

Response to Memo from Mark Jones to the Town of Stow Planning Board dated July 25, 2023.

Comments in black are from Mark Jones.

Comments in red are my responses.

In general, HOA authority should be restricted as much as reasonably possible, to avoid potential difficulty when the board is captured by an intrusive a set of HOA Board Members, the occasion of more than a few difficulties in other locales.

RESPONSE: The intent of the conditions in the Master Deed is to create and maintain a condominium community that maintains its value and is aesthetically pleasing to each and every resident. The restrictions in the Master Deed are not intended to give extraordinary governing power to the Trustees. From time to time we do hear horror stories about Trustees who abuse their positions, but given the number of condos and homeowners associations that exist, I do believe these are few and far between. Generally, those who act as Trustees, (who are volunteers and not compensated) sincerely want to maintain their community in a positive and appropriate way.

The draft Wandering Pond Home Owners Association Covenant Conditions and Restrictions is a copy of prior work at another location, and does not apply to the current site's facts entirely.

RESPONSE: The documents have been revised to comply with the plans.

- Bear in mind, that the present developer might not be the completing developer, and assuming that the same personnel will be present during the entire buildout can lead to surprising future outcomes.
- The hearings should be continued until a full, current, and comprehensive draft applicable to the Athens Lane site is approved. There are numerous discussible aspects to governance that are desirable to discuss, since this is the first large non-age-restricted condominium of the Stow Planning Board.
- Potentially, Town bylaws and regulations may be desirable to draft, to apply to all future occasions of developments with condominium HOAs, promoting good public policy.
- Solar panels on any roof should be specifically allowed, and be an area not able to regulated by the HOA, since units are mostly detached, and owners own the building envelope.
- Antennas should similarly not be regulated by the HOA.
- The above comment about solar on roof can be worked out for multi-unit structures, as the statute allows improvements to be assessed to particular units. Discussion needed.

Response: Although most of the units are detached single family units, the units are reasonably close to one another, and efforts must be made to respect all of the unit owners. The documents allow both antennas and solar panels on both the detached and the attached units, but allow the Trustees to exercise discretion on where they will be located and what they will look like in order to maintain the appearance and value of the development for the benefit of all unit owners. If one unit owner decides to install several unsightly antennas, or solar panels in a manner or in a location that would take away from the carefully designed architectural plans of the community, the Trustees and the other owners have a legitimate interest in preventing and regulating same.

- Color of housing (Response: These units have vinyl siding which is maintenance free and will not require replacement.)

- Parking of vehicles, or types of vehicles in driveways. (Response: This is a residential condominium development – having commercial vehicles or storage of unregistered vehicles, or boats, campers or trailers certainly has a less than positive impact on the appearance of the community.)
- Signage and decoration of the housing. (Response: Reasonable seasonal decorations are allowed and encouraged. However, it would be unreasonable for someone to deck out their home with brightly colored decorations or seasonal decorations like lights and statues, which are overly distracting or which do not get removed when the holiday is over. We have all seen this, and again, it is unfair to the others in the condominium community.)
- Regulating of laundry clotheslines (Response: I have added some language allowing clotheslines in locations where they cannot be seen from the streets or common areas.)
- Architectural control should be minimized to comply with the Planning Board Permit and Town bylaws. Items that are beyond the authority of town bylaws should generally not be in the authority of the HOA. Neighbors in the rest of the town do not control the following, except via town bylaws:
- Other areas of excessive intrusiveness of HOA boards is desirable to explore. There are numerous horror stories of how.

Response: While many single family homes within the Town of Stow are not subject to restrictive or protective covenants similar to what might be found in a condominium association, this is really not relevant to our situation. This is because the detached units (as well as the attached units) at The Cottages at Wandering Ponds Condominium are part of a condominium community. When individuals purchase a unit in a condominium community, they are purchasing an undivided percentage interest in the entire condominium and as such, they pay condominium fees which are used to maintain the entire community. It follows that, what each owner does with regard to the exterior of his or her unit in a condominium community has a discernable impact on the community as a whole, and all the other owners. Accordingly, it is reasonable that there are regulations to maintain uniformity in many respects and limit what each owner can do with the exterior of his or her unit. Each potential unit owner is given a copy of the condominium master deed, declaration of trust and rules and regulations before they agree to purchase the unit so they are very aware of what they will be subject to once they purchase the unit.

- Pets;
- Fencing will have to be figured out, and how and where allowed, and what style and how maintained. Pets can be a reason for fencing. Just enough flexibility is desirable to make this topic not an impediment, yet recognizes that the exclusive use land is the HOA's.- Response: Fencing can certainly be allowed for pets as long as it is aesthetically appropriate and there is a uniform type of fence utilized for the entire condominium community. Given that the units are either attached or close together, it is important to have regulations regarding the behavior and keeping of pets.
- Home offices are regulated by town bylaws, thus not an area for the HOA to regulate. Response: Language has been added allowing home offices so long as in compliance with any rules or regulations of the Town of Stow.
- Since most housing is detached, the HOA will not own the envelope of the structures. Response: This is untrue. The Condominium Master Deed provides that buyers own from the studs in, which means that the Condominium Trust would take care of the replacement of the

envelope of the structures. This is intentional – again to insure that there is uniformity in the quality and appearance of future replacement.

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- Given, for most of the site, everybody has a garage and for most, a basement, it is reasonable to control and forbid sheds in the owner exclusive-use areas. **Agreed**

Rentals:

- The draft excludes rentals of 6 months or less; this keeps housing from being converted into a short term rental usage of the Motel and Bed and Breakfast style, and is desirable.
- Keeping the rentals limited to a maximum 10% to 20% of the units reduces problems and headaches of having a multiplicity of non-resident landlord-owners in a development (as distinct from a single unitary owner renting all of the units of a development). **Response: While this is an interesting idea, putting it into effect and enforcing it will be extremely complicated and difficult. These units are specifically not designed to be rental units.**
- A useful fact: if 50% of the development is rentals, ordinary mortgages for homeowners cannot be passed into the secondary Federal Mortgage market, and this makes financing quite difficult for individual owners, and requires owners to work with banks that hold mortgages for the entire lifetime term of the mortgage. There are few banks that do that these days, though Middlesex Savings Bank is notable for doing so.
- Not allowing a rental for the first two or three years of each unit's ownership, when there is turnover discourages corporate and or absentee ownership, and reduces potential HOA conflicts between a major rental entity and individual resident unit owners. **Response: This kind of regulation could severely limit marketability for the developer and for owners, especially given that people seem to change jobs on a very regular basis these days. It would seem unfair to prohibit a unit owner who gets a new job or is transferred to a different location from renting his or her unit.**

On the Corporate ownership topic: delayed ability to rent also discourages absentee owners of the HOA, and from growing into a major owner of the development. Rentals are useful for transitions, or occasional family need.

- Limiting rental periods to two or three year maximum terms, in renewal, keeps individual owners from hoarding the limited number of allowed rentals, and encourages action during transition. **Response: Same comment as above – difficult to enforce.**

Governance:

- Drafting of desirable transition language, for limiting the total time the developer may have exclusive control period is desirable. **Response: The Declaration of Trust provides that at the second Annual Meeting of the Unit Owners after all of the Units in all Phases (based upon a total of 140 Units) of the Condominium have been conveyed to Unit Owners, the Trust gets turned over to the Owners, who then elect their own Trustees.**
- There has been Planning Board discussion that the unit owners have a board member presence, non-voting, prior to turn over of control, so that the owners know what has transpired, and can immediately pick up operations upon transition. **If the Planning Board wishes this can be written into the Condominium Trust. That being said, unit owners are welcome to review the budget and the expenditures made with the condominium fees at any time.**
- In general the statute for condominiums in Massachusetts is strong. For example, it requires that the HOA know who is residing in each unit at all times.
- There may need to be multiple future amendments and process to handle the several stages of buildout with stages of expanding population of actually built units, and actually

sold units. Transitional sub-HOAs that may merge may be desirable. This will be a phased condominium. Each time a unit is completed and prior to its conveyance to the initial buyer, that unit will be phased into the condominium via an amendment to the Master Deed that is recorded at the Registry of Deeds. There is only one condominium and only one condominium trust. There are no transitional HOAs. The Condominium Trust is the governing document in accordance with MGL. Ch. 183A and it, along with the Master Deed, is recorded at the Registry of Deeds when the condominium is formed.

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