The Arboretum News

July 2010

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6/29 Special Meeting

A called meeting of the Arboretum Community Association (ACA) convened in the Clubhouse at 7 p.m. on June 29, 2010, with President Mike Gould presiding. All Board members and some twenty Association members were in attendance. The subject considered was the dissolution of the Caswell Sewer Service (CSS) and the subsequent distribution of assets when the Town of Caswell Beach assumes ownership of the infrastructure that is currently held by CSS.

One issue discussed was the distribution of some \$500,000 (after attorney fees, etc.) the Town will pay CSS. Based on the July 15, 1996 Agreement to form a Non-Profit Organization, the Ocean Green Home Owners Association (OGHOA) and the ACA will share equally in those funds, with property owners in the Ocean Greens Condos to receive nothing. Based on the CSS By-Laws, approved December 14, 1996, the cash amount would be distributed by the number of "Users" (Class B members).

Upcoming Board Meetings

Board Meetings are held on the 2nd Tuesday of each month at the Arboretum Clubhouse at 7:00PM. All Arboretum Community Association members are encouraged to come and make your voice heard.

- * July No Board Meeting
- * August: Tuesday, August 10th
- * September: Tuesday, September 14th

A second, more problematic issue involves the property on which the CSS package plant is located. Since the plant is located in Ocean Greens, the OGHOA insists that it owns all the property that will become available when the Town of Caswell Beach removes the plant and restores the site to its previous condition.

President Gould presented what he considers crucial to the settlement in the form of three extracted statements taken from the following:

- 1. Articles of Incorporation of Caswell Sewer Service, Inc. June 28, 1996.
- Agreement to Form Non-Profit Corporation – July 15, 1996.
- 3. By-Laws of Caswell Sewer, Inc. December 14, 1996.

Each document addresses the disposition of assets should CSS dissolve; however, each is subject to interpretation, depending on "whose ox is being gored." OGHOA bases its claim on a statement in document #2 above:

"All real property located in Ocean Greens Subdivision shall be conveyed to the Ocean Greens Homeowners Association, Inc., or to its successor in interest."

Document #1 above (the only document required to be filed with the State) provides for distribution of assets to any entity with membership in CSS as set forth in the By-Laws of CSS. In document #3 above, the CSS By-Laws state that, in the event of dissolution, the CSS assets "shall be distributed, transferred, and paid over to the Class A members in proportion to the users of the facilities." (Class A members are homeowners' associations and Class B members are the users of CSS.) At issue is an estimated value of the site upon which the package plant is situated of from \$300,000 to \$500,000. Each HOA has opted to adopt those statements favorable to its position.

The OGHOA bases it claim on the July 15, 1996, agreement to form a Non-Profit Corporation, as quoted above. A question was raised as to why anyone representing ACA would sign a document giving all the subject land to OGHOA. Frank Bausch indicated that he had signed the agreement without duress in order to prevent the developer from turning the sewer system over to the State. If deposed in the event of legal action, Bausch averred that he would swear that the statement above is accurate.

After further discussion of the ACA's position, President Gould asked for advice because the three HOAs involved were to send their board members to a meeting to convene on July 1. 2010. Numerous suggestions and questions were forthcoming. Vice President McGraw stated that our position should be based on an appeal for fairness among neighbors. Bob Baginski and a few others agreed that this was an excellent approach. Bausch suggested that we should arrange an agreement for non-binding arbitration that might solve our dilemma and point the way ahead. Howard Newett, who has been the ACA representative on the CSS Board for four years, suggested that the \$500,000 not be distributed until OGHOA agreed to an equitable solution to the property issue. This action would be possible because under CSS by-laws, any decision must be unanimous. Bob Baginski called this idea "brilliant" while Rob Serra deemed it a "terrible" idea. Another scenario described by Newett was that ACA and OGC agree to give OCHOA \$100,000 and all the land.

A spirited discussion ensued, with no clear-cut position emerging. There was agreement on several questions:

- 1. Why was the OGC to receive no compensation under the July 15, 1996 agreement? Why would its representatives consent to having the other two HOAs get the entire proceeds at the time of dissolution?
- 2. What is the estimated value of the property on which the package plant is located?
- 3. What does the OGHOA plan to do with the money and land if their view prevails and they acquire all the property in question?

The ACA members present provided much food for thought but little advice to the Board. Although the subject of how the ACA would distribute funds from the Town was on the agenda, it was not discussed.

The meeting was adjourned.

Respectfully submitted,

Sarah Williams, Secretary



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The Arboretum Association 122 Flowering Bridge Path Caswell Beach, NC 28465

Vísít the Arboretum Website soon!

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