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1710 California

1710 California is a charming little bungalow built in 1928, and sits on the edge of the Cherryhurst neighborhood in Houston right off of lower Westheimer. My favorite restaurant in the city, DaMarco, lies right across the street, and the smell of the woodfired oven wafts throughout the area. Funky secondhand clothes stores, tattoo parlors, and cafes make a colorful street scene, with people walking here and there, a rarity in this city of automobiles. Two trees – one a large water oak the other a live oak – stand in the front yard, and stepping onto the large covered front porch you have a sense of going back in time to a calmer, quieter Houston. Inside, the light spreads bright and evenly throughout the rooms, beautiful oak plank floors and a wood burning fireplace, large sash windows and strong moldings, a kitchen with real white travertine marble counters. The grounds need some work, but that's natural as the current owners have never lived there in the two years since they bought it. In the aftermath of a divorce, and facing a foreclosure, the time had come for them to sell it, and the wife, an attractive, tall South African stewardess-turned-masseuse wanted a buyer who would both pay a reasonable price and preserve the house that, she told me, has “good feelings.” I told her I would not only take care of the house, but make it better than ever.

My interest in 1710 California was primarily as a place to put my business. But it was not my sole consideration. I have worked from my home office for many years now. During this period, I got married, had a child, and one month ago, had another. As you might imagine, the dynamics of that home office have changed as our lives have changed. After the first child, the home office itself literally changed – we built another structure apart from the main house that was quiet and private. Still, I have been able to live a life that I have come to value. I'll work for several hours at a time, head deep in client accounts, trades, plans, and risk profiles, and then I'll look up and watch as my two year old, a big smile on her face and a bunch of wildflowers gripped tight in her fist, trots across the rock garden and up to my office steps. The difference in a day of seeing such a glorious sight several times versus a day where I don't, is vast. In truth, I'm a happier

worker for it, and therefore I'm a better worker. Still, as a growing business I need more space and I'm simply outgrowing my little office. So I went looking for a compromise – an office apart from our home, but short of an office building. That's when I thought: why not combine my love of old buildings, my interest in preserving Houston's historic heritage, and a new office? Why not, I thought, put my office in a cute and endangered Houston bungalow on a funky part of Westheimer? Money managers tend to be drab and boring, but that doesn't mean I have to be.

When I walked into 1710 California, my wife and I looked at each other and we knew this was it. Other people apparently thought so too, as in only a couple of days the house drew several offers. My realtor and I made sure that we put in the most attractive bid, and in short order we had signed a contract with the seller for more than the asking price. Those of you who have bought or sold a house know that signing the contract is just the beginning of a long process that involves a lot of paperwork: the contract, the loan documents, the deposits, the disclosures, the title assurances, and often, the deed restrictions. Houston's residents, living in a city without zoning, have for decades used these legal mechanisms to shape their neighborhoods. Deed restrictions are stipulations put in place with the deed that transfer with the property when it is sold, and are generally impossible for a new owner to remove. Most often, a deed restriction will govern the type of structure that can be put on a property, the dimensions that it can take, and what activity is or is not permitted. Enforcement of a deed restriction often falls to a neighborhood association, usually a group of gung-ho residents who get elected and get involved with preserving their neighborhood.

In a city without zoning, deed restrictions have their place. They are responsible for neighborhoods staying neighborhoods, and often the best mechanism for maintaining neighborhood continuity. But deed restrictions, like everything, age. And in a world where living and work habits are changing rapidly with the pace of technology, a 1928 deed restriction can look awfully outdated, and can even be at cross-purposes to the present. And getting a deed restriction changed requires the vote of an entire neighborhood – not simple and not something most people have time for.

1710 California came with deed restrictions, and those restrictions read, in part:

“All properties shall be used for residential purposes only, except that a business office or professional activity to which the public is not invited, shall be allowed.” Okay, I qualify, investment management is not a business open to the public, you have to have an appointment to see me.



Then the restrictions go on: *“Such business office or professional activity shall be allowed to employ and use on the property only residents of the property.”* Well, here’s the rub. Would I be a resident or not? The deed restrictions don’t define “resident”, but they do define “Residence” as follows:

“A single, enclosed dwelling unit containing facilities for living, sleeping, cooking and eating.” In truth, I would be doing all of those things and more, since my whole idea is to be able to combine my work and family life under one structure. Not only would I, on a daily basis, living, cooking, eating, but I would also be doing gardening, meditating, reading, babysitting, relaxing, and other things as well.

I needed to get a legal opinion, and for \$500 my attorney told me that she didn’t see any reason from the language to object to my proposed use – as far as she was concerned, I qualified as a resident. I decided to do one more thing, against my attorney’s advice: I contacted the Cherryhurst Neighborhood Association and told them what I had in mind and invited them to meet me so that I could introduce myself and tell them how much I admired their neighborhood, and how much I wanted to integrate my activities there.

And so early on a Saturday morning I, my wife, my 2 year old daughter, and my 2 week old son entered a well-appointed bungalow of one of the Cherryhurst officers, let’s call him Mr. VV. After introductions, my wife took our daughter to the lovely Cherryhurst Park and left me to the tender mercies of the Association. Around the dining room table sat six or so of these Cherryhurst officers. They had clearly convened even earlier in the morning to discuss about my proposed use of 1710 California. It was hard to read them: they weren’t hostile, but they weren’t too friendly either. They started by asking me to talk about myself and my proposed use. And so, there again and in person, I told them my story, how I had outgrown my home office, how I wanted to put my business in one of Houston’s historic homes, how I wanted to include my family life in that home as well, how I wanted to be a part of their neighborhood, and how I wanted to introduce myself to them to demonstrate my good faith and intent.

After going through all of this, someone in the group turned to a tall lanky white haired man sitting low at the end of the table, and introduced him as an attorney who was no longer on the Association but who had been instrumental in working on the restrictions. Let’s call him Mr. M, and I instantly recognized his name because it was all over the deed restrictions.

In business school, one of my professors had once berated the entire class for putting so much faith in things that were written in our business case handouts. “What is this?” he



would shout holding one of the stapled packets aloft. “A business case” people would mumble in reply. “NO!” he shouted, “it’s just toner arranged on a paper.” I looked at Mr. M seated in his chair, his face serious and dour, and I realized that this was the man who had done the toner arranging that resulted in the Cherryhurst deed restrictions.

Mr. M made some preliminary comments and then got to the heart of his matter: Businesses are only permitted to be run by residents, and I would not be a resident. I interrupted to say that my lawyer didn’t see it that way, that she considered, given the wording on the restrictions, that I would be resident. Mr. M interrupted: “Let’s not get derogatory here,” he said, “We’re not here to get derogatory.” I wondered what pointing out my lawyer’s position had to do with being derogatory. Mr. M went on to joke that he himself probably spent enough time at his downtown office to qualify as a resident there, and that his wife, who was sitting in the room as an Association member, would concur. They smiled at each other. But really, he went on, he certainly couldn’t be considered a resident there. I wondered how much gardening, meditating, guitar playing, or babysitting Mr. M did at his downtown office. And then Mr. M, the proud papa of the deed restrictions written almost two decades ago, declared that the Association had the duty to enforce its deed restrictions or what were they for?

I looked around the room at the faces. They were all sober and serious. And then, after a silence, I said “Are you telling me that you are going to take legal action against me if I purchase 1710 California and use it in the way that I have described?” All of these serious and sober faces nodded simultaneously, as if on cue, which in truth it probably was as Mr. M had prepped them before I had arrived.

I told the Cherryhurst Association that the seller very much wanted me to own the house as I had promised to take care of it, and that one of the buyers waiting in the wings was a so-called “developer” – someone who intended to tear down the old house and replace it with something altogether newer and worse. I pointed out some other things as well, but it really didn’t matter. I’m too busy doing this show, managing clients’ money, and taking care of my family and two young children to mess around in a lawsuit with Mr. M and his gang. There wasn’t much more to say other than good luck to everyone, and I left the house and went to tell my wife at the park. I looked at her. She looked at me. “No go,” I said. Her face was suddenly crestfallen, and she began to tear up. “You’re kidding? I can’t believe it…” she went on.

I told my wife not to blame the Association. They have their restrictions, they live there, and they’re going to do their thing. And I meant it. Later that weekend, one of my clients, an ex-Cherryhurst resident, visited us at our ranch. I told her about my



experience. “When I first moved in there,” she said, “everybody told me that I had better show up at the Association meeting just to pay my respects to the rulers of the neighborhood.”

It’s a hard call. Do we protect our neighborhoods best by setting some restrictions and then enforcing them even as times change? Should the restrictions be revisited regularly to make sure that they mirror reality? The challenges that Cherryhurst faced in 1990 were very different than the ones it faces now. Then, Houston was emerging from a devastating multi-year recession and suburban flight had left the inner city dilapidated and, in places, dangerous. Now, in 2007, the inner city is growing and desirable, and the danger is that Cherryhurst itself may go under the developers’ bulldozers, or even under bulldozers driven by its very own residents. Several people who live there told me that they will eventually bulldoze their homes and build bigger ones.

It occurred to me when I fell in love with 1710 California, that allowing modest forms of commercial use in historic neighborhoods is an excellent way to preserve the neighborhoods, not ruin them. The rulers of Cherryhurst clearly don’t agree, and I’ve moved on, looking for a place that wants me and will have me. And so 1710 California went back on the auction block. With the divorced sellers facing imminent foreclosure for not paying their mortgage on time, they lowered their price almost to the amount of the mortgage itself, and apparently settled on a contract around there. The rulers of Cherryhurst had ensured that this struggling young divorcee wouldn’t make a penny for her ownership in their neighborhood. And it’s still not clear that the buyer will allow the beautiful little bungalow with the good feelings on California Street to live on.

I’m Leo Gold. This is The New Capital Show.

