In January 2012, I learned that the legal expenses related to the deer management program had exceeded $60,000 and that the Board chose not to specifically inform the community of this fact. For some time, I felt that the reasons for these expenditures were not totally clear and that information made available by the POA Board was sporadic, somewhat confusing and not easily accessible. For that reason, I decided to gather all the information and write what I felt was a simple summary of what happened over this two year period so that residents could, if they were interested, understand the nature of and reasons behind the legal action and resulting expenses.

In February 2012, I requested that this summary be posted to the POA web site for the benefit of anybody interested in understanding more about the issue and, more importantly, to inform the community of the increased expense. The Board turned down my request.

Therefore, I decided to send this to friends and acquaintances who I felt might be interested in having this information. I believe there are many within the community who would like to better understand why this money was spent. The article contains links to documents and information posted on the POA web site as of March 2012.

Andrew Levin

3-28-12

POA Legal Expenses on "No Hunting" Sign Dispute Now Exceed $60,000

With the addition of bills received after last November's annual general meeting, the total cost of litigation related to the deer No Hunting signs now exceeds $60,000. This is substantially more than the figure of $42,000 disclosed to the audience at that meeting and equates to an expense of roughly $50 per community lot.

The purpose of this article is to explain as simply as possible the reason why this expense was incurred.

The legal action against the POA which caused this expense was instituted by eleven people who live within our community. They consisted of one individual and five couples; Skip Bollenbacher, Benjamin Mark & Marilynne Lee Cheney, Tassos Markas & Lisa Ann Grace, Mark & Karen Ivanhoff, David & Susan Rosenberg and Barry & Susan Friedlander; collectively called the Plaintiffs.

Legal documents containing these names are a matter of public record and have been available on the POA web site for the past year; assuming one could find them.

Contrary to what many believe, this legal action had nothing to do with the actual deer culling activity. That program itself was never challenged in the courts. Rather, it dealt solely with the issue of placing "No Hunting" signs on lots within the community. The end result of spending over $60,000 and negotiating for nine months was a compromise which allowed for an alternative method of warning hunters to stay off certain properties; namely the use of purple tipped stakes.

As noted at the end of this article, it appears that almost all of the Plaintiffs ultimately felt the stakes were unnecessary and chose not to erect them in place of the signs that were removed.

The roots of this dispute go back to 2009 when the deer culling program was first proposed. At that time, a group of people protested the move. After a great deal of research and debate over the course of that year, the Board decided to institute a controlled bow hunting program to cull the deer herd within the community. The pros and cons of this decision are not the subject of this article. Rather, it will deal strictly with the legal expenses and related sign issue.

After deciding to cull the herd, a POA Deer Management Committee was formed in early 2010. It created guidelines for the hunters; all of whom had to be licensed members of the Bowhunters Certification and Referral Service of the North Carolina Bowhunters Association. Hunters were restricted to specific, fixed hunting sites, and a map of those sites was posted to the web site.

Property owners were given the opportunity to prohibit hunters from ever entering onto their lots. Out of more than 1,200 lots, only 84 opted to do this. That represented less than 7% of the lots within the community. All hunters were given color coded maps clearly delineating those lots and the approved hunting areas. Detailed guidelines addressed the possibility of wounded deer entering onto these lots to ensure that the hunters respected the wishes of those not wanting them on their property.

The guidelines required hunters to be in fixed deer stands elevated in trees, and bait stations were to be positioned so that hunters would always be shooting at a downwards angle at deer no more than approximately thirty yards away. At no time was anybody ever permitted to hunt by roaming the community on foot. There was to be close coordination between POA representatives and the hunters to ensure that the wishes of property owners were respected. All guidelines were posted on our web site for the benefit of all residents.

Despite these precautions, the Plaintiffs wanted to place "No Hunting" signs in prominent locations on their lots. They felt that the guidelines were not sufficient and were still concerned that hunters would enter onto their property. With some of their lots, the nearest hunting stations were over a quarter of a mile away. With others, they were nearby but not directly adjacent to their lots.

The Board felt that the guidelines offered enough protection such that signs were not necessary. More importantly, our POA rules specifically prohibit signage of any sort; the idea being that any signage detracts from the look of the community. The Board and the ARB felt they had justifiable concerns as to the negative visual impact of such signs; especially if multiplied throughout the community on over 80 lots.

An example of this potential negative impact could have been seen on Broughton on Lot 50; a vacant lot owned by Daniel Mark & Marilynne Cheney. In November 2011, the street frontage of this one lot contained between ten and fifteen prominently displayed No Hunting signs while the back side of the lot contained only two. The nearest hunting station was roughly a quarter of a mile away on the other side of Governors Drive.

Since the Board and the Plaintiffs could not agree on this issue, the Plaintiffs followed the numerous appeal procedures outlined within POA guidelines. This took place throughout 2010 and into March 2011. After considering all the appeals, the Board ruled that the signs had to be removed. In accordance with POA rules, daily fines were to begin accruing if the signs were not taken down by a specified date.

However, just prior to the POA appeal process being exhausted in March 2011, the Plaintiffs instituted a legal action requesting an injunction to stop the removal of any signs and the accrual of any fines until the issue could be decided in the North Carolina courts; which was expected to be in late 2011. This injunction was granted in April 2011.

It is worth noting that, at the time the plaintiffs filed this lawsuit, controlled hunting had taken place for over six months during the preceding year. In that time, there were no reported incidents of hunters entering onto any of the 84 prohibited lots. Only of few of those 84 lots contained warning signs, so it appeared at that time that the Deer Committee guidelines and hunter cooperation were sufficient to ensure that nobody entered onto prohibited lots.

It is also worth noting that, as with any such dispute, each side may make claims and accusations against the other regarding negotiations, positions and intent. From my reading of the documents and discussions with some participants, that certainly happened here. However, it clearly went both ways such that summarizing the claims of both sides would not serve much purpose. What is more important is to understand the key aspect of each side's position.

Put simply, the Plaintiff's lawsuit claimed that the state law allowing the placement of No Hunting signs during any permitted hunting activity superseded the POA's rules and that these signs were necessary to ensure that hunters would not enter onto their property. The POA felt that sufficient actions and precautions had been taken to ensure that hunters would not enter onto their property and that these constituted a legally acceptable alternative to the signs. That was the disagreement which formed the basis of this legal action.

After the injunction was granted, the two sides entered into mediation to attempt to settle the issue prior to it going to court. In the midst of these efforts, in August 2011, the state law was modified to allow for an alternative to No Hunting signs which would warn hunters off marked property. It consisted of wooden stakes; the top six inches of which were to be painted purple. The POA Board immediately passed a resolution allowing this alternative form of warning without otherwise modifying our signage restrictions.

The Plaintiffs then negotiated with the Board for three months as to the height and spacing of stakes plus the number of stakes allowed on each property. The two sides finally reached an agreement in November 2011. The Plaintiffs agreed to remove their signs as of December 15, 2011, and the settlement detailed the number and placement of stakes allowed on each of the properties. These are outlined on maps contained within the settlement agreement (the Consent Order) which can be found on the POA web site. For example, on two adjoining lots owned by one of the plaintiff couples, the Consent Order allows for the placement of 34 stakes in specified locations.

The state designated hunting season was to run until January 3, 2012. However, the POA had obtained a permit for a depredation hunt extending this activity until January 31, 2012. In accordance with the terms of the Consent Order, the Plaintiffs were notified of this fact and thus knew that hunting would extend well past December 15th; that being the date when all No Hunting signs were to be taken down.

Surprisingly, after the signs were removed, only one couple among the Plaintiffs felt the need to erect the alternative, purple-tipped warning stakes for the balance of the hunting period. It appears the others were no longer worried that hunters would come onto their property during this 45 day time span.

In the end, the POA has incurred slightly over $60,000 in legal fees dealing with this issue. This expense was unexpected, so the necessary funds had not been allocated within the 2011 budget. The Board decided not to levy a special assessment to recoup these costs, so other expenditures were cut or reserves tapped to cover this expense.

Minor expenses related to this litigation were incurred even as late as March 2012. Several unauthorized No Hunting signs erected by one of the Plaintiffs on vacant Lot 47 were still in place as of that date, and the POA had to deal with their removal.

Over the past two years, the POA has allowed periodic deer culling for a total of over twelve months. In that time span, no incidents have been reported and no complaints have been made involving any hunters.

However, there were two incidents recorded involving activities directed against the hunters. One involved a Plaintiff attempting to disturb the hunting process by using loud sounds to warn off deer. The other involved community landscapers being harassed because they were mistakenly identified as hunters. Also, several Plaintiffs have alleged that some No Hunting signs were illegally taken down by unidentified persons.

Overall, though, the culling program has proceeded smoothly with very few residents even aware of the presence of the hunters.