

Enjoin Building of Roadway on Course as Restrictions Violation

By WILLIAM JABINE

A proposed road which would run across a golf course near Shelby, N.C., aroused opposition among neighbors and some of the members of a golf club. They sought an injunction to prevent the construction of the road, which as planned, was to bisect the 9-hole course between the seventh green and the eighth

Legal Side of Golf

tee. Defendants in the action were the owners of land adjacent to the course, who intended to subdivide their land and needed the road to serve the purchasers of their lots, and the directors of the golf club who had voted to permit the construction of the proposed road.

Back in 1926 when the golf course was started, the land on which it was built was owned by the Cleveland Realty Co. which had developed it for residential and recreational purposes including a 9-hole golf course. Other portions of the tract had been sold to individuals who built residences thereon. On May 25, 1926, the company recorded a plat of the development showing lots, streets and the golf course. On the plat were inscribed certain provisions and restrictions, portions of which read as follows:

"Developers do hereby dedicate the streets and alleys as indicated on the plat to the public use forever * * *

"We further dedicate the golf links and playgrounds, and the land occupied by the same indicated on the map, for such use and pleasure of the owners of the lots * * *

"We restrict the use of all lots shown on this plat * * * in the following manner:

"1. The lots shown on this plat are to be used for the location of residences,

with only one residence to the lot * * *

"3. All title, rights and property not specifically conveyed are hereby reserved to (developers) * * *

"4. Further restrictions may be prescribed in several conveyances by (developers) which together with the foregoing shall perpetually attach to and run with the land."

Deed to Club

The company then proceeded to sell its lots and also executed a deed to the Cleveland CC, Inc. This deed included clauses inserted between the description of the golf course and what is known as the habendum clause, the following restrictions:

"1. That the land herein conveyed is to be used as the site of a 9-hole golf course and tennis courts as now used and located.

"3. That said land shall be used for no other purpose than as the site of a golf course and tennis courts and other recreational purposes. Any portion not occupied by same may be used for parks and playgrounds for the use and enjoyment of the members of said golf course and tennis courts, including their families and guests.

"4. That in the event of the violation of any of the restrictions or reservations herein set forth, the grantor, its successors and assigns, shall have the right to have the same abated.

"5. That all of said conditions, easements and reservations shall perpetually attach to and run with the land conveyed."

Injunction Dissolved

In 1963 a man named Hobbs, who was developing land north of and adjoining the golf course, sought permission to construct a road across the course. Owners of lots purchased from the Cleveland Realty Co. objected, as did some of the members of the golf club. They joined Cleveland Realty in seeking an injunction to bar the construction of the road. A temporary injunction was granted which later was dissolved. An appeal to the Supreme Court of North Carolina followed.

The trial court which dissolved the

injunction held that the restrictions in the deed to the Cleveland CC were of no effect because they were merely part of the description of the property and did not appear in the granting or habendum clauses. The Supreme Court disagreed, saying in part:

"The roadway which Hobbs proposed to construct and maintain would be inconsistent with and violative of the restrictions which Cleveland Realty Co. undertook to impose. The golf course was restricted to recreational uses. It was not the intention of the realty company that it should be even a limited thoroughfare for public travel and have a roadway thereon incidental to the development of residential subdivisions by independent developers of land outside the Cleveland Springs Estate (original name of the course), and thereby became a consideration and inducement to prospective purchasers in independent subdivisions. It was undoubtedly contemplated that the golf course would be a relatively private and secluded area where those entitled thereto, children and adults, might enjoy recreational activities without the dangers, interruption and molestation of vehicular traffic.

"Where lots are sold and conveyed by reference to a map or plat which represents the division of a tract of land into streets, lots, parks and playgrounds, a purchaser of a lot or lots acquires the right to have the streets, parks and playgrounds kept open for his reasonable use, and this right is not subject to revocation except by agreement. (Citations.)

"The map of the Cleveland Springs Estate shows no roadway between the seventh green and the eighth tee, and no roadways extending across the golf course to property outside the subdivision. To permit a roadway, open to public use, to be constructed, maintained and used over and across land dedicated for the purpose of a golf course would amount to a dedication of the land to a purpose in conflict with that for which it was originally dedicated. If it is permissible in this instance, we see no reason why a roadway, open to the public, could not be maintained between each green and tee and outside each fairway."

Hudson Newsletter Includes Some Hot Weather Suggestions

A recent issue of the Hudson Valley GCSA Newsletter, edited by Bill Smart, supt. at The Powelton Club, Newburgh, N. Y., contains some interesting hot weather tips. Particularly valuable to turfmen are remarks made in a section of the article that deals with wilt conditions.

Troublesome hours are ahead, it is pointed out, when there is severe moisture loss in fine turf. There are numerous signs that tell when this is going on. Small birds sit with their bills open, as if gasping . . . Dogs dig holes and lay in them . . . Dirt roads are powder-dusty . . . Water from a hose is almost too hot to touch when it first comes out . . . An automobile is too hot to touch . . . Streams drop rapidly.

The article goes on to suggest that greens should be checked the first thing in the morning and at two hour intervals until around 3:30 or 4 p.m. If, in the early morning, there is an absence of dew on any spot or portion of a green, there could be trouble ahead. This is a localized dry spot and should be dealt with immediately.

Make Sure of Proper Care

Where there is a history of disease, the article recommends that regular spraying be carried out during the hot period. It also tells the supt. never to leave his course in the summertime unless he is absolutely sure that the greens will be properly cared for in his absence. This applies to even a few hours as well as days.

Fungicide treatments are made more effective and scums and algae are better controlled if greens are treated in mid-season with a light application of hydrate of lime, according to the Newsletter piece. A 5 to 10 pound application, put on dry with a 36-inch spreader, is recommended. The lime should be watered in and no fertilizer treatment should be made immediately before or after the application.

Muriate of potash (60 per cent) is recommended for stiffening grass blades and