

To: All PPCA Members



From: PPCA Board of Directors

Date: July 6, 2015

Subject: Sex Offender Deed Restriction – Update and Notice of Public Meeting!

On January 21, 2015, the PPCA and TTCA Boards of Directors sent the members of both associations an analysis of the possibility of adopting a deed restriction for the purpose of excluding registered Tier 3 sex offenders from living in either of the two communities. That is an important document because it contains what both Boards agreed was a fair, accurate, objective and balanced description of the permissible scope of, and the pros and cons of adopting, such a restriction. We will soon be asking our members to vote on whether or not to adopt the deed restriction. Because the January 21 memorandum is important in reaching your decision on how to vote we are enclosing another copy.

You may have already heard – or you eventually will hear – that the TTCA Board sent a notice to its members stating that it will allow them to vote on the proposed deed restriction, but that on a split decision, a majority of their Board does not support adopting it. The PPCA Board is aware of that position by the TTCA Board and disagrees with it. We have met with them, listened to, read and fully considered all of the reasons they expressed for their reservations. Having done that, your PPCA Board unanimously supports adoption of the deed restriction and strongly recommends that you vote for it.

The Lake Naomi Board of Trustees also fully considered the views and reasoning expressed by both Boards and it, too, unanimously supports adoption of the deed restriction.

However, the personal views of the individual members of the three Boards should not decide your vote. You should be informed of all the facts, the consequences of adopting or not adopting the deed restriction, and then make your own individual, informed decision of whether it is in the best interests of our community to adopt it. The starting point should be the informational memorandum that you received in late January 2015 (copy enclosed). While the two Association Boards did not reach the same ultimate conclusion, they did agree that the January 21, 2015 memorandum was a fair and objective view of the positive and negative considerations. Every response we received from our members after that memorandum was sent was positive.

In addition, the PPCA Board will hold at least one, and possibly more than one, open meeting at which we will provide you with information, answer all of your questions, and listen to all of your comments. You may also address any questions or comments to our Association Manager, Wendi Freeman, at wfreeman@lakenaomiclub.com, and you will receive a prompt response.

Finally, we will provide you in the rest of this memorandum what we understand to be the reasons that have been stated as arguments for not supporting the restriction, and why the PPCA Board unanimously continues to support a positive vote.

We can start with where there is no disagreement. Every Board Member agrees that we should do whatever is reasonably practical to assure our members that they – and especially their children - are in a safe environment. The success of both communities is largely based on creating and maintaining a safe, comfortable family oriented environment.

With respect to concerns expressed about adopting the deed restriction, we offer the following explanations:

Is it certain that the deed restriction will be enforced in court if it is challenged?

As part of the deliberations conducted by both Boards, we retained legal counsel who is highly experienced to provide his opinion on the legality of the proposed deed restriction. As the TTCA notice to their members acknowledges, his opinion is that, if challenged in court, it is more likely than not that it will be upheld. There is no disagreement on that. The TTCA notice adds the qualification that our joint legal counsel's opinion is not "a definitive statement that such a restriction could withstand a legal challenge".

In our view, any time there is litigation, there is always a measure of uncertainty about the ultimate outcome. The January memorandum expressly stated that we cannot give absolute assurance that the restriction would be upheld, but we reasonably believe it would be. What matters is not the certainty of a result, but rather the consequences of taking action or not taking action. If we adopt the deed restriction and are required to enforce it in court, that means that there is a convicted Tier 3 sex offender who is trying to move here and we have a more than likely chance of preventing it in a court proceeding. If we don't adopt the deed restriction, we will then have certainty, but it's the certainty that we can do nothing to prevent that. In our view, the negative consequences that the presence of a Tier 3 sex offender would have on the sense of security in our community and the negative effect on potential new buyers warrants the inherent risk of uncertainty in litigation.

Is there really a need for this restriction?

It is true that we have had only two prior instances of a convicted sex offender actually living here or trying to, and both were handled without serious incidents. If no one else tries to move here, it won't matter whether we have the deed restriction or not. It's equally true that few homes get destroyed by fire, but we all carry insurance because, while the risk is small, the consequences are severe. According to the latest census, there are currently 76 convicted Tier 3 sex offenders living or working in Monroe County and 16 of those either live or work within 10 miles of Pocono Pines (Blakeslee, Tobyhanna, Mount Pocono, Pocono Lake and Long Pond).

The deed restriction won't exclude Tier 1 and Tier 2 offenders whose crimes involved children

The Pennsylvania legislature has made a determination of the relative seriousness of different classes of sex offenders, with different required time periods for registration. In the interest of having the strongest position in enforcement, our Board, on the advice of our counsel, proposes to limit the restriction to Tier 3, the most serious, the most likely to be a future threat, and the ones who have a lifetime registration requirement. It is true that some Tier 2 offenses involve acts against children. However, a person will automatically be elevated to Tier 3 status if either: (1) he/she is found guilty of two or more Tier 1 or Tier 2 offenses or (2) the judge in a case of a single Tier 1 or Tier 2 offense makes a finding that the person is a sexually violent predator. So we believe the Tier 3 restriction is a reasonable balance of safety and enforceability.

The restriction cannot prevent ownership of property and ability to use LN Club facilities

It is correct that the law does not allow any restrictions on the sale or ownership of property. The most we can do is seek to prevent anyone, owner or not, from occupying it. It is also true that a person could own a lot or home in PPCA and use that to obtain membership in the Lake Naomi Club to have access to all of the Club facilities. To close that potential loophole, we have discussed the issue with the Lake Naomi Board of Trustees and they have committed – if the deed restriction passes, they will move forward to revise the Club Bylaws to preclude membership by any person who is a convicted Tier 3 offender.

There are questions about how to enforce the restriction

We will set up procedures for the Association to monitor all resale certificates (which are required whenever there is a contract for sale of a property in the community) and all applications for temporary membership in the Lake Naomi Club to check whether any of the involved persons is a registered sex offender. As part of the routine procedures for each of those kinds of transactions, we will notify the prospective purchaser or temporary member about the deed restriction and the Association's intent to enforce it.

We recognize that we will not have access to information about private rentals where the renter does not apply for Club membership, but we will strongly urge all of our members who rent, as well as the local realtors, to include a certification by the renter that there will be no occupant who is a Tier 3 offender. And the deed restriction is intended to give the Association the authority to remove such a person if there is actual information that one is occupying the rental house.

Aren't there other ways to deal with the potential problem?

The only alternatives that we are aware of as having been suggested are: (1) the Association can publicize the fact that a Tier 3 offender is living in the community and (2) we can ask owners voluntarily not to sell or rent to a Tier 3 offender. Frankly, our view is that neither of those would be effective.

Publishing the presence of a Tier 3 offender will not remove the person. It will only raise anxiety levels and lead to confrontations.

Asking owners not to sell or rent to sex offenders as a voluntary act provides no ability for the Association to enforce the restriction. It would then require each individual owner to do his/her own check of the public registration files. Finally, we are not comfortable in believing that every owner will refuse a renter or buyer just because we ask them to do it, and it only takes one exception to create the problem.

We do not see either of those alternatives as offering realistic and dependable protection.

Will the Association be potentially liable if an offender slips through the cracks?

We can never say that it's impossible that a slipup could occur or that no one would sue the Association if it did. But checking the sex offender registrations is a straightforward procedure and we expect our Association employees to do their jobs competently. We already have restrictions that could potentially lead to liability if we are lax in enforcing them, including our code of conduct. In our view, the responsibility of the Association is to respond to the concerns of its members, and not avoid taking action to do that solely because it carries a risk of liability.

As the discussions on the deed restriction progress, we will try to keep you all informed about all of the factors, both positive and negative as they are developed, so that when you vote, you can make a fully informed, objective decision. The PPCA Board of Directors will hold a meeting to discuss the sex offender deed restriction issue with the Membership on Saturday July 25, 2015, 9:30AM at the Lake Naomi Clubhouse.

Refreshments will be served. Please come out and participate in the discussion of this very important issue!!