

# Memo

**PRIVILEGED AND CONFIDENTIAL**

To: Rock Ridge Community Club  
Attn: Mark Fasciana  
From: Eileen McCarthy Born, Esq.  
Date: March 29, 2019  
Re: Historical Analysis for Rock Ridge Community Club

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As we discussed, I have reviewed the documents provided to me in order to determine whether Rock Ridge Community Club can impose mandatory membership or a fair share assessment on all property owners in the community.

**Filed maps:** The Rock Ridge Lake community was created by a series of filed maps.

- "Map of Part of the Property of Rock Ridge, Incorporated, made by Lewis and M. R. Van Duyne, June 1907" which was filed in the County Clerk's office in Morris County on May 12, 1909. ("1907 Map")
- "Map of West Glen Road belonging to Rock Ridge, Inc., Morris County, New Jersey, Boughton & Lawson, engineers and surveyors" dated August 4, 1924 and approved June 10, 1925 by the Township Committee of Denville Township and filed in the Office of the Clerk of Morris County, as filed Map No. 697 ("West Glen Road Map")
- "Revised Map of Part of Block Seven and Eight", made by Arthur H. Lennox, C.E. and Surveyor, dated August 1935, and approved September 18, 1935 by the Township Committee of Denville Township and filed in the Office of the Clerk of Morris County, as filed Map No. 976 ("Block 7 and 8 Map")

- “Revised Map of Blocks 3A, 3B, and 8, and part of Blocks 3 and 5, Rock Ridge, Inc.”, dated December, 1935 made by Arthur H. Lennox, C.E. and Surveyor, approved June 7, 1936 by the Township Committee of Boonton Township (approval by Denville Township was undated) and filed in the Office of the Clerk of Morris County, as Map No. 980. (“Block 3A map”)
- “The Brook Section at Rock Ridge” owned by E. Wetmore, approved May 16, 1950 by the Township Committee of Denville Township and May 20, 1950 by the Township Committee of Boonton Township and filed in the Office of the Clerk of Morris County, as filed Map No. 1225.
- “The Lake Section at Rock Ridge, property of B. Wetmore, Denville Township, Morris County, New Jersey held in Morris County Clerk’s Office as Map No. 1732 in Case F” (We don’t have a copy of this map, but it is referred to in several deeds)

**Deeds to the Developer Rock Ridge Inc.:** Based on information in the RLCC website, in 1772, John Cook purchased a large parcel, that was then transferred to his son and then to developers in 1907. This is consistent with the original 1907 filed map. A dam was built and a swamp became Rock Ridge Lake. As the homes were built, residents gained recreational access to the lake through an informal agreement with the property owners. Later the Rock Ridge Community Club was established in order to maintain and protect the lake and the surrounding areas. The website further states that over the years as more homes were built, the boundaries were extended to offer membership opportunities to additional residents and that RLCC currently has over 200 member households.

Based on the information provided from the title company, the deeds reflect the following: Between 1907 and 1923, Rock Ridge, Inc. acquired several parcels of land. The earliest deed was from G. Wilbur Tuttle and wife to Rock Ridge, Inc. dated October 3, 1907. This deed states that Tuttle had acquired the tract from Peter Cook on May 2, 1907, in a deed not yet recorded. This transfer excepted several parcels that had already been transferred out of the large tract. It included covenants that stated no part of any building shall be constructed within 35 feet of the sideline of the road; it was restricted against livestock, public laundry, livery or manufacturing and it also provided no intoxicating liquor shall be sold on the premises. These restrictions stated that they were binding upon Tuttle and his assigns, who were required to build one or

more dwelling houses on the property within two years of the conveyance. However, the above restrictions were not binding after 20 years from the date of the conveyance, which included binding the successors and assigns.

Additional transfers *into* Rock Ridge Inc. included the following:

- On November 6, 1913, there was a conveyance from Carrie F. Tuttle to Rock Ridge, Inc. for Lots 93 and 95 in Block 5 on the “Map of Rock Ridge Inc. dated 1907.” This transfer was made subject to the restrictions and provisions contained in the deed from Rock Ridge Inc. to Wilbur Tuttle.
- On December 18, 1913, in a deed from Howard S. Forman to Rock Ridge, Inc. transferred Lots 97 and 99 in Block 5 as shown on the “Map of Rock Ridge, Inc. dated 1907.” This deed indicates that it is part of the conveyance from Rock Ridge, Inc. to Wilbur Tuttle and is subject to the restrictions contained in that deed.
- On February 10, 1914, a deed from William A. Halsey and wife to Rock Ridge, Inc. transferred Lots 95-98 on the “Map of Rock Ridge Inc. dated 1907.” This was transferred without the restrictions.
- On April 18, 1923, a deed from Claude H. Miller and wife to Rock Ridge, Inc. transferred part of the prior lands owned by C.W. Tuttle; this conveyance was made subject to restrictions in a deed from Rock Ridge, Inc. to Claude Miller.

A judgment was entered in the Chancery Court of New Jersey in 1937 under Docket No. 117, Page 415, for a lawsuit between the Township of Denville v. Rapp, Forman and Rock Ridge, Inc. This was a tax foreclosure for failure of Rock Ridge, Inc. to pay taxes on four (4) Lots 93, 95, 97 and 99 in Block 5 on the “Map of Rock Ridge, Inc. dated 1907,” as well as additional properties.

### **Transfers from Rock Ridge Inc. to Rock Ridge Development Inc.**

After acquiring the land, in the 1930’s following the subdivisions between 1924 and 1936 as reflected in the filed maps, Rock Ridge, Inc. began selling lots, initially to Rock Ridge Development, Inc. Most of these deeds included the restrictions from the Tuttle deed (“standard restrictions”) but not all:

- In a deed from Rock Ridge, Inc. to Rock Ridge Development, Inc. dated June 14, 1935 for lots 146, 148, 150, 152 and 154 in Block 3 as shown on the "Map of Rock Ridge, Inc. dated 1907." This transfer was made subject to the standard Tuttle restrictions.
- On August 10, 1935, Rock Ridge, Inc. transferred to Rock Ridge Development, Inc. certain lots and parcels located in Township of Denville, County of Morris, as shown on the 1907 Map and West Glen Road Map. There were certain modified restrictions of record in this deed, wherein the grantee promised not to use the property for the sale of cider, beer or intoxicating liquors or a druggist, not to use for manufacturing purpose and restricting livestock, etc. These restrictions had an exception that they could be changed with the written consent of two-thirds of lot owners on the map above mentioned. The grantee, its successors and assigns, were also granted bathing, boating and fishing privileges in Rock Ridge Lake together with the use of the roads, streets, bridle paths and trails. The conveyance was also made "subject to all taxes and assessments."
- A second deed dated December 16, 1935 between Rock Ridge, Inc. and Rock Ridge Development, Inc. stated that the purpose of the deed was to grant unto the party of the Second Part, its successors and assigns, bathing, boating and fishing privileges to Rock Ridge Lake together with the use of the roads, streets, bridle paths and trails, particularly affecting the premises commonly known and designated as Lots 146, 148, 150, 152 and 154 in Block 3 as shown on the 1907 Map. This deed also stated that the intent was that the conditions set forth in the prior deed dated June 14, 1935 be released. This deed does not specifically state what conditions are being released, but it is presumed that it is all of the conditions.
- On January 13, 1936, there was another deed from Rock Ridge, Inc. to Rock Ridge Development, Inc. which conveyed additional lots on the filed 1907 map, the 1924 West Glen Road map, the Revised Map of part of Block 7 and 8 dated 1935 and the revised map of Blocks 3A, 3B, and 8, Rock Ridge, Inc., dated December 1935 made by Arthur H. Lennox, C.E. and Surveyor. This deed stated that the grantee, its successors and assigns, is hereby granted bathing, boating and fishing privilege to Rock Ridge Lake together with the use of the roads, streets, bridle paths and trails. This deed was made further subject to covenants and conditions again prohibiting the sale of cider, beer or intoxicating liquors, manufacturing, livestock, etc. These covenants apply again unless there is written consent of two-thirds of the lot owners of the map

above mentioned. Finally, the deed included a setback of 25 feet from any road in the community for the building of a structure.

- On March 17, 1936, in a deed from Rock Ridge, Inc. to Rock Ridge Development, Inc., additional tracks were transferred as shown on the Lennox map and West Glen Road map. This deed was made subject to the covenants regarding intoxicating liquors, livestock, livery, public stable or public laundry and included the setback requirements, but did not include the rights to the use of lake.
- On April 17, 1936, there was a deed from Rock Ridge, Inc. to Rock Ridge Development, Inc. This deed did not contain any of the restrictions included in the prior deeds.
- In a deed dated May 18, 1936 between Rock Ridge, Inc. and Rock Ridge Development, Inc., Lots 151 and 153 in Block 6 as shown on the 1907 Map, Lot 21 in Block 5 on the Lennox Map. These properties were made subject to the standard restrictions.
- On June 15, 1936 by deed from Rock Ridge, Inc. to Rock Ridge Development, Inc. transferred Lot 9 in Block 9 on the “Map of West Glen Road” subject to the standard conditions and setback restrictions.
- On a dated August 25, 1936 from Rock Ridge Inc. to Rock Ridge Development, for Lots 25, 27 and 29 in Block 9 on the “Map of West Glen Road” subject to the standard restrictions.
- A deed dated April 7, 1938 from Rock Ridge, Inc. to Township of Denville transferred lots from the “Map of Rock Ridge, Inc. dated 1907” which was westerly portion of Lot 252 in Block 6.

**Deeds from Rock Ridge Development Inc. to original purchasers:**

Thereafter, properties were transferred from Rock Ridge Development to original purchasers. This is where we would typically find membership covenants, or lake rights, if any. We did not find any in these deeds, only the restrictions against intoxicating liquor, etc. We also only found “lake rights” in some limited circumstances. However, the restrictions in the deeds from Rock Ridge Inc. to Rock Ridge Development would have “run with the land” and still be in effect for subsequent owners:

- In a deed dated June 14, 1935 from Rock Ridge Development, Inc. to Henry J. Vogel and wife for lots 148, 150, 152 and 154 in Block 3 on the “Map of Rock Ridge, Inc. dated 1907.” This conveyance is made subject to the standard restrictions.

- On January 11, 1936 in a deed from Clifford Ralph Frey to Rock Ridge Development, Inc. certain parcels that were on the “Revised map of parts of Blocks 7 and 8, Rock Ridge Inc.” were transferred subject to the standard restrictions and setback.
- On April 15, 1936, a deed from Rock Ridge Development, Inc. to Joseph Kramer (“Kramer deed”), conveyed Lot 27 in Block 8 shown on the Lennox map. This deed contained the restrictions against intoxicating liquors, livestock, public livery, stable and laundry and 25 feet setback requirements. This deed did not contain rights to Rock Ridge Lake.
- On April 15, 1936 there was a deed from Rock Ridge Development, Inc. to Henry Kramer for Lot 26 and Block 8 as shown on the Lennox map which contained the restrictions against intoxicating liquors, livestock, livery, stable or public laundry and 25 feet setback restrictions. This deed did not have any rights to use Rock Ridge Lake.
- Identical restrictions were found in the following deeds: April 15, 1936, Rock Ridge Development, Inc. to Arthur N. Baxter and wife; April 22, 1936 Rock Ridge Development, Inc. to Murray B. Mennie and wife; May 18, 1936 deed from Rock Ridge, Inc. to Elizabeth Wetmore. This deed contained the restrictions against intoxicating liquor, livestock, livery, stable or public laundry and 25-foot setback.
- In a deed dated June 18, 1936 from Rock Ridge Development, Inc. to Edna Bretnall for Lot 3 in Block 7 as shown on the “Revised map of part of Block 7 and 8 of Rock Ridge, Inc.” subject to the standard conditions and setback requirements.
- In a deed dated June 12, 1936 from Rock Ridge Development, Inc. to Norman Scott Weir et al., transferring Lots 2, 3, and 4 in Block 5 on the map entitled “Revised map of Blocks 3A, 3B and 8” dated 1935. This deed included the standard restrictions and setback.
- In a deed dated June 15, 1936 from Rock Ridge Development, Inc. to Leroy A. Storms and wife for Lots 9 and 11 in Block 9 on the “Map of West Glen Road” subject to the standard conditions and setback restrictions.
- On January 13, 1936, there was a deed from Rock Ridge Development, Inc. to Harold A. Davidson. This deed transferred Lot 9 in Block 8 as shown on the "Revised map of Blocks 3A, 3B and 8." The deed was made subject to the standard restrictions, with no lake rights.

### **Deeds from Rock Ridge Inc. to original purchasers:**

At some point after 1936, Rock Ridge Inc. started selling directly to residents (without going through Rock Ridge Development). Some made the transfer subject to the prior Tuttle standard restrictions, some had no restrictions. However, these lots would have been subject to any restrictions in the chain of title for Rock Ridge Inc. finally, some contained new restrictions, which expired in 1962:

- Deed dated June, 1923 and filed July 16, 1923 from Rock Ridge, Inc. to Walter W. Kunse for Lots 133 and 135 in Block 9 as shown on “Map of West Glen Road” and made subject to the standard conditions.
- Deed made April 7, 1938 from Rock Ridge, Inc. to Fred J. Charles. This conveyance was made without restrictions.
- Deed dated April 12, 1938 from Rock Ridge, Inc. to Fred J. Charles transferred multiple lots without any reference to any restrictions.
- Deed dated May 24, 1938 Rock Ridge Inc. to William Ernest Fritch conveyed Lots 255 and 257 in Block 3 on the “Map of Rock Ridge dated 1907; this transfer was made without restrictions.
- Deed dated May 24, 1938 from Rock Ridge, Inc. to Charles E. Van Houten conveyed the multiple lots. This deed was made subject to restrictions that were different from the standard restrictions. It stated that the party the second part shall not erect any building except an attached single-family dwelling or a one or two car garage and all such buildings as were necessary for water pumps, standpipes, etc. It stated that no lot shall be re-subdivided, that buildings must take complete advantage of the view and other natural assets to be in harmony with its surroundings, it set a side yard line of 5 feet except for garage as is located in the rear quarter of the lot, it required 50 feet of frontage, it stated that no noxious or offensive trade be carried on any lot nor any race or nationality or people other than those of the Caucasian blood shall use or occupy the dwelling unless those people are domestic servants of a different race. It required that no structure or building shall be moved onto any lot unless it meets with the approval of the committee. The document later states that the committee is appointed by the sub-divider or successor or assigns or elected by a majority of owners of lots in the subdivision and in the event such a committee is not within existence, the approval is not required provided the design and location of the lot is in harmony with similar structures in the tract and requires a minimum

square footage. These covenants restrictions run with the land until January 1962 which time they terminated. This deed reserves the right of other owners in the lot to enforce the restrictions prior to 1962. The seller reserves the right to use the streets and trails for installing and maintaining utility lines. The deed represented that the property owned by an adjoining and shown on the maps if developed would be laid out in a similar manner and not adversely affect the property previously laid out.

- Deed dated June 15, 1938 from Rock Ridge, Inc. to Louis D. Lyon transferred property described by metes and bounds and stated to be the same premises conveyed by C. Wilbur Tuttle to Rock Ridge, Inc. in 1907 except for lots that had already been transferred by Rock Ridge, Inc. The intent of this deed was to convey all of the remaining lots owned by Rock Ridge, Inc. in both Boonton and Denville that had not been previously conveyed. These lots were conveyed without covenants and restrictions.

Sometime between 1938 and 1941, Rock Ridge Inc. dissolved as a corporation. Based on the signatures in some of the deeds, Rock Ridge Inc. was owned by William and Elizabeth Wetmore, who transferred lots, including some after Rock Ridge Inc. dissolved.:

- In a deed dated October 16, 1941 from Elizabeth Wetmore and husband to Mortimer and Hazel Heilmer transferred Lot 198 in Block 3 on the "Map of Rock Ridge, Inc. dated 1907; there were no restrictions in this deed.
  - On October 16, 1941 Elizabeth Wetmore and husband transferred to Richard F. Young Lot 29 in Block 8 on the map entitled "Revised map of Blocks 3A, 3B and 8;" there were no restrictions in this deed.
  - By deed dated August 19, 1941 Elizabeth Wetmore and husband transferred to Leonard Cousins Lot 8 in Block 8 "Revised map of Blocks 3A, 3B and 8;" there were no restrictions in this deed.
  - In a deed dated June 9, 1978 from William Wetmore and Elizabeth Wetmore to Emma Ellegard. This deed transferred Lots 199, 201 and 203 in Block 3 shown on the "Map of Rock Ridge, Inc. dated 1907" and stated it was the intent of the conveyor to convey to the grantee all of the lands and premises lying between the westerly lines of Lots 199, 201 and 203 in the

westerly sideline of Summit Drive. This deed was signed by William Wetmore and Elizabeth Wetmore as “one of the sole surviving directors and trustees in dissolution of Rock Ridge, Inc.”

### **Chain of Title.**

You also provided deed chains for five (5) separate lots and blocks.

- For Blocks 614.01, Lot 25, 59 West Glen Road. This chain dated back to the deed from Rock Ridge Inc. to Van Houten dated May 24, 1938. This deed contained building restrictions, restrictions against noxious trade, restrictions on race and nationality other than those of pure Caucasian blood and a requirement that the building plans be approved by a committee either of the subdivider, or its successor or “elected by a majority of the owners of lots in said subdivision.” The covenants expressly expired on January 1, 1962. Subsequent deeds were made subject to the Van Houten deed restrictions.
- For Block 614.01, Lot 32, the chain dated back to a deed from Rock Ridge Inc. to Alfarretta Shirley dated February 21, 1927. This deed contained restrictions against the use of the property for the sale of cider, or any intoxicating liquors, and no druggist or manufacturing purpose shall be used and no hog pen, chicken pen or goat pen or any fowl pen and a setback from the road of 25 feet.
- For Block 615.04, Lot 73, 43 Summit Drive, the chain of title dated back to Rock Ridge Inc. to Adalaide Barnes dated April 3, 1909. This deed contained the restrictions against the use of cider, beer, intoxicating liquors, etc.
- For Block 615.05, Lot 1, 80 Summit Drive, this chain dates back to the deed from Wetmores to Dorothy Tyrie are on the dated July 31, 1962, containing no restrictions of record. However, a subsequent deed in this chain from Carmel to Speiser dated August 5, 1977, did include the restrictions against intoxicating liquor and the livestock but also made the conveyance “together with the right or privilege if any for boating and fishing in the lake but subject to covenants and restrictions on the said premises.”
- For Block 615.05, Lot 113, 7 Rock Ridge Road. This chain dated back to a deed from Leonard Hyems to Morris & Essex Construction Company dated April 1, 1938. The property is referenced on 1907 map but does not contain any specific restrictions, only “restrictions of record.”

### **Transfers to Rock Ridge Country Club and Rock Ridge Community Association**

- On July 16, 1936 there was a deed from Rock Ridge, Inc. to Rock Ridge Country Club, Inc. This deed transferred two (2) tracts: the first was premises bounded on the east by East Glen Road as shown on the “Map of Rock Ridge, Inc. dated 1907” and bounded on the west by West Glen Road as shown on the “Map of West Glen Road.” The second tract was shown on Entrance Way. This conveyance was made subject to the standard conditions and included the following statement, “Said conveyances made expressly subject to any existing lake rights in and to Rock Ridge Lake and to surrounding property heretofore given by the party of the first part.”

Therefore, this transfer to Rock Ridge Country Club made the property subject to the rights of all the individual property owners to the use of the lake for this property.

- In a deed dated April 7, 1938 from Rock Ridge Inc. to Rock Ridge Country Club, Inc., the same parcels were transferred again. This conveyance was made without restrictions.
- On April 8, 1938 a deed between Rock Ridge Country Club and Rock Ridge, Inc. transferred those same parcels back.
- In a deed dated April 8, 1938 from Rock Ridge Country Club, Inc. to Rock Ridge, Inc. of multiple lots shown on the “Map of Rock Ridge, Inc. dated 1907”, “Map of West Glen Road” and “Map of Rock Ridge.” (This deed is incomplete and I would be interested to know the second page since it went to the Country Club.)
- On January 27, 1942 in a deed from Elizabeth Wetmore and William Wetmore to Rock Ridge Country Club (this deed does not indicate whether the Wetmores were acting on behalf of Rock Ridge Inc. in dissolution). This deed transferred all of the roads in the “Map of Rock Ridge, Inc. dated 1907” with the exception of Outlook Drive.

On May 1, 1950, Rock Ridge Country Club, Inc. transferred to Rock Ridge Community Club, Inc., the same parcels conveyed to it. This deed states that is the intent that the deed included a conveyance of all the lands and premises belonging to Rock Ridge Country Club. The updated description was from the survey done by Frank Pesce, Surveyor in July 1948. The deed states it is the same premises conveyed to the grantor by Rock Ridge, Inc. via the 1936 and 1938 deeds.

This conveyance contained the following restrictions:

(a) To the express covenant that present owners of property and future owners of property in the Rock Ridge area who have or will acquire title from Elizabeth Wetmore, her heirs and assigns, shall have the privilege at their option to become members of the Rock Ridge Community Club subject to rules, regulations, By-Laws and Constitution of the said Club.

(b) Mortgagees and original purchasers from the mortgagees shall have the same rights designated in paragraph (a) of this deed which have been given to present owners and may be given to future owners upon receiving title under a foreclosure action or upon receiving title on the resale after a foreclosure action as the case may be.

(c) To the express covenant that any and all owners of property not included within the scope of paragraphs (a) and (b) herein must first be approved by the Community Club for membership in said Community Club.

(d) To the express covenant that Elizabeth Wetmore and William Wetmore and their heirs-at-law are to enjoy life membership in the Rock Ridge Community Club with the express power to grant (24) twenty-four-hour lake privileges to a maximum of (12) twelve persons of their choice.

(e) To the express covenant that Elizabeth Wetmore, her heirs and assigns, made any time in the future have the right, power and privilege to construct, maintain and operate another lake adjoining or near the present lake known as Rock Ridge lake if and when said Elizabeth Wetmore, her heirs and assigns, deem such undertaking set and proper.

(f) To the express covenant that Fred Charles and his heirs and at law are to enjoy life membership in the Rock Ridge Community Club.

(g) To the express covenant that Rock Ridge Community Club will replace the dam located on the premises herein described to the satisfaction of the "Water Policy Commission of the State of New Jersey" and to pay to Newel C. Harrison a sum not exceeding \$500 for engineering services rendered.

(h) It is hereby further covenanted and agreed that the Rock Ridge Community Club will care and maintain the dam at their own expense to the satisfaction of the Water Policy Commission of the State of New Jersey.

All of the above restrictions, limitations, covenants, easements, rights-of-way, etc., above-granted shall be perpetual and shall run with the land and bind the land and the parties of the second part, their heirs and assigns. Handwritten on this deed is a notation that states “map attached hereto and made a part hereof property conveyed shown in red.”

- On May 1, 1950, there was a simultaneous conveyance from Rock Ridge Community Club, Inc. to Elizabeth Wetmore, and Elizabeth Wetmore to Rock Ridge Community Club, Inc. These conveyances conveyed the most northeasterly part of a tract of land back to Elizabeth Wetmore after conveyance of a larger tract to Rock Ridge Community Club, Inc. The conveyance to RLCC also included all of the named roads: Entrance Way, Lake Road, Whale Back Waddy and Summit Drive. The conveyance of the roads and the larger tract was made subject to restrictions (a) through (h) as noted above.
- On May 31, 1950, Florence M. Henn conveyed to Rock Ridge Community Club, Inc., three tracts of land, which were part of the “Map of Edgewater Park” in the Town of the Denville. The deed indicates that the lot is a small piece of marshland bounded on the north and was given to RLCC with the express agreement that it will accept membership applications from any person or future owner of the lots shown on the map in the description of the third tract conveyed subject to the rules and regulations of the club.
- On May 31, 1951, Rock Ridge Country Club conveyed to Michael Flynn, three tracks of land along Rockaway Valley Road.
- On September 23, 1961, Rock Ridge Community Club, Inc. transferred to Thomas and Merium Lorenz property described as beginning at the northerly corner Lot 2 on a certain map entitled “The Lake Section at Rock Ridge, property of E. Wetmore, Denville Township, Morris County, New Jersey held in Morris County Clerk’s Office as Map No. 1732 in Case F.”
- On September 23, 1961, Rock Ridge Community Club, Inc. transferred to Donald Quinn and Deloris Quinn a second parcel shown on the map of "The Lake Section at Rock Ridge."
- On September 23, 1961, Rock Ridge Community Club, Inc. transferred to Rocco Leone and Irmgard Leone, lots 5 & 4 shown on the map entitled “The Lake Section at Rock Ridge.” None of the above conveyances were made subject to any restrictions of record.
- On September 23, 1961, William Wetmore and Elizabeth Wetmore transferred to Rock Ridge Community Club, Inc. a parcel of land noted on the “Lake section of Rock Ridge.”

### **Analysis:**

Our goal is to determine whether the development of Rock Ridge qualifies it as a “planned real estate development” under the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-45.1. The definitions section of the amendments to PREFDA provides as follows:

An “owner” is defined as “any person or persons who acquire a legal or equitable interest in a unit, lot, or parcel in a planned real estate development . . .” N.J.S.A. 45:22A-23(d). this would include property owners individually.

“Planned real estate development” is defined as “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 interest in real property.” This definition shall “specifically include but shall not be limited to . . .any form of homeowners' association” and “shall be construed liberally to effectuate the purposes of this act.” N.J.S.A. 45:22A-23(h). This definition would likely include Rock Ridge as well, as it includes individually owned lots, and common or shared elements, such as the lake and beach clubs, if we can demonstrate that Rock Ridge was developed in accordance with a “common promotional plan”

A “common promotional plan” is defined as “any offer for the disposition of lots, parcels, units or interests of real property by a single person or a group of persons acting in concert, where such lots, parcels, units, or interests are contiguous, or are known, designated or advertised as a common entity or by a common name.” N.J.S.A. 45:22A-23(i).

A “unit” is defined as “any lot, parcel, unit or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof.” N.J.S.A. 45:22A-23(p).

"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(p). That section provides that an association shall be organized to manage the common

elements and facilities; it may be in any form permitted by law, including a for-profit corporation.

“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...” N.J.S.A. 45:22A-23(q).

It appears that Rock Ridge fits the definition of a “planned real estate development” as it includes individually owned lots, as well as common elements, including the lake and other recreational lots. To be considered developed under a “common promotional plan” is less clear. There appear to be at least two developers, and the Wetmores, although together they may represent “a group of persons acting in concert” and use of a common name “Rock Ridge.” A further review of the incorporation documents would be helpful in making this determination, and we have ordered those documents.

**Effect of statute on Associations**. As you know, the PREDFDA statute was amended to clarify that the 2017 amendments and the 1993 amendments, apply to all associations, regardless as of the date of the establishment of the community. This is consistent with an earlier decision in the matter of Twin Rivers, which found that even though a traditional homeowners association was exempt from PREDFDA, it was subject to the 1993 amendments regarding open meetings and alternate dispute resolution.

If the statute applies to Rock Ridge, it states that all owners are members. N.J.S.A. 45:22A-45.1(1)(g) concluded as follows:

“It is necessary and in the public interest for the legislature to enact legislation to amend PREDFDA in order to:

- (1) **Establish that all unit owners are members of the association** and provide basic election participation rights for certain residents of common interest communities...”

This issue has already been addressed by the court in New Jersey. In a recent decision, the court determined that the amendments to the PREDFDA apply to a lake that had previously considered membership voluntary.

The court mandated that all owners in a planned real estate development are members of the association and that Ramapo Mountain Lakes is a planned real estate development, developed in accordance with a common promotional plan, under the definitions of the PREDFDA amendments. The Court's December 21, 2018 decision reviewed PREDFDA definitions and the stated the legislative intent, as well as the documentary evidence submitted by all parties, and determined that PREDFDA applied to the Ramapo Mountain Lakes community, holding “the court finds the plain language of the statute to be unambiguous and gives the language and terms their ordinary meaning.” The Court further reviewed the expert opinions submitted by the Defendants, and the controlling case law which defined a “common interest community” and found that Ramapo Mountain Lakes is such a community. Ramapo Mountain Lakes, Inc. v. Owners of Property in Ramapo Mountain Lakes, Docket No. BER-L-000075-17.

You should also be aware that as a result of this new legislation and its impact on lake associations, there has been resistance by property owners who object to mandatory dues. New legislation has been introduced, for the purpose of specifically stating that the amendments to PREDFDA don't apply to associations which were not previously mandatory. I have attached a copy hereto.

### **Fair Share Assessment**

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. In the case of Island Improvement Association of Upper Greenwood Lake v. Ford, 155 N.J. Super 571 (App. Div. 1978), a non-profit voluntary lake association was organized to raise funds to maintain the roads in a privately-developed residential area of Upper Greenwood Lake. They brought a class-action suit against all owners of residential property in the area to compel these owners to contribute to the road maintenance costs. In that matter, it was clear that the titles to the road were held by the private lake association and that the deeds to the individual property owners contained an express easement for the use of the roads, but did not contain an express contractual obligation on the part of the owners to maintain the roads. The Appellate Division held that the individual owners of the residential properties who were granted an easement to use the roads were obligated to contribute to the repair and maintenance of those roads. The Court provided an analysis under easement theory and determined that for those who hold an easement over the property of another, “with the benefit ought to

come the burden” and therefore any holders of the easement were obligated to contribute their fair share of maintenance of that easement.

This theory was affirmed in a later case, Lake Lookover Property Owners Association v. Olsen, 348 N.J. Super 53 (App. Div. 2002). In the Lake Lookover matter, the property owner’s association sought contribution by way of assessment from all individual property owners to pay for the repair costs of Lake Lookover’s dam. The Appellate Division held that the property owners could not avoid liability for contributions to the repair cost of the dam by surrendering their easement rights to use the lake and further that Lake Lookover had the authority to assess the property owners for the costs of the repairs. The Court specifically noted that present easement holders and their predecessors in title have enjoyed the benefit of the lake community easement since the creation in the 1920’s. It noted the wear and tear suffered by the dam over the course of the years and requirement for substantial rehabilitation. In particular, it stated that “a decision which would promote those who have enjoyed the use of that easement to now avoid such payment, simply by act of a purported abandonment of the easement, would make little sense.” It stated that under the rule of the Island Improvement case “ones who enjoy the benefit of the easement must share in the burden.” The Lake Lookover Court also noted that the private lake association generally supervised use of the lake and attended to the routine repairs and other matters that required attention throughout the life of the lake community and accordingly found no merit in the claim that the association had adopted an improper role and assumed duties, rights and obligations it had no right to assume.

An unreported case recently was decided in the matter of Unfair Share Lake Arrowhead 2010, Inc. v. Lake Arrowhead Club, Inc., Docket No. MRS-C-43-11. In that case, the Court determined that because each property owner in the Lake Arrowhead community had the right to use Lake Arrowhead, they accordingly had the obligation to pay an assessment to the Lake Arrowhead Club (“LAC”) for the maintenance of the common properties. Plaintiffs had objected to the assessment and argued that because LAC had always treated membership as voluntary, and had never sought an assessment, it had waived its rights to collect an assessment against all property owners in Lake Arrowhead. The Court concluded “[i]t would be unreasonable for this Court to conclude that LAC could not now seek payment of the necessary expenses to fulfill its responsibility from all those who enjoyed residence in the Lake Arrowhead community.” The Court further held that LAC had the right

to "change the rules and regulations to impose the assessment on all community residents to fulfill its responsibilities to the community."

In unreported cases, other lake communities such as Laurel Lakes in South Jersey, and Mount Glen Lakes in West Milford, have successfully survived court challenges to their right to impose a similar fair share assessment under the case law.

For a view of how the fair share assessment has worked for these lakes, we can look to the history of Upper Greenwood Lake, which has implemented this "fair share" assessment for some time in their community based on the Appellate Division decision in their favor. It has determined that properties that hold an easement to the lake and common areas are responsible for paying their fair share of certain expenses including insurance, dam maintenance, weed control, cost of security patrol, and miscellaneous administrative costs. Upper Greenwood Lake Association received confirmation in 1988 in an unpublished decision of the Superior Court of New Jersey that all easement holders of improved and unimproved property are obligated to contribute their fair share for the repair and maintenance costs of the easement to use Upper Greenwood Lake. Upper Greenwood Lake implements a procedure where there is a proposed budget of easement costs presented at a public meeting and voted upon, then divided by the number of improved and unimproved properties. Property owners who wish to become a member of the Upper Greenwood Lake Property Owners Association pay an additional fee for full Association privileges.

However, these "fair share" cases are distinguishable from the factual scenario of Rock Ridge. In each of those cases, each individual property chain of title contained an identical right of that property to use the lake, in the form of an easement. In Rock Ridge, the right to use the lake is clear for some properties, but it is less clear for others, which include specific language that membership is upon application only. In order for Rock Ridge to argue that all properties have the right to use the lake (which is necessary if you want to implement the fair share assessment under the case law), you need to look not only to the chain of title for each property owner, but to the language in the 1950 deed into Rock Ridge Community Club. As these rights are outside of the chain of title for each property, the right is not as straightforward as the case law to date, which may cause a court to hold there wasn't sufficient notice to each property

owner. Moreover, this deed appears to make membership voluntary, and subject to the approval of RLCC.

The imposition of restrictions of covenants with respect to the use of real property has been recognized in early New Jersey case law as valid and enforceable Kirkpatrick v. Peshine, 24 N.J. Equity 206 (Ch. Div.1873). A “neighborhood scheme” may be enforced by all owners within the area intended to be benefitted. The elements necessary to establish a neighborhood scheme were set forth in Olsen v. Jantausch, 44 N.J. Super. 380, 386 (App. Div. 1957). This scheme must be (a) universal - the restrictions applying to all lots of like character brought within the scheme; (b) reciprocal - the restrictions constituting a benefit to all lots involved, which are subject to the burden imposed; (c) reasonably uniform as to the restrictions imposed; they need not be identical but any variation must be such as not to create an inequitable burden or benefit. Wendell A. Smith, et al, Condominium & Community Association Law, Gann Law Books (2007).

Traditional restrictive covenants are those which “touch and concern” the land. They are said to “run with the land” and to be binding therefore on both the original owners and their successors. When an action is brought to enforce such a restriction a court of law will examine the documents to determine whether it was the intention of the parties that the covenant “run with the land” and whether the particular covenants “touch and concern” the land. Wendell A. Smith, et al, Condominium and Community Association Law, Gann Law Books (2013).

In summary, your case for fair share is not as strong as those developments in which each property has an easement over the lake and common properties.

**Conclusion:**

In order for RRCC to assess each property under the statutory changes to PREDFA, you must meet the definitions under that statute. Although I believe you would meet the definitions for “planned real estate development” and “association,” you may not meet the definition for common promotional plan. This is because there were multiple developers (Rock Ridge Inc., Rock Ridge Developers, Inc. and Wetmores, in dissolution) that failed to put the same restrictions in all of the transfers. None

required membership. Some granted lake rights, others did not. Although it appears the intent was to create a lake community, and the name “Rock Ridge” was used, it is not clear how a court would consider this development where the lake rights were not consistently granted to purchasers. RLCC would also have some difficulty establishing there was a neighborhood scheme under the common law, again because the restrictions in each chain were not identical.

In the face of this ambiguity, if you decide to go forward anyway, these are your options:

Fair Share Assessment: In order to enforce a fair share assessment, first, you should determine the method by which to introduce the concept to the community. RLCC should identify those costs which pertain to the maintenance of the lake and common properties, and develop a budget to be assessed, if a fair share assessment is to be pursued. RLCC should 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 let the community know of the intent to pursue the assessment, mailings and public meetings should be planned in advance of the assessment. RLCC 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.

Mandatory Membership under PREDFDA: In order to require everyone to be a member under PREDFDA, RLCC would simply invoice everyone in the filed map areas, which I understand is the procedure you have used for a number of years. RLCC would proceed to advise all property owners that it intends to file an action or claim of lien for those that don’t pay, and then proceed to do so. Because of the ambiguity in the application of PREDFDA to RLCC, this may result in a lawsuit against you, but you may be covered for legal fees by your Director’s and Officer’s insurance.

Declaratory Judgment: RLCC could also seek a declaratory judgment. This would involve RLCC going to court and presenting a legal argument to the judge, on notice to all parties affected by the action, and asking the judge for a judgment stating you have the right to collect a fair share/enforce mandatory membership. This is more expensive, as the action needs to be filed against all property owners, not just those who aren’t paying, and you would need to fund the litigation out of pocket.

In addition to the mandatory implementation of the fair share assessment or PREDFDA, there are two other options available to your community to achieve the goal of a more equitable sharing of expenses.

#### Declaration of Restrictive Covenants

Property owners may voluntarily elect to subject themselves and their respective properties to restrictive covenants. A Declaration of Restrictive Covenants would bind the individual property to membership; the covenants would run with the land and subject subsequent purchasers to the same restrictions of covenant. The document is executed voluntarily by the current property owner, recorded referencing their own lot and block, binding that individual property and obligating all future owners of that property to the covenants recited therein. RRCC would continue the process over time to pursue this option with property owners allowing them to “opt in” on a voluntary basis. There is little potential legal risk as it involves voluntary action on the part of the property owners. We have had clients implement this option with some success, although it takes a significant amount of time to get a majority of property owners to voluntarily sign.

#### Safe Dam Act loans

In addition, should there come a time when RLCC faces a dam repair issue, changes to the New Jersey Department of Environmental Protection / Dam Safety (“NJDEP”) loan program have made it easier for non-mandatory membership lake associations to have the cost of their loan covered by all property owners in the lake area. The statute provides that in a program which provides loans to owners of private dams or private lake associations for the purpose of funding a dam restoration or repair project, it authorizes the municipality where the lake association is located to assess the amount of principal, interest and cost of the loan against the real property benefitted by the loan in the same manner as an assessment for local improvement. This statute recognizes that many lake associations do not have the authority under their master deed or By-Laws to assess individual property owners. By directing the assessment through the municipality in the same manner as a local improvement, the cost is fairly incurred by all benefitted property owners and the burden does not fall only on those who voluntarily agree to pay.

We would be pleased to assist you in this process, and to meet with you to further discuss these options.