

Mr. R. G. Stewart,
Trustee, Wychwood Park.

re WYCHWOOD PARK

The nucleus of the residential preserve known as Wychwood Park was established over sixty years ago when under trust deed dated June 10th, 1891 Messrs. Jardine and Matthews and Mrs. Agnes Litster, as owners of the property covered by Plan 854 amended by Plan 1092 (known as Wychwood Park) conveyed to themselves as Trustees and to their successors in trust.

Certain restrictions prohibiting the use of the properties within the Park for trading, manufacturing or mercantile purposes etc., and as to the value and type of houses therein were imposed for a period of 20 years from the date of the trust deed.

In or about the year 1907 several new owners were brought in including George A. Reid, Eden Smith and E. E. Duvernet and a re-organization was effected. Mr. Duvernet was responsible for the creation of the now defunct Wychwood Corporation.

Letters Patent were issued by the Province of Ontario on 31st May 1907 creating this new Corporation whose objects in brief were to purchase, lease, take in

exchange or otherwise acquire lands or interest therein. The capital stock was \$100,000 and on the application for incorporation Mr. Duvernet was described as having subscribed for \$25,000 of the said stock and a Mr. A. K. Goodman for \$2500. Subsequent returns show that only 300 shares were allotted. The last annual returns of this company were made for the year 1923 and in 1930 Col. Denison of the Provincial Secretary's Department made a note on the file "This Company has not functioned for many years. The name may be removed from the files." The Company has been therefore defunct for many years. Shortly after incorporation (in 1908) the park lands, roadways, drives and reservations were conveyed by the Trustees under the trust deed to the Corporation and certain other lands as well within the Park area.

In subsequent conveyances from the Wychwood Corporation purchases were made subject to the terms of the said trust deed and also to certain other restrictions more particularly set out in an Agreement of Sale registered as No. 60071 on the 11th day of September 1908. These restrictions were much more extensive than those set out in the trust deed and among other matters it provided that the Wychwood Corporation may erect gates to shut off the public from the Wychwood Park property roads and the care and maintenance of the gates and roads shall be at the expense of the owners of the lots in the Wychwood Park

property according to the method provided in the said Trust deed for the maintenance of the roadway, drives, reserves and reservations therein mentioned. It was further provided that in case any owner shall desire to sell his property the Wychwood Corporation shall have the first right to purchase the same. The restrictions were declared to bind the Purchaser, his heirs, executors, administrators and assigns and may be enforced by any owner in the name of the Corporation.

Subsequently, early in 1917, a quit claim deed, registered as No. 1696 WP, was given by the Wychwood Corporation, as party of the First Part, A. K. Goodman, of the Second Part and Cyrilda Matthews et al, of the Third Part, to Julia Duvernet. The deed recites that certain claims were made by Parties of the First, Second and Third Part in respect of the lands thereafter described, and the undisputed title to the said lands in the said Party of the Fourth Part (Julia S. Duvernet) was acknowledged by all the Parties of the First, Second and Third Part who granted, released and quitted claim all their estate, title, interest, claim and demand of and into Lots 19, ²⁰~~30~~, 21, 25, 28, 29 and also Lots 22, 26, 27 and 30 of Wychwood Park. It may well be argued that the Wychwood Park Corporation relinquished all claim to enforce the said restrictions by the said Quit Claim.

We note that in respect to part of Lot 30 (now owned by Mr. Rea) the said Quit Claim deed was registered 12th January, 1917 and on 8th February 1917 Julia Duvernet conveyed part of the said lot to Alan Sullivan by 1823 WD

subject to the restrictions set out in 60071. In this case Alan Sullivan, the grantee, executed the conveyance. In regard to part Lot 26 (now owned by Mr. Stewart) the Wychwood Corporation executed a conveyance to Julia S. Duvernet by 61006 subject to the restrictions set out in 60071. Subsequently the said Quit Claim deed 1696 WD was registered and then Julia Duvernet by 8881 WD subsequently conveyed part of the said lot to Elizabeth Douglas in which no such restrictions are set out. It may be asked, that granted the Trustees have no power to enforce such restrictions set out in Instrument 60071, could not an owner in the name of the Wychwood Corporation enforce such restrictions. In view of the fact that such owner would be endeavouring to enforce restrictions in the name of a Company which is now defunct, we are of the opinion that the attempt would not be successful. Later in the report we suggest the enactment of a new City By-law to tighten up the building restrictions in the existing City By-law.

In or about the year 1916 a plan was registered as No. M 417 by the Wychwood Corporation which had the effect of opening up a new entrance to the Park from the north. Plan D 1386 also shows the proposed changes.

At this time difficulties arose as to the property control exercised by the Corporation and a Court ruling ^{Justice} (Middleton) dated 11th October 1917 directed that the Corporation do deliver to the new Trustees appointed by the Court the trust estate and property upon the trusts of the Trust deed,

It was further ordered that the Wychwood Corporation be permitted to retire "and it is hereby retired from its Trusteeship under the deeds of 10th June 1891 and 12th June 1907." Subsequently an indenture dated the 5th December 1918 was registered from the Wychwood Corporation Ltd. to the new Trustees, Geoffrey T. Clarkson, George A. Reid and H. H. Love, of the private roadways and drives set out on the Plan 854 as amended by Plan 1092 and subsequent plans "to have and to hold unto the Trustees, their successors and assigns, upon the trusts set out in the Deed of Trust dated 10th June, 1891 registered as No.38822."

The Trust Deed of the 10th June 1891 had vested in the Trustees not only the roadway drives and the Park reserve but also the reservations set forth in Plan 854 as amended by Plan 1092. This consisted of a one foot reservation along the north of the said Plan 1092, also along the west to a depth of 123'9" of the said Plan. There is no one foot reservation along the easterly or southerly sides of the said Plan. It is true that there is a one foot reservation along the westerly end of Burnside Avenue on Plan D 1405 to the east of Wychwood Park but this one foot reservation is not part of the one foot reservation conveyed under the Trust Deed of 10th June 1891 and is not owned by the Trustees of Wychwood Park. The Registry Office opened up a subsequent page in its entry books showing registration affecting

the one foot reserve conveyed by the Trust Deed of June 10th 1891. There is a note by the Registrar on the back of Plan 1092 stating that the subsequent plans and conveyances would indicate that a reserve of one foot on west of roadway and to the north of the northerly lots shown on this Plan was continued though this Plan might seemingly have absorbed such reserves. I am informally advised by Mr. Dodds, the Assistant Registrar, that there has been an argument between the Registry Office and the Land Titles Office as to whether or not that part of the one foot reserve now in Land Titles consisting of the one foot reserve fronting on Alcina Avenue is still in existence. The lands fronting on Alcina Avenue were taken into the Land Titles Office by Plan M.4 and there is no reference on such Plan to the one foot reserve along the south side of Alcina Avenue. It may well be that the one foot reserve along Alcina is no longer legally vested in the Trustees -- in any event the purchasers of lots on the Alcina Avenue frontage would no doubt rely upon the provisions of the Land Titles Act to protect their interests. I do not recommend that the Trustees make any claim to ownership of any alleged one foot reserve along the Alcina Avenue frontage.

Summing up it would appear that the present Trustees hold the lands conveyed to their predecessors by a Conveyance registered as No. 5922 WD on December 31st 1918 pursuant to the terms of Order of the Honourable Justice Middleton dated the 11th day of October 1917.

It would appear that the one foot reservation hereinbefore referred to, subject to any conveyances of same that may have been made from and after the 10th June 1891 and subject to the provisions of the Land Titles Act as to Alcina Avenue, is vested in the Trustees as well as the private roads and Park lands.

Under the Trust Deed the Trustees are empowered to keep the said roadways, drives and reservation in good repair and order for the benefit of the owners from time to time.

Gates

It would appear that for many years gates have been erected at the northerly and southerly entrances of the Park. It would also appear that in compliance with the terms of the said Trust Deed, the Trustees for the purpose of maintaining the said drives in good repair and order have directed that the said gates be kept closed so as to prevent the said roadways from being used by the general public as a by pass in order to avoid the heavy traffic on Bathurst Street Hill by motorists, truck drivers and others, for purposes unconnected with the property

owners and tenants of Wychwood Park. It will readily be seen that the cost of keeping the roadways in good repair and order would be materially increased if the said roadways and drives were utilized indiscriminately by outsiders. For this reason we are of the opinion that the Trustees for the purpose of keeping the said roadways and drives in good repair and order are justified in maintaining the gates to the northerly and southerly entrances to the Park for the purpose of regulating and lessening the amount of through traffic through the Park and in so doing aiding to keep the said roadways and drives in good repair and order.

Gates

We are also of the opinion that the owners from time to time of lands within the Park have the right to use the said roadways freely. The Trustees cannot block access to the Park to any resident of the Park by keeping the gates closed in such a fashion that access to the Park through the said gates is denied to them.

If the gates are kept locked and keys are furnished to the various residents in order to permit them to open the gates, it may be argued that loss may be sustained to residents of the Park due to the delay in obtaining fire, police, medical or similar services in case of an emergency.

For this reason we are of the opinion that the Trustees should not keep the gates locked. Such a procedure might at some time block the immediate access to the Park of fire, police, medical or other similar services.

We are informed that there have been complaints as to the inconvenience caused by the locking of the gates, and we are of the opinion therefore that if the Trustees decide that the traffic should be regulated in order to preserve the privacy of the Park and to protect the roadways from heavy through traffic that the gates can be kept closed but should not be locked.

It would appear that while there were limitations imposed in certain conveyances by Wychwood Park Corporation more particularly set out in Instrument No. 60071 limiting the rights of the subsequent owners of such lands, we do not believe that the Trustees have power to enforce them. The Trustees' powers are derived from the Order of The Honourable Mr. Justice Middleton dated the 11th day of October 1917 and their powers under the said Order are based upon the Trust Deed of the 10th June 1891 hereinbefore referred to.

Have the general public apart from the owners by prescription a right-of-way over the private roads and driveways? If any member of the general public can claim that he has by continuous usage over a period of twenty years used such private roads and driveways, it may well

be that a particular right-of-way to such individual has been executed. We are advised that the access to the Park has been blocked from time to time for at least one day during a period of several years by the keeping closed of the said gates. We suggest that by general agreement of the property owners, and not for the purpose of derogating from the undoubted rights of the property owners to free ingress and egress, that the gates be kept closed for one day a year. Care should be taken by the stationing of a servant of the Trustees at the said gates on such a day so that the ingress and access is not blocked to the owners or residents of the Park or in the obtaining by them of fire, police, medical or similar services. The two gates should not be so closed at the same time. The belief which may exist in the minds of some of the residents that the Trustees have certain supervisory powers as to building restrictions is not warranted.

It would appear to us that the Trustees are limited in respect to their powers to those specified in the said Trust Deed of 10th June 1891 and that these powers cannot be enlarged by an authorization from the property owners expressed in a vote held at an Annual Meeting.

We are of the opinion that the Wychwood Park is now subject to the provisions of a City By-law which we understand is By-law No. 15037 together with amendments thereto. This By-law limits the type of home

in the Park to detached private residences and no person shall use for any purpose except for that of detached private residences any land within the area known as Wychwood Park and the area immediately adjoining the easterly limit thereof more particularly described in the By-law.

It will be noticed that the By-law does not restrict the erection of one storey or bungalow design type of private residence nor does it require a specified minimum frontage or specify a minimum amount for the cost of such residence or the cubic foot content.

We would suggest that if the ratepayers of the Wychwood Park desire a tightening up of the By-law that a perusal of other by-laws covering Lawrence Park and South Rosedale would be of some interest. It would be preferable to make an application for a new by-law rather than have an amendment of the existing by-law. In this connection we point out that By-law 15570^(note) enacted by the City Council in 1941 permits the erection of two family residences in that part of Wychwood Park known as Lot 17 Plan 1092 (approximately the southeast corner -- east of the private road into the Park from Davenport Road). We believe too that in the area south of the Brow of the hill and fronting on Davenport Road a similar amendment has been enacted.

note By-law 15570 amended by 15628 allowing conversion only of existing houses for two family residence purposes. It does not permit the erection of new 2 family residences.