

OPEN LETTER TO GLENMARY RESIDENTS AND DECISION-MAKERS

By Bill Bardenwerper

Counsel to Par Golf, LLC (Glenmary Golf Club Owners)

I am writing to answer questions people keep asking of those of us associated with the Glenmary Golf Club.

What is the reason for the February 6 Planning Commission hearing on a proposed Conservation Subdivision around the Clubhouse and for the 3 minor subdivision plats?

The public hearing scheduled for February 6 is one that was postponed during the time that the Golf Club owners and HOA pursued the idea of the HOA purchasing the Club instead of letting it close, fall into a state of disrepair and/or end up being converted to other uses. After months of meetings, serious due diligence by your prior HOA Board of Directors, and much back and forth negotiation, a Contract of Purchase and Sale was reached for \$2.15 million, which represented a little over \$15,000 per acre of land, including a beautiful clubhouse, pool, barn and all the furnishings, fixtures and equipment.

Since I have represented hundreds of subdivision developers and other land speculators over the years, it is worth you knowing that raw ground zoned single family residential, like the Club's land is zoned, sells for a low of that price per acre to twice and even 3 times that high. Thus, the negotiated price was an extraordinarily fair one to Glenmary residents, and anyone telling you otherwise is playing games with numbers.

On behalf of the current Club owners, Mindel-Scott & Associates (land planners and engineers) and I presented the idea of the Conservation Subdivision Plan and 3 minor subdivision plats to Glenmary residents at an autumn meeting, attended by probably 400 people. A long and intelligent discussion among us and Glenmary residents ensued, with so many residents voicing a preference to just purchase the Club that that is what your prior Board, followed by resident vote, decided to do.

A Contract of Purchase and Sale was thus entered into as a way to save the Club and allow Glenmary residents alone to make all future decisions regarding Club property. Everyone was proceeding in good faith to closing, with two offers to finance the purchase from 2 well-established local banks, until, out-of-the-blue, right before an early December scheduled closing a new HOA Board of Directors was elected, and 4 of those 7 Board members voted to terminate the Contract, violating its terms. Their specifically stated claim was that bank financing was not certain enough or not in order. For several weeks following, my clients (the Club owners) and I tried everything possible to work with the new Board members' attorney to extend the term of that Contract and hold a closing at a later date when the HOA was in a position to close its loan with one of the two banks, thus 100 percent financing the Club purchase. In the end, the new HOA Board members, advised by their newly selected attorney, basically dared us to file suit, repeatedly so – which we now have done, both for breach of contract by the HOA and for tortious interference with Contract by the new Board members. Before filing, our client, the Club owners, even discussed a lower sale price as a last ditch effort to avoid litigation and proceed instead in accordance with Contract.

The reason that we are now proceeding with the application for Conservation Subdivision Plan and 3 minor subdivision platted lots is because that is now and again the only way that we can

see for the Club to continue to pay its bills, such as servicing debt, and remain open. Despite this, the Club's owners remain willing to abide by the prior Board and Glenmary resident vote to still sell them the Club, instead of breaking it into pieces like we now have to do. By purchasing the Club, Glenmary residents can control the fate of this gorgeous piece of God's green earth and can make their own decisions about the Club's future (for example, whether to continue to operate the property as a golf club or to do things like the present owners otherwise plan, such as subdivide off some of the land to service debt).

Will the Glenmary Club owners accept less than the price they recently agreed to take?

No, because the price was negotiated fairly and represents what it is worth relative to several factors: (a) what other clubs are selling for based on their locations and circumstances; (b) the Club property's break-up value if the HOA or other purchasers decide that closing the Club down and selling it off is the best or only viable option; and (c) the sale price actually represents less than what the Club owners owe. Some people like to claim that the Club owners misrepresented their debt. They did not. They showed the Board how they acquired the debt they have and who they owe. Nevertheless, what the debt is and how it came to be is a complete red-herring anyway, because debt, while a factor in the purchase and sale price, by no means was the only factor. The prior HOA Board agreed to a purchase and sale price after intense negotiation, which required the current Club owners to drop their sale price from what they wanted and from what they believe the Club is really worth.

Does the slow-go approach assure any savings?

No. The slow-go, drip by drip, water torture approach, that some think is such a good idea because they believe it just might result in the HOA being able to acquire the Club at an even more discounted (some say, fire-sale) price than the Club owners have already agreed to accept, is an extremely risky roll of the dice. And, of course, that also begs the question of whether the current Board is spending a dollar to save a dime. Naturally, the Club's owners will oppose such efforts every way they can, since they paid for, and invested more in, the Club than they are asking for it. Moreover the December closing was specifically scheduled in order that the HOA could acquire the Club in time to assure Spring-time pre-emergent weed control and fertilizer so as to preserve the beauty and quality of green space. Postponing the previously agreed-upon purchase while the Club deteriorates is like fiddling while Rome burns.

What about the supposed new Appraisal?

Appraisals, some say, can be "made as instructed", meaning that the conclusions reached might be based upon the instructions and appraisal parameters given by the person or entity ordering the appraisal. Therefore, an appraisal of this property considering its development potential would result in a figure much higher than the low million-dollar appraisal apparently received by the new Board. The Clubhouse alone is at least a \$500-\$600,000 asset. As an operating golf course, the property's value also depends upon whether it is owned by individuals (like the current owners) trying to make a living by operating a golf course, or by a membership group (be they individuals like at Hurstbourne, Big Spring or Wildwood Country Club or by residents of a neighborhood like Glenmary) interested in sharing ownership of a community-type facility for their private or semi-private recreational and/or social enjoyment. Obviously, the value of a property like Glenmary Golf Club to a membership group operating as a non-profit, though

hopefully break-even, venture (like Hurstbourne, Big Springs or Wildwood Country Club or Glenmary subdivision) is significantly higher than it is to individuals who are trying to operate as a for-profit venture, making a living operating the place. Also, if the property in question has break-up value, as we believe the Glenmary Club does, an appraisal may shoot up significantly higher.

What's happening at the other clubs:

The *Courier-Journal* just reported that the troubled Standard Country Club was purchased by the Jewish Heritage Fund for \$4.7 million. That's well over twice the price that your HOA agreed to pay for the Glenmary Club. As respects some of the other private, struggling golf clubs locally, consider these situations.

At Indian Springs, for example, it has been reported that the owner has been operating with over \$5 million of debt, unlike the owners of Glenmary with about \$2.15M of debt. Yet the residents of Indian Springs saw fit to enter into an agreement with the Indian Spring Golf Club owner whereby he was allowed to subdivide off and rezone approximately 8 acres of his Westport Road frontage to accommodate a restaurant, a grocery store and a hotel, thus allowing him to pay down his debt that way. That, in turn, allowed him to sell the Indian Springs HOA that club for just \$1 (one dollar). At Glenmary, because residents did not want to allow the current Club owners to sell off any part of the Club, like the owner at Indian Springs did, the HOA negotiated a purchase price of \$2.15 million, leaving the HOA in the future, if it choose to do so like the HOA at Indiana Springs did, to (a) subdivide and sell off some small pieces (like the presently proposed Conservation Subdivision and minor platted lots) in order to pay down or pay off debt, OR (b) to take whatever other course of action the residents might come together and decide to take. At Indian Springs, residents decided to work with the Club, rather than fight it, because they understood how important it was to save the Club or at any rate acquire it without disruption to people's lives and property values. In the process of that, they reached a solution that worked well for all concerned. Going forward, Indian Springs will be a very attractive place to buy a home, with property values continuing to appreciate. Unfortunately, because of the current situation at Glenmary, the very opposite appears true: Glenmary homes are not selling, and home prices are plummeting.

From what we hear, Glen Oaks Golf Club and Polo Fields Golf Club are also for sale, at prices of about \$1.6 to \$1.9 million. Like Glenmary, they are nice golf courses. But unlike Glenmary (or Indian Springs), they are not located in highly populated areas or on major arterial highways. The Glen Oaks and Polo Fields subdivisions are smaller than Glenmary, so purchases by their HOAs are more difficult because there are fewer residents to support operations. And as said, they do not have arterial frontages like Westport Road or Bardstown Road, meaning they have nothing to potentially sell off for commercial use to pay down debt.

What's with the various lawsuits?

There are two lawsuits currently pending against the 4 Glenmary Board members who chose to terminate the existing, already agreed upon Contract of Purchase and Sale. Meanwhile, regrettably the Club owners have had to sue the HOA itself for breach of contract because, after all, these 4 Board members are your elected representatives and, therefore, act on your behalf. If the Contract were terminated illegally, as our client asserts, then the entire HOA can be held liable for the damages that occur. This could amount to \$2.15 million, possibly much higher

when adding in other damages and attorney fees -- meaning, in the end, the HOA may have nothing to show for all this mess but a great big legal bill, court ordered damages and no Club property to go with it.

Meanwhile, what happens to the Club and the Glenmary neighborhood?

Under the current set of above-described circumstances no one knows for sure what will happen to the Club, as the current Club owners struggle day-to-day. Still they very much want to sell the Club to the Glenmary HOA and its residents. But residents only act through their Board of Directors. And since 4 of 7 current Board members remain opposed to honoring the Contract that was entered into by the prior Board and endorsed by a majority vote of HOA residents, that leaves the route of the above-explained Conservation Subdivision and 3 minor platted lots as the only viable road to travel. If those subdivisions are approved after the Planning Commission hearing on February 6, it is possible that the HOA will file suit to try to stop the subdivisions based on some theory, such as the one that a supposed plat restriction limits use of Club property to "recreational use". But even if that were true, "recreational use" includes a lot more activities than just golf courses. Let your imaginations run wild. And if the Planning Commission chooses not to approve the subdivisions, the same appeal rights are available to the current Club owners.

What we do know as respects the Glenmary subdivision is that litigation, mostly only benefiting lawyers, can drag on for years, sapping HOA financial reserves while the Club deteriorates and home owner property values likewise sink ever deeper. Meanwhile subdivisions not at war with their Clubs (like those mentioned above) survive just fine – one might argue all the while the Glenmary subdivision shoots itself in the foot.

Far and away the best course of action is to conclude the purchase and sale under terms of the original Contract with the excellent bank financing that is available so that the Club can be saved before it falls apart and so that the HOA can make its own decisions in the future about whether to continue operating as a golf club, whether to subdivide the property for some other resident-decided use, or whether to close the Club down and enjoy it as maintained open space. But barring that, the subdivisions scheduled for Planning Commission consideration are the next best option.