

Lake Tishomingo Property Issues

The Lake Tishomingo Property Owners Association is the governing body for Lake Tishomingo subdivision. Every property owner is a member of the LTPOA. The seven-member board of directors conducts the day-to-day business of the LTPOA and is empowered by the restrictions to establish rules and regulations to serve the good of all property owners. The board must always act with fairness and concern for the common good. To protect the community and its assets the board must oftentimes balance individual interest against the general welfare of the community.

COMMON GROUND

Common ground is LTPOA-owned real property set aside for use by all Lake Tishomingo property owners.

Common ground includes the parkway, paths, and the lakefront recreation area. The parkway runs all the way around the lake -- in front of every lakefront lot. It extends from the front edge of the lot to the water and is like an urban parkway -- the area beyond the edge of a residential lot, between and often including the sidewalk and the street.

This is the situation in many municipalities where the homeowners' residential lot ends before the edge of the sidewalk. The homeowner is responsible for maintaining that sidewalk, and also the parkway beyond the sidewalk.

It is standard practice in many communities -- the adjacent lot owner is responsible for maintaining the community-owned area between his/her lot and the street.

Each property owner has the option of improving community-owned property that is adjacent to his own. If he improves it, he is also responsible for maintaining it.

ROADSIDE

Common ground includes a 10-foot strip on each side of the road. The roads as laid out in the original plat map are 40 feet wide. In fact, the paved portion is only about 20 feet wide. This means that the LTPOA owns the paved road and about 10 feet on each side of the road. That unpaved 10-ft strip is considered common ground and should be treated as described above.

DRIVEWAYS

Implicit in the ownership of a lot is the use of the land on the street side of the lot. Included in that use is the option to develop it with a driveway. Driveway repair and maintenance is the responsibility of the property owner. Lake Tishomingo building regulations require the first 20 feet of every driveway abutting a lake road to be paved. (Passed by vote of property owners June 2005, 1113 to 271.)

LAKEFRONT PROPERTY

Implicit in the ownership of a lakefront lot is the use of the parkway in front of the lot. Included in that use is the option to develop it with docks, seawall, gardens, landscaping, lights, and patio.

It's a reasonable assumption that the primary user of the lakefront property in front of the property line will be the owner. The owner must cross that property to get to the Lake. It's generally expected that owner would want to improve it and maintain it. That owner is the primary user of that section of common ground.

When the owner makes the decision to improve the land that sits adjacent to his property, he will consider it an extension of his own yard. Implicit in that is his responsibility to maintain that land.

If you plant grass, you will cut that grass, If you plant a tree or you allow a tree to grow you are responsible for that tree. It is not the LTPOA's responsibility, because you've treated that land as an extension of your yard. You've had the primary use of it. You've accepted the responsibility for maintaining it.

No one can prevent another property owner from walking across common ground. Every property owner has the right to walk on any part of common ground. This is not to say that someone can sit down and have a picnic in front of someone else's property, but every owner may walk across the common ground in front of the private property.

DOCKS

A property owner with a lakefront lot has the right to put a dock in front of his lot. In some cases, lakefront lot owners have docks in front of their lots that are licensed to other property owners. The building regulations require that anyone who wants to put a dock in front of someone else's property, must receive written permission from that lakefront lot owner. *[Some docks are owned by other than the adjacent property owner. This is due to previous LTPOA Boards granting permits for docks without obtaining the permission of the lakefront lot owner.]*

All docks are located on common ground and are private property. An owner receives permission from the LTPOA Board to build a dock. He/she then owns the dock and has a license from the LTPOA to maintain and use the dock.

The LTPOA has the right to revoke the license and remove a dock under several conditions:

- If a dock is not maintained properly, if it becomes dilapidated or dangerous,
- If the dock becomes a boating or swimming hazard,
- If the dock is the scene of repeated instances of illegal, offensive, or antisocial behavior at the lakefront.

Every dock should be properly identified with the owner's lot identification. Failure to comply with these rules can result in revocation of the dock license and removal of the dock.

TRANSFER OF DOCK OWNERSHIP

It is generally assumed that the license to a dock runs with the land. That is, a second tier property can be sold with a properly licensed dock that is located in front of another person's lakefront lot.

If the dock license holder wishes to sell only the dock to another property owner he should obtain written permission from the owner of the property it is in front of and notify the LTPOA Board of the transfer. This is in accordance with the building regulation mentioned above regarding putting a dock in front of someone else's property.

PATHS

The original plat map designated many paths from the road down to the waterfront. The paths can be used for lake access by any property owner. Many of these are at the back of coves or low spots where the storm water runs down from the upper tier. These paths are unimproved and unsafe to use.

Only two paths have ever been moved.

1. Originally between M24 & M25, a path is now between M25 & M26.
2. Originally between H06 & H07, a path is now between H07 & H08.

Who is responsible for improving and maintaining a path?

People who want to use the path regularly and the owners of the adjoining properties should discuss it, develop a plan, and bring it to the LTPOA Board for approval.

Can a path be moved?

People who want to use the path regularly and the owners of the adjoining properties should discuss it, develop a plan, and bring it to the LTPOA Board for approval. The LTPOA will not pay for the required survey work or recording of deeds.

Property owners improving path drainage

The LTPOA Board established a precedent by reimbursing property owners up to \$500 for expenses to improved drainage at path locations.

RIGHTS OF PROPERTY OWNERS

"Said Grantee, his heirs and assigns, shall, subject to compliance with the foregoing restrictions, and while holding said lot, have license personally and for the family and lot owners' guests to the use and privileges of the lake in said subdivision, known as Lake Tishomingo, which shall include boating, bathing, fishing and the use of the private beaches only, also the parkway surrounding said lake, including the right to moor boats in front of said parkway, all subject to the rules and regulations prescribed by Grantor from time to time."

"The restriction on any lot may be removed only by written consent, duly acknowledged and recorded, of Grantor and the owners of all other lots in the same block."

GATE CARDS, VEHICLE STICKERS

Each gate card and sticker must be associated with a vehicle owned by the property owner. Limit 6 cards, issued only to the property owners. Requests for additional cards above the limit should be directed to the Board.

DEVELOPMENT OF PROPERTY BEYOND THE SUBDIVISION BOUNDARIES

Lake Tishomingo Restrictions, Article 1

"Said lot shall be used for residence purposes only . . ."

The LTPOA Board developed an agreement (2008) for people who purchase land area beyond the boundaries of the lake subdivision (LABOL) and need to access their property through Lake Tish. This agreement provides them with access to their land through a lot at Lake Tishomingo. And the agreement is a covenant that runs with the land. Elements of the agreement include:

1. The LABOL is to be used only for single family residential homesites.
2. A homesite on the LABOL must be at least 40,000 square ft.
3. Each homesite owner on LABOL must also own a lake lot adjacent to the homesite for the purpose of access.
4. The only access to the LABOL homesite will be through the adjacent lake lot.
5. The homesite cannot be further subdivided.
6. By owning a lake lot the homesite owner will be entitled to full use of the lake and the lake roads.
7. By owning a lake lot the homesite owner will be responsible for payment of all regular and special assessments on that lot.
8. The homesite owner will abide by all the rules and regulations of the Lake Tishomingo Subdivision.
9. Construction of a residence will conform to Lake Tishomingo building regs, including purchase of a road bond if that is a part of the existing building regs.

FIRST RIGHT OF REFUSAL

Lake Tishomingo Restrictions, Article 9

"9. No sale of said lot shall be consummated without giving at least fifteen days written notice to Grantor, and the owners of the two lots adjoining said lot on the sides, of the terms thereof; and the name of the prospective purchasers; and any of them shall have the right to buy said lot on such terms. Such notice shall be personally served if service can be made on the subdivision; if any person entitled to service can not be found on the subdivision, notice shall be mailed to such person at the address last known to the Grantor. Affidavit of the person making service shall be sufficient, evidence thereof to protect a purchaser.

The restriction is binding on every real estate transaction at Lake Tishomingo. Every owner with a property for sale must observe this restriction and offer the property to the adjoining neighbors for the same price and terms.

This restriction was legally tested at Lakes Lotawana (twice), and Tapawingo, both in Jackson County. As a result, the first right of refusal (FRR) as defined in the restriction was affirmed by Missouri Appellate and Supreme Courts:

1956, Beets v Tyler – FRR is "reasonable and valid."

2008, McNaab v Barrett – Neighbor waited too long (five years) to claim FRR.

2010, Blue Ridge Bank v Trosen – FRR was considered generally binding, but in this case, FRR was not upheld by the court because it was an intra-family transfer of property and the property owners' association had explicitly exempted all intra-family transactions from abiding by the requirement to sell to an interested neighbor.

This restriction was tested at Lake Tishomingo and affirmed by the Jefferson County Circuit Court, Division 2, Judge Edward Page:

2022, Diaz de Leon v Lane – defendants ordered to sell property to adjoining neighbor subject to original contract terms.

RELATIONSHIP OF LTPOA TO PWSD#13

PWSD#13 is a government agency that governs the Lake Tishomingo sewer system. It began as the LTPOA sewer committee with the mission of bringing a central sewer system to Lake Tishomingo. The elected members of the Board of Directors are all Lake Tish homeowners.

PWSD#13 uses the office at 5706 N Lakeshore Dr. This building is used as the district office for meetings, storage, and postal service. PWSD#13 pays for the building's electric utility, sewer user fee, and telephone service. The LTPOA also uses the building for meetings and storage.

PWSD#13 provides a service to the LTPOA by running the sewer system. The sewer system benefits every property owner by improving the quality of the lake and increasing property values. But the district receives funding only through sewer use fees paid by the homeowners. By providing the office space to the district the LTPOA enables the non-homeowning property owners to make a small contribution to the success of PWSD#13.

Conversely, if the district had to pay rental fees for use of the building, it is possible that sewer user fees would have to be increased to cover the rental fees. In that way, the homeowning property owners would be subjected to an additional financial burden to support the LTPOA.