COLORADO,

Defendant,

and

GORDON L. NOVACEK, et al.,

Intervenors.

THIS MATTER came on for trial the 10th and 11th days of March, 1998, and the Court, having considered the evidence and briefs and arguments of counsel, finds:

1. All of the remaining plaintiffs are homeowners in Columbine Knolls South, a housing development in Jefferson County, Colorado.

2. The Official Development Plan for Columbine Knolls South provides in paragraph 10 thereof as follows:

Boat, Camper and Trailer Storage

The storage of recreational vehicles such as boats, campers, trailers, motor homes, snowmobiles, etc. shall not be permitted within this development unless such storage is totally screened from public view. (emphasis mine)

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The Official Development Plan was filed of record with the Clerk and Recorder of Jefferson County in 1972 as reflected in Plaintiffs' Exhibit 1.

3. Protective Covenants for the development were then put in place by the developer, Ridgewood Development Company, which contained the identical provision in paragraph 10 of the ODP. See paragraph C-6 of Plaintiffs' Exhibit 2 and also paragraph C-6 of Plaintiffs' Exhibit 3. These documents were duly recorded in the Jefferson County records on January 15, 1974 and February 1975 or 1976, respectively.

4. These provisions governing the storage of recreational vehicles on property within the Columbine South development are clearly unambiguous and the meaning of the prohibition is not disputed by the plaintiffs. However, they urge the Court to find that the Zoning Administrator of Jefferson County is equitably estopped from enforcing the restriction according to its clear meaning because the County failed to enforce it for many years after its adoption and by word and deed led homeowners to believe that screening of recreational vehicles behind a six foot fence was acceptable.

5. In spite of the fact that the Protective Covenants for Columbine Knolls South require that recreational vehicles be totally screened from public view, the evidence discloses that the developer and Homeowner's Association Board of Directors adopted a position that screening by a six foot fence would suffice. Given the absence of complaints to the county zoning

administrator until the late eighties or early nineties, it is fair to assume that the residents of Columbine Knolls South were either ignorant of the restriction or acquiesced to its non-enforcement.

6. The overwhelming majority of plaintiffs concluded that screening of recreational vehicles required only a six foot fence after making inquiry of the sellers from whom they purchased, realtors, the developer and after driving through the development and observing recreational vehicles behind six foot fences. None of these plaintiffs researched any zoning restrictions which might apply or attempted to obtain any information from county officials in this regard.

7. Plaintiff Anderson testified that he purchased his property in 1987 and around that time called and talked to an unknown county employee about the "totally screened" provision and was told it was no problem. Plaintiff Henckel testified that he purchased his property in 1992, contacted an unknown employee of the Planning and Zoning Department and was told that RV storage was strictly a matter of covenant concern and no concern of the County. Plaintiff Sanders, who purchased her property in 1992, gave similar testimony. Plaintiff Simpson purchased his property in 1994 and testified that he visited the Jeffco Planning Department and was told by Mary Bunn, an employee, that a six foot fence for screening was acceptable. Plaintiff Patterson testified that he purchased his property in 1988 and first talked to John Buschman, Enforcement Planner and Zoning

Inspector, in 1993. Plaintiffs Brandsma, Hanson, Suchey, Thomas, Schmidt and Pethoud, likewise, testified that they had no contact with, or representations from, the County, or any of its employees, until long after they had purchased their respective properties.

8. From the inception of the applicable ODP in 1972, for this and other zoning violations in the County, the County Commissioners had adopted a re-active, complaint driven policy of enforcement rather than a pro-active policy. When the Zoning Department began receiving complaints from residents of the development, it issued violation notices and enforced the provisions of the ODP.

9. The plaintiffs have failed to persuade the Court that Jefferson County has, or ever had, an actual, long-standing policy permitting the storage of recreational vehicles by partial screening or, in particular, a six foot fence.

10. The Court is also not persuaded that any of the plaintiffs relied on such a perceived policy or, assuming that they did, that such reliance was reasonable or justified.

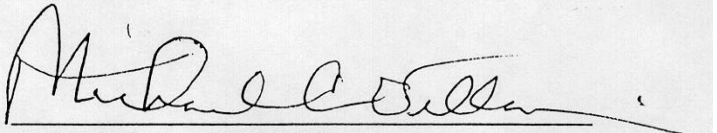
Based on the foregoing findings, the Court concludes that all plaintiffs had either actual or constructive notice of the proscription against totally unscreened recreation vehicles in the Official Development Plan for Columbine Knolls South. Lack of enforcement by the County until complaints were received does not provide plaintiffs with any basis for the claims they now make. See Flinn v. Treadwell, 207 P.2d 967 (Colo. 1949).

The Court further concludes that the Jefferson County Zoning Department and the Board of County Commissioners of the County of Jefferson, Colorado are not equitably estopped from enforcing the zoning requirement at issue here nor would manifest injustice occur as a result of its enforcement. Lehman v. City of Louisville, 857 P.2d 455 (Colo. App. 1992); Kohn v. City of Boulder, 919 P.2d 822 (Colo. App. 1995); National Advertising Co. v. Department of Transportation of the State of Colorado, 932 P.2d 871 (Colo. App. 1997).

IT IS, THEREFORE, ORDERED AND ADJUDGED that judgment enter for the defendant Board of County Commissioners of the County of Jefferson, Colorado on plaintiffs' Complaint and that plaintiffs' Complaint is hereby dismissed.

Done at Golden, Colorado, this 23rd day of March, 1998.

BY THE COURT:



MICHAEL C. VILLANO
District Judge