

## Executive Session

### ***The Short Version (All you really need to know)***

If you have read the minutes of recent HOA Board meetings, you may have noticed that the Board went into Executive Session at the end of each meeting. The purpose of these Executive Sessions was to discuss the status of our efforts to secure clear title to the Bolin Forest Phase II common area adjoining Bolin Creek.

We can now report that the issue has been resolved. Bolin Forest II Homeowners' Association now has record title to the property shown on the plat of Bolin Forest, Phase II, as "Open Space."

### ***Long Version (If you want to know more)***

Last September the HOA Board sought a meeting with the Carrboro Police to discuss 2 issues of concern to the homeowners: 1) controlling unrestrained dogs in the common area down by Bolin Creek, and 2) nighttime patrols of the playground area to discourage drinking and partying by non-residents.

To prepare for that meeting John Rintoul reviewed the plat map for Bolin Forest on the Register of Deeds website and discovered that the Orange County Register of Deeds office did not list Bolin Forest II Homeowners' Association as the owner of the commons are. Their records indicated that it was owned by Bolin Forest Limited Partnership, which was the original developer and property owner of Bolin Forest Phases II, III, and IV. (By way of property history, Bolin Forest Limited Partnership owned the property. Wells Management Group was the general partner and developed the property.)

According to the original development plan for our phase of Bolin Forest, the common area should have been conveyed to the HOA at the time the development loan to the bank was paid off. Unfortunately, Wells Management Group was in bankruptcy at that time (1989-1990) and the Trustee in Bankruptcy apparently overlooked this final step in the development process.

John checked with the Corporations Division of the North Carolina Secretary of State to see if Bolin Forest Limited Partnership was still a viable legal entity. It was, although there was no indication that the partnership had transacted any business since 1989.

The HOA Board met and discussed 3 options for dealing with the ownership issue before we pursued further assistance from the Carrboro police.

- 1) We could ignore the records in the Register of Deeds office and continue to assert our claim to ownership and control over the property.
- 2) We could assume that our "open and notorious claim of ownership" of the property established our legal ownership under the state's doctrine of adverse possession irrespective of the records in the Register of Deeds office.
- 3) We could request that the general partners of Bolin Forest Limited Partnership execute a quit claim deed to convey the property to Bolin Forest II Homeowners' Association.

The Board chose to pursue Option 3. Options 1 & 2 left us open to the possibility of claims by non-resident hikers and dog walkers through the property that our HOA was not the owner of record and that we had no authority to restrict access to the property. While such claims were unlikely the Board was concerned that if it became common knowledge that our HOA did not hold record title to the property we would lose our ability to control access. Consequently we

opted to restrict our discussion of the ownership issue to Executive Session until such time as we could establish record title.

In January, John contacted Ron Wells and Robin Dorff who were the principals in Wells Management Group, the original developer. Both Ron and Robin were receptive to doing whatever was necessary to resolve the problem. Ron was surprised to hear that Bolin Forest Limited Partnership was still considered a viable entity by the Secretary of State.<sup>1</sup> Ron pointed out that Wells Management Group, Inc. was the general partner for Bolin Forest Limited Partnership. Since Wells Management Group had been discharged in bankruptcy, Ron questioned whether his personal signature on a quit claim deed would be sufficient to convey clear title to the property.

When John talked with Robin Dorff, he suggested that John contact Bill Yaeger who was the attorney who represented Wells Management Group in the bankruptcy action. As expected, Mr. Yaeger had some difficulty recalling legal proceedings which took place 15 years ago. He suggested that John contact the Trustee in Bankruptcy who would be in a position to execute a deed conveying the property to our homeowners' association. Mr. Yaeger could not recall who the Trustee had been.

With a little more research, John eventually learned that the Trustee was Elizabeth Peterson. Unfortunately, Ms. Peterson is now deceased.

In February, John contacted the law firm of Northen Blue to get an estimate of the cost to our HOA to clear title to the common area. He spoke with David Rooks who suggested that, as long as the limited partnership that owned the property was still viable, the simplest way to clear title would be to get the limited partnership to execute a deed.

John contacted Robin Dorff again to ask whether Bolin Forest Limited Partnership was a viable entity notwithstanding the records in the Secretary of State's office. He said that as far as he knew nothing had ever been done to formally dissolve the limited partnership. Although he was in agreement with Ron Wells that Wells Management Group had been the general partner, Robin was not able to recall who all of the limited partners were. Robin did recall that one of the limited partners was a consortium of investors that had incorporated in North Carolina. That corporation is still active and Robin continues to serve as its president.

With a little more research, John unearthed a copy of the Limited Partnership Agreement. The partnership agreement specified that the partnership would continue until October 1, 2006 unless dissolved earlier. It also indicated that there was only 1 limited partner, the North Carolina corporation controlled by Robin. When John discussed this information to Robin, Robin and John agreed that John would: 1) draft a resolution whereby the limited partner would appoint Robin as the general partner; 2) draft a deed that Robin would then execute from the limited partnership to Bolin Forest II Homeowners' Association; and 3) draft a Certificate of Dissolution that would allow Robin to legally dissolve the limited partnership as soon as the deed was executed and filed.

John prepared the 3 documents for Robin's signature. The documents were signed in mid-March. The deed was filed March 17, 2005. Bolin Forest II Homeowners' Association is now the owner of record for the common area.

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<sup>1</sup> Ron was also surprised to hear that the Secretary of State still listed him as the Registered Agent of Bolin Forest II Homeowners' Association. We have since filed the necessary documents with the Secretary of State to substitute Cliff Haac as the Registered Agent.