

FILED DISTRICT COURT
Third Judicial District

SEP - 9 2002

SALT LAKE COUNTY

By G. J. [Signature]
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215 S STATE 12TH FLOOR
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BY: ZJM, DEPUTY - WI 19 p.

Attorneys for Defendants Woodlands III Holdings, LLC; Woodlands IV Holdings, LLC;
JDJ Properties, Inc.; and The Woodlands Business Park Association

IN THE THIRD DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

LUTHERAN HIGH SCHOOL)
ASSOCIATION OF THE GREATER SALT)
LAKE AREA, a Utah non-profit corporation,)
dba SALT LAKE LUTHERAN HIGH)
SCHOOL,)

Plaintiff,)

vs.)

WOODLANDS III HOLDINGS, LLC, a)
Utah limited liability company;)
WOODLANDS IV HOLDINGS, LLC, a)
Utah limited liability company; BEDFORD)
PROPERTY INVESTORS, INC., a)
Maryland corporation; JDJ PROPERTIES,)
INC., a Utah corporation; THE)
WOODLANDS BUSINESS PARK)
ASSOCIATION, a Utah non-profit)
corporation; WASATCH PROPERTY)
MANAGEMENT, INC., a Utah corporation;)
and JOHN DOES 1-1,000,)

Defendants.)

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Civil No. 960908063 PR

Judge Sandra N. Peuler

Defendants, Woodlands III Holdings, LLC, JDJ Properties, Inc., and The Woodlands Business Park Association, filed their Motion for Summary Judgment (“Defendants’ Motion For Summary Judgment”) on or about September 25, 2001. Plaintiff thereafter filed its Supplemental Complaint on or about February 8, 2002, joining Woodlands IV Holdings, LLC, as a defendant. On or about March 25, 2002, Plaintiff filed its Motion for Summary Judgment. Woodlands IV Holdings, LLC, joined in the motion papers in support of Defendants’ Motion for Summary Judgment and in opposition to Plaintiff’s Motion for Summary Judgment. The motions were fully briefed by the parties and submitted to the court for decision, accompanied by a request for oral argument. Both motions came on for hearing before the Honorable Sandra N. Peuler on April 22, 2002, at 10:00 a.m. The moving Defendants were represented by P. Bruce Badger and Matthew L. Anderson of Fabian & Clendenin. Plaintiff was represented by Stephen F. Hutchinson of Taylor, Adams, Lowe & Hutchinson. Defendant Bedford Property Investors, Inc., was represented by Ronald G. Russell of Parr, Waddoups, Brown, Gee & Loveless

The court heard argument of counsel and having fully considered the parties’ respective moving papers, including affidavits supporting and opposing the motions, and being otherwise fully advised, now enters its order.

IT IS HEREBY ORDERED:

1. Defendants’ Motion for Summary Judgment is granted for the reasons set forth in the Minute Entry dated April 26, 2002 (attached hereto as Exhibit “A” and incorporated herein by this reference) and as set forth in Defendants’ memoranda filed in support of Defendants’ Motion for Summary Judgment.

2. Plaintiff's Motion for Summary Judgment is denied for the reasons set forth in the Minute Entry (Exhibit "A" hereto) and as set forth in Defendants' memorandum opposing Plaintiff's Motion for Summary Judgment.

3. This action involves a non-exclusive easement (the "Easement") appurtenant to and across a parcel of property located in Salt Lake County which is currently owned by the Salt Lake Lutheran High School. The Easement runs west from 900 East at approximately 4000 South and was granted for the purpose of providing vehicular access to a portion of what is now the Woodlands Business Park located on 700 East. The Easement was created by a Declaration of Easements, Covenants and Restrictions (the "1983 Declaration"), which was recorded in the records of the Salt Lake County Recorder on October 27, 1983, as Entry 3862259, Book 5502, Page 1559. The legal descriptions that were attached as exhibits to the 1983 Declaration were reversed, so an Amendment to Declaration of Easements, Covenants and Restrictions (the "1984 Declaration") was recorded on June 20, 1984, as Entry 3957731, Book 5566, Page 2146, to correctly set forth the legal descriptions of the affected parcels. The Easement is referred to in the 1983 Declaration as the "Associates Roadway". The servient estate with respect to the Easement or the Associates Roadway is referred to as Tract A in the 1983 Declaration, and is more particularly described in Exhibit "B" hereto. The dominant estate with respect to the Easement or the Associates Roadway is referred to as Tract B in the 1983 Declaration, and is more particularly described in Exhibit "C" hereto.

4. Since the grant of the Easement, the Woodlands Business Park has expanded to property north of the dominant estate that the parties to this action have referred to variously as

Tract C, or the "Northern Parcel" or "Expansion Property", which is more particularly described in Exhibit "D" hereto. Tract C contains both a high-rise office building ("Tower IV") owned by Woodlands IV Holdings LLC, and a multi-level parking facility.

5. The Easement, which is for the benefit of the dominant estate, has not been overburdened by the use of the Easement by the owners, tenants, subtenants and concessionaires of Tract B and their customers, invitees and guests, including their use of the Easement to access parking on Tract C.

6. The owners, tenants, subtenants and concessionaires of Tract B and their customers, invitees and guests, may continue to use the Easement to access parking on Tract C.

7. The owners, tenants, subtenants and concessionaires of Tract C and their customers, invitees and guests, may not use the Easement. Accordingly, Woodlands IV Holdings, LLC, shall take all steps necessary to restrict use of the Easement by the Tower IV tenants, subtenants and concessionaires and their customers, invitees and guests, including notifying them, restricting access as part of the lease agreements, and such other steps as may be appropriate.

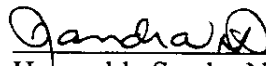
8. This Order is an adjudication of all of the claims in this action notwithstanding that Wasatch Properties Management, Inc., was joined as a defendant and has never appeared. Accordingly, the court expressly determines that there is no just reason to delay entry of final judgment and expressly directs entry of this Order as Final Judgment.

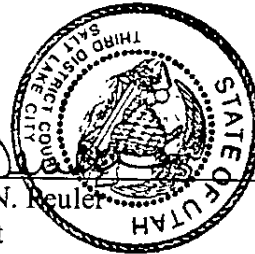
9. **Any person may record a certified copy of this Order in the official records of the Recorder of Salt Lake County, State of Utah. The recording of this Order shall serve**

to immediately release the *Lis Pendens* recorded in the records of the Salt Lake County Recorder on November 21, 1996, as Entry 6511599, Book 7540, Page 10, which referenced the real property described in Exhibits "B", "C" and "D" hereto.

DATED this 9 day of September, 2002.

BY THE COURT:


Honorable Sandra N. Reuler
Third District Court



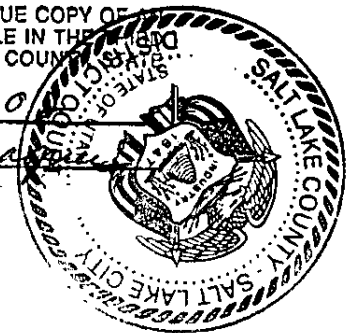
Approved as to form:

Robert M. Taylor
Stephen F. Hutchinson
Sue J. Chon
Attorneys for Plaintiff

I CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.

DATE: 9-24-02


DEPUTY CLERK



CERTIFICATE OF SERVICE

On the 1ST day of August, 2002, I hereby certify that I caused to be served a true and correct copy of the foregoing **Proposed Order Granting Defendants' Motion For Summary Judgment and Denying Plaintiff's Motion For Summary Judgment** by hand delivering said document as follows:

Robert M. Taylor
Sue J. Chon
Taylor, Adams, Lowe & Hutchinson
Attorneys for Plaintiff
2180 South 1300 East, Suite 520
Salt Lake City, UT 84106

Ronald G. Russell
Parr, Waddoups, Brown, Gee & Loveless
Attorneys for Bedford Property Investors, Inc.
185 South State, #1300
Salt Lake City, Utah 84111

Annette E Clark

THIRD DISTRICT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

LUTHERAN HIGH SCHOOL
ASSOCIATION OF THE GREATER
SALT LAKE AREA, a Utah non-
profit corporation, dba SALT
LAKE LUTHERAN HIGH SCHOOL

Plaintiff,

vs.

WOODLANDS III HOLDINGS LLC, a
Utah limited liability
company, et. al.

Defendants.

MINUTE ENTRY

CASE NO. 960908063

JUDGE SANDRA N. PEULER

This matter is before the Court on the parties' cross Motions for Summary Judgment. Oral arguments were held on April 22, 2002. Following the conclusion of the hearing, the Court took the matter under advisement. Now, having fully considered the arguments of counsel, submissions of the parties and the applicable legal authority the Court enters the following ruling.

The relevant facts are as follows. In October 1983 Woodland Investment Company ("Woodland") owned the parcel of land located at 4020 South 900 East, Salt Lake City, Utah ("Tract A") and Woodland Associates ("Associates") owned the land located directly west of Tract A ("Tract B"). On October 27th, 1983 Woodland and Associates entered into a "Declaration of Easements Covenants and Restrictions" (the "1983 Declaration") under which the parties provided for: (1) an easement over Tract A which provided access to Tract B from 900 East; and (2) an easement over Tract B which

provided access to Tract A from 700 East. The language of the Declaration evidences the clear intent of the parties that both tracts would be commercial in nature. Eventually, Tract B developed commercially and currently contains: a parking facility, three high rise office buildings ("Towers I, II and III"), open parking areas and two retail centers. Tract A, on the other hand, was sold in 1992 to the Lutheran High School Association ("Plaintiff").

The current dispute revolves around a contiguous parcel of land owned by Woodlands IV and located immediately north of Tract B ("Tract C"). Tract C is an expansion of the original development and contains both a high rise office building ("Tower IV") and a multi level parking facility. Currently, Tract B tenants, working at Tower III, are permitted to use Tract C's parking facility. In order to reach the parking facility, Tract B workers use the easement over Tract A. Plaintiff objects to this use of the easement by claiming that it overburdens the easement in conflict with the original intention of the parties.

As an initial matter, both parties agree that the benefit of the easement may not be enlarged to include Tract C. Therefore, the tenants of Tower IV, located on Tract C, may not use the easement to access that property. Accordingly, defendants are ordered to take all necessary steps to restrict use of the

easement by Tower IV tenants, including notifying them, restricting access as part of the lease agreements, and such other steps as may be appropriate.

As to the remaining issue, the Court concludes that the easement is not overburdened by the Tract B tenants' use of the easement to access parking on Tract C.

Generally, the holder of an easement is entitled to use that easement in a manner "reasonably necessary for the convenient enjoyment of the servitude." RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.10 (2000). Additionally, the terms 1983 Declaration indicate that this easement was specifically designed for the "benefit" of the parties and their tenants. (Declaration of Easements Covenants and Restrictions Sec. 4 ¶ d). Here, the tenants of Tract B, for whom the easement was originally intended, make no greater use of the easement by parking on Tract C, than they would if they parked on Tract B; there is no evidence that the parking arrangement causes any additional vehicle traffic. In addition, although plaintiffs argued that the parking arrangement makes Tract C a beneficiary of the easement, there is no evidence in the record to support that. Rather, it appears that the tenants of Tract B only use the easement for the benefit and enjoyment of the servitude to which they are entitled.

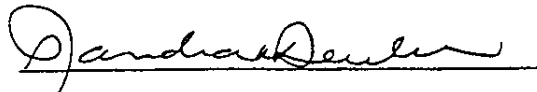
Accordingly, defendants' Motion for Summary Judgment is

granted, and plaintiffs' Motion for Summary Judgment is denied.

Defendants' counsel is directed to prepare an Order consistent with this Minute Entry and submit the same to the Court for review and signature.

Dated this 26 day of April, 2002.

BY THE COURT:



SANDRA N. PEULER
DISTRICT COURT JUDGE

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 960908063 by the method and on the date specified.

METHOD	NAME
Mail	MATTHEW L. ANDERSON ATTORNEY DEF 215 South State St. Suite 1200 P.O. Box 510210 Salt Lake City, UT 84151
Mail	STEPHEN F HUTCHINSON ATTORNEY PLA 2180 SOUTH 1300 EAST SUITE 520 SALT LAKE CITY UT 841060000
Mail	RONALD G RUSSELL ATTORNEY DEF 185 SOUTH STATE STE 1300 PO BOX 11019 SALT LAKE CITY UT 841470019

Dated this 6 day of June, 2007.

R. Anderson
Deputy Court Clerk

BK 8865 PG 2448

EXHIBIT "B"

EXHIBIT B

The following real property located in Salt Lake County, Utah:

TRACT I

Sidwell No.: 16-32-376-047

Commencing 145.67 feet South from the Northeast corner of Lot 12, Block 5, Ten Acre Plat A, Big Field Survey; thence South 237.13 feet; West 379.5 feet; North 0°06'10" East 383 feet; East 229.5 feet; South 145.67 feet; East 150 feet to BEGINNING. 2.82 acres.

TRACT II

Sidwell No.: 16-32-376-026

Commencing North 0°04' East 168.2 feet from the Southeast corner of Lot 12, Block 5, Ten Acre Plat A, Big Field Survey; thence North 0°04' East 23.2 feet; West 23 rods South 0°04' West 23.2 feet; East 23 rods to BEGINNING 0.2 acres.

TRACT III

Sidwell No.: 16-32-376-044

Commencing at the Southeast corner of Lot 11, Block 5, Ten Acre Plat "A", Big Field Survey; thence West 766.09 feet; North 327.21 feet; East 766.09 feet; South 327.21 feet to BEGINNING.

The foregoing notwithstanding Tracts I and II shall be benefited by the Woodland Easement only so long as its use is limited to use for apartment purposes.

BK 8865 PG 2450

EXHIBIT "C"

EXHIBIT C

Sidwell Nos.: 16-32-352-051
16-32-352-057
16-32-352-058
16-32-352-059
16-32-352-060
16-32-352-061
16-32-352-062
16-32-352-063

BEGINNING at the Northeast corner of Lot 8, Block 5, Ten Acre Plot "A", Big Field Survey; and running thence south $0^{\circ}09'59''$ West 572.84 feet to the Southeast corner of said Lot 8, thence South $0^{\circ}09'59''$ West 19.83 feet to the South line of Lot 14A, CLEARVIEW ACRES SUBDIVISION; thence South $89^{\circ}55'$ West 106.51 feet to the Southeast corner of Lot 15A; thence North $88^{\circ}50'40''$ West 100.01 feet to the Southeast corner of Lot 16A; thence North $89^{\circ}52'30''$ West 100.00 feet to the Southeast corner of Lot 17A; thence North $89^{\circ}59'27''$ West 100.00 feet to the Southeast corner of Lot 18A; thence North $88^{\circ}23'10''$ West 100.03 feet to the Southeast corner of Lot 19A; thence North $89^{\circ}01'$ West 100.01 feet to the Southeast corner of Lot 20A; thence North $87^{\circ}39'20''$ West 160.11 feet to the Southwest corner of said Lot 20A, CLEARVIEW ACRES SUBDIVISION; thence North $0^{\circ}14'13''$ East 6.78 feet to the Southwest corner of said Lot 8; Block 5, Ten Acre Plat "A"; thence North $0^{\circ}14'13''$ East 573.07 feet to the Northwest corner of said Lot 8; thence South $89^{\circ}58'24''$ East 89.30 feet; thence along the arc of a 622.03 foot radius curve to the right 715.24 feet to the point of BEGINNING, said arc being subtended by a chord of South $89^{\circ}58'24''$ East 676.48 feet.

BK 8865 PG 2452

EXHIBIT "D"

EXHIBIT D

Real Property situated in Salt Lake County, Utah, described as follows:

Sidwell No.: 16-32-352-011

Commencing 352.1 feet South from the Northwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence East 150 feet; thence South 65 feet; thence West 150 feet; thence North 65 feet to the point of beginning.

Sidwell No.: 16-32-352-012

Commencing 50 feet North from the Southwest corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence East 150 feet; thence North 50 feet; thence West 150 feet; thence South 50 feet to the point of beginning.

Sidwell No.: 16-32-352-013

Commencing at the Southeast corner of Lot 9, Block 5, Ten Acre Plat "A", Big Field Survey, and running thence West along a 622.03 foot radius curve 715.24 feet, (said arc being subtended by a chord of South 89 degrees 59' East 676.48 feet) thence West 82.52 feet; thence North 50 feet; thence East 150 feet; thence North 50 feet; thence West 150 feet; thence North 56.52 feet; thence East 150 feet; thence North 130.58 feet; thence East 389 feet; thence South 13 feet; thence South 85 degrees 34' East 220.6 feet; thence South 257.1 feet to the point of beginning.

THE AFORESAID PARCELS ARE FURTHER DESCRIBED BY ALTA/ACSM SURVEY AS FOLLOWS:

WEST PARCEL – NORTH AREA WOODLANDS BUSINESS PARK

BEGINNING at the Southwest corner of Lot 9, Block 5, 10 Acre Plat "A", Big Field Survey and running thence North 0 degrees 14'13" East along the East line of 700 East Street 220.97 feet; thence South 89 degrees 57'56" East 150.00 feet; thence North 0 degrees 13'23" East 65.00 feet; thence South 89 degrees 57'38" East 110.00 feet; thence South 0 degrees 02'22" West 208.635 feet to a point on a curve to the left; the radius point of which bears South 15 degrees 30'15" East 622.03 feet; thence Southwesterly along the arc of said curve 189.008 feet; thence North 89 degrees 58'24" West 89.30 feet to the point of BEGINNING.

Exhibit D (con't.)

EAST PARCEL – NORTH AREA WOODLANDS BUSINESS PARK

BEGINNING at a point North 0 degrees 14'13" East along the East line of 700 East Street 220.97 feet and South 89 degrees 51'36" East 150.00 feet and North 0 degrees 13'23" East 65.00 feet, and South 89 degrees 57'38" East 110.00 feet from the Southwest corner of Lot 9, Block 5, 10 Acre Plat "A" Big Field Survey and running thence South 89 degrees 57'38" East 285.26 feet; thence South 0 degrees 11'14" West 17.30 feet; thence South 85 degrees 34'00" East 220.80 feet; thence South 0 degrees 09'59" West 251.59 feet to the Southeast corner of Lot 9, Block 5, 10 Acre Plat "A", Big Field Survey, said point also being on a curve to the left, the radius point of which bears South 32 degrees 58'02" West 622.03 feet; thence Westerly along the arc of said curve 526.228 feet; thence North 0 degrees 02'22" East 208.635 feet to the point of BEGINNING.