

# Communication to Ellingsworth Community

## Information and Clarification Regarding Special Assessment Vote

Dear Homeowners,

Your HOA Board is very thankful for your active participation in our last community-wide meeting on Dec. 15, 2020. The fact that nearly 60 out of 80 homeowners attended this Zoom call is a true demonstration that the community cares and is anxious to get this bankruptcy case over with. Many of us as homeowners have watched with dismay how this legal case continues to linger and consume so much of our time while draining our resources. We cannot tell you the amount of work the HOA Board endured due to circumstances beyond its control.

Based on a number of questions several Board members received after the meeting, the purpose of this communication is to provide the community with more answers and hopefully provide further clarity on what has transpired so far and what are the next steps moving forward.

Below is a set of questions we received from several homeowners of our community. The answers have been cleared by our legal counsel. Please understand that this is an ongoing legal proceeding and litigation process that requires all of us to be patient and understanding.

- 1) Q. The Board previously instituted a \$25k special assessment to file for bankruptcy. The Board promised us this is the only amount we need to end this case. Is this amount still the only amount for legal fees?  
  
**A. Due to circumstances beyond the HOA's control, mainly driven by Dr. Guan's steady document submission and legal appeals, the HOA's legal fees exceeded the initial \$25k. The final amount will depend upon the actions taking by, or appeals filed by, Dr. Guan. In an effort to ease the burden of paying attorney's fees incurred throughout the HOA's bankruptcy case, the HOA's bankruptcy counsel has granted the HOA an accommodation and has agreed to accept payment over time. The payments remitted to the HOA's bankruptcy counsel will be paid from annual dues collected by the HOA in the normal course of its operations.**
- 2) Q. If the judge awards Guan, for example, \$500k at the Feb. 25 hearing, and we do not pursue a Cause of Action, is the \$300k special assessment a cap on our liability?  
  
**A. The \$300k special assessment is one component of the HOA's plan of repayment (liability) to its creditors. The other forms of repayment include (i) distributions of the HOA's disposable income over a period of three years; (ii) distributions to creditors of 25% of any recoveries from accounts receivable over 90 days past due; and (iii) distributions from the proceeds of causes of action. The HOA will not be required to remit payment from these sources over and above the total amount of allowed claims in the HOA's bankruptcy case. So if total creditor claims in the HOA's bankruptcy case equal \$500k (which includes Dr. Guan's claim in this example), the HOA will only repay \$500K from the repayment sources outlined above.**
- 3) Q. The Board said on the 12/15/20 call that proceeds from the Cause of Action (malpractice) lawsuit will reduce our \$300k special assessment. Can you please explain?  
  
**A. The answer to this question is dependent upon the final determination of creditor claims in the HOA's bankruptcy case. It is possible that proceeds from the cause of action could reduce or eliminate the need to collect amounts from the \$300k special assessment. By way of example, if the total claims in the HOA's bankruptcy case equal \$400,000.00 and the recoveries from causes of action equals \$300,000.00, then the HOA need only charge \$100,000.00 from the \$300,000.00**

**special assessment in order to resolve all creditor claims. The remainder of the \$300,000.00 special assessment would simply not be charged to homeowners. This example, assuming a total claims pool of \$400,000, is one way the proceeds from causes of action could reduce the \$300K special assessment.**

4) Q: The Board gave the impression that a “yes vote” will end this whole saga and yield a final resolution to our problem. Can you please explain?

**A. For reasons that cannot be disclosed in a public forum, a “yes vote” and passage of the \$300k special assessment will cause certain legal consequences which will aid in bringing an end to continued litigation with Dr. Guan. Conversely, a “no vote” will lead to further litigation with Dr. Guan.**

5) Q: How did the Board assess that this action (the vote on Dec 23) will save each household \$15k in terms of liability from the counter lawsuits?

**A. Dr. Guan has asserted claims against the HOA in the amount of \$1,200,000.00 which the HOA is actively attempting to reduce. If the HOA fails to contest Dr. Guan’s \$1.2 million claim, it will be obligated to pay \$1.2 million to Dr. Guan, which equates to \$15,000.00 per household.**

6) Q: How will proceeds from the malpractice lawsuit be disbursed?

**A. The proceeds from the malpractice suit will first be disbursed to pay the attorneys handling the malpractice suit. The remaining proceeds will be disbursed to pay creditor claims in accordance with the HOA’s Chapter 11 Plan.**

7) Q: Once the final judgment decision is made and after any further appeals, who gets paid first and in what order from the collection proceeds by the HOA?

**A. Once a final judgment on all creditor claims in the HOA’s bankruptcy case is made, the HOA will distribute proceeds to its creditors in accordance with its confirmed Chapter 11 plan of reorganization. Since the HOA does not have any secured creditors, unsecured creditors will be the first to receive distributions after administrative expenses are paid.**

8) Q: If the judge awards more than we recover from a Cause of Action lawsuit, are we going to need a special assessment to make up the difference?

**A. No, the HOA’s chapter 11 plan outlines the HOA’s obligations to creditors and the funding sources it is required to use to meet its obligations. No special assessment other than the \$300K special assessment proposed at the HOA’s December 15, 2020 meeting is required.**

Next steps: Out of an abundance of caution the BOD is delaying the HOA vote count until 30 December to allow homeowners the chance to review this document and determine if it impacts the vote they have already cast. If you have voted already and this communication doesn’t change your mind, you need to do nothing. If you would like to change your vote, please send an email to the BOD President or Vice President ASAP but no later than 28 December so that a replacement ballot can be cast in lieu of what you already have sent.

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