



March 2, 2020

Mary Seage, President
Cranberry Lake Community Club
Route 206, Byram Township
P.O. Box 360
Andover, New Jersey 07821

Re: Denial of Membership in Cranberry Lake Community Club (“CLCC”)

Dear Ms. Seage and all CLCC Board Members:

I am writing to you on behalf of Homeowners at Cranberry State Lake United, an unincorporated group of property owners residing in areas historically comprising the Cranberry Lake Summer Colony, a relatively significant land area in the Township of Byram which was originally subdivided in the 1920s. The group was formed to work with the NJ Department of Environmental Protection (“DEP”) to ensure the future integrity and sustainability of Cranberry Lake for public use, and to resist continuing attempts by the CLCC to foist mandatory membership on members of Homeowners at Cranberry State Lake United, most recently pursuant to the 2017 election amendments to the Planned Real Estate Development and Full Disclosure Act (“PREDFDA”), often referred to as the “Radburn Law”.

New Jersey Appleseed Public Interest Law Center (“NJA”) is a nonprofit 501(c)(3) organization, which has a Common Interest Association Democracy Project under which we have decided to represent the members of Homeowners at Cranberry State Lake United. This project was operated jointly with Professor Frank Askin of the Rutgers Constitutional Litigation Clinic prior to his retirement, and thus has focused and continues to focus on assisting common interest association owners in their various efforts to ensure open and fair board elections pursuant to the New Jersey Constitution and the PREDFDA.

Pursuant to this project, I personally litigated Moore et al. v. Radburn Association, both in the trial and appellate courts; and in the late 1990’s, NJA represented homeowners who held an easement right to access Upper Greenwood Lake and thus were responsible for a fair-share assessment, but had no representation on the board of the association that exacted that assessment. Thus, I am particularly dismayed by the CLCC’s distortion of the Radburn Law; that is, to take a statutory mandate to ensure representation on association boards for all property owners residing in common interest communities, who are required by deed or common law to

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pay an assessment to maintain commonly owned or shared property, and convert it into an obligation to pay membership fees to an entity, which in effect is nothing more than a social club. Despite the CLCC's attempts to represent itself as a common interest association, which pursuant to a master deed is required to maintain and/or own common elements or property for use by all unit owners, it appears from a review of the relevant deeds and other historical documents, that the CLCC was nothing more than a veiled attempt by Mr. William Drews and other founding trustees to control the ethnic make-up of the families who would either own or lease property at Cranberry Lake (through a sales restriction that would disappear in the event that the CLCC dissolved).

As will be explained in detail below, it is the position of Homeowners of Cranberry State Lake United that the neighborhoods constituting Cranberry Lake Summer Colony do not constitute a planned real estate development ("PRED"), as now contemplated by the statute, N.J.S.A. 45:22A-23(h). Just because one landowner subdivided his property over a period of ten or more years, filed maps entitling different sections of such land as all within the Cranberry Lake Summer Colony, and sold such lots adjacent to or within the close proximity of a state-owned lake (perhaps under one promotional plan), does not make such area a PRED, with commonly held or shared property and/or facilities for the exclusive use by the owners residing within that subdivided area.

The historical facts cannot be rewritten: The CLCC has never owned or maintained its clubhouse, beach, docks or other facilities (that have come and gone, such as tennis courts) on commonly held property, nor has it operated those facilities for the exclusive use of all property owners who have bought lots in the areas once designated as the Cranberry Lake Summer Colony. Deeds under which the CLCC acquired property from the Cranberry Lake Development Co. in 1925, and later, Susan Calkins in 1937, and Robert Dennis in 2000, or the agreement under which the CLCC has leased property from the DEP, do not indicate that the land was transferred "upon trust for the common use, benefit and enjoyment by all the owners" of any lands now or hereafter that are subject to the provisions of any uniform declaration of restrictions or covenants granting such owners access to such properties.

The fact that the relevant development activity occurred in the 1920s is no excuse for the lack of deed language and appropriate documents even if Mr. Drews intended (of which we have only scant evidence) to develop the Cranberry Lake Summer Colony as a PRED with commonly shared or owned property. As you may know, Radburn was developed during a similar time period, and the Radburn Association was specifically charged with maintaining, improving and developing over 149 acres of interior parkland, a host of recreational facilities, and other properties within its control for the mutual benefit of its residents. Conversely, purchasers of any parcel covered by a declaration of covenants and restrictions, whether that property was purchased from the original developer or subsequent entities, were granted access to such common properties, and were deemed to agree to pay the Radburn Association an annual assessment to be fixed by the Association. These hallmarks of a common interest community are absent here: declaration of covenants and restrictions on use of individually owned unit or lot (i.e., master deed), commonly held or shared property, and easements granting owners access to such commonly held property. Accordingly, any attempt to employ either the 1993 or 2017 democracy amendments to PREDFDA, which together were intended to enhance

owner participation rights in the governance of common interest communities, to force membership on homeowners, who by deed, have no easement or right to use property held by CLCC, is completely unjustified, and a perverse application of the law.

PREFDA Amendments, P.L. 2017, Chapter.106 (S. 2492)

In direct response to the unpublished decisions in Moore et al. v. Radburn Association, the Legislature amended PREFDA, N.J.S.A. 45:22A-21 et seq., in 2017 to enhance the voting rights of residents owning or leasing property in common interest communities. The amendments were intended to make clear that all unit owners residing in such communities, who (1) either owned a proportionate share of common property or were given access to such property and (2) were required to pay an assessment to an association that was responsible for the maintenance of such common property, were able to nominate themselves to the board and/or elect each board member of the association's governing board. The law was also intended to clarify that the Department of Community Affairs had jurisdiction over common interest association elections, not just financial disclosure, open board meetings and alternative dispute resolution. The amendments did not change the definition of a "planned real estate development" or "association," just "association member," among other substantive changes concerning association elections.

Prior to the 2017 amendments, N.J.S.A. 45:22A-45(a), which the court in Comm. For a Better Twin Rivers, v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 50-51 (App. Div. 2006), *rev'd on other grounds*, 192 N.J. 344 (2007), had found to apply retroactively to common interest communities organized prior to 1977 when PREFDA was first enacted, stated as follows:

The form of administration of an association . . . shall provide for the election of an executive board, elected by and responsible to the members of an association. (emphasis added).

This provision was the only provision in the relevant part of PREFDA that employed the term "members." On the other hand, several other provisions of the 1993 democracy amendments employed the term "unit owners" or "owners" rather than "members." *E.g.*, N.J.S.A. 45:22A-46(a)(permits unit owners to attend board meetings of association); N.J.S.A. 45:22A-46(b)(required bylaws to include method of calling meetings of unit owners); N.J.S.A. 45:22A-46(c)(required bylaws to set forth manner of collecting assessments from unit owners); and N.J.S.A. 45:22A-47(a) (sets forth manner in which control of association was to be surrendered by developer to the owners and called for the executive board of association ultimately to be elected by owners). Despite legislative history making it clear that the purpose of the 1993 amendments to PREFDA was "to safeguard the interests of the individual owners with respect to various governance issues,"¹ both Moore v. Radburn courts refused to provide Radburn owners with the right to elect the governing board of their association. For historical reasons, unit owners in the Radburn community were not members of the Association; only trustees and former trustees of such association were members. As a result, a group of approximately 36 people, including the nine trustees in power at any given time, controlled the

¹ Committee Statement to Senate, No. 217, L.1993, c.30.

budget, assessments and common property of a community of over 1,200 families, without the accountability and responsiveness that representative democracy is supposed to ensure.

To solve this injustice, the Legislature responded by amending certain provisions of the 1993 amendments to PREDFDA regarding elections, bylaws and amendments to bylaws. N.J.S.A. 45:22A-45(a) was changed to read:

The form of administration of an association organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43) shall provide for the election of an executive board, elected by the association members, and voting-eligible tenants where applicable, and responsible to the members of the association pursuant to section 4 of P.L.1993, c.30 (C.45:22A-46), through which the powers of the association shall be exercised and its functions performed. N.J.S.A. 45:22A-45(a).

And the definition of “association member” was changed to provide:

“Association member” means the owner of a unit within a planned real estate development, or a unit's tenant to the extent that the governing documents of the planned real estate development permit tenant membership in the association, and the developer to the extent that the development contains unsold lots, parcels, units, or interests pursuant to subsection c. of section 1 of P.L.1993, c.30 (C.45:22A-43). . . N.J.S.A. 45:22A-23(q).

Notwithstanding these changes, what did not change was either the definition of “planned real estate development” or the “association” governing that PRED. The former remained defined, in part, as:

"Planned real estate development" or "development" means any real property situated within the State, whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. . . This definition shall be construed liberally to effectuate the purposes of this act. N.J.S.A. 45:22A-23(h).

The latter remained defined as:

"Association" means an association for the management of common elements and facilities, organized pursuant to section 1 of P.L.1993, c.30 (C.45:22A-43). N.J.S.A. 45:22A-23(n).

A review of the 2017 amendments and the legislative statements accompanying such amendments indicates that the purpose of the amendments was not to redefine a planned real estate development or the organization governing such PRED. Rather, the purpose was just to make sure that property owners residing in such common interest communities had the right to elect the board that was exacting an assessment from them and that governed the commonly

owned or shared property.² It therefore follows that the CLCC's position that changes made to PREDFDA pursuant to Chapter 106 require that all owners in certain areas of Cranberry Lake become members of the CLCC cannot be sustained by the legislative amendments that were actually made. Either the CLCC was a PRED association already in 1994 or it was not a PRED association in 1994; if the latter, it did not become one in 2017, and surely is not one now. It simply cannot employ the Radburn Law to effect a policy that it has been trying to implement at least since 1987, if not earlier, to no avail.³

In short, what the Radburn Law does make clear is that it is the obligation to pay an assessment by deed (i.e., individual property lots or units are governed by a declaration of restrictions and covenants, including agreement to pay assessment to maintain commonly held or shared property) or common law (i.e., deed easement to use certain shared facilities supports obligation to pay for maintenance of such shared property or facilities) that gives rise to membership for purposes of voting for the executive board of the association, which holds the common property in trust for or on behalf of the individual property owners. The explicit intent of the 2017 amendments was to enable such owners, who pay an assessment, to hold the association to which they pay such assessment accountable. There is simply nothing in the law requiring a property owner to pay to maintain property, facilities or services to which they have no access or easement rights pursuant to their deed.

Furthermore, under PREDFDA, the association that has the authority to exact an assessment must own and/or maintain common property that is shared by all homeowners who live within the development. As already noted but bears repeating, the fact that parcels were sold by one development company, including property to a community club, does not render that club a homeowners association. The CLCC does not own any shared/common property or facilities; indeed, as will be shown below, its right to use Cranberry Lake per its 1925 deed requiring it to erect a clubhouse on certain property, is no different than the right of any other

² It is our position that A2480/S908, which has passed the Senate and is awaiting action by the Assembly, supports this position. That is, the bill merely clarifies the 2017 amendments and does not change them; it emphasizes that the Legislature had no intention to compel property owners who have no servitude in their "deed titles" to use property held and maintained by an association to become members of such organizations. Simply put, if an association does not have the legal authority to exact a fair share assessment, it has no authority to exact additional membership fees.

³ I am in possession of a complaint filed by the CLCC against hundreds of persons, "who presently own property in the Cranberry Lake Community." The complaint was filed in 1987, C-2262-87, Sussex County, seeking to declare that "all property owners within the geographic area under the control of the [CLCC] shall be obliged to pay proper fees, dues and assessments to the Community Club." The Complaint does not set forth the geographic area "under the control of the CLCC" nor does it define what it means by "under the control of." Notwithstanding, a Final Judgment Dismissing the Complaint, Amended Complaint, Second Amended Complaint and Counter Claims was entered on January 4, 1990, with prejudice and without costs. A strong argument can be made that any further attempt to exact a fair share assessment under the common law from any property owner named in this complaint, and their successors, would be subject to the doctrine of *res judicata*.

homeowner purchasing a lot in the Cranberry Lake Summer Colony.⁴ (Its 1990 lease with the State, which since 1922 owns Cranberry Lake in trust for the public, is yet another story that will be discussed below). Also, although one of the purposes of the CLCC when it was first incorporated in 1924 was to erect a community building for use by its members (who owned or leased property in the Cranberry Lake Summer Colony), its members have historically included owners or persons who have leased property within all the areas surrounding Cranberry Lake, not just lots within the Cranberry Lake Summer Colony. And finally, none of the deeds of any of the members of Homeowners of Cranberry State Lake United grant such owner the right to the use, benefit or enjoyment of any CLCC property or facility. As such, the CLCC's position fundamentally turns the Radburn Law on its head (i.e., forcing unit owners to become a member of an association in order to justify exacting an assessment against them in the form of membership fees), and is blatantly wrong as a matter of law.

A detailed review of deeds, maps, leases and other historical documents will further support our conclusion.

Factual Background and Chronology of Cranberry Lake Summer Colony

The story of the Cranberry Lake community appropriately begins when the New Jersey Legislature passed an act on December 31, 1824, incorporating the Morris Canal and Banking Co. to form an artificial waterway capable of navigation between the Passaic and Delaware rivers. N.J.S.A. 13:12-1 (L.1824, pg. 158).⁵ Such waterway included a body of water then known as Cranberry Pond, located in Byram Township. Around 1836, the Morris Canal and Banking Co. expanded the pond, and built a 200-acre lake, known as the Cranberry Reservoir or Cranberry Lake. To do so, the Company received an easement to flood approximately 41 acres of Rose Farm property, with that portion of the lake bottom still held in private hands. The original company failed in 1841 and was reorganized in 1844. Banking privileges were dropped in 1849, leaving the company as a canal-operating business only. As early as 1903, the canal was losing its economic justification; a plan of abandonment was sent to the legislature in 1905 and 1912, but nothing happened until 1922. At that time, the Morris Canal passed into the hands of the State of New Jersey, N.J.S.A. 13:12-3 (L.1922, c.212), but title to canal property and water rights continued to be vested in the Company "in trust for the state of New Jersey." Id.⁶ (L.1923, c. 11).⁷

⁴ It should be noted that the property on which the clubhouse was built and continues to exist (T-12 p.480 Calkins to Cranberry Lake Development Company ("CLDC"), February 9, 1925; T-12 p.482 CLDC to CLCC, February 11, 1925) does not appear on any of the Cranberry Lake Summer Colony maps filed by the CLDC throughout the 1920s.

⁵ This history of the canal is taken primarily from James Lee, "Morris Canal—A Photographic History" and "The Morris Canal and Banking Company" on Wikipedia.

⁶ Pursuant to N.J.S.A. 13:12-4, "The rights vested in the Canal and Banking Company to impound and divert waters of lakes, ponds and streams, and the property and rights vested in such company in . . . Cranberry Lake . . . together with all such lands, easements, rights and property, the title to which is vested in company in trust for the State of New Jersey, as may be

So, once canal operations formally ended, and Cranberry Lake became a public lake open for recreational purposes (e.g., fishing, boating, swimming), its potential to become “an ideal vacation resort[]” became apparent to some of Byram Township landowners, primarily Mr. William A. Drews.⁸ There is little doubt that during the first decade of the Twentieth Century, Cranberry Lake had been the focus of weekend traffic, brought by the Lackawanna Railroad to its shores, which included a casino and nearby amusement park. But this activity all ended in 1911, when the Cranberry Lake Hotel (which had been located on the site of the current CLCC clubhouse) burned down and the “railroad’s excursions were ended.”⁹ Now, over ten years later, the lake could support family-oriented, seasonal recreational activities, and Mr. Drews jumped at the chance to do so (and, presumably, make some money).

Mr. James Frenche, the father of Susan Calkins, was the original owner of all the land at the lake that became designated as the Cranberry Lake Summer Colony. Mr. Frenche owned approximately 1,256 acres (received primarily from William Dawson and Eliza Dawson in 1886, with a small amount from Edward Cooper and Abram Hewitt in 1885), which his daughter inherited upon his death in June 1917. In a deed dated 11/4/1922, Susan Calkins transferred about 656 acres of her property to William Drews (book H-12, p.236); in turn, on 11/9/1922, Drews transferred that same property to the CLDC, (book H-12, p.249). This acreage seems to have included tracts located in areas historically identified as Cabin Springs Park, Frenche’s Grove, Laurel Cove, Weaver House Cove, Della Heights, Strawberry Point, and Weaver House Heights.

necessary to maintain such lakes and ponds, or as may be of public value for public parks or recreation areas, shall be retained by such company in trust for the State of New Jersey, for the public use of conserving the public waters of the State or for public use for recreation, and shall be and are hereby dedicated to such public use.”

⁷ In 1924, legislation was enacted that provided that members of the NJ Board of Conservation and Development be appointed directors of the Morris Canal and Banking Co., that operation of the canal be ended and that several lakes, including Cranberry Lake, be retained for public use. N.J.S.A. 13:12-6 (L.124, c.80). The DEP continues to this day to manage the properties under the terms of the 1924 law. N.J.S.A. 13:12-7.

⁸ “Early in the 1920’s, Mr. William A. Drews, Horace A. Springer and others formed the Cranberry Lake Development Company for the purpose of promoting *a summer colony, which would be attractive to congenial people of good American stock.*” Carl O. Johnson and Elspeth Hart, “Byram Township, County of Sussex 1860” at p. 42 (New Jersey Herald, 1964)(quoting Andrew Spence) (emphasis added) As Andrew Spence further noted in his “Historical Sketches of Cranberry Lake, N.J.” (1939), the plan of these folks included “. . . the construction of moderately priced summer homes, the erection of a Community Center Building, the improvement of the Lake shore, and the establishment of tennis courts, bathing beaches, community docks and trails, water supply and other matters which go to creating a *healthful and enjoyable summer playground.*” (Emphasis added.)

⁹ Johnson and Hart, *supra.* n.8, at p.41.

The record indicates that the CLDC was incorporated by Mr. Drews several days earlier, on 10/31/1922, but, for some unknown reason, he did not record such incorporation document until two years later, on 12/2/1924. A review of the Certificate of Incorporation further indicates that the company's principal office was located in Newark and "the objects for which said corporation formed [we]re: To purchase, hire or otherwise acquire real and personal property, improved and unimproved, of kind and description; to enter into contracts to sell said property, or any part thereof; to sell, dispose of, lease, convey and mortgage said property, or any part thereof" The additional purposes of the development company were general and extensive; **what is lacking in such papers is any indication that the corporation was chartered to establish a planned, separately incorporated, or distinctly bordered residential community located at Cranberry Lake in Byram Township.** Over the next two years, we have identified at least three maps that proposed a subdivision of some of the property transferred to Mr. Drews in late 1922.¹⁰ None of these maps indicates lots or areas to be held in common for the benefit and use of all other lot owners.

On 5/13/1924, the CLCC was incorporated, with Mr. Drews named as the first trustee among 15 other men, and he was designated its resident agent upon whom process against the corporation could be served. The Certificate of Incorporation, No. 26936, was recorded on 7/15/24. The club was incorporated as a nonprofit, and its purpose was as follows:

The purpose of which it is formed is for the erection and maintenance of a clubhouse at Cranberry Lake . . . for the benefit and use of its members and *to ensure the future character and welfare of the Cranberry Lake Summer Colony.* (Emphasis added.)

The Certificate further notes that

No person shall be entitled to a regular membership in this Association who is not the owner of the title to property in the Cranberry Lake Summer Colony and which is held under the terms of a sales agreement and deed from the Cranberry Lake Development Co.

Several things are important to note about this certificate of incorporation. First, Mr. Drews and his cohorts **incorporated a community club; they did not incorporate the Cranberry Lake Summer Colony.** That is, even if they intended to charter a planned community, they did not do so. Instead, they chartered a community club whose mission was "to ensure the future character and welfare of the Cranberry Lake Summer Colony;" those "congenial people of good American stock" of whom Mr. Spence spoke in his 1939 *Historical Sketches of Cranberry Lake New Jersey*. Second, although the club was tasked with the erection and maintenance of a clubhouse at Cranberry Lake, **the trustees did not mission the nonprofit with "purchasing, holding, improving and maintaining, in common, a club house and other**

¹⁰ Map No. 1, Frenche's Grove, Cranberry Lake Summer Col., Oct. 1, 1922, approved March 6, 1923 (includes Laurel Cove tract, but not separately named); Map No. 2, Della Heights, Dec. 1, 1923, approved Oct. 29, 1924; Map No. 3, Weaver House Cove, Cranberry Lake Summer Colony, Oct. 31, 1922, revised May 25, 1923, approved Oct. 29, 1924.

property for the benefit and use of all persons who own or lease property in areas that constitute the Cranberry Lake Summer Colony.” Third, membership in the club was limited to “owner[s] of the title to property in the Cranberry Lake Summer Colony and which is held under the terms of a . . . deed from the Cranberry Lake Development Co.,” **but membership did not include all such owners.** Finally, the **areas within the Cranberry Lake Summer Colony were not designated in the certificate.** Based on this certificate, its amended version in 1937 (which will be discussed *infra*), and the operation of the club going forward, one must conclude that this organization was not at its inception, or since, a common interest association, as understood and defined by PREDFDA.

On 5/31/1924, Susan Calkins transferred an additional six plots to Willam Drews all on the South side of Cranberry Lake, (book P-12, p.157); in turn, on 6/9/1924, Drews transferred this property to the CLDC. (book P-12, p.162). The areas covered by this transfer included Briar Heights, Whitney Point and, perhaps some lots in Della Heights. In November 1924, Map 4, which included certain lots located in Strawberry Point, was filed. We do not have such map in our possession, but it is referred to on Map No. 14, Strawberry Point, Cranberry Lake Summer Colony, dated June 1, 1927.

The following year, on 2/09/1925, Susan Calkins transferred to the CLDC two tracts of land that may have been included in the 1922 transfer to Drews recorded in book H-12. The two tracts were the site on which the current clubhouse sits, as well as a certain tract of land located n Frenche’s Grove described as “Clubhouse Site and Public Grounds,” where the railroad earlier in the century had operated an amusement park (book T-12, p. 480). Two days later, the CLDC transferred these same properties to the CLCC, (book T-12, p. 482). This deed specifically required the CLCC to employ proceeds from the sale of the second tract to erect a clubhouse on the first tract; however, records indicate that the second tract located in Frenche’s Grove was not sold for market value until the 1970s, although it changed hands several times among a number of individuals for \$1.00 consideration.¹¹ Furthermore, it is clear from the relevant deed that the CLCC did not receive rights to use the lake or any portion thereof that were superior to or greater than any other owner purchasing land at Cranberry Lake, which at this time, were no greater than any member of the general public.¹² This is the case because even if Mr. Frenche had had an

¹¹ Like many of the deed histories associated with the Cranberry Lake Summer Colony, this one is very confusing. Working backwards, we have traced this back to the CLDC through the Cranberry Lake Holding Co., not the CLCC. Robert Canning and his wife purchased Lots 6, 9, and 10 shown on Frenche’s Grove, Map 9, C-H section, on 4/10/70, Deed 865 p. 429, from Lawrence Green and his wife for \$2,500; Mr. Green and his wife had purchased it on 4/10/50, Deed 460, p. 324, from Isidore Hornstein and his wife for \$1.00, who had purchased it on 5/5/33, Deed 337, p. 383 from Margareta Kramer and her husband, also for \$1.00. Margareta Kramer had purchased it on 2/16/31, Deed 322 p. 379 from Cranberry Lake Holding Co. for \$1.00, which had received the property from Consolidated Holding Co., which got it from the CLDC. This leads one to believe that the CLCC never actually took control and possession of the second tract from the CLDC.

¹² The relevant deed provision reads as follows:

agreement with the Morris Canal and Banking Co. permitting him use of the Lake, personally or on behalf of any of his commercial enterprises, any such rights or easements (which would have been transferred to his daughter) would have been superseded by the canal company's 1922 legislative mandate to hold the Lake "in trust" for the State of New Jersey; and specifically, for the general public's recreational use, when the operation of the canal was ended.

On April 11, 1925, Susan Calkins deeded a seventh plot of land to William Drews, which appears to have been located in Strawberry Point. (book X-12, p. 548). We have evidence of minimal activity during the rest of 1925 through 1926 (except, we know that Mr. Drews may have been selling or renting cabins from a real estate office located in a log cabin, south of the entrance to the development area around the Lake, in which a private post office was established; that building, according to Mr. Spence, was demolished in 1936).¹³ In a set of deeds dated 3/31/1927, Susan Calkins appears to have re-transferred the seven tracks of property conveyed to Drews in the 1924 and 1925 deeds above. However, after describing those same properties, the deeds, Nos. 3411, 3412, 3414 and 3416, "except" such properties. (Deed 296, p. 209.) The seventh lot, however, located in Strawberry Point, which Mr. Drews had not transferred to the CLDC, seems to be described differently. The CLDC subsequently filed a revised map, Map No. 14, Strawberry Point, Cranberry Lake Summer Colony, on June 1, 1927. Earlier that year, the Company had filed Map No. 6, Cabin Springs Park, Cranberry Lake Summer Colony, on March 1, 1927. No areas to be shared by owners of lots located in Strawberry Point or Cabin Springs Park, in common, are designated or marked on these maps.

Soon thereafter, the stock market crashed and the Depression hit. On Sept. 5, 1930, the CLDC conveyed its unsold properties remaining from the approximately 800 acres it received directly from Susan Calkins or through William Drews to the Consolidated Holding Company. (Deed 319, p. 418). One month later, on Oct. 4 1930, the Consolidated Holding Co. conveyed the same property to the Cranberry Holding Corp. (Deed 321, p. 278); which in turn, on 12/7/31 returned the property to Hiram B. Calkins, Susan Calkins son. (Deed 327, p. 226). In 1934, the Cutler Real Estate Management Corp. filed a map entitled, Map of Section 1, Whitney Point, Cranberry Lake Development. This map was revised in 1936, and neither identified this subdivision area as within Cranberry Lake Summer Colony. In January 1936, Hiram Calkins died with Adele Calkins as his surviving heir. Litigation between Adele and Susan Calkins followed with Adele transferring all the property in her husband's estate to Susan on Aug. 24, 1936. (Deed 252, p. 241.)

H(1) It is the intent and purpose of this instrument to convey to the grantee, in common with all other purchasers or owners of land at Cranberry Lake and the vicinity such rights as the grantor has or ought to have in and on and to the waters of Cranberry Lake or Cranberry Reservoir.

¹³ Map No. 8, Briar Heights, Cranberry Lake Summer Colony, was filed on June 1, 1926, and revised on Feb. 1, 1928; and Map No. 10, Weaver House Heights, Cranberry Lake Summer Co., was filed on Nov. 1, 1926. Neither map indicated the intention to create property to be used in common by all owners residing in the two respective areas.

The following year, in a document dated 5/29/37, the CLCC amended its Certificate of Incorporation to modify its mission and change its membership criteria. The purpose was amended to read:

SECOND. The purpose for which this corporation is formed is to insure the present and future character and welfare of the development known as the Cranberry Lake Summer Colony . . . and to promote the welfare, recreational, social and intellectual interests of its members.

In addition, the previous membership paragraph was expanded to provide:

SIXTH. Membership shall be limited to persons who have been elected to membership and who control property at Cranberry Lake either through (a) ownership or (b) lease . . . or persons who are about to purchase lands at Cranberry Lake and who agree to sell or lease such holdings only to persons accepted by the Club as members . . .

SEVENTH A member shall not be entitled to resign from membership in the Club so long as he or she continues to own or control property at Cranberry Lake. Upon disposition of a member's property at Cranberry Lake, such member may resign from membership . . . providing all dues and other obligations . . . have been paid . . . and provided he or she shall have disposed of said property to a member of the Club.

An analysis of these changes only reinforces the position of the Homeowners at Cranberry State Lake United that the CLCC was not, and still is not, a common interest association. In the amended certificate, all reference to a clubhouse is removed, and **the organization reads like a civic organization, with no mission to hold or improve real property in common for the benefit of all persons residing in the Summer Colony.**¹⁴ Secondly, **membership was no longer limited to persons, who owned or leased property at Cranberry Lake Summer Colony;** it now required the person to “have been elected to membership” and included those who controlled property at Cranberry Lake, not just in the Colony.¹⁵ The inclusion of prospective purchasers seems to be a retroactive attempt to render

¹⁴ Up until 1937, many needed improvements were made to Cranberry Lake, which Andrew Spence, in 1939, attributed to the “Club’s leadership.” These included raising the level of the Lake three times; removing obstructions from South Lake, “a majority of the coves” and “the handsome foot bridge;” placing navigation lights in the Lake; controlling the level of the Lake by two masonry spillways; and annually stocking the Lake with fish resulting in “many a whopper of a fish story.” These improvements, however, were paid for by the “generosity of the state legislature in appropriating the funds for carrying on this needed work.”

¹⁵ At this time, there were two other large tracts of land at Cranberry Lake were not subdivided. One was owned by the State of New Jersey and the other was a privately owned 120-acre tract known as the Rose Property or Rose Farm. In parts of these two un-subdivided

sales restrictions that the CLDC had been placing in its sales deeds cogent (and which will be discussed *infra*); and, together with the requirement that a member “cannot resign from membership so long as he or she continue[d] to own or control property at Cranberry Lake,” and “must dispose property” only to another member of the Club, strikes one as a continuing effort to control the type of person who could join the CLCC and own or lease property at the Lake. We understand, that these clauses do not say, “No Jews, no Blacks, or no Catholics of East and Southern European heritage welcome,” but we do know that such sentiments were prevalent at that time, and were often reflected in restrictive land covenants throughout New Jersey.¹⁶

One week after the CLCC’s Certificate of Incorporation was amended, Susan Calkins transferred Cabin Springs Boat Dock/Grounds to the CLCC (Deed 363, p. 484) on 6/8/37. This property, which was and continues to be used by the Club’s members who do not own property adjacent to the Lake, **was not purchased nor employed by the Club for use by all lot owners residing on property located in Cranberry Lake Summer Colony**. Approximately 30 years later, in 1965, the CLCC leased certain lands in conjunction with its operation of a beach house from the Morris Canal and Banking Co., Trustee for the DEP. In 1990, the lease was renegotiated; property covered by the lease was expanded to include “a seasonal clubhouse facility, three docks and a beach area adjacent to Route 206,” “additional property for parking and recreational purposes such as fishing,” and a pedestrian foot bridge. The lease was set for 25 years; and the CLCC was required to offer “general public membership” to a minimum of 45 families (capped at 60 families, depending on the size of such families). This lease expired, and DEP has informed us that the CLCC is considered a hold-over tenant. It is our understanding that since 1988, the DEP required **some public membership in the CLCC**.

In a deed dated July 24, 2000, Robert L. Dennis transferred to the CLCC additional shore property and certain easements that were located in the area known as Rose Farms. In such deed, the CLCC was given the right to charge adjacent owners a “fair proportionate share of maintenance for the access across the Club property” if such owners were not members of the CLCC. This deed provision contemplates that the **CLCC may have members who did not own or lease property in the Cranberry Lake Summer Colony**, but could own property elsewhere at Cranberry Lake. Both the 2012 and 2018 Bylaws of the CLCC acknowledge that

tracts, land-lease sites were created for summer cottages. The amended CLCC certificate seems to want to render persons leasing such sites eligible for membership.

¹⁶ Homeowners at Cranberry State Lake United has no interest in making inflammatory accusations but is just trying to make sense of the manner in which the CLCC was structured. We acknowledge that the 2012 and 2018 Bylaws of the CLCC include an anti-discrimination provision, prohibiting the Club from discriminating against “any person or group based on age, race, gender, religion or country of national origin.” But see Richard Rothstein, *The Color of Law* 79 (2017)(restrictive racial sales covenants typically could not be enforced by anyone but the initial seller, *i.e.*, the developer; “[t]o get around this problem, many subdivision developers created a community association before putting homes up for initial sale, and they made membership in it a condition of purchase. Association bylaws of such association usually included a whites-only clause”).

the community served by the CLCC has always included the following historically designated areas: Frenche's Grove, Cabin Springs Park, Weaver House Cove, Weaver House Heights, Della Heights, Briar Heights, Strawberry Point, Whitney Point, Rose Property, Laurel Cove, Lackawanna Cove and Cranberry Ledge.¹⁷ At some point during its existence, the CLCC took possession of the Weaver House Cove Beach and docking area, which to the best of our understanding is currently owned by Byram Township, which also owns the adjacent road. Even if the shoreline was included in Calkin's 1922 transfer of property to Drews, who in turn conveyed it to the CLDC, there is no documentation filed with Sussex County that indicates that this property was ever formally conveyed to the CLCC.

In addition to the fact that (1) the CLCC did not hold property in common for the benefit of all owners (or lessees, *i.e.*, tenants) residing in the Cranberry Lake Summer Colony, and (2) the CLCC's membership always included persons owning property outside that Colony (residing in the broader Cranberry Lake community, either on Rose Property or state-owned land), including since 1988, members of the general public, the deeds held by Summer Colony owners also indicate that (3) the Cranberry Lake Summer Colony was never structured as a common interest community, as contemplated by PREDFDA. **Not one deed** that I have reviewed that involved land originally transferred from Susan Calkins to Williams Drews to the CLDC in 1922, 1924, 1925 or 1927, and subsequently, to the CLDC's successors (*i.e.*, two holding companies, Hiram Calkins, Adele Calkins, Susan Calkins, and finally Roland Price, Jr.) **granted an owner, in common with all other purchases or owners of land in the Cranberry Lake Summer Colony, access to all property and facilities owned and held by the CLCC.**¹⁸ If they had done so, such covenant would support a fair share assessment or a requirement to pay an assessment to support the improvements, activities or facilities provided by the CLCC; and, pursuant to the Radburn Law, such easements would require that the property owner be a member of the club for purposes of electing the governing board of the club. In effect, the CLCC would be considered a common interest association. But none of the deeds included such servitudes, and so the democracy provisions of PREDFDA do not apply.

¹⁷ In April 1947, a subdivision map was filed with the Township entitled Cranberry Ledge, Cranberry Lake. There is no indication as to the identity of the developer. Similar to all the maps filed, but entitled Cranberry Lake Summer Colony, this map did not designate any common properties or elements.

¹⁸ All such deeds did grant the following easement, in common: “. . . to convey to the grantee, in common with all other purchasers or owners of land at Cranberry Lake and the vicinity, such right as the grantor has or ought to have in and on and to the waters of Cranberry Lake or Cranberry Reservoir.” At the time of the transfer, the Lake was owned by the State of New Jersey, with the bottom of the Lake owned by the Township, State, and owner of the Rose Farm property. No portion of the bottom of the Lake was ever owned or its waters controlled by Mr. Frenche, or transferred to the CLDC or the CLCC. This is probably the single reason why the Cranberry Lake Summer Colony was not organized as a common interest community; but, such conclusion is mere speculation.

Instead, many, but not all, of the deeds from the CLDC, Susan Calkins or her heir, Roland Price, Jr. simply restricted the sale or lease of the property to a member of the CLCC¹⁹; while others restricted sale to a “member of the Cranberry Lake Summer Colony.”²⁰ Both provisions, on their face and in their historical context, strike one, as mentioned *supra*, as an unlawful attempt to restrict the “type of people” who could purchase improved or unimproved land at the Lake or lease cabins already existing.²¹ Taken literally, the grantee could only sell or lease one’s property to someone who already owned property in the Summer Colony. This was the only interpretation, because pursuant to the 1924 Certificate of Incorporation of the CLCC, no person was entitled to “regular membership in the Association, who [was] not already an owner of the title to property in the Cranberry Lake Summer Colony.” Prior to the amendment to the Certificate of Incorporation in 1937, which seems to have been tailored to meet this problem, the CLCC perhaps permitted another type of membership to capture prospective purchasers. But further review of all these deeds provides additional evidence on which to base the conclusion that the “sales restriction,” in both versions, was an effort by Mr. Drews and other leaders of the CLCC to control who could buy and enjoy the recreational opportunities provided by Cranberry Lake; which, at the commencement of their development effort, was acquired by the State for public recreational use, such as fishing, boating and swimming.

All but the 1970 deed listed in note 20 included a provision extinguishing the sales restriction in the event that the CLCC dissolved. (“These covenants and restrictions and reservations run with the land, but in the event of the Cranberry Lake Community Club disbanding or dissolving or ceasing to be in existence[,] after a period of three (3) years, the party of the second part shall come into her full right or rights without restrictions as to selling, renting or leasing said lands or buildings thereon.”). This clause proves that the CLCC was not intended and never functioned as a PRED Association. No common interest community can sustain the dissolution of the association that is tasked with owning and/or managing the common property and facilities. Instead, this clause establishes that the CLCC was always intended to be a civic club that provided summer recreational activities only to property owners or lessees residing in the Cranberry Lake vicinity who paid membership fees,²² as well as a

¹⁹ *E.g.*, CLDC to Bessie Sanford, Cabin Spring Colony, 1925; CLDC to Mary F. Mattes, Weaver House Heights, 1930; Susan Calkins to Monna Fleischmann, Frenche’s Grove, 1950; Roland Price, Jr. to Arne and Marie Wilson, Weaver House Heights, 1970.

²⁰ *E.g.*, CLDC to James D. Donnelly, Weaver House Cove, 1926.

²¹ In 1939, Mr. Spence simply stated: “As all lots were sold on a restricted basis, the natural beauties of our Lake quickly attracted a very desirable type of settler.” Although most of the early deeds contained “set-back” restrictions that are now included in municipal land use ordinances and other health-related restrictions (*e.g.*, no out-houses or toilets unless attached to the dwelling), the restriction to which Mr. Spence referred is most probably the toxic restraint limiting the person to whom one can sell or lease one’s property—a restraint that I would argue is unenforceable as against public policy.

²² Mr. Spence notes: “Two tennis courts have already been provided for use of members of the Club who are in good standing,” those who pay their dues. He goes on to list a host of

screening organizations, which would try to preserve the “present and future character” of the community by ensuring that only persons of the right “American stock” would gain admission to the Club.

It therefore follows, based on the above factual recitation and legal argument, that the CLCC cannot assess owners of property in any one of the areas surrounding Cranberry Lake for use of their property nor can it force any of those owners to become a member of the Club. It is thus the position of the Homeowners at Cranberry State Lake United that they will resist any legal efforts by the CLCC to place liens on their property, and will defend against any litigation brought against them seeking a declaration that they must become members of the CLCC. In fact, NJA has committed to represent members of the group, if the CLCC takes any legal action, and, based on the foregoing analysis, we will seek sanctions if the CLCC continues to misinterpret the Radburn Law, and misrepresent the deeds and historical documents governing the development of the Cranberry Lake Summer Colony, and the greater Cranberry Lake community.

Thank you for your anticipated consideration of our position. If you have any questions, do not hesitate to contact me at 973-735-0523.

Respectfully,

NEW JERSEY APPLESEED PUBLIC
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activities, including “weekly bridge parties” for women members, “formal dances” that attract “the younger element,” as well as “a weekly showing of the latest movies in the Club house” and non-denominational religious services held on Sunday morning.