



August 27, 2012

Mr. Greg Shivers, Esq.
Mr. George C. Greatrex, Jr., Esq.
SHIVERS, GOSNAY & GREATREX, LLC.
1415 Rt. 70 East, Ste. 210
Cherry Hill, NJ 08034

Re: LeisureTowne Association, Inc.
Proposed Changes to Definition of "Member" and
Status of Richard Weiner, Trustee

Dear Mr. Shivers and Mr. Greatrex, Jr.:

I am writing to you on behalf of Al Capri, current trustee (who finds himself in a minority position regarding the aforementioned matters), and several members of the Concerned Citizens of LeisureTowne Association, an unincorporated group of LeisureTowne residents, whose current Vice Chair is Susan Costalas. Mr. Capri and the members of the Concerned Citizens who have stepped forward have asked New Jersey Appleseed Public Interest Law Center to assist them in ensuring that current governance processes are respected by the Association's Board of Trustees, and that any proposed changes to the Consolidated Declaration of Restrictive and Protective Covenants (the "Consolidated Declaration" or "CDRPC") and the Association's By-Laws are effected in accordance with the governing documents and through an open and fair process, which is designed to encourage full participation and informed decision making by all the Association's members.

As you know the issue of who is and who is not a member of the Association arose when some members of the Board of Trustees became aware of the fact that Mr. Richard Weiner is not a record owner of the home in which he resides.¹ Mr. Weiner was appointed

¹ Indeed, to the best of my knowledge no one knows the exact relationship Mr. Weiner has to the property, other than his

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to the Board over one-year ago to fill a vacancy at that time, and was re-elected to the Board of Trustees in May of this year. Although I understand that Mr. Weiner has not been "officially declared elected," he is still listed as Secretary of the Board on the September *Trustees Corner* newsletter, and is permitted to attend Board meetings (even if not permitted to vote). Memo dated June 20, 2012 from George Greatrex, Jr. to Carrie Poster.

It is the position of my clients that Mr. Weiner is not qualified to be a member of the Board of Trustees, (pursuant to Art. V, Sec. I of the Amended By-Laws of LeisureTowne Association, Inc., 2004, requiring all trustees to be "resident Members") and not until (and only if) the controlling definition of "member" is changed, should he be permitted to serve on the Board. Accordingly, pursuant to Art. V, Sec. 3, they are requesting that the "remaining Trustees, at a special meeting . . . shall choose a successor who shall hold office" for Mr. Weiner's unexpired term. This request is not personal in nature, and is made solely to ensure that the Board of Trustees is acting in accordance with LeisureTowne's governing documents, and the "affairs" of the Association are "governed by a Board of Trustees, consisting of seven (7) persons." *Id.* at Art. V, Sec. 1.

Now, to the heart of this matter. A review of the Consolidated Declaration indicates that "member" of the Association and "owner" are both defined in this document (and are not just controlled by the By-Laws, which must be consistent with the Declaration). Automatic membership of every owner is also the subject matter of Covenant 30. "Owner" is defined as "record owner, whether one or more persons or entities, of the fee simple title to the Lot," (CDRPC at p8), and "member" refers to "all those Lot Owners who are members of the Association as provided in the Articles of Incorporation and the By-Laws of the Association." *Id.* The By-Laws adopt the exact respective definitions of "member" and "owner" as the CDRPC, though membership in the Association is limited to one per Family Unit, (*id.*) and to "the owners or co-owners of family units in LeisureTowne." By-Laws, Art. I, Section 4. Pursuant to Covenant 30, "[e]very Owner of a Lot shall automatically, upon becoming such Owner thereof . . . be a member of LTA and shall remain a

relationship Mr. Weiner has to the property, other than his wife is the title owner of the unit lot. That is, Mr. Weiner has not stated that the property is common marital property nor that he is entitled to inherit the home upon the death of his wife. He has simply stated that he is not and does not intend to become a record owner.

member of said Association until such time as ownership ceases for any reason." (CDRPC at p17). In this way, membership is limited to record owners, and does not contemplate any other type of owner, who may have certain rights of possession or use under common law.

It must also be noted that the respective definitions of "member" and "owner" appearing in the Consolidated Declaration are exactly the same as those found in Section 8A and 8B of the Declaration of Restrictive and Protective Covenants recorded in March, 1988 at Book 3598/Page 96 upon which the Consolidated Declaration were based, in part. Similarly, membership in Section 8A and 8B is limited to "the Owner or Co-owners of a Lot in the Property" although other language found in the relevant provision concerning "Membership" does not appear to have been incorporated word for word during the consolidation process. See Article VII, Section 1 at Book3598/Page140.

This segue into the past is important for one reason only; that is, it is necessary to understand the history of the definition of "member" currently found in the Consolidated Declaration and the Association's By-Laws in order to determine the appropriate method of amendment thereof. It is the position of my clients that if the Board of Trustees wants to change the definition of "member" governing the Association, it must amend the CDRPC, as well as the By-Laws.² Furthermore, although amendment of the Consolidated Declaration simply requires "a two-thirds (2/3) vote of the Board of trustees of LTA" and the "approval of a majority of the members of the Planning Board and of the governing body or the Township of Southampton, County of Burlington," we believe that the Board should also seek to secure the approval of a "majority of two thirds of the Members of the Association," as was previously required to amend Sections 8A and 8B (that include the definitions of "member" and "owner," which were incorporated into the current Declaration). We acknowledge that the Consolidated Declaration "supersedes all prior Declarations," but believe that a change in the definition of "member" that has controlled this Association for over 40 years should only be effected after it has the blessing of a substantial number of current record owners.³

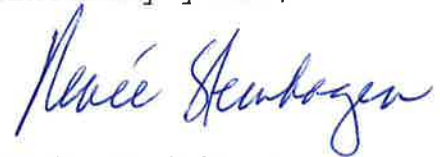
² It should be noted that the Certificate of Incorporation of LeisureTowne, Association, dated May 1, 1970, requires "members of the corporation . . . to be the owner or owners of one or more units in LEISURETOWNE," and thus, probably does not have to be amended if the Board desires members to include owners other than record owners.

³ Amendments to the By-Laws require approval by "a majority

Furthermore, before the Board of Trustees seeks approval of the members of the Township's Planning Board and governing body, my clients request that the proposed amendment be brought to a vote before the Members of the Association. A process should be set up whereby one or more forums are held prior to such vote so that the Trustees and others have the opportunity to voice their opinion about the proposed change to the definition of member (and any other change to the CDRPC and/or By-Laws) and a full discussion and airing of competing views may be had. Such a far-reaching and significant change to the nature of the Association should not be made without full knowledge, participation and approval of a significant portion of the affected community.

I thank you for your anticipated consideration of the matters raised herein, and I look forward to hearing from you as to how the Board of Trustees of LeisureTowne intends to proceed.

Sincerely yours,



Renée Steinhagen

Cc: Al Capri
Susan Constalas

of the Members voting, provided that a minimum of one-third of the Members of the Association cast a ballot." By-Laws, Art. X, Sec. 1. An amendment to a restrictive covenant that radically changes the definition of membership should, as a matter of good public policy, be required to secure at minimum a majority of at least two-thirds of the Members. It is unclear whether members of the Association understood that they were relinquishing their right of amendment by "a majority of at least two-thirds of the Members" when the Final Consolidated Declaration was recorded in 2001 by Caroline Record, Esq., of Hersh, Ramsey & Berman.