



MEMORANDUM

FROM: The Columbia Association Board of Directors

RE: November 5, 2014 Memorandum from General Counsel Sheri Fanaroff

DATE: November 7, 2014

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Attached is a memorandum dated November 5, 2014 from the Columbia Association's General Counsel Sheri Fanaroff, entitled "Letter from attorney John Murphy regarding Inner Arbor Easement". On November 7, 2014, the CA Board of Directors voted to release this memorandum to the public. However, disclosure of this memorandum is not intended to be and should not be construed as a waiver of the attorney-client privilege with respect to any other memoranda or opinions by or communications with CA's General Counsel or outside counsels on this or any other subject.



**TO:** COLUMBIA ASSOCIATION BOARD OF DIRECTORS  
**FROM:** SHERI FANAROFF  
**RE:** LETTER FROM ATTORNEY JOHN MURPHY REGARDING INNER ARBOR  
EASEMENT  
**DATE:** NOVEMBER 5, 2014

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I have reviewed the letter from attorney John Murphy provided by Alan Klein regarding the easement granted by CA to Inner Arbor, and find that Mr. Murphy's conclusions are erroneous.

First, Mr. Murphy has concluded that the easement was a conveyance of property in violation of CA's Deed, Agreement and Declaration of Covenants. There are several reasons why this conclusion is unsupported. First, the easement is not a "conveyance". To "convey" property means "to pass or transmit the title to property from one to another. . . . To convey real estate is to transfer the legal title to it from the present owner to another." (Black's Law Dictionary) CA did not transfer its title to Symphony Woods to Inner Arbor. Second, even if the easement were a conveyance, Mr. Murphy has misread the provision of the Deed (section 5.03) regarding conveyances to a public body. The Deed states that CA has the authority to convey property free and clear of the obligation to pay the annual charge and of the rights of enjoyment of annual charge payers if the conveyance is to a public entity. The Deed does not state that CA may not convey property to any entity other than a public body. Third, the Deed specifically authorizes CA to "contract with any corporation . . . for the performance of the various duties imposed on CA" in the Deed, which include projects relating to parks, recreational facilities, amphitheatres, theaters, galleries, playgrounds, walkways, landscaping and any and all other improvements the board "shall find to be necessary, desirable or beneficial to the interest of the property, Owners and Residents." (Section 4.01) The easement agreement constitutes such a contract pursuant to which Inner Arbor will develop a park with attributes authorized by the Deed. Similarly, CA's Charter gives CA the authority to "lease or sell . . . property . . . to any person . . . to be engaged in providing . . . facilities necessary or desirable for the social welfare of the people of Columbia." (Section III(6))

Mr. Murphy also mistakenly concludes that Inner Arbor's only obligation under the easement is to develop Symphony Woods pursuant to the Concept Plan and that the easement "extinguishes the rights of CA and the Columbia owners and residents in Symphony Woods". In fact, the easement specifically states that it is non-exclusive and that CA has retained rights of use for itself and temporary licensees. The easement also preserves CA's rights of control over Symphony Woods. Inner Arbor not only is required to act in accordance with the Concept Plan,

but also must (a) preserve, protect and develop "Public Benefit Values", which are defined in the easement as scenic, open space, natural, educational and recreational values of importance to CA and the citizens of Columbia, (b) not engage in prohibited uses specifically listed in the easement, and (c) provide quarterly and annual reports on development and operations. CA also may terminate the easement in the event of a default by Inner Arbor in meeting its obligations.

Last, Mr. Murphy concludes that the easement requires CA to subordinate its property interest in Symphony Woods to any financing requested by Inner Arbor with the result that a default on a loan by Inner Arbor would extinguish CA's ownership interest in the property. The language in the easement from which Mr. Murphy draws this conclusion actually states that CA will cooperate with Inner Arbor in the execution of documents relating to financing, which may include "consents, subordinations, non-disturbance or similar agreements or other documents required by any financing or capital source . . . ." (Section 5(iii)) "Subordination" simply means "an agreement to put a debt or claim . . . in a lower position behind another debt." (USLegal) In other words, if CA had an outstanding loan to Inner Arbor (which it does not), CA would provide a document stating that the financing company making a loan to Inner Arbor would have the right to be paid before CA. This document would not impart any ownership right in Symphony Woods to Inner Arbor or the financing company.

In sum, there is no basis for an assertion that CA violated its Deed or Charter in granting the easement to Inner Arbor.