

John Murphy Response to Sheri Fanaroff Memo

1. Her first reason is that the word conveyance refers only to a conveyance of title. This is incorrect. In fact, the 2014 easement uses the word 'convey" on page 3.
2. The second reason is that the 1966 deed does not prohibit conveyance. What it does is prohibit a conveyance free and clear of the rights of the residents set forth in the 1966 deed. As far as I can see, the 2014 easement gives no rights to the residents. I think this is quite deliberate, the intention being to give Inner Arbor Trust total control over the property.
3. She says the easement can be justified on the authority given in the 1966 deed for CA to contract with a corporation to carry out CA's duties. The easement does not say it is a contract. Moreover, there are no contract terms other than to carry out the concept plan, an undefined 1 page visual depiction of something. Assuming it is a contract, it is unenforceable because the terms are undefined. The CA charter does not take precedence over the 1966 deed.
4. She says I am incorrect in saying that the Columbia residents retained no rights and cites as proof the provision allowing CA to allow uses of the property. This is a great example of how this 2014 easement is written. In paragraph 2 (d)(i) on page 7, it does allow CA to allow use of the property. But then it says "Notwithstanding the foregoing", both parties must consent to such use. Thus it is clear that CA has no right at all since Inner Arbor must consent to it.
5. She says that Inner Arbor is required to act in accordance with the "Public Benefit Values". As far as I can see, this language is just a lot of fluff. The public benefit values include recreation, park and approved business uses. The permitted uses include restaurants and retail. The language is broad.
6. She is not correct on subordination. In the context, subordinate clearly means that CA would have to subordinate its interest to an Inner Arbor lender. The paragraph also requires CA to subordinate its interest to any Inner Arbor lease. Both of these provisions allow Inner Arbor to borrow or lease in a way which would take precedence over CA's property interest.

Conclusion:

I am sure the CA attorney is a fine attorney and I mean no criticism of her. But the fact remains that the 2014 easement is very carefully drawn to set up a separate independent corporation. A separate independent corporation is inconsistent with the Columbia residents retaining rights in the property which is required by the 1966 deed unless the conveyance is to a public body.