

PROPERTY OWNERS ASSOCIATION OF ARUNDEL-ON-THE-BAY

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AOTB General Meeting, Saturday, January 7, 2006

Attendees: Roster attached to original

Meeting Location at Hillsmere Library

Called to order: 10:20 a.m.

Chaplain opened the meeting with a prayer.

Frank Florentine announced that Linda Deming with the Anne Arundel County Conflict Resolution Center was present at the meeting. Sue Ford, our attorney, of Council, Baradel, Kosmerl & Nolan, was also present.

President Frank Florentine explained proxy voting procedures.

The Minutes from the November 19, 2005 General Meeting were distributed. There being no changes or corrections proposed, John Rector moved that the Minutes be approved; John Hamilton seconded the motion. A vote was taken and the motion passed.

President Frank Florentine explained the issue for which this meeting had been noticed. The issue is the reprogramming of funds to support the Saratoga Avenue Litigation. Article II of the POA-AOTB Constitution states that "the purpose of this Organization shall be the promotion and protection of the general interest, welfare, and property of the members of the community of Arundel on the Bay, Anne Arundel County, Maryland." This meeting has been noticed to discuss the question of whether to reprogram \$10,000 funds for purposes of continuing the Saratoga Avenue (McManus) litigation.

The President clarified that there are no plans by the Association's Officers or Board for walkways, piers, nature trails, etc., to be constructed on Saratoga Avenue or any of the "paper" roads within the community. David Zeman agreed that statement was correct.

Sherry Bellamy expressed her opinion that the President had stated at a prior Board meeting that he personally wanted to pursue ownership so nature trails could be put in for our children. The President responded that his previous statement was referring to the part of Saratoga Avenue adjacent to Oyster Harbor, not the property adjacent to the McManus property.

The President then discussed how the Association has dealt with encroachment problems in the past. A hand-out was provided which documented some of the previous street encroachment problems and how they were resolved.

The President then gave attorney Sue Ford an opportunity to speak. Ms. Ford first clarified that the law firm represents clients without regard to color, creed, religion, gender. She then explained that although she, on behalf of the Association, has repeatedly expressed to Mrs. McManus' attorney, Merle Maffei, that the Association is willing to discuss settlement, at present settlement of this litigation does not appear likely. The attorney then explained the current status of the litigation. Both Plaintiff and Defendant currently have motions for summary judgment pending, and a hearing on those motions is scheduled for Tuesday, March 7th.

The attorney explained that the community previously litigated the question of whether a fence could be erected across the Association's streets, the court found in our favor, and the fence was ordered to be removed. The court found that the Association's streets had been dedicated to community use in 1890 when the plat was recorded, which dedication was accepted in 1898 by the Maryland General Assembly when it created the Town of Arundel on the Bay. She further explained that the Association asserts title to its streets pursuant to a 1951 deed.

The meeting was then opened to comments from the audience.

Jack Surrick expressed his opinion that the lawsuit should be pursued. He noted that one of the reasons he moved to this community was so he could walk along the shorelines.

Robert Krohn indicated that he believed that funds should be reprogrammed to continue the litigation. He noted that if the Association did not vote to continue the litigation, he would personally file a lawsuit against Mrs. McManus for access. He would not pursue ownership.

Sue Ford responded that even if the Association were to dismiss its complaint against Mrs. McManus, that she had filed a counterclaim and the Association would still need to defend itself against that counterclaim.

LaVerne Davis said that she realizes there have been several filings in this case and wanted to know the date of the last filing. Sue Ford responded that an amended complaint was filed this past Thursday.

Sherry Bellamy stated that in her letter that she mailed out prior to this meeting she was not accusing the law firm of being racist; she just included articles from the Washington Post and the Capital newspapers. She expressed her opinion that the Association should get a second legal opinion on whether to continue this litigation. She also expressed her opinion that the Association's 1951 deed is "bogus" and that the streets belong to the adjoining property owners. Sue Ford responded that the Association was successful in a similar lawsuit concerning the property where Ms. Bellamy currently resides, and thus the law firm's opinion that the litigation has merit has been confirmed by the court's opinion.

Roger St. Vincent expressed his opinion that the Association would be foolish not to continue its use of the same law firm as before because the attorneys would be familiar with the issues. Obviously the Association's claim of access to its property is valid, and since the question of ownership has already been raised in the litigation by Mrs. McManus, we should respond to that issue to protect ourselves.

Oliver Sockwell asked Sue Ford for her response to the 1994 Memo from Eddie Albert regarding title to the Association's streets. Sue Ford responded that the 1994 Memo acknowledge a break in the chain of title, but noted that a court can infer the existence of a missing deed to perfect the chain of title. Accordingly, yes, she confirmed that the Association asserts that it has title to its streets.

John Gordon expressed his concern, based on the experience of a friend at the friend's community in Severna Park, concerning whether the Association had tried to resolve this matter with the landowner prior to filing litigation and whether the creation of an architectural control board might be of assistance. In response, the President briefly summarized the steps that had been taken to try and resolve the matter without litigation.

John Moses expressed his opinion that our pleadings in the litigation reference that the streets must be open to public use and he views that as meaning that anyone would have access to our streets which he does not think is a good idea. Sue Ford responded that the "public use" language began with the court's opinion in the Portner-Durant litigation who found that the streets had been dedicated to public use of the people of the association.

Ed Johnson expressed his view that it is unfortunate we had to resort to litigation to resolve this dispute rather than being able to resolve the dispute through mediation.

Bob Meissner raised the question of whether it would be setting a dangerous precedent to abandon this litigation. He also inquired as to whether the question of whether to reprogram funds could be postponed until after summary judgment was decided. Frank Florentine responded that depositions are currently scheduled for early January and funding is needed to proceed with those.

Richard Abrams stated that he believed he was quoted out of context in David Delia's letter (which was printed in the last newsletter). He is saddened that we have had to resort to litigation, but agreed that there was no dispute in the community that the Association was entitled to access to its street; in his view the only question was whether the community should also be asserted a right of ownership. Sue Ford responded that as a legal matter you cannot proceed in litigation of this nature without advising the court of your deed to the property and asserting ownership.

Valerie Cooksey expressed her opinion that the Association should assert the community's right of access to this property and that the Board and Officers should frequently walk the paper streets to monitor for possible encroachments.

Toni Ray inquired as to how much it would cost to litigate this case, adding that \$15,000 is just the beginning. She stated that no one questions the access issue, only the ownership.

Frank Florentine noted that Mrs. McManus' attorney had requested that representatives of the Association not contact Mrs. McManus directly with respect to the litigation.

Sherry Bellamy expressed her opinion that the Association had to agree that the street adjacent to the McManus property would not be developed.

Mr. K. R. Atterbeary stated he and his wife recently moved to the community and are happy to be living here. He observed that if there is any way to settle this litigation, that would be a good idea.

Tee Allen stated that he has been in the community over 50 years, and is discouraged to see the litigation between Mrs. McManus and the Association. He inquired whether a negotiation might be possible if Mrs. McManus would be willing to take down her fence. Sue Ford responded that if Mrs. McManus were to remove the fence, that would probably resolve the litigation. Tee Allen then observed that when he spoke with Mrs. McManus a few years back, she was concerned with the possibility of the development of the street adjacent to her property.

Oscar Boyd commented that he is opposed to unlimited expenditures for attorney fees.

Mr. Keyes expressed his opinion that the letter from Sherry Bellamy did not raise racist issues.

Roy Karten observed that the community clearly desires harmony which in his opinion was more important than the ownership issue. He further noted that in his opinion the Council Baradel law firm is well respected and competent. Finally, he expressed his hope that there might be some way the litigation could be settled, but noted that the fence needed to be removed (not just a gate put in it).

Pearl Williams stated that she believes Mrs. McManus fears the development of Saratoga Avenue adjacent to her property because of statements that may have been made years ago by previous Association Board or Officers.

Pat Seals stated that she grew up in Arundel on the Bay along with Ed Johnson and Tee Allen. She also hopes this dispute could be resolved without litigation so our money could be spent elsewhere.

Harry Kelly commented that there was a need for some roads to be repaired.

Mrs. Bernice Kelly questioned what was the meaning of “access?” David Zeman responded that to him it means being able to walk along the paper roads, but does not mean that benches were to be constructed. Mrs. Kelly mentioned that a few years ago there was talk of building a community pier near this location. Both David Zeman and Frank Florentine observed that was no longer such a proposal, particularly since the community now has a new pier at the end of Newport.

Mike Lord commented that was is a close friend of Mrs. McManus’s attorney. He also stated that in his opinion Council, Baradel is a very good law firm and Sue Ford is a good attorney. He inquired whether the amount of funds to be reprogrammed would carry us through trial, and if not, how far. Sue Ford responded that this funding should carry the Association through the summary judgment stage. Mr. Lord also expressed his hope that the case could settle, and that depositions might be pushed to a later time to allow for a settlement.

Susan Cook stated that during the years she was Treasurer, the Board and Officers walked the community each year to identify encroachments, and a letter was sent out to any property owner who had encroachments on Association property. We may all wish that this litigation could be settled, but that is a decision in Mrs. McManus’ hands, not ours.

Florita Washington stated that she has been a resident of the community for over 50 years and agrees with Ed Johnson that it is disheartening to know that we can’t resolve matters like this without the need for litigation, which would then free up money for other community improvements.

Tim Hamilton stated that the question of the McManus fence was an issue seven years ago when he was on the Board. In his view, this litigation is not personally directed at Mrs. McManus, but the problem is that allowing her fence to remain might encourage other property owners to do likewise.

Richard Fairley asked if Mrs. McManus was the only encroaching property owner at this time. Frank Florentine responded that the Association has had a fence removed on Hollywood, is currently in negotiations with another property owner regarding a fence across Cedar Avenue, and worked with Anne Arundel County to require Levitsky, another encroaching property owner, to remove his fence from an Association street.

Dr. Fairley expressed his opinion that Mrs. McManus was being unfairly targeted. Becky Morris responded that Mrs. McManus is being sued because she is the only property owner who is currently completely blocking a community street.

Maureen Donahue expressed her opinion that the area of Saratoga Avenue at issue is not desirable for walking anyway. David Zeman responded that it is a nice area to walk to view the sunset. She questioned if this case would set a legal precedent.

John Davis questioned what happened to the first motion that failed from the last general meeting to appropriate \$10,000? Diane Ruegg read that part of the minutes from the last General Meeting which indicated that the motion was tabled. Sherry Bellamy expressed her view that the motion to fund the lawsuit was not tabled but had been voted down. The President explained that regardless of what happened with the last motion, the current General Meeting was noticed for the purpose of taking a vote on the reprogramming of funds, and that was the issue to be voted on at this meeting.

The President noted that it was now 11:50 a.m. and that since the room needed to be vacated at 12 noon, we needed to proceed to a vote.

Robert Krohn made a motion to reprogram \$10,000 to the Saratoga Avenue (McManus) litigation, with \$5,000 being from Roads and \$5,000 from Recreation. David Kay seconded the motion. The vote was 56 in favor, 28 against, with 10 abstentions and thus the motion passed.

A motion was made to adjourn the meeting by Robert Krohn, was seconded by Diane Abrams, and passed by voice vote.

The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Diane Ruegg, Secretary, AOTB-POA

Note: The minutes were distributed and approved with changes, indicated with underline, at the January 28, 2006 meeting.