

# Judge Rules The Pointe Not Entitled to Snow Removal by GW

By **CHRISTINA M. HINKE**

*Specially Written for The Westfield Leader*

GARWOOD – New Jersey State Superior Court Judge Karen Cassidy, the assignment judge for Union County, has ruled that The Pointe, a 44-unit age-restricted condominium complex, is not entitled to snow and ice removal by the borough because she deemed that the “area in question was not a road but a driveway not subject to the Municipal Services Act.” In her decision, the judge said the area in question, Chestnut Court and Maple Court, “does not provide circulation or access to other roadways” but rather access to The Pointe residents’ parking spaces and garages.

“We are disappointed. We feel we are being treated like second-class citizens,” Roswitha Metz, a homeowner and also treasurer of the board at The Pointe, told *The Westfield Leader*.

On March 10, 2011, The Pointe billed the borough for \$54,524 in snow removal costs for the period of 2008-2010. Since the borough did not reimburse The Pointe, The Pointe responded with a lawsuit filed May 31, 2011. The borough decided to litigate, resulting in hourly charges billed by Borough Attorney Joseph Triarsi summing \$15,655, according to his law offices’ bill that was retrieved through an OPRA request.

“That is ridiculous. We are not talking about roads and roads and roads. We were only talking about the middle of the street [of Chestnut and Maple Courts]. It is a minimal amount [of plowing] and for Garwood to spend \$15,000 to litigate – that is absurd,” said Ms. Metz.

Since the lawsuit was filed, residents of The Pointe have spoken out at borough council meetings,

stating the residents at The Pointe pay about double the taxes, about \$12,000 to \$14,000, of the average taxpayer in Garwood. In its legal argument, The Pointe relied on the Municipal Services Act, which was written to protect condominium dwellers, such as The Pointe residents, from double taxation. The Pointe residents have argued that they pay taxes and condo fees and also pay for private snow removal.

“Even if it is a private community, according to the Municipal Services Act, they [the borough] are supposed to reimburse you for part of it [snow removal]. We pay half a million dollars a year to Garwood. That is what I am upset about more than anything,” Tom Pedas, a resident of The Pointe, told *The Leader*.

“The residents sadly do pay high taxes but that is a result of the market at the time of the purchase of the property. New construction taxes are based on the sale of property and some of those townhouses at the time were selling for close to \$600,000,” Borough Clerk Christina Ariemma told *The Leader* in an e-mail.

“However, I do feel for these people in this situation. Let’s not neglect the fact that the only service not being provided is snow removal on what the judge determined to be a ‘private driveway/road.’ We do provide them services and no one ever mentions that,” she said.

The municipality provides The Pointe garbage, recycling, leaves and grass pickup, Ms. Ariemma said, as well as street lighting in the areas that are not private. Ms. Metz said The Pointe pays for the electricity of the street lamps on Chestnut Street and Maple Street, which are municipal streets.

Gudrun Minton of Maple Court in The Pointe said at last week’s

council meeting, “Here in Garwood we are being shortchanged. 512 Maple Court, you would think that is a street, but the city decided it is a driveway and we are not getting the basic services you are talking about. This is not fair. We are paying the highest taxes in this community – we should be getting something.”

The plaintiff, as stated in the ruling, said that Chestnut Court and Maple Court “allow for two-way traffic and has a fire lane.”

Testimony at the hearing by plaintiff witnesses Mark Epstein, chairman of the Association at The Pointe, and Russell Fernandez of Bechtel Engineering, and defendant witnesses, Police Chief Bruce Underhill and Borough Engineer Victor Vinegra, were used in the basis of the court’s decision, as well as case law Bligen versus Jersey City

Housing Authority as introduced by the defendant and case law Stonehill Property Owners Association versus Township of Vernon as introduced by the plaintiff.

In the Bligen case, “...the court held that a driveway located within the housing authority did not fall within the Municipal Land Use Law’s definition of a ‘street’...”

The plaintiff had argued the Bligen case law was inapplicable and had cited case law Stonehill Property Owners Association versus Township of Vernon that found a paved area providing access to vehicular traffic from public streets to private homes is covered under the Municipal Services Act.

At the May 8 council meeting, William Connolly of Maple Court in The Pointe, said, “The only access for an ambulance is Maple Court. The only way a fire engine

can get to me is through Maple Court. The only way a police officer in a patrol car can respond to an emergency in my unit is through Maple Court. Nonetheless, Garwood deems Maple Court to be something less than a public street. I think that is unfair.”

“This case was closely watched by other municipalities here in New Jersey, as this situation has come up in other towns who are confronted with the question about access to condo neighborhoods who have signs warning non-residents to ‘keep out’...these residents cannot have it both ways. If my town is expected to plow your private road, our kids should be allowed to skateboard there and ride bikes and teachers should be able to park their cars there,” Mayor Patricia Quattrocchi told *The Leader* in an e-mail.

## Birchwood Site Hearing Set for Aug. 8-9 in Eliz.

By **FRED T. ROSSI**

*Specially Written for The Westfield Leader*

CRANFORD — A public hearing to review the site plan being submitted by Cranford Development Associates LLC for the Birchwood Avenue development will be held on Wednesday and Thursday, August 8 and 9, at the Union County Courthouse. And township officials, past and present, voiced their displeasure at Tuesday night’s township committee meeting, not only about the venue for the hearing but also the timing.

Cranford Development Associates is proposing to build 360 new housing units in what local officials say is a flood zone. Township Attorney Phil Morin said Tuesday night that Douglas Wolfson, a court-appointed special hearing officer, had scheduled the two-day public hearing

in Elizabeth even though both Cranford officials and the developer had sought to have the hearing held in Cranford. Mr. Morin added that the Cranford Board of Education had offered the Orange Avenue School as a venue.

Several residents also complained about the venue, saying it will be more difficult for interested residents to travel to Elizabeth and then find parking in advance of the hearing, which begins at 10 a.m. on both days. Mayor David Robinson agreed, saying “It’s a hassle.” The mayor also questioned the timing of the hearing, noting that many residents may be out of town on summer vacations during the early days of August. And he agreed with comments made by former mayor Mark Smith, who said the site plan approval hear-

ings were being held before Cranford Development will have gotten the necessary permits from the state Department of Environmental Protection.

“This seems to be putting the cart before the horse,” Mr. Smith said.

When the former mayor asked if there was anything that could be done to change the venue of the hearing, Mr. Morin said the committee had discussed options in closed session, but would not divulge the details of those talks.

After the two-day hearing, Mr. Wolfson will then make recommendations about the site plan to state Superior Court Judge Lisa Chrystal, who last year issued an order over the township’s objections allowing the development to move forward. The township is in the process of filing an

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