

ENCOURAGING BY-LAW COMPLIANCE AND BUILDING OUR COMMUNITY

To: All Residents of Water's Edge
From: Water's Edge Owners Association Board of Directors
Date: July 2008

The following document was originally written by Andrew Wilson, a lawyer in Manotick and resident of Sunset Lakes, in his capacity as a director of the Sunset Lakes Owners Association. It has been amended and reprinted for Water's Edge with his permission.

Background

Water's Edge will become home to many families over the years. Each year will bring additional families, each with their own reasons for choosing Water's Edge as the place to make their home. Many of us are attracted to the area because of its location, its "child-friendly" environment and its recreational facilities. Many of us are also attracted to the area because of its commitment to the environment and its sense of community.

The reason that Water's Edge is so unique is in some respects a direct result of the original vision that was Water's Edge - a new community vision that each of us "bought into" (literally and figuratively) when we purchased our property here. This vision is part of the Water's Edge "package" and is variously set out in writing in the subdivision agreement, the development marketing materials and our respective property deeds. Whether related to recreational facilities, common area maintenance or environmental concerns, these are the "written" attributes of Water's Edge and therefore need to be maintained. They need to be maintained, however, in a manner that allows a key "unwritten" attribute of Water's Edge - the sense of community - to be fostered.

The Role of the Water's Edge Owners Association (WEOA) Board of Directors

The care and management of the Water's Edge community now rests with the Water's Edge Owners Association (WEOA), of which there is annually elected a board of directors. The WEOA Board of Directors, a group of volunteers from our neighbourhood, is committed to listening to the suggestions and concerns raised by residents of Water's Edge and to looking for ways to ensure that, as we grow in size, our sense of community grows along with that size.

As the development of Water's Edge grows, the WEOA Board will be increasingly responsible for ensuring that each of us enjoys our properties to the fullest extent possible, while at the same time recognizing the rights of our neighbours. Where the enjoyment by one property owner negatively impacts the enjoyment of another (or others), it is the responsibility of the WEOA Board to, at a minimum, take steps to protect the rights that are outlined in each of our property deeds.

The balancing of the dual responsibilities of community building and the protection of property owner rights is a difficult one to strike. When one property owner makes a complaint against another about an alleged breach of the Water's Edge written rules, a resolution of the issue that maintains a "community" relationship between the property owners is often difficult to attain. While it would be easy to set up a "police state" mentality to the enforcement of by-laws, rules and regulations, we need to balance the rights of the individual as against the fostering of a community atmosphere.

Concerns over Lawn Treatment

Concerns will be raised that relate to the use of our properties. Specifically, questions and concerns raised over the use of pesticides and non-organic fertilizers by homeowners. The use of fertilizers and lawn chemicals (other than as approved by WEOA) is expressly prohibited in each of our deed restrictions. WEOA has approved the use of organic fertilizers and the spot use of pesticides.

These restrictions and the WEOA exceptions, in addition to being in our deed restrictions, form part of the marketing materials for the development. However they are not merely "rules for rules sake". The restriction on pesticide use is based on the widespread recognition that many pesticides are highly toxic and have been linked to many health-related problems, including cancer. As a result of the way in which children "use" a lawn, this concern is particularly prevalent among children. Our community will become a thriving, family-oriented place, with many young children. We need to ensure that our policies and practices are such that we do not put our children and ourselves at risk.

The restriction on the use of non-organic fertilizers is based on a growing appreciation of the extent to which the use of such non-organic fertilizers can cause damage to our lakes. Whether or not our home is located directly on one of the lakes within Water's Edge, each of us benefits greatly from the access to (and appearance of) these lakes. Organic fertilizers contain water insoluble nitrogen. In non-organic fertilizers, the nitrogen is water-soluble. With rains or the application of water, these water soluble chemical flow through our properties and become part of the groundwater which, in turn, all flows into the lakes. Where these waters contain high levels of nitrogen, the lakes will be adversely affected, causing increased vegetation and decreased water quality.

As a result, each resident of Water's Edge can have an impact on the quality of the water in our lakes. The direct impact of the quality of our lake water on homeowners who do not live beside a lake may not appear to be significant right now. However if our lakes become a collection of weeds and other vegetation as a result of high levels of groundwater chemicals, some of the positive "aura" of our community will be lost (as will, presumably, some of the market value of each of our properties).

Causes for Concern

Concerns that may be raised with respect to the use of fertilizers and pesticides fall into two categories: those applied by third-party lawn service providers and those applied by the homeowner himself or herself.

Where a homeowner engages a third-party lawn service to care for their lawn, it is important that the homeowner make the service provider aware of the restrictions within Water's Edge. However, unfortunately, this often is not enough, as these service providers may use non-organic fertilizers and/or pesticides while at the same time informing the homeowner that only organics are being used. This has become a popular tactic among these service providers and one of which all homeowners should be aware. In addition to the fact that the subdivision rules are being broken, this use of chemicals without homeowner knowledge could put in the immediate area under a significant health risk (particularly with the use of pesticides).

To assist homeowners in their understanding of these issues and in the selection of appropriate lawn care service providers, the WEOA Board will this spring make available information on lawn care service providers. The information will also include a list of the types of questions a consumer of these services should be asking to ensure that chemical fertilizers and pesticides are not being used. It is hoped that this information exchange will help eliminate the situations where residents are unknowingly in breach of the Water's Edge rules.

Should it come to the WEOA Board's attention that certain homeowners are aware of the service provider's non-organic fertilizer or pesticide use or are themselves applying such fertilizers and/or pesticides in a seeming reckless disregard to the by-laws and deed restrictions will warrant strong action by the WEOA Board.

New Policy

The WEOA Board will introduce a policy - the "Policy for the Encouragement of Compliance with By-Laws and Deed Restrictions". The current WEOA By-Laws give the WEOA Board the right to suspend the membership of any homeowner who breaches the Deed Restrictions or other rules of WEOA. The new policy is intended to explain to homeowners the various steps that the Board will take to try to rectify alleged breaches.

At the center of this new policy is a spirit of communication. It is hoped that, with proper communication and the willingness to discuss matters, a significant number of potential disputes and/or issues will easily be rectified at the stage at which they are simple "misunderstandings" and will not become a full-blown dispute. While the right to suspend is still there, it is felt that the spirit of community (and the end result) will often be better served if the Board takes a more measured approach.

As a result, any breach or alleged breach of the By-Laws and/or Deed Restrictions (related to environmental issues or otherwise) will be handled as follows:

1. Any homeowner who is aware of or who suspects that another homeowner is in breach of the Water's Edge By-Laws and/or Deed Restrictions should contact a member of the WEOA Board.
2. Concerns can be lodged on a confidential basis, if desired, in which case the identity of the homeowner bringing forward the concern will not be passed on to anyone else (including the WEOA Board and the other homeowner).
3. The WEOA Board member will bring the complaint forward to the WEOA Board, who will consider the concern.
4. The WEOA Board will appoint one of its members to approach the homeowner who is allegedly in breach for an initial discussion to determine whether the complaint has merit.
5. The WEOA Board member will report back to the WEOA Board as to his/her discussion, the agreement/disagreement of the homeowner with the concern, the degree to which the concern appears to be valid, and, if apparently valid, the degree to which the offending behaviour is likely to continue.
6. The WEOA Board will consider this additional information and, if necessary, engage in further individual discussions with the homeowners (the one lodging the concern and the one about which the concern has been lodged).
7. The WEOA Board will review all available information and make a determination as to the merits of the concern that has been lodged. If the concern is found to have merit, the WEOA Board member will discuss the conclusion with each of the homeowners and will attempt to gain comfort as to the intention of the homeowner to now comply with the By-Laws and/or Deed Restrictions. This discussion will be followed up in writing with a letter from the WEOA Board, indicating the required changes that must be made to the use of the property. A copy of this letter will be maintained with the WEOA Board minutes in case of any need for follow-up.
8. It is hoped that this will be the end of the matter. If for some reason the homeowner does not comply with the By-Laws and/or Deed Restrictions within a reasonable period of time, the WEOA Board will consider whatever additional sanctions need to be introduced. These sanctions will depend on the severity of the breach, the number of other homeowners who are or could be negatively impacted and the type of negative impact that is or could be experienced (i.e. health and safety versus esthetics). Sanctions could include, for example, the suspension of membership rights, the placing of community notices or the referral of the matter to legal counsel to seek injunctive relief and/or registration of caveats on title.
9. As will be the case, any regular meeting of the WEOA Board is a public forum and any homeowner may attend these meetings to discuss his or her concerns.

Conclusion

Each of us has our own reasons for choosing to live in Water's Edge. As we grow as a community, we need to ensure that the unique qualities that attracted us to the area are maintained, and our community culture is enhanced.

We hope that the policy outlined above will help us to achieve an appropriate balance between the rules that exist and the need to apply those rules in a community setting. The WEOA Board is committed to working with the homeowners to ensure that their concerns are addressed, but will use this new policy to encourage and ensure appropriate communication between concerned homeowners, using the WEOA Board as a "sounding board", investigator and, in certain cases, adjudicator.

What will make Water's Edge a special community is our ability to communicate and to foster an understanding of and respect for those who live around us. In that way, we will be sure that each of us will be able to enjoy Water's Edge in our own way while making sure our neighbours are able to do the same.