MHCA FAQ

In an effort to give our residents as much information as possible around the ballot, the Current Board and a member of the Prospective Board have worked together to prepare an information sheet outlining questions you may be asking yourself. We have worked hard to include all questions which have been asked (and to anticipate any questions you may have), but you may find you have more - and that's ok! We encourage you to send your questions to monmouthheightscommunityinfo@gmail.com OR to join us for the Annual Meeting called by the Board of Trustees on October 17, 2021 at the Pool Club parking lot at 2pm.

Why am I receiving this?
On September 5, 2021 a notice was sent to all homeowners by the Board of Trustees issuing a vote which would assess the future expectations and desires of the community as they pertain to the pool club. The ballot that was included in that mailing offered homeowners two choices:

1) To continue Pool Club operations at a proposed annual assessment of $736 starting in 2022 with a 2% annual increase thereafter
2) To Donate the Club to the Township of Manalapan with priority access and pricing for Monmouth Heights Homeowners

Homeowners were given the option to vote by paper a ballot provided by the Board of Trustees, by email, or by a Google Form.

The balance of this FAQ is designed to answer specific questions you may have as a result of this Ballot.

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What Association Documents govern this type of vote?

Any votes relating to our annual assessments OR our ownership of the pool property are governed by our Declarations which can be found at www.myMHCA.com.

Homeowners Annual Assessments (aka "dues") are proposed by our Board of Trustees. The procedure for making changes to those dues *and* information about how many homes need to agree to the increase are all governed by the Declarations (Article V, Sections 4-6). To summarize those provisions:

1. When preparing for an assessment, the Board of Trustees will prepare a Ballot and information supporting the reason and purpose of the Ballot
2. The Board of Trustees will allow some time to pass to allow Homeowners to review the information, ask questions, etc.
3. Next, a meeting is scheduled with a minimum of 10 days' notice to Homeowners
4. For the vote to pass, 60% of the voting members must participate in the vote, and ⅔ of all voting members must say "yes, I'm ok with the increase".
5. If less than 60% of the community participates in the vote by the meeting date, the vote must be reissued and the quorum for the next round of ballots is reduced from 60% to 30% and the entire process starts from scratch. This reduction in quorum repeats until a quorum is achieved, and ⅔ of the quorum is in agreement with the increase.

Ownership of the Pool Property (aka "Common Areas") is governed by different provisions and allows homeowners to vote to donate the pool to an appropriate governmental body, agency or authority, so long as the "Common Areas shall be devoted to recreation and/or to purposes as as nearly as is practicable the same" - this means that a donation will require the property to be used for recreation and/or as close to its current recreational purpose: a Pool. Based on this language, if the pool is given to another authority, it must remain as a pool. The Declarations governing this option is Article IV, Section 3(d). In order for this type of vote to go through:

1. In order for the community to decide it would like to dedicate or transfer all or any part of the Common Areas, 66% of the community must sign an instrument indicating their agreement with the proposal to transfer the Common Areas (in this case, the pool).
2. The Declarations do not offer a clearly defined timeline.
3. The Board conferred with Ansell Grimm who advised that no "end date" was necessary to collect Homeowner votes, provided that the timeline was fair and reasonable
4. With this in mind, the Board informally agreed to collect votes into November to align with the end Fiscal Year.

Can you put both of these options on one ballot? Is this a legal Ballot?

Yes. The language of Declarations and By-Laws allows for the creation of a ballot which offers two options at once *so long as* each option follows its own rules around notice, quorum, and voting. This is why you received a Ballot with two options *and* why you received a new Ballot on/around September 30th.

What is the Status of the Current Open Ballot?

The current Ballot uses two different timelines for completion.

Option #1:

- Runs a 30-day time period, at which time the Board votes to renew the voting cycle or allow it to discontinue.
- The first mailing was sent by the Current Board on September 5th. This would mean the first cycle concluded on October 5th and why new ballots were issued September 30th in anticipation of that expiration.
- When the Ballot was renewed on October 5th, the quorum dropped from 60% of all homes, to 30% of all homes to participate.
- The current Ballot on Option #1 expires November 5th.

Option #2:

- For this option, the quorum does not change. We will always require ⅔ of all homes to participate and say “yes” to this option for the vote to go through. (453 Households)
- The Board conferred with Ansell Grimm who advised that no “end date” was necessary to collect Homeowner votes, provided that the timeline was fair and reasonable
- With this in mind, the Board informally agreed to collect votes into November to align with the end Fiscal Year. The vote will remain open until that time.

Is electronic voting on this Ballot legal?

Yes. The Declarations and By-Laws allow for paper, email and electronic voting (including Google Forms).

How are the votes counted? Doesn't this have to be reviewed by a 3rd Party?

No. Our Declarations and our By-laws, as well as the laws of New Jersey, do not require votes of this nature to be open and reviewed by third Parties. Votes are tallied by members of the Board.

Can delinquent members vote?

Yes, any homeowner can participate in this vote no matter their delinquency status.

About Option #1 - Dues increase to $736 Effective 2022, with a 2% annual increase thereafter

How was this number arrived at?

The Board of Trustees published this figure. They did so with the belief that it would ensure the success of a New Board who will be facing:

- Expensive upcoming maintenance,
- Repair work,
- Increased costs in materials and labor,
- Rising concerns around on-site security, and
- The limited time/availability of volunteer Board members to handle on-site issues

It is the belief of the Board that the increased dues would ensure all maintenance and recommended repairs could be addressed, that adequate reserves could be accumulated so the pool can operate without loans/debt, and to contract adequate labor to alleviate board members of on-site responsibilities when the pool is open (such as cleaning bathrooms or running to the club every time there is a hiccup).

What would the New Board propose for a dues increase?

There is no way to predict exactly what dues may be put into effect by a New Board. It will take some time to conduct proper due diligence (such as obtaining competitive bids, vendor inspections, etc.) to understand the proposed needs and requirements of the pool to determine whether the current dues are sufficient to maintain current operations OR if dues increases, special assessments, or other sources of revenue must be considered.

In anticipation of this process, the Board has prepared a Proposed 2022 Budget for the communities' review. In those figures, we've included details around specific line items proposed for 2022, and recommendations for the New Board (and community) to consider long-range planning. While this is only guidance provided from our experience, we hope this is helpful in providing homeowners some insight to potential expenses the pool may face, and how it may impact your dues.

What immediate work needs to be done at the club?

There are a number of items which are highly recommended by the Board at this time. This includes:

- A complete Pool Resurface project (around $100,000),
- The purchase of a pool cover to protect the resurfacing investment (around $35,000),
- A skimmer repair (about $30,000).

This is a list of just the most expensive items which we intended to address leading into next season, but it is not comprehensive. Please see the Proposed 2022 Budget for others as well.

Incoming Board members are working to establish the urgency of these projects and determine whether these expensive repairs are essential for the 2022 season and, if so, how to fund them.

If these projects are not completed, can the pool still open?

Right now, there is no physical reason that the pool cannot open in the 2022 season. There are some issues at the pool which, if not addressed, may affect the pool's ability to open in 2022 season. As a few examples:

- The skimmer line leak is causing pavers to become uneven and it is unclear whether this presents a hazard and may cause the pool to fail inspection. To make this repair will require funding for the repair, removal and replacement of pavers, and an electrical inspection to recertify the Bonding Grid. Moreover the leak in the skimmer line is causing our water bills to be much higher than prior years, which stresses our budget further.
- There have also been reports that the pool surface is cutting people's feet and the surface needs to be addressed ASAP as a result.

Any incoming Board members may need to address these (and other issues) to ensure the dues will cover the expenses required to make the necessary repairs. The availability of cash will be critical to addressing these issues, to engage the vendors needed, and be season-ready.

Given that revenue is only collected once a year, does the Pool Club have enough Cash to operate next year? Or would a loan be required?

As of October 8, 2021, $65,002 remains in the MHCA Accounts. Additional expenses may be incurred between now and the end of the Fiscal Year - specifically, utilities and legal bills. Any repairs the new Board feels require immediate attention will have to be paid from the current available balance, or a loan/special assessment would need to be considered.

Even with available funds/financing there is no guarantee that the pool repairs can be completed in time for the 2022 season due to supply chain and labor shortages.

The Board has provided us with the financials for the current year through the start of October. What will the Club's finances look like by the end of the year?

The Fiscal Year for the pool ends November 30, 2021. Financials will be updated and released as soon as the year is closed out. While many of the year's expenses are now booked, legal fees have been higher than expected as we've navigated the controversy around the Ballot. This is the only material item which will affect the remaining balance as the year closes.

We've seen a number of aesthetic improvements at the pool. If there are significant, expensive repairs which are due, why did we proceed with other projects (such as shade structures) instead of deferring the cash to these other projects?

In late July 2020, the Board observed that water replacement was happening at a slightly higher rate than normal. At the start of the 2021 season, Candlewood intended to perform a Dye Test to determine if there were issues with the skimmer lines. The test was not conducted by Candlewood in a timely fashion. By mid-season 2021, the Board observed some changes in the pavers surrounding the skimmer lines and it became evident that repairs were needed. In order to address these repairs, the pool would have to be completely shut down to remove pavers and do the work.

Work on our shade structures was meant to begin in 2020, but due to COVID the construction was delayed and instead began in early April 2021. This work included a shade structure at the entryway, the shade structure immediately to your left on entry, and one by the Snack Bar area. In late May/Early June, as we began to prepare for the season, Candlewood drained the pool as part of their opening procedure. Over the course of the winter, the water turns a very dark black/green color since the pool is not covered, which means a visual inspection of the pool could not be conducted. Once drained, the Board became aware of the condition of the pool surface, the scope of work was immediately amended to address the pool surface (patching and epoxy painting the pool) and postpone the Snack Bar shade structure.

Is it possible for the pool to open in 2022 at the current dues rate? What is the risk of keeping the rates the same?

It is not possible to answer this question at this time. The incoming Board needs to review all pool maintenance history, make calls to vendors to understand the state of the pool and the money required to proceed with repairs. Then, they will need to determine the urgency of each of those proposed repairs. Once all the information has been collected, the Board would finalize the 2022 Budget.

Can MHCA issue a dues increase or special assessment for the 2022 season?

It's possible, but the rules around our Special Assessments and dues increases can be extremely lengthy. Our last dues increase (in 2013) took nearly 2 years to approve. While not impossible, it may be difficult to pass any dues/assessments for the 2022 season.

Is it possible that the pool will remain closed in 2022?

Yes, it is possible. In truth, this is a possibility every year. If dues are collected and the pool cannot legally open for any reason, the Association is not under obligation to return dues to Homeowners. Your dues would be held and utilized to remedy the issues that caused the pool to stay closed.

We were told in the Winter 2020 Newsletter that we're in a legal suit with Carmona over a contract violation. How will this suit affect our finances?

The cancellation of our agreement mid-season with Carmona was done with the Legal Counsel of Ansell Grimm who was familiar with the Vendor disputes we were having leading up to our contract termination. In 2021 the MHCA paid approximately $4,500 towards legal expenses relating to this suit and any additional legal fees are expected to be covered by MHCA's Insurance policy. If we win the suit, we will collect part or all of the monies we paid to Carmona. If we lose suit, no additional cash will be required from homeowners.

Is there a countersuit filed against the club with Carmona?

As is commonly the case with vendor disputes, yes there is a countersuit that has been filed against the MHCA. The outcome of this countersuit may be offset by any monies owed to us by Carmona as a result of a judgement in our favor OR by our Insurance company if needed.

Is there any outcome of this lawsuit which may cause our dues to go up? Or to have to pay out cash to resolve the suit?

It is not anticipated that any additional cash would be required. The suit is small (around $100,000) and will likely be negotiated by both sides.

In the event Option #2 passes, Ansell Grimm will be instructed to settle this lawsuit in anticipation of the transfer. Any monies collected from a settlement will be applied towards legal expenses for dissolving the MHCA.

Why is there a sudden concern about Security at the pool?

Over the last few years, the pool club started experiencing open violations of our pool rules and more combativeness with homeowners when we attempted to enforce those rules. While many situations are resolved quietly and without incident, some situations escalate. It is the recommendation of the Current Board that onsite security be considered to ensure the enjoyment of the pool by all.

Why are we suddenly hearing so much about our homeowner liability?

The rules around drinking and substance use are designed to keep the risk to the Association as low as possible. When the rules are not enforced, it opens the Association to the risk of lawsuit. For example, if someone were to become inebriated at the Pool, then get in their car, the association *does* carry risk of lawsuit should that driver, under the influence, injure or kill another person as a result. This is why rule enforcement is so important - it keeps our risk of lawsuit low.

How serious a risk is this?

While the Association has never been faced with this kind of lawsuit, the increased rule breakage at the pool, paired with an increased combativeness with homeowners may mean the risks are higher than they have historically been.

What could happen if we're sued as a result of improper behavior at the pool?

If we're found guilty, our Pool Insurance would first pay any settlement - but any settlement amount which exceeds the limit of the policy would be divided by the number of homes in our community and assigned to each house equally. This kind of allocation could range from just a few dollars, to a several thousand dollars per household (or more).

Are there any other ways to generate revenue?

The tax structure of our club is a 501c7 which limits the revenue opportunities to "Use of the Club". Under this tax structure, we are not able to develop creative community-based income opportunities such as fundraisers, vendor fairs, etc. To collect more revenue, more memberships or camps usage must be generated.

About Option #2: Donate the Club to the Township of Manalapan with Priority Access & Pricing for Monmouth Heights Homeowners

If we vote for Option #2, what happens?

By voting for Option #2, you are giving the Board of Trustees authority to offer the property to the Township of Manalapan. Should the Township agree to accept the donation, the Board of Trustees will immediately work on transferring the Deed of our property (Block 1702 Lot 50) to the Township of Manalapan. From the moment the deed is filed and the conveyance has been effectuated, the property is no longer the responsibility of Monmouth Heights Residents.

Can the Township refuse the donation?

Yes. The township is under no obligation to accept a donation. The Board anticipated this as a possibility and engaged the Township in discussion to assess whether they'd be interested in accepting the donation. They did this to ensure that the Community did not undergo a complex vote only to find out later that the town was not interested or able to accept the Donation.

As a result of those discussions, the Board has already determined that the Township is open to accepting the Donation, but has not formally agreed to accept the donation.

Does the Township require a public vote to accept the property?

No. The Township does not require a public vote to accept donation property.

If we decide to Donate and the Township accepts, how long does the process take to transfer the property to the Township?

We anticipate the procedure for transferring the Deed to the Township would likely take 30-60 days from the day the process begins.

Once the deed is transferred, do we owe Dues?

If the decision is made to transfer the ownership of the Pool Property to the Township, the organization known as "Monmouth Heights Community Association" still has the right to collect dues to fulfill its obligations under the Declarations for responsibilities that do not include the pool (such as property adjustments, fence installations, etc.). *HOWEVER,* in the absence of Pool-related expenses, it is likely that the Board in place at the time of transfer will significantly reduce the annual assessment while it works to dissolve the Community Association.

There are expenses related to the deed transfer and to dissolve the Association which means that the money currently held in cash in the Account is likely to be depleted and no monies will be distributed back to home owners as a result of transferring the Pool Property to the Township.

When would the Township open the pool?

The township would be responsible for opening, operating and setting the dues of the club. There is no way to predict when they might be able to proceed with this.

What does “priority access & preferred pricing” mean?

The Township understands the deep roots of our community to this pool. They have stated they would be willing to give homeowners of Monmouth Heights the ability to purchase a membership *before* membership is offered to Manalapan/Englishtown Residents.

The Township cannot begin to assess the potential dues until the property is donated to them. Those are simply the rules and they will not commit to pricing before the donation is complete, a review of the pool is conducted, a budget constructed and passed, etc. However, it is reasonable to expect that pricing and membership structure should fall roughly in line with neighboring communities.

To offer at least *some* sense of what community pools charge in nearby communities we’ve included some information below.

Hazlet Pool: (See next Page)

RATES - 2021 SEASON

Type	Resident	Non-resident
Individual (Age 18 or Older)	$295	$350
Parent / Guardian with 2 Children	$575	$625
Two Individuals, Same Address	$495	$550
Family	$695	$750
Senior Citizen	$175	$225
Individual (Age 3 to 17)	$275	$295
Swim Team Only	$285	$300
Swim Team Fee for a Member	$55	$55
Weeknights & Weekends		
- Individual	$195	$250
- 2 Individuals (Same Address)	$350	$450
Member Guest Passes		
- Child (2 to 17)	$10	$10
- Adult (Age 18 and Older)	$15	$15
- Children Under 2	Free	Free

Ocean Township Pool:

Membership Category	Twp of Ocean Resident Rate	Non-resident Rate
Individual	$160.00	$220.00
Two persons	$225.00	$305.00
Family of 3 or 4 people	$300.00	$400.00
Family of 5 or 6 people	$320.00	$425.00
*Each additional child added to family or senior membership. Natural or adopted children.	$ 55.00	$ 70.00
Senior Individual (Age 62+)	$ 80.00	$135.00
Senior Couple (at least one spouse age 62+)	$110.00	$185.00
Evening Membership	Half price	Half price
*Active Duty Military	No fee	Available to Ocean Twp. residents only
*Military Veteran	No fee	Available to Ocean Twp. residents only
*Resident non-member receive an ID card to use to show residency prior to purchase of daily pass	No fee	Available to Ocean Twp. residents only
** Not available for online registration. Must register in person at the Recreation Office*		

Why can't <u>WE</u> have this many pricing options and keep the pool for ourselves?

Because Monmouth Heights is deed restricted, we are constrained by our Declarations. These Declarations make all homeowners "equal" - whether you have a pool in your backyard, use the pool, or don't use the pool, all homeowners are equally responsible for the operating expenses of the property.

Townships and community pools are not deed restricted, so pricing can be constructed to allow for more flexibility and to address family size, how many times you intend to use the pool, or if you only intend it to use it for specific hours; they are also able to offer special prices for community members such as senior citizens and active or retired military.

A new Board may be interested in exploring options which may amend the Declarations to offer different levels of Membership based on Pool usage, however no serious discussions around this idea have been had. Ansell Grimm (the MHCA Attorney) has confirmed this may be a possibility and can be explored further, however amending the Declarations and Covenants will require legal costs to be incurred.

Would these benefits be transferable in the event I sell my home?

Yes. The terms of the donation would allow for the benefit of priority access and preferred pricing to be transferred to the new homeowner. The benefit stays attached to your home address and can be used as something "special" when listing your home.

What is the total capacity of the property?

The deck is set with a total of 500 chairs and the pool has a 330-bather limit (the total number of people allowed in the pool at one time). Bather loads are governed by the State of New Jersey Department of Health, Trenton, NJ - NEW JERSEY STATE SANITARY CODE CHAPTER IX PUBLIC RECREATIONAL BATHING N.J.A.C. 8:26 The maximum user load of a swimming pool shall conform to the requirements of the Uniform Construction Code, N.J.A.C. 5:23 (https://www.nj.gov/health/ceohs/documents/phss/recbathing.pdf) The maximum bather load is calculated using the amount of deck area in relation to square feet of water surface area and water depth.

The Township would be responsible for managing the total number people permitted onsite at one time to keep within the bather limits. They would be responsible for scheduling all hours of operation and managing the onsite limits when Manalapan Recreation Camps are on property, as well.

What would happen if occupancy has been met for the day - would I be turned away?

Yes. Just as we do now as MHCA, the Township would have to maintain bather capacity limits, so there is some risk of being turned away if the pool is "full".

Why aren't we trying to sell the property instead of donating it?

There are a number of reasons:

1. Our Declarations specifically state we cannot sell the property. It must be donated.
2. The Declarations would have to be amended (which would incur legal expenses), the land would then need to be rezoned (at our expense), and then all homeowner deeds would need to be updated (at our expense). Once all these costs are incurred, we'd have to list the property and find an interested buyer.
3. The EPA issues, which correlate to activities conducted on the Cumberland Farms site/gas station, could become the responsibility of the Homeowners in the event a Purchase made a contingency that the property would need to be remediated prior to the completion of sale. According to verbal estimates from vendors who specialize in environmental land requirements, the costs would be in the multi-millions. This makes the land too expensive to remediate on our own, and too expensive to make it attractive to potential buyers who would be required by law to remediate the problems in order to build on the property.

4. This process could take many years and the costs are so great, that there would likely be very little profit, if any at all, to Monmouth Heights residents when everything was done.

Can the Township rezone the property in the future?

While the Township would not have some of the same challenges and costs we'd face as deed-restricted homeowners, the EPA clean-up could potentially affect the property's value and attractiveness when considering it for other uses such as commercial or residential property. It's one thing to have polluted land being used as a parking lot, it's another when you have land being used for homes or apartments. The EPA issue would, without question, have to be fixed in order for any new construction to be built and estimates to remedy the issues are in the multi-millions of dollars range.

If we chose to donate the pool, what happens to the cash currently held by the Association?

There are expenses related to the deed transfer and to dissolve the Association which means that the money currently held in cash in the Account is likely to be depelated and no monies will be distributed back to home owners as a result of transferring the Pool Property to the Township.

Would donating the pool to the Township cause my property value to go down?

Home values are complex and take a lot of factors into account. There is a possibility that donating the pool and dissolving our Association may have a negative impact on your home value, but we cannot neither confirm *or* discredit the possibility. There is no one formula or agreed-upon rate as to "how much value" a Community Pool attaches to your home value or whether your current home value takes the Pool into account.

The Township has agreed to preferred access and preferential pricing to Monmouth Heights residents which means you can still enjoy the benefits of the pool, without the legal liabilities.

Would donating the pool to the Township cause my Property Taxes to go down?

Possibly. It would depend on whether the Tax Assessor included the Pool as part of their evaluation of your property value. If it was included and is given away, your taxes could also be adjusted. The onus would be on the Homeowner to speak directly with the Tax Assessor's office.

If we donated the pool to the Township, would homeowners be offered any kind of tax receipt for the donation which may be a tax benefit to us?

In the event Option #2 passes, the Board will discuss this possibility with the Township.

About the 2022 Proposed Budget

The Board has issued updated financial information current as of October 8, 2021.

Additionally, a proposed 2022 Budget has recommended.