

**Taberna Master Homeowners Association**  
**President's Letter – August 2020**  
**by Bart Rovins - President**

**NCDOT US 70 Project**

With the NCDOT US 70 project slowly, but inevitably moving ahead, the time has come to face the reality that our entrance will be forever changed. This hit home in June when the HOA was served with a condemnation lawsuit over the State's taking of the Taberna sign, and masonry and iron fences that reside on the commercial lot owned by 971 Associates, Inc. on the southside of our entrance.

Before I discuss the lawsuit, some background information is needed first. In 2007, Weyerhaeuser designated this lot as commercial and sold it to 971 Associates. At the same time an easement for property within the lot owned by 971 Associates was granted to the HOA for the decorative masonry and ironwork fences. Earlier this year, NCDOT condemned several pieces of property on the southside of entrance, to include the lot owned by 971 Associates, in order to accommodate the new Taberna Way interchange that will be built. 971 Associates and NCDOT could not come to an agreement on the value of the lot, so 971 Associates rejected the State's offer which then triggered the condemnation lawsuit filed by NCDOT against 971 Associates and the Taberna HOA.

So, you may be wondering (1) what exactly is "condemnation," (2) why is the HOA being sued, (3) what are we fighting about, and (4) how much will the lawsuit cost the HOA.

Honestly, I had to take myself back to law school because the last time I even thought about condemnation issues was in 1978 during my first year at the University of Louisville School of Law in the Real Property 101-102 classes. By the way, Bruce Clark and I both went to the U of L School of Law, Bruce a couple of years before me, so feel free to ask him if what follows is correct.

What is condemnation? *Condemnation is the legal process by which a governmental body exercises its right of "eminent domain" to acquire private property for public use (e.g., highways). Condemnation includes a legislative resolution of public need, an offer to purchase, and if a negotiated purchase is not possible, then a condemnation lawsuit. The government may take the property at the time of the lawsuit if it deposits money in with the court in the amount of the government's appraisal.*

Why is the HOA being sued? Because neither 971 Associates nor the HOA were willing to accept NCDOT's purchase price offer. The State offered the HOA \$14,610 for the sign, and the 1,240 square feet of masonry and iron fencing. This triggered the lawsuit that was filed in Craven County Superior. Based on a replacement quote, we believe that the State's offer to the HOA is significantly under the asset's fair market value. At the time the lawsuit was filed, the State deposited with the court the money it offered to 971 Associates and the \$14,610 that was offered to the HOA. At the time the monies were deposited, title to the land transferred to the State. So, 971 Associates no longer owns the lot and the HOA's easement no longer exists so that the assets that are within the easement now belong to the State of North Carolina.

What are we fighting about? In mid-July the HOA filed the necessary court documents to receive the \$14,610. Receipt of this payment will not prevent us from claiming additional compensation we may be due from the State. When received, these sums and any additional future compensation that is received, will be earmarked within the HOA's financial records for use in re-establishing a decorative entrance should the HOA Board at that time deem it appropriate. It will probably take years to resolve these issues, because they are linked with 971 Associates arguments that its lot has been undervalued by the State.

How much will the lawsuit cost the HOA? By the time you read this letter, the HOA will have hired an attorney to represent us in these legal proceedings. We have learned that in condemnation cases, attorneys are compensated on a contingency basis, rather than on an hourly basis, and that the attorney fees in these cases are one-third of any additional compensation that is ultimately awarded. In other words, when the process is complete, the HOA will net the \$14,610 plus two-thirds of any additional compensation that is awarded.

### **2020 Annual Board of Directors Elections**

The Nominating Committee is at work identifying three candidates to replace myself, Joseph Frangipane and Jazz Woodward who are retiring from the Board at the end of this year. If you would like to be considered for membership on the Taberna Master Board of Directors, please contact me as quickly as possible.

### **Annual Membership Meeting**

Due to the restrictions imposed on us by Covid-19, our Annual Membership Meeting will be different this year. As I write, and without being unduly negative, I am skeptical that the Governor's Executive Orders and practical concerns will allow us to have an in-person meeting. The Board will make its final decision in September but based on our discussions at the June and July Board meetings, I believe we will be forced into the digital domain to conduct this meeting. We have reviewed with an attorney various means to satisfy the election and Annual Meeting requirements set-forth in our By-laws and Covenants. More information will be forthcoming over the next several months in the Taberna Tribune, on TabMail and in several written communications from CAMS. While I don't currently know the details, we will do our best to make the on-line experience as inclusive as possible and will be certain to create opportunities for you to ask questions. Stay tuned.

Thank you for supporting your HOA.