

Porsche – We’ve hit a Brick Wall

Background

In September 2008, Councilwoman Diane Cibrian muscled (on a ‘fast track’) the Porsche zoning case through City Council ^[1]. Prior to the final vote, Mr. Frank Burney, Porsche’s attorney, promised deed restrictions ^[2] to Vance Jackson Neighborhood, Inc. (VJNI) and neighbors on Powhatan.

VJNI has yet to receive a draft of deed restrictions which conforms to what was promised. After our last newsletter, I asked Councilman Reed Williams to intervene and see if he could help bring this case to a conclusion.

Recent Events

Councilman Williams contacted Mr. Burney and Mr. Briggs of the Porsche dealership and found out that Guenther Oil and Gas, LTD, the parent company of the Porsche dealership, had signed deed restrictions ^[3] with a home owners association (HOA) in May 2010; but the HOA was Chartwell condos and not VJNI. This came as a shock to both of us.

Chartwell condos are just north of the Calloway property. In September 2008, I placed notices ^[4] on all the doors of the condos, but to my knowledge, not one person from the condos went to any of the meetings: District Office (9/15/08), Zoning Commission (9/16/08) or City Council (9/18/08). So what possessed them to get involved now?

I left a voice message with the Chartwell HOA president and was contacted by someone from their property management group. He reported that Chartwell was contacted by Porsche – probably Mr. Burner - and told that it had “completed an agreement for mutually acceptable deed restrictions with the neighborhood association that is directly across Powhatan from the subject property” ^[5]. So Chartwell just signed their restrictions with Porsche to handle issues peculiar to them.

Again I contracted Councilman Williams to see if he could call a meeting and clear the confusion, but we received a rather confrontational and accusatory email reply from Mr. Briggs ^[5] saying he would not negotiate with me because of my “belligerent attitude”.

An Analysis of What Happened

Let’s look at three facets of what happened.

1. Are negotiations really needed?

I think Mr. Briggs’ comment about negotiations is important. For two years, VJNI has asked that Porsche deliver the deed restrictions Mr. Burney promised to City Council on September 18, 2008 ^[2]. Mr. Briggs states that deed restrictions have to be negotiated so he apparently doesn’t feel bound by Mr. Burney’s letter, in which he said that his promises “would be codified in deed restrictions enforceable by a group of neighbors, including those directly impacted and neighborhood association” ^[2].

2. What parties should negotiate?

Mr. Briggs' statement about not negotiating with me is telling. Sure, my parents may have made a mistake by not sending me to charm school, but I suspect there are more practical issues in play. Here are some possibilities.

Cibrian gave Porsche its zoning change and didn't demand finalized deed restrictions first. And now Cibrian is gone. So it's easy to understand the temptation (aka 'smart business') for Porsche to try to limit its concessions at this point.

Also, Mr. Burney promised to let Powhathan and VJNI be co-signers on the restrictions. This would give legal standing to VJNI to enforce the restrictions. Our experience is that private individuals or small organizations tend to avoid taking legal actions such as those required to enforce deed restrictions; hence you can see that cutting VJNI out of the deal would weaken the enforceability of deed restrictions in the future.

3. But aren't the Chartwell restrictions good enough?

From my reading of Mr. Burney's 2008 letter vs. the Chartwell's 2010 deed restrictions, I see 3 areas that are lacking:

a. Amplification.

Burney/2008: "no outdoor speaker system other than Muzak will be operated on the property". (See Reference 2)

Chartwell/2010: "No outdoor public speaker system will be operated on the Land that can be heard by the owners of the units located in the Complex next to the Land, except that special events may be conducted on the Land utilizing an outdoor public speaker system, provided that (i) no such usage shall constitute a legal nuisance, (ii) such usage shall be limited to the hours between 9:00 A.M. and 9:00 P.M. and (iii) no more than five (5) days of such events may be held in any calendar month." (See Reference 3, Paragraph 1.D.)

Differences: Our original request about limiting PA systems stemmed from problems in the Foothills with Red McComb's PA systems at his lots. In the Porsche case, we went from nothing other than Musak to 5 'special events' per month. Huge difference.

b. Landscaping.

Burney/2008: "landscaping will be maintained on the eastern existing buffer to screen dealer operations from the neighborhood to the east." (See Reference 2)

Chartwell/2010: "Remove the dead ivy from the complex side of the portion of the Wall closest to Powhatan." (See Reference 3, Paragraph 2.B.)

Differences: Porsche promises nothing to maintain the landscaping, other than removing dead ivy.

c. Enforcement

Burney/2008: “These issues would be codified in deed restrictions enforceable by a group of the neighbors, including those directly impacted and neighborhood association.” (See Reference 2)

Chartwell/2010: “This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.” (See Reference 3, Paragraph 4.)

Difference: VJNI is not a party of the Chartwell agreement and has no standing to enforce their agreement or any other.

Can Anything Be Done Now?

Our belief is that simple ethics calls for Porsche to honor Mr. Burney’s promises, but to our understanding, Councilman Williams and VJNI do not have any legal way to enforce the promises. Apparently Porsche’s business concerns have over-ruled any other principles in this case ^[6].

As of this writing, Councilman Williams and I have hit a brick wall. The dealership refuses to discuss the issue with us so there’s only one option left. If you agree that the dealership should implement the deed restrictions promised by Mr. Burney, please contact Glenn Garde, General Manager, Porsche Cars North America, Inc.:

US Mail:

Glenn Garde, GM
Network Development
Porsche Cars North America, Inc.
980 Hammond Dr, Suite 1000
Atlanta, GA 30328

Email:

To: glenn.garde@porsche.us
CC: officers@vjni.org
Subject: San Antonio Deed Restrictions

Phone: 770-290-3500

Given the effectiveness of your past actions (B-Rock, Family Friendly Lanes, Digital Billboards, etc.), your involvement now could be pivotal. I will of course report any movement in this issue in future newsletters.

**Ted Trakas, President
Vance Jackson Neighborhood, Inc.**

End Notes:

1. This was case # Z2008262 on the old Calloway property, 9455 IH 10 West the I-10 Access Road. For the complete details, see our Zoning page:
<http://www.vjni.org/Zoning-Cases/index.htm>
2. Sep 18, 2008 - Burney to Cibrian:
http://www.vjni.org/Zoning-Cases/200809_I10-Wurzbach/20080918_Burney-2-Cibrian.pdf
3. May 2010 – Chartwell condos deed restrictions:
http://www.vjni.org/Zoning-Cases/200809_I10-Wurzbach/20100529_Chartwell-Restriction-Agreement.pdf
4. Sep 9, 2008 – VJNI Information sheet
http://www.vjni.org/Zoning-Cases/200809_I10-Wurzbach/20080909_Info-Sheet_Z2008262.pdf
5. Sep 19-30, 2010 – Email about the Charwell condos deed restrictions:
http://www.vjni.org/Zoning-Cases/200809_I10-Wurzbach/Emails_Z2008262_20100919-30.pdf
6. “Flywheel” by Sherwood Baptist Church is a good movie dramatization of the more typical business vs. ethical conflicts that occur in the automotive industry.