

## NEWSLETTER

November 11, 2013

### The Pond Meadows, A Condominium: Some Perspectives of Land Use

To help clear up any misunderstandings about the rights and obligations of owners (and residents) within our complex, it might be helpful to gain some perspective of the scope of the Master Deed and to identify some of its specific provisions which govern our use of the land on which our condominium complex was built.

The Master Deed was filed in the Bergen County's Clerk's Office in August, 1985, after, what can be assumed, was a protracted negotiation with neighbors, other developers, and the Township of Mahwah. The condominium project had to conform to the requirements of New Jersey Condominium Act on the one hand, and with the conditions finally established by the Mahwah Planning Board to proceed, on the other.

Consider that Planning Board hearings are public forums where neighbors, other developers, and all other interested parties can register their objections and request that restrictions accompany the Board's approval. After all, almost 100 units were to be constructed on fifteen (15) acres and another 100 units on thirty five (35) acres in the Chapel Greens complex by the same developer. Such a population density in such a small area certainly would have raised the concerns of area residents and the owners of single family homes recently zoned for one acre (as the Fardale section of Mahwah is). This parcel of land (100 acres) was once, apparently, used principally as a livestock/pig farm in the 1930s on, and the Township must have considered that in establishing its restrictions.

The Master Deed is some eighty-five (85) pages long, including exhibits, and another 50 pages is attached granting easements, rights of way, and other deeds necessary for installing drainage conduits, roads, sewage lines, and so forth. The Master Deed establishes what was ultimately agreed for the use of this land by all parties, including by the Township of Mahwah. If the use of the land, including its restrictions and owners' obligations, is to be changed, that is to say, if the Master Deed is to be amended, the consent of 67% of the unit owners (64 units) AND 51% of mortgage and lien holders is required (Paragraph 18), and approval of the Mahwah Planning Board is needed.

The By-Laws of the Pond Meadows Condominium Association (Exhibit "E" of the Master Deed) is completely distinguishable from the documents governing land use. The By-Laws govern the organization of the Association and establish the procedures for election (or removal) of the members of Board of Trustees, which conducts and oversees the business of the Association, much like a Board of Directors oversees the business of a corporation. (The Association is simply a "home association" corporation within the meaning of Section 528 of the tax code.) Among others, the Association is entrusted with the power of enforcing the provisions

of the Master Deed and ensuring that the uses of the land meet the purposes for which that use was intended. It is its legal obligation.

### Restrictions

Restrictions on the use of this land are set forth in Paragraph 12 of the Master Deed and are binding on every owner, and by derivation, on every resident/occupant. Let us consider some not necessarily in the order in which they are presented in the Deed.

#### 1. Rentals (Paragraph 12 subparagraph u):

Owners are entitled to rent their units subject to all the restrictions of the Master Deed and By-Laws, but they are not permitted to “sublet” rooms. They must rent the entire unit. ALL leaseholds must be evidenced by written leases or memoranda, signed by the landlord and tenant, identifying the residents, and made subject to all the restrictions of the Master Deed and By-Laws. Copies of all leases or memoranda have to be provided to the Association to be in compliance. Rights of tenants are governed by the terms of their leases, which may provide for greater restrictions than those set forth in the Master Deed but not lesser. Non-Compliance by tenants attaches to the owner/landlord, who has the obligation to pursue legal remedies against the tenant to cure. The relationship of the tenant is to the owner/landlord, not to the Association.

#### 2. Animals (Paragraph 12 subparagraph c)

***“No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit or on the Property. No dogs, cats or other household pets are permitted, nor may any visitor bring pets onto the premises.”*** The Master Deed’s restriction reflects, apparently, the very strong objection to the historical presence of animals on this land by area landowners. (Note that visitor “dog walkers” on our private roads are in violation of the legal use of this land, as are, of course, any resident pet owners.)

#### 3. Offices. (Paragraph 12 subparagraph a)

***“No unit....shall be used for any purpose other than as a private residence.”*** To use any unit for commercial purposes subjects all owners to increase liability for any injuries to visitors invited for commercial purposes. It is contrary to the purposes for which the land is to be used.

#### 4. Alterations. (Paragraph 12 subparagraph k)

***“No unit owner or occupant shall build, plant or maintain any matter or thing upon, in, over and under the Common Elements or Property without the prior consent of the Association.”*** The Association shall have the long term plan and continuity of the property in mind in granting consent. It is assumed that the owners and occupants will have successors who should not have to acquire property adapted solely to the wishes of prior owners and which does not conform to the general uniformity of other units and surrounding areas.

#### 5. Trees and Shrubs. (Paragraph 12 subparagraph l)

***“No unit owner or occupant shall burn, chop or cut anything on, over or above the Common Elements or any part of the Property.”*** This provision speaks for itself.

6. Noxious Activities. (Paragraph 12 subparagraph p)

***“No noxious or offensive activities shall be carried on, in or upon the Common Elements or Property or in any such Unit nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance to the other residents in the condominium.”*** These activities might include excessive noise, generating offensive effluvia (including cigarette smoke), or such conduct as to encroach on the quiet enjoyment of other owners in their units.

7. Age Requirement. (Paragraph 12 subparagraph z)

***“All units shall be occupied exclusively by persons 55 years of age or older and the spouses of such persons.”*** The only exception to this provision is for a live-in caretaker other than a spouse. The age restriction is subject also to conditions established under federal and State laws.

The Master Deed identifies twenty-six (26) restrictions for the use of this land, many of which were originally included as parts of agreements with interested parties and the Township of Mahwah. It is recommended that you read them and other parts of the Master Deed (as uninteresting as the prose might be) to be a better informed owner and Association member. Keep in mind that you cannot choose to act contrary to these restrictions and continue to use this land. If you wish to see changes in what are permitted uses, please review Paragraph 18 respecting the processes to be followed to effect those changes.

We hope that these reminders have been helpful and informative. The Board of Trustees looks forward to working with owners to maintain the best of conditions in our condominium community.

**Board of Trustees**

**Pond Meadows Condominium Association**

11/11/13