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SPOTLIGHT

## Homestead suit now class-action of 100s of parcel owners

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One goal of the lawsuit is an operational Homestead homeowners association that could truly have authority over common open space and related maintenance and fees. (Calvin Bratt/Lynden Tribune)

Revision claims city could do more to enforce having a homeowners association

LYNDEN — The Homestead homeowners' lawsuit over common area fees has become a class-action case, and the suit presses the City of Lynden as well as golf course owner Morris Chen of Canada to have a part in solutions.

Lawyers for the 11 primary plaintiffs filed an amended complaint, or revised list of claims, on May 25 in the Whatcom County Superior Court case. Also, attorneys K. David Andersson and Matthew Davis answered questions about the case during a May 12 Zoom town-hall meeting that is now publicly posted ([www.youtube.com/watch?v=oYN\\_XjTd74E](http://www.youtube.com/watch?v=oYN_XjTd74E)).

The case took shape in early 2020 after fees for that year were raised from \$36 in 2019 to \$93 per month per parcel owner.

As many as 1,200 property owners are in the extensive residential and golf community stretching the mile across north Lynden between Benson and Bender roads. They have a stake by paying the monthly charges, although some have refused to pay it and have diverted their amount to a trust fund for the legal fight.

The suit identifies 8.77 acres of assorted common open space throughout the development. Just a \$30 monthly maintenance fee would raise more than \$2,000 per acre per month to maintain the common open space, the suit claims.

The homeowners want to gain control of the common open space themselves, or have it turned over to the city for parks. Although language in the Master Declaration setting up Homestead in 1992 is conflicting, the fact is that no development-wide homeowners' association was ever created or currently exists.

The common areas are owned by Chen, who has a contract with MJ Management, consisting of Mick O'Bryan and Josh Williams, to maintain them as well as to run the 18-hole Homestead Golf Course.

A contention of the lawsuit is that funds received for common open space maintenance from homeowners is impossibly "co-mingled" with those used to run the golf course.

Chen, as owner today under the corporate name 18 Paradise, claims the same rights as set up by original Homestead developer Jim Wynstra of Lynden in the founding documents.

At the town-hall meeting, Tom Staehr, one of the plaintiffs, also spoke for what has been done as the Homestead Parcel Owners group that has created a website in support of the lawsuit. As to whether negotiation should be given more priority, Staehr said it was tried for several months in early 2020, but it did not yield any progress.

Attorney Davis said, “The problem here is that we cannot negotiate with MJ Management because they have no power. The only person that can do this is Paradise (Chen).”

The attorneys said that after filing the amended complaint, next steps for the suit are to ask for a trial date to be set and to depose (interview on the record) the City of Lynden and Chen himself, the latter possibly having to be done in Canada. Chen lives in Burnaby, B.C.

Davis said it makes sense for Paradise to transfer the common areas to a Homestead homeowners’ association, once formed. The attorney also said that in deposition, Wynstra stated he did not intend to have a functioning homeowners’ association for Homestead, at least not at the beginning.

The attorneys also say the City of Lynden should enforce an obligation that was never fulfilled by Homestead Northwest under its Planned Residential Development agreement in the 1990s, that is, to form a homeowners association that could have some say about the common areas.

“The city can fix all of this,” said Davis at one point on May 12. In the same way it would crack down if someone built a house without a building permit, he said, it is a violation of code. Instead, he said, the message given by the city’s attorneys is that the city is “sort of a neutral observer” and “they just want out (of the lawsuit).”

Judge Robert E. Olson is the presiding judge on the case, and he allowed the class-action refiling of the amended complaint.

Approximately 90% of those who are eligible to be in the class have opted to do, the Parcel Owners website states.

Another claim against 18 Paradise in the case is that it used some funds raised at Homestead to aid another golf course owned by Chen, Sea Links at Birch Bay.