Why We Fight

Friends and Neighbors,

The primary objectives of the Plaintiffs' lawsuit, filed in May of 2020, remain the same today.

1. Homeowners are entitled to accountability for the collection and expenditure of their maintenance fees for the defined Common Open Space. Only the organization of the Homestead Owners Association will protect those homeowners' rights.
2. Plaintiffs, and all class members, want the golf course to remain open and well maintained.
3. Plaintiffs' primary goal was, and continues to be, a negotiated settlement. As Declarant, only Defendant 18 Paradise can settle the lawsuit.
4. Because 18 Paradise does not wish to settle, negotiate or even communicate through counsel, the Plaintiffs are determined to take the case to trial on September 6, 2023.

Brief Background Information

As Declarant, only 18 Paradise, LLP can amend the Declaration to the Homestead Planned Residential Development (PRD). On June 28, 2019, through their agents, MJ Management (MJ), 18 Paradise filed the 6th Amendment, which imposed a Special Assessment on the homeowners on the pretext of storm damage to the Common Open Space. Then, on December 3, 2019, 18 Paradise had MJ file the 7th Amendment to the CC&Rs, allowing 18 Paradise to **retroactively** increase maintenance fees for past years in which the prior Declarants did not increase the fees.

Both of these amendments were in clear violation of the **Washington Uniform Common Interest Ownership Act**, in particular **RCW Section 69.40.525,** which requires homeowner notification and consent.

When the Declarant raised the maintenance fees for the Common Open Space from $36 to $93 per month on the pretext of "deferred maintenance," there was an outcry from homeowners. To address Homeowners' concerns, MJ, the agents for 18 Paradise and its principal Mao Hua (Morris) Chen, called an informational meeting. However, neither 18 Paradise nor its local agents provided any useful information to the several hundred homeowners in attendance. Mick O'Bryan and Josh Williams of MJ could not tell the audience where their maintenance fees were being spent, and could not even identify the Common Open Space on their maps. The Lynden Tribune reported on the 158% fee increase and the meeting on September 9, 2020. At $93/month, 18 Paradise would collect over $600,000/year.

MJ's attorney, Phil Buri, told the audience that 18 Paradise, as Declarant, could make any amendment it wanted to the CC&Rs and the homeowners had no say in the process, nor any right to accountability. According to Mick O'Bryan, it was Mr. Buri who suggested they increase the fee to $93. On June 8, 2023, Mr. Buri filed to withdraw from representing MJ et al in the lawsuit.

The PRD consists of many individual homes and several sub-developments, most with their own independent Homeowners (HOA) or Condominium Association (COA). Volunteer representatives of these HOAs and COAs organized themselves into the Homestead Owners Advisory Group (HOAG).

Through most of January through April 2020, the HOAG attempted communication with 18 Paradise, both directly and through its local agent. The HOAG explored mediation through the Whatcom Dispute Resolution Center as well, but were told that unless the other party was willing to engage, it couldn't happen. After all attempts at negotiation and other options to engage 18 Paradise, which were completely ignored by 18 Paradise, the HOAG reluctantly determined that litigation was the only path forward. The lawsuit was always envisioned as "negotiation through litigation," i.e., a way to encourage 18 Paradise to negotiate. All of the Plaintiffs in the lawsuit are former HOA or COA representatives in the HOAG, or spouses of same.

After t**he lawsuit was filed** in **May of 2020**, **offers to settle were proffered by the Plaintiffs**, but these have either been rejected or ignored. The most recent offer to settle was sent to 18 Paradise in May 2022. The offer still stands. If approved by the Court, the settlement would have permitted 18 Paradise to avoid any *financial* responsibility for its deceptive and illegal practices. **There has been no response**.

On April 6, 2022, the Washington State Superior Court signed an Order confirming that the definition of the Homestead PRD Common Open Space is legally described as follows:

> Platted areas within the Homestead PRD that are: (1) identified on the face of a plat as a "Common Open Space" or "Open Space;" (2) delineated on a plat but not identified as a lot; and (3) easements on the face of a plat for ingress and egress, pedestrian use, or pathways.
> **Except:** (1) areas dedicated to the City of Lynden for roadways and utilities; (2) areas that are also identified as utility easements, (3) unplatted areas, and (4) **areas within the golf course**, clubhouse, R.V. storage and maintenance areas.

The order clearly states that the Common Open Space **DOES NOT INCLUDE THE GOLF COURSE**. It does include about 6 acres of park-type land, electric bills for street lighting, some mailbox surrounds, signage and decorative landscaping at entrances to some Homestead neighborhoods. There is no possible scenario where maintenance of this Common Open Space would cost $600,000. According to independent bids – maybe $50,000?

18 Paradise has entered into an agreement to sell the golf course to local businessman Duane Scholten for $3 million; however, the sale is contingent on the settlement of the lawsuit. The market value of the golf course, without a $600,000 supplemental income stream from homeowners, may be in the $1.2 million range.

The Plaintiffs met with Mr. Scholten, both informally and with their respective counsel present. Mr. Scholten was advised that settlement of the lawsuit would simply require 18 Paradise or its successor to permit the organization of an HOA to oversee the Common Open Space maintenance, as required by the City of Lynden PRD ordinance. Mr. Scholten's position was that upon becoming successor Declarant, he would continue to oppose organization of the Homestead Owners Association and would unilaterally set and collect maintenance fees and would expressly *expand* the scope of Common Open Space to include the golf course and stormwater. He did agree to permit an "advisory board" which would actually have no legal oversight authority.

If sufficient homeowners agreed, a properly organized Homestead Owners Association might be amenable to providing financial assistance to the golf course. However, neither the current nor the prospective golf course owner appear to have any faith in the overwhelming goodwill of the homeowners regarding the golf course.

A Lynden law requires that each PRD establish a Homeowners Association to oversee the maintenance of Common Open Space within the PRD. The Homestead PRD was the first PRD in Lynden, established June 24, 1992. Of the many PRDs established in Lynden since, Homestead remains the **ONLY** PRD which has failed to establish a Homeowners Association. Why is the City of Lynden not assisting with settlement of our dispute by enforcing its laws?

This is why we are compelled to continue the fight for homeowners' rights.

Please visit the Homestead Class Members Website often for the latest updates regarding the Class Action: www.homestead-hoa.org. We ask that you send any questions or comments about the lawsuit to the plaintiffs and their counsel through the website's Contact page.

Sincerely,
Plaintiffs & Class Members
Scott Hillius, Tom Staehr, Randy Drubek, Mark Miedema, Daniel & Sonja Lyons, Douglas & Angelique Scarlett, Steve & Lisa Zehm, Ronald Saran, Lynn Button.