



Preserve at Smith Creek Homeowners Association

February 8, 2025

Dear Preserve at Smith Creek Homeowners,

Many of you have been asking what is the status of lawsuit brought against the Preserve at Smith Creek HOA by Jeff and Jennifer Johnson. We are glad to finally be clear to provide you with the following statement from our attorney regarding the current status of the lawsuit. We realize our inability to provide thorough information prior to court dates (as advised by our attorney) has been very frustrating for some. However, it is sometimes necessary to remain mute regarding legal matters while they are in process in order to prevent further legal complications.

The following is an update statement provided us by the Association's attorney, Mr. Matt Waters of Jordan Price.

Sincerely,
Your Board of Directors

The Board of Directors is writing to provide an update on the lawsuit filed against the Association by Jeffrey and Jennifer Johnson. On Monday, February 3, 2025, the Granville County court heard arguments on the Association's Motion for Relief from Order, and on the Johnsons' Motion to Show Cause. The Association's Motion was seeking relief from the Court's November 1, 2024 Order compelling the Association to produce certain financial and accounting statements to the Johnsons. The Association's Motion addressed that part of the November 1 Order requiring the Association to produce a) 2017 Monthly balance sheets (March-December); b) 2018 monthly balance sheets (January-December); c) 2019 monthly balance sheets (January-March); d) 2017 annual income and expense statements and annual balance sheet; and e) 2018 annual income and expense statements and annual balance sheet (matters a-e being collectively, the "Statements"). The Association did not produce the Statements to the Johnsons as required by the November 1 Order because, after due diligence, search, and inquiry, the Association no longer had those documents in its possession, custody, or control to produce. The Johnsons' Motion asked the Court for an Order requiring the Association to show cause for why those Statements could not be produced. There was no dispute between the parties as to whether the Association produced all other documents required by the November 1 Order.

The Association argued that there was no Bylaw, statute, rule, or otherwise any law that ever required the Association to create, much less maintain, monthly balance sheets—particularly ones dating back 5 years or more. The Association also argued that any statute, law, or otherwise which addressed annual income and expense statements and annual balance sheets limited the Association's requirement to keep

the same for the past 3 years. The Johnsons conceded that the Association should not be required to produce what it does not have, but that the Association should be required to obtain affidavits from numerous prior directors and other parties detailing with more specificity what everyone did to search and locate documents responsive to the November 1 Order.

After hearing arguments of the parties, the Court ruled in favor of the Association, granted relief from the Court's November 1 Order, and denied the Johnsons' Motion.

The Board is also aware of questions from many of you as to why the Board has not been meeting in the clubhouse on our normal schedule. For reasons related to public safety and wanting to keep Directors and Members in attendance safe, these meetings have been postponed and/or moved out of the clubhouse for now. It is the Board's hope to resume its normal activities, and the Board's hope that the Johnsons' lawsuit is brought to an end soon.

With that said about the meetings, minutes from any meeting, whether it is a Board meeting or a meeting of the Members, are never ready and available for the Members directly after a meeting. That is the case, or should be the case, with every community association. The reasons for this include the fact that, for example, draft minutes for a Board meeting are created during or soon after that meeting, and do not become the official meeting minutes of the Board meeting until the Board meets again next, at which point the Board votes to approve or amend the draft minutes. It is after this process that Board meeting minutes would be available. So, in other words, and for example, Board meeting minutes for a February 1, 2025 Board meeting would not be ready until after the Board next meets again. For membership meeting minutes, the result is similar, except that meeting minutes for the 2024 Annual Meeting of the Members would not be available until following the 2025 Annual Meeting of the Members (because the Members have the right to approve Membership meeting minutes; and the Board has the right to approve Board meeting minutes).