

November 10, 2015

Via Email (lppres@hotmail.com) and First Class Mail

Board of Trustees

Lake Parsippany Property Owners Association

P. O. Box 62

Parsippany, NJ 07054

Attention: William Sempier

Re: Lake Parsippany Property Owners Association – Document Analysis

Dear Board Members:

We have examined the relevant documents of Lake Parsippany Property Owners Association ("LPPOA") including deeds, title searches and other documents, and have concluded that property owners who purchased lots and homes in Lake Parsippany also acquired a right to use Lake Parsippany as part of the purchase. This is evident from the following language found in deeds in the title searches: "together with the right to use, in common with others, the waters of Lake Parsippany for bathing, boating and fishing." This language gives property owners an "easement" over the LPPOA property. An easement is generally the right in the land of another; it does not give the holder a right of possession of the land subject to the easement, but gives a right to use or in certain circumstances control activities on the burdened property. The rights given to all property owners in Lake Parsippany for the use of the lake for bathing, boating and fishing would be considered an easement. Moreover, the language in the restrictions indicates

that the easement runs to each property owner in the chain of title for that property, which benefits all current owners, even if the easement language is not in the current deed.

New Jersey courts have recognized that lake associations that did not require mandatory membership in an association when they were originally formed can assess non-members who hold an easement over the lake and common properties. The theory of “fair share” assessment was developed in a series of cases which determined that a property which holds an easement to another property bore responsibility for the maintenance of that easement. Based on our review, LPPOA has an option to assess non-members under this easement theory.

Alternatively, LPPOA could encourage property owners to voluntarily elect to subject themselves and their respective properties to restrictive covenants. A Declaration of Restrictive Covenants would bind the individual property to membership in LPPOA; the covenants would run with the land and subject subsequent purchasers to the same restrictions of covenant. This option would result in membership for all who agreed to sign and record the document, and their successors in title.

If LPPOA determines to go forward with a fair share assessment program, you should determine the method by which to introduce the concept to the community. LPPOA would identify those costs which pertain to the maintenance of the lake and common properties, and develop a budget to be assessed. LPPOA’s Board would pass a resolution to move forward with the assessment. You must also review your By-laws and Rules and Regulations for consistency, and make the necessary changes. In order to keep the community informed regarding the assessment, mailings and public meetings should be planned in advance of the assessment. Finally, LPPOA should also be committed to enforcing the assessment on all properties that don’t voluntarily pay and determine whether to enforce the fair share assessment either through a collections action or declaratory judgment.

Very truly yours,

DOLAN & DOLAN, P.A.

Eileen McCarthy Born

cc: Debbie Orme (via email)