

March 11, 2023 CER Review Committee summary review for BOD

CER, (Covenant, Easements and Restrictions) or CC&R (Covenants, Conditions and Restrictions) or referred to as the Declaration of Covenants, Easements, Restrictions, and Association in the 1998 document

Current CER Committee:

Established by the BOD in 2018/2019 to review CER documents and decide how to move forward so that the document does not expire and further complicate the situation. First meeting, April 2019. Lise LeTellier, Denis Dillio and Frank Fazi. FF is no longer on the committee. Stepped down in 2022. Deborah Wagner now BOD liaison. Draft submitted in May 2022.

Review of Problem and Current Situation:

1972-1975: Establishment of WPOA and Warmolts Deed (Restrictions)

- WPOA established to govern and maintain.
- Warmolts Deed: 16 specific restrictions and conditions concerning the use and development of the lot.
- "... the developer conveyed, to the WPOA, title to common properties including the lakes, roads, beaches, clubhouse, etc. There was also the assumption that any owner of Wildwood property had "WARMOLTS" DEED RESTRICTIONS and was *de facto* a member of the WPOA with the obligation to pay 100% dues, follow the WPOA rules and have access to 100% of the community, facilities and benefits derived." (History of WPOA Teresa U.)
- Original Documents had:
 - By-Laws for Membership (All), Governance (BOD), Dues, and Enforcement
 - Restrictions for Members and their private property
 - Rules and Regulations over all common property

1994-1997: **The Franco Case**

- Separated the original intent of the "member" of the Association, as inferred in the Warmolts Deeds, to only the **member's** obligation to pay "100% dues, follow the WPOA rules and have access to 100% of the community" to a two level status: **Member and Nonmember**, with all property owners being responsible for paying for roads and pond maintenance, but no legal obligation (by deed) to be a full member. (Hence our two meetings at the annual meeting) and the loss of ALL properties having restrictions attached to their property.
 - Question: What happens with restrictions and rules and regulations for "non-members"

1998: Attempt to Fix

- The Walmart's Deed was now considered "Expired"
- Again from the History of this by Teresa U. "...a new legal document was prepared which contained, in detail, most of the restrictions of the WARMOLTS DEED as well as the restrictions relating to the common property in the deed conveyed to the WPOA by the developer. This document – Declaration of Covenants, Restrictions, Easements, and Association – was the method to allow property owners to **bind** their property to the WPOA, thus legally committing the property owner to the WPOA.. It was a means to guarantee that funds would continue to be available not only for the maintenance of roads and lakes but also for the amenities that make Wildwood a leisure recreation-oriented community.
 - "CC & R is a legally binding commitment by an owner of property (and subsequent owner) to fully participate in the set of rules and restrictions that is intended to keep Wildwood as it was envisioned"
 - When the Declaration of Covenants, Restrictions, Easements and Association was filed out of 248 property owners, only 121(49%) lot owners had committed their property to the CC&R by signing a Declaration of **Joinder** and 127 (51%) of whom had not.

1999-2005

- The Governance Committee reviewed Wildwood documents and proposed changes. Some passed and some did not and some have changed over time since then.
 - Articles of Incorporation of WPOA
 - CC&R
 - ByLaws (1997)
 - Rules and Regulations (currently Code of Responsibility; Rules and Regulations)

- CC&R was the biggest conflict and hurdle and still is. To quote Teresa U's History "From the discussion leading up to the vote, it seemed clear that the divergent views regarding the CC&R need to be addressed before progress can be made on our other documents."

Current Problem as seen by this committee:

1. Three levels of Property owners:
 - a. CER - Signed -mandatory membership with acceptance of restrictions- Enforceable
 - b. No C.E.R- not signed on, but Volunteer membership and acceptance of restrictions- No recourse
 - c. Road and Pond users- Nonmembership- No recourse and no restrictions
2. CER Expires in 2028- Time consuming process that needs to move....
 - a. Controversial Restrictions -This is what this committee reviewed

Goals and Next Steps

1. Committee believes that CER has value and if the community is properly educated, and if written, so owners can understand its value and accept it and don't feel unnecessarily "restricted", then perhaps they might be willing to sign a Declaration of Joinder.
2. Restrictions were rewritten in both [wordy](#) and more [succinct](#) versions and presented to the BOD in May 2022.
3. Looking at Documents shared by BOD president, especially " history reviews" and "Kass-Goodrich Summary" this committee unknowing, but logically, came to some similar conclusions:
 - a. In Kass and Goodrich recommendation it stated:
 - i. **Q:** What are some ways to build consensus and heal divisions?
 1. **A:** Acknowledge that this process is long and slow. Decisions need to be made "slowly and with intelligence". The documents need to be as clear and succinct as possible. Any duplication of existing town or state rules should be trimmed from association documents.
 - a. This committee did not eliminate all town and state rules but incorporated them in such a way to help the community understand we are not an exception to these.
 2. Now that the CER is getting ready to expire (2028) it is time to start revisiting while we have time to build consensus and hopefully keep old wounds closed. (2023-2026)
 - ii. **Q:** What are the advantages and disadvantages of these documents and restrictions?
 1. **A:** Judge Kass' personal and professional opinion (supported by research and real estate data) is that such restrictive covenants **increase the value of property within such associations or communities.** The advantages **are to be part of a "greater good"** (which is controlled with respect to development) and which is better represented and maintained than a collection of unregulated and unrelated properties. **The disadvantage is in surrendering some individual rights for personal use on private property.** best to have the restrictions run with the land (i.e. as part of the recorded deed) as it insures that the property is committed to the association. This also assures that all subsequent property owners knowingly acquire their property with the covenants as part of their deed.
 2. Preface to new restrictions explain purpose:
 - a. The Wildwood Property Owners Association, Inc. (WPOA) is a private organization of property owners in the area known as Wildwood in the Town of Tolland, Massachusetts. The purposes of the WPOA are to manage its properties and activities for the benefit of its members and the environment and to make Wildwood an attractive, enjoyable year-round vacation and recreation community in a natural environment, while maintaining and increasing property values.
 - b. To ensure the environmental integrity of Wildwood for generations to come, certain restrictions are required to be followed by its members and nonmembers alike.

4. What the committee did not do yet:
 - a. Write a long legal preface, as in the 1998 CER- this is legal jargon best left to the legal team.
 - b. Write Restrictions in Part B- ON COMMUNITY AREA and FACILITIES
 - i. However, some of these are the same or similar to the property owner restrictions:
 1. No noxious, unruly or offensive.... On community areas...
 2. No excavation of stone....
 3. No subdivisions...
 4. No powerboats.... (safety boat?)
 - c. Accepted Article II, ASSOCIATION (signatory commits to membership)
 - d. Review Article III OPERATIONS AND MAINTENANCE OF COMMUNITY AREAS AND FACILITIES AND Article IV- ASSESSMENTS, Article V-ROAD AND LAKE EXPENSES... Article VI- COVENANTS RUNNING WITH THE LAND, Article VII- ENFORCEMENT, and Article XI- GRANT

5. Lawyers need to be retained and advice sought.
 - a. Key questions to be asked:
 - i. Based on the history of the Franco case, current WPOA by-laws, rules and regulations, current CER held by 49% of the property owners, can these new restrictions (or similar) written in the CER, be for both “members” and non-member” alike or only members? Can we try to get “everyone” on board- though 100% is a lofty goal.
 - ii. Is the first legal step, in any movement forward, that the current CER holders must vote to amend the current CER and to accept the new revised restrictions with a 2/3 votes? (Extend requires 50%) Then can others sign a “ Declaration of Dejoiner”
 1. In other words, what would the actual legal process be to be able to move forward once (if) we presumably can get buy-in from say 85-90% or 100% of property owners members and non-members alike, CER and non CER holders.
 - a. This is legal aspects of Article VIII- AMENDMENT and Article IX TERM, EXTENSION, and Article X, TERMINATION
 - iii. Are there new laws or regulations for property or homeowner associations that we could benefit from in this situation? Currently we truly have no recourse for any non-member and for any member without the CER on their property.
 1. Though we understand that our current lawyer indicates that the CER is the best enforcement tool, we don’t have understanding regarding non CER holders and nonmembers.
 - 2.

6. NEXT- How does the board wish to proceed
 - a. Special workshop to discuss?
 - b. Legal advice before or after further discussion?
 - c. Special Presentation at April Meeting to just update the community on the Committee's work though we are not at any kind of vote, it may be helpful to update the process that is happening.
 - i. There are some members who just want this CER to disappear altogether!