

Carderock Springs Citizens Association

Litigation Update

On Friday, March 16th, the CSCA through counsel requested a temporary restraining order (TRO) to prevent further construction at 8209 Stone Trail Drive. This kind of relief is temporary; if granted, it would have afforded a 10-day period during which construction could not be undertaken, with provision for the possibility of securing an additional 10-day “no construction” period. This request was premised on the fact that the plans that were the basis of the plaintiffs’ permit from the County were not submitted for review by the ARC. Counsel for the plaintiffs and the CSCA met with a judge in chambers on Monday, March 19th. Although the CSCA President was available to participate if necessary, no principals were present, as the judge conducted the “hearing” in chambers with counsel alone.

At the bottom line, the CSCA secured a representation from the plaintiffs that the plans that were permitted by the County, as modified by certain sketches delivered to the CSCA on March 8th, a few days prior to the commencement of construction, are in fact the plans that are the basis of the plaintiffs’ construction and that the plaintiffs want these materials reviewed by the ARC. The sketches that were delivered to the CSCA were the product of a meeting held with the plaintiffs on February 1st, some five weeks earlier. The CSCA has been directed by the judge to review the plans to determine whether or not they comply with the covenants and to respond to the plaintiffs. This action effectively moots the TRO request, which the judge was not inclined to grant at this time. We have requested the ARC to make an expedited review of the plans and sketches so we can promptly respond.

As has been the case to date, any construction that the plaintiffs undertake is at the risk that they may be ordered to modify or remove some or all of it. In this regard, some community members have inquired about the necessity of posting a bond in the event that the plaintiffs are restrained, either temporarily or permanently, from continuing construction. The size of a bond is entirely within the court’s discretion and should be related to the costs to plaintiffs of delaying construction, although the plaintiffs yesterday sought a bond of \$750,000 (rejected outright by the judge). Based on the limited information that is available to the CSCA, we think it possible that the Court could order posting of a bond in the neighborhood of \$40,000; this is a best guess only. A bond would be posted only if the plaintiffs are restrained or enjoined from continuing construction. In the absence of a restraining order or an injunction, there would be no bond, and the plaintiffs would continue construction at their own risk.

As you know, litigation is expensive, and the Board, in consultation with counsel, has consistently litigated the case in order to defend the covenants, which we believe are essential to preservation of the neighborhood. Our counsel is of the opinion that, ultimately, our case for prevailing in a trial is strong. Some members of the community have requested information concerning the anticipated cost of the litigation and the size of our reserves and budget for litigation. It is likely that the plaintiffs would also be

interested in such information and accordingly we have not to date made such information publicly available. We hope that members understand the strategic reasons for not publicly disclosing such information.

While aggressively pursuing the litigation, the Board at all times has been willing to settle the case in a manner that upholds the covenants. Reaching such a settlement depends upon reaching agreement with the plaintiffs on formal construction plans that are acceptable to the ARC. If the case continues, it is likely that additional funds will be sought from the community. If the CSCA is required to post a bond, the community will likewise be called upon to fund it.