

1807780

Recorded
Sep. 02, 2008 AT 03:46PM
OUTAGAMIE COUNTY
JANICE FLENZ
REGISTER OF DEEDS
Fee Amount: \$27.00
Total Pages 9

Date: August 26, 2008



**PROTECTIVE COVENANTS FOR
ALL OF LOTS 1-29 & OUTLOTS 1-5
OF THE REPLAT OF LOTS 74-92, 94, &
OUTLOTS 4 - 8, NESTING MEADOWS III**

**RECORDED AS DOC # 1802302,
IN CABINET K, PAGES 75-76**

Kim Pischke
4004 E Appleseed Dr
Appleton WI 54913

Statement of owner's intent

2700
9

These Protective covenants, herein "Covenants," are made by JLKP INVESTMENTS LLC., herein "Developer," for purposes of protecting future Homeowners and real property in that residential development known as "Replat of Lots 74 - 92, 94, and Outlots 4 - 8, Nesting Meadows III," (herein after referred to as Replat of Nesting Meadows III) in the City of Appleton, Outagamie County, State of Wisconsin. The purpose of these Covenants is to submit the real property described below and the improvements constructed or to be constructed thereon to the Covenants described herein in order to preserve and protect the harmonious development of the property, enhance maintenance of property, financial and aesthetic values, and to aid harmonious residential living conditions in the Replat of Nesting Meadows III development. The property being subjected to these Covenants described below will be referred to herein collectively as "Nesting Meadows III." The legal description of the property is: **All of Lots 1-29 & Outlots 1-5 of the Replat of Lots 74-92, 94, and Outlots 4-8, Nesting Meadows III, recorded as Document #1802302, being part of the Northeast 1/4 of the Northeast 1/4, Section 7, Town 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin**

The Replat of Nesting Meadows III is NOT A CONDOMINIUM and is not subject to the provisions of Chapter 703 of the Wisconsin Statutes. However, part of the purpose of these Covenants is to combine some of the benefits of both private ownership and condominium ownership without being subject to the common ownership of lots and Homes as is customary in condominiums. Although the Replat of Nesting Meadows III is not a condominium, in some limited respects, it will be operated in a manner similar to a condominium.

The term "Home" shall mean one real property lot in Nesting Meadows III with or without a completed single-family dwelling. The term "Homeowner" shall mean the owner of a Home in the Replat of Nesting Meadows III.

PROTECTIVE COVENANTS

The Protective Covenants are hereby imposed on the property as follows:

1. **Homeowner's Association Membership.** Replat of Nesting Meadows III Homeowners' association, Inc. is a non-profit Wisconsin Corporation organized for management of Replat of Nesting Meadows III, which is governed by the members of this corporation. All owners of real property (Homeowners) in Nesting Meadows III shall automatically become members in the Replat of Nesting Meadows III Homeowner's Association, Inc. upon acquiring title by deed or land contract. As members all Homeowners are subject to and bound by the Articles of Incorporation, Bylaws, and Rules and Regulations applicable to the Association. Membership in the Association will continue indefinitely for so long as the Homeowners continue to own real property in Replat of Nesting Meadows III. Upon sale of the real property membership in the Association shall automatically terminate. Land contract purchasers are members, but land contract sellers are not members.
2. **Common areas and facilities.** The Association is ultimately expected to own certain "Outlots" of vacant property containing landscaping or other features within the Replat of Nesting Meadows III to be known as "common Areas and Facilities." These Common Areas and Facilities will not be used for the construction of single family homes, but rather will be maintained for the common use, benefit and enjoyment of all members of the Association and their guest for Private Park, aesthetic and recreational purposes.
3. **Architects.** A list of approved architects and or residential designers that shall be used for home designs in Nesting Meadows III, can be obtained from the Developer or a member of the Architectural Review Committee.
4. **Architectural Review.** So long as developer owns any lot, the Developer shall have the option to establish a committee of at least three and no more than five people to review any matter covered by these declarations. Before construction may commence: (1) the plans and specifications and exterior architectural design for the structure must be presented to the Architectural Review Committee for approval. (a) The plans shall consist of a least four building elevations and floor plans, to scale, showing dimensions, architectural or design features and materials to be used. In addition, a dimensional plot shall be submitted showing the footprint of any improvements and its applicable setbacks. (2) The plans for any proposed additions or external modification must also be submitted for review and approval. Any plans and specifications not disapproved by the Architectural Review Committee within 19 days of receipt shall be deemed approved.
Landscaping: A complete landscaping plan shall be submitted for house and lot. The landscape plan and construction shall be completed by one of the landscaping companies on an approved list of companies, which can be obtained from the developer or Architectural Review committee.

- A. *Exterior Design.* All dwellings shall have a minimum of 75 %brick or stone façade. At the sole discretion of the Architectural Review Committee, the Architectural Review Committee may consider deviation so this masonry requirement and other Exterior Design covenants where the lot owner can demonstrate that a particular restriction would not be consistent with the architectural style of the proposed home, or where other premium quality natural materials such as but not limited to solid wood siding, stucco, or Hardiplank or equivalent are used on all elevations. The remaining ¼ (one fourth) of the dwelling front and remaining sides shall be decorative materials such as stucco, brick, stone, natural cedar, solid wood siding, Hardiplank siding or equivalent, premium quality vinyl or aluminum siding, or other decorative product such as premium quality cedar shake impressions. To promote more consistent and harmonious exteriors, using full variety of exterior materials on all elevations shall be encouraged: for example: if shutters, lineals or shakes are used as accents on the dwelling. All exposed concrete on porches below porch slab shall have a brick or stone veneer face. Any exposed basement or foundation walls must be covered with masonry veneer or siding materials used on the walls above. HVAC venting or ductwork terminating outside shall be located in an inconspicuous location, and/or sufficiently camouflaged by landscaping. Earth stone, wood tones or other color schemes that compliment the natural setting of the subdivision shall be encouraged. At the sole discretion of the Architectural Review Committee, homes that are considered to be very similar or identical in architecture or appearance shall not be permitted to be constructed in close proximity to one another.
- B. *Energy Star.* All homes shall be Energy Star compliant.
- C. *Garages.* All dwellings shall have an attached garage. No attached garage shall be less than a two (2) car garage. Garage and service doors may be wood, steel, or fiberglass and must have a raised panel or similar decorative design.
- D. *Temporary structures and vehicles.* No structure of a temporary nature, shanty or similar structure shall be permitted on any lot either temporarily or permanently. No structure other than a fully completed residence shall be occupied.
- E. *Grades and Drainage.* No lot owner shall block, dam, or otherwise obstruct the flow of surface water drainage so as to cause such water to back-up onto the lot of another property owner or so as to restrict the use or enjoyment of any other lot by any owner. Each lot owner is responsible for establishing the final grade, lawn and landscaping within one year of occupancy in strict compliance with the approved subdivision drainage plan.
- F. *Fill.* The Developer reserves the right to direct the disposition of any fill, including excess excavation material which is to be removed from any lot, at the lot owner's expense. However, such disposition if directed by Developer shall (a) be within one mile radius of the lot, (b) be placed in designated areas specified by Developer. If Developer does not require specific disposition of

any excess fill, the lot owner shall be responsible to locate a site outside of the Replat of Nesting Meadows III, for such disposition and pay all costs associated therewith.

- G. *Trash*. All trash and waste shall be kept in sanitary container and out of public view. Owner is responsible for daily site clean-up during construction to avoid disbursement of trash by wind to adjacent properties.
 - H. *Antennas*. Satellite dishes less than 20 inches in diameter, mounted on the principal structure and not visible from the street shall be permitted. All other TV antennas must be contained within the home and not mounted on the roof.
 - I. *Driveways*. All owners shall, within one year of occupancy, install a paved driveway of stable and permanent construction extending from the garage to the lot line. Until such time that the street is permanently paved, the owner will be required to maintain a temporary apron.
 - J. *Signs*. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six square feet advertising the property as being for sale.
 - K. *Special Structures*. No special structures, such as enclosed tennis courts above ground swimming pools, kennels or detached storage buildings of any type will be allowed.
 - L. *Fences*. Plans for fences must be submitted to the Nesting Meadow III Architectural Review Committee for review and approval. Fences may be of wrought iron or maintenance free materials, which do not include wood.
 - M. *Animals*. No animals, except customary household pets, shall be kept, bred, or raised on any lot in this Subdivision. Pets shall not be allowed to run either freely or on a leash upon other owner's properties. Pet noises shall be curtailed to avoid unreasonable annoyance to neighboring property owners. Each owner shall be responsible for the timely disposition of all animal waste on the property, including other lots.
 - N. *Dog runs*. All fenced or tether style dog runs are prohibited.
 - O. *Personal property storage*. Storage of vehicles, recreational vehicles, snowmobiles, boats, trailers, campers, mini-bikes, fishing shanties, etc., shall not be parked or stored outside on lawn or driveway at any time.
 - P. *Rental*. No home or garage may be built for the purpose of rental or rent to own.
 - Q. *Docks*. There shall be no individual or jointly constructed docks on the pond.
5. **Minimum Floor Plans**. The ground floor area of a single story structure, exclusive of open porches and garages, shall have not less than 1450 square feet of living space. In the case of a one-and one-half or two story structure, shall have not less than 2,000 square feet of living space. No portion of any level which has its floor below grade will be considered living space.
6. **Completion Date**. All homes shall be under construction within one (1) year following the date of lot closing and shall be completed 12 months after commencement of building construction and shall not be occupied prior to being completed. All landscaping must be completed within one (1) year after

occupancy. The Developer reserves the right to grant a variance to a purchaser who buys two (2) or more lots at a time, in allowing construction starts of new homes on the individual lots over a longer period of time on the remaining lots after home construction is started within the first year after lot purchase on any one of the lots. The Developer also reserves the right to modify the completion dates as Nesting Meadows III new home construction exceeds 50% of the lots.

7. **Restrictions On Use and Development of Outlot 1.** Nesting Pond is an integral part of the storm water, and erosion control system for the Replat of Nesting Meadows III. The home owners and or the Homeowner's Association will own all drainage swales, and berms needed to convey overland storm water flow to the storm sewer system and Nesting Pond, which is an aesthetic detention facility. As the lots are sold the new owners will be responsible for operation and maintenance of the swales and berms on their lot. The Homeowner's Association is responsible for operation and maintenance of the swales and berms located in Outlot 1. The deep water well and pump shall be used to maintain the minimum water level of the pond and shall be maintained and operated by the Homeowner's Association. Electrical costs for operation shall be part of the Homeowner's Association assessment fees each year.
8. **Special Maintenance Requirements for Nesting Pond.** Maintenance is controlled by a "Storm Water Management Practices Maintenance Agreement" between the City of Appleton and the original developers of Nesting Meadows III, which is binding on the Replat of Nesting Meadows III. "Exhibit A" of this agreement is part of the approval of the storm water plans submitted to the Wisconsin Department of Natural Resources (DNR) and the City. The City will monitor the pond's maintenance and notify the Homeowner's Association regarding noncompliance with the Agreement.

Nesting Pond Maintenance Standards from "Storm Water Management Practices Maintenance Agreement." (Taken from "Exhibit A")

Maintenance Component	Defect	Conditions When Maintenance is Needed	Results Expected When Maintenance is Performed
Side slopes and Embankments	Trash & Debris	Any visual evidence of dumping, trash or debris.	Trash and debris cleared from site
	Unknown vegetation / ground cover	Mowing is not anticipated. If needed is best once every 3-4 years. Mowed vegetation should be removed from areas where it could enter the basin, with when the basin level rises or by rainfall runoff. SEE SPECIAL MOWING NOTE BELOW.	Trees and bushes should be removed where they interfere with pond maintenance activities; that is, at the inlet, outer and near engineered structures.
	Rodent Holes	Any evidence of rodent holes if the facility is acting as a dam or berm, or any evidence of water piping through dam or berm with rodent holes.	Rodents destroyed and dam or berm repaired

	Tree Growth	Tree growth does not allow maintenance access or interferes with maintenance activity (i.e. slope mowing, silt removal or equipment movements).	Trees do not hinder maintenance activities
	Erosion	Eroded damage over 2" deep where cause of damage is still present or where there is potential for continued erosion	Slopes should be stabilized by using appropriate erosion control measures; e.g., rock rip-rap, planting of grass, erosion control mat, and compaction.
Inlet/Outlet Pipe	Debris and Sediment	Sediment and/or debris clogging more than 10% of the pipe opening.	No clogging or blockage in the inlet and outlet piping.
	Damaged	Cracks or exposed rebar in concrete pipes	Pipe repaired or replaced
		Any dent that decreases the cross section area of pipe by more than 10% or retards the flowage of water.	
Erosion / Scouring	Eroded or scoured bottom at inlet or outlet pipes; undermining of structure or end section	Area should be stabilized by using appropriately sized rip-rap	
Trash Racks/Hoods	Trash and Debris	Trash or debris that is plugging more than 20% of the openings in the barrier.	Barrier clear to receive capacity flow
	Damaged / Missing bars or hood	Bars or hood are bent out of shape more than 3"	Bars in place with no bends more than 3/4"
		Bars are missing or entire barrier missing	Bars in place accordance to design
		Bars are loose and rust is causing 50% deterioration to any part of barrier	Repair or replace barrier to design standards
Pool Area	Sediment Accumulation in Pond Bottom	Sediment accumulations in pond bottom that exceeds the design sediment depth	Sediment cleaned out to designed pond shape and depth; pond reseeded if necessary to control erosion
	Water Level	water level does not drain down to normal pool elevation	Check outer structure and downstream conveyance systems for obstructions
	Oil Sheen on Water	prevalent and visible oil sheen	Remove oil from water by use of oil-absorbent pads or by vactor truck. Refer problem to located source and correct.
Emergency Overflow / Spillway and Dikes	Settlements	Any part of these components that has sealed 4" lower than the design elevation, or inspector determines dike/berm is unsound	Dike should be built back to the design elevation and repaired to specifications
	Rock Missing	Only one layer of rock exists above native soil in area five square feet or larger, or any exposure of native soil at the top of emergency spillway	Replace rock to design standards

9. Private Ownership. Each purchaser of a Home in the Replat of Nesting Meadows III will be the sole and exclusive owner of that entire Home under

the private ownership form of ownership. All buildings and other improvements such as patios, decks, sidewalks, and driveways, other than public utilities, will be privately and exclusively owned by each separate Homeowner. No portion of an individual Homeowner's Home will be commonly owned with any other member of the Association or with the Association itself.

10. **Private Ownership Expenses.** Each Homeowner of a Home in Nesting Meadows III will be responsible for all costs of construction, initial landscaping, maintenance, repairs and replacements pertaining to all building and improvements located at the Home. The individual Homeowners shall, for example, be responsible for painting repairing, replacing and decoration of interiors and exteriors, maintenance and repair of decks, patios, walks, driveway, building, and garage at their own Home. Any structural repairs to the individual homes, including matters such as fixing cracks or replacing a driveway, sidewalks, patios, decks and stoops and all other repairs and maintenance of the Homes shall be the responsibility of each individual Homeowner for their own Home, at their sole expense. The architectural integrity of the homes shall be maintained with the same quality, color, design, and architectural harmony in the event repairs or replacements are made. Each Homeowner shall also be responsible for all real estate taxes, special assessments for public improvements, insurance, and other costs and expenses related exclusively to that Homeowner's individual Home not otherwise expressly assumed by the Association in these Covenants, the Bylaws, or in the Rules and Regulations adopted by the Association.
11. **Landscaping, Lawn Care Maintenance and Snow Removal.** After the initial construction and installation of lawns and landscaping are complete as part of the Homeowner's initial expense, landscaping and lawn care, and snow removal on walks and driveways, thereafter will be undertaken by the Association at Association expense in accordance with the Rules and regulations adopted by the Association.
12. **Association Common Expenses.** Expenses for Common Areas and Facilities on property deeded to the Association for such things as insurance, landscaping, lawn care, snow removal, real estate taxes, income taxes, if any special assessments for public improvements, supplies, management fees, and other costs and expenses related to the Common Areas and Facilities. The Association itself will be the responsibility of the Association. Expenses incurred for landscaping and lawn care maintenance at the Homes, and snow removal on walks and driveways, after completion of initial construction and installation, will also be deemed common expenses of the Association. The Association may establish additional common expenses in accordance with the budget, and budget amendments, established pursuant to the bylaws of the Association.
13. **Dues and Assessments for Common Expenses/Liens.** Each homeowner as a member of the Association will be responsible for a pro-rata share of Common expenses payable from time to time as billed by the Association in the form of dues or assessments. The pro-rata share of each member of the

Association will be as established in the Bylaws of the Association. The common expenses as prorated shall be paid to the Association when billed. If not paid on or before the due date, subject to applicable grace periods if any, the charges shall bear interest at the rate of one and one-half (1 ½) percent per month until paid in full. The Association is granted authority to file a mortgage lien against the real estate of any Association member which fails to pay dues or assessments for common expenses for the expenses due, interest thereon, and costs of collection including reasonable attorney's fees, enforceable pursuant to Chapter 846 Wisconsin Statutes in addition to other means of collection available under Wisconsin Law. In the event a single owner buys two (2) or more lots, regardless of home location, that owner will be responsible for dues and assessments for each lot owned.

14. **Voting.** Each Home in Nesting Meadows III will be allocated one vote for Association matters in accordance with the Bylaws. The one vote may be cast by the person designated pursuant to the Bylaws. If a Home is owned by two or more individual members those owners will be allowed to cast one vote for that Home. It is the intent that the Association be governed and controlled by the Homeowners. During the time period that lots exist, and are owned by the Developer, the Developer shall hold three votes for each lot in Nesting Meadows III not yet deeded to a new owner.
15. **Bylaws, Rules and Regulations.** The Association will adopt, and may amend, Rules and Regulations, which will apply to all real property, owners, occupants and guests in Nesting Meadows III. A copy of these Bylaws and Rules and Regulations will be maintained by the Association and distributed to Homeowners and prospective purchasers of Homes upon request. The Rules and Regulations in effect from time to time, including further amendments, are part of these Covenants and are incorporated herein by reference.
16. **Reporting Transfers of Ownership.** Each Homeowner shall report to the Association the name and address of the new Homeowners of each Home sold or transferred in Nesting Meadows III together with the date of closing the sale. This reporting requirement is being made to facilitate maintenance of membership records for the Association. All dues and assessments due and payable or accrued for the Association common expenses shall be paid on or prior to closing the sale or transfer of any Home in Nesting Meadows III by the then current Homeowner.
17. **Enforcement.** Authority for enforcing these Covenants is granted to the Association and /or the Developer, either of which may commence action for enforcement of these Covenants. These Covenants may be enforced by injunctive relief or an action at law for damages. Any person or persons violating these Covenants shall additionally be liable to the enforcing party for the costs, expenses and reasonable attorney's fees for successful enforcement of these Covenants.
18. **Amendments.** These Covenants may be amended, modified, supplemented, or fully or partially terminated only upon 75 percent vote of all votes entitled to be cast on behalf of the Association, which votes shall be cast in writing following which these Covenants shall be modified by a recordable instrument

sighed by the President and secretary of the Association. In the event the original developer transfers ownership of this subdivision to another developer it does not change the applicability of these covenants as they pertain to the developer.

These Covenants are effective upon recording. Drafted by Martenson & Eisele, Inc.

Dated this 26th day of August, 2008.

Kim Pischke, Member

JLKP Investments, LLC.

By: Kim Pischke, Member

STATE OF WISCONSIN)

)ss.

OUTAGAMIE COUNTY)

Personally came before me this 29 day of August, 2008 the above-named Kim Pischke, on behalf of JLKP Investments, LLC. known to me to be the person who executed the foregoing instrument and acknowledge the same.



Susan Jarowski

Notary Public, State of Wisconsin

My Commission expires: 9-12-10

