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FILED

DEC 04 2017

MICHAEL J. BLEE, P.J.Ch.

COLLINGS LAKES CIVIC ASSOCIATION, Plaintiff, v. CITIZENS VOICES ASSOCIATION, et al Defendants.	SUPERIOR COURT OF NEW JERSEY ATLANTIC COUNTY CHANCERY DIVISION GENERAL EQUITY PART DOCKET NO.: ATL-C-99-13 CIVIL ACTION ORDER
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WHEREAS this matter was the subject of an order entered July 24, 2017 adopting the special master report, deciding remaining miscellaneous issues, and scheduling a community-wide vote on the overall proposal on the governance of the Collings Lakes Civic Association ("hereinafter "CLCA");

WHEREAS the July 24, 2017 Order indicated that an overall yes vote would result in the court's adoption of the proposal;

WHEREAS the community vote was conducted under the supervision of Jessica Pyryt Esq., Atlantic County Superior Court Mediation Specialist;

WHEREAS the community voted 441-212 in favor of the proposal;

WHEREAS Ms. Pyryt has prepared a final version of the report representing the global settlement;

AND WHEREAS the court wishes now to enter a final order;

IT IS ON THIS 4th day of DECEMBER, 2017 HEREBY ORDERED as follows:

1. The Special Master Report attached hereto at Exhibit A (hereinafter “The Final Report”) is adopted by the court as a final order and incorporated herein. All of the items and relief contained therein, including but not limited to the following, shall be and are hereby Ordered by this court:

A. Within ninety (90) days from the date hereof, an election of a new CLCA Board shall occur. To the extent Jessica Pyryt is unable to oversee the election, there shall be an election committee comprised of two (2) representatives of the CLCA and two (2) representatives of the CVA which shall conduct the election. Any disputes regarding the election shall be submitted to Jessica Pyryt for determination. If she is unavailable, the disputes shall be submitted to counsel for the CLCA and CVA. If the dispute cannot be resolved, it shall be submitted to the court for determination. Future elections do not need to be conducted in this fashion but shall be conducted per the by-laws.

B. The new board shall have seven (7) board members. There will be two (2) members from each tier (set forth below) and one (1) member at large. The election of board members shall be as follows:

2017: full new seven (7) member board

2019: the lowest vote-getter from each tier and the at large member up for re-election

2020: the highest vote getter from each tier from the 2017 election up for re-election

2021: members elected in 2019 up for re-election (4 people)

2022: members elected in 2020 up for re-election (3 people)

C. In order to be eligible to vote in the first election, property owners must be either (1) paid up to date in full on all past due \$48 yearly fees; or (2) be on a reasonable, approved agreed upon payment plan and be current and up to date on said plan payments.

D. The CLCA will continue to operate under the name “Collings Lakes Civic Association.” The reorganized CLCA will have strong enforcement powers to collect fees and special assessments, including the right to pursue legal action against non-paying property owners to enforce payment. The CLCA shall have the right to impose interest, late fees, and other enforcement mechanisms upon delinquent property owners. The CLCA shall also be entitled to collect reasonable attorney’s fees and costs as part of collection as against delinquent property owners. The CLCA shall amend its By-Laws accordingly.

E. The new tier structure for purposes of fees, special assessments, and elections shall be:

Tier 1 - Lakefront: 17% of budget and fees (143 homes)

Tier 2 - Non-Lakefront: 72% of budget and fees (759 homes)

Tier 3 - Properties across Rt. 322: 11% of budget and fees (155 homes)

A list of properties in each tier is attached hereto at Exhibit B;

F. The \$48 annual fee will no longer be in effect as of the date of the settlement. In its place, the Board will set an annual budget, which will be divided by the tiers (as above) on a percentage basis to determine annual fees to each property. The board shall have the right to amend any budget throughout the year (up or down) and make assessments accordingly, again divided per the tier structure set forth herein.

G. Any property owner not up to date on the \$48 annual fee, will be considered in arrears and the Board will have the authority to pursue collection of those unpaid fees.

H. The CLCA shall be required by this order to repair, upgrade and replace the dams per DEP standards, maintaining the community as a lake community. The Board will explore financing, grants, and any other options to defray or spread out the costs of the dam project. The Board shall make special assessments each year for the dams project and said assessments shall be divided per the tier structure above.

I. All unpaid attorney's fees and costs for the CLCA and CVA shall be paid by the CLCA. The new board shall contact each of the two attorneys to ascertain the total amount of fees and costs and shall budget said amounts into its budget for payment. Unpaid fees and costs to the CLCA's counsel and CVA's counsel shall be paid within six (6) months from the date hereof;

- J. The preceding items set forth in paragraphs A-I is a summary of the relief Ordered. The Final Report at Exhibit A sets forth an exhaustive list of the relief ordered.
2. This Order and all of the relief ordered herein shall run with the land as against each and every property located within Collings Lakes. A list of properties subject to this order is attached hereto at Exhibit C and incorporated herein by reference.
 3. The CLCA may, at its option and expense, record this order as against any property located within Collings Lakes.
 4. This Order is a final order, but the court shall retain jurisdiction so as to adjudicate any enforcement issues.


J.S.C.

EXHIBIT A

Special Master Report/Settlement Agreement

Settlement Agreement

Collings Lakes Civic Association v. Citizens Voices Association, et al.

Docket No.: ATL-C-99-13

After further discussion with both the Collings Lakes Civic Association (CLCA) and Citizens Voices Association (CVA) and their attorneys, significant progress was made toward a collaborative settlement of the issues involved in the above-referenced litigation. Based on long-term discussions and a yes/no vote in which all members of the community were entitled to participate, and which by a count of 441 YES to 212 NO was approved by the community of Collings Lakes, the following is the settlement agreement.

1. New Governing Organization

The parties agreed that it is not in the best interest of the community to have a formal Homeowners Association under the relevant state laws. Therefore any governing organization will be extremely limited in its powers. The governing organization will be empowered to:

- a. Set and collect fees for repairing, maintaining, and operating the common areas of the community, including the lakes, dams, beaches, and playgrounds.
- b. Enforce collection of those fees through legal means, including litigation if necessary. Additionally, the organization will have the power to assess and collect late fees, interest, counsel fees, court costs, and any other costs associated with the collection of unpaid fees through litigation or any other legal means.
- c. Repair, maintain, and operate the common areas of the community, including the lakes, dams, beaches, and playgrounds. The organization will be able to solicit bids for any work, insurance, maintenance, or other services required to fulfill this obligation, and will have the power to expend the funds necessary to do so.
- d. Maintain bank accounts, contracts, insurance policies, permits, and/or any other legal or contractual relationships to facilitate repair, maintenance, and operation of the common areas.

After significant discussions back and forth, the parties understand that it is financially and logistically disadvantageous to entirely dismantle the CLCA, which has been the organization charged with collecting fees, maintaining the common areas, etc. for the past several years, and form an entirely new organization. Specifically, the CLCA is incorporated; maintains 501(c)(3) status; has bank accounts, insurance policies, contracts, and permits in the CLCA name that support the common areas; and provides tax benefits for the community as a whole.

However, the parties understand that significant changes should be made to the current CLCA if we are to come to a resolution. By way of changes, please see the edits to the bylaws I have included with this document.

Notably, the leadership in the CLCA must be put to a new election with ninety (90) days of a signed settlement agreement. Each developed property in the community is afforded two (2) votes in accordance with the Bylaws, irrespective of the number of members of the household or owners listed on the property deed, in this and all future elections, provided the household's \$48 annual fees are paid in full or that the household is on a formal Board-approved repayment plan for any arrearages¹. The board will comprise seven (7) members, two (2) from each of the three (3) categories of homes in the community, and one (1) elected at large. The board will have the powers delineated above. The board will hold quarterly meetings open to the community at large to discuss any and all issues facing the community. Of the seven (7) members of the board, the board will elect appropriate officers as designated by the bylaws. Only members whose \$48 annual fees are current and paid in full may run for the Board.

Most importantly, the organization will have the power to enforce collection of the fees by any and all legal means. The organization will have the ability to retain an attorney and/or other collections professionals and use all legal means at their disposal to collect fees from delinquent homeowners, as well as any costs associated with collection (attorney's fees, court costs, etc) and interest and late fees as the board sees fit. The board will also maintain discretion to collect any unpaid fees to date owed by any homeowner in the amount of \$48 per year through 2017. The Board, in its discretion, may decide to employ a management company to assist in accounting.

In creating the new Board and facilitating rotating elections, the election schedule will be as follows:

2018: Full new seven (7) member board

2020: The lowest vote-getter from each tier and the at-large member will be up for re-election

2021: The remaining 2018 member from each tier will be up for re-election

2022: Members elected in 2020 up for re-election (4 people)

2023: Members elected in 2021 up for re-election (3 people)

In sum, the CLCA will remain in place, with significant alterations to the election procedures, board, bylaws, and general transparency. This will be the least costly option and will allow smooth transition into the next steps of the process to fix the dams.

2. Fee Structure and Budget

The board will have ultimate authority to set a budget for the community. However, for the first year, this settlement will assume a \$100,000 operating budget, separate and apart from the budget to fix the dams (although the actual amount will be set by the board based on their actual budget). This is slightly higher than the current CLCA's proposed budget of \$88,000; however, the community must be mindful that this litigation has amassed significant legal fees that need to be addressed, and the community should also seek to maintain a small cushion in their operating budget that as of right now, does not exist.

¹ Parties and counsel may, by consent, alter the allowance for repayment plans.

The 1057 developed properties in the community will be divided into three (3) tiers for purposes of annual fees:²

- a. Tier 1 Waterfront: developed properties that directly abut the lakes (143)
- b. Tier 2 Non-Waterfront: developed properties on the lake side of the Black Horse Pike that are not directly on the water (759)
- c. Tier 3 Across the Black Horse Pike: developed properties on the non-lake side of the Black Horse Pike (155)

Undeveloped properties will be excluded from fees.

Taken on the numbers, Tier 1 homes represent approximately 13% of homes in the community; Tier 2 72%, and Tier 3 15%. However, to divvy up percentage responsibility for the budget according to those numbers ignores the fact that Tier 1 homeowners receive significantly more benefit from the lakes than Tier 3, despite that under such a payment scheme, they would pay the same amount.

My goal in this is to come up with a percentage based scheme that shared responsibility for the operating budget and all other expenses fairly given the geographic size of this community. On the equities, therefore, Tier 1 homeowners should be responsible for 17% of the total budget and expenses for the community, which under a \$100,000 budget is \$119. Tier 2, which comprises significantly more homes than either other tier, should be responsible for 72% of the total budget, which would be \$95. Tier 3 should be responsible for 11%, or \$71. For the 2016 year, any home that has paid their \$48 fee and/or the CLCA fee additionally will be credited the amount they've paid.³

This Tier structure will be incorporated into the By-Laws and Policies of the organization, and will be used to determine the allocation of any fees, assessments, or costs the board determines necessary, including dam repairs.

The reconfigured organization and board will bear ultimate responsibility for ensuring all legal bills for the CLCA and CVA are paid within six months.

3. Repairing/Replacing the Dams

Both parties agreed that the lakes should remain a part of the Collings Lakes community. As such, the parties agreed that regardless of what steps are taken to reconfigure the governing body of the community or re-elect a new and different board, the organization will be held responsible for taking all necessary steps to rebuild the lost dams, and rebuild or otherwise rehabilitate the dams that remain to be in compliance with all state and local regulations. The costs to repair and bring to specifications the dams in the community should be divided by tier percentage in the same manner as the annual fees. The board will ensure that the dams will be repaired and brought to specifications with all reasonable

² The specific number of homes in each Tier may be altered by consent of the parties.

³ The specific dollar amount will likely change year to year depending on the operating budget and the expenditures as decided by the Board, but the percentages should stay the same unless the Board votes to change them.

expediency. The board will be free and strongly encouraged to explore financing options that may lessen the financial burden on the community, including loans, fundraisers, grants, and any other financial assistance that may be available.

Upon latest information, the cost to repair and/or replace the dams as necessary will be approximately \$2 million total, or \$500,000 per dam. Based on the fee structure outlined above, to cover the costs of the first dam, Tier 1 owners would be responsible for \$595, Tier 2 \$474, and Tier 3 \$354. Repairing the dams must be a main priority of the new board, and construction is to begin as soon as reasonably possible.

It is undisputed that currently, there is no money to begin construction on the dams. It would be wise and prudent for the reorganized Board to begin searching for funding, financing, or other financial aid for this project post haste, and the reorganized Board should have control of the project; however, this project cannot be left to sit indefinitely when the broken dams and emptying lakebeds pose the myriad problems they do.

As noted elsewhere in this Agreement, the community will have ninety (90) days from the date of settlement to vote for and establish a new board. Within sixty (60) days of that deadline, the Board will produce and approve a document outlining a plan for the dam project. This plan should include, but need not be limited to, a timeline, potential sources of financing and/or funding, and the potential out of pocket costs to the homeowners in the community for each dam (Tier 1: \$595; Tier 2: \$474; Tier 3: \$354). The document should also include a timeline for payment based on those costs, subject to change as approved by the Board. Under no circumstances shall the construction start date be more than six months from the deadline date for approval of the plan, including remittance by each homeowner of one-half the total cost of the first dam (Tier 1: \$297.50; Tier 2: \$237; Tier 3: \$177) unless the Board has secured other financing/funding and advised homeowners that the amount of the assessments for this project has changed.

The Board should within ten (10) days of its establishment, form a Committee to explore any and all potential options for financial assistance to cover the costs of the dams. The Board may, by Resolution, alter the amount of the installment payments if financial assistance can be secured. If the Board secures financing after the second notices have been mailed, the Board may either opt to mail a second notice to Members advising of the new amount due, or may opt to hold extra funds in reserve to start the next dam. However, the Board shall adhere to the Tier system in determining the amount of any and all assessments levied for the dam project.