

OLD FIELDS OWNERS ASSOCIATION

DECLARATION AND ESTABLISHMENT OF CONDITIONS, RESERVATIONS, COVENANTS, AND RESTRICTIONS FOR OLD FIELDS

KNOW ALL MEN BY THESE PRESENTS:

We, LAWRENCE H. BURD, JR, and J. DOUGLAS LAKE, as the only general partners of the Old Fields Limited Partnership (herein referred to as "the Grantor"), a limited partnership formed and existing pursuant to the laws of the state of Maryland, being the owner of all the described premises, situate with the counties of Hardy and Hampshire, State of West Virginia, to wit:

All that part and parcel of land conveyed to the Grantor by deed recorded Deed Book 127, Page 653 and Deed Book 127, Page 656 of the land Records of Hardy County, West Virginia, the same being known as "Old Fields" (and hereinafter referred to as such) has established a general plan for the improvement, development, use and enjoyment of said premises, and does hereby establish the conditions, reservations, covenants, and restrictions upon which and subject to which all tracts and portions of tracts shall be used, improved, or sold and conveyed. Each and every one of these conditions, reservations, and restrictions, is, and all are, for the benefit of each owner of land in Old Fields or of any interest therein, and shall inure to and pass with each and every parcel or tract of Old Fields and shall bind the respective successors in interest of the present owner thereof. These conditions, reservations, covenants and restrictions are, and each of them, is imposed upon each and every such tract, all of which are to be construed as restrictive covenants running with the land and with the title of such tract, and with each and every part and parcel thereof.

All of the following conditions, reservations, covenants and restrictions shall forever continue and remain in full force and effect at all times against the owner or owners of any tract in Old Fields, regardless of how title was acquired; provided, however, that these conditions, reservations, covenants and restrictions may be extended, modified, or rescinded in whole or in part by the owners of three quarters of the tracts designated by the plat or plan of Old Fields and such additional tracts as may result from any subdivision thereof in accordance herewith (a copy of said plat is filed with the land records of Hardy and Hampshire counties, West Virginia and is hereby made a part of this Declaration) upon their execution, acknowledgement and recordation of a proper instrument so indicating.

In the event of the violation or breach of any of the following conditions, reservations, covenants or restrictions, or a threatened breach thereof, the Old Fields Owners Association or the owner or owners of any tract or tracts in Old Fields, or both, jointly or severally, shall have the right to enjoin the same and in addition thereto, the right to recover just damages both for themselves and on behalf of all other owners of tracts in Old Fields, and upon their prevailing in any such action or actions they shall recover an additional award of all costs and expenses incurred in such proceeding, including reasonable counsel fees.

No delay or omission in exercising any rights, power, or remedy hereinabove provided shall be construed as a waiver thereof or acquiescence therein.

The invalidation by any court of any provision of this Declaration shall in no way affect any other provision and all other provisions not expressly invalidated shall remain in full force and effect.

1. No tract containing an area of less than ten (10) acres shall be subdivided. Any tract containing an area of ten (10) acres or more may be subdivided only in such manner that no resulting tract shall contain an area of less than five (5) acres. As used in this paragraph, the term "subdivision" shall be deemed to include any division of ownership, use, or right or occupancy whatsoever.
2. All those tract on the plat or plan of Old Fields attached hereto which are designated as park areas or roadways with all rights appurtenant thereto are hereby dedicated to the free use and enjoyment of the owners of the other tracts in Old Fields, jointly and severally, with families and guests. No personal property of any tract owner or other person shall be stored in any such area. Said park areas and roadways may hereafter be conveyed, or the permissible use altered, only in the same manner as provided for the modification of these covenants and restrictions.
3. No tract, park area or roadway in the subdivision shall be subjected to other than residential and recreational use and no activity for profit shall be conducted on any tract, except the rental of entire tracts.
4. No structure shall be erected closer than thirty (30) feet from the boundary line of any tract except that where two (2) or more tracts are used together then said setback shall apply to the outside boundaries.
5. No signs, billboards, or advertising of any nature shall be erected, placed or maintained on any tract, nor upon any building erected thereon, except directional and informational signs of the Grantors provided, however, that there may be placed on each tract a sign of reasonable size showing the owner's name or the name of the premises or both, and except as otherwise herein prohibited, a for sale sign having an area of not more than two (2) square feet. No tree in excess of fifteen (15) inches in diameter measures one (1) foot above the ground shall be cut except for the clearing of a building site and driveway thereto and in such event the same shall not be done until immediately preceding the commencement of construction. Nothing herein shall prevent the removal of any diseased or dead tree. No tract or park area shall be commercially timbered.
6. No Stream, watercourse, or spring on or near any tract may be contaminated or permanently blocked.
7. No temporary structure shall be placed on any lot except those necessary for and incidental to construction operations and those constructed for such purposes shall be promptly removed when no longer required therefor.

8. No mobile home shall be placed on any tract; provided, however, that motor homes, campers, and tents may be temporarily utilized but shall not be left on any tract when not in use.
9. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed, screened, or so placed and kept as not to be visible from any road.
10. All tracts, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly by reason of the accumulation of trash, rubbish, garbage, debris, junk, or other refuse thereon.
11. Any tanks for use in connection with any residence constructed on any tract, including tanks for the storage of fuel, must be buried or walled sufficiently to conceal them from the view of neighboring tracts, roads, or ways of general access.
12. No trash, ashes, garbage, debris, junk or other refuse shall be dumped or stored on any tract nor be thrown into any right of way, route of general access, or common area.
13. No hunting of wild animals or fowl shall be permitted in Old Fields.
14. The construction of any driveway or roadway on any tract shall be done with the use of culvert or drainage pipe of adequate size and type for drainage. After completion of any permitted construction or improvement the ground shall be left with a neat and orderly appearance with all trash and debris removed.
15. The Grantor shall have the right to grant easements and rights-of-way to telephone and electric companies over any land in Old Fields so long as it shall retain seventy-five (75%) ownership of Old Fields; thereafter the right to grant to grant easement over any tract shall be vested solely in the owner of that tract, provided, however, that the right to grant any such easement over any common area or roadway easement shall be vested in the Old Fields Owners Association.
16. The grantor shall be and remain fully responsible for the maintenance of the existing roads and common areas in Old Fields until seventy-five (75%) percent of all tracts designated in the plat of Old Fields are conveyed by it, after which such functions, together with any improvement of any road or common area, shall be the sole and exclusive function and responsibility of the Old Fields Owners Association. The Old Fields Owners Association may periodically, fairly and proportionately assess its members in order to raise such revenues as may reasonably be required to fulfill such functions and meet its obligations and the association shall have a lien upon every tract in Old Fields to secure the prompt payment of all assessments against its owner or owners. In the event any such assessment remains unpaid for a period of ninety (90) days, it may be enforced in equity as in the case of any lien foreclosure; provide, however, that the same shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and value.

17. For the purposes of maintaining roads, rights-of-way, common areas, waterfront, and all common community services of every kind and nature, required or desired within Old Fields for the general use and benefit of all tract owners, in accepting a deed or contract for any tract in Old Fields, or by assuming ownership thereof, shall be a member of and be subject to the obligations and duly enacted by-laws and rules of the Old Fields Owners Association.

18. No animal or animals, domesticated or otherwise, shall be kept or maintained upon any tract of Old Fields in such a manner as to create a nuisance to the owner or owners of other tracts in Old Fields; provided, however, that this provision shall not be construed as a leash law against domesticated pets.

Executed December 7, 1973 by

Lawrence H. Burd, Jr. And
J. Douglas Lake

Notarized by Clyde M. See, Jr.

OLD FIELDS OWNERS ASSOCIATION

TREE CUTTING REGULATIONS

Background

In the Covenants of Old Fields, restrictions on the cutting of trees is found in Covenant number five (5), which reads, in part, as follows:

...No tree in excess of fifteen (15) inches in diameter measured one (1) foot above the ground shall be cut except for the clearing of a building site and driveway thereto and in such event the same shall not be done until immediately preceding the commencement of construction. Nothing herein shall prevent the removal of any diseased or dead tree. No tract or park area shall be commercially timbered.

In spite of the fact that this restriction against tree cutting has been upheld in the Circuit Court of Hardy County, and that a permanent injunction is in effect enforcing the ban on tree cutting, the practice has not stopped. The Board of Directors, whose responsibilities include enforcement of all covenants (Article III (h) and Article V.1 of the Articles of the Old Fields Association), have established the following procedures for the orderly enforcement of the Covenants and the permanent injunction.

Establishment of a Tree Committee

A Tree Committee, herein after referred to as the Committee, is established. It shall be a permanent committee of the Board and shall consist of three Directors and two members who are not Officers or Directors. The committee shall select a chairperson from among its members, and shall establish rules for the functioning of committee meetings. The following regulations shall form the basis if the actions of the Committee.

1. Not tree shall be cut in Old Fields without the expressed approval of the Committee, either in writing or otherwise as the Committee shall determine.
2. The Committee shall establish rules and procedures for cutting of trees in Old Fields. These rules shall apply equally to every tract in Old Fields.
3. Any member of Old Fields desiring to cut a tree on his tract shall make written application to the Committee detailing the trees to be cut, the reason for cutting, and the name of the person or company which will perform the cutting, and the proposed date on which the cutting is to start.

The Owner shall mark the trees proposed for cutting with orange paint and orange flagging tape.

4. Applications for tree cutting shall be supported by sufficient documentation to show the Committee that the proposed tree cutting will be in compliance with the Declarations and the Court Injunction. Claim of diseased tree shall be supported by the written opinion of a certified Arborist. Other supporting information may include the following items in sufficient detail to establish conformance with the Declarations and the Injunction.
 - a. A building permit issued by Hardy or Hampshire for construction of a building on the tract where tree cutting is to occur.
 - b. A permit to construct a well and or a septic sewage disposal system, including a percolation test approved by the Health Department.
 - c. Drawings of the proposed building.
 - d. Written agreement or contract with a contractor to construct a building signed by both parties to the agreement.
 - e. A statement indicating that the trees desired to be cut have been marked as required, and granting permission to the Committee to examine the premises to verify the request.
5. A request to cut trees, together with all of the necessary supporting documentation, must be presented to the Committee at least three months before the trees are to be cut. The Committee will schedule an inspection of the premises within thirty (30) days of their receipt of the request, and submit their final decision thirty (30) days therefrom.

Penalties and Damages

In the event that an Owner of any tract in Old Fields shall cut trees without prior approval from the Committee, the Committee shall recommend to the Board of Directors that an action be brought against said Owner by duly notifying the Circuit Court that the permanent injunction has been violated. It will be up to the Court to establish damages and assess fines as it sees fit.

This action was taken by the Board of Directors at its November 11, 1999 meeting.