

APPLETREE MANAGEMENT GROUP, INC.

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COMMUNITY, REAL ESTATE & RESORT MGMT.

P.O. BOX 866

MOSCOW, PENNSYLVANIA 18444

(717) 842-0321

FAX (717) 842-4445

SEP 23 1996

September 19, 1996

Mr. William Caton
Office of Secretary
Federal Communications Commission
1919 "M" Street, NW
Washington, D.C. 20554

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Re: Reference IB Docket No. 95-59 and
CS Docket No. 96-83

Dear Mr. Caton:

I wish to take this opportunity to comment on the above FCC ruling as it relates to the installation of antenna's on "common" community property. As our management firm represents and manages several private residential and recreational communities in the Northeastern part of the Country, I trust you will consider these comments as representative of their concerns.

The original premise for my comments are based on the following:

- (1) That it is a violation of private property rights for the government to give the right to make private use of common property to individuals, and Congress did not mandate such action; and,
- (2) That to do so would also be a violation of constitutional rights and "taking" without just compensation.

Legal justification in support of the above is found within the legal documentation which permits such quasi-governmental entities to exist. It is common for such communities to have the following (real example) language incorporated within the deed restrictions of each community owner (member).

***Declaration of Restrictions, Covenants, Etc.
Eagle Lake***

THIS DECLARATION OF RESTRICTIONS, COVENANTS, EASEMENTS, EQUITABLE SERVITUDES, CHARGES, ASSESSMENTS AND LIENS, dated for convenience as of the 1st day of May, 1981, by EAGLE LAKE CORPORATION, a Pennsylvania Corporation, herein referred to as the "Declarant".

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List A B C D E

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I. DEFINITIONS

The following terms and phrases as used in this Declaration shall be defined as follows, unless the context clearly indicates otherwise:

.....

1.6 "Common Area" means any and all real property designated as such on a Plat and all real property acquired by the Association, whether pursuant to the Transfer, Construction and Operation Agreement, or otherwise, together, in each instance, with all improvements which may be at any time constructed thereon, including, but not limited to, Roads, Utility Facilities, recreational and community facilities, Lakes and parks, and including any area designated as "Buffer Area" on a Plat; provided that any "Buffer Area" along the shoreline of any lake shall not be "Common Property", except to the extent otherwise provided, such as recreational areas, boat docks and beaches; otherwise lake front property shall be owned as provided in section 4.2(a) hereof, subject to the easement provided in section 5.1(b) hereof.

1.16 "Reserved Area" means any and all of the real property designated as such on a Plat, ownership of which may be retained by Declarant and which may be put to such uses as Declarant shall determine, including, but not restricted to, future subdivision or associated commercial enterprises of any type or kind whatsoever.

.....

III. LAND USES

3.2 Common Areas

(a) Roads: All real property in the Development designated as Roads on the Plats are and shall remain private property, and Declarant's recording of the Plats shall not be construed as dedication of the Roads to public use. The Roads shall be constructed by Declarant and transferred to the Association pursuant to provisions of the Transfer, Construction and Operation Agreement. All Owners shall have use and enjoyment of the Roads subject to the provisions hereof and to reasonable rules and regulations from time to time adopted by the Association. Declarant reserves the right to use of the Roads in connection with its sales and development program. Operation and maintenance of Roads shall be the responsibility of the Association. At any time after transfer of the Roads to the Association, the Association may, upon the affirmative vote of two-thirds of its members entitled to vote, offer any of the Roads for dedication to public use, subject to acceptance by the appropriate governmental authorities and applicable standards.

(b) All other Common Areas, excluding the Utility Facilities which are governed by Part IX hereof, are and shall remain private property and Declarant's recording of the Plats shall not be construed as dedication of any such Common Areas to public use. Subject to provisions of the Transfer, Construction and Operation Agreement, Declarant will transfer to the Association all Common Areas together with any improvements constructed thereon. The use and enjoyment of Common Areas and improvements thereon shall be subject to provisions hereof and to reasonable rules and regulations from time to time adopted by the Association. Declarant reserves the right to use of Common Areas and any improvements thereon in connection with its sales and development program. Operation and maintenance of Common Areas and any improvements thereon, including repair to any such improvements, shall be the responsibility of the Association.

3.3 Reserved Areas. All real property in the Development designated as Reserved Areas on the Plats are and shall remain private property and Declarant's recordation of the Plats shall not be construed as dedication to public use. Use of any Reserved Area shall be determined solely by Declarant. Maintenance of Reserved Areas and repair of any improvements thereon shall be the obligation and responsibility of Declarant.

Declarant may use all or any portion of the Reserved Areas for such purposes as shall be determined by Declarant, including any commercial purposes, which it deems to be appropriate accessory uses for the Development; or for subdivision of additional campsites, in which event such real property shall be governed by the provisions hereof applicable to campsites; or Declarant may convey all or any portion of the Reserved Areas, including any improvements thereto, to the Association, pursuant to the Transfer, Construction and Operation Agreement, in which event such real property, together with any improvements, shall be governed by the provisions hereof applicable to Common Areas. Improvements to Reserved Areas shall not be subject to approval by the Committee.

.....

What becomes obvious from the above language is that (1) the property is owned by the Association for common use to the benefit of all members; and, (2) that no single owner (member) has any greater right to utilize the common or reserved areas.

Legal liability becomes a significant matter of concern as well. Permitting individual owners to access common property would increase liability with contractors, the creation of access areas which do not encroach on owner (member) properties, maintaining aesthetics, sight variances, etc. Lastly, it also permits each individual owner (member) to potentially file suit against the association for permitting such activity. If you take the time to study Association Law, you will find

several cases of such litigation. Who will defend and financially support the legislation?

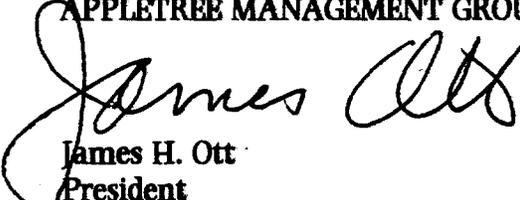
The most critical impact of this FCC Ruling pertains to the association's right to utilize common or reserved areas for the benefit of all owners. Common or reserved areas generally contain recreation facilities and/or utility facilities. Such utility facilities consist of water and/or sewer plants, electric plants and yes, Cable TV Systems. These Cable TV Systems service the entire community and serve the entire community. If individual antenna's were permitted on this same common area, it could essentially cause conflict or business interruption. Cable TV Systems can be a multi-million dollar expense by the Association. In addition, the annual subscription revenues are necessary for the operation, maintenance and long term preservation of the system. To permit individual use of this same common property would definitely impact the association asset negatively in its ability to maintain and operate its own community system.

The most logical question(s) we must ask at this time is - Why is such a law required, who will enforce , who will defend and will eventual future amendments dilute the law anyway?

I, and the many communities that our firm represents, urge you to repeal the above ruling at the earliest possible convenience.

Sincerely,

APPLETREE MANAGEMENT GROUP, INC.



James H. Ott
President

JHO/ajj

cc: Eagle Lake Community Association, Inc.
Penn Estates Property Owners Association, Inc.
Greenwood Acres Property Owners Association, Inc.
Pine Grove Acres Property Owners Association, Inc.
Woodland Condominium Owners Association, Inc.
E.L.C.A. Development Corp.
CS Water and Sewer Associates
Community Associations Institute
A.M. Skier Insurance Agency
Pocono Lake Preserve
JOAL Realty Corp.
Woodloch Springs
Matergia & Dunn, Attorneys at Law
MLA Management Associates, Inc.
The Community Association of Pocono Farms
Lake Naomi Club