

MINUTES OF THE
LAKE CHAFFEE ASSOCIATION BOARD OF DIRECTORS
JULY 11, 2007
CHAFFEE HALL, 630 P.M.

President Koropatkin called the meeting to order at 6:36 p.m.

In attendance: Laura Koropatkin, Kay Warren, Bob Layton, Jerry Dufresne, Pauline Backhaus (A), Tom Martin, Jack Pirzl, and Carol Natitus (A).

Kay Warren made a motion to seat Pauline Backhaus as an alternate. Tom Martin seconded the motion. Motion passed unanimously.

The secretary's minutes from the June 13, 2007 meeting was tabled due to the absence of the secretary.

Carol Natitus arrived at 6:50 p.m.

TREASURER'S REPORT

Kay Warren motioned to accept the treasurer's report. Pauline Backhaus seconded the motion. Carol Natitus abstained due to absence from the meeting. Motion passed.

Kay Warren motioned to seat Carol Natitus. Jack Pirzl seconded the motion. Motion passed unanimously.

BINGO CHAIRMAN'S REPORT — Jack Pirzl

Jack Pirzl stated that money was made with only 23 people at the bingo on Saturday night. He is still looking for help in the kitchen.

BEACH CHAIRMAN'S REPORT — No chairman

President Koropatkin stated that someone had called her asking what we pay to mow the grass at the beaches and the hall. She stated that we had been paying \$50.00 in the past. Jerry Dufresne stated that his son James was still mowing the grass at the boat launch.

CONSTABLE — Jerry Dufresne

Jerry stated that Shannon Sherman had called him stating that items had been stolen from their truck. Jerry stated to her to call Troop C and report it. She was to get back to him with a list of items that were stolen but she hadn't got back to him as yet. Jerry stated that he had some complaints on the fireworks. Kay Warren stated that she had had 3 complaints, too. Jerry had had to talk to a few people on blocking the roads when they had their 4th of July parties.

ROAD CHAIRMAN'S REPORT

Jerry Dufresne stated that Joe Hipsky had been grading the dirt roads during the week. Jerry was going to have Joe Hipsky put rocks and stones on the side of Union Drive, Ashford Drive, and Westford Drive to prevent the roads from being damaged during rain washouts. Bob Layton suggested putting storm drains on these roads. President Koropatkin mentioned to Jerry that there were trees that needed to be trimmed on Circle Drive and Lakeview Drive.

ENVIRONMENTAL CHAIRMAN — Diana Murray

No report due to the absence of the chairman. President Koropatkin asked Jerry to check into the possibility of dredging the Main Beach.

FUNDRAISING — Laura Koropatkin

There was no fundraising at this time.

NEWSLETTER — Kay Warren

The only thing to report is that there probably would be another newsletter going out soon and the previous newsletter had paid for itself through the ads obtained.

CORRESPONDENCE

President Koropatkin recessed for 5 minutes. At 8:35 p.m. Meeting was resumed at 8:40 p.m.

SECRETARY'S MINUTES

Bob Layton had left the meeting to go home and retrieve a copy of the June 13, 2007 meeting. Kay Warren read the minutes to the Board. There was one correction which was "...Association members take their trash when they leave the Main Beach.... Jerry Dufresne motioned to accept the secretary's report as of June 13, 2007 with the correction. Tom Martin seconded. Motion passed unanimously.

President Koropatkin asked to go into executive session. Tom Martin motioned to go into executive session at 7:47 p.m. Jack Pirzl seconded. Motion passed. The Board came out of executive session at 8:17 p.m. No motions had been made during the executive session.

President Koropatkin stated to the Board that she and Kay had gone to see the Lake attorney after the June 24th annual meeting. She stated that the building codes in Section 1d of the Lake Chaffee Building codes ordinance of August 22, 1958 was illegal due to the fact that no by-law or ordinance can be made that goes directly against the covenant. Discussion was held. Reference Attached July 6, 2007 letter from Attorney Paul.

OLD BUSINESS

Kay was asked if she would go to the town hall to check the previous zoning books on home businesses. President Koropatkin had obtained a copy of the recent book for Lake Chaffee use.

President Koropatkin stated that the first selectman, Ralph Fletcher, was going to not issue permits to Lake Chaffee home businesses unless by permission of the Board.

Meeting was adjourned at 8:45 p.m.

Kay M. Warren
Acting secretary

Minutes approved _____

APPROVED

GOODWIN AND PAUL

*Attorneys at Law
32 South Street
Vernon, CT 06066*

*W. Bradford Goodwin
JoAnn Paul*

*Telephone (860) 875-9566
Facsimile (860) 875-0514*

July 6, 2007

Board of Directors
Lake Chaffee Improvement Association, Inc.
c/o Laura Koropatkin, President
15 Old Town Road
Ashford, CT 06278

Re: Covenants and Restrictions

Dear Board Members:

I have been asked by the Board to address three questions concerning the restrictions and covenants contained in your individual deeds to lake property.

1. Specifically, the Board has expressed a concern about the scope of its authority in enforcing the covenant which provides, "Said premises shall not be used for any commercial, agricultural or manufacturing business of any kind".

You have asked whether the Board has the authority to enforce this restriction.

2. You have also asked whether this restriction (or indeed any deed restriction) may be amended or removed by a vote of the membership.

3. You have asked whether the vote taken at your June 24, 2007 meeting of the membership, in which the membership present, by majority vote, voted to allow the Board to issue variances of the enforcement of covenants was valid.

Discussion

The Board's authority is first governed by statute and secondly, by its Bylaws which are created from the authority vested in the Association by the statute. In the case of Lake Chaffee, it is subject to the provisions of the Special Act which created the Association. Its bylaws are enforceable if they are consistent with the powers granted to the Association by the statute which created it. Sterner v. Saugatuck Harbor Yacht Club, Inc., 188 Conn. 531 (1982).

For Lake Chaffee, it is the Special Act referenced here and known as the Substitute for Senate Bill No. 36 Special Act No.86 entitled, "An Act Incorporating the Lake Chaffee Improvement Association, Incorporated" which created it and from which all of its power comes. This Act was approved April 23, 1957. The restrictions and covenants were included in deeds commencing in 1950.

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This Act, in Section 7, specifically provides that the restrictions applying to property in place at the time this Act was enacted shall remain in force and in no case shall be removed prior to the expiration of the restrictions. This Section also gives the Board authority to enforce these restrictions. As an aside, there is no expiration date for these restrictions in the deeds I have reviewed.

The Act also allows the Association to create bylaws and ordinances. However, bylaws and ordinances may not be inconsistent with any provisions in the Act. (Section 4). Since the Act speaks specifically to deed restrictions in place at the time of its enactment (Section 7), it is my opinion that the deed restrictions cannot be modified or rescinded by any action of the Board, through the formation of bylaws or ordinances, or by the membership by any vote.

Given this conclusion, it is my opinion that the ordinance contained in that document entitled, "Lake Chaffee Building Ordinance", Section 11. d which states "Buildings and land may be used and buildings may be erected or altered for the following uses: professional office of physicians, dentists and members of other recognized professions..." was beyond the scope of the Board's authority to enact because it contradicts or seeks to modify, the deed restriction concerning commercial use.

Likewise, there is no authority of any kind in either the Special Act or bylaws which grants the Board authority to selectively enforce any restriction through the granting of variances. No such power exists in any formative document of the Association.

If it were not for the specific language in the Special Act, we would look to the corporate purpose of the Association as stated in its Certificate of Incorporation for its authority to enact certain bylaws. A bylaw is enforceable only if it germane to the accomplishment of the stated corporate purpose. Debernardo, et al v. Pinewood Lake Association, Inc., 46 Conn. Sup. 265 (1999). The Association's corporate purpose as stated in the Special Act (which serves as a Certificate of Incorporation in your case), provides in Section 3, that "the objects of said association shall be to provide for the improvement of the lands in said territory and for the health, comfort, protection and convenience of the inhabitants thereof".

This language serves as the Board's authority for the regulation of the uses of the land through the enactment of bylaws addressing allowable uses. However given the specific language in Section 7, which gives the Board authority to enforce the restrictions as written in the deeds, we need not even concern ourselves with the Board's authority to enact bylaws to restrict commercial uses, because that authority is specifically provided for in the Act itself.

We can conclude from this review the following:

1. The Board has the authority to enforce all of the deed restrictions as written in the individual deeds.
2. The Board does not have the authority to selectively enforce these restrictions or modify them by vote, variance or ordinance.
3. The restrictions may not be modified or rescinded by vote of the membership.

The remaining question is how the Board may interpret the restriction pertaining to commercial use of property. The cases tell us that the meaning of restrictive covenants must be determined by reviewing all its relevant provisions and reading it in light of the surrounding circumstances. It is an attempt to determine the intent of the parties by considering the language and circumstances existing at the time of the writing. Wood v. Amer. 54 Conn. App. 601 (1999).

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The Board must not selectively enforce the restriction, but it may make reasonable assumptions in interpreting the restriction and to what circumstance it applies, in determining which purported violation of the restrictions it will seek to enforce. For example, there may be a difference between a home office on the premises which supports a business which is conducted primarily offsite and a business which is conducted solely onsite.

The Board has the authority under the Special Act to enforce the restrictions. Likewise, any member of the Association has the right to bring an enforcement action to the Court to enforce the restrictions as well. The Board's interpretation of the restriction may ultimately be reviewed by the Court. Indeed the cases I have cited were all brought by one landowner against another.

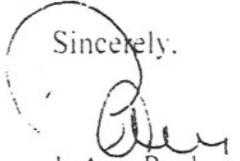
Section 7 however only provides recourse to the Court for enforcement. It is allowable for the Board to enact an ordinance which provides for other means of enforcement, such as a fine as you have done for many other situations, but there is presently no such ordinance in place addressing the violation of the commercial use restriction.

Lastly, in enforcing the restrictions, the Board should also be cognizant of the principal of laches and the applicable statute of limitations. Laches means an inexcusable delay which prejudices the one against whom enforcement is sought. Farmers & Mechanics Savings Bank v. Sullivan, 216 Conn. 341 (1990). Was enforcement of the restriction delayed so long that the property owner has somehow been prejudiced and suffered damages as a result of the delay? This is a question of fact for the Court.

Connecticut General Statutes Section 52-575a however, provides that an action to enforce a private restriction must be commenced within three years of the time the person seeking enforcement had actual or constructive knowledge of the violation. This time limitation provides specific direction.

Please contact me should you have any further questions or if anything contained in this letter requires further clarification.

Sincerely,



JoAnn Paul
JP/ml

jp lakechaffee board 07/06/07