



**MINUTES OF
BOARD OF DIRECTORS MEETING
TABERNA HOMEOWNERS ASSOCIATION**

2009

Minutes of Board of Directors Meeting
Taberna Homeowners Association
January 21, 2009

Board Members Attending:

Gene Peele	President
George McNulty	Vice President
Linda Pickens	Secretary
Suzanne Forsythe	Treasurer
Steve Harman	Member at Large
Willis Vincent	Member at Large
Rick Layton	Member at Large

Residents Attending:

Residents Alva Windham, Beverly Robertson, Dave Myers, Don Loudin, and Wayne Picciano.

Gene Peele called the meeting to order at 5:30 pm, there being a quorum present.

Minutes:

Gene Peele made a motion to approve the Minutes of the Annual Meeting, held December 10, 2008, which was seconded by Steve Harman. The Minutes were unanimously approved and accepted.

George McNulty made a motion to approve the Minutes of the Post Meeting, held at the conclusion of the Annual Meeting on December 10, 2008, which was seconded by Steve Harman. The Minutes were unanimously approved and accepted.

George McNulty made a motion to approve the Minutes of the Meeting held on December 16, 2008, which was seconded by Steve Harman. The Minutes were unanimously approved and accepted.

Treasurer's Report:

Suzanne Forsythe gave the following report:

Cash and Accounts Receivable: Total cash in all of the Master and Sub-Association checking accounts as of January 21, 2009 totaled \$111,260. Total Accounts Receivable as of January 16, 2009, totaled approx. \$141,119. The Treasurer is of the opinion that collections may run a little slower than in past years due to the economy. However, she does not believe that there is any cause for concern at this time.

Late Fees and Liens: Eleven late fee invoices for Dec, 31, 2008 overdue accounts receivables were issued in early January. The Treasurer explained when late fees are assessed. There are currently eight outstanding liens against five property owners for unpaid accounts totaling \$2,325. One property owner has three liens against the property, one property owner has two liens and the others have one lien. She reviewed the lien procedures. Liens must be placed no later than eight months after the invoice due date and are good for three years. By law, the lien is extinguished unless proceedings to enforce the lien are instituted within three years. The

HOA may take the property owner to court at any time during this period. It is the Treasurer's opinion that the HOA will need to decide in the summer whether to move against a couple of the outstanding liens now being held. Also discussed was the impact to our collection of the debt when a house is sold, or goes into bankruptcy and/or foreclosure.

A Motion was made by George McNulty to approve the Treasurer's Report, which was seconded by Steve Harmōn. The report was unanimously approved and accepted.

Gene Peele requested that the Treasurer present a detailed line item review of the 2009 budget at the next meeting so that the Board has a clear understanding of budgeted items in order to more effectively monitor funding and expenditures for pending and future projects.

Sub-Association Representatives:

Four additional residents have volunteered to serve as representatives on the Abbington Woods Sub-Association Committee. Suzanne Forsythe discussed that by adding their names to the list of Committee members, these individuals would be covered under the HOA insurance policy. The additional representatives on the Abbington Woods Sub-Association Committee are: Wayne Picciano, Beverly Robertson, Don Loudin and Dave Myers. A motion was made by Steve Harman to approve adding these Committee representatives, which was seconded by Suzanne Forsythe. The motion was unanimously approved.

Website:

Alva Windham made a presentation on the HOA Website. Mr. Windham, formerly a Board Member, will continue to update the Website. He has made a couple of changes to the Website by adding business links and will be adding links to items of interest. There are four sites on the Website that will be maintained and updated by Mr. Windham: Crime Watch; Minutes; Presidents Notes; and Budgets and Financial Information. Questions posed to the Board on the Website will be directed to the Secretary, and the Secretary will respond or forward the question to the appropriate Board Member for response.

Mr. Windham indicated that Gene Peele has some good ideas on updating the Website, and he will be working with Gene and the Board on the updates to improve and expand its contents. All changes and updates to the Website will be subject to prior approval by the Board.

Mr. Windham suggested that he post on TabMail a request to obtain pictures of interest of Taberna from residents for use on the Website. He will submit the pictures to the Board for approval prior to their use on the Website. The Board endorsed this plan to obtain pictures from residents.

Mr. Windham emphasized that he does not post updates to the Website without the express approval of the President or the Secretary of the Board.

Once the updates and changes are approved, Mr. Windham will have the Webmaster make all changes at once, rather than piecemeal, to be more cost effective. Mr. Windham estimates that the updates will cost approximately \$300.00, which was felt to be a reasonable fee for the work entailed for the updates.

Suzanne Forsythe remarked that the President of the Greenbriar Association was impressed with the Taberna website and plans to pattern their website after it. Mr. Windham stated that he knew of three other communities that planned to pattern their websites after the Taberna Website.

Resident Appeal:

The Board heard an appeal from a resident relating to a fine imposed for violations of the Covenants. The resident had previously appealed the violation to the Adjudicatory Panel, which upheld the violation and imposed a fine. The Board informed the resident that the Board would discuss the matter further, and he would receive written notification of its response to the appeal. The Board discussed the matter at length after the resident left, and voted to uphold the fine. A Motion was made by George McNulty that the President prepare and send a letter to the resident documenting the Board decision to uphold the fine, which was seconded by Rick Layton. The Board unanimously approved the Motion.

Open Items:

The Board reviewed a list of open/ongoing items from 2008, which will need to be addressed by the Board in 2009.

- 1) **Tree Removal Policy:** The Board discussed the revised tree removal policy and its implementation. Steve Harman, also a member of the Architectural Control Committee, stated that the Committee had a meeting whereby it reviewed its past decisions denying requests from homeowners to remove trees in light of the revised policy and found none requiring a change in their original decision. Suzanne Forsythe stated that it was her understanding that the Committee would notify each homeowner previously denied permission of the possibility of revisiting the request under the revised policy. Mr. Harman stated that was not his understanding. It was decided that Gene Peele would contact the Chairman of the Committee for clarification.
- 2) **Digital Records:** While this is a low priority matter for the Board, the previous Board expressed an interest in digitizing the records of the Association for preservation purposes so that the books and records of the Association would be preserved in the event of a fire, flood, or similar incident. It was decided that an estimated cost would be obtained from a company specialized in digitizing records so that the Board could determine whether it was feasible to initiate such an undertaking.
- 3) **Sediment Drainage:** A homeowner had complained regarding the sediment from an unimproved lot draining onto the street. A letter was sent to the lot owner by the Board in 2008, and the lot owner responded that it was not the lot owner's responsibility to fix the problem. After discussion, it was determined that Gene Peele will prepare and send a letter to the lot owner advising that the owner is responsible for curtailing sediment run-off.
- 4) **Fence Easement for Front Entrance:** Gene Peele stated the Easement issue with ECB will have to be addressed in the future. The Easement with ECB is in

abeyance until such time as ECB determines whether it will build on the lot or sell it. Gene Peele will contact ECB to see whether any decision has been made regarding this lot.

- 5) Budget Process Procedure. Gene Peele noted that during the budget process in 2008, the Board saw a need to clarify the rolls of the various Committees with respect to the budget process. He noted that the Committees play a key role in the budget development process, and the need to clarify how that role aligns with the responsibility of the Finance Committee.
- 6) Landscaping Maintenance Contracts: A major item to be undertaken in 2009 is the bidding process of the various landscaping maintenance contracts. Gene Peele will work with the Building and Grounds Committee to create a timeline to ensure that the bidding and review process runs smoothly. Suzanne Forsythe stated she must have the landscaping budgets no later than August.
- 7) Beautification Plan: Gene Peele discussed the budget for the Beautification Plan and the need to clarify the plans of the Building and Grounds Committee with respect to expending funds in 2009.
- 8) Proposal for Basketball Court: Gene Peele indicated that this is an open matter carried over from 2008. A group of residents made a presentation to the 2008 Board in November to construct a half-court basketball court in the Todd Denson Park, at a projected cost of approximately \$15,000. Because the 2008 Board was approached in November, the group was asked to revisit the issue with the 2009 Board if they wanted to pursue the matter. Suzanne Forsythe stated that the funds from the Beautification Plan could be appropriated for the basketball court if the Committee did not expend its budget of \$20,000 in 2009; she also indicated that approximately \$5,000 was available for capital improvements which are not earmarked for any other project. Gene Peele indicated the need to have transparency in the budget and clearly itemizing how funds are appropriated and expended. Linda Pickens noted that if the court is constructed, there would be an associated cost with maintaining the court.

A general discussion then ensued as to whether the cost of the basketball court would be justified by its use, how use of the court could be limited to residents, and the liability to the Association if someone from outside the community is injured while on the court. It was decided that this issue would be examined further if the proposal is presented again to the Board in 2009.

New Business:

Linda Pickens brought to the attention of the Board the need to repair the stairs on the canoe dock and remove the existing graffiti on the gazebo. Steve Harman also mentioned that the walkway leading to the canoe dock is starting to show some wear and tear and may need attention in the future. Gene Peele will contact the Building and Grounds Committee to see whether its members have the expertise to assess the wear and tear to the walkway. Funding to repair the stairs and remove the graffiti was tabled until the February Board meeting.

Gene Peele noted that the Association will need to enter into an agreement with the Taberna Country Club regarding the placement of the Taberna sign on Club property at the Old Airport Road entrance.

The Board approved Willis Vincent as the Board's representative with respect to Covenant violations.

Change of Board Meeting Dates:

Gene Peele noted that, due to the publishing dates of the Taberna Tribune, publication of information from the Board would be delayed by a month if the Board continued to meet on the third Wednesday of the month. Because of this, and the Board's desire to have timely input for the benefit of residents, the Board changed its meeting dates from the third Wednesday of the month to the second Wednesday of the month.

Wetlands Management Committee:

A new Committee has been established in connection with the Association's new legal responsibility for maintaining all designated wetlands located in Taberna, which have been officially turned over to the Association by the State. Bob Costanzo volunteered to serve on the Committee. Gene Peele noted that, although the Architectural Control Committee has primary responsibility for wetlands monitoring and maintenance under the Covenants, the Committee did not want to take on that additional responsibility without understanding what it entails. Therefore, it was decided to establish the Wetlands Management Committee to establish an understanding of the requirements for management of our wetlands. Suzanne Forsythe made a motion to establish the Wetlands Management Committee and to approve Bob Costanzo to serve on that Committee, which was seconded by George McNulty. The motion was unanimously approved.

The next meeting of the Board of Directors will be held on Wednesday, February 11, 2009 at 5:30 pm.

There being no further business before the Board, Suzanne Forsythe made a motion to adjourn, which was seconded by George McNulty. The motion was approved, and the meeting adjourned at 7:27 pm.

Approved by the Board of Directors:

By: Gene Peele
Gene Peele, President

Date: 11 Feb 09

BACKGROUND

MATERIALS

FOR

MATTERS

DISCUSSED

AT BOARD

MEETING

**Taberna Homeowners Association
Board of Directors
Agenda
January 21, 2009 @ 5:30**

- | | | |
|--------------|--|--------------------------------|
| I. | President's Remarks | Gene Peele |
| II. | Adoption of Minutes | Linda Pickens |
| III. | Treasurer's Report | Suzanne Forsythe |
| IV. | Old Business | |
| | • Review of Open Items from 2009 | Gene Peele/All |
| | • Website Marketing Upgrades | Gene Peele/Alva Windham |
| | • Adjudicatory Decision – Vendetti Appeal | All |
| | will be heard at 6:00 | |
| V. | New Business | |
| | • Approval of 2009 Committee Members | All |
| | • Selection of Sheriff to Monitor
Covenant Violations | All |
| VI. | Good of the Order | |
| VII. | Confirm Next Meeting | |
| VIII. | Adjournment | |



TABERNA

Taberna Home Owners Association
Board of Directors
1005 Taberna Circle
New Bern, NC 28562

Gene Peele, President
George McNulty, Vice President
Linda Pickens, Secretary
Suzanne Forsythe, Treasurer

Representatives:
Steve Harman
Willis Vincent
Rick Layton

January 22, 2009

Mr. and Mrs. Gregory C. Vendetti
306 Mellen Ct.
New Bern, N.C 28562

RE: Your appeal letter, dated September 12, 2008

Dear Mr. and Mrs. Vendetti:

On January 21, 2009 the Taberna Homeowners Association Board of Directors met with you to review your appeal, as outlined in the referenced letter, of a \$100 fine levied on you by the Taberna Adjudicatory Panel on September 9, 2008. Based on the information in your letter, statements made by you at this meeting, the advice we received from our legal counsel, and the evidentiary material presented at the Adjudicatory Panel meeting, the Board has upheld the findings and the fine imposed by the Adjudicatory Panel.

You stated in your letter and at the meeting that you had been fined only for parking your truck and trailer in the street and that the association could not restrict and fine you for parking in the street. As stated at the meeting, your fine was also based on improper parking on your property in violation of the covenants. I call your attention to a statement in the Taberna Adjudicatory Panel's letter of September 9, 2008 that imposed the fine. Quote, "A representative of the Taberna HOA Board of Directors made a presentation based upon the frequent and continued improper parking, overnight or for extended periods, of a truck and trailer, loaded with trash, *on your property* and the adjacent street". The presentation addressed past written notifications sent to you and subsequently ignored by you for parking on your property in violation of the covenants. Accordingly, the Board has determined that the fine is appropriate.

When you purchased your lot you became contractually bound by the provisions of the covenants and specifically the right of the association to regulate parking per the provisions of Paragraph 4(J). As a homeowner, you have a responsibility to know and comply with these governing documents. Furthermore, beginning in 2006, you were made aware of the parking restrictions when you received the violation letters. The persistent and flagrant violations since then do not support your statements at the meeting that you didn't understand the covenants and that you subsequently complied with the covenants after each time that you were notified of a violation. In addition, your violations and the nature of your violations are considered a nuisance by the Association as they are detrimental to maintaining a clean and attractive condition in your neighborhood.

You will be receiving an invoice from our Treasurer requesting prompt payment of your fine. You will be assessed late fees if this fine is not paid in accordance with the invoice due date. Fines are considered assessments against your property. Accordingly, if you continue to refuse to pay the fine, the BOD may determine it appropriate to place a lien against your property.

The Board wishes to resolve this matter expeditiously and requests that you honor your statements at the meeting that you would pay the fine if it included improper parking on your property. Your assistance in resolving this matter would be greatly appreciated.

Sincerely,

/signed/
Gene Peele, President
Taberna Home Owners Association

cc: George McNulty, Suzanne Forsythe, Steve Harman, Willis Vincent, Rick Layton, Linda Pickens



TABERNA

Taberna Home Owners Association
Board of Directors
1005 Taberna Circle
New Bern, NC 28562

Gene Peele, President
George McNulty, Vice President
Linda Pickens, Secretary
Suzanne Forsythe, Treasurer

Representatives:
Steve Harman
Willis Vincent
Rick Layton

January 23, 2009

Martin and Teresa McLawhorn
P.O. Box 714
Winterville, N.C. 28590

RE: 1) Taberna HOA letter dated November 8, 2008, lot 396, 122 Friburg Rd
2) Your undated letter responding to our letter above

Dear Mr. and Mrs. McLawhorn:

I am writing to respond to your letter and to let you know that the Association considers the sedimentation erosion problem from your lot to be an issue that you need to address to remedy the concerns of your adjacent neighbor and to avoid potential notice of violations from the State of North Carolina with regard to the Sedimentation Pollution Control Act.

As noted in our letter to you an adjacent homeowner has notified us about soil/mud that flows over the sidewalk and into the street from your lot and into adjacent wetlands. Since he is at the end of the cul de sac, this sometimes requires him to clean things up, especially after heavy rains, to minimize tracking of sedimentation into his driveway. He came to the Board because the runoff has occurred over an extended period and he was getting frustrated at having to deal with a problem caused by your lot. In addition, the homeowner's drain, that he paid to have a stone lining added to prevent erosion of the drainage easement in his yard over time, is being clogged with runoff. I recently visited this area after a heavy rain and saw runoff from your lot into the street.

Relative to your comments regarding the actions of the contractors, we have no way of knowing whether they caused land disturbing activity resulting in erosion from your lot since we do not oversee their activities on vacant lots. The installation of electrical, cable, and telephone on your lot may have been done pursuant to easements that allow them to access your property for such work. Regardless, it is the owner's responsibility, not the Association's, to determine if they contributed to the problems and to seek appropriate remedies from them to put controls in place such as a silt fence and to replace vegetation that has been lost.

We urge you to address this problem quickly as you are the legal owner of the lot and therefore, may be subject to the State of North Carolina Sedimentation Pollution Control Act of 1973. In 2001, one of our homeowners received notice of violations of this act for runoff into the street and into wetlands and was

given 7 days to correct the problems or face a civil penalty of up to \$5,000.00 per day. In addition, you face potential liability from the city and the homeowner for cleaning of their drains.

We are prepared to assist you, if requested, and with the understanding that you would pay for the associated costs to put in place control measures to stop the erosion and the Association assumes no liability. Although a silt fence may be the answer, we have not taken any action to scope the effort to control erosion from your lot or cost for corrective measures.

The Board requests that you advise us NLT February 9, 2009 of your plans to resolve this matter. If you have questions, please contact me at (252) 635-1684.

Sincerely,

/signed/

Gene Peele, President
Taberna Home Owners Association

cc: George McNulty, Suzanne Forsythe, Steve Harman, Willis Vincent, Rick Layton, Linda Pickens

Taberna HOA Board of Directors – Open Items
2009

Subject	Date Initial Discussion	Target Resolution Date	Responsible Person/Board	Comments	Completion Date
Vendetti Covenant Violations	2006	Feb 2009	Peele/BOD	Numerous violations of boat and trailer covenants. Fined \$100 by Adjudicatory Panel. Appeal pending	TBD
Etta Daniel's Insurance Claim, 101 Valais Ct	22 Sep 2008	Mar 2009	Peele/BOD	22 Sep ltr received from homeowner demanding reimbursement for tree damage to house. Issue turned over to insurance agent on 25 Sep 08. Awaiting response from Cincinnati Ins Co.	TBD
Review of Tree Removal Decisions	Sep 2008	Spring 2009	Turner/ACC	Daniel's situation requires a review of past decisions to limit HOA liability	TBD
Update THOA Web Site	2008	Summer 2009	Peele/Windham	Purpose is to improve community visibility via web updates. Status to be presented at Jan 09 BOD mtg	TBD
Digital Backup for THOA records	12/2006	Fall 2009	Peele/Costanzo	Need to plan for records backup	TBD

Drainage from Lots at 122 & 123 Friburg Rd.	Summer 2008	3/2009	Peele	Property owners were notified by Costanzo ltr on 8 Nov 08. Undated ltr received from owner of 122 Friburg (denying responsibility). Response ltr required.	TBD
Fence Easement for Front Entrance	2006	September 2007 – TBD pending ECB decisions	Peele/BOD	Easement resolved with Fred Morton and Dunkin Donuts. ECB unwilling to talk until they make development decisions	TBD
Prepare Budget Process Procedure	Summer 2008	Apr 2009	Peele, BOD & Committees	Improve coordination and preparation of budget	TBD
Landscaping & Maintenance Contracts for 2010/2011	Jan 2009	Sep 2009	BOD, Jim Wilson B&G, & sub-committees	Goal is to release bids and select contractors NLT end of Sep (proposed date)	TBD
OTW owner request to glass their screened porch	Dec 2008	TBD	TBD/BOD	Need opinion on whether request violates covenants	TBD
Owner appeal of ACC decision to deny Pergola in backyard	Nov 2008	Apr 2009	Peele/BOD	Issue is golf course lot. Owner wants a waiver as the lot doesn't face course	TBD

Subject	Date Initial Discussion	Target Resolution Date	Responsible Person/Board	Comments	Completion Date
Beautification Plan	January 2006	Dec 2009	THOA Board in conjunction with B & G	<p>BOD implemented a 5 year plan for changes to beautify Taberna. 2009 is the last year. Completed mods to Front Entrance, planted trees on Taberna Way, and Emmen Rd</p> <p>Need to verify with B&G plans for 2009. Some owners want more done on Emmen Rd.</p>	TBD

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
 "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
 "Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe"
 <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Thursday, January 22, 2009 6:14 PM
Subject: FW: Violations of Taberna Covenants Regarding Street Parking

Don't know if this will result in anything but Max is normally very supportive of us.

From: Gene Peele [mailto:dgpeele@embarqmail.com]
Sent: Thursday, January 22, 2009 4:55 PM
To: 'ward3@newbern-nc.org'
Subject: Violations of Taberna Covenants Regarding Street Parking

Max,

Let me introduce myself and request your thoughts and assistance regarding enforcement of Taberna covenants. I am the President of the Taberna Homeowners Association. We met briefly last summer at the Duncan Donuts when I accompanied Bob Costanzo to talk with you regarding street lighting.

We are currently involved in a dispute with a homeowner who has a long history of parking on his property and in the streets in violation of our covenants. Specifically, our covenants don't allow boats, trailers, campers, recreational vehicles, utility vehicles or trucks (rated one ton or higher) to be parked on any street right of way or on any lot overnight unless enclosed in a garage. The homeowner agrees we can regulate parking on his property but disputes our right to regulate and fine him for parking his truck and trailer (sometimes loaded with scrap steel and trash) in the street as they are public streets.

It appears we are caught in a gray area, despite the covenants, when it comes to our right to regulate street parking. Our law firm Howard, Stallings, From & Hutson, P.A. has given us an opinion that while we can prohibit homeowners from violating the covenants as it pertains to the lot/property, it is unclear whether we can enforce the restrictions regarding street parking since the streets have been dedicated to the City of New Bern for public use. As we understand current New Bern parking ordinances, they do not address restrictions that may exist within defined community covenants such as ours.

The Planned Community Act does not address an Association's rights to regulate the streets when they are public and there is apparently no existing case law within N.C. that addresses this specific issue.

The Taberna protective covenants, restrictions and easements were legally recorded and in place by the Declarant, Weyerhaeuser Real Estate Company, when the Taberna streets were dedicated to the City of New Bern. Our covenants are clear that when you buy property in Taberna you are obligated to comply with the covenants. Accordingly, our Association desires to enforce the street parking restrictions.

Any thoughts or advise on this issue would be greatly appreciated. Thank you for your past support of Taberna.

Sincerely,
 Gene Peele, President
 Taberna Homeowners Association

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
"Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
"Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe"
<forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Cc: <Jimbo47K@aol.com>
Sent: Thursday, January 22, 2009 4:19 PM
Attach: VendettiAppealDecision.doc
Subject: Vendetti Appeal

Please review and get back to me quickly so that I can send out by certified mail tomorrow.

Tx, Gene

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>; "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>; "Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe" <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Saturday, January 10, 2009 4:31 PM
Attach: 20081111111810987.pdf
Subject: FW: Street Parking Letter

This is lawyer's letter on Vendetti issue (pdf format). I will try to locate the original Vendetti letter to send to you and then you will have all the pertinent pieces. Hope to send that on my return on the 16th. See you later I am heading to Myrtle Beach now.

Tx, Gene

-----Original Message-----

From: Richard P. Leissner [mailto:RLeissner@hsfh.com]
Sent: Tuesday, November 11, 2008 11:18 AM
To: abcostanzo@suddenlink.net
Subject: Street Parking Letter

Bob,

Here you go.

Richard

-----Original Message-----

From: rleissner@hsfh.com [mailto:rleissner@hsfh.com]
Sent: Tuesday, November 11, 2008 11:18 AM
To: Richard P. Leissner
Subject:

This E-mail was sent from "Sav4027@HSFH" (4027).

Scan Date: 11.11.2008 11:18:10 (-0500)

Internal Virus Database is out of date.

Checked by AVG - <http://www.avg.com>

Version: 8.0.175 / Virus Database: 270.8.5/1760 - Release Date: 11/1/2008

9:36 AM

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.176 / Virus Database: 270.10.5/1885 - Release Date: 1/9/2009 7:59 PM

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: ""Gene Peele"" <dgpeele@embarqmail.com>; ""George McNulty"" <mmcnulty@suddenlink.net>;
 ""Linda Pickens"" <lindapickens676@suddenlink.net>; ""Rick Layton"" <ricklayton@msn.com>;
 ""Steve Harman"" <steve_harman@suddenlink.net>; ""Suzanne Forsythe""
 <forsythenc@embarqmail.com>; ""Willis Vincent"" <wsvincent@aol.com>
Sent: Tuesday, January 20, 2009 10:39 PM
Subject: Vendetti Appeal Issues

For those not familiar with the Vendetti appeal, I am sending this to help you understand the related issues. I had previously sent you the letter from our lawyer with specific responses to his contentions that we could not fine him.

At the request of our 2008 BOD, the Adjudicatory Panel met with Mr. Vendetti on Sep 9, 2008 to review his violations of HOA covenants and levied a fine of \$100 against him. He requested a hearing by the BOD to hear his appeal of the fine and a meeting was scheduled for Nov 18 at 6:00. He did not attend the meeting and subsequently claimed a misunderstanding with Bob Costanzo on the date. At the next board meeting in Dec, the board confirmed his fine would stay in place and passed a motion to retroactively assess him late fees. I subsequently contacted our lawyer who confirmed that fines are considered assessments and thus subject to late fees. However, the lawyer advised that the invoice due date for the fine could not be established until the appeal process closed. Hopefully that will happen tomorrow night.

Mr. Vendetti has a long history of flouting our covenants regarding the parking of trailers and boats.

- Feb 10, 2006 – cited for parking utility trailer in yard
- Aug 23, 2007 – cited for parking boat in driveway
- Sep 27, 2007 – cited for parking a trailer and/or boat in the driveway, yard and street for extended periods of time.
- Jul 7, 2008 – cited for parking a trailer loaded with scrap metal and trash in the driveway and street for an extended time. It was noted that the scrap metal and trash could also be considered a nuisance and detriment to the lifestyle of our community.
- Aug 29, 2008 – Adjudicatory Panel sent letter to Mr. Vendetti requesting his presence at a hearing of complaints against him for repeated violations of covenants
- Sep 9, 2008 – Adjudicatory Panel reviewed materials presented by a board representative and assessed the fine. Mr Vendetti acknowledged the violations and gave verbal assurance he would comply with covenants.
- Sep 12, 2008 – Mr Vendetti sent a letter challenging the Panel's decision saying they had no authority to fine him for parking in the street. He also stated he would stop bringing the trailer to his residence until the issue is resolved
- Oct 7, 2008 – Our lawyer responded to Vendetti's letter and confirmed our right to fine for violations of parking on his lot overnight. The lawyer advised that it was unclear if we could prohibit overnight street parking. The lawyer supported our fine as there were documented cases of his parking overnight on his lot. Please review this letter as it contains the key legal issues if he decides to legally challenge our fine
- Dec 22, 2008 – Trailer loaded with junk observed in street in front of his house
- Dec 23, 2008 – Trailer with junk observed in street in front of house

Summary – I think the evidence strongly supports the fine; however, we should hear him out.

Please call me if you have questions before the meeting.

Tx, Gene
 635-1684

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
 "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
 "Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe"
 <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Friday, January 09, 2009 11:44 AM
Subject: FW: 306 Melon Ct Vendetti

First installment of Vendetti issue. More to follow

From: Gene Peele [mailto:dgpeele@embarqmail.com]
Sent: Friday, August 08, 2008 10:36 AM
To: Jimbo47K@aol.com; abcostanzo@suddenlink.net; forsythenc@embarqmail.com;
 md4066@embarqmail.com; arwindham@suddenlink.net; steve_harman@suddenlink.net
Subject: RE: 306 Melon Ct

I agree with going to the Adjudicatory Panel. Is this guy a garbage collector?

Form a posse and round them up.

Tx, Gene

From: Jimbo47K@aol.com [mailto:Jimbo47K@aol.com]
Sent: Friday, August 08, 2008 9:39 AM
To: abcostanzo@suddenlink.net; dgpeele@embarqmail.com; forsythenc@embarqmail.com;
 md4066@embarqmail.com; arwindham@suddenlink.net; steve_harman@suddenlink.net
Cc: Jimbo47K@aol.com
Subject: 306 Melon Ct

Hopefully the attached pictures came across. I would like to email vote on going to the Adjudicatory Panel with Mr. Vendetti. The truck and trailer full of crap is back per Frank Bolen and other neighbors are upset, as well. I wrote him several letters last year concerning parking a trailer in his yard and another letter on July 8th. Apparently he is not willing to abide by the covenants.

This truck and trailer is parked on the street. The Arch Guide #7 states only autos may be parked on the driveway, street or in a garage (please review). Anything else cannot be parked on any street right of way...

Please advise ASAP.

the Sheriff

Looking for a car that's sporty, fun and fits in your budget? [Read reviews on AOL Autos.](#)

Bob Costanzo
President -- Taberna HOA

-----Original Message-----

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]
Sent: Tuesday, September 02, 2008 10:22 PM
To: jcrjbr@suddenlink.net
Cc: abcostanzo@suddenlink.net
Subject: Ajudicatory Hearing for Vendetti's
Importance: High

Dear John Reichenbach, JR,

This email is in response to the subject above. I have not been Parking my work truck and trailer with scrap metal or trash on my driveway or on my property. I have however parked it over night and then recycled the metal at Goldmans the following morning. I currently own Havelock Mobile Court and am tearing down 21 trailer and moving new ones in. I have 11 more to dismantle and I will be done. It is not feasible to drive back to Havelock in the morning and then drive back to New Bern.

I was not aware that I was breaking any laws. When I received your letter I expeditiously went to the New Bern city ordinance department and asked if I was in violating any city ordinance and was informed that I was not. I was informed that I must not disconnect the trailer while parked in the city maintained street. I do understand that the HOA has some rule about parking a truck and trailer overnight on my property and have respected that. I would however like a copy of the Homeowner Association rules for future reference.

I will be attending the meeting scheduled for 8:00 PM on Monday, September 8 2008. If you have any more to share with me before that time please feel free to email me or mail me or call me at 919-623-9957.

Sincerely,
Gregory C Vendetti

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.7.0/1682 - Release Date: 9/20/2008 10:24 AM

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
 "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
 "Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe"
 <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Friday, January 09, 2009 11:54 AM
Subject: FW: Ajudicatory Hearing for Vendetti's

2nd background info

From: Arlene & Bob Costanzo [mailto:abcostanzo@suddenlink.net]
Sent: Saturday, September 20, 2008 4:36 PM
To: Greg Vendetti
Subject: RE: Ajudicatory Hearing for Vendetti's

Greg:

I'll e-mail you when I receive it.

Bob

-----Original Message-----

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]
Sent: Saturday, September 20, 2008 11:54 AM
To: Arlene & Bob Costanzo
Cc: Reichenbach, John
Subject: Re: Ajudicatory Hearing for Vendetti's

Bob,

You should have received a certified letter with my request to appeal the Adjudicatory committees decision. Let me know if you do not receive it. The letter states the basis for my appeal and outlines NC state planned community statutes. In good faith I have ceased to park my truck and trailer on City maintained streets until after my appeal is heard. Any date after the month of October will work for me. I have to be out of town most the month. Communicate any information you think is helpful via email or certified letter.

Greg Vendetti
 Homeowner

From: Arlene & Bob Costanzo

To: Greg Vendetti
Cc: Reichenbach, John
Sent: Saturday, September 20, 2008 7:28 AM
Subject: RE: Ajudicatory Hearing for Vendetti's

Gregory,

I understand that you might want to appeal the decision of the Adjudicatory Committee. Once you review their findings contact me so that we can establish a date to have you present your case to the full Board of Directors.



HOWARD,
STALLINGS,
FROM &
HUTSON, P.A.

Telephone: 252.633.3006 | Facsimile: 252.633.3097 | PO Box 975, New Bern, NC 28563

ATTORNEYS at LAW

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Russell W. Johnson
Andrea D. Schrag
Brooke L. Dalrymple
Stephen A. Brown

Of Counsel
Edwin P. Friedberg

October 7, 2008

Mr. Robert Costanzo
Taberna Master Homeowners Association, Inc.
1005 Taberna Circle
New Bern, NC 28562

RE: Gregory & Brenda Vendetti

Dear Bob:

In connection with Mr. Vendetti's appeal of the fine levied by the Taberna Homeowners Association, Inc. (the "Association") for violation of the parking restrictions, you have asked our firm to research his contention that the Association cannot assess the fine. Mr. Vendetti contends that the Association cannot "invalidate or modify zoning, subdivision, building code, real-estate law, ordinance or regulations..." and thus cannot prohibit Mr. Vendetti from parking in the streets of Taberna.

Mr. Vendetti has been fined \$100.00 for parking a truck and trailer on a street right-of-way and on his Lot overnight, multiple times, without placing the same in a garage, which violates Paragraph 4(J) of the Protective Covenants. Mr. Vendetti states that the Association cannot prohibit him from parking his truck and trailer on the street, as the same is a public street maintained by the City of New Bern. He cites N.C.G.S. §47F-1-106 to support his contention.

My research indicates that the Association can prohibit Mr. Vendetti from parking his truck and trailer overnight *on his Lot*, when the same is not within a garage. Moreover, N.C.G.S. §47F-1-106 is not germane to Mr. Vendetti's position, as the statute merely provides that a municipality may not discriminate against planned communities when creating ordinances. Nevertheless, it is not clear that the Association can prohibit overnight street parking. This is so because the streets have been dedicated to the City of New Bern for public use; the City is responsible for maintaining and regulating the use of the same.

The Planned Community Act does not address an Association's right to regulate the streets within a subdivision where such streets are public. Unfortunately, there are no cases in the State of North Carolina directly on point. Webster's on Real Property, an authoritative treatise on real property law in the State of North Carolina, does not offer guidance on this precise issue, though it suggests that a right-of-way dedicated to the public use is not subject to restrictive covenants.

NEW BERN OFFICE
2407 Grace Ave.
New Bern, NC 28562
Telephone: 252.633.3006
Facsimile: 252.633.3097

RALEIGH OFFICE
PO Box 12347
5410 Trinity Road
Suite 210
Raleigh NC 27605
Telephone: 919.821.7700
Facsimile: 919.821.7703

Mr. Robert Costanzo
October 7, 2008
Page 2 of 2

There are several points to consider. First, Mr. Vendetti purchased his Lot and agreed to be bound by the Protective Covenants, which forbid overnight parking on rights of way in certain instances; thus it may be argued that, as a matter of contract, Mr. Vendetti is bound by the provisions of Paragraph 4(J) of the covenants, even though it regulates his use of a public right of way within the subdivision. Moreover, the Association has the right and obligation to protect the general welfare of the community; ensuring that the Lots, common areas, and the streets within the subdivision are reflective of the neighborhood's ambiance is certainly within the Association's purview. Second, if Mr. Vendetti is parking his truck and trailer on the right of way, but it still touches any part of his Lot or Association property, then the Association certainly has the right to enforce Paragraph 4(J). Third, if Mr. Vendetti's truck and trailer are completely in the right of way in violation of the City ordinance concerning parking in City streets, the Association can report the matter to the authorities.

If Mr. Vendetti is parking, and continues to park, his truck and trailer completely on the public right of way, then the Association may treat it as a City issue and contact the appropriate authorities, or may elect to argue that Mr. Vendetti is contractually bound to adhere to Paragraph 4(J) as to on-the-street parking. If the Association chooses the latter, and Mr. Vendetti mounts a legal challenge, we cannot predict how a court will rule on the matter. There are legal arguments that favor both sides; and while the Association may prefer to regulate street parking, the City already does so at no cost to the Association, which may be a determining factor in your course of action.

As to the fine already issued, the Panel is authorized to fine an owner for up to \$100.00 *per violation*. Since it appears that there were violations related to his parking the truck and trailer overnight on his Lot, the fine could be for the violations related to that, regardless of whether or not you decide to attempt to continue to enforce the restriction against certain on-street parking.

On an unrelated issue, the Association has also asked our firm to research cases dealing with an Association's tort liability for negligent acts. As with parking enforcement, I was not able to locate case law directly on point on this issue. In general, if the Association takes on an obligation, such as the regulation of tree removal, then it has a duty to act with reasonable care in carrying out its responsibilities. Thus, in the instance of a tree removal, the Association would be liable to a Lot Owner for its actions if it acted unreasonably in denying a Lot Owner's request to remove a tree, and said denial proximately caused the Lot Owner damage. The Association can minimize its risk by enacting and following policies that ensure its decisions are prudent, reasoned, informed, and consistent. Ideally, the Association would have documentation to establish that it acted reasonably, upon reliable information, and followed its own policies in making its decision.

I will be happy to discuss these matters with you in greater detail, or to assist you in any other way. Please do not hesitate to contact me with any questions you have.

Sincerely,
Howard, Stallings, From & Hutson, P.A.



Richard P. Leissner, Jr.



HOWARD,
STALLINGS,
FROM &
HUTSON, P.A.

Telephone: 252.633.3006 | Facsimile: 252.633.3097 | PO Box 975, New Bern, NC 28563

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October 7, 2008

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1005 Taberna Circle
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October 7, 2008
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I will be happy to discuss these matters with you in greater detail, or to assist you in any other way. Please do not hesitate to contact me with any questions you have.

Sincerely,
Howard, Stallings, From & Hutson, P.A.



Richard P. Leissner, Jr.

Linda Pickens

From: "Robert A forsythe" <forsythenc@embarqmail.com>
To: "Gene Peele" <dgpeelee@embarqmail.com>
Cc: "Gene Peele" <dgpeelee@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
 "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
 "Steve Harman" <steve_harman@suddenlink.net>; "Willis Vincent" <wsvincent@aol.com>
Sent: Friday, January 09, 2009 4:13 PM
Subject: Re: Vendetti Appeal 9/12/08

Gene: As Mr. Vendetti will have received the late fees invoiced to him by now, as well as my letter 'requesting' payment, I will email him that we are holding the late fees in limbo until he has a chance to address the Board on 1/21. Suzanne Forsythe 1/9/09

----- Original Message -----

From: "Gene Peele" <dgpeelee@embarqmail.com>
To: "Gene Peele" <dgpeelee@embarqmail.com>, "George McNulty" <mmcnulty@suddenlink.net>, "Linda Pickens" <lindapickens676@suddenlink.net>, "Rick Layton" <ricklayton@msn.com>, "Steve Harman" <steve_harman@suddenlink.net>, "Suzanne Forsythe" <forsythenc@embarqmail.com>, "Willis Vincent" <wsvincent@aol.com>
Sent: Friday, January 9, 2009 2:17:15 PM (GMT-0500) America/New_York
Subject: FW: Vendetti Appeal 9/12/08

Suzanne,

We were right on the point that fines are assessments but unfortunately I think we are caught here regarding the imposition of the late fees. He will claim that the Nov board meeting was not an appeal because he didn't attend due to the apparent misunderstanding with Bob. Per Beth's counsel we can't impose a fine due date until is has cleared appeal.

I think the appropriate thing would be to notify him that the late fees are suspended pending his appeal at our next meeting.

Other board members, please weigh in if you don't agree.

Tx, Gene

-----Original Message-----

From: BETH F. ATKINS [mailto:BAtkins@hsfh.com]
Sent: Friday, January 09, 2009 12:44 PM
To: Gene Peele
Subject: RE: Vendetti Appeal 9/12/08

Gene, I am in receipt of your message regarding the Vendetti appeal. The Planned Community Act does say that fees and charges assessed under which 47F-3-102, which includes the section that allows fines, may be enforced as assessments under the lien provisions of the statute. Therefore, I think they would be deemed assessments for purposes of the

statute allowing late charges on assessments. So long as there was definite due date for payment of the fine. However, if the fine is still properly under appeal, then it should be considered due until it has been upheld on appeal. It is not clear from your message what the misunderstanding was that delayed the hearing on appeal, but if it is still considered under appeal the fine is not yet due.

Do not hesitate to contact me if you have further questions about this or about our letter regarding the legal issues with the appeal in general.

I look forward to working with you.

Beth Atkins

Beth F. Atkins
Howard, Stallings, From & Hutson, P.A.
2407 Grace Ave. (Zip for Street 28562)
P.O. Box 975
New Bern, NC 28563
(252) 633-3006
Fax: (252) 633-3097
batkins@hsfh.com<<mailto:batkins@hsfh.com>>
www.hsfh.com<<http://www.hsfh.com/>>

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Attorney Work Product

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From: Gene Peele [<mailto:dgpeele@embarqmail.com>]
Sent: Friday, January 09, 2009 12:16 PM
To: BETH F. ATKINS
Subject: RE: Vendetti Appeal 9/12/08

Beth,

I am the President of the HOA for 2009. We will be hearing an appeal by Mr. Vendetti at our 21 Jan board meeting.

I am coming up speed on this to prepare for this meeting. I have seen his letter and your response regarding the legal issues.

Due to a misunderstanding Mr Vendetti failed to show up for a Nov appeal meeting and the Board assessed him a late fee for not paying the \$100 fine. My understanding of the way fines for covenant violations works is that a fine is legally an assessment by the Board and therefore late fees may be charged if not paid. Please advise as to whether this is a correct understanding.

I will be out of town starting Sat 10th and returning on Fri 16th. Please call my cell (703) 402-3820 if you need to reach me.

Thank you

Gene Peele, President THOA

From: Beth F. Atkins [mailto:batkins@hsfh.com]
Sent: Thursday, October 02, 2008 9:08 AM
To: 'Arlene & Bob Costanzo'
Subject: RE: Vendetti Appeal 9/12/08

Bob, We had not received this before, but we will take a look at it and get back to you.
Beth

Beth F. Atkins
Howard, Stallings, From & Hutson, P.A.
2407 Grace Ave. (Zip for Street 28562)
P.O. Box 975
New Bern, NC 28563
(252) 633-3006
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intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

From: Arlene & Bob Costanzo [mailto:abcostanzo@suddenlink.net]
Sent: Wednesday, October 01, 2008 6:16 PM
To: BETH F. ATKINS
Subject: Vendetti Appeal 9/12/08

Beth,

Please review this letter and let me have your opinion.

I thought that I had previously sent this to you but may be not.

Bob Costanzo

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
To: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
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2nd background info

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Subject: RE: Ajudicatory Hearing for Vendetti's

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Bob

-----Original Message-----

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]
Sent: Saturday, September 20, 2008 11:54 AM
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Cc: Reichenbach, John
Subject: Re: Ajudicatory Hearing for Vendetti's

Bob,

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Greg Vendetti
 Homeowner

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Subject: RE: Ajudicatory Hearing for Vendetti's

Gregory,

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Bob Costanzo
President – Taberna HOA

-----Original Message-----

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]

Sent: Tuesday, September 02, 2008 10:22 PM

To: jcrjbr@suddenlink.net

Cc: abcostanzo@suddenlink.net

Subject: Ajudicatory Hearing for Vendetti's

Importance: High

Dear John Reichenbach, JR,

This email is in response to the subject above. I have not been Parking my work truck and trailer with scrap metal or trash on my driveway or on my property. I have however parked it over night and then recycled the metal at Goldmans the following morning. I currently own Havelock Mobile Court and am tearing down 21 trailer and moving new ones in. I have 11 more to dismantle and I will be done. It is not feasable to drive back to Havelock in the morning and then drive back to New Bern.

I was not aware that I was breaking any laws. When I received your letter I expeditously went to the New Bern city ordinance department and asked if I was in violating any city ordinance and was informed that I was not. I was informed that I must not disconnect the trailer while parked in the city maintained street. I do understand that the HOA has some rule about parking a truck and trailer overnight on my property and have respected that. I would however like a copy of the Homeowner Association rules for future reference.

I will be attending the meeting scheduled for 8:00 PM on Monday, September 8 2008. If you have any more to share with me before that time please feel free to email me or mail me or call me at 919-623-9957.

Sincerely,
Gregory C Vendetti

No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 270.7.0/1682 - Release Date: 9/20/2008 10:24 AM

Linda Pickens

From: "Gene Peele" <dgpeele@embarqmail.com>
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Cc: "Gene Peele" <dgpeele@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
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 <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Thursday, January 08, 2009 6:37 PM
Subject: FW: Vendetti - Adjudicatory Hearing September 9, 2008

Mr. Vendetti,

I am writing to notify you that we have scheduled your appeal of a fine levied against you for violations of Taberna Covenants for January 21st at 6:00 p.m. That is our regularly scheduled Board meeting and we have made time available for you to present your appeal. I also left a message on your phone (919-623-9957) regarding this date and time.

I request you confirm that you will be able to attend and present your appeal.

We look forward to getting this issue resolved and behind us and ask for your attention to this matter.

Donald G. Peele, President
 Taberna HOA

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]
Sent: Thursday, December 18, 2008 10:46 PM
To: Arlene & Bob Costanzo
Cc: Windham, Alva; Gene Peele; Harman, Steve; Forsythe, Suzanne; Daniels, Martha; Costanzo, Arlene & Bob; Jim Krise
Subject: Re: Vendetti - Adjudicatory Hearing September 9, 2008

Bob,

Was the below email a set time for my appeal? I never was given a definitive time when my appeal would be heard. Now I am told I missed my appeal. I also am told I owe \$100.00 plus late fee's of \$20 per month even though the association can only levy Late fees on late assessments. A fine is not an assessment. READ THE NC STATE HOA LAWS! I still want my appeal and I want a time and date sent to me via certified mail. I did get the letter from your attorney which stated I could park what ever was legal on a city maintained street but not on my lot. I figured the association dropped this whole ridiculous matter. Instead you have an appeal for me with out giving me notice.

Regards
 Greg Vendetti
 306 Mellen CT
 New Bern, NC 28562

---- Original Message ----

From: Arlene & Bob Costanzo
To: Greg Vendetti
Cc: Windham, Alva ; Gene Peele ; Harman, Steve ; Forsythe, Suzanne ; Daniels, Martha ; Costanzo, Arlene & Bob ; Jim Krise
Sent: Tuesday, October 07, 2008 3:36 AM
Subject: Vendetti - Adjudicatory Hearing September 9, 2008

Greg,

I had asked our attorney to review our letter as part of the appeal process. I have not received their reply yet.

Thus, I would recommend that we reschedule your appeal until I have received the letter from them and can forward it to you for your review prior to the meeting.

Thus, I would recommend that we delay the review until the scheduled November 18th meeting of the Board of Directors. If you would join us at the office at 6:00 PM we review your appeal.

Sincerely,
Bob Costanzo, President
Taberna HOA

-----Original Message-----

From: Greg Vendetti [mailto:gregvendetti@suddenlink.net]
Sent: Friday, September 26, 2008 9:12 AM
To: Arlene & Bob Costanzo
Subject: Re: Vendetti - Adjudicatory Hearing September 9, 2008

Mr. Costanzo,
Thank you for letting me know you received the letter.
Have A Great Day!
Greg Vendetti

|----- Original Message -----

From: Arlene & Bob Costanzo

To: jcrjbr@suddenlink.net ; Greg Vendetti
Cc: Jim Krise
Sent: Thursday, September 25, 2008 10:44 PM
Subject: Vendetti - Adjudicatory Hearing September 9, 2008

Mr. Vendetti,

I have just received your letter of 9/12/2008.

Based on the legal question you raised in the letter I am forwarding the letter to our attorney for a reply.

Upon receiving a reply from our attorney I will be back in contact with you.

Sincerely,
Robert Costanzo, President
Taberna Homeowners Association

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Version: 7.5.524 / Virus Database: 270.7.3/1693 - Release Date: 9/26/2008 7:35 AM

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Checked by AVG.

Version: 7.5.524 / Virus Database: 270.7.6/1712 - Release Date: 10/7/2008 9:41 AM

No virus found in this incoming message.
Checked by AVG - <http://www.avg.com>

Version: 8.0.176 / Virus Database: 270.10.5/1884 - Release Date: 1/9/2009 8:38 AM

Linda Pickens

From: "Gene Peele" <dgpeelee@embarqmail.com>
To: "Gene Peele" <dgpeelee@embarqmail.com>; "George McNulty" <mmcnulty@suddenlink.net>;
 "Linda Pickens" <lindapickens676@suddenlink.net>; "Rick Layton" <ricklayton@msn.com>;
 "Steve Harman" <steve_harman@suddenlink.net>; "Suzanne Forsythe"
 <forsythenc@embarqmail.com>; "Willis Vincent" <wsvincent@aol.com>
Sent: Friday, January 09, 2009 3:17 PM
Subject: FW: Vendetti Appeal 9/12/08

Suzanne,

We were right on the point that fines are assessments but unfortunately I think we are caught here regarding the imposition of the late fees. He will claim that the Nov board meeting was not an appeal because he didn't attend due to the apparent misunderstanding with Bob. Per Beth's counsel we can't impose a fine due date until is has cleared appeal.

I think the appropriate thing would be to notify him that the late fees are suspended pending his appeal at our next meeting.

Other board members, please weigh in if you don't agree.

Tx, Gene

-----Original Message-----

From: BETH F. ATKINS [mailto:BAtkins@hsfh.com]
Sent: Friday, January 09, 2009 12:44 PM
To: Gene Peele
Subject: RE: Vendetti Appeal 9/12/08

Gene, I am in receipt of your message regarding the Vendetti appeal. The Planned Community Act does say that fees and charges assessed under which 47F-3-102, which includes the section that allows fines, may be enforced as assessments under the lien provisions of the statute. Therefore, I think they would be deemed assessments for purposes of the statute allowing late charges on assessments. So long as there was definite due date for payment of the fine. However, if the fine is still properly under appeal, then it should be considered due until it has been upheld on appeal. It is not clear from your message what the misunderstanding was that delayed the hearing on appeal, but if it is still considered under appeal the fine is not yet due.

Do not hesitate to contact me if you have further questions about this or about our letter regarding the legal issues with the appeal in general.

I look forward to working with you.

Beth Atkins

Beth F. Atkins
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From: Gene Peele [<mailto:dgpeele@embarqmail.com>]
Sent: Friday, January 09, 2009 12:16 PM
To: BETH F. ATKINS
Subject: RE: Vendetti Appeal 9/12/08

Beth,

I am the President of the HOA for 2009. We will be hearing an appeal by Mr. Vendetti at our 21 Jan board meeting.

I am coming up speed on this to prepare for this meeting. I have seen his letter and your response regarding the legal issues.

Due to a misunderstanding Mr Vendetti failed to show up for a Nov appeal meeting and the Board assessed him a late fee for not paying the \$100 fine. My understanding of the way fines for covenant violations works is that a fine is legally an assessment by the Board and therefore late fees may be charged if not paid. Please advise as to whether this is a correct understanding.

I will be out of town starting Sat 10th and returning on Fri 16th. Please call my cell (703) 402-3820 if you need to reach me.

3/27/2009

Thank you

Gene Peele, President THOA

From: Beth F. Atkins [mailto:batkins@hsfh.com]
Sent: Thursday, October 02, 2008 9:08 AM
To: 'Arlene & Bob Costanzo'
Subject: RE: Vendetti Appeal 9/12/08

Bob, We had not received this before, but we will take a look at it and get back to you.

Beth

Beth F. Atkins
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From: Arlene & Bob Costanzo [mailto:abcostanzo@suddenlink.net]
Sent: Wednesday, October 01, 2008 6:16 PM
To: BETH F. ATKINS
Subject: Vendetti Appeal 9/12/08

Beth,

Please review this letter and let me have your opinion.

I thought that I had previously sent this to you but may be not.

Bob Costanzo