Jayne Nelson (Rep. McGee)

From: ncstophoaabuse@aol.com
Sent: Monday, February 01,2010 5:11 PM
To: Rep. William C. McGee
Cc: Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray
Subject: Homeowner Association information

Representative McGee,

My husband and I are encouraged to know that you are interested in reigning in the power of homeowner's associations in North Carolina. We know from personal experience how difficult it is to fight against these private goverments and their lobbyist friends at the Community Association Institute (CAI).

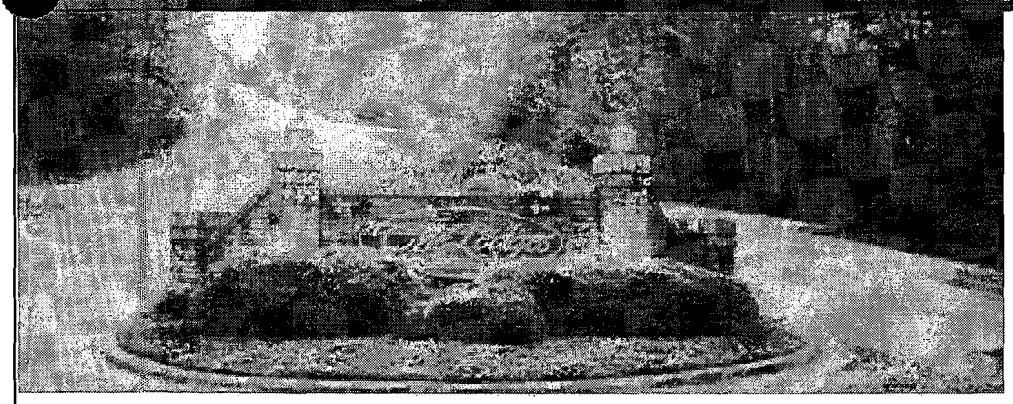
In 2001 we purchased our retirement dream home in Hendersonville, North Carolina. We intentionally chose a community without amenities or private streets. In 2003 our HOA amended the Restrictive Covenants granting the officers the authority to, among other things, convert existing private property to common area, acquire additional property, adopt Rules and Regulations, impose fines and mandatory assessments and impose liens on our homes. To defend ourselves we filed a lawsuit which was ultimately decided in our favor by the North Carolina Supreme Court. (Armstrong v. Ledges Homeowner's Association, filed Augusut 18, 2006, No. 640PA05) To preserve our retirement savings, my husband went to work at Walmart to earn the equivalent of our legal fees. The toll on our well-being during the three years of litigation is incalculable. We've chronicled our experience on a website and invite you to visit www.ledgesofhiddenhills.com.

Anything you can do to protect our property rights will be remembered and appreciated.

Robert and Vivian Armstrong
510 Red Fox Court
Hendersonville, N.C. 28792

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"Property does not have rights, only people do.."

Supreme Court Justice Potter Stewart

Broadly stated, this web site is intended to create historical context within which to explore the events that resulted in the filing of a lawsuit in which every property owner was obliged to be a party. It will document an assault on the most fundamental right from which all other liberties flow - the right to property - by a so-called "private government."

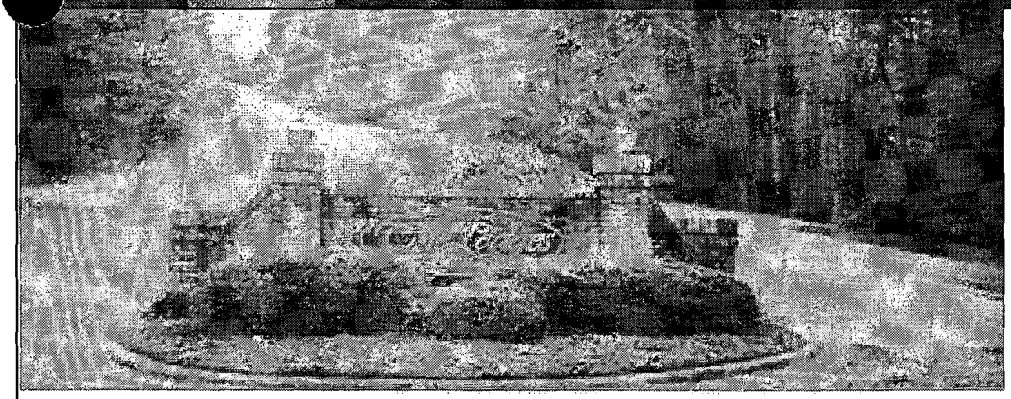
What occurred in the Ledges subdivision, while clearly distinguishable, is strikingly similar to the taking of private property by eminent domain. In this instance, the homeowners association amended the Covenants converting private property to common area and granted their agents total discretion to impose unlimited mandatory assessments with the authority to file a lien on our homes.

This analysis will present evidence, classify it, consider motives and test reality. The resulting process will be organized in such a way as to be either a "quick study" or digested as a documented expose by viewing the documents behind the highlighted links.

Questions about this site? Please send email to NCStopHOAAbuse@aol.com.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."

Dr. Martin ***Luther*** **King**

In 1988, Vogel Development Corporation filed a plat creating the Ledges of Hidden Hills, a 49-lot subdivision in Henderson County, North Carolina. A Declaration of Restrictive Covenants was filed concurrently as required by the County Development Ordinance. No amenities or common areas are shown on the plat or referred to in the Covenants. The plat provides a 50 foot right-of-way to the state Department of Transportation for street maintenance. Neither the plat nor the Covenants mention assessments or a requirement to be a member of a homeowners association

Originally formed as a social club, the Ledges Homeowners Association incorporated itself in 1994 as a non-profit in order to obtain a taxpayer identification number, a requirement for opening a checking account. Nine years later on July 16, 2003, the corporation amended its By-Laws transforming itself into a so-called "private government" by adopting the North Carolina Planned Community Act and granting its officers the authority to, among other things, convert existing private property to common area, acquire additional property, adopt and amend Rules and Regulations, impose fines of $150./day for rule infractions. establish mandatory assessments and place liens on our homes.

With stunning arrogance, the association Board of Directors ignored the written opinion of their own lawyers, Dungan and Mitchell using the By-Laws in a manner they had been advised was not legally appropriate.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association

The Ledges of Hidden Hills

"Ultimately, the only power to which man should aspire is that which he exercises over himself."

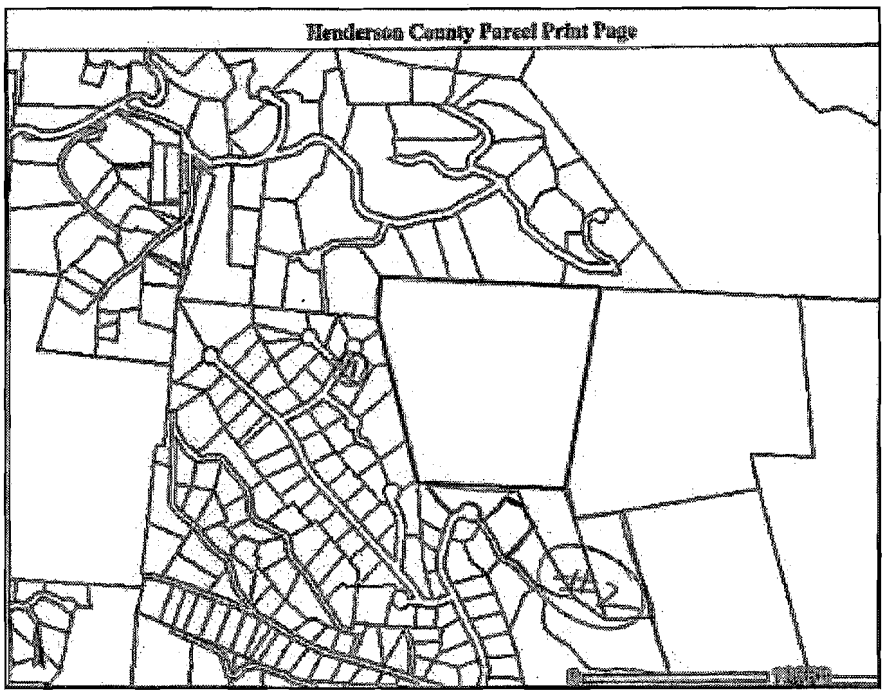
Elie Wiesel

Many of us wondered why such Draconian changes were being imposed on our neighborhood. Houses had been built on all but a few of the lots and property values were increasing. Without exception, owners took pride in and maintained their homes and abided by the Covenants. Why, then, did the newly-installed association president with cooperation from the original developer believe it necessary to subject the Ledges of Hidden Hills to the statutory parameters of the North Carolina Planned Community Act?

The reasons given speak volumes but aren't expositive. For example, behavior considered serious enough to warrant the imposition of a $150.00/day fine included walking two leashed dogs simultaneously, failing to answer the door or telephone when a Neighborhood Watch captain visits or calls and having an attitude of "hooray for me and—-you." (August 4, 2003 e-mail from homeowners association president)

It is disconcerting when a few so covet power they are willing to threaten their neighbor's homes. Yet this does not explain the stated intention to add property to the subdivision and the provision that Board of Directors may, at their discretion, convene meetings outside the state of North Carolina.

Sometimes A Picture Is Worth A Thousand Words!



For the purpose of exploring motives, relevant observations are useful:

1. The approximately 50-acre undeveloped parcel at the center (Garren property) was zoned R-20 shortly before the association Board retained Dungan and Mitchell to "make suggestions" concerning changes to the subdivision documents.

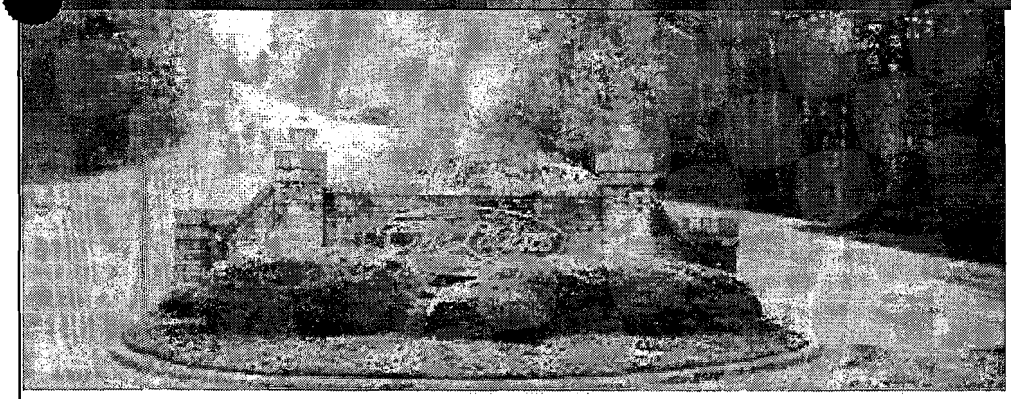
2. The Garren property is land-locked meaning it cannot be accessed by existing right-of-way even though it adjoins three subdivisions; the Ledges of Hidden Hills, Hidden Hills and Cove Creek Estates.

3. Attorney Robert Dungan represents the Cove Creek Estates homeowners association Board and advised them to adopt the Planned Community Act giving assurances that, in return for access through their subdivision, the Board could dictate development plans to the purchaser of the Garren property.

4. The North Carolina Planned Community Act provides for the formation of "master associations" created when the homeowners associations of adjoining planned communities merge.

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association



The Ledges of Hidden Hills

"The human heart is an idol factory."

Martin *Luther*

At the nexus of the most interested parties are the association president (#1 on the parcel map), the developer of the Ledges and Hidden Hills (#2 on the parcel map) and attorney Ted Mitchell, a relative of the association Board member who recommended retaining him.

#1. The association president includes in his credentials a three-year term on the Fallsmead Homes Corporation Board of Directors. Located in the Washington, D.C. suburb of Rockville, Maryland, this 291-home neighborhood surrounding a large private park has an active homeowners association which provides centralized planning in the form of "financial, organizational, social, and civic direction" to the community.

#2. Retired developer, Ed Vogel lives in a self-described multi-million dollar home on 50+ acres in the Hidden Hills subdivision. In the Hidden Hills Restrictive Covenants, Mr. Vogel expressly excluded his own property from the restrictions and has stated his intention to form a homeowners association for Hidden Hills.

In his July 19, 2002 letter to the Ledges Homeowners Association Board, attorney Ted Mitchell states, "Furthennore, if the Act is adopted, an association can seek payment of its reasonable attorneys' fees..... *in* all actions to enforce the provisions of the *articles* of incorporation, the declaration, bylaws and rules and regulations." With shameless self-interest, he then suggests that the Board of Directors submit the Ledges subdivision to the North Carolina Planned Community Act. However, in subsequent

legal briefs filed in response to the lawsuit, Mr. Mitchell refused to defend his implied assertion that the subdivision was a "planned community" as defined by the statute. In fact, during oral arguments Robert Dungan conceded that ***the Ledges is not a planned community.***

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association

The Ledges of Hidden Hills

"Those* who cannot learn from history are doomed to repeat *it."

George Santayana

Question: When is **a** lawsuit not **a** lawsuit?

Answer: When the facts are not in dispute.

The nature of our final resort to the courts in defense of our homes has been misrepresented as "suing our neighbors personally". The reality is much different. Three couples filed a Declaratory Judgment on October 17, 2003. By definition, a Declaratory Judgment is one which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. (Black's Law Dictionary)

As a matter of law it was necessary that all property owners of record be included as parties to the lawsuit simply because the rights of every owner will be impacted by the North Carolina Supreme Court's decision.

No law or legal precedent exists authorizing the action taken by the Ledges homeowners association. Lawyers on both sides as well as the Justices of the North Carolina Supreme Court agree that the issues are "a case of first impression."

Question: When is a democracy not a democracy?

Answer: According to Thomas Jefferson, 'A democracy is nothing more than mob rule, where fifty-one percent of the people may take away the rights of the other forty-nine."

It's been argued that, because a majority wanted to make wholesale changes to the governing documents changing the nature of our community, those in the minority were obligated to dutifully submit. This line of thinking reveals a lack of understanding concerning the basic elements necessary for the existence of a legitimate democracy; respect for the rule of law, constitutional protections for the minority, a free press and access to the means of dissent – none of which exist in either form or substance in

the Ledges "private government." Instead, those in power have demonstrated contempt for the law, used intimidation, ad hominem attacks and misinformation to suppress dissent and enforce a "Group Think" mentality.

Question: When is the Golden Rule not the Golden Rule?

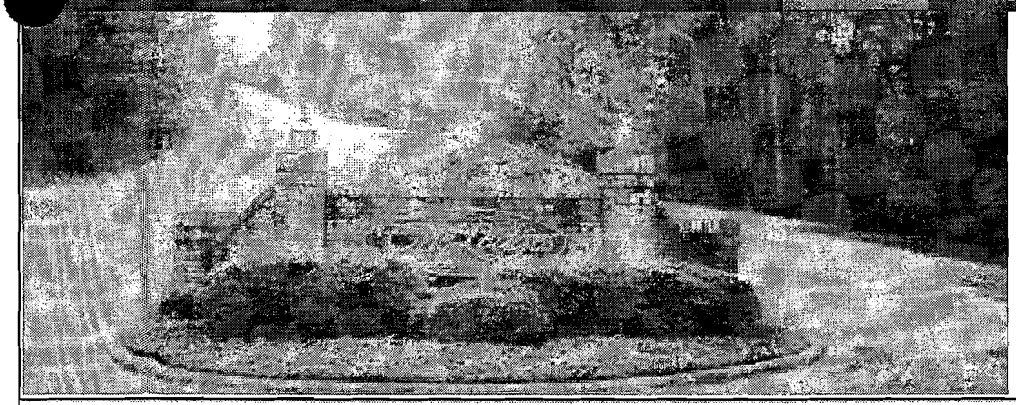
Answer: When the meaning is perverted to, "him with the gold, makes the rules."

Perfectly capturing the essence of the contemporary culture's "What's in it for me?" Gospel, George Bernard Shaw observed, "A government that robs Peter to pay Paul can always depend on the support of Paul."

Question: When, in certain circles, is it considered necessary to blame and belittle the messenger?

Answer: When the message threatens an agenda.

"Resort is had to ridicule only when reason is against us." Thomas Jefferson



The Ledges of Hidden Hills

North Carolina Supreme Court Decision

To Download a copy of this decision click here

All opinions are subject to modification and technical correction prior to official publication in the North Carolina Reports and North Carolina Court of Appeals Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the North Carolina Reports and North Carolina Court of Appeals Reports, the latest print version is to be considered authoritative.

IN THE SUPREME COURT OF NORTH CAROLINA
No. 640PA05
FILED: 18 AUGUST 2006

ROBERT LOUIS ARMSTRONG and wife, VIVIAN B. ARMSTRONG; L.A. MOORE and wife, E. ANN MOORE; and WILLIAM B. CLORE and wife, RAE H. CLORE,

Petitioners

v.

THE LEDGES HOMEOWNERS ASSOCIATION, INC. and THE OWNERS OF LOTS IN THE LEDGES OF HIDDEN HILLS SUBDIVISION: VIOLET M. MYERS, C. DONALD LARSSON/TRUSTEE, MARILYN BARNWELL, CHARLES S. and CATHRYN A. HARRELL, THOMAS REIN LUGUS, JACK H. and ROBERTA M. CRABTREE, DOROTHY LOIS SHIMON, TRUST, WILLIAM V. and JOANN K. PHILLIPS, RICHARD and ELIZABETH C. COOMBES, GUIDO D. and EILEEN J. MIGIANO, EUGENE M. and LUCRETIA B. WAGNER, JACQUELINE W. EADIE, ELIZABETH H. SCHAD, TRUST, SUNNIE TAYLOR, SUE EDELL and T. HILLIARD STATON, ALBERT W. and URSULA K. JENRETTE, THERESA M. WUTTKE, JOHN FITZGERALD and ROBIN RENEE HOLSHUE, ADRIAN R. and MARILYN B. ADES, LINDA N. ROSS, J.D. and EDWINA S. MILLER, RUSSELL L. and LAUNA L. SHOEMAKER, PAUL E. and DEBORAH H. PARKER, WILLIAM SCOTT and ELIZABETH A. CHOVAN, DAVID N. and MELANIE D. HUTTO, TEDD M. and JEANNIE PEARCE, JIMMIE J. and BETTY J. REMLEY, TERRY N. and MICHELLE L. MCADOO, JOSEPH A. and MARGARET K. DINKINS, CARLTON W. and FRANCES A. DENCE, CLIFTON F. and DONNA GRUBBS SAPP, MARVIN G. and E. JOYCE KATZ, JOY N. PARISIEN, LEWIS EDWIN and HELEN BOOKMAN, and DENNIS R. and DONDRA C. SETSER,

Respondents

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 620 S.E.2d 294 (2005), affirming a judgment granting summary judgment for respondents and denying petitioners' requests for injunctive relief signed on 20 October 2004 by Judge J. Marlene Hyatt in Superior Court, Henderson County. Heard in the

Supreme Court 20 April 2006.

Kennedy *Covington Lobdell & Hickman,* by Roy H. Michaux, Jr., for petitioner-appellants Robert and Vivian Armstrong.

Gray, *Layton,* Kersh, Solomon, Sigmon, *Furr &* Smith, P.A., by Ted F. Mitchell, for respondent-appellee The Ledges Homeowners Association, Inc., and *Dungan &* Associates, P.A., by Robert E. *Dungan,* for respondent- appellees Owners of Lots in The Ledges of Hidden Hills.

Jordan Price Wall Gray Jones & Carlton, PLLC, by Henry W. Jones, Jr., Hope Derby Carmichael, and Brian S. Edlin, and Wyrick *Robbins* Yates & Ponton, *LLP,* by Roger W. Knight, Counsel for Research Triangle Chapter of the Community Associations Institute, Inc., amicus curiae.

WAINWRIGHT, Justice.

This is a declaratory judgment action brought by subdivision property owners against their homeowners' association. The dispositive question before the Court is to what extent the homeowners' association may amend a declaration of restrictive covenants. The parties agree that a declaration may be amended and that the subdivision in question is not subject to North Carolina's Planned Community Act, which is codified in Chapter 47F of the North Carolina General Statutes. There are no disputed questions of fact.

We hold that amendments to a declaration of restrictive covenants must be reasonable. Reasonableness may be ascertained from the Language of the declaration, deeds, and plats, together with other objective circumstances surrounding the parties' bargain, including the nature and character of the community. Because we determine that the amendment to the declaration sub judice, which authorizes broad assessments "for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board," is unreasonable, we conclude that the amendment is invalid and unenforceable. Petitioners own lots in The Ledges of Hidden Hills subdivision (the Ledges) in Henderson County. The Ledges was developed in 1988 by Vogel Development Corporation (Vogel) pursuant to a plat recorded in the Henderson County Public Registry. Forty-nine Lots are set out along two main roads that form a Y shape. There are four *cul* de sacs. The plat designates the roads as "public roads," which are maintained by the State, and shows no common areas or amenities.

Before selling any Lots, Vogel recorded a Declaration of Limitations, Restrictions and Uses (Declaration). The Declaration contained thirty-six provisions which restricted the Lots to single family residential use; established setbacks, side building lines, minimum square footage, and architectural controls; and otherwise ensured a sanitary and aesthetically pleasing neighborhood. The Declaration emphasized that roads in the Ledges are "dedicated to public use . . . forever" and that Vogel may "dedicate the roads. . . to the North Carolina Department of Transportation." Finally, the Declaration provided for the establishment of a homeowners' association:

The Developer [Vogel] intends to establish a non-profit corporation known as THE LEDGES OF THE HIDDEN HILLS HOMEOWNERS [sic] ASSOCIATION, and said Homeowner's [sic] Association, upon the recording of its Articles of Incorporation in the office of the Register of Deeds for Henderson County, North Carolina, shall have the right, together with the Lot owners of lots within this Subdivision, either acting individually or as a group, to administer and enforce the provisions of-this Declaration of Restrictive Covenants as thesame now exists or may hereafter from time to time be amended.

(Emphasis added.) The Declaration did not contain any provision for the collection of dues or assessments, and it appears that formation of a homeowners' association was primarily intended to relieve Vogel from the ongoing responsibility to enforce the architectural control covenants.

Vogel began conveying lots in the Ledges after recording the Declaration and plat. Later, Vogel decided to construct a lighted sign on private property in the Sunlight Ridge Drive right of way. Sunlight Ridge Drive is the entry road to the Ledges. Because lighting the sign required ongoing payment of a utility bill, Vogel included the following additional language in subsequent conveyances:

The grantor herein contemplates the establishment'of a non-profit corporation to be known as The Ledges of Hidden Hills Homeowners Association, and by acceptance of this deed the grantees agree to become and shall automatically so become members of said Homeowners Association when so formed by said grantor; and said grantees agree to abide by the corporate charter, bylaws, and rules and regulations of said Homeowners Association and agree to pay prorata [sic] charges and assessments which may be levied by said Homeowners Association when so formed. Until the above contemplated Homeowners Association is formed or in the event the same is not formed, the grantor reserves the right to assess the above- described lot and the owners thereof an equal pro-rata [sic] share of the common expense for electrical street lights and electrical subdivision entrance sign lights and any other common utility expense for various lots within the Subdivision.

(Emphasis added.) This language appears in each petitioner's deed, together with a reference to the previously recorded Declaration. Because specific language in a deed governs related general language, we determine that assessments for "common expense" for "electrical" service are the kind of assessments that the deed provides "may be levied by the Homeowners Association." See Smith v. Mitchell, 301 N.C. 58, 67, 269 S.E.2d 608, 614 (1980) (applying the maxim "the specific controls the general" to construction of a restrictive deed covenant). Our conclusion is supported by the deposition of Edward T. Vogel, President of Vogel Development Corporation, taken during this action. In his deposition, Mr. Vogel agreed that the assessment provision was added so that Vogel would not be responsible for paying the electric bill indefinitely.

Articles of Incorporation for the Ledges Homeowners' Association (Association) were not filed with the Secretary of State until 20 September 1994. The Articles provide that the Association is incorporated for the purposes of "upkeep, maintenance and beautification of the common amenities of [the Ledges]," "enforcement of the restrictive covenants of [the Ledges]," and "engag[ing] in any other lawful activities allowed for non-profit corporations under the Laws of the State of North Carolina."

Sometime before the Association's first annual meeting in 1995, the Association's three-member Board of Directors adopted by-laws. These by-laws set forth the Association's powers and duties, which included the operation, improvement, and maintenance of common areas; determination of funds needed for operation, administration, maintenance, and management of the Ledges; collection of assessments and common expenses; and employment and dismissal of personnel.
Such bylaws are "administrative provisions" adopted for the "internal governance" of the Association. Black's Law Dictionary 193 (7th ed. 1999) [hereinafter Black's]. "The bylaws [of a nonprofit corporation] may contain any provision for "regulating and managing the affairs of the corporation," but no bylaw may be "inconsistent with-law." N.C.G.S. § 55A-2-06 (2005). As explained below, in a community that is not subject to the North Carolina Planned Community Act, the powers of a homeowners' association are contractual and Limited to those powers granted to it by the declaration. Therefore, to be consistent with law, an association's by-laws must necessarily also be consistent with the declaration.

At the first annual meeting, the by-laws were amended to provide that the Association would have a lien on the lot of any owner who failed to pay an assessment. Thereafter, the Association began assessing lot owners for the bills incurred for lighting the Ledges entrance sign. Additionally, the Association assessed owners for mowing the roadside on individual private lots along Sunlight Ridge Drive, for snow removal from subdivision roads, and for operating and legal expenses. By affidavit submitted in support of petitioners' motion for summary judgment, petitioner Vivian Armstrong stated that the annual electrical bill for the sign is less than sixty cents per Lot per month or approximately seven dollars and twenty cents per year; however, the Association has billed lot owners total assessments of approximately eighty to one hundred dollars per year.

On 18 June 2003, Armstrong sent an e-mail to the President of the Association, Marvin Katz, challenging the validity of these assessments:

Since purchasing property here, we've received two invoices from the Ledges homeowner's [sic] association. In good faith, we relied upon the representation that the money was legitimately owed. We've recently learned that the nature of the homeowner's [sic] association has been misrepresented. Therefore, we ask for a full and immediate refund of $160.

Armstrong requested that the matter be placed on the agenda of the officers' next meeting. At a meeting held on 16 July 2003, the board amended the Association by-laws again, greatly expanding the entity's enumerated powers and duties. In particular, the amended by-laws provided that the Association shall have the power to "[i]mpose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars ($150.00) per violation (on a daily basis for continuing violations) of the Restrictive Covenants, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the North Carolina Planned Community Act." Several additional amended provisions also referenced the Planned Community Act. On 1 August 2003, petitioners Robert and Vivian Armstrong sent a letter to the Association requesting termination of their membership. On 8 August 2003, petitioners L.A. and E. Ann Moore requested termination of their Association membership as well. In their Letter, the Moores stated:

We chose this particular property last year for several reasons. After a thorough search of Western North Carolina and the Hendersonville/Brevard area, in particular, we decided expressly against living in a gated community with "all the amenities." Golf courses, swimming pools and clubhouses are not our choice for daily living. Walking trails, while enjoyable and convenient, are but another source of assessment we don't need.

The Ledges appeared to be the answer to our desires, and until recent events we've been sure of it. The current Covenants are more restrictive than any other area in which we've resided, but not unreasonably so. While receptive to OPEN discussion of a small change or two, we are adamant in our oppositionto the-expressed plan of The Board to turn us into a Planned Community, (Emphasis added.)

On 17 October 2003, petitioners filed a declaratory judgment action in Superior Court, Henderson County, seeking, among other relief, a declaration that the Ledges is not a "planned community" as defined by N.C.G.S. § 47F-1-103 (23) and that the amended by-laws are unenforceable. Thereafter, on 20 November 2003, the Ledges' Board of Directors amended the Association by-laws to omit any reference to North Carolina's Planned Community Act.

On 24 November 2003, a majority of the Association members adopted "Amended and Restated Restrictive Covenants of the Ledges of the Hidden Hills" (Amended Declaration). The Amended Declaration contains substantially different covenants from the originally recorded Declaration, including a clause requiring Association membership, a clause restricting rentals to terms of six months or greater, and clauses conferring powers and duties on the Association which correspond to the powers and duties previously adopted in the Association's amended by-laws.

Additionally, the Amended Declaration imposes new affirmative obligations on lot owners. It contains provisions authorizing the assessment of fees and the entry of a Lien against any property whose owner has failed to pay assessed fees for a period of ninety days. According to the Amended Declaration, such fees are to be "assessed for common expenses" and "shall be used for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board." Special assessments may be made if the annual fee is inadequate in any year; however, surplus funds are to be retained by the Association. Unpaid assessments bear twelve percent interest per annum.

Petitioners amended their complaint in early December 2003 to reflect the November changes to the Association by-lawsand original Declaration. Petitioners asserted five claims for relief, seeking: (1) a declaration that the Ledges is not subject to the Planned Community Act, (2) a declaration that the amended Association by-laws are invalid and unenforceable, (3) a declaration that Lot owners are not required to join the Association or otherwise be bound by actions of the Association, (4) a declaration that the Amended Declaration is invalid and unenforceable, and (5) a permanent injunction preventing the

Association from enforcing the amended by-laws or recording the Amended Declaration. In their answer to the amended complaint, respondents admitted that neither the amended by-laws nor the Amended Declaration subjected the Ledges to North Carolina's Planned Community Act. (See footnote 1)

Both petitioners and respondents moved for summary judgment, submitting multiple affidavits and exhibits in support of their positions. Following a hearing, the trial court granted respondents' motion for summary judgment, denied petitioners' motion for summary judgment, and dismissed petitioners' claims with prejudice. In so doing, the court found that the Amended Declaration was valid and enforceable. Petitioners then appealed to the North Carolina Court of Appeals. The Court of Appeals determined that the plain Language of the Declaration is sufficient to support any amendment thereto made by a majority vote of Association members, noting "the declaration provides, 'that any portion of the restrictive covenants may be released, changed, modified or amended by majority vote of the then property owners within this Subdivision.'" Armstrong v. Ledges Homeowners Assh, ___ N.C. App. ___, ___, 620 S.E.2d 294, 297 (2005). The court further concluded that

[p]roviding for mandatory membership in the [A]ssociation and permitting the [A]ssociation to assess and collect fees from the [A]ssociation's members is not clearly outside the intention of the original restrictive covenants and is generally consistent with the rights and obligations of lot owners of subdivisions subject to restrictive covenants and homeowners' associations.

Id. a t , 620 S.E.2d at 298. Accordingly, the Court of Appeals affirmed the trial court's order of summary judgment in favor of respondents.

Robert and Vivian Armstrong then filed a petition for discretionary review in this Court, arguing that the Court of Appeals erred by determining that the scope of the disputed amendment does not exceed the authority granted to the Association in the covenants contained in the original Declaration. Petitioners did not seek discretionary review of remaining issues resolved by the Court of Appeals. This Court granted the Armstrongs' petition on 26 January 2006. The word covenant means a binding agreement or compact benefiting both covenanting parties. See generally Black's 369; The American Heritage Dictionary of the English Language 432 (3rd ed. 1992) [hereinafter Heritage]; Random House Webster's College Dictionary 314 (1991) [hereinafter *Webster's*]. A covenant represents a meeting of the minds and results in a relationship that is not subject to overreaching by one party or sweeping subsequent change.

Covenants accompanying the purchase of real property are contracts which create private incorporeal rights, meaning non-possessory rights held by the seller, a third-party, or a group of people, to use or limit the use of the purchased property. See Wise v. *Harrington* Grove Cmty. *Ass'n*, 357 N.C. 396,401, 584 S.E.2d 731, 735-36 (2003) (stating that courts will enforce a real covenant in the same manner as any other contract); Karner v. Roy White Flowers, Inc., 351 N.C. 433,436, 527 S.E.2d 40, 42 (2000) (stating that covenants create incorporeal rights); Robert G. Natelson, Law of Property Owners Associations §§ 2.1, 2.3.3.1 (1989) (discussing the characteristics of servitudes and contractual servitudes) [hereinafter Law of Associations]. Real covenants "run with the land," creating a servitude on the land subject to the covenant. *Runyon* v. Paley, 331 N.C. 293, 299-300, 416 S.E.2d 177, 182-83 (1992) (explaining that a restrictive covenant is a real covenant if "(1) the subject of the covenant touches and concerns the Land, (2) there is privity of estate between the party enforcing the covenant and the party against whom the covenant is beingenforced, and (3) the original covenanting parties intended the benefits and burdens of the covenant to run with the land") (emphasis added). An enforceable real covenant is made in writing, properly recorded, and not violative of public policy. J. T. Hobby & Son, Inc. v. Family Homes of Wake Cty, Inc., 302 N.C. 64, 71, 274 S.E.2d 174, 179 (1981) (Real covenants may not offend "articulated considerations of public policy or concepts of substantive law."); Cummings v. Dosam, Inc., 273 N.C. 28, 32, 159 S.E.2d 513, 517 (1968) (stating that real covenants must be in writing); Hege v. Sellers, 241 N.C. 240, 248, 84 S.E.2d 892, 898 (1954) (stating that real covenants must be recorded).

Real covenants are either restrictive or affirmative. Classic restrictive covenants include covenants limiting land use to single family residential purposes and establishing setback and side building Line requirements. Affirmative covenants impose affirmative duties on Landowners, such as an obligation to pay annual or special assessments for the upkeep of common areas and amenities in a common interest community.

Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the original intent of the parties; however, covenants are strictly construed in favor of the free use of land whenever strict construction does not contradict the plain and obvious purpose of the contracting parties. Long *v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967) ("[T]he fundamental rule is that the intention of the parties governs" construction of real covenants.). But see Wise, 357 N.C. at 404, 584 S.E.2d at 737 (When a covenant infringes on common Law property rights, "'[a]ny doubt or ambiguity will be resolved against the validity of the restriction.'" (quoting Cumnings, 273 N.C. at 32, 159 S.E.2d at 517)); J. T. Hobby & Son, Inc., 302 N.C. at 71, 274 S.E.2d at 179 ("The rule of strict construction is grounded in sound considerations of public policy: It is in the best interests of society that the free and unrestricted use and enjoyment of land be encouraged to its fullest extent."). Moreover, the North Carolina Court of Appeals has held that affirmative covenants are unenforceable "unless the obligation [is] imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application." Beech Mountain Prop. Owner's Ass'n v. Seifart, 48 N.C. App. 286, 288, 295-96, 269 S.E.2d 178, 179-80, 183 (1980) (concluding that covenants requiring an assessment for "'road maintenance and maintenance of the trails and recreational areas,'" "'road maintenance, recreational fees, and other charges assessed by the Association,'" and "'all dues, fees, charges, and assessments made by that organization, but not limited to charges for road maintenance, fire protection, and security services'" were not sufficiently definite and certain to be enforceable); see also Allen v. Sea Gate Ass'n, 119 N.C. App. 761,764-65, 460 S.E.2d 197, 199-200 (1995) (holding that a covenant requiring an assessment "'for the maintenance, upkeep and operations of the various areas and facilities by Sea Gate Association, Inc.'" was void because there was no standard by which a court could assess how the Association chooses the properties to maintain); Snug Harbor Prop. Owners Ass'n v. *Curran*, 55 N.C. App. 199, 203-04, 284 S.E.2d 752, 755 (1981) (holding that covenants requiring owners to pay an annual fee for the "'[m]aintenance and improvement of Snug Harbor and its appearance, sanitation, easements, recreation areas and parks'" and "'[f]or the maintenance of the recreation area and park'" were not enforceable because there was "no standard by which themaintenance [was] to be judged"), disc. rev. denied, 305 N.C. 302, 291 S.E.2d 151 (1982). But see Figure Eight Beach Homeowners' Ass'n v. Parker, 62 N.C. App. 367, 371, 377, 303 S.E.2d 336, 339, 342 (concluding that a covenant authorizing an assessment for "'[m]aintaining, operating and improving the bridges; protection of the property from erosion; collecting and disposing of garbage, ashes, rubbish and the like; maintenance and improvement of the streets, roads, drives, rights of way, community land and facilities, tennis courts, marsh and waterways; employing watchmen; enforcing these restrictions; and, in addition, doing any other things necessary or desirable in the opinion of the Company to keep the property in neat and good order and to provide for the health, welfare and safety of owners and residents of Figure Eight Island'" was enforceable because the purpose of the assessment was described with sufficient particularity), disc. rev. denied, 309 N.C. 320, 307 S.E.2d 170 (1983). The existence of definite and certain assessment provisions in a declaration does not imply that subsequent additional assessments were contemplated by the parties, and courts are "'not inclined'" to read covenants into deeds when the parties have left them out. See Wise, 357 N.C. at 407, 584S.E.2d at 739-40 (quoting Hege, 241 N.C. at 249, 84 S.E.2d at 899).

Developers of subdivisions and other common interest communities establish and maintain the character of a community, in part, by recording a declaration listing multiple covenants to which all community residents agree to abide. See generally Law of Associations, § 2.4 (discussing servitudes and the subdivision declaration). Lot owners take their property subject to the recorded declaration, as well as any additional covenants contained in their deeds. Because covenants impose continuing obligations on the Lot owners, the recorded declaration usually provides for the creation of a homeowners' association to enforce the declaration of covenants and manage Land for the common benefit of all lot owners, thereby preserving the character of the community and neighborhood property values. Id. § 3.1 (discussing distinguishing characteristics of the property owners' association). In a community that is not subject to the North Carolina Planned Community Act, the powers of a homeowners' association are contractual and are limited to those powers granted to it by the declaration. Wise, 357 N.C. at 401, 584 S.E.2d at 736 ("[U]nder the common law, developers and Lot purchasers were free to create almost any permutation of homeowners association the parties desired."). Cf. N.C.G.S. § 47F-3-102 (2005) (enumerating the powers of a planned community's homeowners association); id. § 47F-1-102, N.C. cmt. (2005) (naming powers that may apply retroactively to planned communities created before the effective date of the Act). Although individual Lot owners may voluntarily undertake additional responsibilities that are not set forth in the declaration, or undertake additional responsibilities by mistake, lot

owners are not contractually bound to perform or continue to perform such tasks.
Declarations of covenants that are intended to govern communities over long periods of time are necessarily unable to resolve every question or community concern that may arise during the term of years. See 2 James A. Webster, Jr., Webster's Real *Estate* Law in North Carolina § 18-10, at 858 (Patrick K. Hetrick & James B. McLaughlin, Jr., eds., 5th ed. 1999) (noting that a homeowners' association often takes over service and maintenance responsibilities from the developer in a planned transfer to ensure continuation of these operations in the future). This is especially true for luxury communities in which residents enjoy multiple common areas, private roads, gates, and other amenities, many of which are staffed and maintained by third parties. See Patrick K. Hetrick, Wise v. Harrington Grove Community Association, Inc.: A Pickwickian Critique: *The* North Carolina Planned Community Act Revisited, 27 Campbell L. Rev. 139, 171-73 (2005) (comparing the administrative and legal needs of a modest subdivided hypothetical neighborhood, "Homeplace Acres," with those of a hypothetical "upscale residential land development," "Sweet Auburn Acres"). For this reason, most declarations contain specific provisions authorizing the homeowners' association to amend the covenants contained therein. The term amend means to improve, make right, remedy, correct an error, or repair. See generally Black's at 80; Heritage at 44; Webster's at 59. Amendment provisions are enforceable; however, such provisions give rise to a serious question about the permissible scope of amendment, which results from a conflict between the legitimate desire of a homeowners' association to respond to new and unanticipated circumstances and the need to protect minority or dissenting homeowners by preserving the original nature of their bargain. See Wise, 357 N.C. at 401, 584 S.E.2d at 736 ("A court will generally enforce [real] covenants '"to the same extent that it would lend judicial sanction to any other valid contractual relationship."'" (quoting Karner, 351 N.C. at 436, 527 S.E.2d at 42 (citation omitted)); see also 2 Restatement (Third) of Property: Servitudes § 6 Introductory Mote at 71 (2000) ("The law should facilitate the operation of common interest communities at the same time as it protects their long-term attractiveness by protecting the legitimate expectations of their members.") (emphasis added). In the same way that the powers of a homeowners' association are limited to those powers granted to it by the original declaration, an amendment should not exceed the purpose of the original declaration.

In the case sub judice, petitioners argue that the affirmative covenants contained in their deeds authorize only nominal assessments for the maintenance of a lighted sign at the subdivision entrance; thus, the Association's subsequent amendment of the Declaration to authorize broad general assessments to "promot[e] the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board" is invalid and unenforceable. Respondents contend that the Declaration of Restrictive Covenants expressly permits the homeowners' association to amend the covenants; thus, any amendment that is adopted in accordance with association by- laws and is neither illegal nor against public policy is valid and enforceable, regardless of its breadth or subject matter. We hold that a provision authorizing a homeowners' association to amend a declaration of covenants does not permit amendments of unlimited scope; rather, every amendment must be reasonable in light of the contracting parties' original intent. (See footnote 2) A disputing party will necessarily argue that an amendment is reasonable if he believes that it benefits him and unreasonable if he believes that it harms him. However, the court may ascertain reasonableness from the language of the original declaration of covenants, deeds, and plats, together with other objective circumstances surrounding the parties' bargain, including the nature and character of the community. For example, it may be relevant that a particular geographic area is known for its resort, retirement, or seasonal "snowbird" population. Thus, it may not be reasonable to retroactively prohibit rentals in a mountain community during ski season or in a beach community during the summer. Similarly, it may not be reasonable to continually raise assessments in a retirement community where residents live primarily on a fixed income. Finally, a homeowners' association cannot unreasonably restrict property rental by implementing a garnishment or "taking" of rents (which is essentially an assessment); although it may be reasonable to restrict the frequency of rentals to prevent rented property from becoming like a motel.

Correspondingly, restrictions are generally enforceable when clearly set forth in the original declaration. Thus, rentals may be prohibited by the original declaration. In this way, the declaration may prevent a simple majority of association members from turning established non-rental property into a rental complex, and vice-versa. In all such cases, a court reviewing the disputed declaration amendment must consider both the legitimate needs of the homeowners' association and the legitimate expectations of lot owners. A court may determine that an amendment is unreasonable, and, therefore, invalid and

unenforceable against existing owners who purchased their property before the amendment was passed; however, the same court may also find that the amendment is binding as to subsequent purchasers who buy their property with notice of a recorded amended declaration.

Here, petitioners purchased lots in a small residential neighborhood with public roads, no common areas, and no amenities. The neighborhood consists simply of forty-nine private lots set out along two main roads and four *cul de sacs.* Given the nature of this community, it makes sense that the Declaration itself did not contain any affirmative covenants authorizing assessments. Neither the Declaration nor the plat shows any source of common expense.

Although petitioners' deeds contain an additional covenant requiring lot owners to pay a pro rata share of the utility bills incurred from lighting the entrance sign, it is clear from the language of this provision, tqether with the Declaration, the plat, and the circumstances surrounding installation of the sign, that the parties did not intend this provision to confer unlimited powers of assessment on the Association. The sole purpose of this additional deed covenant was to ensure that the developer did not remain responsible for lighting the entrance sign after the lots were conveyed. Payment of the utility bill is the single shared obligation contained in petitioners' deeds, and each lot owner's pro rata share of this expense totals approximately seven dollars and twenty cents per year.

For these reasons, we determine that the Association's amendment to the Declaration which authorizes broad assessments "for the general purposes of promoting the safety, welfare, recreation, health, common benefit, and enjoyment of the residents of Lots in The Ledges as may be more specifically authorized from time to time by the Board" is unreasonable. The amendment grants the Association practically unlimited power to assess lot owners and is contrary to the original intent of the contracting parties. Indeed, the purposes for which the Association has billed additional assessments of approximately eighty to one hundred dollars per year are unrelated to all other provisions of the deeds, Declaration, and plat: for example, assessments for mowing land that the plat clearly designates as private property and assessments for snow removal from roads that the plat clearly designates as public.

For the reasons stated above, we conclude that the disputed amendment is invalid and unenforceable. In so doing, we echo the rationale of the Supreme Court of Nebraska in *Boyles v. Hausmann,* 246 Neb. 181, 191, 517 N.W.2d 610, 617 (1994): "The Law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes in existing covenants." Here, petitioners purchased their Lotswithout notice that they would be subjected to additional restrictions on use of the lots and responsible for additional affirmative monetary obligations imposed by a homeowners' association. This Court will not permit the Association to use the Declaration's amendment provision as a vehicle for imposing a new and different set of covenants, thereby substituting a new obligation for the original bargain of the covenanting parties. Accordingly, we reverse the opinion of the North Carolina Court of Appeals and remand this case to that court for further remand to the trial court for additional proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

Justice MARTIN did not participate in the consideration or decision of this case.

Footnote: 1 *N.C.G.S. § 47F-9-103(23)* (2005) ***defines a planned community as "real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration." The Planned Community Act does not apply to any community that does not meet this definition.***

Footnote: 2 ***A number of other states considering amendments to the founding documents of common interest communities have also applied a reasonableness standard. See Hutchens v. Bella Vista Vill. Prop. Owners' Assh,*** 82 ***Ark. App.*** 28, 37, ***110***

S.W.3d 325, 330 (2003) (concluding "the power of . . . [a] homeowner's [sic] association . . . to make rules, regulations, or amendments to its declaration or bylaws is limited by a determination of whether the action is unreasonable, arbitrary, capricious, or discriminatory"); Holiday Pines Prop. Owners Assn v. Wetherington, 596 So. 2d 84, 87 (Fla. Dist. Ct. App. 1992) (per curium) ("In determining the enforceability of an amendment to restrictive covenants, the test is one of reasonableness."); Zito v. Gerken, 225 Ill. App. 3d 79, 81, 587 N.E.2d 1048, 1050 (1992) ("A restrictive covenant which has been modified, altered or amended will be enforced if it is clear, unambiguous and reasonable."); Buckingham v. Weston Vill. Homeowners Assn, 1997 ND 237, ¶ 10, 571 N.W.2d 842, 844 (A condominium association's amendment to the declaration or bylaws "must be reasonable" and "a rule which is unreasonable, arbitrary, or capricious is invalid."); Worthinglen Condo. Unit Owners' Assn v. Brown, 57 Ohio App. 3d 73, 75-76, 566 N.E.2d 1275, 1277 (1989) (adopting "the reasonableness test, pursuant to which the validity of condominium rules is measured by whether the rule is reasonable under the surrounding circumstances"); Shafer v. Bd. of Trs. of Sandy Hook Yacht Club Estates, Inc., 76 Wash. App. 267, 273-74, 883 P.2d 1387, 1392 (1994) (a covenant amendment "respecting the use of privately-owned property is valid, provided that such power is exercised in a reasonable manner consistent with the general plan of the development"), disc. rev. denied, 127 Wash. 2d 1003, 898 P.2d 308 (1995).

The Anatomy of a Lawsuit

In Search of a Kinder, Gentler Neighborhood Association

The Ledges of Hidden Hills

"First they ignore you, then they laugh at you, then they fight you, then you win!"

Ghandi

In June **2003,** Hendersonville attorney Walter Carpenter answered four questions concerning the legal nature of the Ledges homeowner's association and the extent to which the original Restrictive Covenants could be amended. On August **18,2006,** the North Carolina Supreme Court affirmed Mr. Carpenter's judgment. Furthermore, the Court concluded among other things that the Amended Restated Covenants are "unreasonable....invalid and unenforceable".

After three years and legal fees totaling upwards of $80,000., the facts are unchanged.

1. The original **1988** Covenants remain in effect and are fully enforceable.

2. The corporation known as the Ledges homeowner's association is a by-invitation-only private club which since **1994** has misrepresented its authority and illegally collected tens of thousands of dollars.

Rules Are **Not** Sacred, Principles **Are!**

The following is one of several requests made to the homeowner's association president after the Supreme Court ruled against the association.

Bill and Ursula Jenrette wrote:

Dear Mr. Katz:

The recent decision handed down by the NC Supreme Court in regards to the lawsuit brought by The Armstrongs, Moore's and Clore's against The Ledges Homeowner's Association which was recently ruled in their favor states clearly that dues collected from homeowners in The Ledges subdivision, over and above those needed to pay for the lighting at the entrance to the subdivision, were collected improperly.

Therefore, I am requesting that the dues paid by me to the homeowner's association over and above my share of the lighting cost be refunded in full. In addition, I am also requesting that any fees that were assessed to me and subsequently paid by me to the association to defend the association and its officers against this lawsuit be included in the refund.

You should recall that I was one of the first homeowner's to object to the action being taken by the association to revise the covenants and by laws that I believed infringed on my property rights and at that time urged you and those who were influenced by your ideas to abandon the course of action you had embarked upon. If I had been residing in my home at the time I hope I would have had the strength to join the plaintiffs in their suit, and in retrospect should have done so as an absentee owner in order to help them with the financial burden they undertook in order to defend the rights of all property owners from being run over by a majority hell-bent on having their way.

Fortunately, the Armstrongs were tenacious enough to follow their beliefs as far as necessary to find justice. Thankfully, in America we still have the right to seek justice through our court system and thankfully the NC Supreme Court agrees and has vindicated their tenacity. Since you have had the use of the funds I paid interest free for several years now, I'm sure that you take care of this request promptly. Please send the refund to my home address shown below.

Sincerely.

Bill Jenrette

To: North Carolina House Select Committee on Homeowners Associations

Date: February 2,2010

Co-Chairs Weiss and MeGee, and Members of the Committee:

First, I want to thank you for providing this opportunity today for citizens to submit our thoughts and suggestions about HOAs in NC. The creation of this Committee was welcome news to me! It reinforces my confidence in participatory democracy in our state, and demonstrates that our Legislature is addressing contemporary issues of importance to ordinary citizens.

My husband and I have owned our home in a western Wake County subdivision since 2001. We had never been members of, or even encountered an HOA in the states where we'd lived before. Since 2002, I served on our HOA Board of Directors (the governing body of our subdivision) for three years, as president for one, and my husband currently serves on the Board. So, I have experienced HOA operations from the inside and out, the good and the ugly.

Let me say here that I love living in the beautiful and bountiful state of NC! Likewise, I enjoy the community where I live, and we have many good neighbors and friends there. But, from what I have observed in my community and elsewhere, HOAs have far outlived and exceeded whatever usefulness they may have had. Moreover, in these challenging economic times, it is not surprising that HOAs are now encountering difficulties in demonstrating their relevance, in compliance with covenants, and in collection of dues and fines from residents. HOA government is ineffective, or worse, for numerous reasons:

1) Widespread use by developers of standard "boiler-plate" in the covenants that was out-dated at the time the communities were created, is grossly out-of-date now, and barely relevant to specific, diverse communities;

2) Lack of interest by residents in understanding, abiding by, or updating the covenants and other governing documents;

3) Failure by HOAs to hold more than one required meeting per year or otherwise to provide sufficient means of communication with and among HOA members;

4) Inconsistency in HOA operations, policies, and enforcement, from year to year, as members of governing boards change;

5) Lack of accountability for HOA board members, and

6) Arbitrary decision-making due to lack of knowledge, qualifications, commitment - and I would suggest, courage - by many who serve on HOA governing bodies.

Here are some examples from my own HOA of the above deficiencies. Executive board members have asserted that any decisions made, or policies enacted by previous Boards are irrelevant and can be reversed or altered at will. This results in confusion among homeowners, a sense of not knowing what to expect next. Some of our boards have not followed Roberts Rules in their meetings, or any set of guidelines. Some have followed a practice of not taken formal votes, not recording votes taken, and of not keeping formal minutes. In addition, requests for board meeting minutes by residents have not been honored, or encountered undue delay, and then access to minutes was restricted (e.g., residents could look at the minutes in the company of a board member but could not have a copy).

Architectural restrictions are selectively and inconsistently enforced, or ignored altogether. A few years ago, our HOA board declared that it was incumbent upon adjacent homeowners to address covenant and architectural violations by their neighbors. In other words, if adjacent neighbors did not object to the violation, it would not be addressed by the HOA. But if adjacent neighbors did object, enforcement was incumbent upon those neighbors, and, if their warnings were ignored, ultimately the HOA board might address it. This obviously results in compliance inconsistencies from block to block.

Other rules are not enforced – such as prohibiting consumption of alcoholic beverages at the pool – because board members themselves like to drink at the pool, or they do not want to confront their neighbors who are in violation. Outgoing board members have been compensated for service from HOA bank accounts, even though the covenants prohibit it. Further, the covenants relieve executive board members of any liability or accountability for their official actions, unless the actions are of direct financial benefit them. I believe this is standard exclusionary language in community covenants in NC. And while it has understandable merit, it renders homeowners effectively defenseless against arbitrary and self-serving actions by board members.

One of the distinctive amenities in my community is a barn and pastures for seven horses. It is a co-op facility; it has no manager or paid caretakers. Rather, horseowners pay for use of the facility while purchasing their own horses' feed, hay, etc., and doing all of the daily work required to care for their horses themselves. Members of the HOA board are often not horse-owners, so they lack the expertise or interest necessary to operate such a facility. Over the years, many arbitrary, uninformed, and even damaging decisions – some endangering the safety and welfare of the horses - have been made. Some boards have accepted responsibly in the operation and upkeep of this amenity, but others have actually taken a passive or even punitive stance against it – e.g., declaring that no general HOA funds would be directed toward maintenance or upkeep of the facility, frequently changing the terms of the stall leases that horse-owners sign, failing to enforce barn rules, and trying to prohibit homeowners who have horses from serving on the board, although they pay HOA dues plus additional monthly fees to keep horses.

Some of the actions and abuses I have cited are in violation of NC law, as well as community covenants. Yet, there is no recourse that I am aware of, for homeowners who

are affected or harmed by these decisions, other than to hire their own lawyers and file legal action. For individual homeowners, finding legal counsel to represent them in such situations is not only cost prohibitive, but nearly impossible. Lawyers advise that legal actions against HOAs are futile because HOAs are effectively unaccountable in NC, are free to do whatever they wish, and courts do not rule otherwise.

When the town of Fuquay-Varina moved to annex our community a couple of years ago, I was one of the few who hoped it would happen. But, due to the Legislature's call for a halt to such annexations, it did not happen. Although my household would have incurred added expense for connecting to the town's sewer and water systems, we would have preferred those utility services over the inadequate ones we have now. In addition, annexation would have increased our fire and police protection. For these reasons and more, I believe that annexation would have enhanced not only our property value but our quality of life. But moreover, I favored annexation because, having experienced the shortcomings and abuses of "private government" as practiced by HOAs, I prefer public government. The proliferation and abuses of these private governments in NC should be a wake-up call to us all.

Recommendation: While I do not object to the HOA dues I pay, I would far prefer that my "tax money" went to support the services of the legitimate local, state and federal governments already in place and that have constitutional foundations. But I doubt whether the elimination of HOAs as we know them in NC is realistic. This would not even be in my best interest, since as a horse-owner, I benefit from our HOA-owned barn. So, I suggest that tighter state control over HOAs is called for, and that official oversight – in the form of a state ombudsman, board, commission, or agency – should be established. The officers of these organizations must be accountable, and their actions, subject to review. Citizen homeowners throughout the state - whose very homelives and the protection of their property - are directly affected by HOA actions, deserve some avenue of appeal outside of the HOA board itself and the courts.

Thank you for your time, consideration and efforts to address this issue!

Susan Barnard
5436 LaFayette Drive
Fuquay-Varina, NC 27526

Jayne Nelson (Rep. McGee)

From: Patbatleman@aol.com

Sent: Monday, February 01,2010 6:34 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagatty; Rep. Julia Howard; Rep. Michael Wray

Subject: Comment for Public Hearing - Select Cmte on HOAs - 2/2/2010

I apologize for the lateness of this email. I would like to highlight two aspects of HOA governance that need assistance through the legislative process.

1. HOAs are in need of some protection from developers who create bylaws and covenants (usually using a template of documents from other associations) which they violate in the process of selling homes. Setback, fence heights and styles, patios, decks, storage buildings in areas designated "open space" or in violation of zoning, are often allowed installed by the developer, even when they do not comply with the documents. In our particular HOA, we now have a problem of trying to enforce the covenants among residents who (a) had these installed upon purchase; (b) want to install these additions but who point to a similar project that exists when they are turned down.

Further, in an effort to have all properties in compliance with the documents, the HOA is in the untenable position of trying to have the violating additions removed or returned to cbmpliance. Owners simply refuse and threaten law suits. We are dealing with these issues at this time. We even have a group of residents who want the HOA to deed over the open space land their construction projects have encompassed in violation of the covenants. They need 80% approval of 100% of the residents, but still, you can see the type of problem that arises.

2. HOAs are also in need of protection from State agencies (e.g. DENR, etc.) charged with permitting during the development process but who improperly issue permits and approvals. This causes major headaches for the HOA; huge sums are spent in legal fees in an attempt to get relief from these costly errors. We have such a case going on right now.

3. Lastly, HOAs need protection from developers who surreptitiously violate zoning and environmental ordinances by burying construction waste in a camouflaged "berm."

Jayne Nelson (Rep. McGee)

Record

From: Dan Bergbauer [bergbauer@suddenlink.net]
Sent: Friday, January 29, 2010 2:44 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: Diana Starling
Subject: Public Hearing of The House Select Committee on Homeowners Associations
Attachments: Letter to Representatives Weiss and McGee Jan 2010.doc

Friday, January 29, 2010

The House Select Committee on Homeowners Associations

Attn: Ms Doty and Ms Nelson, Committee Assistants

I have recently become aware of the second public hearing of The House Select Committee on Homeowners Association, scheduled for February 2,2010, in Raleigh. Since I will be unable to attend, I have attached a statement expressing my concerns that homeowners have little recourse in trying to get a board of directors to comply with and enforce the Covenants. Although the Covenants usually have a provision that states that a homeowner may enforce the Covenants if the board fails to do so, it usually requires taking legal action. In reality, this is impractical because the cost is generally prohibitive, and, if the case gets to court, judges are often not sympathetic with homeowners. As you also probably know, The Office of the Attorney General will not get involved in these disputes. There must be a way that is practical and affordable for homeowners to be able to challenge the unilateral actions of the boards that are in conflict with the Covenants or State statutes.

Please contact me if any questions.

Dan Bergbauer
252-940-1186

Statement for The House Select Committee on Homeowners Associations

Jan 29, 2010

Over the past 12 years, I have been a member of 2 different homeowners associations (HOAs) having mostly retired members, one in Moore County and one in Beaufort County. With both HOAs, the boards (comprised of home owner members only) have acted with virtual impunity in deciding how and when to apply and comply with the Covenants and other governing documents. In neither HOA was there a disputes clause in the Covenants. Trying to resolve disputes involving failures of the board to comply with the governing documents usually comes down to 2 options: elect new members or take legal proceedings. For the former, new members usually get subsumed into the board brotherhood and protect the previous board largely because of fear of becoming knowledgeable and thereby involved with the uncertainties, complexities, and legalities. For the latter, very few homeowners have a spare $50,000 or more, and judges have the reputation of not wanting to be bothered with wasting valuable time on what they consider such relatively petty matters.

On the more complex and controversial issues, boards are reluctant to get advice from an attorney largely because of the expense and not wanting to have to live with the advice. When a board does obtain a legal opinion, moreover, the board usually will refuse to make it available to the membership, claiming it to be privileged. I am also reminded that knowledge is power. Most times, the opinion will be very constrained based on limited information and direction usually supplied by the board president. In this way, the board is often able to manipulate the attorney to produce an opinion that favors the position of the board and not necessarily to the best interest of the membership.

A year ago, I sent a letter to the Attorney General expressing concern that successive boards of my HOA were involved in possible fraudulent scheming of NC statutes with another party and not protecting member rights. The Attorney General's Office declined to get involved.

A small group of us have tried without success for a number of years to get the board to enforce the terms of a lease contract (to operate and maintain a limited common element) that required compliance with certain provisions in the Covenants. This cost us thousands of dollars in getting legal advice from a prominent Raleigh attorney. The successive boards, however, have stonewalled and even tried unsuccessfully to amend the Covenants.

Our Covenants has a Rules paragraph that allows the board to make rules unilaterally for the use of any property to protect the value of lots, the aesthetic qualities of each community, and the tranquility of the owners. All such rules, moreover, are enforceable as though set out within the Covenants. In effect, this allows the board to override the Covenants.

My HOA has rules and procedures for forcing members to comply with the Covenants but nothing for forcing the board to comply. What is sorely needed for the Covenants is the requirement for a disputes clause, which would be used to resolve significant disputes between members and the board by involving a disinterested party with some form of mediation and/or arbitration. When a board refuses to participate, however, to what State agency can an appeal be made to require enforcement?

Submitted by: Daniel Bergbauer, 102 St Johns Ct, Chocowinity, NC 27817 252-940-1186

Jayne Nelson (Rep. McGee)

From: joycemcarobest@msn.com
Sent: Monday, February 01,2010 10:59 AM
To: jennifer.weiss@mcleg.net; Rep. William C. McGee
Subject: Public hearing re: NC statutes relating to Homeowners' Associations

North Carolina House Select Committee on Homeowners' Associations
Raleigh, NC

Attn: Representatives Weiss and McGee

When a homeowners association Board of Directors operates without regard to, and in violation of its state's condominium statutes, I am in the dark as to the avenues North Carolina provides to the homeowner for enforcement of the State's own statutes. I am interested in finding out who or what agency in this state has the authority to investigate complaints regarding mismanagement by a condominium association's Board of Directors that willfully disregards and/or only partially complies with existing NC State Statutes.

It seems wrong to me that a condominium owner would have to take on the financial burden of a private attorney in order to force a Board of Directors to comply with State Statutes that were put in place for his/her protection in the first place. Therefore, I am requesting that your committee address the obligation of the State of North Carolina to provide help to the home owner when decisions of a Board of Directors are at odds with present statutes.

Many thanks for your time and efforts on my behalf.

Joyce M. Best
joycemcarobest@msn.com
(828)698-8024

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01,2010 4:57 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: hoa problems

Susan Doty
Office of Representative Jennifer Webs
House District 35
919-715-3010

From: Lawrence Breyfogle [mailto:breyfogles@bellsouth.net]
Sent: Saturday, January 30, 2010 03:07 PM
To: Susan Doty (Rep. Weiss)
Subject: hoa problems

when the directors of a hoa do not follow the by laws and refuse to follow the by-laws the only alternative for the owners is to sue and this results in suing yourself. the other alternative is to replace the directors by voting them off the board. if you have a board of 7 this can be a several year process. suggest the state have a mediation process to review these type of problems and rule for or against the board. the mediation would be binding on the both parties. larry breyfogle, 910.458.9189

Jayne Nelson (Rep. McGee)

Record

From: Gina Brooks [mommy927@yahoo.com]
Sent: Monday, February 01,2010 12:37 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: Fw: HOA Hearing
Attachments: February 1 hoa doc..docx

--- On **Mon, 2/1/10, Gina Brooks <*mommy927@yahoo.com*>** wrote:

From: Gina Brooks <mommy927@yahoo.com>
Subject: HOA Hearing
To: susan.doty@ncleg.net, jane.nelson@ncleg.net
Date: Monday, February 1,2010, 12:16 PM

Good Morning Ladies,

I have attached a document regarding our problem with Eagle Ridge HOA.

Thanks
Gina Brooks

February 1,2010

Susan Doty
Jane Nelson

Subject - HOA Problem

Good Morning Ladies,

I was sent a email from Diana Starling regarding problems with HOA. She asked that I send you an e-mail with our problem.

Our problem started a few years ago with Eagle Ridge HOA and Talis Management. We had paid our dues late (I really hate paying these dues because you should not have to pay to live in a decent neighborhood) Talis had added late charges and interest of over $200.1 had paid that charge over the HOA dues. Payment had been posted the first week of the New Year, two weeks later Talis added attorney fees of $500.00. At this point I became very upset and got a attorney. We took our case to court and won (They had to remove our lien on our home) The letter we received from the Attorney did no state that this letter was a intent to collect a debt so there for they were in violation of a Federal Law that protect the people.

Talis and Eagle Ridge continued to add interest and attorney fees to our account. The amount they said was owed for over $1200.00. I had tried to contact our President and Vice President regarding the problem. I had talked with Eagle Ridge VP and to this date he has never contacted me regarding the issues.

We have gone back and forth to court and finally received a order from the courts for Eagle Ridge and Talis and Nelson Harris to remove the amount they said we still owed them. The Judge told Nelson Harris that his charges were not legal, only the courts tell the attorneys how much they are allowed to charge.

Our account has been put to -0- and a credit was posted to our account. I have asked Eagle Ridge HOA have you received a check from Nelson Harris for the amount that was credited to our account, NO ONE IN OUR HOA WILL ANSWER MY QUESTION. OUR HOA WILL NOT ANSWER AND OF THE QUESTIONS I HAVE ASKED.

I can say that since our legal problem the changes that followed – Talis no longer had Nelson Harris as their attorney – Also Eagle Ridge has changed Management company.

Our attorney has stated that everyone needs to pull together and file a class action lawsuit.

This is outline of what we all went through and the homeowners need to be in control and be free to fight and win. HOA's make it so that when you live in a HOA community its like living in a dictator community.

I will attempt to be there tomorrow, if you have any questions for thoughts please E-mail me back.

Thank-You for being there for us homeowners.

Gina Brooks
246 Mediate Dr
Raleigh, Nc 27603

Record

Jayne Nelson (Rep. McGee)

From: Diana Crews [djcrews@northstate.net]

Sent: Saturday, January 30, 2010 1:38 PM

To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray

Cc: jlaumann@hoa-usa.com

Subject: Public Hearing: Issues Related to Protection & Participation of Homeowner in the Governance of their Homeowners Associations.

Attachments: Issues Related to the Protection and Participation of Homeowners in the Governance of Their Homeowners Associations.doc

Members of the House Select Committee on Homeowners Associations:

Since I am unable to attend the House Select Committee on Homeowners Associations' public hearing on Tuesday, February 2, 2010, I have attached a memo addressing issues which concern me that I would ask to be made part of the record.

Thank you for your consideration of my concerns.

Diana J. Crews
1708 Huntington Circle
High Point. NC 27262
djcrews@northstate.net
336-882-9328

To: House Select Committee on Homeowners Associations
From: Diana J. Crews
1708 Huntington Circle, High Point, NC

Subject: Issues related to the protection and participation of homeowners in the governance of their homeowners associations:

1. Covering all planned communities
2. Enforcing Chapter 47F
3. Establishing a Planned Community Homeowner Protection Agency

Date: January 30, 2010

The North Carolina Planned Community Act, Chapter 47F is a very good bill that protects homeowners in planned communities. Unfortunately, not **all** planned communities are protected by **all portions** of the bill. Only those planned communities "created within this State on or after January 1, 1999" are covered by all sections of the bill. I urge the committee to consider a revision to Chapter 47F which would cover all planned communities including those planned communities which were created **before** January 1, 1999.

There is no enforcement provision in the current Planned Community Act. If an Association Board violates the Planned Community Act, individual members have very little recourse except to use their own personal finances to litigate, whereas Association Boards are covered by the Association's treasury.

Establishing a Homeowner Protection Agency similar to the Consumer Protection Agency, would at least give individual homeowners an opportunity to report abuses of the law.

Record

. Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01,2010 4:59 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: home owners versus home owners associations

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Maryallen Estes [mailto:estesmaryallen@yahoo.com]
Sent: Saturday, January 30, 2010 04:55 PM
To: diana_starling_60@yahoo.com; Susan Doty (Rep. Weiss); jane.nelson@ncleg.net
Subject: home owners versus home owners associations

The House Select Committee on Home Owners Associations:

This is my story about the Home Owners Association in Mountain Heritage Estates, Burnsville, North Carolina. In 1984 my husband and I purchased 5 and 1/8th acres of land in Mountain Heritage Estates. Our original covenant made no mention of a home owner's association or assessments or a lien on our property if we didn't pay an assessment.

In 1988 we built the home I am presently living in. In 1991 we moved here permanently. In all those years, we have NEVER paid any assessments. In 2007 the land around us was purchased by the Mountain Lifestyle Development Corporation. They sent me documents to sign which contained requirements that I pay assessments and stated if I didn't pay, I would have a lien put on my property. I REFUSED TO SIGN AND HAVE NEVER PAID ANY ASSESSMENTS. I DO NOT BELONG TO THEIR HOME OWNERS ASSOCIATION. However, they sent me a bill for $334 to be paid every three months for their cost of doing business. The yearly fee would have been $1336. Even though I consulted an attorney who told them I was not subject to the Planned Community Act because I bought my land before 1999, they continued to send me bills and harass me.
Their attorney sent me a Claim for a Lien dated June 5,2009. I consulted another attorney who sent their attorney, Robert Phillips, a nine page decision by the N.C. Supreme Court decided on in 2006 in favor of the Home Owners against the Home Owner's Association. The case was similar to mine.
My attorney, Sam Craig, called Mr. Phillips and asked why he thought my case was any different from the one that the N.C. Supreme Court decided on. He replied he would have to consult his clients, MLDC. Well, to this date we haven't heard from the MLDC or the attorney.
I had been told that after six months if the claimants had not set a court date to prove they deserved the lien, the document is null and void. The six months was over Dec. 5th. To make sure this lien was no longer in effect, I visited our clerk of the superior court, Warren Hughes, who informed me the document, in deed, was no longer valid.' He also added I didn't have to do anything that it would be null and void automatically.
In spite of all the above, the Mountain Lifestyle Development Corporation continues to send me assessment bills. Now they ask $250 dollars every three months. I ignore every bill sent. First of all it is exorbitant for what they do which is scraping the road every so often and blowing leaves off the road in the fall (a ridiculous waste of time and energy). When we had the last snow storm on December 18th, no one showed up to scrape the road. I paid a neighbor $100 to clear one mile of snow.

On Dec. 4,2009 the gate to Mountain Heritage Estates would not open. I was trying to get out of the place to go grocery shopping as I had been out of town for two weeks. I returned home and told my son I couldn't get out. He went down to the gate, loosened two bolts and the gate opened. Long story short, the powers that be never fixed the gate until May, 2009!

The gate wouldn't close from the outside on Nov. 28,2009. So far it still hasn't been fixed. Personally, I don't care if it ever closes again. I was never asked if I wanted a "gated" community in the first place. In fact I have never met the development people face to face. I only talked to one of them once. He was extremely rude. You see, I and my son are the only permanent residents in the Mountain Heritage Estates. I am eighty three years old and I don't need this kind of harassment.

Home Owner's Associations are just a way to take home owner's rights away from them and relieve the county from maintaining the roads.

My advice to anyone buying property, READ THE FINE PRINT, DON'T SIGN ANYTHING UNTIL YOU'VE READ IT AT LEAST THREE TIMES! If it sounds fishy, don't sign at all!

Please correct the abuses of these Johnny Come Lately buyers who try to impose restrictions on long time residents.

Thank you for your attention to this matter,
Sincerely,

Maryallen Estes, LCSW, Retired.

Date: February 1, 2010.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss
Representative William McGee

Cc: Diana Starling

From: Members of the Fairfield Harbour Property Owners Association.
1822-6 South Glenburnie Road, PMB #222
New Bern NC 28562

Dear Committee Members,

We are members of the Fairfield Harbour Property Owners Association in New Bern, North Carolina. Our community was established in 1972 and now has approximately 2825 members. We are a community with both retired and working families. Our Property Owners Association is a Non Profit Corporation operated by seven (7) Board members.

Over the last five (5) years our Property Owners Association Board of Directors (POABOD) has been under the control of a group of interviduals that are out to change our community. They have made rules and regulations on their own authority and have refused the membership the opportunity to expand their voting rights. They have created documents that charge fees and impose rules that do not appear in our Declarations of Restrictions to accomplish their agenda. They ignore the bylaws and the Declaration of Restrictions because they get in the way of doing things. The following is part of a legal letter the POABOD received: "Most Board of Directors of most Associations are given the authority to adopt rules, regulations and guidelines by statute (47F-3-102 (1)) or by specific provisions in bylaws or restrictive covenant. The Board at Fairfield Harbour has no such general rule making authority."

The POABOD and Property Control Committee (PCC) have expanded our three page Declaration of Restriction section on building requirements into a fifty (50) page builder's application. This application dictates that the builder must do what the PCC requires, but if a builder is sued due to following their rules, the POABOD and PCC are to be held harmless. The application imposes a road maintenance fee, which is not mentioned in our Declaration of Restrictions. The Road fee has increased 100% over the last 5 years.

In 2009 the entire PCC resigned under what was a power struggle between the POABOD and the coequal PCC. The POABOD presented a "Document of Understanding" to the PCC. The PCC rejected the "document", and resigned stating that it shredded the Declaration of Restrictions.

In 2005 our Board presented a Declaration of Restriction change to restrict Boats, Trailers and RV's from being kept in residential yards. Following what was a very close vote, the communities billboard results changed over night, that put suspect on the results. It took over 3 years to get the votes recounted because the POABOD refused access to them. Only under threat by legal council to litigate the matter was ballot access finally permitted. A review of the ballots disclosed that the late votes were counted in the totals. A letter to the POABOD outlined these results along with documentation. The reply by the POABOD stated that "late does not have to mean late". The POABOD minutes also reflect that the ballot box was opened to " see how the vote was going".

The Annual Meeting held in May of 2009 was the first occasion that sign in sheets were provided to establish a quorum. We believe that the only reason this initial establishment of a Quorum occurred was that our group demanded to present a petition to the POABOD at the meeting. The POABOD has always been required to establish the quorum prior to installing new directors. We could have challenged the sitting board members because they had never been properly installed.

No one knew what a proxy was for and none were ever sent out. One half of our membership does not live in our development and many are out of state owners.

Currently our POABOD is on a quest to purchase the Amenities within the development. The property owners over the years have been told that the POABOD can not purchase the amenities. Our Declarations and Articles of Incorporation do not allow for the Property Owners Association dues to service debt. The Board has looked for two years to find a legal opinion that would state, "you can buy the Amenities". This venture will cost over 6 to 10 million dollars. The POABOD had a five-year projection for the dues that contained a 59% increase without the purchase of the Amenities. The property owners have no control over the POABOD spending, as a previous Board of Directors removed a budget approval provision by members from our bylaws years ago.

We have formed a group called Fairfield Harbour Property Owners Reform Team or FHPORT. Last year we petitioned the POA Board for bylaw changes to get more voting rights and spending caps. Thirty (30%) percent of the membership signed the petition. That was 903 voting members asking for a chance to vote on the changes. The POA Board refused to allow a vote and dismissed the petition.

Our group's members have contacted the following North Carolina Officials:

1) North Carolina Attorney Generals Office
2) North Carolina Secretary of States Office.
3) North Carolina Real Estate Commission.
4) Federal Government Representatives.
5) State Representatives
6) Local Government Representatives

All the Agencies and Representatives have said they could not help and that we needed to hire a lawyer to have our rights enforced. Most lawyers advise that to take on the Association you need to be ready to spend upwards of $100,000 dollars. The current law and State Government Agencies that control the Non Profit Corporations which most Homeowners Associations operate under are generally ineffective. Alternatively these agencies may not want to enforce the statutes. As a result, Property Owners are left fending for themselves against an organization that has virtually unlimited resources produced by our own dues with which to defend itself. All Homeowner Associations have insurance policies and we have been told "if you don't like it sue us". We as Property Owners clearly need help from our legislators and from State Agencies to protect our Rights. Laws need to change or new ones created to protect property owners and members of Associations from unscrupulous Homeowner Association Boards. Though our group FHPORT has organized in our community there are those who ridicule and demean people that take a different point of view. Challenging the powers of the establishment is a difficult undertaking. Any and all help would be appreciated and if you need to contact us please do so.

Sincerely,

Members of the Fairfield Harbour Property Owners Association and Members of FHPORT Inc.
Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards
252-617-6276

Jayne Nelson (Rep. McGee)

From: GGar104641@aol.com
Sent: Monday, February 01,2010 4:48 PM
To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty: Rep. Julia Howard; Rep. Michael Wray
Cc: ggar104641@aol.com
Subject: SUGGESTED HOMEOWNER STATUTES SECTION ADDITION–MEETINGS NOTIFICATIONS

House Select Committee on Homeowner Associations
North Carolina House of Representatives

Chairperson: Representative Jennifer Weiss
Chairperson: Representative William C. McGee

Representative George C. Cleveland
Representative Beverly M. Earle
Representative Chris Heagarty
Representative Julia C. Howard
Representative Michael H. Wray

Honorable Chairpersons and Member Representatives:

During your upcoming hearings on Homeowner Association regulations and statutes, please consider reinstating a provision which was in the Statute several years ago but was removed in subsequent legislation to the detriment of association members who wish to follow the meetings of their association. That removal decreased the member tolerance by and commonality of the elected directors, and eliminated a source of association memory and expertise which ill serves associations.

Association boards are no longer required by statute to notify members of the date, time and location of board of directors meetings. In fact, some boards refuse to do so when asked by members and prefer to notify members later if they wish as to what was discussed and decided. This might have served developers well when boards were just forming but ill serves members whose associations have been turned over.

The suggested wording of a section of statute to correct such flagrant secrecy in the conduct of association business might read as follows:

The directors of association boards shall notify members of the association in advance of board meetings. Such notice shall be at least five days in advance or at least at same time and in the same manner as directors are notified.

Members shall be allowed to attend meetings to observe and listen. The board of directors shall have rules of order which will allow any member to comment before or after the meeting, stipulating time limits for the individual member to speak and rules of behavior. Minutes of members comments shall be taken in the same manner as board meeting minutes.

Reinstating the above would better serve North Carolina members of homeowner associations, especially since some associations are using the NC Statute as their operating document and noting the absence of any such law about meeting notification as justification for their actions.

Sincerely,

Association Member
George W. Gardner
3843 Daphine Drive
Wilmington, NC 28409-2847
910-792-9953
GGar104641@aol.com

NORTH CAROLINA
Department of Commerce

MEMORANDUM

TO: Rita Harris

CC: Ward Lenz
John Morrison
Larry Shirley

FROM: Bob Leker, Program Manager, State Energy Office, NC Department of Commerce

DATE: February 2,2010

SUBJECT: Public Hearing for House Select Committee on Homeowners Associations 2/2/10 at 2 p.m. in LOB 643– Issues Related to Solar Access Law – Senate Bill 670, Session Law 2007-279 (Rep. Jennifer Weiss is Chair of the House Select Committee on Homeowners Associations)

Through the course of two years I have received a number of inquiries related to the above reference NC Law that attempts to prohibit ordinances, regulations, covenants, and other restrictions to the placement of solar technology on homes. These inquiries have come from homeowner associations, homeowners, and builders seeking clarification about the above legislation or wanting to develop guidelines supporting solar energy placement (in the case of homeowner associations). The legislation was intended to limit restrictions a local government or private community might place to installing solar energy systems. The clarity is necessary due to a number of issues, noted below, that have come to my attention. Some of the exceptions in the legislation allow prohibitions by a local government or private community in the following instances:

1. If the solar system is "visible to a person on the ground". Does this mean fully visible, partially visible – what if the system is only from the side? How tall is a person?.....
2. If the solar system "faces areas open to common or public access". What does "faces" mean? What does "open to common or public access"? Are these greenways, sidewalks, roads, etc?

Moreover, if the intention is to encourage solar system installations, those folks who have contacted me feel that that merely being visible should not be an issue. Solar collectors look very similar to skylights and may be better looking than satellite dishes or other equipment installed on a roof. Solar collector systems that vary significantly from the roof plane or that are ground mounted may be more noticeable and may need to be specifically addressed. With the federal and state incentives that encourage solar technology and the benefits that these distributive generation technologies have for encouraging jobs, the green economy, etc. – it seems prudent to address the deficiencies In the legislation and that the legislation may need to be more explicit in allowing solar collectors to be visible.

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Tuesday, February 02,2010 12:23 PM
To: Rep. William C. McGee
Cc: Jayne Nelson (Rep. McGee)
Subject: FW: homeowners association public hearing 2-2-10 at 2 pm
Attachments: homeowners association - solar access hearing notes 2-2-10.doc; ATT00001.htm

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Harris, Rita E [mailto:rharris@nccommerce.com]
Sent: Tuesday, February 02,2010 12:05 PM
To: Rep. Jennifer Weiss
Cc: Susan Doty (Rep. Weiss); Lenz, Ward; Leker, Bob; Morrison, John E; Shirley, Larry; Crisco, Keith; Carroll, Dale B
Subject: Fwd: homeowners association public hearing 2-2-10 at 2 pm

Rep. Weiss
Our State Energy Office would like to make you aware of solar issues relating to your public hearing @ 2pm today in 643.
Thank you for your consideration. Please let us know if you have questions. -rita
Sent from my iPhone

Rita Harris
NC Commerce
9193320390

Begin forwarded message:

> **From:** "Leker, Bob" <bleker@nccommerce.com>
> **To:** "Harris, Rita E" <rharris@nccommerce.com>
> **Cc:** "Morrison, John E" <jmorrison@nccommerce.com>, "Lenz, Ward" <wlenz@nccommerce.com>, "Shirley, Larry" <lshirley@nccommerce.com>
> **Subject: homeowners association public hearing 2-2-10 at 2 pm**
>
> Rita,
> I have attached a memo I have prepared on some issues related the solar access law and homeowner associations.
> Representative Jennifer Weiss is Chair of the House Select Committee on Homeowner's Associations. The Public Hearing is today at 2 pm in LOB 643.
> It would be helpful if the comments attached in the memo were forwarded to weissla@ncleg.net to alert Rep Weiss of these concerns that I have received.

Feel free to contact me for any further explanation.
Thanks,
Bob
****

Bob Leker
Renewables Program Manager
State Energy Office, NC Dept, of Commerce
MSC 1340, Raleigh, NC 27699
919-733-1907 (phone)
919-733-2953 (fax) bl&er@nccommerce.com **(note new email)**
www.energync.net

Record

Jayne Nelson (Rep. McGee)

From: Susan Henderson [susanlhenderson@gmail.com]
Sent: Sunday, January 31,2010 4:49 PM
To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray
Cc: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee); James Laumann; Henderson, Ross; Henderson, Susan L.
Subject: House Select Committee on Homeowners Associations

Dear House Select Committee Members on Homeowners Associations -

My husband and I live in Florida and have a second home in North Carolina (Jackson County). I would very much like to attend and speak at the Select Committee on Homeowners Associations this week. However, distance and expense precludes my attending. I will, however, in this email share our personal experiences with regards to the governance, assessments and record keeping of our homeowners association.

We have a homeowners association (HOA) called "Catspaw Property Owners Association" that we try to participate in. When we purchased our land, we carefully read the covenants and bylaws. However, in the past four HOA meetings we have found the bylaws are not being followed..

For Example:
According to our association bylaws, we are supposed to vote for officers. However we are not given the opportunity to do so. The current board members "invite" other members to'become part of the board. The officers are chosen by the board members. The same individuals rotate back and forth between President, Secretary and Treasurer. There are no terms of office. One board member said to me, "**The board has the right to make any decision that they want to if there is not a quorum at the annual meeting".** We never have a quorum at the annual meeting.

Assessments:
A 1993 amendment to the bylaws that is referenced in all our deeds says that a majority vote of the members (one vote per lot) is required to pass any increases in fees. In the past, when there was insufficient attendance at the annual meeting, homeowners were asked to vote by US-mail to achieve the majority vote of members, as required by the amended bylaws. This is no longer done. The Board of Directors now makes all decisions and informs the property owners of their decisions rather than take a vote which would have to be done by mail or the internet. The board has some self generated, non registered documents, which are not referenced in any of our deeds, that they say gives them this authority. **There** is **no recourse except to go to court which would be divisive for the community and very expensive.**

Record Keeping:
One property owner, Stephen Nelson, an attorney who has significant experience working with home owner associations in another state, questioned the board's authority based on the bylaws, to assess new fees without a membership vote. He also made a request to the President in writing for the complete records of the association. He was essentially stalled by the HOA officers who said that it would be an onerous burden upon the board to provide those records. He made repeated requests in writing to receive the HOA records. The HOA President informed him that it would be expensive to the association to provide those records and a lot of work. Mr. Nelson offered to pay for the records and to make them available for all other property owners electronically. Still, the association stalled. **Apparently, the** HOA **did not maintain complete, organized records.** He finally received the available records months after they were requested after much stress and duress from the HOA Officers.

Requested Action:
I would like to strongly encourage you to strengthen and protect the rights of property owners to participate in the governance of their HOA, particularly related to assessments and record keeping. The actions of the HOA should represent the property owners, not just the HOA Officers and Board. **Documentation for bank accounts, expenditures, meetings, and board of director meetings should be readily available for any property owner to**

access without a fight. With computers and the internet, there is no excuse for poor record keeping, poor access to records and even the opportunity to vote on assessments and issues could be done electronically.

Property owners need protection from a board taking authority that is not documented in a property deed.

Property owners need some recourse to appeal the wrong doing of an HOA board without the prohibitive cost of hiring an attorney and going to court

Thank you for your consideration of these issues. My husband and I would like to ensure participatory homeowner's associations. HOAs should be democratic, not dictatorial.
Please help through appropriate legislation. If we can assist in any way, please let us know.

Sincerely,

Susan L. Henderson

Ross P. Henderson

429 Catspaw Road
Cullowhee, NC 28723

US Mail to:
3124 Ortega Drive
Tallahassee, FL 32312

850-386-2330 (h)
850-591-4309 (c)

e-Mail:
susanlhenderson@gmail.com

Jayne Nelson (Rep. McGee)

Rec'd

From: J. R. Hildreth [drumroll@charter.net]
Sent: Monday, February 01,2010 9:51 AM
To: Rep. Jennifer Weiss; Rep. William C. McGee
Cc: Rep. Edgar Stames
Subject: Public Hearing - NC House Select Committee on HOAs

Importance: High

Representatives Weiss and McGee:

While doing some research on HOAs in North Carolina I discovered that this Committee exists and that public hearings are being held to provide an opportunity for the NC public to comment. Please accept this as my comment.

Currently, NC GS 47F permits the declarant, i.e., the developer, of a planned community to retain control for an unlimited period of time although there is a requirement to state some period of declarant control in the master documents.

This is unlike many other state's statues which stipulate a discrete period of declarant control from the date of inception or first sale based on either time itself, eg. 7 years, or when a percentage of lots, home, units, etc. have been sold, eg. 60%, or both.

In any case, NC property owners who reside in developments covered by a HOA should have a time period specified for declarant control. I strongly recommend consideration of "no more than 10 years from date of the sale of the first lot, home, unit". I recommend adding clauses that provide for a graduated inclusion of representatives to the board of directors of the association by vote of the non-declarant owners based on either specified time periods or by percentaqe of elements sold, eq 1 board member after 10% of sales, 2 after-30% of sales, etc.

It would be helpful to have language similar to but stronger than NC GS 55A regarding the fiduciary responsibility of the declarant and the declarant appointed members of the board of directors during the period of declarant control.

Additionally, our current statue has no teeth or support in terms of State enforcement. There is no State agency that's responsible for supporting and assisting owners when there's an issue, conflict or for enforcing the legislation and its components. Owners are left only with the option of civil suit in the courts.
There is a serious need for a State agency to be assigned the responsibility for supporting and enforcing the current or revised statue.

I hope the above has reached you all in time for consideration.

I would appreciate knowing how to follow these public hearings and any legislation or changes to the current statue that might be proposed. Can you direct me?

Thanks and kindest regards,

J. R. Hildreth
147 Gunpowder View Circle
Granite Falls, NC 28630
828-212-0342

Jayne Nelson (Rep. McGee)

From: Janebjordan35@aol.com
Sent: Tuesday, February 02, 2010 1:48 PM
To: Rep. Jennifer Weiss
Cc: Rep. William C. McGee; Rep. Beverly Earle; Rep. Julia Howard; Rep. Chris Heagarty; Rep. George Cleveland; Governor Office; edwin.speas@nc.gov
Subject: HELLO REPRESENTATIVE WEISS ! HOA MEETING RESULTS

02-02-10

Dear Representative Weiss, et.al,

Thank you for your prior communication with me. I could not ultimately make the open meeting today as I so wanted to attend or come to Raleigh at all. I will call you tomorrow and check up on things. I had an interview for a job that I really need and this went overtime this morning and then as I was leaving to come to Raleigh, a matter of state and nation came to me and my family as we are advocating for a man who is running for President of Haiti. I may end up flying down there myself with my family. My fibromyalgia will just have to be put on hold. I will be fine. I will copy this to Ms. Smith as well, who I am representing and our Governor, to keep them informed of your progress, as I am sure Governor Perdue is also interested in keeping homeowners in their homes and in their present jobs. I hope you read all of this because it is very important. I know you will and trust that justice, support and help to our citizens will come forth. And swiftly.

Please keep me informed as to whether this study commission's open meeting today ensued by the House of Representatives, did take my comments and talk about this, about allowing homeowner's to pay along as they can when they fail to pay their dues exactly on time, not realizing the process, going through duress in divorces, etc or loss of jobs, and especially when they are in distress. In other words, the laws of North Carolina should adequately protect the homeowners, if they are attempting to pay off any debts owed, to HOAs, as most people cannot afford these high and quite obviously ruthless attorney's fees. The laws can still be enforced to coerce compliance, if needed, but by reason not hysterical manipulation to make a buck off of someone unjustly. If after the homeowner starts making payments and communicates effectively with the board or management company, there should be no future huge charges added on time after time, like has happened to Ms. Smith and refusal by any HOA, management company or attorney, to accept what a person can pay. Attorneys are taking advantage and we all know this in this regard. So are HOAs. This would have been over long ago if such laws were in place already. She would have paid her HOA $903.00 charged when she tried to pay them $600.00 in January of 2008 and been done with it. this is much more stress on a human being than is necessary in their ability to function and keep the job they have. Now you know that this HOA, management company and attorney is charging her around $6,000.00 for an original debt of only $175.00 for one year or for any amount owed, and this is abusive as it can be. It is all centered off of what someone can "get" off of another person. This kind of activity has nothing whatsoever to do with justice or doing the "right moral thing."

Now Representative Weiss, I want to thank you personally for supplyng Ms. Smith with the North Carolina Department of Justice referral in Mr. Riley who did call her, but she does not qualify for legal aid on her yearly salary. He has not called her back, so could we still get some sliding scale low, low priced attorneys to look into this ? Do you know of any ? I am going to fight for this law to be added in North Carolina to include paying along as one can. It is reasonable and just. Also, for me to receive such threatening letters, from both my HOA board and the association attorney, which made me royally lose my temper, from the same attorney's law firm as Ms. Smith, when I had done nothing wrong, but originally bring to light to the community in which I live, unparliamentary procedure on breech of a quorum vote for only $54,900.00 for a special assessment in 2005 when the President of our HOA at Elizabeth Townes went over her own entire board's head even after this and solely signed a contract for $77,129.00, most likely hiring illegal immigrants, paid under the table, as I live here and talked to them, with this attorney's knowledge, then we just cannot have this. We see the writing on the wall. Embezzlement abounds and will continue in such non profits unless safe guard laws are put into place. Let me know your thoughts.

I look forward to hearing from you.

Sincerely,

Jane Brawley Jordan
Political Activist
[redacted]510 Elizabeth Townes Lane
Charlotte, North Carolina 28277
704-341-4293

Jayne Nelson (Rep. McGee)

From: Marie [Marie—@ec.rr.com]
Sent: Tuesday, February 02,2010 1:04 AM
To: Susan Doty (Rep..Weiss); Rep. William C. McGee; Rep. George Cleveland
Subject: North Carolina House Select Committee on Homeowners Associations
Attachments: Letter to the LAJF BOARD members01-18-10.doc; Laura-Jan19-2010.doc; Marie-Pam-final.doc

Dear Ms Weiss, Mr. McGee and Mr Cleveland,

Just tonight I've received the information that there is a House select committee in NC dealing with HOA problems. I submitted a short summary but I want to draw our problem to your attention as well. I also attach a letter that our community petitioned 3 broad member also signed, but the HOA president didn't allow to discuss the matter and there are still residents in our community who are ignorant about these serious issues. I found nobody who would represent New Hanover county so I sent a letter to everybody.

I've just received this information about this series of meetings. I do hope you will pay attention to the coastal areas as well – we need your attention!

<!--[if !supportEmptyParas]--><!--[endif]-->

For example, in our community (called LAJF), we experienced serious problems from its conception of our HOA, and I would appreciate info and help.

<!--[if !supportEmptyParas]-->

Residents in our community are never informed, the annual meetings never give allowances under new business to discuss any problems and no rules are ever observed. I, as a member of the residents before, or member of the board now, tried to speak up, but no free exchange of ideas is allowed.

Annual meeting attendance is under 10 persons out of 144 single-family homes, because residents do not feel that the BOARD does anything for them, except sends out violation notices even in trivial issues. Meeting rules are not observed at annual meetings.

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Right now the developer wants the violate the covenant and built several huge rental buildings dispersed in an area where only single family homes were allowed, some rentals probably will be built on dedicated wetland areas. Meanwhile the same developer still did not address storm water and drainage issues in 14 years - and I was not allowed to inform the residents about these pertinent issues on the **Annual** Meeting last week, nor were these important issues included/attached under new business in the report sent to the residents calling for Annual Meeting as I requested at several board meetings in the summer and fall. In the Lakes even pseudo-democracy ceased to exist.

Sometimes I wonder if I live in the United States or in North Korea.

<!--[if !supportEmptyParas]--> Respectfully,<!--[endif]-->

Maria Lonyai

02/02/2010

Member of the Board,

The Lakes at Johnson Farms, Wilmington, North Carolina

It seems that the City council had more common sense and having received the letter postponed the decision and may request certain changes - but our president still did not think that we should have acted or discussed this issue with the very residents who would be very much effected by all these developments and of many signed the petition in case they knew about the plans. But there are residents who are still ignorant because the HOA President decided not to inform them.

02/02/2010

Dear Board Members and Laura,

I read through the letter, called "Notice of Annual Meeting" sent out to the HOA members for the annual meeting on this coming Thursday, and I found that something was missing in the "New Business" section. Notably the issue about the voluntary annexation and more importantly the hostile takeover planned by South College Associates. This takeover as you all know involves building 3 story high rental units inserted into single our family residential neighborhood.

As you all know I opposed this plan fiom the very beginning and several times I requested that this issue should be a topic in the upcoming annual HOA meeting. Some board members agreed with me, but nobody, not one single person ever said that it wasn't a good idea to discuss this issue with the interested parties, namely, the residents. Even less was I told that it will not be done and the residents would not be notified.

If some Board members, working for the city, feel or felt that it would be a conflict of interest to fight for our community against the City Council if it comes to it, they could and should excuse themselves from participating in these proceedings. That is fair and an acceptable step and it is far much better than being thought later on or by outsiders that they were silent because they were agents of South College Associates as some former Board members were accused to be, rightly or wrongly, that's beside the point right now.

There is one thing that cannot be and should not be done by this Board: to keep the residents intentionally in the dark, try to eradicate this issue by silence. Had you seen what happened here after hurricane Flojd due to the lack of drainage easements that are still not built by South College Associates, you would not be so complacent as to what will happen to this area if several high rental buildings will be placed over us. The Lakes is the most vulnerable in this respect, ask anybody who has an engineering degree and honest enough to tell you what is going on.

Nonetheless, our community, like the others in the area deserves advice and information fiom its Board. In particular, when South College Associates is involved who disregarded so many legal and other regulations in the past and could endanger both property values and human lives in the future both in our community and in the others. Having listened to the city Council Proceedings of January 5, it seemed to me, that the Mayor and a few members of the council had serious problems with the plan submitted by South College Associates and they were not even aware of the entire story. Meanwhile our Board wasn't there or remained silent. A second reading is scheduled for Tuesday, January 19th.

Pamela King, the HOA President of Cambridge Heights worked a lot on a letter and collected all supporting materials relevant to the history of this case. I tried to help her as much as I could. She hand-delivered the letter (I send you in attachment) to the Mayor and the members of the City Council in the name of all these communities on Friday, January 15.

I would like to inform you, in case you don't not know that she collected a lot of signatures from the Johnson Farms area and those will be submitted as attachment to the City Council before the second reading tomorrow. I **also signed this petition.** Rest assured, I was not alone from the Lakes who signed this petition.

I suggest, or rather request, that CEPCO should make enough copies of the attached letter for those who are interested to read it. If delivering it to every resident is impossible (I am sure, actually, I know that it is not impossible and that would ensure that more homeowners would attend the meeting - as we discussed it in the summer and again in the fall Board meetings), have copies available when people enter the room. And, please, add this subject to "new business" because this is one of the most important businesses what we should discuss. I am hoping there will be time allowed for people to express their concern in case they want to do it.

The Board should not appear as a body that dodges vital issues impacting our community and relish only sending out violation notices.

Best wishes,

Marie

Laura,

If you read my letter of yesterday you find all pertinent information in it regarding your question who wrote the letter in question.

As to the issue of authorization, or lack thereof, as I recall the LAJF BOARD had no opinion or decision in this matter. I requested several times on various BOARD meetings to discuss this issue with the residents on the upcoming annual meeting, and as I wrote yesterday, some members agreed, some remained silent but not one board member said **"no"**, consequently the authorization issue cannot even be raised reasonably.

The issue of authorization is moot and void anyway, because the letter is submitted in the name of the "citizens" of these communities, and despite the LAJF BOARD inactivity, opposition or even antagonism to help, many of our residents signed the petitions as I was informed about this fact last night.

The last time I checked, we are free citizens of the USA, not subjects of North Korea, so people can sign a petition any time they agree with it. This freedom is a basic right guaranteed in our constitution – let it be state or federal.

Of course, our Board would appear in much better light if we could show our residents that we were and are willing to lead, to discuss these problems with them and are aware of the problems coming.

It is dangerously naïve to think that these developments would not effect us, because if the drainage issues are no fixed, storm water problems are not resolved prior to any new housing development, even worse, huge rental units are going to built further up, the Lakes will suffer the most if a major hurricane hits us again. Ask for a review from the U. S. Army Corp of Engineers before you further neglect this very dire situation.

You wrote: **"Any communication going to the City regarding any of the proposed development should be discussed by the entire LAJF BOD before it is distributed because some of the members may not have the same views as other members."**

When, may I ask? We could have done it during the summer or in the fall meetings – I did raise this issue both times. Waiting any longer just won't do. The previous Boards waited till Still Meadows became a fact and Arbor was built on our stolen property and illegally ditched wetland. How long does this Board intend to wait? Till the there is a fait a compli and nothing can be done or changed?

It is irresponsible not to put this issue on the agenda of the Annual Board meeting. I intend to ask for a few minutes to speak and I hope neither the other members of Board or you will deny me the possibility to open my mouth. If another resident will raise the issue I will not speak.

Best wishes,

Marie

January 15, 2010

Mr. William Saffo, Mayor
Dr. Earl Sheridan, Mayor Pro-Tem
Mr. Kevin O'Grady
Ms. Laura Padgett
Mr. Charles Rivenbark
Mr. Ronald Sparks
Ms. Kristi Tomey

Hand Delivered

Dear Mr. Mayor and City Council Members,

On April 21,2009, City Council accepted the voluntary annexation request from South College Associates and the Silver Lake Baptist Church to build 288 apartments on 28.21 acres of vacant real properties located at 4811,4723 Carolina Beach Road and 4800 Split Rail Drive, without any notification to the residents at The Lakes at Johnson Farms, Cambridge Heights, Belle Meade Plantation, The Arbors, Johnson Farms, Henderson Park and Treetops all of whose residents will become new citizens of the City of Wilmington on June 30,2010 and all of them will be negatively impacted by this decision. The first time the Johnson Farms and Treetops communities were notified that their collective lives were about to be negatively changed was by Public Notice signs posted at the edge of the above mentioned properties and if one were unfortunate enough to live within a 100 feet of the disputed properties, one received a letter informing him of a Subdivision Review Board meeting on July 15, 2009 at 1:30 pm.

From that first meeting, the citizens of Johnson Farms and Treetops made it very clear to the Subdivision Review Board, the Planning Commission and City Council that they strongly opposed this project. The original Master Site Plans dated 1988, 1990 and 1996 show the Johnson Farms subdivision to be comprised **entirely** of single-family houses (See attached Site Plans). On September 1, 1996, New Hanover County added the requirement of a Special Use Permit for all new high-density land use projects, such as apartments. South College Associates asked for and was granted an exception from the Special Use Permit, by the County Commissioners, for the Still Meadows Apartments. Had this exception not been granted, Still Meadows most likely would not have been built, because it failed the first, third and fourth tests of the Special Use Permit:

- **(1) that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved** (Cars from Still Meadows speed, even before DOT assigned a 35 mph speed limit, through the narrow streets of The Lakes at Johnson Farms to exit on to Carolina Beach Road endangering our children. Additionally, there was discussion of insufficient sewerage capacity evidenced by the attached correspondence between the County and South College Associates.)
  (3) **that the use will not substantially injure the value of the adjoining or abutting property, or that the use is a public necessity (as** a matter of fact, the houses near Still Meadows continue to endure depressed property values), **and**
  (4) **that the location and character of the use if developed according to the plan submitted and approved will be in HARMONY with the area in which it is to be located and in general conformity with the plan of development for New Hanover County** (Is it HARMONEOUS to have three story apartment buildings towering over single family houses?).

In addition to failing these tests, South College Associate violated the Lakes at Johnson Farms Home Owners Association Covenants **ARTICLE X, ANNEXATION OF ADDITIONAL PROPERTIES, SECTION 2. –** written **by South College Associates:**

"If the Declarant, its successors or assigns, shall develop all of any lands adjoining the Properties, as additional tract of any portion thereof may be annexed to said Properties without the assent of the member; provide, however, the annexation of the Additional Properties as additional phases of THE LAKES AT JOHNSON FARM permits only single-family dwellings. Annexation provided for in this Section shall become effective upon the filing by the Declarant of a Supplemental of Amended Declaration in the office of the Register of Deeds of New Hanover County." (See attached HOA covenants and letter from Wessell & Raney, L.L.P.)

The 03/04/05 Accepted Revised Master Site Plan for the Johnson Farms subdivision showing the inclusion of Henderson Park states there shall be **38.31 acres of OPEN SPACE and lists the** 28.21 **acres now being discussed as WETLANDS and part of the OPEN SPACE.** In 2009, City Council accepted the voluntary annexation request for another parcel, owned by South College Associates, within the Johnson Farms subdivision, and approved the addition of 144 apartments to Still Meadows and 62 very small single-family houses to be built on **additional WETLANDS OPEN SPACE provided by the '05 site plan.** Has a New Master Site Plan for Johnson Farms been created to show where the 38.31 **acres of OPEN SPACE are now located?** South College Associates and now Silver Lake Baptist Church are once again avoiding New Hanover County's Special Use Permit for this type of high-density development. **Hayleigh Village, the expansion of Still Meadows and the** 62 **undersized single-family houses would have most likely failed all the requirements of the County's Special Use Permit.**

When South College Associates built The Lakes at Johnson Farms subdivision they did not put in sidewalks or provide space for playgrounds. Neither did Town & Country Developers at Wilmington or Mr. Pigford who built the Cambridge Heights and The Arbors subdivisions respectively. Consequently our children have to walk and play in the streets. Although the roads in the Johnson Farms Subdivisions are classed as Public Access Roads, they were built as local roads, not collector roads, and never were intended to handle the wear and tear of **679+cars** from Hayleigh Village and **412+cars** from the Still Meadows expansion and 62 single-family homes. Most of the streets are narrow and no overnight parking is allowed in order to keep the streets clear for emergency vehicles. Adding **1000+** cars on our narrow roads combined with the posted 35 mph speed limit is a disaster waiting to happen. **The Site Plan** is disingenuous to suggest that only a few of the **1000+** cars will travel through our neighborhoods.

On October 7, 2009, South College Associates and Silver Lake Baptist Church withdrew their zoning application after the builder, CIP, withdrew from the project. If Hayleigh Village was such a great plan, one must ask why CIP withdrew. Perhaps CIP conducted its own research and concluded there was no market for its product.

If Council Members should travel south on Carolina Beach Road from City Council Chambers they would pass by the skeletons of commercial and housing developments that have denuded acres of land only to lay fallow. (If Hayleigh Village were approved, when would the 434 trees be stripped away?) The housing developments that are building again are doing so with asking prices $30,000 to $60,000 lower than their initial asking price. Belle Meade Plantation's builder is in **bankruptcy** with 5 houses that have never been occupied (two of these homes won prestigious building awards). It appears BB&T may have withdrawn its financing from Mr. Digioia's project on Matteo Drive; the BB&T sign has been removed from the site. Mr. Digioia

has talked about the pending contract to purchase the Lawson land necessary to connect Sikes Drive to Pineview Drive since the first Subdivision Review Board meeting on July 15,2009. (If you review the January 5th recording of the City Council meeting, Mr. Digioia talks about the **still pending** purchase of the Lawson property.) In the Johnson Farms' vicinity, there are already seven apartment complexes and one townhouse community providing approximately 2300 rental units. The Keys apartment on Hearthside is offering 1-month free rent for a 13-month lease. Sea Pines, Tesla and **Still Meadows** are all offering reduced rental incentives. (Does **Still Meadows** really need another144 units? Where will the employment opportunities come from to attract all the new tenants?) Adding to the glut of existing rental space, 30% of the Gardens Condominium is being offered as rental. Or, perhaps CIP performed soil testing and realized the cost to prepare the land for building would require a very long period of time to recover it? Has Council asked the question why did CIP withdraw?

Storm Water runoff and drainage is a constant concern throughout our existing neighborhoods which appear to be impacted by the proposed 'Hayleigh Village'. Historically speaking, the current subdivisions, as well as the proposed location, were classified 404 **Jurisdictional Wetlands by the U. S. Army Corp of Engineers in 1996.** A portion of what is now, "The Arbors" was illegally drained by a practice known as 'ditching' by South College Associates. In the late 1990's the State of North Carolina put a stop to this practice and the developer, **South College Associates,** had to make restitution to the State through mitigation. This organizational group, The Lakes, The Arbors, Cambridge Heights, Johnson Farms and Treetops, has taken the initiative of comparing all public documents related to the proposed development, and while all may appear to seem normal on paper, the 404 wetlands boundary delineations are not depicted on the Heyleigh Village preliminary plan dated 08/10/09. There is a defined wetlands boundary, post construction. But a realistic view of the proposed area is not an 'apple to apples' result and if the applicant were to construct these structures, as proposed, one would have the belief that a thorough study of the 404 Jurisdictional Wetlands was reviewed by the Corp of Engineers. Thereby, such a review should be readily available which insures all impacted parties of potential, or negative drainage impacts which can be a result of a natural disaster, e.g. hurricanes and large downpours. In addition, it is an absolute fact that any deviation, adjustment, or proposed impact to such boundaries has to be reviewed by the Corp of Engineers and while we understand that much of New Hanover County has wetlands boundaries, the proposed plan clearly impacts these established boundaries and each potential adjustment to a defined wetland area must have legal documentation assigned to it whether it is for the proposed Multi-family Medium Density or any substitute plan. Has staff read the Army Corp of Engineers report concerning this land? Where is the location of the land that was offered as restitution for the mitigation?

To date, **South College Associates** has not fulfilled its obligation to rectify the drainage issues in The Lakes subdivision. Can we really trust they will be held accountable for correcting and containing the potential water issues that are sure to arise with the construction of Hayleigh Village? The Current Master Site Plan for Johnson Farms subdivision shows a 30 to 50 foot drainage easement around most of its perimeter except behind the properties abutting the disputed properties. (See attached copies of various site plans for the different neighborhoods that designate lots as DO NOT BUILD and they did.) Could it be the drainage easements were not built because they would have invaded protected 404 wetlands or because by the very nature of a swamp, the land does not drain? The Hayleigh Village Site Plan states that pervious pavement will be used for the additional parking spaces over the necessary 679 spaces. Pervious pavement when built upon optimal soils, at its best, can absorb 1 inch of gentle rain over the period of a day. Our rains are rarely gentle.

At the January 5,2010 City Council meeting, Council acknowledged it made its decision to accept this voluntary annexation **without looking at a comprehensive plan and consideration of the impact on the neighboring communities** and now feels that there is tacit agreement to accept whatever **"Plan" South College Associates and Silver Lake Baptist Church** presents in order not to discourage other future projects that may want to annex voluntarily. Council mentioned regrets about another apartment complex approval years ago and said they grimace every time they pass by the complex and wishes it had never been built. Here is a golden opportunity **not** to repeat history. Earlier in the evening, Council accepted the Greenville Loop development that has 20 single-family houses and 120 townhomes as **transition to the** 80,000 square feet of office/retail space. Townhouses (MF-Low Density) would be the more logical and aesthetically pleasing **transition** from the single family housing of the Cambridge Heights, The Lakes at Johnson Farms and Treetops subdivisions.

The Johnson Farms and Treetops communities have had no say in the fate about to be foisted upon them of forced annexation and if the City Council accepts this plan, it is making it very clear that City Council does not care about tax paying citizens. All the public hearings we have attended will have become a meaningless exercise in pseudo-democracy and it might appear that only developers who can make enhancements to the City's infrastructure matter. Council Members need only to look around within the State of Florida to learn what happens to communities when they rely solely on developers to "improve" infrastructure.

Our request is that City Council will zone the properties located 4811,4723 Carolina Beach Road and 4800 Split Rail Drive, if not to our preference of R-10 single family housing consistent with the existing neighborhood, then MF-Low Density with a plan for townhouses, not 280 apartments. Council Members are charged with the responsibility and duty to represent **all** of your citizens (including future citizens). Council Members you possess the power to grant our request.

Respectfully,

The Citizens of Johnson Farms and Treetops

Enclosures

Jayne Nelson (Rep. McGee)

From: THOMAS KELEHER [tjkeleher@msn.com]
Sent: Wednesday, January 27,2010 10:40 AM
To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray
Subject: Thoughts on HOA

January 26, 2010

Dear Representative:

I am writing you today to give you a positive perspective on Homeowners Associations.

I am on the Board of Directors for Biltmore Lake HOA. This is my fourth year on the Board so I felt that you might be interested in my perspective. First, let me acknowledge that all HOAs are not alike. I am certain that there are some that take advantage of their position. However, I sincerely feel that is the exception and not the rule.

The Board and committee members of our Association are dedicated to keeping our Community a positive area to live and to raise children. The Finance Committee alerts us as to expenditures and reserves. Our Post Design Construction Review Committee makes certain that any new additions comply with the architectural ambiance of the entire community. The Social and Recreation Committee offers multiple events throughout the year ranging from childrens activities, lectures, welcoming new residents, holiday picnics, games at the clubhouse, to a chili cook off for the local fire department. Our Lake and Trails Committee monitors the integrity of our lovely lake and its surrounding trails. They look for things that may be hazardous to our residents and make recommendations to keep the lake a recreational [redacted]sure. Without these committees, and the tremendous amount of volunteer work that they do, our community would not be the Association of the Year for 2009.

I can also tell you, first hand, that there are those people in communities that are never, and will never, be satisfied with anything that an association does. It is discouraging to listen to their warped logic about running a community. These are the same people that dont volunteer, dont vote, find fault with everything, and then claim that the association, board, or management company, is horrible.

A well run association is what makes a good community an excellent community. To limit the HOAs ability to balance the needs of all the community members because some take advantage of the system, would be like saying that we should abolish democracy because some legislators are unethical. Unfortunately, we have to take the bad with the good until we can vote them out. If there needs to be change in an association, the residents that want the change will have to initiate it and not mandate it to those who are happy with the system.

Rather than further limiting HOAs, might I suggest that a professional standard be developed for management companies? Oftentimes, people with little or no experience, set themselves up as property managers. With no oversight and no professional standards, they can abuse the HOAs resident members or not take their fiduciary duties seriously. Isnt it time that an industry, which represents thousands of people, have a definable set of standards and governances?

Thank you for taking the time to read this letter. I was hoping to go to Raleigh to speak with you in person, but a broken foot would make that trip less than desirable. However, I would be happy to discuss this further if need be. Thank you for the time that YOU spend to serve your legislative area. I know that you are a committed public servant [redacted]like I am.

Sincerely,
Carol Ann Keleher

828-670-7821

Record

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01, 2010 1:15 PM
To: 'David M. Knauss'; Jayne Nelson (Rep. McGee)
Subject: RE: Comments for North Carolina House Select Committee on Homeowners Associations

Dear Mr. Knauss:

I have printed your comments for consideration by the committee members. Thank you for sending them, the format printed perfectly.

Susan Doty

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: David M. Knauss [mailto:dmknauss@rochester.rr.com]
Sent: Monday, February 01, 2010 10:37 AM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: Comments for North Carolina House Select Committee on Homeowners Associations

Dear Ms Doty and Ms Nelson,

I am not able to attend the North Carolina House Select Committee on Homeowners Associations Hearing on February 2, 2010, but I would like to submit the attached comments for inclusion in the Committee's considerations.

A word document is attached, please let me know if that format is acceptable.

Thank you,

David M. Knauss
585-975-9105

Dear Committee Members,

Thank you for the opportunity to comment on the issues related to the protection and participation of homeowners in the governance of their homeowners associations.

The most important action that the General Assembly can do to assist homeowners associations is the passage of the 'North Carolina Community Association Managers Licensure Act'. The most difficult problem that associations face is the hiring or appointment of custodians to manage our property. Many problems in homeowners associations are the result of incompetent or untrustworthy managers that gain the confidence of the hiring committee. Without standards of competence and performance, inexperienced hiring committees often make poor decisions that are later revealed in assessments and fee increases due to incompetent property management. At its worse, this lack of clearly defined standards and performance results in many opportunities for malfeasance and corruption. The passage of this act is vitally important to help associations raise the level of management competence and raise the confidence in hiring decisions. Thank you for your continued support of this important legislation.

The major issue facing association owner's is enforcement of the existing statutes governing the behaviors of the association management. When association bylaws or state laws (55a, 47a, and 47c) are violated and management refuses to comply, the only recourse available to owners is costly retention of an attorney to mount a legal challenge to the behavior. This is self defeating since the owners pay all legal fees for both the challenge and the defense through their HOA fees. Several examples of potential violations of bylaws are:

1. Denying access to records by invalidating the stated purpose of a request for records.
2. Violating procedural bylaws for the proposing and approval of annual budgets by denying the owner meeting as called for in the bylaw.
3. A by-mail budget approval voting process that violates Roberts Rules because "no ballot returned" was counted as a "vote to approve the budget" instead of an absentee.
4. The association borrowed $400,000 when the bylaws limit unapproved borrowing to $50,000.

In each of the above instances, owner's inquiries and challenges were simply ignored by the Board of Directors with no response or actions. The owners are powerless to move beyond this point without hiring an attorney. The association's attorney and CPA are directed by the Board not to respond to owner's inquiries by invoking client confidentiality.

Homeowners require a practical means of preliminary challenge and enforcement of the law without the expense of engaging an attorney. A practical approach may be an advocate within the North Carolina Attorney General Office that could provide assistance to owners either as a mediator or an expert source of interpretation of the law. The primary focus of the Committee should be on enforcement of existing law and the protection of owner's rights.

Thank you,

David M. Knauss
1194 Gatestone Circle
Webster, NY 14580

Ocean Dunes Homeowners Association
Kure Beach, North Carolina

Rec'd

Jayne Nelson (Rep. McGee)

From: Nancy J. Kurul [nancy@nkurul.com]
Sent: Monday, February 01, 2010 1:35 PM
To: Rep. Jennifer Weiss; Rep. William C. McGee; Rep. George Cleveland; Rep. Beverly Earle; Rep. Chris Heagarty; Rep. Julia Howard; Rep. Michael Wray
Subject: Nancy Kurul's Comments for North Carolina House Select Committee on Homeowners Associations
Attachments: N Kurul NC House Public Hearing Info.doc

Attached please find my comments relating to the public hearing on Homeowners Associations Tuesday, February 2,2010.

Please feel free to call upon me should you need any volunteer assistance or further information.

'Thank you for your efforts on behalf of the citizens of North Carolina.

All my best,

Nancy Kurul

February 1,2010

To Whom It May Concern:

Thank you for this opportunity to address issues related to the governance of homeowners associations, particularly as to it relates to assessments and record keeping. In addition to Manager licensing, I hope you are able to address difficulties associated with Developer management of HOAs and an orderly Developer-Homeowner Transition.

I live in the Oak Ridge sub-development of Grand Oaks in Pender County, NC. I served for little over a year as the Secretary for the Oak Ridge Homeowners Association. As part of the first elected HOA board, I was involved in the transition from Developer control to lot owner control of our sub-development HOA. The inadequate record keeping and poor budgeting and assessment processes continue to lead to serious problems for our development.

Some background may be helpful to address:

CLOSING

We purchased Lot #8 in the Oak Ridge sub-development on 7/3/2007. Prior to closing we were supplied **Covenants, Conditions and Restrictions** (hereinafter referred to as CCRs) by the Declarant's real estate agent.. [1] These were forwarded to our closing attorney for review. Unfortunately these were not the CCRs attached to our sub-development, but rather those attached to another sub-development in Grand Oaks. All of the Oak Ridge lot owners received either incorrect CCRs or no CCRs whatsoever.

To date we have not received the required **Street Disclosure Statement,** which would have informed us prior to closing that the streets are private and were built below current Department of Transportation standards.

Monies collected for **capital reserve funds** at closing were $100 more than those specified in the Oak Ridge CCRs. Attempts to verify that reserve funds have not been co-mingled with operating expenses have gone unanswered. Since we now know that we will be responsible for maintenance of roads built long before the development itself, verification

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[1] Grand Oaks Development Company, LLC, hereinafter referred to as the Declarant or Developer, was incorporated on 5/16/2000.
Oak Ridge at Grand Oaks Homeowners Association was incorporated 6/6/2000.
The Pender County Subdivision Ordinance was adopted on 3/15/2004.
Pine Village at Grand Oaks Homeowners Association was incorporated 4/21/2004.
Grand Oaks Homeowners Association (hereinafter referred to as the Master Association) was incorporated 4/14/2004.

of the continued existence of these funds is essential to long-term planning. No reserve study has ever been conducted to our knowledge.

DEVELOPER/HOMEOWNER TRANSITION

It was during the November 2007 transition from Declarant Control of the Oak Ridge HOA to a homeowner-elected HOA board that we realized the extent of the poor record keeping and budgetary practices. It took numerous certified mail requests to obtain the correct CCRs, By-laws, and bank account records for the Oak Ridge HOA. It was not until then that we realized a Master Association even existed. The Master Association CCRs informed us that the Declarant Control Period for the Master Association would continue as long as the Declarant, its successors or assigns, own any property in the Grand Oaks Development. This means the lot owners do not, and will not for the foreseeable future, have any vote on budgets or representation on the Architectural Committee.

The current Grand Oaks Board of Directors consists of the Declarant and his two adult children who own unimproved lots in the Oak Ridge Development. The Declarant owns a home in the Oak Ridge sub-development, but excluded his home from the Development plat; his property is not subject to sub-development dues or requirements to comply with the sub-development's CCRs.

BUDGET/RECORDKEEPING ENFORCEMENT

The Grand Oaks Board does not supply lot owners with a proposed budget until July at earliest for that fiscal year, if a budget is supplied at all. Lot owners do not have voting rights on the Master Association budget. The annual assessments have risen dramatically since the transition to homeowner control of the sub-developments and include such items as a conference calling system for the Declarant to meet with the other Master Association Board Members (his two adult children).

Upon discovering a myriad of other irregularities in record keeping, deeds and contracts[2], etc., I attempted to discover what remedies were available to lot owners. I consulted the Pender County Board of Commissioners and the Pender County Planning Board, reviewed the North 'Carolina Planed Community Act, the Pender County Subdivision Ordinance and a host of other resources. I contacted my Representatives and the Attorney General's Office.

As a lot owner in this development it seems I have no option other than to sue the association and/or the offending property owners in court for an order compelling them to abide by all lawful covenants and bylaws. Please help us, and please supply some "teeth" to whatever you do.

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[2] For example, a contract made by Grand Oak Board President to the Grand Oaks Development Company, LLC for maintenance of supposed common elements property still owned by Elloyd E. McIntire, Sr. The common elements were not deeded to the Grand Oaks Development until January 2008

Should you have any questions or concerns or need any homeowner volunteer assistance, please do not hesitate to contact me.

All my best,

Nancy J. Kurul

Nancy J. Kurul
431 Pine Village Dr.
Rocky Point, NC 28457
910-602-6126
nancy@?urul.com

Record

Jayne Nelson (Rep. McGee)

From: jonl9@suddenlink.net
Sent: Saturday, January 30, 2010 11:25 AM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Subject: The House Select Committee on Homeowners Associations

Dear Ms. Doty, Ms. Nelson,

Your help in getting my note before the Select Committee currently holding public hearings on Homeowners Associations would be most appreciated.

I have served on Home Owners Association Boards of Directors in two states, in California as board treasurer and most recently in North Carolina as board president. California at that time had some 92,000 Home Owners Associations and from experience had grown a body of law to deal with Common Interest issues. The main piece of legislation was and continues to be evolving as the Davis Sterling act which outlined the responsibilities and liabilities of a Home Owners Association Board of Directors and in doing so provided protection in many areas for the property owners of that Association from negligent or even malicious acts of a majority on a Home Owners Association or Common Interest Development Board of Directors.

I recognize no such definitive and protective legislation here in North Carolina which could help avoid expensive litigation.

It appears to me that the only recourse a member of a Home Owners Association has is litigation on virtually all issues. I would suggest a more orderly approach should evolve in North Carolina statute defining clearly the obligations and liabilities of a Board of Directors thus providing protection for the member of the Board, but also providing a clear path of resolution for members of the Home Owners Association before the only recourse of resolution is litigation. The concern also exists that Judges may not be familiar with Common Interest case history as opposed to clear statute and there is no assurance a full weighting of the issues can be obtained.

I believe a climate that enforces liability even at the expense of the negligent or malicious Board member would help to prevent issues.

I recommend the select committee should acquire experience from other states such as California and learn from their experience while evaluating legislation here in North Carolina.

Covenant violations are civil violations, the state's Attorney General does not appear to have responsibility to resolve these issues. I would recommend that North Carolina define a place of review or mediation of civil issues regarding Home Owners Association Boards and the Association members before litigation becomes the expensive solution of last resort.

We have issues here in our community including a created and defined $1,290,000 liability. Two past presidents of this Association and a number of Association Members retained a lawyer, Mr. Henry Jones, who I am sure is known to the Select Committee. He helped us understand that this community has problems of liability from negligent attention to the provisions of the Covenants (Declaration) and the only path to get the issue on a path of resolution is very expensive litigation. Our group offered, at Mr. Jones suggestion, to pay the costs of a mediator on the issues, the board ignored the issue. The financials around the problem continue to deteriorate in the year since we've seen Mr. Jones; means of defining and recommending resolution should be available before a court

has to make a decision.

North Carolina is blessed in many ways. Located in the transition zone between temperate and and sub tropical climate zones, located between the the magnificent mountains in the west of this state and matchless coast in the east, Common Interest Developments offering common amenities here should be a natural hold for North Carolina residents and a draw for retired people who come with their pensions, assets and health insurance. All adds to the local tax bases, all use local restaurants and other businesses injecting cash flow into local and state economies. Beaufort County has benefited from all of this from the several Common Interest Developments here.

North Carolina should strive to be the ideal destination and residence for those wishing to benefit from Common Interest Developments. If the state gets a reputation for badly run Common Interest developments, then the benefits will flow elsewhere.

Respectfully,

Jon Larson
103 Neuse Drive
Chocowinity, NC 27817

(252) 940-0222

Rec'd

Jayne Nelson (Rep. McGee)

From: Rich Marshall [rcmarshall@suddenlink.net]
Sent: Monday, February 01,2010 2:55 PM
To: Susan Doty (Rep. Weiss); Jayne Nelson (Rep. McGee)
Cc: diana_starling_60@yahoo.com
Subject: Statement for House Select Committee Public Hearing
Attachments: Letter to House Select Committee.doc

Attn: Susan Doty
Jayne Nelson

re: House Select Committee on Homeowners Associations Public Hearing

The attached document is a written statement which we request to be entered into the public record at the Select Committee's hearing being held on February 2, 2010 at 2p.m. We will not be present to offer an oral presentation.

Please convey our appreciation to Representatives Weiss and McGee for holding these hearings. We look forward to the introduction of corrective legislation that will restore a balance of control between North Carolina Property Owners and their Homeowners Association's Board of Directors.

Respectfully submitted,

Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards.
Members of FHPORT, Inc (Fairfield Harbour Property Owners Reform Team) and
Members of the Fairfield Harbour Property Owners Association

Date: February 1,2010.

To: House Select Committee on Homeowners Associations.
Representative Jennifer Weiss
Representative William McGee

Cc: Diana Starling

From: Members of the Fairfield Harbour Property Owners Association.
1822-6 South Glenburnie Road, PMB #222
New Bern NC 28562

Dear Committee Members,

We are members of the Fairfield Harbour Property Owners Association in New Bern, North Carolina. Our community was established in 1972 and now has approximately 2825 members. We are a community with both retired and working families. Our Property Owners Association is a Non Profit Corporation operated by seven (7) Board members.

Over the last five (5) years our Property Owners Association Board of Directors (POABOD) has been under the control of a group of interviduals that are out to change our community. They have made rules and regulations on their own authority and have refused the membership the opportunity to expand their voting rights. They have created documents that charge fees and impose rules that do not appear in our Declarations of Restrictions to accomplish their agenda. They ignore the bylaws and the Declaration of Restrictions because they get in the way of doing things. The following is part of a legal letter the POABOD received: "Most Board of Directors of most Associations are given the authority to adopt rules, regulations and guidelines by statute (47F-3-102 (1)) or by specific provisions in bylaws or restrictive covenant. The Board at Fairfield Harbour has no such general rule making authority."

The POABOD and Property Control Committee (PCC) have expanded our three page Declaration of Restriction section on building requirements into a fifty (50) page builder's application. This application dictates that the builder must do what the PCC requires, but if a builder is sued due to following their rules, the POABOD and PCC are to be held harmless. The application imposes a road maintenance fee, which is not mentioned in our Declaration of Restrictions. The Road fee has increased 100% over the last 5 years.

In 2009 the entire PCC resigned under what was a power struggle between the POABOD and the coequal PCC. The POABOD presented a "Document of Understanding" to the PCC. The PCC rejected the "document", and resigned stating that it shredded the Declaration of Restrictions.

In 2005 our Board presented a Declaration of Restriction change to restrict Boats, Trailers and RV's from being kept in residential yards. Following what was a very close vote, the communities billboard results changed over night, that put suspect on the results. It took over 3 years to get the votes recounted because the POABOD refused access to them. Only under threat by legal council to litigate the matter was ballot access finally permitted. A review of the ballots disclosed that the late votes were counted in the totals. A letter to the POABOD outlined these results along with documentation. The reply by the POABOD stated that "late does not have to mean late". The POABOD minutes also reflect that the ballot box was opened to " see how the vote was going".

The Annual Meeting held in May of 2009 was the first occasion that sign in sheets were provided to establish a quorum. We believe that the only reason this initial establishment of a Quorum occurred was that our group demanded to present a petition to the POABOD at the meeting. The POABOD has always been required to establish the quorum prior to installing new directors. We could have challenged the sitting board members because they had never been properly installed.

No one knew what a proxy was for and none were ever sent out. One half of our membership does not live in our development and many are out of state owners.

Currently our POABOD is on a quest to purchase the Amenities within the development. The property owners over the years have been told that the POABOD can not purchase the amenities. Our Declarations and Articles of Incorporation do not allow for the Property Owners Association dues to service debt. The Board has looked for two years to find a legal opinion that would state, "you can buy the Amenities". This venture will cost over 6 to 10 million dollars. The POABOD had a five-year projection for the dues that contained a 59% increase without the purchase of the Amenities. The property owners have no control over the POABOD spending, as a previous Board of Directors removed a budget approval provision by members from our bylaws years ago.

We have formed a group called Fairfield Harbour Property Owners Reform Team or FHPORT. Last year we petitioned the POA Board for bylaw changes to get more voting rights and spending caps. Thirty (30%) percent of the membership signed the petition. That was 903 voting members asking for a chance to vote on the changes. The POA Board refused to allow a vote and dismissed the petition.

Our group's members have contacted the following North Carolina Officials:

1) North Carolina Attorney Generals Office
2) North Carolina Secretary of States Office.
3) North Carolina Real Estate Commission.
4) Federal Government Representatives.
5) State Representatives
6) Local Government Representatives

All the Agencies and Representatives have said they could not help and that we needed to hire a lawyer to have our rights enforced. Most lawyers advise that to take on the Association you need to be ready to spend upwards of $100,000 dollars. The current law and State Government Agencies that control the Non Profit Corporations which most Homeowners Associations operate under are generally ineffective. Alternatively these agencies may not want to enforce the statutes. As a result, Property Owners are left fending for themselves against an organization that has virtually unlimited resources produced by our own dues with which to defend itself. All Homeowner Associations have insurance policies and we have been told "if you don't like it sue us". We as Property Owners clearly need help from our legislators and from State Agencies to protect our Rights. Laws need to change or new ones created to protect property owners and members of Associations from unscrupulous Homeowner Association Boards. Though our group FHPORT has organized in our community there are those who ridicule and demean people that take a different point of view. Challenging the powers of the establishment is a difficult undertaking. Any and all help would be appreciated and if you need to contact us please do so.

Sincerely,
Members of the Fairfield Harbour Property Owners Association and Members of FHPORT Inc.
Tom Cherney, Rich Marshall, Mandi Johnson, Tony Morello, Pat Byrne, Rich Edwards
252–617-6276

Record

Powder Horn Mountain Property Owners' Association, Inc

1568 **Powder Horn Mountain Road**
Deep Gap, NC 28618
(828) 264-2072
E-mail: manager@powderhornmountain.com
Web site: www.powderhornmountain.com

February 1,2010

Members of the House Select Committee on Homeowners Associations
C/o Committee Assistants - Susan Doty & Jayne Nelson
Legislative Office Building, Room 643
300 N. Salisbury Street,
Raleigh, NC 27603-5925

Re: Public Hearing on Homeowners Association Related Issues on February 2,2010

Dear Honorable Representatives on the Select Committee on Homeowner Associations:

As a professional operations manager of a large property owners' association (a more accurate term than homeowners association), I would like to make a few written comments for the public record regarding issues related to homeowners associations. I am quite certain that you Committee members have most likely already heard some real horror stories regarding the egregious management of these associations and/or egregious treatment of property owners by their associations. I am also certain that at least some of these stories are likely based on true and accurate facts and very bad real life experiences.

As a former manager in business and industry and for the past 8.5 years as a property owners' association manager, it has been my personal experience and observation that 5% of such entities and/or certain groups of individuals account for 95% of the problems experienced by such groups of entities, their individual entities and members, including property owners associations. These "bad apples" tend to spoil the image and outlook for their affiliated groups and their memberships. Unfortunately, I believe that no matter what legislation is passed or regulations implemented that many of these entities and individuals will continue to act as they do. Just visit any NC criminal or civil court room on a day it is in session and you will see clear and irrefutable evidence of this reality. It has also been my personal experience and observation that we (society and legislative bodies) tend to equally punish the many good and honest entities and individuals with over regulation and far overreaching laws just to punish the few "bad apples". It has also been my personal observation that failure to enforce existing laws and regulations already on the books is a very large part of this problem. We are over regulated to death in NC!

I truly believe the majority of professionally managed property owners associations are very efficiently and effectively operated by their representative boards and managers to the great benefit of their memberships and local communities, I would suspect that some

small associations, often operated by real estate developers, their volunteer boards and staff, or even individual owners, have such difficulties due to their lack of knowledge, experience, resources and internal oversight. I also suspect that many of the existing problems also have to do with current economic climate and the resulting stress that it has placed on many associations and their management and membership. I have also found from personal experience that many property owners simply do not understand or want to accept their own responsibilities as owner-members when buying into planned communities complete with restrictive covenants and legal commitments to fund the operation of their communities and their amenities and infrastructure. In fact, I personally fight this battle nearly everyday as an association operations manager.

I believe the two primary and relevant statutes, Chapter 47F – NC Planned Communities Act and Chapter 55A – NC Non-Profit Corporation Act, provide a sufficient and meaningful structure for the effective and efficient operation of property owners associations with modest revisions if properly applied and enforced. The need for better education for association management, boards and members is the real issue at hand, not more laws and regulation to further complicate our lives and day to day existence. I would simply ask that you proceed with extreme prudence as you move forward with your hearings and subsequent deliberations and any resulting legislative proposals that your Committee may generate and bring before the General Assembly for its consideration.

Thank you in advance for your kind review and consideration of my comments above and I would welcome any questions or comments that you may have for me. I regret that I could not be present in person for the hearing tomorrow on such short notice and due to the long distance between Deep Gap and Raleigh. However, I can be reached at the above phone number, mailing address or e-mail address Monday through Friday.

Sincerely,

J. Grant Mastin
Operations Manager & Member of the Community Associations Institute

"Experience the Future on the Mountain!"

Cc: Rep. Cullie Tarleton, Rep. Steve Goss, Sarah Stubbins – CAI; George McSwain – PHM POA President, Pat Hetrick

Recd

Jayne Nelson (Rep. McGee)

From: Mark Morano [mrm@herrin-morano.com]
Sent: Monday, February 01,2010 3:24 PM
To: Jayne Nelson (Rep. McGee)
Subject: Re: Committee on homeowners assn hearing tomorrow
Attachments: hoaselectcommitte.submission.doc

Attached. Thank you. (I also received a response from Ms. Susan Doty and have sent it to her.)

--- Original Message ---
From: Jayne Nelson (Rep. McGee)
To: Mark Morano
Sent: Monday, February 01,2010 3:20 PM
Subject: RE: Committee on homeowners assn hearing tomorrow

Yes Mr. Marano, that would be fine. Please do so as soon as possible so we have time to get it before the committee tomorrow.

Thanks,

Jayne Nelson

Jayne **A.** Nelson
Legislative Assistant to Representative Bill McGee
North Carolina General Assembly
phone 919.733.5747 - fax 919.754.3321
m.cgee!a@.ncl.eg.net

From: Mark Morano [mailto:mrm@herrin-morano.com]
Sent: Monday, February 01,2010 09:45 AM
To: Susan Doty (Rep. Weiss)
Cc: Jayne Nelson (Rep. McGee)
Subject: Committee on homeowners assn hearing tomorrow

I would like to submit a written comment for the hearing tomorrow, but have never done this before. Can I e-mail it to you as a "Word" attachment? Is the deadline this afternoon7

Thanks.

Mark Morano
Washington NC

Written statement submitted to
House Select Committee on Homeowners Associations

To: Rep. Jennifer Weiss, Co-chairman
Rep. William C. McGee, Co-chairman

From: Mark Morano
124 Cypress Bay
P. O. Box 2012
Washington, N. C. 27889-2012
mark.morano@yahoo.com

Date: February 1,2010

Re: Hearing on February 2,2010

I would like to submit this written statement in support of what I understand is a proposal to require homeowners associations (HOAs) to give their members an opportunity to participate in budgeting decisions.

I am a member of a homeowners association in Beaufort County. We are not a condominium, so we are not subject to the provisions of the North Carolina Condominium Act (Chapter 47C). Our association was formed before the North Carolina Planned Community Act (Chapter 47F) was enacted, so we are not subject to it, either. (Also, I am not sure if our community is large enough to be subject to the Planned Community Act.)

Because of this, there is no requirement that our board provide individual homeowners with a copy of a proposed budget. Nor is there a requirement to provide homeowners with advance notice about a board meeting to adopt a budget. Also, there is no requirement that the board give any notice to individual homeowners about a plan to expend a signifcant portion of our HOA's funds.

I would like to briefly describe two recent instances involving our HOA:

(1) The board recently spent about 15% of our HOA's funds on a discretionary, non-emergency matter (landscaping). This amount was more than three times the amount that was contained in the budget for this. Originally, the "landscaping" was advocated as a means of addressing drainage issues, but it was ultimately conceded that its purpose was simply

"curb appeal." In any event, at no time before this substantial expenditure was made were any individual homeowners given any specific information about how much of the HOA's money was going to be spent. I even sent two written inquiries to HOA officers about this, but received no response until after the contract for this landscaping had been signed and the work was about to begin.

(2) An announcement for a recent board meeting stated that the purpose of that meeting was to address two specific issues, neither of which was the budget. However, at that same meeting, the board began to consider and adopt the budget. At one point, it was even suggested that the proposed budget be circulated via e-mail to board members only (not the general membership) and that the board then approve it via e-mail.

If I not been at that meeting as an observer and objected, no individual homeowner would have known that the board was going to adopt/approve the budget.

I do want to say that I appreciate and respect the hard work that goes into being a board member for an HOA. I do not intend this statement as being a criticism of any of them. However, HOA boards are spending "other people's money." Also, at least in our HOA, the board has the power to increase assessments (in the form of monthly dues). This is really not that different from having the power to tax, since these assessments are legally enforceable against the homeowners. Because of this, I think that it is important that individual homeowners be notified in advance of any significant financial matters, and have an opportunity to participate in the decision.

Another reason why other homeowners and I are concerned about how our HOA spends its money is that we are located on the Pamlico River, and our HOA's facilities are very vulnerable to hurricanes and flooding. We need to preserve our HOA's funds to be ready for the next storm.

In summary, I would support a proposal to extend to homeowners associations the same type of protections that are contained in Chapter 47C [N.C.G.S. 47C-3-103(c)] and Chapter 47F ([N.C.G.S. 47F-3-103(c)] about budgets.

Thank you.

/s/
Mark R. Morano

Jayne Nelson (Rep. McGee)

From: Steve Nelson [slnelson@mcg.net]
Sent: Monday, February 01,2010 1:14 AM
To: Rep. Michael Wray; Rep. Julia Howard; Rep. Chris Heagarty; Rep. Beverly Earle; Rep. George Cleveland; Rep. William C. McGee; Rep. Jennifer Weiss
Cc: Jayne Nelson (Rep. McGee); Susan Doty (Rep. Weiss)
Subject North Carolina Homeowner Association Statute Changes

1/31/2010

To House Select Committee on Homeowner Associations,

My family and I own a lot in a North Carolina subdivision that is subject to a Homeowner's Association. I am also a real estate professional in Minnesota and have been involved in creating homeowner associations and in helping associations resolve problems created by others. I wish I could affordthe time to attend one of your hearings but I am unable to do so due to my work load. I would strongly encourage you to look at the Minnesota "Common Interest Community" statutes which can be found in Chapter 515B (see https://www.revisor.mn.gov/statutes/?id=515B). I think the Minnesota statutes clearly address many of my concerns and are fair between the owners and developers plus set out adequate protection and disclosure for purchaser's protection. A declarant referred to in the Minnesota statutes is essentially the developer or the contractor who is building the units.

Rather than bore you with all of the specifics of what I have experienced with a homeowners association in southwestern North Carolina, I will try and highlight some areas where I found lacking in the association I am involved in and what I think the state of North Carolina should do to help all owners in associations. I am sure that there are many well run associations and there are well written documents but unfortunately the association I am involved with currently is not one of them.

When I purchased the property I tried to do my due diligence and asked the title company to send me a copy of all of the homeowner association documents since my seller didn't have any and I had no information about who were the then current officers or directors of the association. The homeowner documents I received were unfortunately incomplete as I have since found out. Much to my surprise I have learned that the directors are not elected by members of the association but are appointed by the current board members. The officers are to be elected by the association members but have never been elected because there has never been a quorum at an annual meeting. The current board just appoints who they choose amongst the membership to be the Association's officers. The association documents were written primarily to protect the developer and the developer only.

Since purchasing my North Carolina property, I have learned many things. The association is run by some people who maybe have good intentions but they operate the association in a very undemocratic manner in which they are attempting to impose their will on all of the owners. The following is a synopsis of my experience.

1. The homeowner association documents were not all furnished to me by the title company (only 2 of the 3 of record). One was missed but more important is that I have since found out that there were at least one if not more documents amending the original recorded documents which had allegedly been passed by the board (i.e. not the association members) and had never been recorded or served on the members despite the requirement under the original recorded documents that require all subsequent amendments to be passed by the members of the association and are not to become effective until 30 days after notice to the owners and the filing of the amendment with the recorder have taken place. Thus, how is a purchaser to find out what are the governing documents when the board doesn't follow the documents and they are not of record? (See Minnesota Statutes 515B.4-107 to 108)

2. The documents filed say that the officers are elected by the homeowners. Nothing in the recorded documents at the recorder's office mentions about election of the directors. Thus, in some associations I have seen, the officers were also deemed to be the board of directors of the association. I have since learned that the organizational documents (i.e. articles of incorporation) for the association which was not of record in the recorder's office provide for the association to be run by directors. The articles of organization have no provision for election of the directors by the association's membership. Instead, the directors are to be appointed or elected by the current board members. This was done by the developer to retain control of the association. The developer also inserted provisions that the developer did not have to pay any assessments for any of his lots until a lot was sold. Since the board is not elected by the members, the developer retained control until he sold his last lots or he voluntarily turned over the board to some of the members by appointing them to the board. The board has elected its own successor and replacement board members ever since. Thus, the individual members of the association have no say in election of the directors. . The owners have the right to elect the officers but since officers can only operate under the direction of the directors, the members essentially have no way of controlling the association. Also, the members of the association have never elected officers because the association has never had a quorum present at any of the annual association members meetings so the directors have elected the officers from amongst themselves. Essentially, the current directors have just appointed the officers despite contrary provisions within the documents.

3. The homeowner's association is responsible for maintaining the roads and common areas. There are no common areas so the roads are the only responsibility of the Board and the roads are easements along the common boundary lines of the respective lots. The Board claims they have the right to levy assessments in any amount and the members have no say as to what they can or can't do. Essentially they claim they have the right to levy assessments for whatever they deem to be part of improving the roads whether it is within or without the development. The roads that seem to always receive the most attention are those roads nearest the directors homes. The directors furthermore have the right to lien my property if I do not pay my assessments. Assessment without representation makes you appreciate how the people in Boston must have felt before the Boston Tea Party in the harbor.

4. The operation of a board of directors should be transparent. The members should have the right to attend the meetings of the directors and the right to receive copies of the minutes of the meetings of the board. In Minnesota, most run associations send out copies of the minutes of the board meetings to all of the members so they know what ,is going on in the association. When I requested copies of the homeowner's association documents the board bulked at furnishing me the documents. The right to these documents appears to be mandatory under North Carolina non profit corporation law and if not it should be mandatory. The association should be entitled to reasonable compensation for providing copies which is only fair. There should be a right to have access to corporate documents including minutes of all meetings of members and board of directors. (See Minnesota Statutes 515B.3-118)

I would ask that you consider the following when amending your statutes:

A. In Minnesota and other states, anytime you buy into a common interest community there is a requirement of full disclosure by the Seller relative to the homeowners association (See MN Statutes 515B.4-106 to 108). This should be applicable to all homeowner associations that maintain common elements shared and paid for by all members. A seller should be required to provide a prospective purchaser with copies of the organizational documents and the purchaser has 10 days within which to inspect the documents and to cancel the agreement if the documents are not acceptable to the purchaser. Upon request, a homeowner's association in Minnesota is required to provide a "sales package" which includes a complete copy of the Covenants and Declaration, Articles of Organization, Bylaws and any amendments to these documents, rules and regulations, copies of the budget and financial statements including the balance of any reserve accounts, a statement as to status of the

assessments for the particular property and a list of any planned special assessments, names of board members and officers and copies of the last two years of minutes. The purchaser then has 10 days to review and approve the documents during which the buyer can cancel the purchase agreement or back out if the documents are not acceptable and receive a full refund. This prevents law suits by disgruntled homeowners and puts everyone on a level playing'field. Most Associations are authorized to charge the Seller for the cost of duplicating these documents for a modest fee of $50 to $75. The legislature could even set a maximum fee and provide that the homeowners association can charge the lesser of the actual cost or $75. This will give a purchaser of a parcel subject to an association all information needed to properly evaluate the association. A purchaser who subsequently becomes an owner is than a more informed person which benefits the Association as well. There is a standardized addendum and/or language used in Minnesota purchase agreements to comply with this disclosure requirement which must be included in a purchase agreement. Essentially, it notifies the buyer that the property is subject to a homeowners association, that seller must provide the required documents and the right to rescind the agreement within 10 days of receipt of all required documents. Failure to give the notice makes the seller subject to a fine. If the notice is provided and the buyer closes before the documents are furnished, the buyer is deemed to have waived the right to inspect the documents.

B. Furthermore, I would suggest that you create a law that requires the establishment of replacement reserves for any capital improvement to the common areas to be maintained by the association. This should be in addition to the normal maintenance and upkeep expenses for the common improvements. (See MN Statutes 515B.3-114)

C. All members of the Board of Directors of an association once the developer has turned over control should be elected by its members. All directors should be required to be members of the association or officers of an entity that holds title to a unit or a trustee of a trust that is an owner. The Board should then elect the officers from amongst the directors. Board of Directors should not be allowed to levy assessments that are lienable unless the association members have the right to vote and elect the directors. All directors .should be re-elected each year.

Furthermore, the board should be required to send out an agenda in advance of an annual meeting together with a copy of the proposed budget and proposed annual assessments. (See MN Statutes 515B.3-115(c)) The budget and all regular assessments for reserves and maintenance of common areas should be approved by the members at a duly qualified meeting. Most well written documents for an association require the board to propose a budget which then must be submitted to the association membership and adopted by the association membership before the regular assessments can be levied. If the board fails to do so, the prior years assessments remain in effect. Likewise, special assessments against all owners for unusual items not covered by insurance or replacement reserves are generally approved at a special meeting of the members of the association. Associations that have an obligation to maintain common areas used by all members are also required to set aside and collect replacement reserves in addition to the annual maintenance and upkeep expenses (See MN Statute 515B.114). In Minnesota, the developer (i.e. declarant) or first directors have a reserve analysis done to determine replacement cost and life expectancy of the improvements to the common areas and then the cost is amortized over the life expectancy of the various items and divided up amongst the homeowners based on the allocation of expenses in the declaration documents so that hopefully enough money will be available to replace the capital improvements when needed.

All minutes of directors and members meetings should be available to the association members within a reasonable period of time after a meeting either by mail or electronic notice.

D. The bylaws of the Association, articles of organization and the covenants and declaration should only be amended by the members of the association based on the required vote in the organizational documents. The changes should either be proposed by the Board or 5 or 10% of the members of the

association. The notice of the meeting at which any amendments are to be addressed should require specific notice and provide the homeowner with a copy of any proposed amendments and a summary of how they will affect members. Once voted on and approved, changes should be effective only after service of notice upon the entire membership and all such amendments to the Covenants and Declaration should be recorded.

E. The assessments in the association should be limited to those purposes declared in the original declaration and covenants. Amendments to expand the scope of the association should require disclosure of an estimate of future costs to the members of the association and should only be enacted by a super majority of the association members rather than a simple majority (75%) of those present for a quorum.

F. The association should be limited to only owning or acquiring an interest in land within the limits of the property covered by the covenants and declaration unless the land is in another association that is also subject to or part of a master association. . Also, the right to levy assessments should be limited to such improvements permitted under the organizational documents and said improvements should be made on land owned and controlled by the association except where a master association exists and all of the associations share costs of improvements owned by all associations under the master association. Associations should be restricted from entering into agreements with other homeowner associations to share in costs except when the other association or associations have the legal authority to levy assessments to cover the other association's proportionate share of said costs.

Again, I strongly encourage you to look at the Minnesota law which has been in existence for about 10 years and may provide you with some ideas as to how you can amend your current laws to address some of my concerns. Thank you for your considerations.

Very truly yours,

S. L. Nelson
3475 Siems Ct.
Arden Hills, MN 55112
(651) 636-0414

Jayne Nelson (Rep. McGee)

From: Lawrence E Overton [lorinceoverton@bellsouth.net]
Sent: Saturday, January 30, 2010 2:53 PM
To: Jayne Nelson (Rep. McGee)
Subject: Placed on agenda for N.C. legislature on special committees to deal with community association
Attachments: Violation of board in 2009.pdf

Dear Representative Bill McGee:

I am forwarding you information on our" Kaymoore Association" The attachment will show the violations of the board. The only recourse we as homeowners is Civil court which is very expensive. We have no protection from a board that has no knowledge of community law, covenants, By-Laws, State Statues and is not willing to learn. The board is not held accountable except for the law. I would like to know if the insurance company can hold the board responsible since they have directors & officers insurance. Could they cancel their policy if they violate the covenants, By-laws or state statues. I would like to see legislation in the following areas.

1. Associations that are self-Manage are required to have a managers license. "Managing Licensing Act.
2. Easier way to pursue legal action if board breaks law and violates documents.
3. Future By-laws and covenants are required to have new state statue laws in documents

Sincerely,

Lawrence E. Overton

..

November 19,2009
Dear Homeowner:
The Items listed below are violations of the board at the annual meeting held November 20,2008.
1. Meeting notice was not properly mailed, but attached to Mailboxes.(Notice could have blown off mailboxes.) Homeowners wouldn't have known of meeting and that could affect the outcome of meeting. Violation of By-Laws Article IV,Section 3 .Should have been mailed.
2. sh
3. Meeting Notice did not properly specify the proposed agenda.(violation of State Statues 47F-3-108 Meetings. Reason they should be listed is- Owners will base their decision whether to attend the meeting on the purpose stated in the notice. Imprecise language or unclear purpose in a special meeting notice can render a meeting invalid. Items to be discussed should be listed.
4. Meeting had only two Board members, President and Secretary. This is a violation ofKHOA's By-Laws (Article IV, section 1) and they had no Vice President a Violation of (Article IX, Section 1)
5. The secretary is the only person who can hold multiple offices. (Article IX, Section 7) it is a violation for any other officer to do so.
6. Dues payable January 1 stated in (Article XVI of Covenants).
7. Maintaining entrance and common areas. Violation of Covenants Article XVI.
8. Board gave out improper address of Kaymoore Association to Homeowners to pay dues. This was later corrected after bringing it to boards attention.
Sent out notice and requesting a rescheduling of meeting without results.

Homeowners, IF YOU REFER TO OUR ANNUAL Meeting LAST YEAR YOU CAN See we ONLY HAD TWO Board members THAT open The meeting. A VIOLATION OF BY-LAWS. REFER TO Article V. Section 4

2) IF YOU REFER TO OUR ANNUAL meeting You will See JEFF Locke, President & Kevin Swiden, Secretary; There IS no vice president. Vice president SHALL be members OF The Board AT ALL TIMES; Refer to Article II Section #1

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies tled to cast, one-fourth (¼) of the votes of each class of membership shall constitute a quorum ny action except as otherwise provided in the Articles of Incorporation, the Declaration, or s By-laws. If, however, such quorum shall not be present or represented at any meeting, the bers entitled to vote thereat shall have power to adjourn the meeting from time to time, out notice other than announcement at the meeting, until a quorum as aforesaid shall be ns or be represented.

Section 5. Proxies. At all meetings of the members, each member may vote in person or roxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be cable and shall automatically cease upon conveyance by the member of his lot.

ARTICLE V. BOARD OF DIRECTORS.

Section 1. Number. The affairs of this Association shall be managed by a Board of no less three (3) and no more than five (5) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting the members shall elect at least one tor for a term of one year, at least one director for a term of two years and at least one tor for a term of three years; and at each annual meeting thereafter the members shall elect tors for a term of three years.

Section 3. Removal. Any director may be removed from the Board, with or without e, by a majority vote of the members of the Association. In the event of death, resignation moval of a director, his successor shall be selected by the remaining members of the Board, shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may r to the Association. However, any director may be reimbursed for his actual expenses red in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any n in the absence of a meeting which they could take at a meeting by obtaining the written val of all the directors. Any action so approved shall have the same effect as though taken meeting of the directors.

Homeowners, This among other issues Like our Records IS Why we need A MANAGEMENT COMPANY. A MOTION From The Floor IS Needed "According To Roberts, Rule OF Order.

charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(c) procure and maintain adequate liability insurance covering the Association, its directors, officers, agents and employees and to procure and maintain adequate hazard insurance on any real and personal property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the entrance landscaping and improvements, and Common Properties, if any, to be maintained.

ARTICLE IX. OFFICERS AND THEIR DUTIES.

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

KAYMOORE HOA ANNUAL MEETING

Georgia Taylor Recreation Center
Winston-Salem, NC
Thursday November 20, 2008 6:55pm-8:40pm

Officers Present: Jeff Leckie, President
Kevin Swider, Secretary

Pre-Meeting Discussion: At the start time of the meeting quorum was not established. Jeff and Kevin discussed options with the homeowners and expressed their disappointment. The homeowners decided to continue with the meeting excepting the fact that no voting could take place. Quorum was eventually established with 8 Proxies and 14 Homeowners present.

Call to Order: Kevin Swider called the meeting to order and welcomed everybody.

Introduction of Board Members: Kevin Swider and Jeff Leckie introduced themselves to the homeowners

Approval of 2007 Annual Meeting Minutes: Kevin read the minutes from last year's annual meeting. The minutes were unanimously approved by the homeowners.

Financial Report: Jeff reviewed the 2008 Profit and Loss sheet to date. He also presented the 2009 budget, which was approved by the homeowners. Both are attached to this document.

Year in Review: Jeff and Kevin discussed issues from the year. The accomplishments were regular news letters, summer time social, new landscaper, successful completion of taxes, and cleaning up the pond area (trespassing, lids for trash cans, and research on lot 12). The disappointments were no interest from the neighborhood, board vacancies, and lack of work on the website.

Sheds: Jeff brought up a proposal to amend the by-laws to allow sheds. The proposal was liked by the homeowners. They voted to go ahead and present to the neighborhood to receive the needed 80% of votes to change. The following will be changed in the proposal; the shed must be five feet from any property line, the shed foundation, if not slab, must be painted a solid color to match shed, a fine system will be set in the amendment. The fine would be $100 for any violation and the homeowner would have 30 days to rectify. If not fixed the homeowner would be fined $10 a day from day 31-90. If not fixed at day 90, there will be a lien filed against their home for the fine amount and legal cost. The fines will increase to $30 a day on day 91 with a new lien filed every 45 days.

Lot 12: Jeff presented the following proposal to the homeowners and they unanimously approved the proposal.
Problems with lot 12:

- Lot 12 has several areas where the water wells and does not drain into the pond or drains into the pond at a very slow rate.
- Lot 12 is downhill of much of the rain that falls north and east of the lot, adding to the already existing drain problem.

LIST OF FOLLOWING ERRORS IN NOTICE

(1) NO YEAR ~~[illegible]~~

(2) Not MAILED. Violation OF COVENANTS Article III, SECTION TWO & STATE STATE) 47F-3-108 MEETING

(3) meeting Requested Amendment change & not LISTED ON ANNUAL NOTICE. VIOLATION OF STATE STATES 47F-3-108 MEETING

Refer to-N

NO YEAR ON BALLOT
NOT VALID because notice WASN'T sent by mail
PUT ON MAIL BOX

Dear Homeowner(s),

The annual Kaymoore Homeowners Association meeting will be at 6:30pm on Thursday November 20th. The meeting will be at the Georgia E. Taylor Neighborhood Recreation Center located at 1471 W. Clemmonsville Road, Winston-Salem, NC 27127. We will be discussing important issues, as well as, electing officers for 2009. If you can not make the meeting please give your proxy vote to a neighbor by using the form below. If you have any questions please email the board at board@kaymoore.org.

Kevin Swider
Secretary- Kaymoore HOA

PROXY VOTE PERMISSION

I _____ owner(s) of lot # _____ give permission to _____ to vote on my behalf.

_____ Signature Lot Owner 1 _____ Date

_____ Signature Lot Owner 2 _____ Date

November 19, 2009

Dear Homeowner:

The Items listed below are violations of the board at the annual meeting held November 20, 2008.

1. Meeting notice was not properly mailed, but attached to Mailboxes.(Notice could have blown off mailboxes.) Homeowners wouldn't have known of meeting and that could affect the outcome of meeting. Violation of By-Laws Article IV,Section 3 .Should have been mailed.
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5. The secretary is the only person who can hold multiple offices. (Article IX, Section 7) it is a violation for any other officer to do so.
6. Dues payable January 1 stated in (Article XVI of Covenants).
7. Maintaining entrance and common areas. Violation of Covenants Article XVI.
8. Board gave out improper address of Kaymoore Association to Homeowners to pay dues. This was later corrected after bringing it to boards attention.

Sent out notice and requesting a rescheduling of meeting without results.

Rec'd

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Tuesday, February 02,2010 10:28 AM
To: Rep. William C. McGee
Cc: Jayne Nelson (Rep. McGee)
Subject: FW: House select subcommittee on Homeowners Associations
Importance: Low
Attachments: Jennifer Weiss.docx

FYI

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Mark R. Richards **[mailto:mrichards@carolina.rr.com]**
Sent: Tuesday, February 02,2010 10:11 AM
To: Susan Doty (Rep. Weiss)
Subject: House select subcommittee on Homeowners Associations
Importance: Low

Good Morning,

I wish to submit the attached letter to your office as representation for the House select subcommittee on Homeowners Associations meeting.

Thank You,

Mark R. Richards

Rep. Jennifer Weiss
NC House of Representatives
300 N. Salisbury Street, Room 532
Raleigh, NC 27603-5925

My name is Mark R. Richards from Charlotte NC and I live in a development called Morris Farms. Morris Farms consists of 363 homes with an average price range between 100K – 125K. Over the last few years, we have witnessed numerous accounts of HOA mismanagement of member's funds as well as major abuses of power. We have made numerous attempts to access and review the association's financial records and have been unsuccessful on all accounts. We have asked numerous questions and received very few answers, most which have been incomplete and sometimes condescending.

Morris Farms is now being managed by a company named CAM, Carolina Association Management. I personally have evidence that CAM conspired with our HOA board to fix the outcome of the last election of the board of directors. I have evidence that our board president used association funds for her personnel which was used against us in the last election. This board has threatened people with fines for so called violations that fall under the jurisdiction of the county, clearly overstepping their boundaries.

The Board and management company are out of control and there is no help available for the homeowners. Our only representation is a 15 minute open floor to the members at the annual meeting. However, if the meeting runs late, we do not get that 15 minutes as we have to vacate the rented room.

I have written to the Attorney General's office and received a standard form letter in response stating that there was nothing they can do, I have written to the Secretary of State's office and received a standard form letter in response from them as well stating that there was nothing they can do. They tell us that we should get a lawyer on our behalf but what sense would that make? We would be paying money to an attorney and the board would hire an attorney using the association funds. Therefore, we are paying for both sides.

I have records of where the board and management company falsified financial statements to hide money and it doesn't take a financial expert to figure it out. This past year, between 45-75K has been suspiciously moved on and off of financial statements.

The bottom line here is that the members of our association have been denied every option that our by-laws provide us and we have nowhere to go to right this wrong. We've been told to vote them out and when we tried, they manipulated the outcome of the election. In past elections, the board actually took the votes out of the meeting and into their homes to count them. We asked to review the votes and proxies for the last election and have been continuously been stonewalled.

The State of NC needs some kind of group, committee or board that can step in and force these boards and management companies to comply with the By-laws of each association. Being that HOA's are non-profit organizations registered under the Secretary of State, I'm wondering why they do not govern the rules of these groups.

Many homeowners are actually fearful about voicing their opinion as they fear for reprisals from the board in the form of harassment and threats of fines for anything they can find or make up. I have knocked on doors and spoke with many of these people, some of which are out of work, cannot pay their mortgage and therefore have not paid their dues. They have been threatened by the Board with

liens and foreclosure. This is absurd because this community's annual budget is around 45K a year and the Association has over 100K in assets and some of it in CD's at two different banks.

I am in the process of putting a package together that will point out all of the allegations I speak of above. This will consist of financial statements, emails, letters, and anything else I have to prove the allegations. I am sorry I don't have it available for the scheduled hearings today as I am a little late in getting involved in this matter.

We need HELP, we need REPRESENTATION! We know we're getting ripped off and there seems like there's nothing we can do about it. This just furthers the boldness of the Boards and Management companies and the people have had enough. We want to be heard and represented.

I will forward my information package to your office very shortly but I wanted to be heard and represented in any way shape or form at today's hearing.

Thank You,

Mark R. Richards
Member of the Morris Farms HOA
8714 Sweet Sage Lane
Charlotte, NC 28227
HM: 704-573-1355
Cell: 704-301-8704

Record

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01,2010 5:00 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: Comments for Upcoming Homeowner's Hearing

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

From: Rep. Jennifer Weiss
Sent: Sunday, January 31,2010 08:36 PM
To: shelbot@earthlink.net
Cc: Susan Doty (Rep. Weiss)
Subject: RE: Comments for Upcoming Homeowner's Hearing

Dear Shelley:

Thanks for sharing your views about HOAs with me. I will keep your suggestion in mind.

Regards,

Jennifer Weiss. NC House 35

From: shelbot@earthlink.net[mailto:shelbot@earthlink.net]
Sent: Sat 1/30/2010 11:40 AM
To: Rep. Jennifer Weiss
Subject: Comments for Upcoming Homeowner's Hearing

Dear Ms. Weiss,

I received an email concerning the upcoming Homeowner's Association meeting on February 2, and it encouraged sending an email if one could not attend. I do have one concern I would like addressed [as I'm sure with many others having the same concern), which is about increases in costs of homeowner's dues.

One of the reasons I moved into the townhome I'm currently living in, was for the reasonable homeowner's dues, and of course the wonderful neighborhood. I have seen my dues increase from $110 a month when I moved in, to $159 a month for this coming year. It may not seem like much - but to me, it becomes a hardship as I (along with many others in this economy) are barely able to meet living costs without going into the hole each month.

I feel like these continual increases will make homes in the neighborhood that much more difficult to sell (forthose who are trying to do so). Plus, it seems like an idea to do certain things, like add a fence around the neighborhood, should require residents 'agreeing' to it, rather than having to go out of their way to 'not agree'.

But my request is: For any increases in homeowner's dues, or for major changes to a development that would require extra money spent by the homeowners, would require 80%of the homeowners of that development to AGREE to it. Instead of the current ideology of "this will be implemented unless a certain number of people say no." This would require the committee to attain "yes" votes.

THANK YOU so much for your time and consideration, I really do appreciate the opportunity to finally be heard! :)

Warm regards,
Shellie Spero
8111 Satillo Lane
Raleigh, NC 27616
(Riverside/Cypress Grove Development)

Jayne Nelson (Rep. McGee)

From: Stephen Sulkey [ssulkey@atmc.net]
Sent: Monday, February 01, 2010 9:04 AM
To: Rep. William C. McGee
Subject: Committee on HOA's

Ladies and Gentlemen,

Unfortunately it is very difficult for me to attend on of your public hearings due to the distance to Raleigh from Wilmington. I might suggest to get a better sampling of public opinion the members of the House Select Committee on HOA's should hold hearings at different venues such as one in Asheville, one in Charlotte, one in Wilmington, and so forth.

So in lieu of trying to appear I am sending you this email with some of my thoughts on your committee, the actions of the legislature to date and some of the consequences of those actions.

First of all I've been in the business of managing community associations for ten years and was in property management for years before that. My association certifications are CMCA, AMS and PCAM and I've also been a license NC real estate broker since 1995. I started out in this business working for a large management company and for the past three years have been running my own small company with 21 small scale associations. I am also a member of CAI National Faculty. Obviously the past couple years have been both challenging and frankly at times upsetting with the economy. HOA's are affected by economic downturns like anything else. I am also a proponent of manager licensing and have been since 2000, long before there was any call for it from either the industry in NC or the legislature.

To be sure I believe the committee's most important task is that licensing occurs as soon as possible (truly it should be in effect now) and that it be done right. There are too many 'managers' out there without a clue. Trust me, I know. I clean up their messes when I get new accounts. Also, if the licensing law is to be seriously intended for the public's good, there must be some control over 'self managed' associations. Just because they are not 'paid' managers they still need some level of competence dealing with member funds and property, and some monitoring for their honesty. Again, I've had to clean up messes for 'self managed' associations as well.

Aside from that I know the legislature has passed a number of bills intended to protect homeowners such as 1541 and 806 but they have done a lot of damage under the law of unintended consequences. First of all, more than 85% of the unit owners that I have in collections now were in and out of collections well before the current economic crisis. I actually have a very small percentage of delinquencies overall but many of those who are delinquent are those owners who make a career out of skipping their financial responsibilities. What many of the efforts of the legislature have done is make it easier for them to play their little games while at the same time placing the onus of paying association bills on the backs of the vast majority that do pay. When members this past year heard these facts at annual meetings they placed blame not with the associations, management companies, collection attorneys, etc. but with their legislators. They may or may not take that to the ballot box but it is always possible they will.

An example recently is House Bill 806. As the law states I, as the agent for the association, make every effort of contacting the homeowner searching for their address. If they do not live in the unit we've mailed the letter stating they'll be turned over to a collections attorney to the unit in question as well as address of record, tax records, etc. Although addressed to the homeowner many of these letters do get delivered to the units by the USPS and it seems tenant's do open them. The next thing I get a call from a very irate property owner that his tenant called him with this and I've violated his privacy. I explain that I am just following the law as placed on us by the legislature and he should contact his representative, etc.
And, of course, added postage and rules increases the cost of collections that all the

'regular dues paying homeowners pick up the tab for in the long run unless the delinquent party does pay. I can tell you no one appreciates that the NC legislature has cost everyone more money, especially in these times. Again, the law of unintended consequences comes to play.

That is only one example but I urge the committee to play this like a game of chess. A good chess player is around seven moves ahead and you need to be as well. Before recommending any more actions to the legislature please try to think of all the possible consequences. If need be ask managers with experience. I can tell you many have been though this enough that they will be able to predict the outcome of the legislature's actions with unnerving accuracy.

Thank you for your time and attention to this matter and good luck with your committee efforts.

Stephen J. Sulkey, CMCA, AMS, PCAM
Professional Association Management Inc.

(910) 253-9147

Record

Jayne Nelson (Rep. McGee)

From: Susan Doty (Rep. Weiss)
Sent: Monday, February 01,2010 5:01 PM
To: Jayne Nelson (Rep. McGee)
Subject: FW: HOA Public Hearing Speaker

Attachments: State of NC Study on HOA foreclosure collection process and governance.doc

State of NC Study on HOA forec...

Susan Doty
Office of Representative Jennifer Weiss
House District 35
919-715-3010

-----Original Message-----
From: Norm Thompson [mailto:ndthompson@bellsouth.net]
Sent: Friday, January 22, 2010 09:49 AM
To: Susan Doty (Rep. Weiss)
Subject: HOA Public Hearing Speaker

Ms. Doty,

I will NOT be able to attend the public hearing on HOA but wish to submit my statement for inclusion in the record when the meeting takes place on February 2, 2010 at 2:00 P.M. The statement is in the WORD attachment to this email.

I would appreciate a confirmation that you have followed up on my request. If you have any questions, I am available at 704-820-2936 or via email at ndthompson@bellsouth.net

Thank You,
Norman D. Thompson
Oxford Hunt HOA - President
704-820-2931

Norman D. Thompson
442 Doves Crest Ct.
Stanley, NC 28164
Oxford Hunt HOA- President
704-820-2936

Subject: "Study Commission" for the purpose of looking into issues relating to homeowners associations.

Representative Jennifer Weiss,

Due to travel distance, my opportunity to attend the "HOA Public Hearing" on Monday, February 1,2010, must be limited to sending my statement to be recorded for the record.

The Oxford Hunt HOA has been in existence since March 1999. Since that time, there have been no completed foreclosures due to HOA issues. This success is due to an interface between a management company who was contracted to manage financial records as well as advise in the governance of the HOA to the associations Board of Directors. To say the least, a very effective way to support Board Members who may have limited legal and financial backgrounds and the property owner who may have financial pitfalls.

Common practices that have scored positive results in our HOA are due to holding to a standard that drives "fairness" to both the HOA as well as it property owners. Setting a threshold between assessment due dates and late fees protects the HOA from falling into arrears in its annual budget costs but also allows the property owner time to zero out a balance. Should the property owner fall into non-payment, proper notification is made to alert the property owner that lien proceedings are at hand. Further ignorance to adhere to the non-payment and associated late fees then results in legal lien proceedings. If the non-payment activity continues, legal foreclosure steps are put in place. This is where it is important to be fair with the property owner but at the same time, protect the HOA in maintaining financial balance to its budget. In times of hardship, a fair approach to allowing a one time IPA (Installment payment plan) by the Board of Directors, allows the property owner to both agree and follow through with making monthly payments and up front legal fees. This gives some window of opportunity for the property owner to balance out their account. Constant communication and interface through the Management Company and legal department is paramount.

I wish to submit the following process that is used in our HOA. As was expressed above, it serves as a very effective means to protect both the HOA and the property owner and at the same time, serves as a fair and just way to give a property owner a chance to recover from delinquencies.

Oxford Hunt Homeowners Association Lien and Foreclosure Process

Notice of Delinquency (30 day letter):

- The homeowner meets or exceeds a delinquent threshold amount set by the board of directors.
- A letter is sent informing the homeowner of the delinquency and asks them to pay amount due or contact us to make arrangements (this is done automatically if a threshold is set)
- If the homeowner pays the process ends here
- If the homeowner does not pay within the 30 days a request for lien will go to the attorney's office

Lien Proceedings:

- The attorney usually files the claim of lien within 2-3 weeks of the request date
- Once the account has been forwarded to the attorney's office for lien, all communication related to collection should now go through the attorney's office because there will be additional fees involved that will not be reflected on the homeowners account (and the association is now paying the attorneys to collect this debt)
- The fees (billed to the association) at this time are established for the lien filing. Extra charges may apply for cancellation of the lien and for any correspondence between the law firm and the homeowner. All legal fees incurred are collectible from the homeowner as part of the debt owed to the association.
- If the homeowner has not made contact or payment after 30 days, the board proceeds to foreclosure.

Association Foreclosure:

**Foreclosure proceedings will not begin until a signed permission slip from the board of directors for the community has been received.

Normally what happens once the process starts is the following:

- Claim of lien is updated
- Commencement package is prepared
- The hearing and sale date are scheduled at the courthouse (usually about 6-8 weeks out on the hearing and about another 4-6 weeks for the sale)
- The homeowner is notified of the above
- The hearing takes place with or without the owner present.

- The sale takes place as scheduled
- Assuming the association is the high bidder.... The deeds are prepared and sent out for the board president's signature and the straw man's signature
- The deeds are recorded upon completion of both signatures
- The homeowner is then notified of the eviction and has 10 days to vacate the property
- An eviction date is scheduled with the sheriff and the property manager would be present at this eviction

Anytime during this process the homeowner could pay the past due amount up to the date of sale. After the sale it would be up to the board to decide whether or not they would be willing to sell the property back to the homeowner.

From start of process to eviction it is usually about 4-6 months.

Lender Foreclosure:

- Once a property enters lender foreclosure our attorneys monitor the file and update us on a regular basis of about every 30 days.
- They will update more often around the time of the sale and hearing for the property.
  They will automatically provide updates unless told not to by the board..
  The attorneys will also stop (place on hold) any legal action that was started when they discover a lender foreclosure.
- If the lender foreclosure is abandoned or dismissed, normal collection process can be restarted at that time.

Bankruptcy and Relief from Stay:

Chapter 7 (usually surrendering the property)
Chapter 13 (usually keeping the property)

When someone files bankruptcy, it is necessary to set him or her up with a brand new account.

- All amounts owed prior to the date of filing are put on what is called a pre-bankruptcy account and are considered un-collectible (through the lien and foreclosure process) as long as the bankruptcy case is open.
- If the bankruptcy is dismissed resumption of collections will take place as per normal process.
- Once a bankruptcy is discharged, any amount remaining on the pre-bankruptcy account is written off. If it is a Chapter 7, monitoring for Lender FC will begin if they are surrendering the property.
  Any amount that becomes due after bankruptcy can be collected through the process of filing for relief from stay.
  If the court grants the association relief from stay, ALL amounts owed then become collectible.

- Many times the court will rule that a consent order will be approved to resolve the motion for relief, This means that the court will set a payment plan in place to allow the homeowner opportunity to pay the past due debt. If the homeowner defaults on this plan the relief from stay is granted to the association and ALL amounts become collectible at that time.

Although I do not admit to fully understanding the ramifications for your study on "foreclosure collection process and association "governance.", I do feel that there is a fair way to both protect an HOA as well as a property owner when times of hardship occur. Our process certainly proves to be successful in returning a property owner to financial normalcy. Proper professional management and common sense of the HOA Board of Directors interfacing with an experienced management company such as how our HOA operates has proven to be very effective. I suspect there are HOA's in this state that do not recruit a management company qualified to support these types of legal issues. If this is true, a gap certainly can occur that has negative results in achieving a fair and just way to resolve a foreclosure process. The standard that is used in our HOA works.

I am available for questions, should anyone wish to discuss this matter further.

Respectfully,

Norman D. Thompson
Oxford Hunt HOA – President
704-820-2936

Jayne Nelson (Rep. McGee)

From: Stephanie Walker [walkermanagementgroup@gmail.com]
Sent: Monday, February 01, 2010 9:45 AM
To: Susan Doty (Rep. Weiss)
Cc: Jayne Nelson (Rep. McGee)
Subject: Developer Responsibility to Homeowners & Making Developers Accountable

Dear North Carolina House Select Committee Members:

It has come to my attention that you all are starting to hold hearings on homeowner association matters. One area that I would like to address is developer responsibility.

A common problem a lot of HOAs are having is making developers accountable for their responsibilities. Developers sign and notarize documents claiming responsibility to the communities they develop. These promises and county documents of public record mean no more than the paper they are written on. To give an example, the current HOA I manage is a 403 home community that was developed starting in 1996. The homes were finished being built around 2001-2002, but it is now 2010 and the developer is still legally responsible for the roads and stormwater system, and they are ignoring their responsibilities. This is a very common problem in this area with some developers.

NC DERIR (state stormwater division) cannot get a response from this particular developer about bringing the ditches up to code (by law they are subject to fines) and the HOA cannot get a response from them regarding their responsibility of maintenance of the roads, particularly replacing many lost and damaged stop signs. Numerous attempts have been made via fax, mail, certified mail and actually calling them, and they have all been ignored.

What it all boils down to is the developer can get away with whatever they want with no one overseeing them or forcing them to be accountable for their responsibilities. As the management company for this particular HOA, I have made several attempts to find out who the developers were accountable to. In my thinking, if the county is going to go as far as requiring notarized documents to be submitted making claims of responsibility, then the developers MUST be responsible to someone. Every government entity I have contacted either doesn't know who 'they are responsible to, or refuse to give me advice on the matter. I called New Hanover County Planning, Zoning &the County Attorney; Zoning didn't know, Planning sympathized with me and gave me suggestions, but didn't take responsibility, and the County Attorney was quite upset being asked the question and refused to give me any kind of legal advice at all. I called the NCDOT, who also sympathized and admitted that the developer IS responsible and they SHOULD be fixing problems, but there was nothing he could do (this particular developer has been in the road turnover process for a year now, and has failed to get the roads turned over to the state 3 different times now) I called the State Attorney and they were the same; reluctant to (and almost nervous to) give me any advice, but did tell me that the court system would have to be the one to settle it. Many HOAs cannot afford to take developers to court, and even the ones that can are wasting their money because these developers should be meeting their obligations. They developed the land and made large sums of money, but then when they decide they've had enough, they just ignore the homeowners and no one is holding them accountable. This leaves homeowners all over

the state and the country with no recourse except wasting large sums of reserves to make the developer do what they are supposed to be doing anyway.

I have personally heard and seen this story and scenario a few times, and I believe it is just the tip of the iceberg. I realize that there are probably plenty of good developers out there that do what they are required to do, but there are plenty that don't. As you all know, land development has skyrocketed in Southeastern North Carolina (within the top 5 in the country), and it is time for the state to take a hard look at what it can to do protect the citizens of North Carolina from the whims of over zealous and unresponsive developers. They should be held accountable for promises they make in regards to their responsibility to the people of the communities they develop, and not leave people with no recourse except to waste large sums of money and time in the court systems to force responsibility. The state or county MUST be more aggressive with this, and it must start at the highest level possible in the form of legislation.

If at any time, any of you feel it would advantageous or it would help the committee delve deeper into problems HOAs face, I would be glad to come and speak or give testimony. I am sure I could also bring a few HOA community members with me also. In the meantime, could you please include this letter with the upcoming meetings to help highlight this very important issue?

Sincerely,

Stephanie Walker, Owner
Walker Management Group, Ltd.

Proud Member of the Community Associations Institute
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