

## Minutes - Meeting to Discuss Homestead Petition/Issues

**Date/Time:** Tuesday March 29, 2022 10:00am

<b>Attendees:</b> <u>City of Lynden</u>	<u>Homestead Homeowners</u>
Mayor Scott Korthuis	Lynn Button
Heidi Gudde – Planning Director	Tom Staehr
Steve Banham – Public Works Director	
John Williams – City Administrator	

This meeting was called based on an invitation by Mayor Korthuis in response to a petition submitted to the City of Lynden (COL) from over 200 residents at the Homestead Planned Residential Development (PRD). There was general agreement that all parties wanted to come to a resolution of the dispute between the residents at the Homestead PRD and the owner of the Homestead Farms Golf course, Morris Chen of 18 Paradise and Mick O'Bryan of MJ Management. There was agreement that all parties wanted the golf course to succeed. Tom Staehr began by saying that a major obstacle to finding a resolution to the dispute was that the various parties involved had a different understanding of the facts and that meeting attendees review certain issues and come to agreement on those issues. To that end, Staehr handed out a list of 20 points for discussion (see attached).

There was general agreement by all on the listed points as stated. However, that review led to more detailed discussions of various subjects which are summarized below.

### **Discussion:**

#### Homeowners Contract

In 1992, the Homestead PRD followed the laws stated in the PRD Ordinance (Ordinance 905, since codified). A Preliminary PRD Plan (PRD Agreement) was agreed to by the developer (Homestead Northwest) and the City of Lynden. Approval of the PRD Agreement constituted a **contract between the COL and the Developer**. The purpose of the PRD Agreement was to reiterate the applicable laws stated in the Ordinance and for the COL to impose any additional requirements or details on the Developer. The PRD Agreement included a Declaration of covenants (the Declaration), where the Developer could pass down any of the requirements to the future homeowners. The COL approved the Declaration as part of the PRD Agreement.

The *Master Declaration of Covenants, Conditions, Restrictions and Reservations for Homestead, A Planned Residential Development* (CCR's) constitutes a **contract between the homeowners and the Declarant** (currently 18 Paradise), part of which requires homeowners to pay a monthly fee to the Declarant to maintain the Common Open Space (COS). Current homeowners were subject to this contract upon purchasing property at Homestead.

## Scope of Work

Homestead homeowners are only obligated to fund **maintenance activities that are stated in Section 3.3 of their contract**, (CCR's), which says there are approximately 8 acres of COS. Tract A (Homestead Park) of the Maberry tract was included as **Common Open Space** in the original Declaration. Amendments 3-5 to the Declaration added property to the Homestead PRD but failed to properly designate additional COS. Nowhere does the say that COS "will be maintained in perpetuity" as required by City ordinance. MJ contends, without specifying, that there are over 30 acres of COS. Section 3.3 also states that maintenance includes entry signs and landscape, mail box surrounds, street light electrical power bills, and maintenance of lights not maintained by the COL.

There are certain maintenance requirements of the Developer stated in the PRD Agreement, that have not been passed down to homeowners, such as **maintenance of private streets, fences, sidewalks, and street trees**.

Property owners are responsible for **maintaining frontage property** (typically between the curb and public right of way), including sidewalks and trees. That requirement is the same for property owned by the golf course.

Per the PRD Agreement, **private street maintenance** is the responsibility of Owners of the golf course or the homeowner's association. The requirement to maintain private streets was not included within the scope of the CCR's. However, there is a "Roadway Maintenance Covenant" that is stated on the face of the plat map for each private street in Homestead. It states that the responsibility of maintaining private streets lies with the owners of property on those streets. Several of those private streets, including Twin Sister Court, Harrison Place, and private streets within Fieldstone have in the past been resurfaced with funding coming from homeowners. Although MJ Management collects fees for these activities, we don't recall when they have actually done any private street maintenance.

## Maintenance Fees and Accountability

Homeowners are currently paying **maintenance fees of \$93/month**, which is based not on need but rather from a revised formula in **the 7<sup>th</sup> amendment**, that produced the most money obtainable. MJ Management provided a business plan that showed the revised maintenance fee was to be used as a down payment to purchase the golf course rather than funding maintenance activities. Homeowners are very much concerned that future fee increases could double or triple since there is no one holding MJ Management accountable. This statement is made due to owner M. Chen's 18 Paradise "hands off" involvement. An equal or perhaps greater concern is that, with **their 6<sup>th</sup> amendment**, MJ Management can levy special assessments on homeowners with no basis or accountability. MJ Management has indicated that additional funding is required to replace cart paths on the golf course, a new maintenance building, and new on course bathrooms, among others.

Despite repeated requests year after year, MJ Management has never provided homeowners with a basis, or an accounting of what the collected homeowners fees are used. Currently, it is

believed MJ Management is using maintenance fees to make their lease payments to 18 Paradise and to pay for attorney fees for the ongoing litigation. MJ Management has stated that it is impossible to separate expenses between golf course maintenance and common open space maintenance. To be clear, the maintenance and expenses of the golf course are separate and distinct from the Homestead PRD property obligation under section 3.3 to 3.5 of the CCR's. MJ Management perpetuates the myth that the maintenance of golf course properties and COS is, "one operation."

A good portion of Homestead residents, especially condo owners, are retired and are on a fixed income.

### Homestead Stormwater System

Although there is no requirement in the Declaration for homeowners to fund the maintenance of the Homestead SDS, all acknowledged that it is an issue worthy of discussion. In addition to properties within Homestead, there are several other **neighborhoods outside of Homestead that utilize the Homestead SDS**, including The Park Condominiums, Emerald Green Way south, Harrison Place, Rosellen, Woodfield, and Heartland. Over three miles of public streets also drain into the Homestead SDS. A determination needs to be made as to what portion of the SDS is public and private. Regardless, all users of this shared SDS need to be considered when determining assessing fees for use and maintenance.

Per **Section 13.24.140.C of the LMC**, 18 Paradise, as owner of the private Homestead SDS, shall develop a standard to determine if maintenance is required. Since there is currently no standard, there is no basis for inspection and no basis for performing maintenance. Thus, there is currently no basis for assessing costs for maintenance of the Homestead SDS. MJ Management is promoting the idea that the Homestead PRD property owners should pay for the Homestead SDS. Needless to say, this idea is an attempt to justify the fees in question. This issue is more complicated due to the various number of users of the SDS.

The golf course ponds have additional value to the golf course other than for storm management, ie. Golfing hazards, aesthetics, wildlife, boundaries, etc. This also needs to be considered.

The City is looking into establishing a local improvement district (LID) to fund maintenance of the Homestead SDS (Heide Gudde, Steve Banham).

### Streetlights

In order to take over streetlights in Homestead, the PSE would require the system to be brought up to their standards. This would require replacing the existing direct buried cable with underground conduits. Costs would be expensive. As an alternative, the City is looking into having another **private company take over streetlights on public streets** (Steve Banham). The City would eventually assume responsibility for public streets once retrofitted to an acceptable standard. Streetlights on private streets may have to be dealt with separately.

### Homeowners Association/Representation

Despite the Declaration stating that an advisory only Owners association is established, **there is no representation for homeowners**. The owner's association is in name only and as such, does not have the ability to "preserve community facilities and open space" as required by City ordinance.

The **Homestead Owners Advisory Group (HOAG)** was formed by over 15 volunteer residents of Homestead in early 2020. The purpose of the HOAG was to give homeowners a voice and negotiate a settlement with MJ Management and 18 Paradise regarding the voting rights and maintenance fees. Unfortunately, MJ Management and 18 Paradise refused to negotiate, and litigation was the only recourse for Homestead residents.

#### Prospective Buyer of the Golf Course

It was acknowledged that a local resident had made an offer to purchase the golf course from 18 Paradise. All parties agreed that it was in the best interests of Homestead residents and the City of Lynden that the golf course succeed. It was also agreed by all that a local owner would be very beneficial, especially in light of the fact that the current owner has not any monetary funds in the golf course.

There was general disagreement on the issue of Homestead residents **subsidizing the golf course**. The COL maintains that the golf course is not sustainable by itself without the help of Homestead residents. Several arguments were presented including 1) the cost to sustain the golf course is unknown since MJ Management combines golf course funds and maintenance fees, 2) the Declaration as written, would allow the owner of the golf course to increase fees indefinitely with no accountability, 3) the golf course is a private enterprise, the same as Steakhouse 9 and Homestead Fitness. Would those businesses also want to be subsidized? 4) Homestead residents receive no benefits for subsidizing the golf course, 5) Costs for bringing the golf course up to a standard because of minimal maintenance by past owners, should not be a homeowner obligation, but should instead be reflected in the purchase price.

Homeowners may still be open to financially supporting the golf course, however, suggestions would have to be vetted, transparent, documented and agreed to by Homestead PRD homeowners.

#### Path Forward/Resolution

All parties agreed that all avenues for a resolution to the dispute should be explored. It was also generally agreed that certain steps need to be taken in order to come to a fair and reasonable resolution for all, including: 1) Define who is responsible for maintaining what, ie. Golf course, COS, storm drain., 2) define what maintenance activities need to be performed, 3) define the fair market cost for performing those activities.

There is an overriding sense of mistrust between the current owner, 18 Paradise and MJ Management, based on MJ Managements misuse of maintenance fees and the Owners resistance to allowing the homeowners to form an HOA.

A major obstacle to negotiating a resolution to the dispute is that 18 Paradise refuses to give up its current "maintenance fee revenue stream" of over \$600,000/year. Since there is no

representative homeowner's association, litigation may be the only recourse for homeowners to resolve this issue.

The most straight forward resolution to the dispute appears to be to separate the golf course business operation from the neighborhood. Any resolution of the dispute would most likely have to involve revising or restating the Declaration.

All parties agreed to keep options open.