

*198 Brecks Lane
Wilmington, Delaware 19807*

October 3, 2008

**VIA ELECTRONIC MAIL, FACSIMILE
AND FEDERAL EXPRESS**

Gregg E. Wilson, Esquire
New Castle County Department of Law
87 Reads Way
New Castle, DE 19720-1648

**Re: 20 Montchanin Road, Christiana Hundred
Deed Restriction Amendment Application**

Dear Gregg:

I understand from Dick Beck (acting on behalf of The Kennett Pike Association) that the County Law Department is considering legal aspects of the pending application to amend the deed restrictions for 20 Montchanin Road, which is the address of the former headquarters of Columbia Gas Systems.

To assist in your deliberations, please find enclosed copies of Affidavits executed by former Chief Justice E. Norman Veasey and Rodman Ward, Esquire. Former Chief Justice Veasey represented Columbia Gas Systems at the time when the restrictions were made and recorded, and Rodman Ward, Esquire, represented residents in the community who brought a lawsuit opposing the rezoning of the land from residential to office.

The lawsuit filed on behalf of the community was ultimately dismissed in reliance on changes that were made to the prior restrictions for the community's protection. Whereas the restrictions initially offered by Columbia Gas to support its rezoning application were enforceable solely by New Castle County Council and could have been amended solely by New Castle County Council, the restrictions as re-drafted and re-recorded added The Kennett Pike Association and the Hagley Foundation as expressly named third party beneficiaries with enforcement rights and powers.

The applicant, 20 Montchanin Road LLC, has neither sought nor obtained the consent of either The Kennett Pike Association or the Hagley Foundation to the proposed deed restriction amendment. Evidently the applicant has misread the deed restrictions, and based on this misreading has concluded that words allowing County Council to approve an amendment to the

deed restrictions without the consent any "other party," means that the consent of the KPA and Hagley is not required.

However, as confirmed by the enclosed Affidavits, it was never intended that the restrictions as re-drafted and re-recorded to resolve the lawsuit and pave the way for rezoning of the property, could unilaterally be amended by County Council for the purpose of changing the protections which The KPA and Hagley had been empowered to enforce. That would have made the addition of The KPA and Hagley illusory. The reference to "other parties" in the revised restrictions for amendment purposes means nothing more than parties who are not expressly named in the revised restrictions. It does apply to The KPA and Hagley Foundation

Based on the enclosed Affidavits as well as the obvious purpose of the restrictions, I respectfully request that you advise the Land Use Department to reject further consideration of the application for deed restriction amendment unless and until the applicant obtains the consent and approval of The Kennett Pike Association and The Hagley Foundation, or convinces a Court of competent jurisdiction to hold that such consent and approval is unnecessary.

Sincerely,

A handwritten signature in blue ink that reads "Allen M. Terrell, Jr." The signature is fluid and cursive, with the first name "Allen" and last name "Terrell" being the most prominent parts.

Allen M. Terrell, Jr., Esquire

Enclosures

cc: Councilman Robert Weiner
New Castle County Department of Land Use
The Eleutherian Mills-Hagley Foundation
The Kennett Pike Association
Pamela Scott, Esquire

AFFIDAVIT OF E. NORMAN VEASEY

STATE OF DELAWARE)
: SS.
NEW CASTLE COUNTY)

BE IT KNOWN, that on this 3rd day of October, 2008, The Honorable E.

Norman Veasey, personally known to me, appeared before me, the undersigned Notary Public, and affirmed the following to the best of his knowledge, information and belief:

1. My name is E. Norman Veasey. I am a member of the Delaware Bar, former Chief Justice of Delaware, and a resident of New Castle County in the State of Delaware. I make this Affidavit in support of the rights of The Kennett Pike Association, Inc. ("KPA") and the Eleutherian Mills-Hagley Foundation, Inc. ("Hagley") under the Agreement Declaring Restrictions dated January 17, 1969, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, in Deed Record Y, Volume 81, Page 155, a copy of which is appended hereto as Exhibit A (the "Final Restrictions").

2. The Final Restrictions were made and recorded by Dorcas Van Dyke Farquhar, Donald K. Farquhar (the "Farquhars") as record owners and by Columbia Gas System Service Corporation ("Columbia") as beneficial owner against 35.595 acres of land fronting on Montchanin Road in Christiana Hundred, New Castle County, Delaware (the "Land"), that Columbia had contracted to purchase. Columbia was seeking rezoning from a residential designation to an office designation so that it could serve as the site of Columbia's corporate headquarters. At that time, I was a member of the law firm of Richards Layton & Finger, and represented Columbia.

3. Hoping to allay community concerns, the Farquhars and Columbia had made and recorded an earlier Agreement Declaring Restrictions dated September 9, 1968, which was recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, in Deed Record K, Volume 81, Page 221 (the "Initial Restrictions"). A copy of the Initial Restrictions is appended hereto as Exhibit B. The Initial Restrictions were enforceable only by New Castle County Council.

4. In opposition to the proposed rezoning, Rodman Ward, Esquire, who at that time was a member of the firm of Prickett, Ward, Burt & Sanders, filed a legal action in the Delaware Court of Chancery on behalf of various area residents. My recollection is that the lawsuit was settled and dismissed when the Farquhars and Columbia agreed to refile the Agreement Declaring Restrictions with certain changes. One of the most significant changes was the naming of KPA and Hagley as third party beneficiaries having rights and standing to enforce the Final Restrictions. The Final Restrictions are those set forth in Exhibit A.

5. The understanding and intent of Columbia was that KPA and Hagley would have the power and standing under the Final Restrictions to enforce the express terms of the Final Restrictions as written and recorded. I believe that was also the understanding and intent of the Farquhars and the residents represented by Rodman Ward, Esquire. It was not intended that County Council could nullify this protection simply by amending the restrictions without the consent of KPA, Hagley and Columbia.

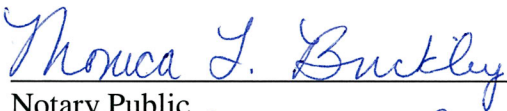
6. It is my recollection that the statement in the Final Restrictions indicating that no "approval of any other party" would be required to amend the restrictions, referred to any other party not expressly named in the Final Restrictions, and was not intended to

apply to KPA and Hagley. Those parties had been added as expressly-named third party beneficiaries in order to make it clear that they were expressly granted the right and standing to enforce the terms of the restrictions.



E. Norman Veasey

WITNESS MY HAND AND SEAL OF OFFICE the day and year first above written.



Notary Public
Print Name: MONICA L. BRICKLEY
My Commission Expires: 12/26/08

AFFIDAVIT OF RODMAN WARD, JR.

STATE OF DELAWARE)
 : SS.
NEW CASTLE COUNTY)

BE IT KNOWN, that on this 2nd day of October, 2008, Rodman Ward, Jr., personally known to me, the undersigned Notary Public, appeared before me and affirmed the following to the best of his knowledge, information and belief:

1. My name is Rodman Ward, Jr. I am a member of the Delaware Bar and a resident of the State of Delaware, and make this Affidavit in support of the rights of The Kennett Pike Association, Inc. (the “KPA”) and the Eleutherian Mills-Hagley Foundation, Inc. (“Hagley”) under the Agreement Declaring Restrictions dated January 17, 1969, and recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware, in Deed Record Y, Volume 81, Page 155, a copy of which is appended hereto as Exhibit A (the “Final Restrictions”).

2. The Final Restrictions were made and recorded by Dorcas Van Dyke Farquhar, Donald K. Farquhar (the “Farquhars”) as record owners and by Columbia Gas System Service Corporation (“Columbia”) as beneficial owner against 35.595 acres of land fronting on Montchanin Road in Christiana Hundred, New Castle County, Delaware (the “Land”), that Columbia had contracted to purchase and was seeking rezoning from a residential designation to an office designation so that it could serve as the site of Columbia’s corporate headquarters. E. Norman Veasey, Esquire, who was then an attorney with Richards Layton & Finger, represented Columbia Gas.

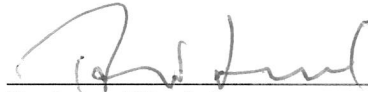
3. Hoping to allay community concerns, the Farquhars and Columbia had made and recorded an earlier Agreement Declaring Restrictions dated September 9, 1968, which was recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware in Deed Record K, Volume 81, Page 221 (the “Initial Restrictions”). A copy of the Initial Restrictions is appended hereto as Exhibit B. The Initial Restrictions were enforceable only by New Castle County Council.

4. In opposition to the proposed rezoning, I filed a legal action in my capacity as an attorney with the firm of Prickett, Ward, Burt & Sanders. The lawsuit was settled and dismissed when the Farquhars and Columbia agreed to refile the Agreement Declaring Restrictions with certain changes. One of the most significant changes was the naming of KPA and Hagley as third party beneficiaries having rights to enforce the Final Restrictions.

5. The understanding and intent of the residents whom I represented, and, I believe, of Columbia and the Farquhars, was that KPA and Hagley would have the power under the Final Restrictions to protect the community in accordance with the express terms of the Final Restrictions as written and recorded. It was not intended that County Council could nullify this protection simply by amending the restrictions without the consent of KPA, Hagley and Columbia.


6. The statement in the Final Restrictions indicating that no “approval of any other party” would be required to amend the restrictions, referred to any other party not expressly named in the Final Restrictions, and was not intended to apply to KPA and Hagley, which had been added as expressly named as third party beneficiaries in order to

assure the community that its rights under the Final Restrictions as written would be protected.



Rodman Ward, Jr.

WITNESS MY HAND AND SEAL OF OFFICE the day and year first above written.



Notary Public
Print Name: LETHA K. COMEGYS
My Commission Expires: 04-15-2012

LETHA K. COMEGYS
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires April 15, 2012

RPB/105793-0001/1955163/1

“FINAL RESTRICTIONS”

Agreement Declaring Restrictions
Dated January 17, 1969

Deed Book Y, Volume 81, Page 155

EXHIBIT A

TO AFFIDAVITS OF

NORMAN E. VEASEY, ESQUIRE
AND
RODMAN WARD, ESQUIRE

REV-81 REC 155

AGREEMENT DECLARING RESTRICTIONS

THIS AGREEMENT by and between Dorcas Van Dyke Farquhar (owner) and Donald K. Farquhar, her husband, parties of the first part and Columbia Gas System Service Corporation, a Delaware corporation (Columbia) party of the second part;

WITNESSETH:

WHEREAS owner holds fee simple title to a certain parcel of land located in Christians Hundred, New Castle County, Delaware consisting of 35.535 acres more or less (hereinafter referred to as "the land", a legal description of which is attached hereto and made a part hereof as Exhibit A);

WHEREAS the land is the subject matter of a certain option agreement under which owner is the optionor and Columbia is the beneficial optionee, and under which Columbia has an option to purchase the land provided, among other conditions, that there shall be a final rezoning of the land to a zoning classification suitable for Columbia's proposed use of the land;

WHEREAS Columbia presently intends to use the land for the foreseeable future as the executive headquarters office building of Columbia Gas System with open landscaping;

WHEREAS Columbia wishes, so far as is practicable, to maintain the area immediately surrounding the land as primarily low density residential land;

WHEREAS owner and Columbia desire voluntarily to place upon the land the restrictions hereinafter contained to be covenants running with the land, upon the effective date hereof as the same is hereinafter defined.

"Final Restrictions" - Exhibit A

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NOW, THEREFORE, in consideration of one (\$1.00) dollar and for other good and valuable consideration in hand paid by parties of the first part to party of the second part, receipt of which is hereby acknowledged, and for the mutual covenants and undertakings herein expressed, it is agreed as follows:

1. These restrictions shall become effective upon their filing in the Office of the Recorder of Deeds of New Castle County. These restrictions shall remain in effect as long as the land is zoned O-2 or its equivalent as the same may be constituted from time to time in the Zoning Code of New Castle County and as long as there shall be no additional restraint imposed upon such O-2 use except as provided herein.

2. The terms hereinafter referred to in these restrictions shall be the same as defined in the Code as of the effective date of these restrictions.

3. Notwithstanding any provision in the Code, no use shall be permitted on the land except an office, building and accessory uses thereto; provided, however, nothing contained herein shall prohibit temporary buildings and temporary storage of materials during construction and vending machines inside the enclosed building for the convenience of the occupants thereof.

4. In addition to other restrictions and limitations imposed by the Code, the following restrictions shall be applied to the land:

(a) The minimum lot size shall be the entire acreage of the land (less any portion thereof which may at any time be condemned or acquired by public authority);

(b) The total ground floor area of the building shall not exceed 1.7 acres.

(c) The height of the building shall not exceed (exclusive of basement) either two stories or forty feet.

3. These restrictions shall be covenants running with the land. They are for the benefit of New Castle County, The Kennett Pike Association, Inc., a Delaware Corporation, and the lands and tenements of Elautharian Mills-Hegley Foundation, Inc., a Delaware Corporation, adjacent to the lands to which these restrictions apply. Such restrictions may be enforced by any one of the foregoing. No modification, revision or amendment of any of the foregoing restrictions may be made except with the approval of the beneficial owner of the land and the New Castle County Council after public notice and public hearing; provided, however, nothing contained herein shall be construed to require the approval of any other party for such modification, revision or amendment. Nothing contained herein shall preclude a rezoning of the land to another zoning classification in accordance with the then prevailing procedures for such rezoning, and in the event of any such rezoning these restrictions shall become void and of no further force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 17th day of January, 1969.

Signed, Sealed and Delivered
in the presence of

Richard W. ...
at the ...

Dorcas Van Dyke Farquhar (SEAL)
Dorcas Van Dyke Farquhar

Donald K. Farquhar (SEAL)
Donald K. Farquhar

Richard L. ...

COLUMBIA GAS SYSTEM SERVICE CORPORATION

By: *[Signature]*
President

Attest: *[Signature]*
Secretary



“INITIAL RESTRICTIONS”

Agreement Declaring Restrictions
Dated September 9, 1968

Deed Book K, Volume 81, Page 219

EXHIBIT B

TO AFFIDAVITS OF
NORMAN E. VEASEY, ESQUIRE
AND
RODMAN WARD, ESQUIRE

AGREEMENT DECLARING RESTRICTIONS

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THIS AGREEMENT by and between Dorcas Van Dyke Farquhar (owner) and Donald E. Farquhar, her husband, parties of the first part and Columbia Gas System Service Corporation, a Delaware corporation (Columbia) party of the second part;

WITNESSETH:

WHEREAS owner holds fee simple title to a certain parcel of land located in Christiansa Hundred, New Castle County, Delaware consisting of 35.595 acres more or less (hereinafter referred to as "the land", a legal description of which is attached hereto and made a part hereof as Exhibit A);

WHEREAS the land is the subject matter of a certain option agreement under which owner is the optionor and Columbia is the beneficial optionee, and under which Columbia has an option to purchase the land provided, among other conditions, that there shall be a final rezoning of the land to a zoning classification suitable for Columbia's proposed use of the land;

WHEREAS Columbia's proposed use of the land, if rezoned, contemplates an executive office building with open landscaping for the use of the corporate executive headquarters of Columbia;

WHEREAS owner and Columbia desire voluntarily to place upon the land the restrictions hereinafter contained to be covenants running with the land, upon the effective date hereof as the same is hereinafter defined.

NOW, THEREFORE, in consideration of one (\$1.00) dollar and for other good and valuable consideration in hand paid by parties of the first part to party of the second part, receipt of which is hereby acknowledged, and for the mutual covenants and undertakings herein expressed, it is agreed as follows:

1. The date upon which these restrictions shall become effective shall be the date upon which final action has been taken

"Initial Restrictions"- Exhibit B

REC-81 MAR 220

by the New Castle County Council and the County Executive (provided such final action shall have been taken on or before January 16, 1969) adopting Ordinance 3-25-68-6-a rezoning the land to the O-2 classification under the Zoning Code of New Castle County (hereinafter referred to as "the Code"). These restrictions shall remain in effect as long as the land is zoned O-2 or its equivalent as the same may be constituted from time to time in the Zoning Code of New Castle County and as long as there shall be no additional restraint imposed upon such O-2 use except as provided herein.

2. The terms hereinafter referred to in these restrictions shall be the same as defined in the Code as of the effective date of these restrictions.

3. Notwithstanding any provision in the Code, no use shall be permitted on the land except an office building and accessory uses thereto; provided, however, nothing contained herein shall prohibit temporary buildings and temporary storage of materials during construction and vending machines inside the enclosed building for the convenience of the occupants thereof.

4. In addition to other restrictions and limitations imposed by the Code, the following restrictions shall be applied to the land:

(a) The minimum lot size shall be the entire acreage of the land (less any portion thereof which may at any time be condemned or acquired by public authority);

(b) The total ground floor area of the building shall not exceed 1.7 acres;

(c) The height of the building shall not exceed (exclusive of basement) either two stories or forty feet.

5. These restrictions shall be covenants running with the land. They are for the benefit of New Castle County and may be enforced by New Castle County. No modification, revision or amendment of any of the foregoing restrictions may be made except with the approval of the beneficial owner of the land and

the New Castle County Council after public notice and public hearing; provided, however, nothing contained herein shall be construed to require the approval of any other party for such modification, revision or amendment. Nothing contained herein shall preclude a rezoning of the land to another zoning classification in accordance with the then prevailing procedures for such rezoning, and in the event of any such rezoning these restrictions shall become void and of no further force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 9th day of September 1968.

Signed, Sealed & Delivered
in the Presence of:

David L. Leland
as to both

Dorcas Van Dyke Farquhar SEAL
Dorcas Van Dyke Farquhar

Donald K. Farquhar SEAL
Donald K. Farquhar

COLUMBIA GAS SYSTEM SERVICE
CORPORATION

Richard G. ...

BY John H. ...
President

Attest: ...
Secretary

