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# Riverview Community Group v. Spencer & Livingston Homeowners Hit Hole in One – Developer Double Bogies

☰ On November 20<sup>th</sup> the Washington State Supreme Court ruled that, under certain circumstances, representations made by a developer may create implied equitable servitudes that restrict the future use of property, even though no formal writing, deed, covenant, or other enforceable restrictions appear on title.

The case is ***Riverview Community Group v. Spencer & Livingston***, Wa. St.

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Supreme Court Cause Number 88575-3, you can read the full decision [here](#).



Back in the 80's two partners developed residential property and a golf course in Lincoln County, Washington, and represented in marketing materials and other oral statements that the golf course surrounded by the homes in various subdivisions would remain a permanent fixture in the community.

Some 20 years later, the golf course was closed down and the owner started the process of platting the course into additional residential lots. Several members of the surrounding residential community formed an association and filed a lawsuit requesting that the Court hold that the use of the property be restricted to only use as a golf course.

A slim five justice majority held that such restrictions could, under certain circumstances as alleged in the Livingston case, be created by implied equitable servitude. In this particular case, no recorded writing existed setting forth such restrictions. The only

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“document” of record was one of the seven plat maps that noted the presence of a “golf course.” The remaining “representations” were either oral or contained in marketing materials used to sell the residential lots. The Court disregarded the statute of frauds that generally requires all conveyances or encumbrances of real property be in writing and satisfy other formal requirements.

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This case could have far reaching consequences for developers, title insurance companies and property owners. The Court’s holdings do not appear to be limited to residential property, so yes, those of you developing malls, business parks, and other commercial properties need to be careful as well.

One Justice disagreed as to the Implied Equitable Servitude holding and three others dissented because they believed the Plaintiff, “Riverview Community Group” had no standing to bring the lawsuit for equitable servitude because the claim requires the individual participation of the property owners.

If you have any questions about this or any other real estate and/or development related questions, please feel free to contact us at 206-448-8100 or email our firm at [info@sgfslaw.com](mailto:info@sgfslaw.com) .