

POKAGON BAND OF POTAWATOMI INDIANS



ADMINISTRATIVE PROVISIONS AND BUILDING RESTRICTIONS FOR RESIDENT OWNERS

Current through May 21, 2012; Res. 12-05-21-04



"Our People, Our Homes."

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**ARTICLE 1
PREAMBLE**

1.1 Purpose

The purpose of these Restrictions is to establish administrative requirements and proscribe building restrictions to maintain a consistent and beneficial environment that meets the unique cultural, governmental and other needs and objectives of the Band and provides a positive, high-quality living environment within Developments.

1.2 Scope

These Restrictions apply to all Resident Owners. Entering into any Lease or occupying any Housing Unit shall constitute acceptance and agreement to comply with the terms of these Restrictions. All Resident Owners shall ensure that their Household members, guests and invitees comply fully with these Restrictions.

1.3 Nature of Restrictions

These Restrictions are intended to be restrictive covenants and are hereby automatically incorporated into any Lease of Band Land, and shall run with the land.

1.4 Definitions

For purposes of these Restrictions, the following terms are defined.

(a) "Band" means the Pokagon Band of Potawatomi Indians, a sovereign, federally recognized Indian tribe, along with its instrumentalities, agencies, departments, and programs.

(b) "Band Land" means all real property which is held in trust for the benefit of the Band or owned in fee by the Band upon which a Development is located.

(c) "Common Areas" means all areas of a Development that are not Housing Units, including but not limited to Open Space and road and utility easements.

(d) "Constitution" means the Constitution of the Band.

(e) "Department of Housing" means the Band's Department of Housing.

(f) "Development" means any Band housing development in which any Resident Owner owns a Housing Unit.

(g) "Household" means any person who resides at the Housing Unit with permission of the Band or lessor.

(h) “Housing Unit” means all or any portion of any house, home, building or other structure used as a residence within a Development which is owned by a Resident Owner.

(i) “Lease” means a written agreement between the Band and a Resident Owner for the possession of Band Land for residential purposes and includes any sublease or lease-to-purchase agreement.

(j) “Open Space” means any portion of the Development designated as such in the site plan for the Development.

(k) “Resident Owner” means any person who has entered into a Lease of Band land for the purpose of purchasing or constructing a Housing Unit thereon.

(l) “Restrictions” means all these policies and procedures.

(m) “Tribal Court” means the Band’s Tribal Court.

ARTICLE 2 AMENDMENT AND TERMINATION

2.1 Amendment

The Band may amend these Restrictions at any time and from time to time without the consent of any Resident Owner; provided the use of the Open Space may be subject to permanent restrictions in accordance with a site plan approved by a township, and the Band may not be able to amend such use without the township's further approval. Written notice of any such amendments shall be sent to all Resident Owners of the Development.

2.2 Termination

The Band may terminate these Restrictions at any time without the consent of any Resident Owner; provided the use of the Open Space may be subject to permanent restrictions in accordance with a site plan approved by a township, and the Band may not be able to terminate such restrictions without the township's further approval. Written notice of any such termination shall be sent to all Resident Owners of the Development.

2.3 Continuation

The Band's right to amend or terminate these Restrictions shall continue even if the Band places the land into trust with the United States of America.

**ARTICLE 3
ADMINISTRATION**

3.1 Management

The Band shall manage Band Land and the business and affairs of the Development. The Band, including through the Department of Housing, may contract with third parties to provide property management, security and other services, and all Resident Owners shall cooperate with and comply with the Band's (or any authorized third party's) directives in connection with such Band Land management.

3.2 Powers

The Band, subject to the Constitution and Band law, shall have all powers necessary for the administration of the affairs of the Development, including but not limited to, the following:

- (a) to determine, levy and collect assessments from Resident Owners as required for the operation and affairs of the Development;
- (b) to employ and dismiss contractors and personnel as necessary for the efficient management and operation of the Development;
- (c) to adopt and amend policies and procedures governing the use of the Band Land;
- (d) to obtain insurance for the Development, the premiums of which may be assessed against the Residents;
- (e) to authorize the execution of contracts, licenses, easements and rights-of-way affecting the Band Land;
- (f) to make repairs, additions and improvements to, or alterations of, the Development, and repairs to and restoration of the Band Land after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- (g) to assert, defend, or settle claims on behalf of all Resident Owners in connection with the Development and institute actions, including against any Resident Owner, to enforce these Restrictions;
- (h) to transfer or mortgage any portion of the Band Land owned by the Band, including a transfer into trust with the United States of America;
- (i) to authorize the Department of Housing to excise authority or perform duties in connection with the Development; and
- (j) to exercise such additional powers and perform such further duties as necessary or desirable in the judgment of the Band to administer the Development.

3.3 Management in Accordance with Township Approval

The Development has received applicable township approval of an application for designation as an Open Space - Cluster Development and related site plan approval. All persons, including Resident Owners and Household members, shall comply with all applicable township requirements set forth in such approvals, including without limitation the requirements restricting the use of Open Space. The Open Space shall be maintained and utilized in an "undeveloped state" as defined under State law, as applicable.

ARTICLE 4 TAXES AND SSESSMENTS

4.1 Apportionment

To the extent the Development is subject to state and local taxation, real property taxes and assessments shall be apportioned between the Band and the individual Resident Owners to the extent of their ownership interest. Taxes for real property improvements made to or within a specific Housing Unit shall be assessed against that Housing Unit only. In the event a taxing jurisdiction levies any tax or assessment against the Band that a Resident Owner is required to pay hereunder, and the Band pays such tax or assessment, then upon demand, the Resident Owner shall reimburse the Band the full amount of such payment.

4.2 Collection of Assessments

Each Resident Owner shall be obligated to pay all assessed common charges levied upon the Resident Owner's Housing Unit during the time that the person is the Resident Owner of the Housing Unit. No Resident Owner shall be exempt from liability for contribution toward the expenses of administration by waiver of the use or enjoyment of any component of the Development or by the abandonment of a Housing Unit.

4.3 Legal Remedies

In the event of default by any Resident Owner in paying any assessed common charge or real property taxes, the Band may declare all unpaid installments of any assessment, as applicable, to be immediately due and payable. In addition, the Band may impose reasonable fines or charge interest at the rate of twelve percent (12%) per annum on such assessments or taxes from and after the due date. Unpaid assessments, together with interest on the unpaid assessments, collection and late charges, advances made by the Band for taxes or to protect its lien, and attorney fees and fines shall constitute a lien on the Housing Unit, and the Band may enforce the collection of all sums due by suit at law for a money judgment or by foreclosure of the liens securing payment. In any foreclosure proceeding, the Resident Owner or anyone claiming under the Resident Owner shall be liable for assessments charged against the Housing Unit that become due before the redemption period, if any, expires, together with interest, advances made by the Band for taxes or to protect its lien, or costs and reasonable attorney fees incurred in their collection.

4.4 Sale of Housing Unit

Upon the sale or conveyance of a Housing Unit, all unpaid assessments and taxes against the Housing Unit shall be paid out of the sale price by the purchaser in preference over any other assessment or charge. A purchaser may request a written statement from the Band as to the amount of unpaid assessments and taxes levied against the Housing Unit being sold or conveyed. The purchaser and seller shall be jointly and severally liable for unpaid assessments and taxes.

4.5 Application of Payments

Money received by the Band in payment of assessments in default shall be applied as follows: first, to costs of collection and enforcement of payment, including reasonable attorney fees; second, to any interest charges and fines for late payment on such assessments; and third, to installments of assessments in default in order of their due dates.

ARTICLE 5 MAINTENANCE AND INSURANCE

5.1 Maintenance

After exercising the option to purchase, each Resident Owner shall be solely responsible for all maintenance, repairs or replacements to the Housing Unit and Band Land. The Band shall be responsible for all maintenance, repairs and replacements to Common Areas; provided the cost thereof may be charged proportionately to all the Resident Owners as a common expense unless such expenditures were necessitated by the negligence, misuse or neglect of a particular Resident Owner, in which case the expense shall be charged to such Resident Owner individually.

5.2 Insurance

The Band shall obtain and maintain, to the extent applicable: casualty insurance with extended coverage, vandalism and malicious mischief endorsements; liability insurance; and worker's compensation insurance pertinent to the ownership, use and maintenance of the Development. After exercising the option to purchase, each Resident Owner will be responsible for obtaining casualty and liability insurance coverage at the Resident Owner's expense with respect to the Resident Owner's Housing Unit and Band Land. At all times, it shall be the responsibility of each Resident Owner to obtain insurance coverage for the Resident Owner's personal property located upon Band Land, and for alternative living expenses in the event of fire or other casualty causing temporary loss of the Housing Unit.

ARTICLE 6 BUILDING RESTRICTIONS

6.1 Design Standards

The Band has or will establish design standards for Housing Units in the Development, as set forth in applicable Band law and these Restrictions. Design standards promote quality, value and stability for Resident Owners and further preservation of the unique environmental and cultural nature of the Development. The standards are intended to promote consistency of architecture and landscape design and to enhance and preserve real estate values.

6.2 Band Approval

No residences, buildings, outbuildings, garages, swimming pools, fences, walls, drives, walks or other improvements shall be commenced, erected or maintained, nor shall any addition to, or external change in the appearance of any structure be made (including color and design), nor shall any hedges, trees, plantings or landscaping modifications be made, until plans or specifications acceptable to the Band, showing the nature, kind, shape, height, materials, color scheme, location and approximate cost of such structure or improvement and the grading and landscaping plan of the area to be affected, shall have been submitted to and approved in writing by the Band. The Band shall have the right to refuse to approve any plans or specifications, including the grading and landscaping plans, which are not suitable or desirable in its opinion for aesthetic or other reasons. In passing upon such specifications, grading or landscaping plans, the Band shall have the right to take into consideration the suitability of the proposed structure, improvement or modification, the site upon which it is proposed to erect the same, the effect on the unique environmental nature of the Development, and the degree of harmony with the Development as a whole.

6.3 Review Committee

An architectural review committee (the "Review Committee") may be established by the Band in its sole discretion. The mission of the Review Committee will be to provide Resident input to the Band regarding whether plans submitted for review meet the criteria established in the design standards, but the Band shall retain the authority to make the final decision with respect to any submittal.

6.4 Approval of Contractor

All Housing Units and other structures shall be constructed only by residential home builders licensed by the State of Michigan or Indiana and approved in writing by the Band. If building construction is intended to commence within three (3) months after the date of plan approval, the name of the proposed residential builder must be submitted at the time the plans and specifications are submitted. If construction is to be delayed beyond three (3) months, the name of the proposed residential builder must be submitted for approval at least sixty (60) days prior to the commencement of construction. In its approval process, the Band may take into consideration the qualifications of the proposed builder along with its reputation in the

community before deciding whether or not that builder will be approved for participation in the Development. Construction of all other improvements, including swimming pools and landscaping involving any excavation, must also be done by contractors approved in writing by the Band.

6.5 Specific Requirements

All improvements at the Development shall be consistent with the following requirements:

(a) **Garages.** Each Housing Unit must be equipped with an attached garage of not less than two (2) stalls and not more than three (3) stalls, and outside parking for a minimum of three vehicles shall be provided on the driveway.

(b) **Letter and Delivery Boxes.** The Band will determine the location, design and permitted lettering of all mail and/or paper delivery boxes.

(c) **Landscaping; Yards.** Because the Development is being constructed with particular care with respect to the unique environmental features of the Band Land, any landscaping, plantings or lawn grasses and any related grading, berming or dirt work must be carried out so as to have no adverse effects on native species, natural drainage and contours or the other unique, environmental aspects of the Development. All Housing Unit yards shall at a minimum be seeded or sodded and maintained as lawn or planted and maintained with native vegetation as directed and approved by the Band.

(d) **Utilities.** All Housing Units must be serviced by a private well (or municipal water supply, if available), must be connected to the constructed wetlands wastewater treatment system provided by the Band (or connected to public sewer, if available) and must be connected to electrical service. Any Housing Unit serviced by natural gas shall be connected to a gas line provided by the area utility; no propane tank or other free-standing gas tanks shall be permitted. All electric, telephone and CATV distribution and transmission lines shall be underground.

6.6 Codes and Ordinances

In addition to the construction requirements contained in these Restrictions, all buildings and other structures must comply with applicable building, mechanical, electrical and plumbing codes of the applicable jurisdictions in effect at the time the building or structure is erected, including Band law and policies and procedures.

6.7 Time for Construction

At the time of submitting the name of a proposed residential builder for approval, a date for commencement of construction (which shall not be more than three (3) years after the date of approval) must be agreed upon and approved by the Band. Once construction has started, work on the building must be diligently pursued and completed within a maximum of twelve (12) months from the date of commencement; provided, that the Band may extend the time for either

commencement and/or completion when, in its opinion, conditions warrant an extension. No Housing Unit may be occupied prior to its completion as evidenced by Certificates of Occupancy from all relevant agencies and authorities.

6.8 Building Lines

For the purpose of this Section, the word “building” will mean the main residence, the garage and related outbuildings and their projections such as eaves, bay, bow or oriel windows, exterior chimneys, covered porches, porticos, loggias, and similar Development. "Building" will not include open pergolas, uncovered porches, open terraces, stoops, steps or balustrades, the sides of which do not extend more than three (3) feet above the level of the ground floor of the main building.

6.9 Permitted Variance

The Band, upon a showing of practical difficulty or other good cause, may grant variances from the requirements of this Article, but only to the extent, and in such a manner, as do not violate the spirit and intent of the requirements.

6.10 Setback Lines

No Housing Unit or other building will be erected nearer to a street, lot line, or Development boundary than permitted by the setback requirements of the zoning or special use permit applicable to the Development at the time of the contemplated construction of the building unless a variance or other permission for such setback is obtained from the Band and from any other applicable authority.

6.11 Soil from Excavation

All soil to be removed from the Development in the course of grading or excavating in connection with construction of a Housing Unit or otherwise will, at the option of the Band, become the property of the Band and shall be placed by the Resident Owner or the Resident Owner's contractor at the Resident Owner's expense in such location within or adjoining the Development as the Band may designate.

ARTICLE 7 COMPLIANCE AND ENFORCEMENT

7.1 Compliance

In addition to the Restrictions contained in this Article, the use of any Housing Unit must satisfy: (a) the requirements of any applicable zoning ordinances in effect at the time of the contemplated use, unless a variance for such use is obtained from the unit of government; and (b) all requirements imposed under Band law and policies and procedures.

7.2 Policies and Procedures

Additional policies and procedures concerning the use or occupancy of Housing Units or the Development may be promulgated by the Band or the Department of Housing. Copies of such rules and regulations will be furnished by the Department of Housing to each Resident upon request.

7.3 Enforcement

(a) These Restrictions are for the benefit of the Band and all Residents Owners, and accordingly if a Resident Owner or other person does not comply with these Restrictions, then:

(1) The Band may enforce these Restrictions against any Resident Owner or any other person; and

(2) An aggrieved Resident Owner may initiate an enforcement action in Tribal Court; subject to the following.

(A) the aggrieved Resident Owner must provide the Department of Housing and the subject Resident Owner or other person with written notice describing the noncompliance and requesting the Department of Housing to initiate enforcement;

(B) the aggrieved Resident Owner must attend a resolution meeting on the date and time scheduled by the Department of Housing; and

(C) the aggrieved Resident Owner shall be permitted to initiate an enforcement action only if the Department of Housing does not initiate such an action within thirty (30) calendar days after the date of the resolution meeting, or the Director indicates in writing that the Department of Housing does not intend to initiate such an action within such time period.

(b) The Band and any aggrieved Resident Owner shall be entitled to exercise all available remedies, including but not limited to, equitable relief to enforce compliance with these Restrictions, as well as money damages caused by any such violation of these Restrictions.

7.4 Self-Help

In addition to all other available remedies, the Band may enter any Housing Unit or any other area of the Development to remove and abate any condition constituting a violation of these Restrictions, or may discontinue the furnishing of services to a Resident Owner in default under any of the provisions of these Restrictions, upon seven (7) calendar days written notice, or such shorter notice as provided under Band law, to such Resident Owner of the Band's intent to do so. Such entry shall not constitute a trespass, and the Resident Owner of the Housing Unit shall reimburse the Band for all costs of removal or correction. A Resident Owner in default shall not be entitled to utilize any of the Common Areas of the Development so long as the

default continues; provided that this provision shall not operate to deprive any Resident Owner of ingress and egress to and from the Resident Owner's Housing Unit.

ARTICLE 8 GENERAL PROVISIONS

8.1 Severability

In the event that any provision of these Restrictions is held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair any remaining portion of such provision or any other provision of these Restrictions.

8.2 Notices

(a) Notices provided for herein shall be in writing, and shall be addressed as required under this Policy to the Department of Housing offices or to the Resident Owner at the address of the Housing Unit on file with the Department of Housing. The Band may designate a different address for notices to it by giving written notice of such change of address to the Participant.

(b) All notices required or permitted under these Restrictions shall be delivered either in person or by first class United States mail with postage prepaid. Any notice mailed in such manner shall be deemed delivered two (2) days after being sent.

8.3 Conflicts.

These Restrictions are intended to be interpreted in a manner consistent with applicable law, including Band law. If any provision of these Restrictions conflicts with applicable law, then such applicable law shall control.

8.4 Transfer of Responsibility

If the Band so desires, the Band may in the future assign or transfer its duties, obligations, powers and authority under these Restrictions to any Association of Residents of the Development (the "Association"). The powers, procedures and bylaws of the Association will be established by the mutual consent of the Band and a majority in interest of the Resident Owners at the time such powers are transferred to the Association, it being understood that at a minimum the Association will assume and accept responsibility for maintenance of the roads, waste treatment system, and other Common Areas of the Development. Any such assignment or transfer shall be made by an appropriate document in writing, signed by the Band and recorded in the public records. Upon such action, the Association will have the same duties, obligations, rights and powers as those granted to or reserved by the Band in these Restrictions.

8.5 Agreement to Cooperate

Although not anticipated, if for any reason a local government is required to exercise its public duty and authority to maintain the Development or its utilities, roads, etc., all Resident

Owners shall cooperate with the same and shall not object to the imposition of assessments or a special assessment district to pay for the cost of any such maintenance or other actions.