

Flemington Fields

Condominium Association Newsletter

OCTOBER 2016

Website: flemingtonfields.com

Transition, Repairs, and Modification Questions

Recently, Mr. George Ditzler, COA Board member, submitted the following question to Mr. Martin Calabar, Associate of the law firm Becker and Poliakoff, transition attorney.

We have several instances of residents wanting to make changes to their decks and/or cement pads. In the past, the board has taken a hard stance on this and has not allowed any deviation to restrictions to “common elements” per the by-laws. Some of these restrictions are pretty severe and primarily due to poor design by the builder. The board has discussed this and we are considering relaxing or allowing certain changes to decks and/or cement pads at owners’ expense. This can be a tricky situation, we don’t want to open Pandora’s box and have changes which would not benefit the community.

We have been telling residents that we can do nothing to the outside of the units until transition is over. We really aren’t certain this is true. **Question:** Can you advise me as to whether or not we could proceed if we chose to do so? We also don’t want to do anything that could jeopardize the case.

The following response was given: There are two potential issues here. One involves the transition related issue and the other relates to a more general issue.

The issue with respect to the litigation is what do you mean by “changes”? If you mean repairs, we would strongly recommend that unit owners not be permitted to undertake any repairs, because the cost of the repair is an expense we are claiming in the litigation. If a unit owner makes the repair, there is no longer a claim. Even if you are referring to an expansion, the question then becomes is that deck one in need of repair? If so, then we would strongly urge that you do not permit this. Of course, if there is a safety issue, a repair would be made by the Association, but under no circumstance should a repair be made by a unit owner. Also, please remember that in the event the Association were to make any repairs, we would still have to give the appropriate notice to the defendants.

Relating to a more general issue, it is one thing if they are seeking to repair problems with existing decks or patios and another if they are looking to expand existing decks or patios.

*In 2005 the New Jersey Supreme Court issue a decision in a case entitled FOX V. INGS GRANT essentially saying that a board may not give any owner exclusive use over the common elements **without 100% of the owners approving it**. When a board allows a unit owner to expand a limited common element, that expansion is, of course, into the common elements. Thus a board is giving exclusive use to a portion of the common elements to an individual owner, which, according to the court, **requires the approval of 100% of the unit owners – a near impossibility in a condominium of any size.***

Occasionally, boards wish to permit owners to expand a limited common element despite the foregoing. Where boards express this desire we advise them to get a recordable document signed by the owner (Declaration of Maintenance Obligation) that provides the following: (a) owner is responsible for all maintenance of the expanded portion of the deck or patio; (b) if, when the deck or patio needs to be replaced, the then owner is not willing to pay for the expanded portion then the Association will only replace the original sized deck or patio; and (c) the owner must indemnify the Association from any claim from any other person related to the expansion of the common element, meaning that the owner must pay all legal costs and expenses related to any lawsuit – or alternatively the owner must promptly remove the expanded portion of the limited common element to preclude any other owner’s threat of suit.

COA/HOA Court Case Update

We are pleased to inform you that Judge Michael O'Neill, of the New Jersey Superior Court, issued two important rulings last Thursday in the lawsuit filed by the COA against the HOA for nonpayment of common amenities' expenses. In response to a motion filed by the COA's attorney, Judge O'Neill ruled that the HOA is obligated, both retroactively and going forward, to pay for its fair share of the operating expenses, deferred maintenance, and capital reserves for Flemington Field's storm water management system, which included the retention basin that is located on the COA property, adjacent to the clubhouse.

In ordering that the HOA assume part of the financial responsibility for the storm water management system, Judge O'Neill noted that the arguments presented on behalf of the COA were "compelling" and demonstrated "common sense and logic." The percentage of expenses and reserves to be paid by the COA and HOA, respectively, will be decided by agreement of the parties or imposed at trial, which is scheduled for November 28.

As part of our lawsuit, the COA is also requesting that the HOA reimburse the COA for all legal fees incurred in this matter. In opposing that request for counsel fees, the HOA filed a *cross-motion*, seeking to dismiss the COA's claim for counsel fees. After carefully considering both the written presentations and oral arguments, Judge O'Neill ruled that the HOA's cross motion was denied, preserving COA's right to receive reimbursement from the HOA for its legal fees in this case.

These two decisions – both decided in the COA's favor – represent significant victories in our lawsuit against the HOA for failing to pay their proportionate share of the operating expenses and reserves for the Clubhouse and other common amenities since 2014.

Prior to the hearing last Thursday, the COA's attorney also asked the Court to issue a partial summary judgment or ruling on the main issue of the money owed by the HOA to the COA for the use of the Clubhouse and other common amenities from 2014 to April 30, 2016. After considering the arguments – both written and oral – Judge O'Neill *denied without prejudice* the COA's motion, noting the matter was fact sensitive. Judge O'Neill stated on the record that he could have "...gone either way at this point" and that the COA presented very strong arguments in support of their position. If this issue cannot be resolved in advance of trial, Judge O'Neill indicated that he would address it at the November 28 trial.

The COA remains committed to a cost-effective resolution of this matter, given the guidance of the Court to the HOA. The COA has not and will not accept a resolution of this matter that would entail the HOA being permitted to use amenities, for which it previously paid its proportionate share, either for free or at a reduced expense. The COA Board remains hopeful, given Thursday's rulings and the Judge's comments, that the HOA will recognize the **fallacy** of the positions that they have been advocating and further recognize the fact that the HOA can be compelled to contribute toward the COA's legal fees as this matter moves forward to trial on November 28.

The COA Board of Trustees – September 8, 2016

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NJ Department of Community Affairs

REMINDER: Inspection Scheduled for October 4, 2016

Forty-eight of our residences need an inspection or a re-inspection of their smoke or carbon monoxide detectors or for other safety issues. Check the information provided on the September 21 communication notice. Inspections are set to begin at 9:00 a.m. on Tuesday October 4, and each visit should only take about ten minutes. Make sure that there is access to your home on that date.

Local Activities and Information

Hunterdon County Library

Movies:

“Hello, My Name Is Doris” – R
Thursday – October 20, 6:00 p.m.

When Doris meets her company’s new, young art director, sparks fly – at least for Doris. She thinks she found her one and only – a person half her age – and begins to show up at places he can be found. Doris yearns for an experience she has missed and throws caution to the wind. Stars Sally Field.

“Suffragette” – PG-13
Thursday – October 27, 6:00 p.m.

This stirring story centers on a working wife and mother whose life is forever changed when she joins Britain’s growing suffragette movement which includes women from all walks of life. Aggressive police action forces them underground and their civil disobedience escalates. Stars Helen Bonham Carter and Meryl Streep.

Indoor Fall Concerts:

AC Steel and the Galvanizers
Wednesday – October 12, 7:00 p.m.
Blues, R&B, and Funk based music

Rove On!
Wednesday – October 26, 7:00 p.m.
The hits of Buddy Holly, Roy Orbison, and more

Lectures-In-Song

October Surprises
Wednesday – October 20, 2:00 p.m.
Songs celebrating Oktoberfest, Columbus Day, Halloween, and Autumn presented by pianist/singer/narrator Fred Miller

Help Support the Friends of the Library at their “TRICKY TRAY BASKET RAFFLE” FUNDRAISER

This is the group that provides the funds for all of the wonderful programs, movies, concerts, and lectures that many of us attend. Hundreds of items and services have been donated from businesses throughout our area. Tickets available Saturday, October 8 (9:30 – 2:00); first drawing at 2:30.

Check it out: www.hclibrary.us/friends/trickytray

FFCOA Friday Movie

“Woman in Gold” – PG-13
Friday – October 21, 6:30 p.m.

Maria Altman seeks to regain a world-famous painting of her aunt that was plundered by the Nazis during WWII. She does this not just to regain what is rightfully hers, but to obtain some measure of justice for the death, destruction, and massive art theft perpetrated by the Nazis. Stars Helen Mirren and Ryan Reynolds.

FF Book Club

October 10 – “This Is Your Life Harriet Chance”
by Jonathan Evison

November 14 – “The Expatriates”
by Janice Y. K. Lee

Hunterdon County Senior Center
Classic Movie: “Urban Cowboy” – PG
Friday – October 21, 10:00 a.m.

Computer & Electronics Collection Day

Hunterdon County Complex – Rte. 12
Saturday, October 8, 9:00 to 1:00
Recycle your old, used, or broken computers, monitors, and television sets. It’

For History Buffs and Their Family

“Weekend Journey through the Past”
Saturday, October 8 – 10:00 to 5:00
Sunday, October 9 – Noon to 4:00

During this two-day period, twenty-six significant historic sites in **Somerset County** will be open to the public for free. This even is a perfect opportunity for a family outing as many of the sites have important Revolutionary War histories. For a complete list of the places and for other information, check the website: www.schistoryweekend.com

IN MEMORIAM

Edward N. Collison, Sr.

1941 -2016

COA INFORMATION

Trustees: Joan Ruby (2016) President
Rosemary D’Allura (2017) Secy.
Walter Yarrow (2017) Rec. Secy.
George Ditzler (2017) Treasurer
Vacancy (2016)

Property Manager: Dawn Carone 908 284-3422
Access Prop. Management 908 806-2600
Emergency No. APM: 855 227-1157
Clubhouse 908 782-2931
FFCOA Website: www.flemingtonfields.com

Committees:

Finance: Matt Andrejco, Chairperson
Bldg.&Grnds.: Jim Livezey, Chairperson
Covenants: Vacancy
Clubhouse: Charlie Padalick, Chairperson
Social: Ginny DiMilia & Roe Loria, CoChairs

Communications:

Website: Mo Saur
Directory: Evelyn Hamrah
Newsletter: Jerry Matcho

Flemington Fields COA

C/O Access Property Management
4 Walter Foran Blvd. – Suite 311
Flemington, NJ 08822
www.accesspm.com

TO:

Social Committee Report

Fire up your imaginations and dig out your wigs, capes, hats and moustaches for our **Halloween Party** scheduled for Tues., October 25, at 5 pm at the clubhouse. We’ll be sinking our fangs into pizza, salad, iced tea, soda (BYOB), and some **spooktacularly** delicious desserts – all for just \$5.00. Contact: **Ginny Dimilia** 917.833.7689 or **Gloria Gwizzd** 908.603.7873. Soooo, come join us . . . if you dare.

Also, check the flyer for our guided tour at the beautiful **Grounds for Sculpture** on October 13. This certainly will prove to be a memorable experience.

The Romeos

This group of residents is enjoying good food and comraderie on the first and third Monday of every month at the Country Griddle on Rte. 202. This is for guys only; we discuss the hot topics of the day as we enjoy the breakfast special. Enough food is served to carry one through to dinner – and we are growing. Join us on Oct. 3; call **Bob DiMilia** if you need a ride.

FOHCL Thanks Joan Wolseifer

COA resident, **Joan Wolseifer**, has chaired the Scholarship Committee for the Friends of the Hunterdon County Library for the past eleven years. It was her job to set up the scholarship requirements, invite participation, send the essays to the committee for discussion and decision, and plan the awards ceremony. Each award was used to defray the cost of books for a youngster about to enter college. Although Joan will no longer be the chair, she will continue to serve on the committee.

Your “Electronic” Newsletter

Please print out and share your COA Newsletter.