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Dustin Frederick said "Pool Issue solution"

From: **Nextdoor Admiral's Cove Beach Club** (reply@nextdoor.com)

Sent: Fri 7/05/13 12:08 PM

To: whshed@live.com

Dustin Frederick from [Admiral's Cove Beach Club](#) said:

Open letter to ACBC Board of Directors and Cove members regarding the results of the Pool Vote.

153 for refurbishment 166 for removal

We have a problem that will only be successfully resolved through a "mediated" settlement.

WHY? ---Based on the recent voting results, several prior assessment votes and two relatively recent surveys we have a community that is split down the middle with regard to the pool and its future. We have had community votes in the past to keep the and now we have one to not keep the pool.

The legal issues that divide us are complicated and many but the practical issue that divides us is-----MONEY

I AM COMMITTED TO WORKING TOWARD A WIN-WIN RESOLUTION THAT AT LEAST TWO-THIRDS OF THE MEMBERS WILL SUPPORT WHEREBY THE POOL WILL REMAIN IN OPERATION AND THE PROPERTY OWNERS WHO DO NOT WANT TO PAY FOR THE POOL'S REFURBISHMENT, OPERATION AND MAINTENANCE -----WILL NOT BE REQUIRED TO PAY.

The above resolution will require a change in our Articles of Incorporation and our bylaws and such a change must be approved by at least two-thirds of the members.

The primary legal issue is a conflict of rights under the governing documents, i.e. AOIs, bylaws and individual deeds.

WHAT IS THE CONFLICT? ---Pursuant to the Articles of Incorporation (AOIs), bylaws and deeds many property owners believe that they have an enforceable contract with ACBC; wherein the property owners pay their dues and assessments and in exchange the ACBC operates and maintains the pool and community areas. Many bought their property based on this assumption and expect "specific performance" of that contract.

At the same time---the AOIs and bylaws provide that an issue---such as the pool refurbishment or removal of the pool---can be determined by the "majority"; thereby making a major change in the 40 year history of the ACBC and destroying the asset that is essential to the "contract" mentioned in the paragraph above. (It remains to be determined if the word "majority" refers to a simple majority voting on an issue---or a two-thirds majority mentioned in Article VI of the AOIs).

It may be true in the pure legal abstract that majority rules in an organization like the ACBC---but the actual facts and circumstances of the situation will dramatically influence which group will prevail in litigation.

For example:

1. Did certain ACBC Directors violate their responsibility pursuant to state law to take all reasonable measures to fulfill their contractual obligations to property owners who want the pool?
2. Is the pool building really beyond its useful life as an asset? The pool was fully operational prior to last year. This issue will be determined by expert testimony in litigation.
3. Does it take a simple majority vote on the issue or a two-thirds vote of all "members" to remove a 40 year asset that was the cornerstone of the ACBC.
4. There are 153 property owners who voted to refurbish the pool/building and 166 who voted to remove the pool---based on the information provided to them in the ballot and Q&A sheet. There are numerous procedural issues with

the manner in which the final ballot information was created and disseminated which will be part of the litigation. (The facts in support of the preceding statement are not included in this letter because the purpose of this letter is to try and bring the two factions together---not create further dissension).

5. Prior to voting--were the members given "full disclosure" regarding the effect of removing the pool? For example--the actual cost to remove, shoreline restrictions on replacement and other permit restrictions on modifications to the Shelter etc. In other words---due to permit and shoreline restrictions--- will the ACBC be stuck with sand and rocks and no bathroom facilities going forward?

Unfortunately, the above described conflict is legal in nature and can only be resolved through litigation. Litigation is very costly, will produce a win-lose resolution. But more importantly ---it will not solve our practical problem---which is--- we have a 50/50 division in the community over the future of the pool and the issue is ----money.

Since the voting result was announced last Saturday I have given much thought to the practical issues we face. I concluded that if the ballot had been worded differently, reasonable funding options explained, donation programs supported and embraced and the true costs of removal revealed—the vote could have easily gone the other way---that is---in favor of refurbishing the pool.

But---even if it had gone the other way we would still be faced with unresolved legal issues---of a different nature---and our practical problem that would continue to divide the community.

The 153 people who voted for the pool are very likely not going to pay an assessment to decommission and remove the pool. This will create a loss of members, future dues money, inadequate assessment collections and problems with the state.

Likewise the 166 people who don't want the pool are very likely not going to pay an assessment and/or increased dues to refurbish it and maintain it. This will result in a loss of members, inadequate assessment collections and delays in construction.

There will be permitting problems and ability to pay issues with any attempt to put a structure where the pool now exists if it were to be removed and/or do modifications to the shelter outside its current use.

Therefore----the only sustainable, long-term resolution is to develop a solution that meets the fundamental core interests of both factions both pro pool and against pool. If we don't take this step---then we will be in ping pong litigation for the next decade.

HOW DO WE MOVE FORWARD? It will require a change in the bylaws and AOs to allow for more dues options i.e. different dues levels, possibly establishing user fees and an aggressive marketing plan to attract associate members through partnerships with local business organizations etc. We will have to agree to change the structure of the ACBC so that we can meet the interests of the two groups---those who want the pool and those who don't want to pay for the pool.

WHAT WILL BE THE CHALLENGE? It will absolutely require an open mind on the part of current and future ACBC Board directors as well as Cove property owners and a firm commitment to make these changes with the goal of not forcing one group or the other to accept a plan that does not address their core interests.

We have a choice---we can work together to solve our long-standing practical problem or we can refuse to work together, keep a closed mind and a fixed position on the issues and send the entire matter to litigation wherein the legal issues will be examined and ruled upon producing a win-lose resolution and very likely---additional litigation. Depending on how the issues are framed, litigation could be costly to ACBC as an organization i.e. damage our insurance rating, costly to individuals and or groups of individuals because I'm confident that there will be legal "war chests" created in support of both factions---pro pool and against the pool.

IN CONCLUSION----I am Pro pool and I'm committed to a win-win resolution—I believe it can be done.

I am hereby requesting the ACBC Board to put this proposal/concept on the August Board meeting agenda for discussion and community input.

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