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**THE PROCESS OF NEIGHBORHOOD DEVELOPMENT: THE ROLE OF
RESTRICTIVE COVENANTS IN THE DEVELOPMENT OF
RESIDENTIAL NEIGHBORHOODS**

by

ERIC DAVID HART

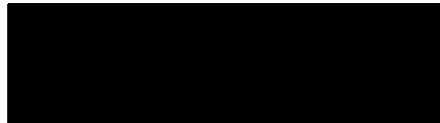
**A thesis submitted in partial fulfillment of the
requirements for the degree of**

MASTER OF URBAN STUDIES

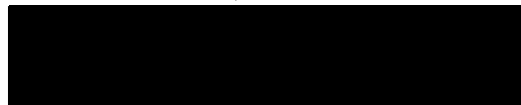
**Portland State University
1991**

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AN ABSTRACT OF THE THESIS OF Eric David Hart for the
Master of Urban Studies presented April 23, 1991.

Title: The Process of Neighborhood Development: The Role of Restrictive
Covenants in the Development of Residential Neighborhoods.

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Restrictive covenants (RCs) consist of legal language that is put in a land parcel deed by the subdivider of a subdivision at the time it is platted. The restrictions usually limit land use and require that the house constructed on the lot be of a certain cost. This thesis addresses four research questions: 1. Is the restrictive covenant (RC) minimum house cost amount directly related to the size of the housing? 2. Do differences in housing size translate into social status

differences? 3. Do RCs create homogeneous areas of social status? 4. Are subdivisions with RCs less likely to decline in social status over time than subdivisions without RCs? The goal is to establish whether development limitations placed on residential land translate into a differentiated built environment and then into a differentiated social structure.

I chose the area of SE Portland, Oregon from SE 20th-39th Avenues, SE Hawthorne Blvd to Harrison Street to test my hypothesis. First Multnomah County deed records were used to find out which subdivisions in the study area have RCs and what their restrictions are. After that was completed I grouped the subdivisions or their respective blocks into five RC groups based on the range of minimum house costs found in their deeds. Data was collected once every ten years during the 1940-80 period from the US Census was used to get the mean owner estimated value of houses and the percent owner occupied. The Polk Portland City Directory was also used to get the percent owner occupied as well as to get the occupation of each household sampled in the same years as the census. The occupation of each household head sampled was converted to a Duncan SES index score which was then compiled by RC group for every sample year. Finally data from the Multnomah County Assessor's office assessment roll was obtained for every house in the study area for such things as house size, year built, and the assessed value. Sales data from the study area over the last year was also analyzed to see how the different RC areas were priced.

The results of the analysis of the study area support my basic hypothesis that

RCs affect the built environment of residential areas which in turn influences social status. The size of the houses followed the anticipated pattern (the High RC group had the largest houses, the Low the smallest, etc.) as well as the assessed valuation, the estimated value from the census, and the sales data. The percent owner occupied was lower in the lower RC groups although the percentages stayed relatively constant over time. This indicates that, at least in this study area, RCs do not effect neighborhood decline by stabilizing owner occupancy rates. The final and most important indicator, social status, showed the same pattern as the other data did. Social status does indeed get less as the minimum cost requirements in the did so RCs influence the social structure of residential areas.

Other residential areas need to be studied in Portland and other cities to see if these findings can be applied elsewhere. The methods I used in this thesis can provide, along with an examination of the actors involved in the subdivision process, important insights into the social differentiation of urban space.

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CHAPTER I

INTRODUCTION

This MUS thesis poses the following questions: (1) Does the presence or absence of restrictive covenants on residential subdivisions substantially impact the subdivisions' social status in a lasting way? (2) Can differences in social status between adjoining areas be attributed to the presence or absence of restrictive covenants and/or differences in their restrictions? The goal is to establish whether development limitations placed on residential land translate into a differentiated built environment and then into a differentiated social structure.

Restrictive covenants (RCs) consist of legal language that is put in a land parcel deed by the residential subdivision developer at the time it is platted. This legal instrument was first widely used by the 1850s along the Eastern seaboard and generally came into use between 1900-10 west of the Mississippi River. Generally RC language preceding the Second World War consisted of set back requirements, a minimum value that the house built on the lot must have, language restricting the lot to low density residential use, and occasionally specifications as to the type of facade required. Generally the requirements of the Rcs are followed in the time period shortly after subdivision but may not be 10 or more years after subdivision. Neighbors in the same subdivision have the right to sue each other if they feel that

someone has violated the restrictions.

This study hypothesizes that the key element which determines the social makeup of an area or subdivision is the minimum value that a newly built house must have. This value determines the size of house that must be built on the lot and consequently the status of the person who will come to live in it. Thus it could be inferred that restricted subdivisions could have a similar character to the surrounding area or could be completely different depending upon the scheme of the subdivider and the minimum values (a planned outcome). Conversely, areas without RCs would take on the general character of the area at the time of subdivision (an unplanned outcome). Restrictive covenants can explain why we find very different social status areas in close proximity to one another.

Usually the subdivider puts RCs on all lots of a subdivision and groups adjacent blocks with the same minimum values. Consequently areas with relatively homogeneous house sizes and social status develop. If a homogeneous area is desirable to people then it is theorized that over time areas with RCs will retain their status and will be fairly stable. Areas without RCs tend to be more heterogeneous both in housing size and type and so would be less desirable and more likely to change or decline in status. Many subdivisions have more than one minimum value, so we would expect areas within a subdivision to differ in status and housing size based on those different values. All this is provided that the area is built up fairly rapidly after subdivision and the restrictions don't expire. Minimum values tend to lose their meaning and effect if the area is not built up until many years after

subdivision.

I will explore four related questions: 1. Is the RC minimum house cost amount directly related to the size of the house? Are the areas with the highest minimum costs also the areas with the largest houses? 2. Do differences in housing size translate into social status differences? 3. Do RCs and more specifically, the various minimum costs found in restricted subdivisions, create homogeneous areas of social status? 4. Are subdivisions with RCs (regardless of the minimum cost) less likely to decline in social status over time than subdivisions without RCs? Do areas with high minimum costs decline less than those with lower minimums?

In this thesis I will look at the history of restrictive covenants, why they are used by developers, and their impact on the social structure of residential areas. This study will then use a part of Portland, Oregon to explore the research questions. The study area I have chosen runs from SE 20th to SE 39th Avenues between SE Hawthorne Boulevard and SE Harrison Street. (See Figure 1). The part of Southeast Portland, Oregon that I chose has a wide variety of housing sizes and ages in a relatively small area so provides for a good test case.

Even though the city of Portland was founded in the 1850s, the area of the city east of the Willamette River did not see substantial development until the 1890s. During the late 1880s and 1890s several permanent bridges were constructed across the Willamette connecting the city of Portland on the west side of the river and the city of East Portland on the east side. Street car lines used these bridges to reach the east side, helping to speed development considerably.

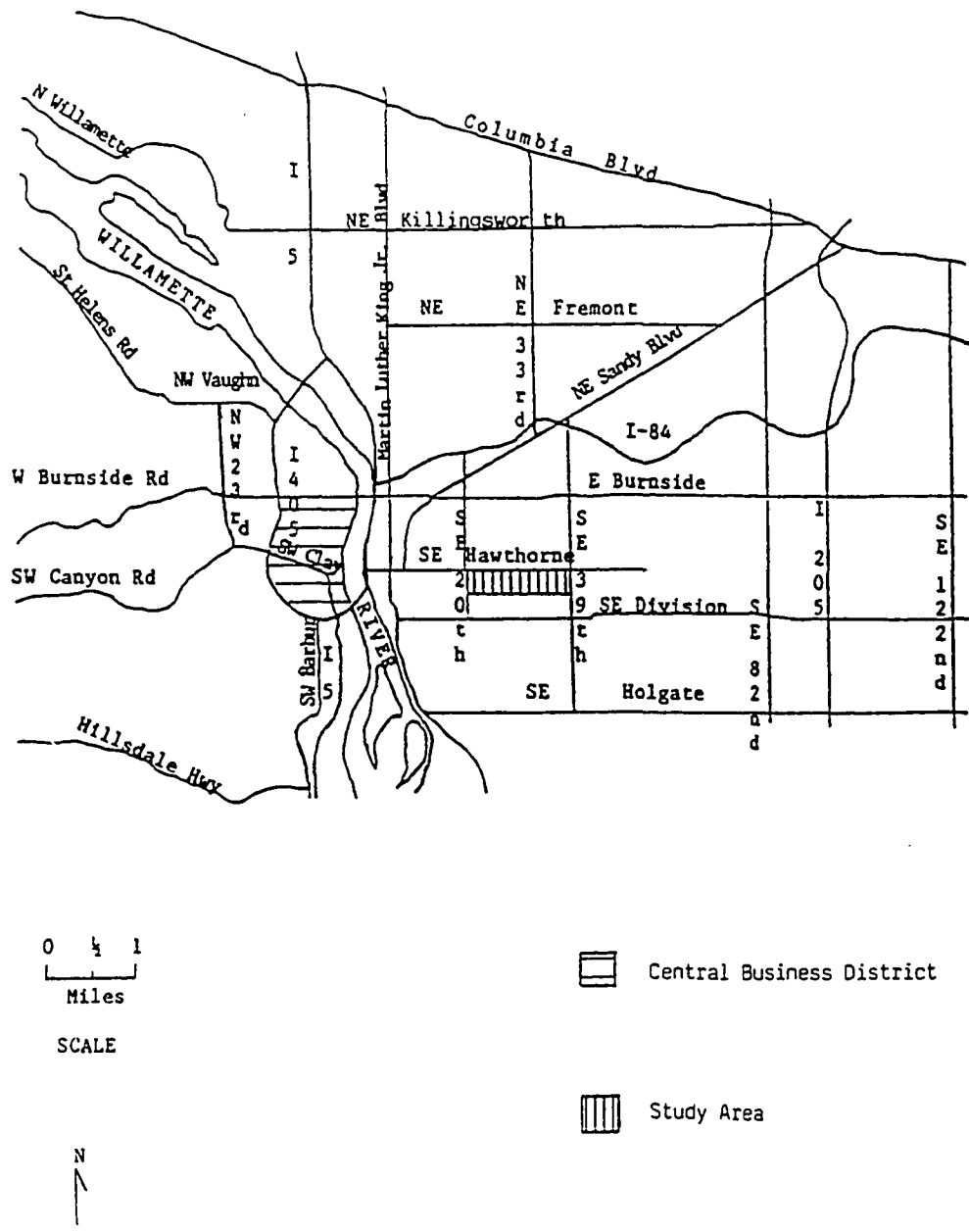


Figure 1. Portland, Oregon

Consequently, a large area was opened up for development and most land within three miles of downtown had been platted by 1900. By this time East Portland had been annexed by Portland. One area that hadn't been subdivided was the area from SE Hawthorne Boulevard to SE Division Streets, SE 20th to SE 39th Avenues, which includes the study area. SE 41st was the city limit in 1901 according to the Insurance Maps of Portland, Oregon of that year so the study area was on the edge of the city. Land was subdivided on all sides of the study area at that time, however. A street car line ran down Hawthorne Boulevard, making access to the study area land convenient. Parts of the subdivisions to the north were substantially built up by 1901 and even subdivisions to the east of the study area, not a part of Portland, had seen construction activity. Thus it appears that the land the study area occupies could have been subdivided and built upon much earlier than it was. For unknown reasons, a majority of landowners in this area did not subdivide it until 1905 or later. Much of the study area was subdivided by 1909 but only the east half of it (SE 30th-39th Avenues) had seen any substantial construction. By that time basically all of the areas within one mile of the study area boundaries had been built up. Thus the study area has a considerably different development history than most of the areas nearby on the east side of Portland.

The fact that development was delayed in the study area makes it a good test of the effects of restrictive covenants. Most of the land around the study area was developed without restrictive covenants while the study area was developed at a time when restrictive covenants were used. This fact provides a means to test whether or

not RCs can establish social status. If RCs had no effect, then the character of the study area should be the same as the surrounding unrestricted subdivisions. Conversely, if RCs did establish social status areas, then this area should be significantly different from other areas of SE Portland. The areas around the study area have experienced some decline in social status while other parts of SE Portland farther east have suffered significant decline and influxes of Asian minorities. The study area has not declined in social status and has not seen a major influx of Asian minorities. It is unusual in that it was not developed until relatively late despite its central location a mile and a half from the city's main East-West street and only two miles from downtown (See Figure 1). The character of the west part of the study area (SE 20th to 30th Avenues) contrasts markedly with that of the east part and for that matter much of SE Portland. The solidly middle class character of the west part of the study area makes it a good candidate for study since it seems out of place in its location. One would expect such an area to be at least two to three miles farther east. What factors have made it possible for this part of SE Portland to be so different from the surrounding area? Looking for restrictive covenants in the study area and establishing the various areas of minimum costs will make it possible to see if this legal instrument has contributed to these differences.

CHAPTER II

A HISTORY OF THE USE OF RESTRICTIVE COVENANTS

RESTRICTIVE COVENANTS IN GENERAL

A restrictive covenant is legal clause found in a land parcel deed (usually a lot in a subdivision) which restricts the use of the property in various ways. Jost provides this classical definition of the restrictive covenant: "The real covenant is defined classically as an agreement evidenced by a sealed and delivered writing and enforceable at law between parties in Privity [a grantor-seller and grantee-buyer relationship] at the time of the agreement whereby one party agrees to assume an obligation respecting property."¹ The major advantage of properly constructed restrictive covenants is that they become a permanent part of the land parcel's deed. When this occurs it is said that the restrictions "run with the land". If a subdivision meets certain conditions, the courts have ruled that once restrictions are placed on a subdivision those restrictions are valid for as long as the deed specifies; regardless of how many times the property changes hands. State court cases over the years have built a sizable case law which defines the conditions that must be met in order for restrictive covenants to run with the land. All of these are case law rules, not

¹Timothy Stoltzfus Jost, "The Defeasible Fee and the Birth of the Modern Residential Subdivision," Missouri Law Review 49 (1984): 703 note 36.

public laws, which are passed by a legislative body. Consequently one has to examine cases pertaining to restrictive covenants in order to determine what rules govern them.

There are five basic requirements that must be met before RCs can run with the land²: 1. Privity of Estate. The person writing the restrictions must be the owner of the property. A covenant between two persons to build a house on a third person's land is not a covenant that runs with the land but is a personal covenant which dies with the covenantor, their heirs or assigns.³ Also the restrictions must succeed to subsequent owners and cannot be enforced against previous owners. In other words it is a contractual obligation in which each subsequent owner is bound by the restrictions.⁴ This is the most basic requirement for restrictions to run with the land. 2. Intention. The covenanting parties must intend that all subsequent owners will be bound by the restrictions. This is what distinguishes covenants that run with the land from those that are merely personal (just between the grantor and grantee). 3. Form. Correct form is another requirement. In order to be enforced and run with the land a restrictive covenant must be in writing, in a deed or on the subdivision plat. 4. Touch and Concern. In order to be effective a RC must "touch and concern" the land being restricted. It must directly enhance and preserve

²Luther House, "The Running of Restrictive Covenants in Kentucky," Kentucky Law Review 45 (1957): 638.

³Albert S. Bolles, "Land Running Covenants in Massachusetts: A Chapter in Legal History," Boston University Law Review 7 (1927): 1-2.

⁴American Law of Property: A Treatise on the Law of Property in the United States vol. 2, (Boston: Little, Brown and Co, 1952) 427.

property values in the subdivision and nearby areas. This is how RCs have been construed to be in the public interest. If a covenant does not enhance the property values of the community then theoretically the covenant does not pass this test. This rarely occurs, however. Any enhancement of the social environment that results from such restrictions as minimum cost of construction, racial restrictions or architectural design standards have been construed to satisfy this test.⁵ 5. Notice. There must be some sort of notice of covenants in the deed whether it be the complete language or a reference to an earlier deed or plat containing the covenant language.

Once these requirements are met, the covenants are legal and can be enforced. There are circumstances where the restrictions are declared void even if all of the above tests have been satisfied. If there is a change in character of the surrounding neighborhood then usually the enforcement of the restrictions is held to be oppressive and inequitable and the RC is terminated.⁶ This occurs when a residential area is invaded by commercial uses and a covenant which restricts land use to residential uses only, is enforced. It also happens when price fluctuations cause the minimum-house-cost clause of a RC to become inequitable. This occurred during the Great Depression when the cost of new houses actually fell.⁷ This is only of concern when studying Depression era construction, since most of the time housing prices increase over time and minimum housing cost restrictions in RCs do not cause

⁵American Law of Property 413.

⁶American Law of Property 444.

⁷Steven Beach, "Minimum Building Cost Restrictions: Effect of Decreased Cost of Construction," University of Detroit Law Journal November 1940: 32-35.

hardship. They rather can lead to the possible decline of the neighborhood when smaller houses are built and consequently a lower status of resident moves into the area.

Finally, restrictive covenants (at least parts of them) have been declared null and void when they run contrary to public policy. The most famous of these instances was the declaration of racial restrictive covenants as unconstitutional by the United States Supreme Court.⁸ (See Appendix B for an example of a deed with racial restrictive covenants). Covenants restricting the sale and occupation of lots to whites only were declared unconstitutional but all other parts of the RC are intact and enforceable. Rarely is the whole RC voided unless it is a single purpose RC, as were some in the nineteenth century.

Two types of deeds contain restrictive covenants, Warranty deeds and to a lesser extent, release or quit claim deeds.⁹ Warranty deeds are where most land running covenants are found so I will concentrate on that type of deed. A Warranty deed contains a total of five covenants, four of which do not run with the land, and a fifth which contains land running restrictive covenants. Any restrictive covenants appear directly after the legal description in the deed, with the other four following. (See Appendices A and B). The covenants which do not run with the land are

⁸There were five cases: *Shelley v. Kraemer* and *McGhee v. Sipes*, 334 US 1 (1948); *Hurd v. Hodge* and *Urciolo v. Hodge*, 334 US 24 (1948); and finally *Barrows v. Jackson* 346 US 249 (1953). The 1948 cases issued injunctions to stop the enforcement of racial RCs and the 1953 case stopped a plaintiff from collecting damages sought due to the breach of a racial RC.

⁹Bolles 3-4.

almost always present in a Warranty deed even if restrictive covenants are not. The four covenants which do not run with the land are covenant of seizin, covenant of the right to convey, covenant against encumbrances, and the covenant of warranty or quiet enjoyment. All deal with the sellers ability to convey the property's title in good faith. Obviously since every owner can encumber the property with liens or even lose legal title to the property, these covenants cannot run with the land but have to be personal covenants.

The covenant of seizin is a guarantee that the grantor has legal possession of the property. The covenant of the right to convey is similar to that of seizin in that the grantor is guaranteeing that they have the legal title and right to convey the property. This covenant is not always listed since it is similar to that of seizin. The covenant against encumbrances insures that there are no encumbrances (such as liens or unspecified mortgages) on the property besides those specified in the deed (outstanding mortgages, etc.). The covenant of warranty or of quiet enjoyment warrants that the grantee will have the right to peacefully use and enjoy the property granted to them without any fear of disturbance by the grantor or any person legally qualified to do so. This protects the grantee from any dispute between the grantor and a former claimant.¹⁰

Additionally most deeds with restrictive covenants have an enforcement clause at the end which spells out the remedies that can be taken against any violations of

¹⁰Edna L. Hebard and Gerald S. Meisel, Principles of Real Estate Law (New York: Simmons-Boardman Publishing Corp, 1964) 227.

the restrictions. Early restrictive covenants (and the ones I am concerned with) enforced the restrictions in the form of a reverter clause. This clause stated that if any of the restrictions were violated that the property will revert back to (be forfeited by) the grantor. Generally only adjacent landowners in the same subdivision and the subdivider themselves can bring suit against persons violating the RC.¹¹ See Appendices A and B for examples of two deeds (one with and one without a reverter clause) as an example.

As was mentioned above, the law of restrictive covenants has been made by state courts over the decades. The way various clauses of restrictive covenants are interpreted have been defined by this case law. So, if we want to know how RCs are enforced we have to look to case law. Friedman¹² has a good modern overview of the various issues of RC interpretation and the court cases which have defined them. Indeed there is a voluminous number of cases going back to the early nineteenth century from which to get an accurate sense of just when and where restrictive covenants were used. I have looked at early restrictive covenant cases to come up with a history of this legal instrument. Next I will start my examination of RC history by looking at RC cases from the nineteenth and early twentieth centuries.

¹¹Zigurds L. Zile, "Private Zoning on Milwaukee's Metropolitan Fringe: Part II- Problems of Drafting," Wisconsin Law Review (1959): 456-57.

¹²Milton R. Friedman, Contracts and Conveyances of Real Property (New York: Practising Law Institute, 1984) 486-517.

THE HISTORY OF RESTRICTIVE COVENANTS

The use of RCs has evolved as a response to urbanization and first appears whenever large scale urbanization starts in a particular locale. It is not my aim to determine the definitive date when RCs were first used, but rather to see when they first became widely used. A study of RC cases and of RCs in particular cities confirms this hypothesis as will other published sources I have found.

RC Case History

Case law provides a way to find out approximately when and where restrictive covenants were first used. The appropriate subject headings (covenants, deeds, etc.) were used in the American Digest (1658-1896), the First Decennial Digest (1897-1906), and the Second Decennial Digest (1907-1916) to find cases about restrictive covenants. With each citation in these indexes is a brief summary of the legal issues involved. I looked for any mention of pertinent RC legal issues (such as definition of set backs or the meaning of certain building requirements) in these abstracts and looked up all the cases that had any mention of this in them. Only cases between 1658-1916 were examined because previous research has established that RCs were widely used by 1916. Most cases had a detailed description of the restrictions involved and contained the date the restrictions took effect. This made it possible to get a fairly detailed history from these sources. Of the 225 cases originally selected from the Digests, 161 had enough information to be compiled and analyzed. Information was collected on the date of the deed in question which contained the

restrictions, the type of restrictions involved, the location of the restrictions, whether or not the restrictions were in a subdivision or just between a few owners, and if the restrictions were typical for the time (ordinary) or seemed to be for a group with high socioeconomic status (elite). Then the cases were arranged chronologically by deed date for the analysis of RC history.

The earliest case found in the analysis was one with an 1806 deed date from Boston. It concerned a height restriction placed on a house that was not part of a subdivision.¹³ Obviously this does not qualify as a covenant which runs with the land and indeed this case (which was heard in 1875) concerned the question of whether or not this covenant should bind future owners (run with the land). Of the 23 cases found between 1806 and 1850, 12 (52%) concerned individual lots and most likely involved personal covenants. The rest involved small subdivisions. All the subdivision cases were from states in the Northeast (Massachusetts, New York, Pennsylvania, and New Hampshire) and usually were located in the largest town such as New York, Boston or Philadelphia. (See Table I). The first subdivision case I found had an 1822 deed and was from Boston.¹⁴ The early covenants that restricted subdivisions (as opposed to individual land parcels) restricted land use to one dwelling per lot, required houses to be set back a specified distance (set backs), restricted use to dwelling houses only, prohibited offensive uses such as factories, and occasionally required that the houses be built of certain materials and be above a

¹³Jeffries v. Jeffries, 117 Mass 184 (1875).

¹⁴Parker v. Nightingale, 88 Mass 341 (1863).

certain number of stories. Most of these restrictions are similar to those found in later subdivisions but the major difference is these restrictions were geared toward attached row houses rather than detached single family houses. The setbacks are mostly three feet (just enough space to place the stairs without infringing on

TABLE I
LOCATION OF RC CASES BY TIME PERIOD

<u>Time Period</u>	<u>Location</u> <u>(Number of Cases)</u>		
	<u>East Coast</u>	<u>Interior States</u>	<u>West Coast</u>
1806-1850	21	2	0
1851-1865	24	2	0
1866-1879	25	6	0
1880-1912	60	17	4

the sidewalk) instead of the 15-30 feet common 70 years later.¹⁵ The height restrictions are for three or more stories, a normal height for row houses of the period.¹⁶ The buildings were to be built of stone, brick, or iron (an iron facade I assume) which were also common materials for nicer row houses of the day. (See Appendix E for an example). Half of the cases had row house restrictions with most

¹⁵See *Schefer v. Ball*, 104 NYS 1028 (1908) as an example.

¹⁶See *Parker v. Nightingale*, 88 Mass 341 (1863) as an example.

of the other deeds having only a single restriction. The most common of these were setback requirements and nuisance prohibitions. The small number of cases and the lack of comprehensive restrictions indicates that this instrument was not widely used and that most subdividers and even their lawyers were unaware of their existence. Also urbanization was just beginning by 1850 so it would be logical that there would be few subdivisions with restrictions and little pressure on subdividers to protect their subdivisions from invasion by businesses or low income groups. We also see restrictive covenants appearing in the largest cities (especially in Boston and New York) which had the highest rates of urbanization and greatest population pressures. Until urbanization began to pick up around the Civil War, there was not widespread use of restrictive covenants, although they had been used since the 1820s.

The period 1851-1865 saw a dramatic increase in the number of cases but not much change in the substantive content of the restrictions. There were a total of 26 cases documented in the 1851-65 period, not many more than the 1806-50 period but in one-third the time. Of these 26 cases, exactly half concerned covenants between individuals and/or were on subdivisions of less than five lots. The requirements of the RCs were basically the same as the earlier period. We still see restrictions geared toward row houses and many nuisance restrictions. A case did show up in Chicago having a deed date of 1863 which had a set back of twenty feet so was geared toward detached houses.¹⁷ This is the first subdivision case to appear that is not in the Northeast and indicates that urbanization, and the consequential use of RCs, was

¹⁷Eckhart v. Irons, 128 Ill 568 (1889).

spreading away from the east coast to the new booming cities of the west.

Another interesting aspect of the 1851-65 period is the restrictive covenants placed on the land reclaimed by the Commonwealth of Massachusetts when it filled in the Back Bay area of Boston. In 1856 land was reclaimed by filling in the Back Bay area of Boston and the Commonwealth of Massachusetts consequently became the land owner and subdivider of the reclaimed land. (See Appendix E for an example of a deed from the Back Bay area). Three cases show up with deed dates in the late 1850s that contain row house type deed restrictions written by the Commonwealth of Massachusetts.¹⁸ Thus from 1851-1865 we see restrictions similar to the earlier 1806-50 period but the cases are appearing more rapidly, indicating an increasing rate of urbanization and a wider use and awareness of restrictive covenants.

The period from 1866-1879 saw restrictions appear in the case deeds that are similar to modern subdivision RCs. This is the beginning of rapid suburbanization of fringe areas around large cities with single family houses, and the restrictions drafted in the period reflect this. I documented a total of 31 cases with deed dates from 1866-1879 in the analysis. Eighteen or 58 percent of these concerned subdivisions. Setbacks are closer to modern standards (10-20 feet) and we see the first RCs prohibiting liquor manufacture and sale.¹⁹ Landscaping requirements and the requirement that all house plans be approved by the subdivider before

¹⁸See *Attorney General v. Gardiner*, 117 Mass 492 (1875) as an example.

¹⁹The liquor prohibition case is *Judd v. Robinson*, 41 Colo 222 (1907).

construction appear for the first time in the elite subdivisions.²⁰ Also in the more elite subdivisions, the appearance of a minimum cost for a new house is first observed. Nuisance restrictions are common and one case, with an 1871 deed date, prohibited any use, especially any hotel or saloon, that would depreciate property values.²¹ Some subdividers got carried away with nuisance prohibitions, listing every conceivable nuisance of the time. (See Appendix F for a few examples). A few deeds contained a time limit on restrictions after which the restrictions would be void, usually 10 or 20 years.²² Another restricted building materials used to construct the house to brick or stone and mandated that the roof must be slate or metal, probably for fire protection reasons.²³ The location of the restrictions are not as concentrated in the Northeast as they were previously. There appear cases that deal with deeds drafted in Chicago, Toledo, and St. Louis, as well as cities in Ohio and Colorado. (See Table I). Only half of the subdivision cases I found were located on the east coast, indicating a spread of this legal instrument from the big cities of the east coast. Indeed the restrictions were not limited to the big cities but also found in their suburbs and in smaller inland cities. Restrictive covenant form had developed to the point it remained at for the rest of the nineteenth and early twentieth centuries, by the end of the Civil War. After 1880 and until the end of the

²⁰*Deviers v. Cone*, 82 Md 186 (1895).

²¹*DeGray v. Monmouth Beach Clubhouse Co.*, 50 NJ Eq. 329 (1892).

²²*Bahnall v. Davies*, 140 Mass 76 (1885) and *Best v. Nagel*, 182 Mass 495 (1903).

²³*White v. Collins Building and Construction Co.*, 81 NYS 434 (1903).

sample analysis (1912), restrictive covenants basically contained the same type of restrictions as the 1866-79 period although the restrictions did get more comprehensive as the twentieth century drew nearer.

The period 1880-1912 was not a period in which new ways of restricting property were developed but one in which the techniques were refined. There were a total of 81 cases which had deed dates in this period. Minimum cost of dwelling restrictions were much more common as were requirements that the houses be built of brick or stone. The typical set of restrictions for this period included set back requirements, a minimum building cost clause, and some sort of minimum quality requirement (built of brick or stone, built in "good style", or must be of a minimum number of stories). Most cases were still on the east coast but by the turn of the century cases from all parts of the country, including the west coast and the midwest, appear. By 1880 the basic type of restrictions commonly found in RCs had been developed and these restrictions were increasingly being used in subdivisions in all parts of the country. Table I has the number of cases found in the various regions for the four time periods.

It can be concluded from this study of restrictive covenant cases that this legal document has been used in the United States since at least the 1820s. Monchow²⁴ says that William Penn's son placed restrictive covenants on a subdivision in 1749, much earlier than any cases I found. The exact date RCs were first used is

²⁴Helen C. Monchow, The Use of Deed Restrictions in Subdivision Development (Chicago: The Institute for Research in Land Economics and Public Utilities, 1928) 2.

immaterial since they appear to have been around for longer than 200 years but rarely used in the eighteenth and early nineteenth centuries. The modern form appeared just after the Civil War with the increase in single family suburbanization. Monchow places the birth of the modern restricted subdivision as being the establishment of Riverside, Illinois in 1871.²⁵ This subdivision had a minimum dwelling cost of \$3,000, a 30 foot setback, and a requirement that the house must be built within one year. She downplays this start however, saying that only isolated subdivisions had restrictions prior to the turn of the century: "Not until cities began to grow by leaps and bounds did conscious control as a more or less unified movement begin to sweep the country."²⁶ These findings are similar to what I found in the subdivisions studies I will report later.

The findings from the case analysis above are paralleled by Jost's study of the case law of restrictive covenants.²⁷ The first type of cases that he found were those prohibiting the sale or manufacture of alcohol.²⁸ Deeds as early as 1810 were found to have these restrictions and they became even more prevalent by the 1830s. I first found a mention of alcohol restrictions in an 1853 deed.²⁹ By the 1870s they were very common in Jost's study as well as in mine.

²⁵Monchow 2-3.

²⁶Monchow 3.

²⁷Jost 695-717.

²⁸Jost 718-19.

²⁹Plumb v. Tubbs, 41 NY 442 (1869).

Another common restriction found in both studies were nuisance restrictions. These first started out as prohibitions against factories and noncompatible uses but later were expanded to include all nonresidential uses.³⁰ In my study I found both aspects of this restriction occurring simultaneously, not the evolution Jost finds.

Two other common restrictions relating to the construction of houses on subdivision lots were documented. A requirement that houses be built on the lot within a specified period of time (e.g. one year) was also common in my study. The first deed containing this restriction was drafted in 1867.³¹ Also common was a requirement that dwellings built upon subdivided property be of at least a certain value. Of course I discovered these also and these restrictions are an integral part of this thesis. Jost found restrictions as to the type of materials to be used for the construction of the house, the minimum number of stories, and setback requirements. I also found these restrictions. Finally Jost examines racially restrictive clauses of RCs which became popular after the First World War. (See Appendix B for an example). This specific restrictive covenant does not concern this study since only two of the smaller subdivisions in the study area contained racial covenants.³²

Jost's overall findings confirm my own.³³ As the 1870-1920 period he studied

³⁰Jost 720-21.

³¹Hopkins v. Smith, 162 Mass 444 (1894).

³²This is probably due to the fact that most of the subdivisions were subdivided before 1918. One small subdivision contained racial restrictions and I found a renewal of restrictions from one subdivision in 1929 with the same.

³³Jost 726-27.

unfolded, deed restrictions became more numerous. Earlier deeds only contained one restriction, such as one against alcohol, but deeds closer to the 1920s were much more complex, having multiple types of restrictions. Smaller subdivisions tended to not have restrictions, a finding which I have affirmed in my studies of subdivisions. This is probably due to the inexperience of the small subdivider who usually isn't a professional land developer. Another finding of Jost's was that deed restrictions were more common in new rapidly growing cities than elsewhere. Subdivisions in these areas tended to be larger, developed by professional land developers, and geared toward the wealthier market. All these factors help to explain the common use of restrictions in these areas. Overall Jost confirms my findings and further clarifies the history of restrictive covenants.

Examples of RCs in the Literature

Jost, as well as doing a RC case analysis, also took a sample of subdivisions between 1870-1920 in four counties: Franklin (Columbus), Ohio; Suffolk (Boston), Massachusetts; Cook (Chicago), Illinois; and the District of Columbia. He sampled 5-10 subdivisions recorded in the years 1870, 1880, 1890, 1900, 1910, 1920, and 1930 from each of the four localities. The sample was a convenience one, taking the first 5 or so subdivisions he found in the plat books for that particular year. He then found three deeds for each subdivision to inspect for the presence of restrictive covenants.

Jost's study of these four localities reveals that there was much variation among the four localities studied in their use of RCs over time. Deed restrictions

appeared quite late in the District of Columbia (after 1910) and even then not all subdivisions had restrictions.³⁴ Deed restrictions in Cook County (Chicago) Illinois first appeared in 1890 although none were found in the 1910 sample. This may be due to the unfavorable treatment that Illinois courts gave RCs, rather than a lack of intent on the part of developers. Deed restrictions were common in Franklin county (Columbus) Ohio but were not widely used in late nineteenth and early twentieth century Suffolk County (Boston) Massachusetts, according to the authors study.

Jost's results might lead one to believe that RCs were not widely used even after 1900, let alone before. Rather than questioning the widespread use of RCs as one might, I think it is his method for looking for restrictions that has caused these results to differ from his case analysis. His samples are much too small to get a feeling for the character of subdivision activity in each county. We do not know if those 5-10 subdivisions per year are a large sample of the subdivision activity in a particular locale or if they are representative of all plats. It is likely that the subdivision sample for most of the locations would represent only 10-50% of the subdivision activity. Since the sample is not random and is so small, it is doubtful that it is representative of all subdivision activity. A larger representative sample would have yielded better data. While it was interesting what Jost did with his four county survey, it could have been done better so the results would be more accurate and less potentially misleading.

Two articles about the Texas cities of San Antonio and Houston also

³⁴Jost 718.

document the use of RCs. Extensive and very exclusionary RCs were documented in a subdivision outside San Antonio in the late 1920s³⁵ The Olmos Park subdivision had rigorous RCs to insure racial segregation and to maintain high property values. These restrictions were used as a selling point for the subdivision and proved to be successful as the subdivision lots sold quickly. Besides restricting the sale of the lots to whites only, the RCs in this subdivision restricted use to residential uses only and houses were to be built of brick, stucco, or tile. The restrictions against any nonresidential uses were advertised as being "sensibly designed to protect your home and every home from the encroachment of inferiority".³⁶ The subdivision also had a minimum expenditure allowed for housing construction of \$7500, an amount at the upper end of housing prices for the time. From this article we can see how RCs had progressed by the late 1920s to be used in order to create exclusive enclaves. The restrictions found in this subdivision are not much different from those of the 1910s but are used more as a marketing tool and a way to create a homogeneous community.

Another article deals with neighborhoods in Houston. Deed restrictions were first used in Houston in the 1890s with the development of residential subdivisions

³⁵Char Miller and Heywood T. Saunders, "Olmos Park and the Creation of a Suburban Bastion, 1927-39," Urban Texas: Politics and Development, ed. Char Miller (College Station, TX: Texas A & M University Press, 1990) 113-27.

³⁶Miller and Saunders 118.

in that city.³⁷ An interesting development in Houston was the organization of Civic Clubs whose primary responsibility was restriction enforcement as well as lobbying for city services.³⁸ Apparently Civic Clubs also were formed in Chicago and St. Louis suburbs also as a means of excluding blacks and getting city services. Those in Houston were interested in maintaining property values and a homogeneous population. A 1909 Houston subdivision was found to have restrictions that: "preserved the original beauty of the property", forbid any liquor sales or business uses, had detailed architectural restrictions for homes constructed, and "protected from colored neighbors". The experience of Houston as to the development of RCs is similar to that of other western cities I have studied.

A 1939 US government document summarizes a number of case studies of successful subdivisions and documents their use of RCs. The Urban Planning and Land Use Policies report of the Urbanism Committee to the National Resources Committee³⁹ looks at well planned communities (basically cities, subdivisions, or government agency communities) to see what has made them successful. Not surprisingly the report cites comprehensive deed restrictions as being key to the successes of the subdivisions they looked at. For some of the subdivisions analyzed a history of the subdivision and the deed restrictions are listed, giving us further

³⁷Robert Fisher, "Protecting Community and Property Values: Civic Clubs in Houston, 1909-70," Urban Texas: Politics and Development ed. Char Miller (College Station, TX: Texas A & M University Press, 1990) 128-37.

³⁸Fisher 130.

³⁹National Resources Council. Urbanism Committee, Urban Planning and Land Policies (Washington, D.C.: US Government Printing Office, 1939).

information on the history of RCs. Eleven "suburban" communities (subdivisions developed by private developers) were looked at in this report from all parts of the country.

The Country Club District of Kansas City first started development in 1906.⁴⁰ This area consists of 4,000 acres and 16 subdivisions as of 1936, all developed by the same developer. It is covered by comprehensive deed restrictions which include control of land use, minimum cost of dwelling, architectural review of building plans, set back lines, building projections, free space, outbuildings, billboards, and racial restrictions.⁴¹ The subdivision was unusual in that the restrictions had a 25 year limit but are automatically renewed for another twenty five years unless the majority of subdivision residents vote to release the restrictions. With this large group of subdivisions came very strict and comprehensive restrictions which go beyond the usual RCs to deal with areas later covered by zoning ordinances.

Palos Verdes in Los Angeles County California was established in 1923 and was considered to be one of the best planned and most carefully restricted real estate developments in the country at the time.⁴² The two principles on which the covenants were based are quite a bit different than is the case for most subdivisions. The two principles are: "1. The success of the whole depends on the harmony of all its parts. 2. Inventiveness and imagination of many individuals must be given as

⁴⁰National Resources Council 83-85.

⁴¹National Resources Council 84.

⁴²National Resources Council 85-89.

great a scope as is consistent with this harmony to avoid monotonous and stereotyped quality in the whole." Most subdividers seek to narrowly define what is acceptable in a subdivision so as to maintain property values, not encourage diversity. It is not surprising that the restrictions were drafted this way as the famous landscape architects and planners, the Olmsted Brothers, came up with the subdivision layout and protective covenants.

The deed restrictions have been referred to as the most complete in America at the time including both traditional restrictions as well as a complete zoning ordinance. (See Appendix G for the restrictions found in this subdivision). Every possible problem with subdivision living is addressed from plant diseases to architectural style. If these restrictions were not comprehensive enough, the Palos Verdes Homes Association has the power to tax all lot owners and provide the services that a city would.⁴³ Thus through the establishment of deed restrictions and a homes association, the developer tried to create a new town by entirely private means. This demonstrates how advanced private deed restrictions had become by the 1920s, before the widespread use of zoning.

The final subdivision looked at in detail in this report was Roland Park in Baltimore, Maryland.⁴⁴ The report says that this subdivision was one of the pioneers in drawing up detailed private restrictions which have served as models for other subdivisions. With the first subdivision of this community platted in 1891 it is

⁴³National Resources Council 89-92.

⁴⁴National Resources Council 89-92.

indeed an early example of comprehensive restrictions. Deed restrictions included nuisance restrictions, land use, setbacks, maximum width of the buildings, approval of house plans, as well as provisions to tax by the neighborhood association for the maintenance of private parks, sewers, and streets. The Olmsted Brothers were also involved in this subdivision. Nearly all of the residential communities studied by the committee had deed restrictions although no specifics were given.⁴⁵

The report generally approved of the use of RCs. Concerning private legal restrictions it stated: "...they often form the only protection which prevents individual interests from pursuing their own course without reference to the welfare of one another."⁴⁶ Private deed restrictions are favored for such things as aesthetic requirements and minimum building costs but zoning is seen as a better way to control land uses.⁴⁷ Indeed with the nearly universal adoption of zoning, deed restrictions do tend to promote the aesthetics and livability of the subdivision rather than trying so much to exclude nuisance uses. The next article I will look at examines RCs in subdivisions platted during the late 1930s to the mid 1950s.

Consigny and Zile⁴⁸ looked at subdivisions platted between 1938 and 1955 in Waukesha County, Wisconsin (excluding the city of Milwaukee). They documented

⁴⁵National Resources Council 147-48.

⁴⁶National Resources Council 147.

⁴⁷National Resources Council 272-73.

⁴⁸Robert H. Consigny and Zugurds L. Zile, "Private Zoning on Milwaukee's Metropolitan Fringe: Part I, Use of Restrictive Covenants in a Rapidly Urbanizing Area," Wisconsin Law Review (1958): 610-40.

the use of RCs in these subdivisions to see what types of restrictions are used, how legally effective they might be, and how aware of them residents of restricted subdivisions are. Out of the 132 subdivisions, 100 had restrictions (76%) with the majority of the unrestricted subdivisions being small in size (1-40 lots).⁴⁹ These findings are similar to Jost's and my own research. Since the small subdivisions contain few lots the total percentage of lots with restrictions was even higher than that of restricted subdivisions-83%. Thus by the middle of the twentieth century a majority of subdivisions had RCs and it appears that the use of the restrictions was a standard practice that subdividers used routinely. The specific restrictions found in the various subdivisions are not all that different from those found in earlier subdivisions.⁵⁰ Notable additions are provisions against temporary structures or against moving structures onto the lot, one controlling the keeping of livestock, provisions against junk and rubbish, height restrictions and provisions against outdoor toilets.⁵¹ Thus we see some minor additions to the standard restrictive covenant which had been used since the late nineteenth century. The authors do note a

⁴⁹Consigny and Zile 616.

⁵⁰The restrictions found (with the percentage of subdivisions having such a clause) are the following: 1. Land use (residential only)-86% 2. Building location (set backs, etc)-83% 3. Single family dwelling only-78% 4. Architectural (design) control-58% 5. Minimum dwelling size-50% 6. Provisions against temporary structures-45% 7. Animal control-41% 8. Provisions against junk and rubbish-41% 9. Minimum cost-39% 10. Maximum height of building-38% 11. Provisions against moving structures onto the premises-38% 12. Use of certain building materials prohibited or regulated-35% 13. Minimum lot size-31% 14. Provisions against outdoor toilets-27% 15. Use of certain building materials required-27% 16. Noxious and offensive uses prohibited-26%. Consigny and Zile 620-21.

⁵¹Consigny and Zile 620-21.

change in the type of restrictions from subdivisions platted in the late 1930s to those platted in the 1950s. Minimum cost restrictions are giving way to minimum dwelling size and restrictions concerning such nuisance items as outdoor toilets are being replaced by more elaborate restrictions such as the prohibition of prefabricated houses. These new restrictions help to assure more control over the appearance and value of subdivision property than the earlier restrictions.⁵² Racial covenants have also disappeared presumably because of the series of 1948 supreme court cases which declared them unconstitutional.⁵³

Since the authors were concerned with the legal issues of RCs, the issue of enforcement was addressed.⁵⁴ This is an important issue since if RCs cannot be effectively enforced then at least some of their power is reduced. During the period that the Portland study area was platted (1905-25) the penalty (if any) for violation of any part of the restrictive covenant was that the property conveyed would immediately revert to the grantor (be forfeited). Four of the six restricted subdivisions in the study area had such restrictions. See Appendix B for an example of this clause. The Wisconsin study only found a few subdivisions with this clause in it since by the 1930s the Wisconsin courts were generally unsupportive of forfeiture

⁵²Consigny and Zile 622.

⁵³See supra note 8. For a history of these Supreme Court cases see: Clement E. Vose, Caucasians Only: the Supreme Court, the NAACP, and the Restrictive Covenant Cases (Berkeley, CA: University of California Press, 1959). For a documentation of how racial RCs were used in Chicago to exclude blacks see: Thomas Philpott, The Slum and the Ghetto: Neighborhood Deterioration and Middle Class Reform, Chicago 1818-1930 (New York: Oxford University Press, 1978) 189-96, 255-56.

⁵⁴Zile 455-59.

so might refuse to enforce all restrictions in the deed.⁵⁵ State courts in general were hostile toward using forfeitures as a remedy for RC violations so they often refused to enforce a RC with such an enforcement remedy.⁵⁶ Courts more often construed the enforcement provisions of RCs as being enforceable by injunctive relief rather than by forfeiture.⁵⁷ Thus the property would not be forfeited but the court would issue an injunction to stop the RC violation. Even with injunctive relief the means of RC enforcement were cumbersome at best, doubtful at worst.

By the 1950s nearly all RCs proscribed injunctive relief and recovery of damages as remedies to covenant violations rather than forfeiture.⁵⁸ This remedy is favored by the courts and is much more equitable. Hence most modern subdivisions have such provisions for enforcement. I have included complete restrictions from a 1965 subdivision in Appendix H as an example of modern restrictive covenants. Restrictive covenants as a legal instrument are continually evolving so even some parts of this 1965 set of restrictions are undoubtedly different in a 1990 subdivision. Now that I have chronicled the development of RCs to the present day I will next turn to a work that chronicled residential development on the San Francisco Peninsula from 1860-1970.

⁵⁵Zile 456.

⁵⁶Jost 728.

⁵⁷Jost 731.

⁵⁸Zile 456.

In her PhD dissertation, Elizabeth Burns⁵⁹ looked at the urban morphology and development of the San Francisco Peninsula from 1860-1970. She sampled subdivisions in this area by period and each subdivision was checked for the presence or absence of RCs. The period 1860-1970 was broken down into six smaller periods; I 1860-1883, II 1884-1900, III 1901-1917, IV 1918-1932, V 1933-1949, VI 1950-1970. What she found was indicative of the history of RCs in general. No subdivisions were found to have RCs in the first period and only 16% of the subdivisions in period II had restrictions.⁶⁰ Thus RCs first appeared after 1884 but were not very common up to 1900. The third period had 36% of all subdivisions restricted and 57% of the period IV subdivisions were. Thus from 1900 to World War I a little over one third of the subdivisions were restricted but after the first World War and up to the Great Depression a little over half of all the subdivisions were restricted. Period V had the highest percentage of restricted subdivisions, 83%, but the final period saw a decrease to 59% restricted. I would say that the fifth period is a better indication of how many modern subdivisions are restricted since this was a period of rapid growth in the area. The 1950-1970 period probably saw fewer new subdivisions developed and more resubdividing of existing subdivisions which wouldn't necessarily have RCs associated with them. Thus RCs became widely used after the first World War on the San Francisco Peninsula but had been used in a few subdivisions since the 1880s.

⁵⁹Elizabeth Kates Burns, "The Process of Suburban Residential Development: The San Francisco Peninsula, 1860-1970," diss., University of California-Berkeley, 1974.

⁶⁰Burns 260, note 31.

Burns also made some general observations on how the character of deed restrictions has changed over time.⁶¹ Early restrictions only covered land use or the prohibition of alcohol with later restrictions being more comprehensive. The type of modern (period VI) restrictions she found are similar to those Zile found and she was able to break down these modern RCs into four social categories based on minimum house size or value.⁶² I was able to do the same thing with RCs in my study area except my study area was subdivided in period III. The restrictions were viewed as a good indicator of the intended social status level of the subdivision. Thus Burns generally supported my overall hypothesis at least with data from the 1950-1970 period. Deeds from a 1909 subdivision were found to have minimum building cost requirements, a liquor prohibition restriction, and a limitation to residential uses only.⁶³ A 1905 subdivision was found to have RCs against liquor and nonresidential uses.⁶⁴ Although Burns did not go into great detail about the evolution of RCs on the San Francisco Peninsula, we do get a broad sense of this evolution.

The preceding case studies are enhanced and confirmed by a complete enumeration of subdivisions I did of five or more lots that were platted in the city of Lincoln, Nebraska between 1894 and 1917. For every subdivision found, a sample of deeds was taken in which about one lot per block (or one lot for every 12 lots) was

⁶¹Burns 260, note 31.

⁶²Burns 261.

⁶³Burns 110.

⁶⁴Burns 111.

sampled to look for evidence of RCs.

A total of 77 subdivisions were platted in Lincoln between 1894 and 1917. The six between 1894 and 1899 were all resubdivided before any lots were sold so were not included in the analysis. I chose to start my analysis after the crash of 1893 since I was aware that late 1880s and early 1890s (a boom time in Lincoln) subdivisions did not have RCs and that most subdivisions after 1917 had RCs. The purpose of this study was to pinpoint when RCs were first used in Lincoln and to see when they were first widely used.

Of the 71 subdivisions studied, 31 or 44%, had restrictive covenants. If the total number of lots with RCs are examined then more lots are restricted than are not. Of the 5320 lots platted, 2868 or 54% have restrictions. This reflects the fact that unrestricted subdivisions on the whole tended to have fewer lots in them (75% had fewer than 30 lots) than restricted ones. Only 6 of the 31 restricted subdivisions (19%) were less than 30 lots in size. This is similar to the findings I reported earlier by Jost and Consigny and Zile. Breaking down the study period into two subperiods reveals that RCs were widely used only in the later subperiod. From 1900-1910 only 23% of the subdivisions had restrictions while in the 1911-1917 period, 51% of the subdivisions were restricted.

The first restricted subdivision in Lincoln, Nebraska was platted in 1901 but was only a seven lot subdivision with restrictions against barns, out houses, and livery

stables.⁶⁵ The next restricted subdivision was platted in 1904, was 55 lots in size, and only had set back requirements.⁶⁶ The first subdivision to have substantial RCs was platted in 1905 and had restrictions on business uses, a minimum dwelling cost, and a dwelling house only restriction.⁶⁷ There were only seven more subdivisions with restrictions before 1914 (as opposed to 22 without) after which there was a rapid increase in subdivision activity. From 1914 to 1917 there were a total of 36 subdivisions (51% of the subdivisions for the entire study period) platted with 21 or 58% of those being restricted. In terms of the total number of lots subdivided the switch to restrictive covenant use is very dramatic after 1911. From 1900-1910 only 28% of the lots had restrictions whereas in the 1911-1917 period 73% had restrictions. Even though the number of unrestricted subdivisions in the 1911-1917 period is close to that of restricted ones, (15 versus 21), the post 1911 unrestricted subdivisions are usually small (less than 30 lots), thus accounting for the low percentage of restricted lots. Thus it became standard practice for developers of large subdivisions (probably professional developers) to place restrictions of their properties after about 1911. Subdividers of small pieces of land probably weren't aware of RCs and/or didn't think it was necessary to place restrictions on their land since subdividing wasn't their livelihood.

⁶⁵Floral Park, Lincoln Lancaster County, Nebraska; April 9, 1901. Plat Book 3, p 225. See Warranty Deed Book 101, page 550 for an example of the RC.

⁶⁶Mount Emerald, Lincoln Lancaster County, Nebraska; July 22, 1904. Plat Book 4, p. 19. See Warranty Deed book 141, page 331 for an example of the RC.

⁶⁷Elm Park, Lincoln Lancaster County, Nebraska. May 20, 1905 See Warranty Deed book 126, page 392 for an example of the RC.

The average set of restrictions on residential subdivisions consisted of a minimum dwelling cost, restrictions limiting use to residences only, and setback requirements. Only a few of the 31 restricted subdivisions did not have this standard set and all of those were before 1914.

The widespread use of RCs after 1911 in Lincoln closely follows the dramatic population increase in the same time period. Between 1900 and 1910 Lincoln's population grew 9.5% while between 1910 and 1920 it grew 25%.⁶⁸ Thus population growth coincides with the rapid rate of subdivision after 1910 (54% of the subdivisions and 64% of the lots of the entire period were platted after 1910) and also with the increased use of RCs. Before 1911 there were not the population pressures and demand for new housing and subdivisions that there was after that time. Consequently RCs were not used very much. Subdividers responded to the new demand with RCs which helped establish homogeneous areas and to sell lots. Increased population pressures could cause neighborhoods to decline so the developer needed some way to assure that their subdivision wouldn't decline. What happened in Lincoln reinforces my hypothesis that RCs basically come into widespread use as urbanization increases in a particular locale. Even though RCs had been used on the east coast since the 1850s demand and urbanization pressures in Lincoln were not strong enough to warrant the use of RCs prior to 1900.

⁶⁸Nebraska Blue Book, (Lincoln, NE: Nebraska Legislative Reference Bureau, 1922) 270.

Portland Study Area RCs

The use of RCs in the Portland study area parallels the historical development in Lincoln. The first restricted subdivision in the study area was platted in 1904 with the rest of the restricted subdivisions platted between that time and 1911. There are a total of 16 subdivisions in the study area, 10 unrestricted (62%) and 6 restricted (38%). Again the total number of lots reveals a much different idea of the extent of restrictions. A total of 54% of the lots had restrictions on them and 46% did not. The period after 1904 saw 70% of the lots subdivided being restricted while 30% were not. Those subdivisions not having restrictions after 1904 were either small (under 20 lots), had more than one person subdividing them, or there were extraordinary circumstances prohibiting the normal sale of the subdivision lots. Fifteen percent of the study area lots were subdivided between 1889 and 1903 so the majority of the study area lots were platted after RCs were in widespread use.

Even though the appearance of the first subdivision with RCs is nearly the same in Lincoln as it is in the Portland study area, RCs were more quickly adopted in Portland than in Lincoln. I attribute this fact to the different times the two cities experienced their first period of rapid urbanization. Portland saw a large influx of persons between 1900 and 1910 while Lincoln saw its first between 1910 and 1920. Between 1898 and 1905 Portland's population increased by a phenomenal 83% (or 67,563 persons) nearly doubling its population in those seven years.⁶⁹ Thus this

⁶⁹E. Kimbark MacColl, The Shaping of a City: Business and Politics in Portland, 1885-1915 (Portland, OR: The Georgian Press, 1976) 492, Appendix M.

rapid population increase coincides with the first time that RCs were used and also supports my RC history hypothesis. As the population pressures of this period got greater subdividers used RCs to provide some degree of stability to the rapidly urbanizing area. They also needed some way to differentiate their properties from others so they used RCs with differing minimum house costs to cater to different income groups. RCs could also be used to sell lots since it was presumed that these lots were a safer investment than most because they were restricted.

CONCLUSIONS

From the evidence presented above it is clear that RCs were developed in response to the pressures of urbanization, whenever it first became strong. Thus the date of the first widespread use of RCs varies from locale to locale. In general RCs first started on the eastern seaboard where urbanization first started and spread to the rest of the country. RC use was nearly universal by the end of World War I. Consequently we can be fairly sure that areas developed after the First World War have restrictions and that their social structures are probably influenced by this legal instrument. In Chapter III, I will examine the reasons that subdividers use RCs and how that is directly related to the social structure of residential areas.

CHAPTER III

THE RELATIONSHIP BETWEEN RESTRICTIVE COVENANTS AND SOCIAL STRUCTURE AND THE RESULTING RESEARCH DESIGN

This section first examines the reasons that subdividers place RCs on their subdivisions and the reasons buyers want them. It then turns to the probable effect that RCs have on the social structure of residential areas. Finally I will look at the research design that I will use to test my hypothesis.

REASONS FOR THE USE OF RESTRICTIVE COVENANTS

In the broadest sense Monchow sums up the need for RCs in this sentence: "The process of urbanization has so increased the number and complexity of the relationships arising out of the use and title to urban land that measures of control have become absolutely essential to the economic functioning of urban life."¹ Thus some sort of regulation was needed to establish order to a potentially chaotic and inefficient situation. The increased urbanization of the nineteenth century created possibilities of conflict between expanding commercial areas and residential areas. Unrestricted use of land could not go on forever so there was a need for some sort of private legal machinery to preserve the residential character of subdivisions. Developers needed some sort of assurance that the investments they made improving

¹Monchow 4.

suburban real estate would not be depreciated by the infiltration of businesses or undesirable structures into their subdivisions.² Instead of relying on public means of separating land uses, restrictive covenants were favored since they fit the laissez faire ideology of the time.³ Complete freedom in the use of one's property was favored, so any restrictions that limited uses of land were disliked. The restrictive covenant was favored since it is a voluntary contractual agreement with no involuntary restrictions involved. Once a buyer signs a deed containing RCs, they are bound contractually to them. A potential buyer who doesn't like the restrictions need not buy the property.

Prior to suburbanization, the social structure of cities was inverted to what it is today. The rich lived close to the Central Business District and the poorest lived on the fringes. The areas bordering cities were considered fringe in both the social and physical sense. With the advent of steam railroads in the mid nineteenth Century and the electric trolley in the 1890s it became possible to live on the fringe of cities or even in suburban communities 10-20 miles away and still work in the central business district. Once it became possible and fashionable to live on the fringe of cities and suburbanization began, some mechanism was needed to transform the social status of fringe areas. In order to change this perception and to insure that whatever social status the developer desired was maintained, restrictive covenants

²American Law of Property 402.

³Paul McCarthy, "The Enforcement of Restrictive Covenants in France and Belgium: Judicial Discretion and Urban Planning," Columbia Law Review 73 (1973): 1-2.

were employed. This would explain the early heavy emphasis on land use restrictions since undesirable land uses were once located on the fringe of cities. A quote from a case concerning an early twentieth century fringe subdivision in Louisville, Kentucky illustrates this nicely: "In this way [the use of minimum house cost restrictions] it was believed the desirability of the lots would be enhanced, as all would thereby be insured immunity from the encroachment of an undesirable class of tenements and occupations which are thought to depreciate the selling value of purely residential properties."⁴

Buyers of subdivision lots also came to expect subdivisions to be restricted for social as well as functional reasons. Owners of subdivision property also wanted a protection on their investment and an assurance that no land uses or lower social classes would invade the area. Any invasion of this sort would lower their peaceful enjoyment of their property and the value of their homes.⁵ A subdivision with a uniformity of housing sizes, social classes, and land uses was more likely to appreciate over time and be a good investment than was an unrestricted one. Indeed middle class customers were found to prefer uniform neighborhoods to mixed ones probably because of their supposed stability.⁶ The eight subdividers interviewed by Consigny and Zile in the 1950s stated that 90 percent of their customers desired to live in a

⁴Highland Realty Co. v. Groves, 130 Ky 374 (1908) at 376.

⁵Jost 701.

⁶Sam Bass Warner, Streetcar Suburbs: the Process of Growth in Boston, 1870-1900 (Cambridge, MA: Harvard University Press, 1978) 122.

restricted subdivision.⁷ The subdividers interviewed were from Waukesha County (Milwaukee) Wisconsin and were local small to medium sized developers. They are probably typical of similar sized subdividers of the period who platted the majority of suburban land. Consequently I would expect that their attitudes to be representative of the majority of subdividers at that time.

Thus restrictive covenants are used to create uniform residential areas which appeal both to the needs of the developer and to the buyer. Developers use the presence of restrictions to promote the sale of their lots to buyers as well as to assure financial success through constant or rising lot prices. The developer sees the restrictions protecting their investment until all lots are sold while the buyer sees them creating long standing stability and social homogeneity in the neighborhood. Buyers also desire restricted subdivisions for more obvious social status reasons.

In modern American society social identity is conveyed by conspicuous consumption of objects such as housing. The dwelling along with the status of its location is one of the principal symbols of social status.⁸ Restrictive covenants are a perfect way to define social status spatially and to insure the maintenance of homogeneity. The use of RCs can be seen as a way to establish and maintain areas

⁷Consigny and Zile 623.

⁸James S. Duncan and Nancy G. Duncan, "A Cultural Analysis of Urban Residential Landscapes in North America: the Case of the Anglophile Elite," The City in Cultural Context, ed. John A. Agnew, (Boston: Allen and Unwin, 1984) 255-67.

of a certain social status. Minimum values and other restrictions as to facade and physical appearance are an assurance that others around you will partake in the same or higher level of conspicuous consumption and hence not threaten your social position. People of similar social status generally expect the same things from their neighbors (working on your car in the front yard is not all right in a middle class neighborhood) and consume things in a uniform fashion. Thus if RCs create areas of social status homogeneity then people will not be threatened by their neighbors if they are in the appropriate status area. To avoid a chance that one's identity might be threatened, future buyers of subdivision lots look for subdivisions which are restricted and have areas of homogenous social status already established.

Since buyers of suburban lots want homogeneous subdivisions and developers need to sell lots, the restrictive covenant is a logical way to satisfy both parties. Developers can get good and stable prices for their lots since they know that buyers want restricted subdivisions and residents are relatively certain that their status will not be threatened by lower status groups.

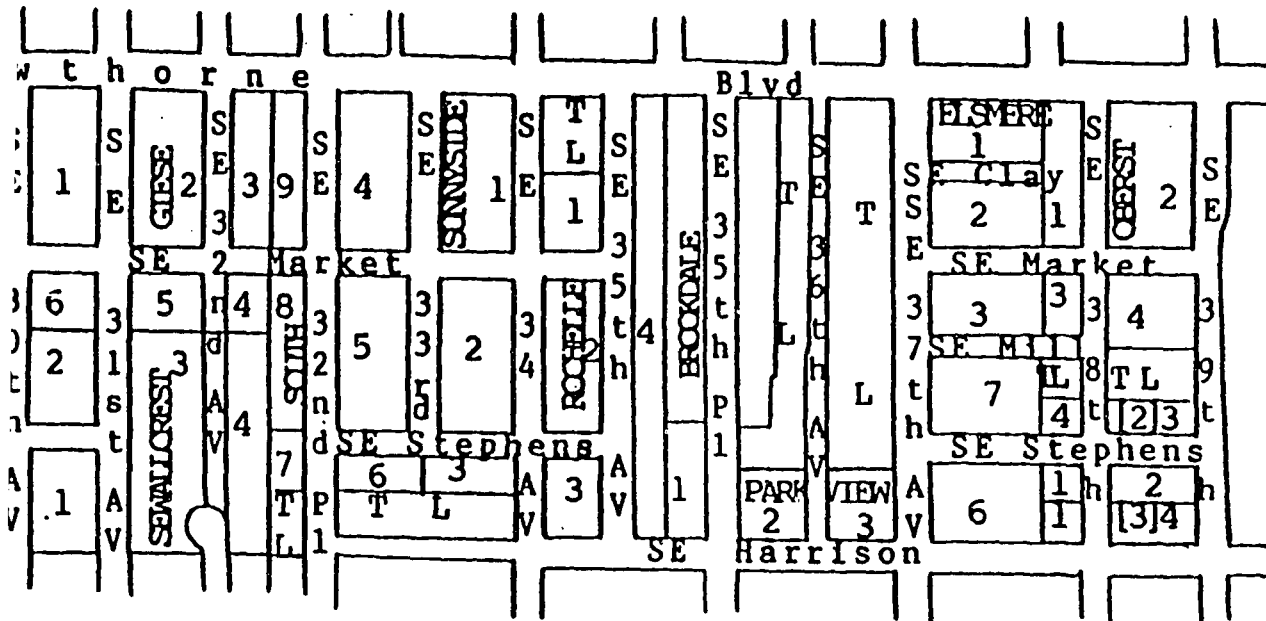
In order to begin to identify social status areas when looking at a particular residential area it is necessary to find out exactly what the intentions of the subdividers were. If the study area is an older one then many subdivisions may not have RCs or very limited ones. It is safe to say, however, that if an area has RCs, it was subdivided after 1905-15. Once the absence or presence of RCs is established then it is necessary to find out what sort of status areas certain subdivisions were intended to be. Social status is basically differentiated in residential subdivisions by

the price and/or size of the houses required in the deed. Until about 1950 this requirement usually consisted of a minimum cost for houses constructed on the lots. After 1950 it usually consisted of a minimum size (minimum square footage) requirement. (See Appendix H). Developers geared their subdivisions to different classes of buyers by these minimum cost/size requirements. Thus if one finds a wide range of minimum cost areas in a particular residential area--say \$1000, \$2500, and \$5000--then one would expect to find a wide variation in status or even three distinct status groups (low, medium and high). Differences in minimum values usually translate into different size houses, especially if the differences are great, say between \$2000 and \$5000. The size of the house usually is a good indicator of the social status of the resident; social status is tied to income which determines the size of house one can afford. Dividing all of the subdivisions in a particular study area into minimum cost groups makes it possible to study the social status of the residents in these groups. It is in this way that one can establish if RCs and their differing minimum house costs do indeed affect the social structure of residential areas. Next I will look at the research design I will use to test the affect of RCs on residential areas.

RESEARCH DESIGN

The study area is located between SE Hawthorne Boulevard, 20th, and 39th Avenues and Harrison Street in the Southeast section of Portland, Oregon. (See Figures 1 and 2). This area has a range of housing sizes, quality, and ages so is a

Figure 2. Portland, Oregon St



Portland, Oregon Study Area.

good area to study the effects of RCs. It also has a wide variety of minimum housing cost requirements and a substantial area without any restrictions.

Data are drawn from four sources: deed records, Polk City directories for Portland, block statistics from the decennial census, and Multnomah County Assessors data. (See Table II).

Deed records were used to find out whether or not a subdivision has restrictive covenants and what the minimum house cost values and restrictions are. Using the Deed indexes arranged by subdivision at Ticor Title Company, I found Warranty Deeds for the appropriate number of lots in each block and looked up those deeds at the Multnomah County Records Office. I checked each deed for restrictive covenants and recorded any restrictions. My deed sample was taken by the block face (as opposed to by block) and consisted of: 1 lot per block face for very short block faces (1-5 lots); 2 lots per block face for short blocks (6-11 lots); 3 lots per block face for medium length blocks (12-23 lots); and 4 lots for any block longer than 24 lots. I sampled by block face so that it would be easier to detect any variations in minimum values in a block and to assure that both sides of the block were sampled. An attempt was made to get sample lots from equally spaced parts of each block face (i.e. for a short block one at each end of the block face) and not use lots that are all bunched in one place. After the completion of this sample I placed the block faces into the appropriate RC house cost groups. Due to the many minimum

TABLE II
DATA SOURCES

<u>Data</u>	<u>Source</u>
Restrictive Covenants	Warranty Deeds
Occupation	Polk City Directory for Portland
Percent Owner Occupied	Decennial Census and City Directory
Estimated Price of House	Decennial Census
Size of House	Assessor's Data (assessment roll)
Date of Construction	Assessor's Data (assessment roll)
1990 Assessed Value	Assessor's Data (assessment roll)

house cost requirements, the study area was divided into 5 different RC groups; High, Medium, Low, None-West, None-East. The complete restrictions of the various subdivisions are summarized in Table IV. The high group has a minimum house cost of more than \$5000, the medium has a range of \$2000-4999, and the low goes from \$1000-1999. The None-West and the None-East groups refer to those subdivisions which have no RCs in the western part of the study area (SE 20th-31st Avenues) and in the eastern part (SE 31st-39th Avenues), respectively. The subdivisions and housing with no RCs were found to be significantly different in these two parts of the study area so were separated.

The Polk City Directory for Portland was used to get a sample of household head occupations from each RC group to see how status is effected by RCs. This

sample was taken in the years 1940, 1950, 1960, 1970 and 1980 to ascertain how different RC areas have maintained their particular status. The city directory usually has the occupation of the household head of every housing unit and is updated nearly every year. A systematic sample consisting of 1/4 of all employed household heads was undertaken for each of the years mentioned above. I took this sample by street instead of a stratified sample by RC group. When the household is surveyed by the Polk Company, data on owner or tenant status is also collected and recorded next to the household's name in the address index of the city directory. Hence the percent owner and the percent tenant or renter can be calculated. The percent owner occupied is an indication of the desirability and stability of the neighborhood (at least for single family areas). Thus the owner-occupied percentages can be analyzed by RC group to see if RCs affect the proportion of owner occupants in the area. I would expect the higher RC groups to have a higher percent owner-occupied since they were intended to be higher status and more desirable areas to live in.

Next, the occupations of the household heads were converted into a score based on Duncan's Socioeconomic Status (SES) Index⁹ and an average was computed for each RC group by year. The Duncan SES index scores range from 1-99 so can detect fairly small but important status differences between RC groups. Most occupations are given a score so conversion is fairly easy. Even though this SES measure was developed for occupations in the 1950 Census and others have

⁹Otis Dudley Duncan, "A Socioeconomic Index for All Occupations," Occupations and Social Status, ed. Albert J. Reiss (New York: Free Press, 1961) 109-138.

updated it with different job classifications, it is a reliable index for the entire study period. In order to test the reliability of the 1950 index I recalculated a sample of 1970 and 1980 data using year appropriate scales developed by three different authors¹⁰. I found that the scores were on average lower (but not by much) and that all RC groups were lowered by approximately the same amount. The Duncan measure is therefore a reliable measure for the purposes of this thesis. I was able to get a sample of at least 30 household heads for every RC group per sample year. Once the occupations were scored then a data file was established which contained the status of the household head along with all the appropriate house data for their residence. This data file was established for each status group for each sample year.

The block statistics from the decennial census (1940-1980) were used to get the mean owner estimated value of the houses for each block in the study area. This information was used to see how housing values have progressed and differed in areas with and without restrictive covenants. The percent owner and the percent tenant (renter) are also reported so will be used along with and as a check against, the same data contained in the Portland City Directory. The various Census defined blocks were divided among the five RC groups and the data from them analyzed as such. The Census also reported the number of nonwhite persons living in each block

¹⁰Gillian Stevens and Elizabeth Hoisington, "Occupational Prestige and the 1980 Labor Force," Social Science Research 16 (1987): 74-105. Gillian Stevens and Joo Hyun Cho, "Socioeconomic Indexes and the New 1980 Census Occupational Classification Scheme," Social Science Research 14 (1985): 142-68. Gillian Stevens and David L. Featherman, "A Revised Socioeconomic Index of Occupational Status," Social Science Research 10 (1981): 364-95.

with the earlier years reporting the percent Negro while the later years (especially 1980) breaking down the minority population into different races or ethnicity. At no time during the time period study was there a significant minority population anywhere in the study area so I have not included these variables in my analysis. The percent of persons older than 62 years and younger than 18 years was also reported for the 1970 and the 1980 Censuses. I could not discern any clear patterns in these variables for the various RC groups so I have not included them in the analysis.

The final data source was the Assessment Roll which is maintained by the Multnomah County Assessors Office.¹¹ The date of construction, 1990 assessed valuation, and the size (number of square feet) of every single family house in the study area was obtained. All apartments and single family houses converted to apartments were deleted from the data set to facilitate analysis. One large data file with all the study area records in it was established as well as one for each of the RC groups. The differences between the RC groups could be easily analyzed with the separate data file for each RC group. The Assessor's data was used to see how RCs affect the size and value of the housing as well the timing of housing development. I would expect that the size and value of the housing would be directly related to the particular RC group it was in. Development should be delayed in those areas with higher minimum cost requirements. In addition I collected data on the sale prices of houses in the study area from the sales data records maintained by the Assessors

¹¹I got an electronic data file containing data records for all the houses in the study area from the Assessors office. This was given to me on a floppy disk, which I then imported into a statistical program for analysis.

office. These data were collected to get an idea of the prices for which houses in the various RC groups were selling and to see if there were significant differences between the RC groups. I would expect there to be a large difference between the low groups and the highest ones although there may not be much difference between the High and the Medium and the Low and the None-East groups.

The various sub-hypotheses that will be tested in the next chapter are as follows: 1. The higher RC groups will have a higher owner-occupied proportion than lower groups. 2. The size and value (assessed as well as owner estimated) of the housing will be directly related to the particular RC group it is in. 3. There should be a large difference in the value and size of the lowest and highest RC groups, although there may not be much difference between the Medium and the None-West groups, and the Low and the None-East groups, 4. The social status of the RC groups will be directly related to the particular group they are in (the High group will have high status, etc.) The next chapter will deal with the results that these methods revealed.

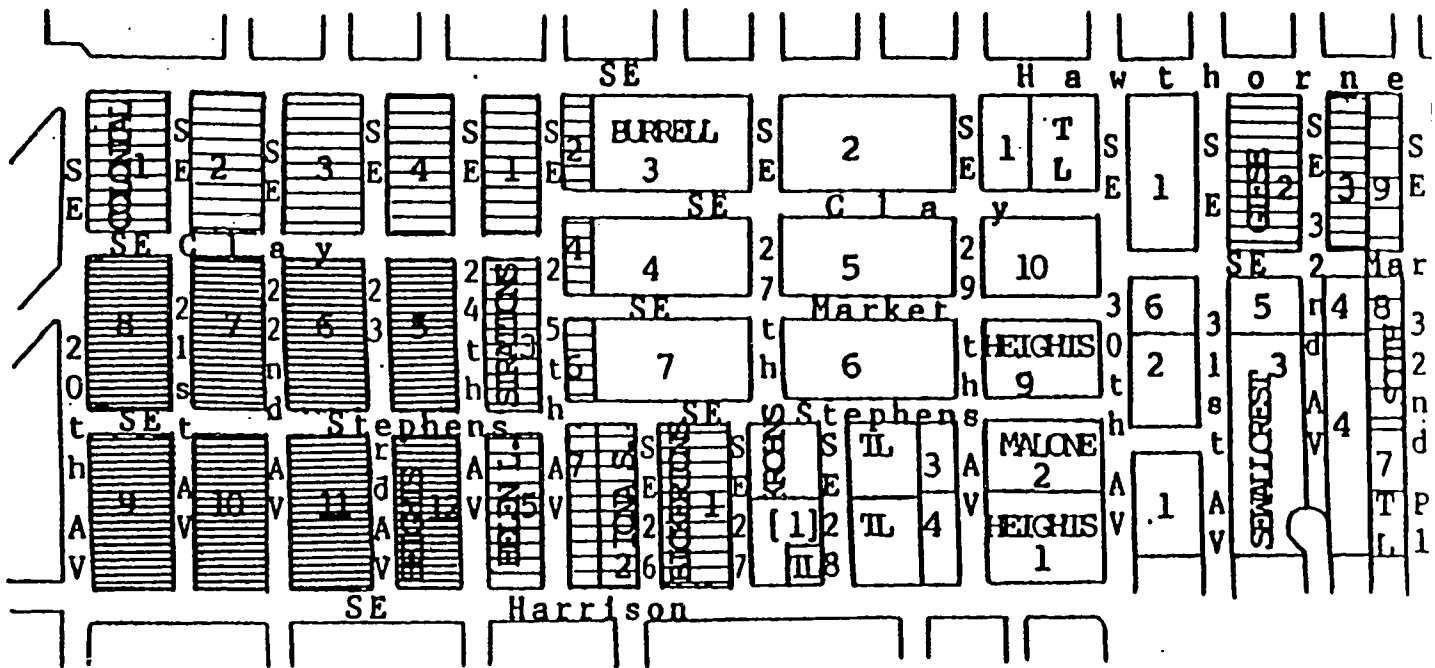
CHAPTER IV

PORTLAND STUDY AREA RESULTS

The results of my analysis of the Portland study area generally confirm my hypothesis that RCs do effect the social structure of residential areas. I will first look at the physical and valuation aspects of the study area housing to provide a basis for further analysis and then will look at the historical data I collected on status, etc.

SUBDIVISIONS

As was indicated in Chapter II there are 16 subdivisions in the study area. I have broken down the subdivisions into their particular RC groups to facilitate comparisons between them. See Figure 2 for a map of the study area. Table III lists the subdivisions by RC group with the date of subdivision and the number of lots. See Figure 3 for a map of the RC areas. As can be seen from the tables below the RC groups contain roughly the same number of houses in them although the Northeast group does contain considerably more than most. The number of lots in each group does not match the number of houses studied because I deleted any multifamily dwellings or businesses that were found on any lot. The majority of multifamily dwellings in the study area are within 2 blocks of Hawthorne, with there being concentrations around SE 21st and Hawthorne, and 28th and Hawthorne. The majority of houses that were converted to multifamily use are East of 30th Avenue.



0 500 1000

Feet
SCALE

Notes:

[1] Burrell Heights,
Block 8

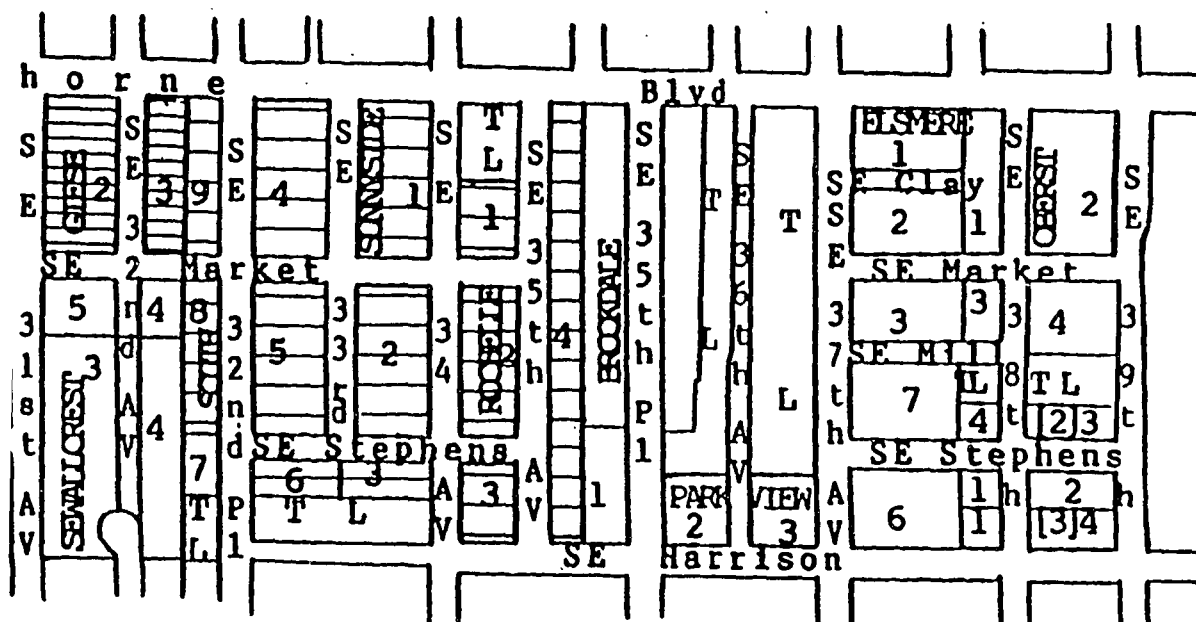
[2] Linns

[3] Strubes

TL Tax Lots



Figure 3. Restrictive Covenant Gro



High (\$5000+)



Medium (\$2000-4999)



Low (\$1000-1999)



None-West (West of 31st AV)



None-East (East of 31st AV)

tive Covenant Groups.

TABLE III
STUDY AREA SUBDIVISIONS BY RC GROUP

HIGH (minimum house cost-\$5000+)

<u>Subdivision</u>	<u>Date of Subdivision</u>	<u>Number of Lots</u>	<u>Location</u>
Colonial Heights (Blocks 5-12)	1905	128	SE 20th-24th, SE Clay-Harrison

Total Number of Lots: 128

Total Number of Houses Studied: 119

MEDIUM (\$2000-4999)

<u>Subdivision</u>	<u>Date of Subdivision</u>	<u>Number of Lots</u>	<u>Location</u>
Colonial Heights (Blocks 1-4)	1905	56	SE 20th-24th, SE Hawthorne-Clay
Iona S. Bickerton's	1911	27	SE 26th-27th, SE Stephens-Harrison
Giese (Blocks 2,3)	1908	26	SE 31st-32nd, SE Hawthorne-Market
Helen Stratton's	1910	66	SE 24th-25th, SE Hawthorne-Harrison

Total Number of Lots: 175

Total Number of Houses Studied: 128

TABLE III
STUDY AREA SUBDIVISIONS BY RC GROUP
(continued)

LOW (\$1000-1999)

<u>Subdivision</u>	<u>Date of Subdivision</u>	<u>Number of Lots</u>	<u>Location</u>
Rochelle	1906	56	SE 34th-35th, SE Hawthorne-Harrison
South Sunnyside	1904 & 1906	86	SE 32nd PL-34th AV, SE Hawthorne-Stephens

Total Number of Lots: 142

Total Number of Houses Studied: 132

NONE-WEST

<u>Subdivision</u>	<u>Date of Subdivision</u>	<u>Number of Lots</u>	<u>Location</u>
Burrell Heights	1912-14	108	SE 25th-30th, SE Hawthorne-Stephens
Giese (Blocks 1,6)	1908	24	SE 30th-31st, SE Hawthorne-Market
Krohn's	1921	8	SE 27th-28th, SE Stephens
Malone Heights	1912	20	SE 29th-30th, SE Stephens-Harrison
Sewallcrest	1926	20	SE 30th-32nd AV, SE Market-Harrison
Tax Lots	Various	11	SE 28th, SE Stephens- Harrison & SE 30th, SE Hawthorne-Clay

TABLE III
STUDY AREA SUBDIVISIONS BY RC GROUP
(continued)

LOW (continued)

Total Number of Lots: 191
Total Number of Houses Studied: 159

NONE-EAST

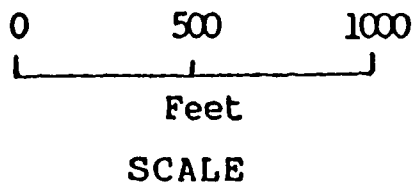
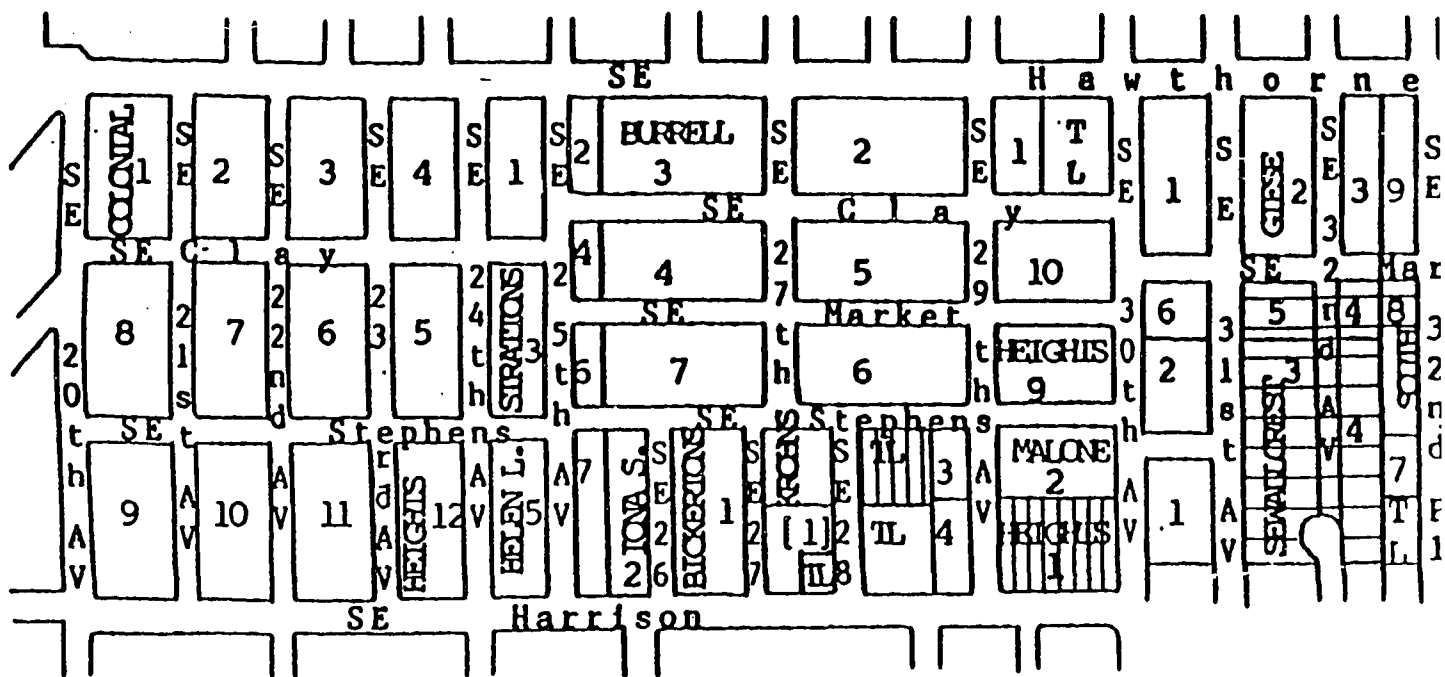
<u>Subdivision</u>	<u>Date of Subdivision</u>	<u>Number of Lots</u>	<u>Location</u>
Brookdale	1889	36	SE 35th PL, SE Hawthorne-Stephens
Elsmere	1890	36	SE 37th, SE Hawthorne-Mill
Linn's	1904	16	SE 38th, SE Stephens
Oberst	1905 & 1910	39	SE 38th, SE Hawthorne-Mill
Park View (Blocks 1-3,6-7)	1891 & 1902	46	Blocks 1-3, SE 35th PL- 37th AV, SE Stephens- Harrison. Blocks 6-7, SE 37th, SE Mill-Harrison
Strube's (Blocks 1,4)	1903	8	SE 38th & SE Harrison
Tax Lots:	Various	86	Mostly SE 36th, SE Hawthorne-Stephens

Total Number of Lots: 267
Total Number of Houses Studied: 227

They are only 6 percent of the houses in this part of the study area (23 of the 359) so are not an indication of decline. Only 40 houses were dropped out of the final 765. I only included in the total number of lots, the number of lots that actually had some sort of building built on it. All lots were eliminated that now have churches, schools, or parks on them. Nothing was included that faces Hawthorne since this thoroughfare has predominantly commercial uses and some apartments. See Figure 4 for the locations of the major public uses in the study area. A tax lot is a single lot not part of any formal subdivision.

In Chapter II I have analyzed the distribution of lots and subdivisions over time and in relation to RC history. In general the majority of the subdivisions were platted between 1900-1911 with a few predating 1900 and a few occurring after 1911. Three out of five of the RC groups were subdivided in the 1900-11 period. The exceptions are the two groups without RCs. The None-East group contains a few subdivisions from the late nineteenth Century and the None-West group contains some from the 1920s. It figures that the None-East group would have some 1880s and 1890s subdivisions since RCs were not used in this time period. However, the None-West subdivisions would be expected to have restrictions since they were subdivided after 1905. I attribute the lack of RCs in the None-West group to the special circumstances surrounding the subdivision and sale of these subdivisions.

Burrell Heights was subdivided by four different people on four different plats over the span of three years. Thus this subdivision is a single entity in name only as each subdivider sold and marketed their own lots. It would have been hard for the



Notes:

[1] Burrell Heights,
Block 8

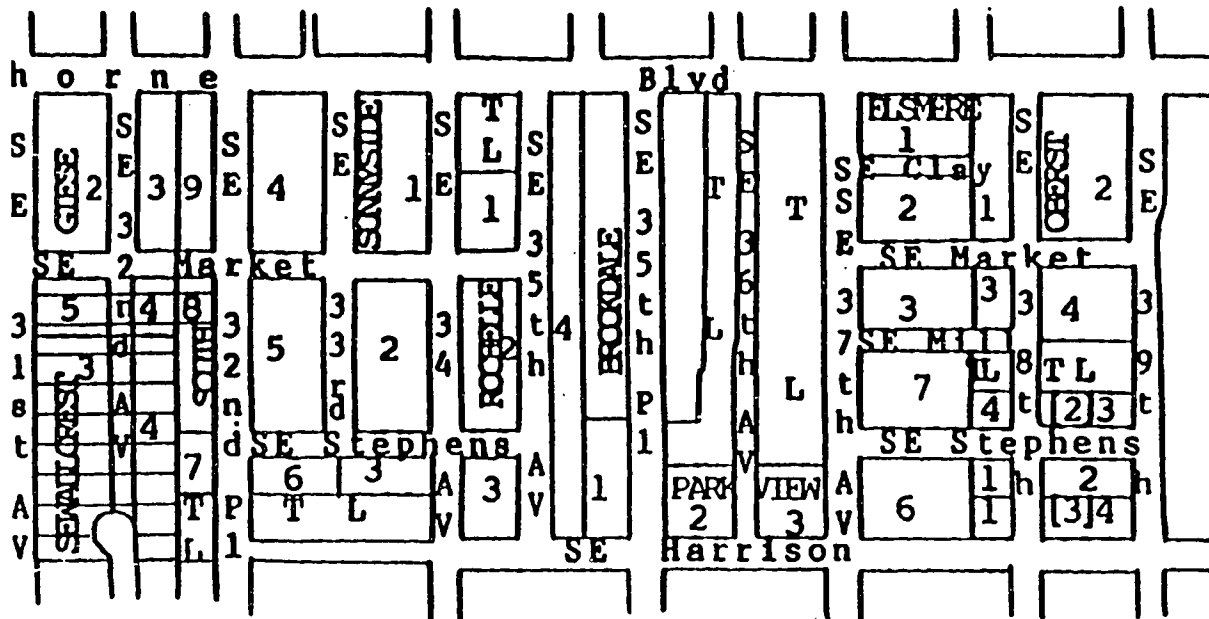
[2] Linns


[3] Strubes

TL Tax Lots



Figure 4. Public and Institutional Land Uses



 Schools and Parks

 Churches

tional Land Uses.

owners to agree on a set of uniform restrictions, and indeed each owner might have had a small enough part that they saw no reasons for restrictions. One person subdivided the blocks along Hawthorne Boulevard (blocks 1-3) and these were belatedly developed in commercial or multifamily use. Thus one subdivider was not interested in residential development at all so probably would have opposed any restrictions. Krohn's subdivision is a very small subdivision (8 lots) so it figures that there would not be RCs on it. Block 1 of Giese had RCs with a minimum house cost of \$2500 but it appears that they never had an effect on the development of the subdivision. A majority of the lots had not been sold or developed by 1929 when the original restrictions had nearly expired. When the restrictions were renewed in that same year, only racial restrictions and a set back were placed on the lots. These new restrictions contained no minimum amount so had no effect on the size of subsequent houses built. Since this block was not developed under RCs with a minimum cost requirement, it was placed in the None-West category. All of the rest of the blocks in this subdivision had seen the majority of their lots sold and built upon before the restrictions had expired so could be classified in the Medium category.

Malone Heights had restrictions but they expired before the majority of the subdivision could be built up. I therefore classified the subdivision as not containing RCs since they had expired before having an effect on the subdivision. Not even 25% of the lots that were eventually to be built upon had been so by the 1925 RC expiration date. I noted in a 1913 deed that the original owner and subdivider Mary Ellen Malone, "an insane person", had given a John C. Malone the right to sell the

lots. In 1913 she lived on the West side of 30th Avenue between Stephens and Harrison, so she probably inherited the land from her parents or other relatives. Obviously under these circumstances the lots wouldn't be sold in a timely manner and any RCs placed on them wouldn't have been renewed.

Sewallcrest appears to have been delayed also in its development after its late 1926 subdivision. The subdivider, Clarence B. Sewall, lived on the piece of land that was his subdivision and he earned his living as a bank vice-president. Since his income did not depend on the sale of the lots he was not in a hurry to subdivide or sell lots and probably didn't care if there were any restrictions on the land. Hardly any lots were built upon before the end of the Second World War further indicating that he was in no hurry to sell or develop the lots. Apparently only blocks 1 and 2 were built upon before 1976 when all of blocks 3 and 4 (two thirds of the subdivision) were deeded to the City of Portland for a park (Sewallcrest Park). Thus this is not the typical subdivision developed by an experienced full time subdivider, so I would expect it not to contain RCs.

Concerning the splitting of the Colonial Heights subdivision between the Medium and the High categories, I attribute that to the anticipated business use and congestion along Hawthorne Blvd. The four blocks of Colonial Heights that are in the Medium group all border on Hawthorne Blvd. which makes them less desirable for residential uses because of the traffic and noise created by that major thoroughfare. Thus the subdividers did not expect to get as high of a price or of a class of persons to live so close to Hawthorne as they did for the blocks just to the

south with the highest restrictions. I also found several deeds which released restrictions from those lots fronting on Hawthorne, presumably to allow for commercial or multifamily housing development.

There are quite a few more tax lots in the None-East group than any other, reflecting the general unplanned nature of the Eastern half of the study area. Most are along SE 36th Avenue, where nearly the entire length of the study area is in tax lots, and on the West side of 37th Avenue. The average size of the lots is smaller than most (45' X 90' as opposed to 50' X 100') although the size varies quite a bit over this small area. Lot size amongst all subdivisions did not vary significantly from the standard 50X100' size so was not included in any analyses I did. The restrictions of the various RC groups are summarized below in Table IV.

All of the High, None-West, and all except one of the Medium RC group subdivisions, are on the West side of 31st Avenue. The Low group and the None-East group are located East of 31st Avenue. Consequently the study area is basically divided into two large status areas with 31st Avenue being the dividing line. That is why I broke down the areas without any restrictions into a westerly and an easterly component at 31st Avenue. These two large status areas are very different in character with the West being more appealing than the East. This division is obvious when driving through the area even before knowing the RC areas. My original reason for studying this area was due to this distinct split so it is significant that these differences can be explained by differences in the minimum housing cost restrictions found in the RCs. Now that the subdivision patterns of the study area have been

established it is time to turn to an examination of how the area was built up.

TABLE IV

RESTRICTIONS OF STUDY AREA SUBDIVISIONS
(ALL HAVE RESIDENTIAL USE ONLY RESTRICTIONS)

HIGH (minimum house cost-\$5000+)

<u>Subdivision</u>	<u>Minimum Amounts</u>	<u>Setbacks (feet)</u>	<u>Length</u>	<u>Comments</u>
Colonial Heights (Blocks 5-12)	\$5500	25	to 1946	No reverter

MEDIUM (\$2000-4999)

<u>Subdivision</u>	<u>Minimum Amounts</u>	<u>Setbacks (feet)</u>	<u>Length</u>	<u>Comments</u>
Colonial Heights (Blocks 1-4)	\$2000, 3500	20	to 1950	No reverter
Iona S. Bickerton's	\$2500, 3000, 3500	20, 25	10, 25 years	When 10 year expired, 25 used. Racial restrictions
Giese (Blocks 2,3)	\$2000	15	25 years	Racial restrictions after 1929
Helen Stratton's	\$3000	15	to 1921, renewed	

TABLE IV
 RESTRICTIONS OF STUDY AREA SUBDIVISIONS
 (ALL HAVE RESIDENTIAL USE ONLY RESTRICTIONS)
 (continued)

LOW (\$1000-1999)

<u>Subdivision</u>	<u>Minimum Amounts</u>	<u>Setbacks (feet)</u>	<u>Length</u>	<u>Comments</u>
Rochelle	\$1000, 1250, 1500	None	Not listed	No reverter
South Sunnyside	\$1000	15	25 years	

BUILD UP OF THE STUDY AREA

In general the None-West and the Low groups were the first to have houses built on them. These areas were built up almost immediately after subdivision while the Medium and the High groups did not see rapid development for a decade or more after their subdivision. It appears that RCs in the Medium and High groups hindered development of those areas since they were subdivided at approximately the same times as the other groups but were developed much later. The dividing line between the two broad status areas, SE 31st Avenue, also divides the area into two different time periods that development occurred. The East part was developed predominantly between 1904 and 1914 while the West half was built up during the 1920s. An analysis of the development history of the RC groups will demonstrate this.

I will describe the general buildup of the different RC groups and that of their subdivisions as necessary. As was noted earlier only a small number of houses in the study area have been converted to multifamily use and very few apartments were built except within a few blocks of Hawthorne Blvd. Essentially the RCs against multifamily use were effective and the area was developed in a predominantly single family manner.¹ I have summarized the build up of the various RC groups in Table V.

High RC Group

The high group consists only of Colonial Heights Blocks 5-12 so this is an analysis of both that subdivision and the High RC group. Three fourths of this group were built between 1922-29 with only 4 houses built before that (3 in 1913 and 1 in 1915) and only 9 houses built after 1946. 89% of this group were built before 1946 with the mean year built being 1928. The peak of building activity was 1925 when nearly 1/3 of this group was built. The architecture of this group reflects the time period it was built in. The majority of the houses are frame Tudor Revival style houses but some streets have a considerable number of Colonial style houses. Both styles were popular in middle class, late 1920s and early 1930s subdivisions, so it is no surprise they are found here. I found no deeds from before 1922 for this RC group so apparently lots were not sold widely before this date and hence not many houses built. The land was ready for development though, since by 1910 the

¹A map of the general buildup of the study area would not be useful since the patterns are either too uniform or too varied to be more enlightening than a description of them.

sidewalks had been laid in the subdivision. Thus it is likely that the RCs caused a delay in development unless there was some unidentified problem with the subdivider that delayed lot sales.

TABLE V
YEAR BUILT BY RC GROUP AND TIME PERIOD

<u>Time Period</u>	<u>RC Group</u> <u>(Percent Found in Each Time Period)</u>				
	<u>High</u>	<u>Medium</u>	<u>Low</u>	<u>None-West</u>	<u>None-East</u>
Before 1900	0	1	0	0	5
1900-1904	0	2	2	0	7
1905-1909	0	5	66	1	33
1910-1914	3	22	23	4	33
1915-1919	1	6	1	2	4
1920-1924	19	24	2	4	6
1925-1929	56	20	2	34	5
1930-1934	4	6	0	29	0
1935-1939	1	6	1	14	1
1940-1946	8	5	1	3	2
1947-	8	3	2	9	4

Medium RC Group

The medium group was built up before the high group with over half of it

being built up by 1923. Seven percent occurred before 1910 and only 18% occurred after 1929. Again the most rapid construction activity occurred in the 1920s with 44% of the houses being built in this decade. During 1922 and 1923 over 1/5 of this group was built. Except for these two years, development occurred fairly uniformly starting in 1902 and ending in 1952. Only four houses were built after 1946 and only one was built before 1902. Lots in Blocks 1-4 in Colonial Heights were traded often shortly after subdivision, so consequently this part of Colonial Heights had a better chance of being built up before Blocks 5-12. The medium blocks had a lower minimum house cost (\$2000 and \$3500) so were closer to what other houses were costing in the area at the time. Thus development was not hindered by the RCs and we see construction earlier. Buildup of Blocks 1-4 of Colonial Heights was not rapid, however, as houses were constructed evenly over a 30 year period from the early 1910s to the early 1940s. The lower RCs were low enough to allow for some early development but were not low enough to allow for rapid development soon after subdivision. The architecture of this part of Colonial Heights is an eclectic mixture of new and old, large and small. There are a number of apartment buildings which were built soon after subdivision (the early 1910s) and a few that were built within the last 15 years. On many of the streets there are approximately half c. 1910, 2.5 story prairie boxes and half 1920s, 1.5 story bungalows. This mix of houses is an indication of how the RCs affected the size of the houses in the subdivision. When the early houses were constructed in the 1910s the minimums were large enough to cause larger sized houses to be built. Apparently there was not enough demand for

these lots so many remained unsold until the 1920s. By the time some of the lots were built on in the 1920s, prices had increased enough that the size of the house built with such a minimum was much smaller. The rapid inflation following World War I caused housing costs to rise rapidly, remaining at that level or higher until the Great Depression. Thus the minimums mandated a much smaller house by virtue of the fact that the cost requirements remained unchanged. Had the RC required a certain size house rather than a certain price, such a wide range of sizes probably would not have been built.

Arthur W. Giese was a fruit grower who apparently had orchards on his land until he subdivided it in 1908. It appears that Block 1 was used as an orchard until at least 1924, as the 1924 Insurance Maps of Portland, Oregon shows three outbuildings on Block 1 and no lots or other buildings are shown. On the East side of 31st Avenue there are two large outbuildings that appear as though they could be barns. Mr. Giese is listed as living on the NE corner of Block 1 in 1907-08 but he moved to 31st Avenue just South of Market (now part of Sewallcrest Park) in 1926. It is likely that he farmed Block 1 until 1935 when that block was first developed. This block was platted at the same time as the others and was intended to be developed since the sidewalks were laid in 1909. A likely reason that Mr. Giese farmed this block was that the high RC minimums in the Block caused development to be delayed. All of the subdivision blocks were originally in the medium category but block 1 had \$2500 minimums and Blocks 2 and 3 had \$2000 minimums. This difference may have caused the delayed development of Block 1 since it was entirely

built up between 1935 and 1947. The original restrictions (which went to 1933) were changed in 1929 to delete the mention of a minimum but still included racial restrictions and a set back. These revised restrictions only lasted until 1934 and apparently were not renewed. It is no coincidence that development did not start until 1935, since the RCs probably hindered the development of the property. The entire block is developed in typical late 1930s and 1940s semi-styled small houses. Giese is between the more expensive west part of the study area and the less expensive east part so its social status could have developed either way. It was closer to already established Low RC group areas so most likely it would have been developed rapidly after subdivision in the manner of the adjacent areas, had minimums been lower. Block 2 of Giese was developed over the same 30 year period as Blocks 1-4 of Colonial Heights. With the lower \$2000 minimum some early development was feasible but this amount was still too high for rapid development. Again there are some large 2.5 story prairie boxes mixed with smaller 1920s bungalows and even some houses similar to those in Block 1. Block 3 was entirely built up between 1910-11 and had the same restrictions as Block 2. This block is only 8 lots in size so may have been small enough to be developed rapidly (by one developer?) after subdivision even with the higher minimum cost. This block consists almost entirely of 2.5 story prairie box type houses, some with Craftsman styling. Helen Stratton's subdivision developed fairly uniformly from subdivision until the early 1930s. This subdivision has similar type architecture to that of the High RC group. It does have more 1.5 story bungalows but the majority are in the Tudor and

Colonial styles. Iona S. Bickerton's subdivision followed the same pattern as Blocks 5-12 of Colonial Heights did; most of it was developed from 1922-29. The architecture is also very similar.

Low RC Group

The lowest RC group (with a minimum cost requirement between \$1000-1999) was developed in a very rapid manner almost immediately after subdivision. 83% of the houses in this group were built in the seven years between 1906 and 1912. This is reflected in the mean date of construction of 1910. There is no variation between the two subdivisions in this category, Rochelle and South Sunnyside. The low minimums apparently were close enough to what the market would dictate on an unrestricted lot, that the RCs posed no hinderance to development. The architecture of this group consists of a mixture of medium sized bungalows (1.5 story) and of prairie boxes. No real patterns emerge with both styles being mixed to varying degrees on the various streets.

None-West RC Group

The None-West category was developed the latest of any of the RC groups. The mean date of construction of 1932 reflects this fact. Only 45% of the houses had been built before 1930 but 91% had been built by 1941. About half of the houses up to the beginning of the Second World War were built in the 1920s and the other half in the 1930s. The period before 1920 and the period after 1948 each had seven percent of houses in the area built during them.

The development of Burrell Heights appears to have been determined by the way the ownership of the subdivision was organized. Four persons or groups subdivided it, one had Blocks 1-3, another 4-7, one only owned Block 8, and a fourth owned Blocks 9-10. Block 3 is the location of the mansion of capitalist Walter Frazar Burrell (since 1925 the Holman and Son Funeral home) and Blocks 1 and 2 (also controlled by Burrell) were only developed commercially in the late 1930s. Thus these three blocks will not appear in my analysis. Blocks 4-7 were predominantly developed between 1930-34, while Block 8 was developed in the late 1920s. Blocks 9-10 had some early development shortly after subdivision with most development coming in the late 1920s. Even though these differences in development between the blocks are not huge, they still point to a different strategy that each subdivider must have had in selling and promoting their lots. This strategy in turn determined when lots would be available for sale and subsequent development. Since there are no RCs on this subdivision it is the decision of subdividers (or perhaps the market) that determine when the lots will be sold. If the subdivider holds out for high prices and doesn't care if lots are sold, then the land can go undeveloped for many years until the subdivider is forced to sell or their price is met. The character of this subdivision (and that of other None-West subdivisions) is very similar to that of the Medium and High RC groups. Given the later development of the None-West group I would imagine that these subdividers were depending upon the subdivisions directly to the west to base their prices on and were counting on these adjacent properties to enhance their own. Until the High and Medium groups had developed, no basis had

been established for the status of the area. So in order to sell their lots for higher prices and to assure a higher class set of buyers, it would seem that subdividers of None-West subdivisions (at least Burrell Height anyway) intentionally waited until the restricted properties to the West had been developed. This would explain the later date of development for Burrell Heights and the varying development dates of it's blocks. Depending upon what the individual subdividers were willing to take for their lots, they could sell their lots anytime after subdivision. If they sold immediately after subdivision then they probably could have sold their lots rapidly but at a price more comparable to that in the Eastern half of the study area. This may be what the owner of Blocks 9-10 did since these were developed before the rest. Most likely the owner of Blocks 4-7 held on to the lots until the adjacent subdivisions were developed and a higher price could be attained. Once the adjacent areas were developed in a higher class fashion, the subdivider could easily market the lots to a similar clientele. The area was not likely to be developed in a lower class manner once a higher one was established nearby. The Tudor style is the predominant architectural style in Burrell Heights. SE Clay and Market streets have an especially high concentration of this style which creates a picturesque setting.

Malone Heights was not developed due to the extraordinary circumstances I outlined earlier in this chapter. The subdivision was tied up in court for a long while which hindered the development of the subdivision until the late 1930s. From 1918-28 all of the lots in Block 2 except those along 30th Avenue were occupied by the Hosford Elementary School. Once the school was closed and demolished those lots

could be developed. This accounts for the later development of most of this Block. The architecture of Malone is very similar to that of Burrell Heights, the Tudor style. Lots in Sewallcrest were not made available for sale in great numbers until the late 1920s for unknown reasons so were unavailable for development. Consequently the houses in this subdivision are mostly in the Tudor style or in a late 1940s, early 1950s nondescript small house style. The tiny subdivision, Krohn's, was the only one of this group to be almost immediately developed after its platting in 1921. I have outlined the situation of Block 1 of Giese which also was developed in the 1930s, in the Medium RC group section above.

None-East RC Group

The development history of the None-East RC group is very similar to that of the Low group. 70% of this group had been built by 1912, and 83% had been built by 1919. 62% of the entire area was built between 1904 and 1913 which was also the period of the highest intensity of building. 90% of the area had been constructed by 1925. Five percent was built before 1900 and seven percent was built after 1929.

Brookdale (the first subdivision in the study area) has the largest concentration of nineteenth century houses with 29% of this subdivision (7 houses) being built in the 1890s. The subdivision was mostly developed by 1907, with much of the activity occurring between 1890 and 1904. The architecture of this subdivision is an eclectic mix of styles ranging from large 1890s Victorian houses to small late 1940s houses. A few houses were constructed in Block 2 of Park View before 1905 but the majority

of the remaining houses in this group were constructed in the period of highest building intensity, 1904-13. The vast majority of the houses in this group are 1-1.5 story bungalows. There are some prairie boxes mixed with the bungalows and the distribution of the various sizes and styles is not very uniform. There are not whole streets with predominantly one style, like is found in the western part of the study area, but it appears that the two styles and various sizes of houses are almost randomly distributed. I will next analyze how the number of square feet differs in the housing of the various RC groups.

HOUSING CHARACTERISTICS OF THE RC GROUPS

The most important effect of minimum housing cost restrictions are that they can dictate the size of the house that has to be built on the lot. If RCs can affect house size then it is expected that the social status of people living in those houses is also directly affected. In order to establish a base for analyzing the effect of RCs on the social structure of residential areas, we need first to demonstrate that differing minimum costs do indeed cause the size of the house and its price to vary directly with that cost. I would expect that the higher the minimum cost requirement, the larger and more expensive the average house will be. To explore this proposition, I will look at the average house size of the RC groups, the average assessed value of each, and sale prices from the previous year.

House Size by RC Group

The house sizes (number of square feet) of the various RC groups support my

hypothesis that higher RCs result in larger houses. The differences between the means of the High and the Medium group are small (1892 as opposed to 1854 square feet) but these two are substantially higher than the Low group which is 1559 square feet. The two highest groups are nearly identical in their distributions but are again different from the Low RC group. 34% of the High and Medium groups houses have more than 2000 square feet but only 11% of the Low houses do. The None-West group is similar to the High and Medium groups with a mean of 1714 square feet. 19% of the None-West group are more than 2000 square feet, significantly different from the two highest groups. The None-East is similar to the low category with a mean of 1429 square feet. Only 7% of the houses in this group have more than 2000 square feet. The mean and the medians show the same relationships with the median usually being a little lower. (See Table VI).

TABLE VI
HOUSING SIZE OF RC GROUPS
Percent of Group in Size Range (Square Feet)

<u>RC Group</u>	<u>Mean Size</u>	<u>Less Than 1000</u>	<u>1000- 1499</u>	<u>1500- 1999</u>	<u>2000- 2499</u>	<u>2500+</u>
High	1892	0	15	53	24	8
Medium	1854	3	18	46	23	10
Low	1559	6	38	45	9	2
None-West	1714	1	28	52	18	1
None-East	1430	16	39	38	7	0

The relationships I expected were found although the differences between the Medium and the High groups are less than I anticipated. The absence or presence RCs is not a determining factor in house size because it appears that the subdivisions in the West and the East parts without restrictions took on the character of the surrounding restricted subdivisions. This finding is consistent with that of others who have noted that the character of unrestricted subdivisions tends to be similar to that which had existed previously.² Thus, at least for the size of the houses, one could group all the houses on the West side (west of 31st) together and all the ones on the East side together. More significant differences exist when the assessed value is looked at.

Assessed Value by RC Group

The assessed value of the RC groups directly follows the predicted relationship. The High RC group has the highest value, the Medium less than that, and the low has the lowest value of the restricted groups. (See Table VII). The None-West category is nearly identical in value to that of the Medium category and the Low and the None-East categories are very similar. The median values are similar to the mean values, with the former being somewhat lower. Even more dramatic than the mean and median values is the differences between the distribution of values in the individual RC groups. 71% of the High group has a value of greater than \$70,000 while only 45% of the Medium group does and in the Low group only

²Warner, p. 130.

TABLE VII
1990 ASSESSED VALUE BY RC GROUP
(IN DOLLARS)

<u>Percent of RC Group in Range</u>					
<u>Value Range</u>	<u>High</u>	<u>Medium</u>	<u>Low</u>	<u>None-West</u>	<u>None-East</u>
Less than 30,000	0	0	0	1	4
30,000- 39,999	0	1	23	0	24
40,000- 49,999	0	6	42	2	48
50,000- 59,999	3	14	32	20	22
60,000- 69,999	26	34	2	28	2
70,000- 79,999	42	26	1	29	0
80,000- 89,999	19	11	0	14	0
90,000- 99,999	6	5	0	5	0
100,000+	4	3	0	1	0
Mean Value	76,316	69,713	46,641	69,625	44,323
Median Value	73,800	68,550	47,000	69,300	44,000

one house (.8%) has such a value! The None-West category is very similar to the

Medium group with 50% having values above \$70,000. The None-East is nearly the same as the Low category with none of the houses having a value above \$70,000. Thus it appears from the assessed value data that RCs do indeed influence the housing values of the RC groups. This relationship is identical to that of the RC groups themselves so I would expect that the RC groups will be differentiated by status also. A look at the sales data from 1990 will tell us how RCs affect the prices that houses are sold for.

Sales Data by RC Group

The differences between the RC groups are even greater when the average sales price is analyzed. The differences between the High and the Medium groups are not great with the average Medium group sales price actually a little higher than the High group. This is probably not all that significant since the sample size was small for both groups. The differences between the High and Medium groups and the Low and None-East groups are very pronounced with the former almost twice the latter in value. The None-West group is in it's own category, nearly half way between the Medium and the Low groups. (See Table VIII).

Thus we find two very different housing markets within the study area which cater to two different income and status groups. The highest priced areas are those closest to 20th Avenue with the None-West group around 30th Avenue serving as a transition zone between the higher priced area to the West and the much lower priced area to the East. Even though the assessed value of the Medium and of the None-West groups are almost identical it appears that in the real estate market the

TABLE VIII
1990 SALES PRICE BY RC GROUP
(IN DOLLARS)

<u>RC Group</u>	<u>Mean Sales Price</u>	<u>Sample Size</u>
High	95,104	12
Medium	97,995	11
Low	52,559	17
None-West	72,150	12
None-East	54,711	27

two are in somewhat different submarkets. This may be a more direct indication that the None-West area serves as a transition zone between the high and low priced submarkets. The houses may be very similar in the Medium and None-West groups (as reflected by the assessed value and house size) but their locations are significantly different enough to warrant a large difference in their sales prices. The None-West group is less desirable since it borders on the lower priced east half of the study area and is several blocks away from the High group. Looking at the sale prices of the various RC groups gives us an idea of how the different groups are perceived by buyers and sellers and potentially what kind of status level they are perceived as having. This is an indirect indication of the desirability of the various RC groups and a way to get an idea of how the status of the various RC groups will turn out. Next I will look at the historical data I collected between 1940-80, estimated house price and percent owner occupied, and then will conclude with an historical analysis of the

status of the RC groups.

HISTORICAL ANALYSIS OF DATA

I have looked at three different pieces of data for the study area over the period 1940-1980. First I will look at the mean estimated value of the house as reported in the Census, then at the percent owner occupied as reported in the Portland City directory and the Census, and finally at the status of the various RC groups over time.

Mean Estimated Value of House

Generally the relationships revealed in the assessed value analysis hold for the entire forty year period of the mean estimated value data. The High group still has the highest values, the Medium and None-West groups have similar values which come in second and finally the Low and None-East groups have similar values which are the least of any of the RC groups. (See Tables IX and X). I indexed the values in Table X to make it easier to analyze changes in the various relationships over time. These relationships have held over time and even appear to have gotten stronger in 1980. That year is the only one that there is a significant difference between the Low and the None-East groups and the differences between the Medium and the None-West group are one of the smallest of the entire time period. There is no indication of filtering (a decline in the value or status of one group in relation to the others) in any of the RC groups since the relationships are stable over time. The relationship between the RC groups appear to have been established at the time

TABLE IX
MEAN ESTIMATED HOUSE VALUE BY RC GROUP
(IN DOLLARS)

<u>RC Group</u>	<u>Year</u>				
	<u>1940*</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>
High	44.10	12,476	15,313	20,888	73,271
Medium	35.27	11,131	12,214	17,986	66,389
Low	24.35	7,183	9,375	12,145	50,523
None-West	38.58	11,070	14,300	18,392	67,273
None-East	23.54	6,884	8,889	12,100	44,233

*=Monthly rent

TABLE X
INDEXED MEAN ESTIMATED HOUSE VALUE BY RC GROUP*

<u>RC Group</u>	<u>Year</u>				
	<u>1940**</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>
High	1.00	1.00	1.23	1.67	5.87
Medium	.80	.89	.98	1.44	5.32
Low	.55	.58	.75	.97	4.05
None-West	.87	.89	1.15	1.47	5.39
None-East	.53	.55	.71	.97	3.55

* 1950-80 Estimated Value Index based on 1950 High group value=1.00

** 1940 Monthly Rent Index based on High group value=1.00

the area was built up and have held steady over time. At least in this study area, the lack of RCs has not caused these areas to decline relative to areas with RCs.

Another indication of neighborhood decline, the percent of the housing that is owner occupied, will be analyzed next.

Percent Owner Occupied

I analyzed the percent owner occupied from two sources, the Portland City Directory and the Census. The percent owner occupied is a good indication of the relative health and desirability of the area in question. If a single family house neighborhood has a low percent owner occupancy then it is fairly certain that this area is not of higher status and probably has declined. Also if the percent owner occupied has declined over time then it is likely that the neighborhood is becoming less desirable and is deteriorating. I would expect that areas without RCs should tend to decline over time since they were not usually developed in a manner which assures stability (a homogeneous housing stock and exclusive single family use assures stability). The unrestricted subdivision might initially have high owner occupancy, but over time as more desirable areas are developed and population pressures cause higher intensity uses in the area, owner occupancy is liable to decline. The City Directory data and the Census data show the same patterns but the pattern of the Census data is stronger and more consistent. (See Table XI).

In general the Census data seems more reliable and does not vary widely over time. I included the Polk City Directory data for comparison, although I will not analyze it. It shows the same general patterns that the Census data does but

generally seems too high (especially for the Low and the None-East categories). I trust the methods of the Census Bureau more than Polk's since I am not sure that Polk covers and follows up on every household the way the Census does. Polk may not get every household every year and may use the previous years data in the current years directory. Also people might not be as truthful with a Polk surveyor (on the phone or in person) as they would be with the census enumerator.

The Census percent owner occupied data reveals the same patterns as the other data sources I have analyzed. The None-West and the Medium groups are very similar as are the None-East and the Low categories. The higher the RC group, the higher the percentage owner occupancy. The High group along with the None-

TABLE XI
PERCENT OWNER OCCUPIED BY RC GROUP

<u>RC Group</u>	<u>Year</u> (P=Polk's City Directory, C=Census)									
	<u>1940</u>		<u>1950</u>		<u>1960</u>		<u>1970</u>		<u>1980</u>	
	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>
High	87	82	97	95	76	89	86	98	90	84
Medium	77	64	92	79	95	71	82	69	70	63
Low	61	41	85	64	82	59	56	61	81	61
None-West	80	72	89	89	94	80	95	77	83	75
None-East	61	52	87	67	77	59	77	62	63	60

East and Low groups all have relatively stable owner occupancy percentages over the

entire time period. The rest of the groups show a slight decline over time, although I would hesitate to conclude that they are declining. Still, all of the groups (even the ones that are slightly declining) have a high owner occupancy rate of over 50% and in the case of the higher groups closer to 75%. The fact that owner occupancy tends to decline as minimum values go down reinforces the hypothesis that RCs tend to create social status areas. The groups with higher RCs are more desirable so have a higher owner occupancy rate than those with lower RCs. Next I will look at the status of the RC groups as the final and most important test of the effect of RCs on the social structure of residential areas.

Social Status of the RC Groups

The final and most important measure of the effect of RCs on the social structure of residential areas is the measurement of social status. Using the occupation of the household head, a status score is obtained for every house in the city directory sample and then compiled by RC group. If there are significant differences in status between the RC groups then we can conclude that indeed RCs do influence the house size and value of houses which in turn influences the status of the people who live in the houses. Not only do RCs influence the built environment of subdivisions but they also influence the social structure of them also. Again the social status indicator shows exactly the same patterns that all the other indicators I have used have. (See Table XII).

The differences in status between the RC groups translates into differences in the typical occupations of each group. Using the 1950 sample as an example, we

TABLE XII
MEAN SOCIAL STATUS BY RC GROUP
(USING THE DUNCAN SES INDEX)

<u>RC Group</u>	<u>Year</u>				
	<u>1940</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>
High	57	58	59	47	55
Medium	57	49	52	48	46
Low	50	31	30	38	43
None-West	58	52	52	55	52
None-East	47	43	39	38	45

might find a real estate or insurance agent in the high group, a photographer or store floor manager in the medium and None-West groups, a plumber or delivery truck driver in the low group, and in the None-East group an electrician or a clerk. Thus these status scores translate into different occupational groups, namely white collar and blue collar, especially when comparing the highest and the lowest groups. A delivery truck driver and a real estate agent have different incomes and certainly tolerate different things in the neighborhoods they live in. It is not likely that either would want to live in the others neighborhood and might feel their identity threatened if they did. Thus the environment created by RCs caters to different occupational classes of people who have significantly different expectations of what the environment they live in should be like. Without any strong outside pressures for change, it appears that these areas maintain their social character over time. RCs

do create significant social areas in residential areas and these social areas appear to be stable over time.

In general the relationships between the RC groups are the same as other data I have analyzed although the relationship between the High and the Medium groups is not consistent. In two out of the five time periods there was little or no difference in status between the High and the Medium groups. Still, in more than half of the time periods, there was a good size difference between the High and the Medium groups of 7-9 points. There certainly is a large difference between the High and the Low or None-East groups in all time periods except 1940. The Medium and the None-West group are similar in the 1940-60 sample years but in the 1970 and 1980 sample years the None-West is somewhat higher. All the RC groups were fairly close together in status in 1940, only assuming their present pattern in 1950. I attribute this homogeneity in 1940 to the Depression era housing market of the time. There was little new building elsewhere to pull higher status persons to newer areas from the Low and unrestricted areas of the study area so their status remained higher than it normally would. Thus there was less mobility and people stayed in their houses even if they could afford a nicer neighborhood. After World War II these people were free to move to the newer suburbs and thus the low RC group saw a sudden and one time fall in status between 1940 and 1950. There is no clear pattern of decline in social status for any group. The small decline in the owner occupancy rates of some of the groups must have been minor enough to have little or no effect on social status. An analysis of the median social status data reveals even a stronger

relationship between the RC groups. (See Table XIII).

The main difference between the Median and the Mean Social status statistics is that the difference in status between the High and the Medium groups are greater. In three of the five time periods there is a difference of 10-19 points in median status as opposed to the 7-9 points found in the mean status statistic. Again 1940 and 1970 are the two years with the weakest relationships. Every group except the None-West group show some decline in status between 1950 and 1970 although all groups except the None-West and the Medium groups showed an increase between 1970 and 1980. The Medium group is the only one to show consistent decline, albeit at a slow pace,

TABLE XIII
MEDIAN SOCIAL STATUS BY RC GROUP
(USING THE DUNCAN SES INDEX)

<u>RC Group</u>	<u>Year</u>				
	<u>1940</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>	<u>1980</u>
High	59	64	61	50	64
Medium	59	50	51	47	45
Low	50	27	26	25	42
None-West	61	54	60	54	52
None-East	46	44	34	36	43

from 1950-80. I wouldn't say that this is even close to decline, however, given the small changes and the slow pace of it. It appears that higher status persons moved

into the area in the 1970s, possibly gentrification activity, but probably just normal turn over. The rest of the relationships are similar to that of the mean statistic. The distributions of the RC group status values are skewed in the direction that the particular group indicates. The median is a better representation of the center of a skewed distribution so I would tend to rely more on the median to provide an accurate picture of the relationships. Both statistics reveal the same relationships, the only basic difference being that the median shows a stronger difference between the High and the Medium RC groups.

CONCLUSIONS

In conclusion it can be said that all the data that I collected and analyzed by RC group supports my hypothesis that RCs do differentiate residential areas both in terms of the size and quality of the housing and in terms of social status. Historical analysis from 1940 to 1980 revealed that areas without RCs or with low minimums tend to be just as stable as areas with RCs and do not suffer from neighborhood decline. Once the character of the area was established via the minimum house cost clause of the RC, or by market forces if no RCs were present, then that character remained stable over time. The absence or presence of RCs did not appear to cause or prevent neighborhood decline, at least in this study area. In other parts of Portland or in cities with large minority populations RCs have been used to prevent the invasion of unwanted groups which would supposedly cause the neighborhood to decline. It would be interesting to study an area that had more downward pressures

acting upon it to see if RCs maintain social status under more stressful circumstances. The model I have used in analyzing the social structure of residential areas should be applied to other parts of Portland and to other cities to see if my study area findings can be replicated.

CHAPTER V

CONCLUSIONS

The goal of this thesis was to establish the relationship between restrictive covenants (RCs) and the social status of residential areas. Before analyzing the possible effect of this legal instrument on social status, the history of RCs was analyzed. It was discovered that RCs basically develop in response to widespread urbanization (or suburbanization, depending upon the time period) and were first widely used on the east coast during the 1850s in response to the urbanization of that period. By the 1900-1910 period the use of RCs was almost universal in residential subdivisions and this legal part of a deed has been widely used ever since. Thus when analyzing any residential area that was developed after 1900-1910 it is necessary to first establish which areas have restrictions and the quality of the various restrictions.

A restrictive covenant is found in a subdivision lot deed and usually contains such restrictions as the minimum cost that a new dwelling on the lot must have, setback requirements for the house, restrictions as to the use of the property (usually single family use only), and sometimes quality restrictions such as the house must be built of a certain material or be of a certain height. I am most concerned with the first restriction (the minimum cost one) since this is the way that residential areas are differentiated. Differing minimum costs are responsible for different sized houses in

the various minimum cost areas of a subdivision and this in turn translates into differences in social status. Social status is tied to income which is in turn tied to the ability to pay for housing. Larger houses are higher priced and so tend to attract higher income individuals who also have higher status. Thus there is a link between the physical built environment as established by RCs and the social status of the area. It must first be established that RCs do indeed influence the built environment and then the social status effects can be analyzed.

I chose the area of Southeast Portland, Oregon from SE 20th-39th Avenues, SE Hawthorne Blvd to Harrison Street to test my hypothesis. I collected data from the 1940-80 US Census, the Polk Portland City Directory for the same time period, deed records, and Multnomah County Assessor's data for the study area. First deed records were used to find out which subdivisions in the study area have RCs and what their restrictions are. After that was completed I grouped the subdivisions or their respective blocks into five RC groups based on the range of minimum house costs found in their deeds. The five groups and their minimum ranges are: High (\$5000+), Medium (\$2000-4999), Low (\$1000-1999), None-West (subdivisions with no RCs West of SE 31st Avenue), and None-East (subdivisions with no RCs East of SE 31st Avenue).

The US Census was used in the years from 1940-80 to get the mean owner estimated value of their homes, and the percent owner occupied, both by block. The City Directory was also used to get the percent owner occupied as well as to get the occupation of each household sampled in the same years as the census. The

occupation of each household head sampled was converted to a Duncan SES index score which was then compiled by RC group for every sample year. Finally Assessor's data was obtained for every house in the study area for such things as the size of the house, the year it was built, and the assessed value. Sales data from the study area over the last year was also analyzed to see how different RC areas were priced.

The results of the analysis of the study area support my basic hypothesis that RCs affect the built environment of residential areas which in turn influences social status. The size of the houses followed the anticipated pattern (the High RC group had the largest houses, the Low the smallest, etc.) as well as the assessed valuation, the estimated value from the census, and the sales data. The higher RC areas were developed later than the lower ones which indicates that the presence of high RCs hindered the development of the higher groups. The percent owner occupied was lower in the lowest RC groups although the percentages stayed relatively constant over time. This indicates that, at least in this study area, RCs do not effect neighborhood decline by stabilizing owner occupancy rates. The final and most important indicator, social status, showed the same pattern as the other data did. Social status does indeed get less as the minimum cost of the housing does, so RCs influence the social structure of residential areas.

Now that I have established that restrictive covenants do influence the social structure of residential areas other areas need to be studied in Portland and other cities to see if these findings can be applied elsewhere. The area I studied has not

been declining and has not seen a large influx of minorities in it or close to it. To really test if RCs prevent neighborhood decline an area that is experiencing decline or is close to one that is, needs to be studied. At any rate RCs appear to establish social structure in residential areas and if no strong pressures for decline are exerted on them, then RCs maintain that social structure over time. In this thesis I have established a method for analyzing the social structure of residential area that will make it possible to look at this social structure in a new light and as possibly a new way to explain the social structure of residential neighborhoods. While such an RC analysis cannot provide all the reasons for the developmental history and the social structure of residential areas, this method, along with an examination of the actors involved in the subdivision process, can provide important insights into the social differentiation of urban space.

REFERENCES

BOOKS AND ARTICLES

- American Law of Property: A Treatise on the Law of Property in the United States, Vol. 2. Boston: Little, Brown and Co., 1952.
- Beach, Steven. "Minimum Building Cost Restrictions: Effect of Decreased Cost of Construction." University of Detroit Law Journal November 1940: 32-35.
- Bolles, Albert S. "Land Running Covenants in Massachusetts: A Chapter in Legal History." Boston University Law Review 7 (1927): 1-35.
- Burns, Elizabeth Kates. "The Process of Suburban Residential Development: The San Francisco Peninsula, 1860-1970." Diss. University of California-Berkeley 1974.
- Consigny, Robert H. and Zugurds L. Zile. "Private Zoning on Milwaukee's Metropolitan Fringe: Part I, Use of Restrictive Covenants in a Rapidly Urbanizing Area." Wisconsin Law Review (1958): 610-40.
- Duncan, James S., and Nancy G. Duncan. "A Cultural Analysis of Urban Residential Landscapes in North America: the Case of the Anglophile Elite." The City in Cultural Context. Ed. John A. Agnew. Boston: Allen and Unwin, 1984. 255-67.
- Duncan, Otis Dudley. "A Socioeconomic Index for All Occupations." Occupations and Social Status. Ed. Albert J. Reiss. New York: Free Press 1961. 109- 38, 263-75.
- Fisher, Robert. "Protecting Community and Property Values: Civic Clubs in Houston, 1909-70". Urban Texas: Politics and Development. Ed. Char Miller. College Station, TX: Texas A & M University Press 1990. 128-37.
- Friedman, Milton R. Contracts and Conveyances of Real Property. New York: Practising Law Institute, 1984.
- Hebard, Edna L. and Gerald S. Meisel. Principles of Real Estate Law. New York: Simmons-Boardman Publishing Corp., 1964.

- House, Luther. "The Running of Restrictive Covenants in Kentucky." Kentucky Law Review 45 (1957): 637-49.
- Jost, Timothy Stoltzfus. "The Defeasible Fee and the Birth of the Modern Residential Subdivision." Missouri Law Review 49 (1984): 695-717.
- MacColl, E. Kimbark. The Shaping of a City: Business and Politics in Portland, 1885-1915. Portland, OR: The Georgian Press, 1976.
- McCarthy, Paul. "The Enforcement of Restrictive Covenants in France and Belgium: Judicial Discretion and Urban Planning." Columbia Law Review 73 (1973): 1-57.
- Miller, Char and Heywood T. Saunders. "Olmos Park and the Creation of a Suburban Bastion, 1927-39." Urban Texas: Politics and Development. Ed. Char Miller. College Station, TX: Texas A & M University Press, 1990.
- Monchow, Helen C. The Use of Deed Restrictions in Subdivision Development. Chicago: The Institute for Research in Land Economics and Public Utilities, 1928.
- Nebraska Blue Book. Lincoln, NE: Nebraska Legislative Reference Bureau, 1922.
- Philpott, Thomas. The Slum and the Ghetto: Neighborhood Deterioration and Middle Class Reform, Chicago 1818-1930. New York: Oxford University Press, 1978.
- Stevens, Gillian and David L. Featherman. "A Revised Socioeconomic Index of Occupational Status." Social Science Research 10 (1981): 364-95.
- Stevens, Gillian and Joo Hyun Cho. "Socioeconomic Indexes and the New 1980 Census Occupational Classification Scheme." Social Science Research 14 (1985): 142-68.
- Stevens, Gillian and Hoisington, Elizabeth. "Occupational Prestige and the 1980 Labor Force." Social Science Research 16(1987):74-105.
- Urbanism Committee to the National Resources Council. Urban Planning and Land Policies Washington, D.C.: US Government Printing Office, 1939.
- Vose, Clement E. Caucasians Only: the Supreme Court, the NAACP, and the Restrictive Covenant Cases. Berkeley, CA: University of California Press, 1959.

Warner, Sam Bass. Streetcar Suburbs: the Process of Growth in Boston, 1870-1900. Cambridge, MA: Harvard University Press, 1978.

Zile, Zugurds L. "Private Zoning on Milwaukee's Metropolitan Fringe: Part II, Problems of Drafting." Wisconsin Law Review (1959): 451-88.

MISCELLANEOUS SOURCES

Attorney General v. Gardiner. 117 Mass 492 1875.

Bahnall v. Davies. 140 Mass 76 1885.

Best v. Nagel. 182 Mass 495 1903.

DeGray v. Monmouth Beach Clubhouse Co. 50 NJ Eq. 329 1892.

Deviers v. Cone. 82 Md 186 1895.

Eckhart v. Irons. 128 Ill 568 1889.

Hamlen v. Werner. 144 Mass 396 1887.

Hart, Eric D. "Knob Hill: Synthesis of an Urban Landscape." BA Honors Thesis University of Nebraska-Lincoln 1988.

Highland Realty Co. v. Groves. 130 Ky 374 1908 at 376.

Hopkins v. Smith. 162 Mass 444 1894.

Jeffries v. Jeffries. 117 Mass 184 1875.

Judd v. Robinson. 41 Colo 222 1907.

Kitchings v. Brown. 75 NYS 768 1902.

Parker v. Nightingale. 88 Mass 341 1863.

Plumb v. Tubbs. 41 NY 442 1869.

R.L Polk and Co. Portland, Oregon City Directory. 1940 ed. Kansas City, MO: R.L. Polk and Co Publishers, 1940.

R.L Polk and Co. Portland, Oregon City Directory. 1950 ed. Kansas City, MO: R.L. Polk and Co Publishers, 1950.

R.L Polk and Co. Portland, Oregon City Directory. 1960 ed. Kansas City, MO: R.L. Polk and Co Publishers, 1960.

R.L Polk and Co. Portland, Oregon City Directory. 1970 ed. Kansas City, MO: R.L. Polk and Co Publishers, 1970.

R.L Polk and Co. Portland, Oregon City Directory. 1980-81 ed. Kansas City, MO: R.L. Polk and Co Publishers, 1981.

Rowland v. Miller. 139 NY 95 1893.

Sanborn Map and Publishing Co. Insurance Maps of Portland, Oregon. 1889 ed. New York: Sanborn Map and Publishing Co., 1889.

Sanborn-Perris Map Ltd. Insurance Maps of Portland, Oregon. 1901 ed. New York: Sanborn Map and Publishing Co., 1901.

Sanborn Map Co. Insurance Maps of Portland, Oregon. 1909 ed. New York: Sanborn Map Co., 1909.

Sanborn Map Co. Insurance Maps of Portland, Oregon. 1924 ed. New York: Sanborn Map and Publishing Co., 1924.

Schefer v. Ball. 104 NYS 1028 1908.

White v. Collins Building and Construction Co. 81 NYS 434 1903.

APPENDIX A

DEED WITH RESTRICTIONS

From Multnomah County Warranty Deed 945:286:

KNOW BY ALL MEN BY THESE PRESENTS, That Emmet B. Williams and Rosetta Williams husband and wife of Portland, Multnomah County, Oregon grantors in consideration of Ten (\$10) Dollars to them paid by Edith W. Stubbs of Portland, Multnomah County, Oregon grantee have bargained and sold and by these presents do grant bargain sell and convey unto said grantee her heirs and assigns forever all of the following described real property to wit:

[lengthy list of lots in Colonial Heights and]

Lots Nine (9) Ten (10) Eleven (11) Twelve (12) Thirteen (13) Fifteen (15) and Sixteen (16) in Block Ten (10), all in Colonial Heights in the City of Portland, in the County of Multnomah and State of Oregon as shown and designated on the plat of Colonial Heights as the same appears on record in the Public Records of Deeds of said County of Multnomah together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining

PROVIDED: That during the period between the date of the execution here of and the first day of January one thousand nine hundred and fifty (1950) the above described premises shall be used exclusively for residence purposes and no business whatsoever shall be conducted thereon; that no dwelling house shall be erected thereon during the above period costing less than Five Thousand Five Hundred Dollars and the main part or body of which dwelling house shall not be nearer than twenty-five feet to the respective streets upon which the east or west end of the above described lots abut; and that no flat, apartment or tenement house shall be erected upon said premises during the aforesaid period; and these conditions shall be and shall be construed to be covenants and conditions running with the above described premises

TO HAVE AND TO HOLD the above described and granted premises unto the said grantee her heirs and assigns forever, and the said Emmet B. Williams hereby covenants to and with the said grantee that he will warrant and defend the above granted premises and every part and parcel thereof except as to taxes due during the year 1924 against the acts and deeds of said grantors and all persons claiming by from through or under said grantors unto the said grantee her heirs and assigns forever

IN WITNESS WHEREOF the said grantors have hereunto set their hands and seals this the 25th day of February 1924

[signatures and notary seal]

COMMENTS:

The restrictions are in the 3rd paragraph which starts with PROVIDED:. This deed does not specify any remedies although many deeds of the time required forfeiture of the property for any violations of the covenant (see Appendix B). The 4th paragraph which starts with 'TO HAVE...' is where the other four covenants should be. This deed only contains one covenant, that of quiet enjoyment ("...that he will warrant and defend the above granted premises..."). Most deeds at least have this covenant plus the covenant against encumbrances and the covenant of seizin.

APPENDIX B

COMPLETE DEED WITH RESTRICTIONS

From Warranty Deed 857:470 Portland, Multnomah County, Oregon:

KNOW ALL MEN BY THESE PRESENTS That Iona S. Bickerton, unmarried of Multnomah County, State of Oregon in consideration of one thousand (\$1000.00) Dollars to her paid by Christine Larsen of Multnomah County, State of Oregon has bargained and sold and by these presents does grant, bargain, sell and convey unto said Christine Larsen her heirs and assigns all the following bounded and described property situated in the County of Multnomah, State of Oregon

Lot seven Block one Iona S. Bickerton's Addition within the corporate limits of the City of Portland, County of Multnomah, State of Oregon

Subject-nevertheless to the following conditions to-wit:

During the period of 25 years from and after the 1st day of April 1921 no structure other than one single detached dwelling house costing not less than \$3000 and also if desired any outbuilding which may be necessary or usual shall be erected upon said premises nor shall any portion or projections of any such dwelling house or outbuildings (excepting the steps thereof) be within 20 feet from the nearest side line of the street upon which the front of said premises abut nor shall said premises or any building thereon be used or occupied otherwise than strictly for residence purposes nor shall the same or any part thereof be in any manner used or occupied by Chinese, Japanese or negroes except that persons of said races may be employed by residents; nor shall any old building be placed on said premises; nor shall any building or any part thereof on said premises be erected maintained or used for flats apartments stables or business or manufacturing purposes. And in the event that the restrictions and conditions aforesaid or any one or more of them shall be broken by said party of the second part his heirs successors assigns or legal representatives or by any person holding said premises for by through or under them then and in either or any such case this conveyance shall be and become null and void and the title to said premises hereby conveyed shall revert to said party of the first part her heirs successors or legal representatives free from all right title or claim arising under or by reason of this conveyance. Provided however that in the event of any forfeitures as hereinbefore provided and if there shall at the time thereof be any mortgage lien upon said premises then the holder of such lien shall have the option to take said premises and to hold the same on the same terms and conditions and subject to forfeiture in his her its their hands for like causes and on the same conditions as hereinbefore provided as against the grantee herein or his heirs

successors assign or legal representatives.

.. together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and also all her estate right title and interest in and to the same including dower and claims of dower.

TO HAVE AND TO HOLD the above described and granted premises unto the said Christine Larsen her heirs and assigns forever. And Iona S. Bickerton grantor above named does covenant to and with Christine Larsen the above named grantee her heirs and assigns that she is lawfully seized in fee simple of the above granted premises that the above granted premises are free from all incumbrances and that she will and her heirs executors and administrators shall warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever excepting as to any and all claims demands and incumbrances placed against said described real property by the grantee.

IN WITNESS WHEREOF the grantor above named has hereunto set her hand and seal this 1st day of July 1921

[Signed and notarized.]

COMMENTS:

The "TO HAVE AND TO HOLD" paragraph contains the covenant of seizin, against encumbrances, and of warranty or quiet enjoyment. The covenant of the right to convey is not present presumably because the covenant of seizin is included. The enforcement part of the restrictions is one of the most involved I've seen, making sure every possible person ever associated with the grantee is held responsible for any violations. The reverter clause in Appendix D is closer to what the usual set of restrictions contain. This deed only contains two more restrictions (a racial and a reverter clause) than the deed in Appendix A but is much longer because the legal language is so exhaustive and exact. The legal language is much more exact than the modern subdivision covenants in Appendix H and of any RCs I have seen.

APPENDIX C

GENERAL WARRANTY DEED FORM

THIS DEED between _____ of _____ County,
State of _____, hereinafter called GRANTOR, and
_____, of _____ County,
State of _____, hereinafter called GRANTEE.

WITNESSES, That in consideration of the sum of _____ dollars
and other valuable consideration, paid by the GRANTEE to the GRANTOR,
the GRANTOR does hereby convey unto the GRANTEE, his heirs and assigns
the following described real estate, located in _____ County,
State of _____

together with all improvements thereon and all the estate and rights
pertaining thereto.

TO HAVE AND TO HOLD the described real estate unto the GRANTOR,
his heirs and assigns forever.

The grantee, his heirs and assigns, hereby covenants with the grantor,
his heirs and assigns, to develop and use the real estate conveyed for single
family, detached dwelling residential purposes only.

The grantor hereby conveys to the grantee, his heirs and assigns, a
right of way easement in the following described real estate, located in
_____ County, State of _____

The grantor, his heirs and assigns, hereby covenants with the grantee his
heirs and assigns that the grantor is lawfully seized of an absolute estate in
fee simple in the described real estate, . . . that the grantor has good right
to convey the described real estate, that the described real estate is free from all
encumbrances except as stated herein:

(place exceptions here)

and that the grantor will warrant and forever defend the title to the described
real estate.

IN WITNESS WHEREOF, the grantor has duly executed this deed on this
_____ day of _____, 19_____

ACKNOWLEDGMENT

State of _____)
County of _____) ss.

Before me, the undersigned, a Notary Public, in and for said County and
State, on this _____ day of _____, 19_____
personally appeared _____ to me known to be the identical person
who executed the within and foregoing instrument, acknowledged to me that
_____ executed the same as _____ free and voluntary
act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year above written.

Notary Public

My Commission expires _____

From: Larry E. Wofford, Real Estate (New York: John Wiley
and Sons, 1983), 109.

APPENDIX D

EXAMPLE OF A LINCOLN, NE RESTRICTIVE COVENANT

Clearview subdivision, Lincoln, Lancaster County, Nebraska. From Warranty Deed

181:294, January 26, 1915:

"And the following we do covenant is to run with the land. In case the grantee, her heirs, or assigns, shall at any time erect or permit to be erected upon the above described property any house containing less than four rooms, or costing less than \$700 or erect any barns or outbuildings thereon of such unsightly or objectionable character as to decrease the value of the surrounding property or in the case of the erection of any such prohibited building or buildings a failure to remove or change the same in accordance herewith within sixty days from the date of written notice served on the grantee, her heirs or assigns, by the grantors or their agents, or in case prior to January 1, 1920 the grantee, his heirs and assigns, shall establish or permit the establishment or maintenance of any public nuisance or any factory, business, industry, or establishment obnoxious to the public or detrimental to the neighborhood as a residence district, or at any future date shall permit or allow the sale of intoxicating liquors or the maintenance of any illegal institution or business on said premises, then the title herein conveyed to the above described real estate shall without further action immediately revert and become absolute in the grantors."

COMMENTS:

Note the lengthy nuisance restrictions and the mention of any "unsightly" structure which would harm property values. The last phrase (starting with "...then the title herein...") contains the reverter clause.

APPENDIX E

EXAMPLE OF A ROW HOUSE RESTRICTIVE COVENANT

An example of a row house RC from the Back Bay area of Boston is found in *Hamlen v. Werner*, 144 Mass 396 (1887) at 397. From an 11 lot subdivision platted by the city of Boston in 1860:

On October 25, 1860, said city [Boston] conveyed the lot numbered two on said plan to Lorenzo A. Hitchcock and Samuel Stubbs, by a deed subject to the following conditions and restrictions:

1. All taxes and assessments which have been laid or assessed on said premises previous to execution of this conveyance shall be paid by the said Hitchcock and Stubbs, their heirs and assigns.

2. The front lot line of the building which may be erected on the said lot shall be placed on a line parallel with, and ten feet back from Tremont Street.

3. The building which may be erected on said lot shall be of a width equal to the width of the front of the said lot.

4. No dwelling-house or other building, except the necessary outbuildings, shall be erected or placed on the rear of said lot.

5. No building which may be erected on said lot shall be less than three stories in height, exclusive of the basement and attic, nor have an L of more than three stories in height; nor shall said building or said L have exterior walls of any other material than brick, stone, or iron, nor be used nor occupied for any other purpose or in any other way than as a dwelling-house, for the term of twenty years from the first day of June, A.D. 1860.

COMMENTS:

The setback for this subdivision is not as shallow as most row house covenants but certainly conditions 3 and 5 are intended for row houses. No single family detached house covenant ever had a requirement that the house must be the width of the lot nor did the house have to be more than 3 stories.

APPENDIX F

LENGTHY NUISANCE RESTRICTIONS

An example of very lengthy nuisance restrictions is found in *Kitchings et al v. Brown*, 75 NYS 768 (1902):

The defendant is bound by the covenant created in 1873 not to erect upon her property any buildings within 40 feet of the front of said premises, except of brick or stone, with roof of slate or metal, and not to erect or permit on any apart of said premises any stable of any kind, coal yard, slaughterhouse, meat shop, tallow chandlery, steam engine, smith shop, forge, furnace, brass foundry, nail or other iron foundry, or any manufacturing of glass, gunpowder, starch, glue, varnish, vitriol, ink, petroleum or turpentine, or any cooper's carpenter's or cabinetmaker's shop, or any establishment for tanning, dressing, preparing, or keeping skins, hides, or leather, or any brewery, distillery, sugar refinery, or bakery, or drinking or lager beer establishment, circus, menagerie, or public show, or exhibition of animals, railroad depot, railroad stable, car engine, or tenement house, or any other trade, manufactory, business, or calling which may be in any way dangerous, noxious, or offensive to the neighboring inhabitants.

A second example of lengthy nuisance restrictions from an 1865 deed is found in *Rowland v. Miller*, 139 NY 95 (1893):

...entered into a mutual agreement "for themselves and their representatives, heirs and assigns, owners of any of the said lots above described, that no buildings other than dwelling houses at least two stories high, of brick or stone, or churches, chapels or private stables of the same material shall be erected on any of said lots; that not livery or other stable shall be erected on lots fronting on Madison avenue, and that there shall not be allowed or erected on any part of said lots of land any tenement house, brewery or lager beer saloon, tavern, slaughter house, butcher's or smith's shop, forge, furnace, steam engine, foundry, carpenter's or carriage or car shop, manufactory of metals, gunpowder, glue, varnish, vitriol, turpentine, ink or matches, or any distillery, or any establishment for dressing hides, skins or leather, or any museum, theater, circus or menagerie, nor shall any other buildings be erected for trade or business carried on upon said lots which shall be injurious or offensive to the neighboring inhabitants; it being expressly agreed that this covenant runs with the land, and is binding on all future owners thereof.

APPENDIX G

RESTRICTIONS FROM THE PALOS VERDES SUBDIVISION

From Urban Land Policies and Planning, p. 87.

In detail the restrictions cover the following general headings: Building height limits; type of architecture; minimum cost of buildings; building setback lines; building side and rear lot lines; variation in setbacks; privies and cesspools; easements and right of ways; burning of refuse without permit; title to streets reserved; maintaining natural drainage; insect pests and plant diseases; duration of restrictions; modifications of restrictions; records and reports; annexation of additional property; reversion of title; violation of conditions; violations constitutes nuisance; construction and validity of restrictions; assignment of powers; interpretation and enforcement; right to enforce; and exceptions. All restrictions are in force to 1960 and are automatically extended for 20 year period after 1960 unless changed by the approval of owners of two-thirds of the area within 300 feet of the proposed change and by the homes association. About 90 percent of all lots are restricted to detached single family dwellings.

APPENDIX H

A SET OF MODERN RESTRICTIVE COVENANTS

PROTECTIVE COVENANTS

Book 103
Page 459

Peterson Construction Company, by
President, Attest Secretary, Seal

Date Dec 1 1965
Filed Jan 17 1966

Acknowledged Dec 1 1965 before Elva M Brakhage N P Lancaster Co Nebr.,
Comm exps Nov 2 1969, Seal.

That Peterson Construction Company, a corporation of Lincoln, Lancaster County, Nebraska, hereinafter known as the Company, being owners of the following described real estate, located in Lincoln, Lancaster County, Nebraska, to-wit:

Lots 11 to 27, inclusive, Block 2; Lots 5 to 8, inclusive, Block 3, Lots 3 to 19, inclusive, Block 4; all of Blocks 5, 6, 7, 8 and 9, all in Southwood, a subdivision of Lincoln, Lancaster County, Nebraska, hereby create, adopt and establish the following restrictions against and upon said real estate, to-wit:

A. All lots herein described shall be used exclusively for private, single family dwellings, not to exceed two stories in height, and a private garage of a maximum three-car capacity, which may be either attached to or detached from the dwelling.

B. No dwelling shall be located on any lot nearer than 25 feet to the front lot line, nor nearer than 5 feet to the side lot line. In the case of a corner lot, the dwelling shall not be nearer than 25 feet to the side street lot line. No detached garage building, or other out-building, shall be nearer than 60 feet to the front lot line, nor nearer than 2 feet to the side lot line. In case of a corner lot, the garage or other out-building shall not be nearer than 25 feet to the side street lot line.

C. The ground area below the main living area shall not be less than 750 square feet in the case of a split level, 1 1/2 story, or 2 story dwelling, nor less than 800 square feet in the case of a one-story dwelling.

D. Not more than one dwelling and a garage shall be built upon any lot except nothing herein shall prevent the construction of one dwelling and garage on a portion of two or more lots. In such case restrictions pertaining to the side lot lines shall be construed to apply to the side lines of such tract.

E. The construction of a dwelling shall not be started until the written approval is first secured from the Company of the residential building plans, which must show the size, exterior material, design and plot plan indicating the location of the dwelling and garage upon the lot or lots. The Company reserves to itself, its successors and assigns, the sole right to approve or reject any building plans, if in its opinion, either the size, materials, design or plot plan do not conform to the general standard and value of development in the subject area. To insure the enforcement of this provision, one set of said plans, signed by the owner, shall be left on permanent file with the Company. This provision shall remain in full force and effect at least until January 1, 1972, and shall continue to remain in full force and effect thereafter until terminated by the Company.

F. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon, which may be or become, an annoyance or nuisance to the neighborhood.

G. No trailer, basement, tent, shack, barn or any other out-building, erected in or on any lot, shall at any time be used as a residence, temporary or permanently; nor shall any structure of a temporary character be used as a residence.

H. No building of any kind whatsoever shall be moved on to any building lots, except that the Company may use temporary buildings for storage of tools and material during construction of homes and development of the subdivision.

I. No nuisance, advertising sign, billboard, or other advertising device shall be permitted, erected, placed or suffered to remain upon said lots, and said lots shall not be used in any way, or for any purpose, which may endanger the health, or unreasonably disturb the quiet of any holder of adjoining lots; except that this covenant shall not prevent the Company from placing signs advertising the lots on the subdivision upon any lots owned by said Company. This covenant shall not prevent the Company from building ornamental structures at subdivision entrances.

J. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for any commercial purpose.

K. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

L. The owner of a lot or lots shall install public sidewalks as required by the City of Lincoln. Failure to do so within the time limit set by City shall empower Peterson Construction Company to install said public sidewalks and charge the costs thereof against said lot owner.

M. All electric power lines and telephone lines, including service lines to the buildings shall be underground, except where the respective utility companies shall declare it to be absolutely necessary that they be above ground. Said underground power service line from main to buildings shall be at least 150 amperes capacity as required by the National Electric Code.

N. Any relocation of underground cables, transformer pads or service pedestals which may be required as a result of grade changes made by the owner of such lot or lots shall be done and performed at the expense of the owner.

O. The Company expressly reserves to itself, its' successors and assigns, the sole and exclusive right to establish grades and slopes on all lots, and to fix the grade at which any dwelling shall be hereafter erected or placed thereon, so that the same may conform to a general plan.

P. The herein enumerated restrictions, rights, reservations, limitations, agreements, covenants and conditions shall be deemed as covenants and not as condition hereof, and shall run with the land, and shall bind the several owners until the 1st day of January, 1991, in any event, and continuously thereafter, unless and until any proposed change shall have been approved in writing by the owners of the legal title to all of the land on both sides of the street, within the block in which is located the property, the use of which is sought to be altered by said proposed change.

Q. In the event that any person shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person or persons owning any other real estate in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction and either to prevent him or them from so doing or to recover damages or other dues for such violation.

R. Invalidity of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.