

MEMORANDUM

TO: Julian Cloud

FROM: Langdale Vallotton, LLP

DATE: September 20, 2024

RE: Restrictive Covenant Summary for Gornto Road Property

The restrictive covenants in the Warranty Deed from A. F. Saunders, Jr. to H. Dennis Wetherington dated October 25, 2000, recorded in Deed Book 1923, Page 139 (the “2000 Warranty Deed”) are now expired and no longer apply to the property. Additionally, the restrictions contained in the Warranty Deed from H. Dennis Wetherington to Canaan Properties, LLC dated August 28, 2003, recorded in Deed Book 2659, Page 23 (the “2003 Warranty Deed”) have also expired. Georgia law provides that covenants restricting lands to certain uses shall not run for more than 20 years in municipalities which have adopted zoning laws nor in those areas in counties for which zoning laws have been adopted. *O.C.G.A § 44-5-60*. Despite the restrictions in both the 2000 Warranty and the 2003 Warranty Deed expiring, the easements contained in both deeds are still valid and enforceable and will apply to the property. The various easements have been created by plat as well as by recorded agreements between the property owners.

The 2000 Warranty Deed.

- The 2000 Warranty Deed provides that the property shall not be used for automobile service stations, food stores, restaurants and food catering services, or retail auto parts and tire sales. These restrictions expired in 2020 pursuant to *O.C.G.A § 44-5-60*. Further the building approval and the signage approval would also be use restrictions that expired in 2020 along with the other use restrictions.
- The 2000 Warranty Deed and Plat Record Book A, Page 1441 create the following easements:
 - 30’ access easement running north and south through the middle portion of the property.
 - 20’ access easement running north and south along the western boundary of the property with the railroad.
 - 30’ sanitary sewer easement running north and south through the eastern portion of the property.
- This deed also contains maintenance obligations for the owner of the property. The owner is responsible for one-half of the costs of maintenance for the access easement areas detailed above.

The 2003 Warranty Deed.

- This deed reiterates the three easements described in the 2000 Warranty Deed. However, this deed also only conveys 2.039 acres of the 3.92 acres described in the 2000 Warranty Deed. Due to this subdivision, the 2003 Warranty Deed provides for an additional 30' sanitary sewer easement running east and west through the middle and southern portions of property.
- The building approval use restrictions contained in this deed would have expired in 2023. The owner of property would not have to get approval for improvements to be located on the property. The approval restriction is also expressly terminated in the Sign Easement Agreement (defined below).
- The 2003 Warranty Deed also references a Sign Easement and Use Agreement recorded in Deed Book 2641, Page 19 (the "Sign Easement Agreement"), and a Reciprocal Easement and Operating Agreement recorded in Deed Book 2659, Page 19 (the "Reciprocal Easement Agreement"), which we outline hereinbelow.

The Sign Easement Agreement.

- This Sign Easement Agreement establishes the right for the property owner to use, maintain, and have access to the existing commercial sign board located on the front parcel adjacent to Gornto road. The agreement further provides that the owner of the property will be responsible for one-half of the maintenance, repair, and upkeep of the commercial sign board.
- The owner of the property may modify the sign provided that the modifications do not substantially alter the size or the style of the sign.

Reciprocal Easement Agreement.

- This agreement reaffirms and reestablishes the 30' access easement running north and south through the middle portion of the property and the 20' access easement running north and south along the western boundary of the property adjacent to the railroad.
- The responsibility for performing and paying for maintenance under this agreement falls on the owner of the property of which the maintenance is performed. The other property owner may provide written notice to the owner of the property needing maintenance, and after ten days with no response, the other property owner may perform such maintenance at the expense of the defaulting owner. If the party owning the property needing maintenance does not reimburse the other owner who performed the maintenance, the other owner may lien the property on which the maintenance was performed.

- This agreement provides that any changes to the signage located on the front parcel adjacent to Gornto Road must be unanimously approved by the owners of all three of the properties. Additionally, the message portion of the sign is reserved for the owner of the front parcel. The agreement appears a bit ambiguous, but it seems to provide that the owner of the 2.039 acre tract will be responsible for two-thirds of the expenses for the usage of the sign. However, at the time of the agreement, Canaan owned both the 2.039 acre tract and the tract that is now Berta's pizza.
- All parking lots and drive aisles shall be maintained by the owner of the property on which the parking lots and drive aisles are located.
- The owner of the property is responsible for fifty-two percent of the lighting bill for external parking lot lights with the front parcel owner being responsible for the remaining forty-eight percent. However, this proration is based on the total square footage owned by each of the parties.
- The maintenance and repair of the sewer easement areas shall be the responsibility of the owner of the property on which the easement area lies. However, maintenance for the 20' sewer easement and the 60' REA easement as shown on Plat Cabinet A, Page 2279, are the responsibility of the owner of the current Canaan property.
- The owner of the front parcel has reserved a parking easement for the two handicap spaces located adjacent to the front parcel. The sole use of these spaces is retained by the front property owner.
- This agreement also establishes various utility easements for the front property and the current Canaan property. The location of the utility lines may be changed by the owner of the respective property so long as such alteration does not adversely affect the other owner. The maintenance and repair of these utility lines shall be the responsibility of the owner of the property on which the utility lines are located.

In conclusion, the use restrictions contained in the 2000 Warranty Deed and the 2003 Warranty deed have expired pursuant to Georgia law. However, the property remains subject to various access, sign, sewer, and utility easements. The obligations under those easements generally fall on the owner of the property on which the easement is located. However, in certain circumstances the owner of the Canaan property will be responsible for the cost of maintaining and repairing the easement areas located on the two adjacent properties to the north and south.