

## RESPONSE TO “OURHOMESTEADLYNDEN” WEBSITE

I write this message in response to the “Our Homestead” website. I, along with others, have spent numerous hours reviewing the Homestead PRD documents and different forms of written communications as well as participating in meetings with others including Duane Scholten and City of Lynden officials. This effort was done in order to gain an understanding of the magnitude of issues concerning the owner of the golf course, 18 Paradise (Owner) and the golf course managing agent, MJ Management (Agent).

This journey began when the agent for 18 Paradise, MJ Management, amended the Homestead Declaration (Declaration) by adding amendment 6 (special assessments) and amendment 7 (increase homeowners fees beyond what was stated in the Declaration) from \$36 to \$93 per month per homeowner. **A 258% increase!** (We have subsequently learned that the Agent did not have the permission from the Owner to amend the Declaration) The homeowners of the Homestead PRD (Homeowners) were very upset at this increase. Subsequent meetings with MJ Management were arranged in order to reach a compromise on the raising of the monthly fee. These meetings were not productive as the Agent, MJ Management, refused any suggested resolution. I remember the pleas to the Agent about how the increased fee cost created a hardship on fixed income residents.

The lack of a working compromise led homeowners to file a lawsuit. Initially, 8 litigants filed the lawsuit and a subsequent class action lawsuit soon followed. Meetings were continually held with representatives throughout the Homestead PRD to determine the best course of action. Homeowners had, and still do not have, any type of representation or remedy for disagreements on issues with the Owner. The litigation has dragged on for over 2 years and we are all tired of no resolution. The circumstances for this seemingly long period of time include:

- Three different judges have been assigned to the case. This created delays.
- Covid 19 surfaced creating more delays.
- The judges juggled criminal and civil cases thus increasing the case timeframe. Generally, civil cases are further down the pecking order than criminal cases.
- Discovery motions and the subsequent discovering of new information germane to the case caused changes in direction and filing of motions. The original 8 complainants were kept abreast of this information and voiced their preference on the direction of the litigation. The defendants in the case retained legal counsel and they too submitted motions and counter claims.
- All of the legal issues must be resolved by the judge. Each raised issue resulted in extending the timeframe.
- The judges calendar as well as the plaintiffs and defendants’ legal counsels were taken into consideration. This is nothing unusual for a civil court case.
- The parsing of words in a court case is a major component in litigation. Understanding the intent or meaning of a word can be the basis for several court appearances. It is the judge, the trier of fact, that makes the decision with regard to the “meaning” of the word in question.

Homestead owners submitted a signed petition to the City of Lynden regarding their lack of enforcing certain municipal codes and contract agreements between the City and the Owner/s.

The City of Lynden responded to the petition. We have ongoing communication with City leaders since.

### **Our Fees Pay:**

The information under this heading suggests that our collected monthly fees pay for each of the mentioned entries. The judge has ruled on section 3.3 of the Declaration and succinctly stated that the wording is very clear and that homeowners are responsible for COS, streetlights, mailbox surrounds and entry signs. Homeowners are not responsible for sidewalks, trees not in COS, bridges, hanging baskets and flowerbeds in neighborhoods unless in identified COS, storm water retention ponds on the golf course, snow removal, and/or private street maintenance. The Agent, MJ Management, has mentioned these responsibilities that are not in the Declaration as the homeowner's responsibility. They are not. The Declaration is also very clear in section 2.3 that golf course property is **NOT COS**.

One has to question why the Agent, MJ Management representatives, and even the prospective buyer want to include storm water ponds (all on the golf course), sidewalks, trees, fences, snow removal, bridges, cart paths, irrigation issues, bathrooms, and everything else as areas that homeowners are responsible for. Why? The old saying, "follow the money" is most certainly at play. ***We should be outraged over this.***

If we as homeowners are dissatisfied with the appearance of the COS areas then we should report such dissatisfaction to both the Owner and Agent.

One last point. A significant number of homeowners received a warning letter from the Agent for 18 Paradise that threatened to turn unpaid dues balances to collections. Section 3.6 of the Declaration was cited as the enforcement provision. Several homeowners contacted plaintiffs' attorneys and a subsequent court order stopped this threat. Since the Agent cited the Declaration, then, one must conclude that when the Owner and/or Agent cite the Declaration then they must be held accountable for **ALL** provisions of the Declaration. As an example, if the Declarant and/or the Agent uses homeowners collected fee money for the golf course, then they would be in violation of the Declaration. Section 2.3 specifically states that the golf course is not COS. Therefore, money collected from homeowners, used for maintenance of COS, is not to be used for golf course operations. Therefore, the Owner/Agent is in violation of the Declaration.

The Owner/Agent have commingled the golf course revenue with the homeowners' collected fees. This act appears on its surface as a deceitful practice in order to confuse the need to identify which source of incoming money, golf course revenue or homeowners collected fees, pays an invoice. **We should be completely outraged at this!**

### **Our Options:**

The Sea Links 9-hole short golf course was owned by 18 Paradise and they have subsequently sold the property. Questions arise as to why the course closed. Were there any marketing strategies to keep the course open? One year they had a reasonable membership offer and the next year it was gone. This case was unfortunate. Was money from the Homestead PRD

owner's fees used to pay for an engineering firm to provide a report for the Sea Links property? Why was a Sea Links invoice from said engineering firm in the paperwork submitted by the Agent on a discovery motion? Did 18 Paradise reimburse the homeowners for said expenditure if in fact we paid the bill? **We should be outraged over this.**

The underlying and latent message in this section is that if the lawsuit isn't settled then the Homestead Golf Course would suffer the same fate as Sea Links. If we as property owners allow this to happen then shame on us. Are we to roll over and play dead. I think not. There are many people residing in the Homestead PRD that would be willing to step forward and resolve this possible situation. If the Owner is a smart business person, then why would he allow an asset, the golf course, with value, to deteriorate into a worthless property?

Lastly, I don't know of anyone who does not want the lawsuit to be resolved. So far, the owner refuses to meet and discuss. The defendant attorneys have not offered any meaningful resolution.

### **We Have 3 Options:**

#### **HOA:**

The wording in this section is quite perplexing. Transferring the COS to a HOA is in the Declaration. The HOA is not one person but comprised of an elected Board. A suggested separation of the COS from the golf course owner is an option. Incidentally, this option would relieve the golf course owner of the responsibilities of maintaining the COS and allow said owner to devote their energy to the golf course. This suggestion may or may not be feasible.

An elected HOA Board would have a voice and decision-making responsibility in determining the best manner in which to maintain the COS. We would have control of our funds if needed as well as maintaining COS to a high standard. One would have to agree that for the last several years, this has not been the case. It is my belief and understanding that this is what a settlement proposition from the plaintiffs have suggested. Incidentally, the law was amended in 2018 that specified that once a developer of a PRD reaches 70% completion then the COS must be turned over to a HOA. I wonder why this was written into law. Look no further than what has happened to the Homestead PRD.

The establishment of a HOA and its structure would be voted on by all of the homeowners. The preference would be to work with and support the golf course owner. No one is suggesting any form of adversarial relationship. Partnerships can build strong communities. This partnership should consist of the golf course owner, PRD homeowners and the City of Lynden.

#### **New Owner:**

We all want the current prospective owner to complete the purchase of the golf course. If the local business owner prevails then we would all look forward to working together for the benefit of our Homestead community as well as the City of Lynden. The prospective owner is well

established in Lynden with a solid reputation. However, changing the Declaration is a must and certain sections must be revised.

I have heard the phrase many times “trust me.” Trust is a double-edged sword. “Trust us” (the homeowners) should also be loudly expressed.

### **We Do Nothing:**

This particular section paints a “sky is falling” scenario. The golf course owner can close the golf course. I am one that does not believe that this would happen. Why would a prudent and business savvy owner allow a valuable property to deteriorate? Especially since there is an offer on the table for the purchase of the golf course.

I believe the recent deposition from the 18 Paradise representative stated that collected fees are to be used for maintenance of the COS. Thus, the fees are not a slush fund, piggy bank, or profit source.

As stated before, we as homeowners would have the ability to challenge this “sky is falling” scenario and develop alternatives. There are several homeowners that have a wealth of talent that could foster a series of options. As a side note, there is a firm in Bellingham that specializes in this area.

**We as homeowners have done something!** We have challenged what we believe was a wrongful act by the Owner and Agent. As a result, we have gained the following:

- Clarification of COS
- An uncovering and education as to what has transpired over the past 30 years with regard to the golf course and COS. The documents from discovery motions, sworn affidavits, depositions, and a myriad of document reviews paints a very complicated and questionable picture regarding the actions of the Owner and Agent.
- The fact that the Owner/Agent cannot provide an accounting of how homeowners collected fees are used should be frightening. This is outrageous.
- A complete forensic analysis of the COS as well as the golf course might be the needed requirement.

“But beyond the storm-ponds, who will do the actual maintenance for upkeep and safety (streetlights, sidewalks, trees, etc) of our many neighborhoods? And at what cost?”

This is why we would have an elected HOA. With input from the owners this concern could be easily rectified.

### **FAQs**

- *Original Design of Homestead’s Planned Residential Development (PRD)*
  - “Mitigating storm-water levels through a system of ponds, pumps, and weirs are on the golf course.” This particular issue should rest with the Owner and the City

of Lynden. We as homeowners already pay a storm water fee to the City of Lynden. Why would the homeowners assume this responsibility? This particular topic was never raised for nearly 30 years by the Owner or Agent. It was only as a result of the litigation that this surfaced. This appears to be an after the fact tactic from the defendants to justify raising the fees. This issue is compounded by “public” and “private” stormwater system claims. To date, areas of public and private have not been identified. Also, which ponds are for stormwater and which ponds are golf course play hazards? No one has identified an analysis of maintenance needs for the ponds?

- *Who are the HOAG?*
  - The HOAG was established to represent concerned homeowners regarding the increase of homeowner fees from \$36 to \$93 per month. This increase in fees sparked an outrage by homeowners and questions were asked regarding the need and use for the increased amount. The justification for the increase by the Agent did not make sense thus more questions were asked. The Agent, MJ Management representatives, listened and would not budge on negotiating the increase in fees regardless of its merit and the expressed hardship voiced by homeowners. The HOAG on numerous occasions, attempted to negotiate with the Agent however said negotiations continued to fall on deaf ears. This resulted in the filing of a lawsuit by 8 complainants with a subsequent class action suit as well. A group of homeowners who were against the litigation formed an “advisory committee” that initially included representatives from the Agent. The establishment of the advisory group did not include participation from the over 600 homeowners. This group met with the Agent and submitted a compromising proposal for consideration. The proposal was rejected by the Agent.

The length of time regarding the lawsuit has already been mentioned above so no need to revisit its content.

**It is not time to retire.** Retire to what? So far, proposals from the defendants provide no protection from unfair and unjust practices from the Owner. Certain sections of the Declaration, if left intact, could propel us into the same debacle we are currently in. We have a chance to right the injustice and wrong by the Owner. Now is not the time to concede.

- *Opt-in or Opt-out?*

Mr. Anderson and Mr. Davis are litigating our case at a reduced rate. I have spoken to them several times. They have responded to my inquiries and I have absolutely no qualms about them being “*YOUR LAWYERS*”!
- *How are lawyers paid in class action lawsuits?*

No comment needed.
- *How are Mr. Anderson and Mr. Davis paid?*

This section suggests, “if” each homeowner is paying \$93 per month. I am not sure what the point of this statement is designed to accomplish. By the way, paying the \$93 per month to the litigation fund rather than the Owner would be a VOLUNTARY action. Litigation is not cheap. So, do we invest in the litigation in order to right a wrong? Or do we roll over, play dead, and allow a wrongful use of homeowner’s collected fee money by 18 Paradise and its Agent, MJ Management?

Comparing costs! There are approximately 646 homeowners in the Homestead PRD. Prior to the wrongful monthly increase to \$93, residents were paying \$36. 646 residents x \$36 per month x 12 months = an annual yield of approximately \$279,072. This figure can fluctuate slightly based on the number of residents that actually pay. At \$93 per month, using the same formula, the annual yield is \$720,936. Why is another \$500,000 needed to pay for our obligation as set forth in the Declaration? To date, there has not been an actual cost figure that addresses our obligation as stated in the Declaration. These costs for maintaining COS have been requested several times. The Agent has continually stated, “We can’t do that.” There is something terribly wrong about this amount and we as homeowners should continue to be outraged.

So, in order to stop this egregious practice, the investment in “*YOUR LAWYERS*” seems prudent in order to right this wrong. The bottom line then is that I am willing to voluntarily pay my part for the litigation to stop this outlandish practice.

## **OUR NEXT STEPS**

- *01 Stop paying the lawyers.*  
Paying the lawyers is voluntary. Both attorneys have taken this case to right a wrong. I cannot believe that anyone in the Homestead PRD believes that we have not been wronged. If we have been wronged and sustained injury (misuse of entrusted funds) then what is our remedy. What grievance procedure do we have? NONE. **We have been forced into litigation!** This heading is absurd.
- *Pray*  
Divine intervention would be most helpful.
- *Support your fellow homeowners.*  
Without question.

**“We cannot move forward if we continue to look backward. And our situation has changed from what it was in 2019.”**

One cannot ignore history without change for the betterment of Homestead. We still have the same Owner, same Agent of the Owner, same Declaration, and same disputed amendments. We do not want to become involved in a repeat of our history.

**“Homeowners now know what need to – and can be-fixed for our community”**

This lawsuit could have been settled long ago with a reasonable offer. To date, offers that have been made do not relieve the burden of Homestead property owners.

Resolutions from the Owner to date continue to shoulder the responsibility of the golf course success on the backs of Homestead property owners.

**“City of Lynden & MJ Management are no longer defendants”**

Perhaps those who believe that this is a deterrence should ask the question as to why these defendants are no longer involved in the litigation.

**“Charges in original Complaint are in its 3<sup>rd</sup> revision”**

The changes in a court case are nothing new and quite often occur. New information, new evidence, discovery motions, depositions, etc. are but a few reasons why a revision/s of a complaint are submitted.

**“New fees have been proposed for us to consider and negotiate”**

The wording in the current Declaration complicates any form of negotiation since the homeowners are ADVISORY only and have no authority to reject a proposal. The authority exclusively rests with the owner.

The new fee proposal that was submitted was done without an explanation as to the need or use of the fees. The homeowners must agree on any type of fee restructuring. The Declaration has to be amended and the Homestead PRD homeowners must have the ability to approve this change.

This section only begs the question, “Why would the Homestead homeowners agree for an increase in fees above what was described in the Declaration, and give 18 Paradise more money, only to have the funds comingled and spent in violation of the Declaration without any type of accountability? We have endured this inexplicable practice over the last several decades. No one in Homestead believes that our collected fees have been solely spent on our areas of responsibility as outlined in the Declaration.

**Final Thoughts**

- We all want to move forward.
- We cannot forget what has happened in the past. We must rectify what has occurred in the past for our future. We do not want a repeat!
- Trust has been broken. It is a must and needs to be restored.
- Visions are expressed in words, meaning, and action. How one moves forward with the vision is what needs to be explained.
- Two groups of homeowners have drawn lines in the sand. One against litigation and one involved in litigation. The addition of a local business owner who desires to purchase the golf course is being used as leverage in order to convince homeowners that litigation must be ended without a righting of a wrong. What is most disheartening is that those against the lawsuit have not reached out to those who initiated the litigation in an effort to present a united front. This can be accomplished through compromise and ensuring that homeowners have a meaningful say in COS issues.
- A partnership with the Owner, homeowners, and City of Lynden officials is critical and a must.