

Dear Property Owner:

As you may have heard, a vote is underway to determine if the Declaration of Covenants will be continued. You may be wondering why we are asking for all persons on the deed to vote and not just one vote per lot. The reason can be found in our declaration of covenants.

Please note the highlighted terms in the following covenant:

21.1 Term. The provisions of this Declaration shall become effective when recorded in the Office for Recording of Deeds, Luzerne County, Pennsylvania. This Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an Interest in the Development for forty (40) years from date of recording, after which time the same shall be extended for successive periods of ten (10) years each if an instrument signed by the Board of Directors certifying that such extension has been approved by **an affirmative vote of two-thirds (2/3) of the then record Owners of the total Interests** in the Development and has been recorded in the Office for Recording of Deeds, Luzerne County, Pennsylvania, agreeing to extend this Declaration, in whole or in part, whereupon this Declaration and the other Association Instruments shall continue to apply to such Interests for an additional period of ten (10) years. This same procedure shall be followed prior to the termination of said ten (10) year period and each succeeding ten (10) year period.

The Declaration defines Owners and Interests. These terms are capitalized because they have definitions within the covenants.

1.38 "Owner" means **any person or legal entity**, including Declarant, **who holds fee simple title to an Interest in real property** Development or **who holds an Interest in a Membership Certificate** pertaining to a camping club or timesharing arrangement for the use of any property in the Development. Owner shall not mean or refer to a Mortgagee of Record, its successors or assigns, unless or until such Mortgagee of Record has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure. Declarant shall be deemed to be the Owner of any portion of the Development for which title has not been transferred to another party. If any portion of the Development is subject to use under a camping club or timesharing arrangement, Declarant shall be deemed the owner of any Membership Certificates that have not been transferred to another party.

1.32 "Interest" means **any** ownership interest in the real property of the Development as described in Exhibit A hereto, and all other real property which may be annexed thereto, **which has been recorded in the Office for Recording of Deeds**, Luzerne County, Pennsylvania, and, for purposes of this Declaration, any ownership interest in a Membership Certificate pertaining to a camping club or timesharing arrangement for the use of any property within the Development, even though such Membership Certificate does not constitute an interest in real property. Any reference herein to title to an Interest shall be deemed to include the ownership interest in a Membership Certificate.

Therefore, we need an affirmative 2/3rds vote of all persons or legal entities who hold fee simple title to any ownership interest in the real property (or time share membership) of the Development to vote in the affirmative. We are not happy about this either – one lot, one vote would make this process much simpler. But, as it stands, husband and wife could get two votes, one to vote yes, the other to vote no, and the two votes would each be for their half interest in their property. So, they get two votes. This is because the Declaration as recorded requires that 2/3rds of the **OWNERS** must vote in the affirmative. There is no separate provision in the Declaration redefining Owners to be anything else but all fee title interest holders in property in our Community.

This office believes that due to the way the covenant is drafted the owners in the Unit 1 Community get 1 vote for each owner in interest. The language in this covenant is drafted in the same way that Quail Hollow Village gets 1 vote for each member in interest they have, despite owning far fewer lots in total. The language of the covenants, which predate the Uniform Planned Community Act, controls.

The Uniform Planned Community is not fully retroactive. Only certain provisions are given retroactive effect and even then such retroactive provisions will not modify existing provisions of the declaration of covenants. Specifically, per the retroactive provisions of the Uniform Planned Community Act, “sections 5105, 5106, 5107, 5203 (relating to construction and validity of declaration and bylaws) ..., 5218, 5219 (relating to amendment of declaration), ... 5302(a)(1) through (6) and (11) through (15) (relating to power of unit owners' association), ... and section 5103 (relating to definitions), to the extent necessary in construing any of those sections, apply to all planned communities created in this Commonwealth before the effective date of this subpart; but those sections apply only with respect to events and circumstances occurring after the effective date of this subpart and **do not invalidate specific provisions contained in existing provisions of the declaration, bylaws or plats and plans of those planned communities.**” Also, “Sections 5103, 5108, 5113, 5220(i) (relating to termination of planned community) ... **to the extent necessary in construing any of those [prior] sections,** apply to all planned communities created in this Commonwealth before the effective date of this subpart, but those sections apply only with respect to events and circumstances occurring after the effective date of this subsection and **do not invalidate specific provisions contained in existing provisions of the declaration,** bylaws or plats and plans of those planned communities.” The amendment provisions found in section 5219 specifically provide that larger numbers required for amendment may be demanded by the declaration.

As such, since we are required to tally up the vote of all the Owners with an Interest in real property, we need all Owners (defined in the declaration as record title owners) to vote. This may seem counterintuitive, but we have no choice but to work with the declaration we have. If you have any further questions, feel free to contact our office.

Sincerely,

BEECH MOUNTAIN LAKES  
ASSOCIATION

BY: \_\_\_\_\_