

**ISSUES/CONCERNS AND QUESTIONS SUMMARY**

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The intent of this structured document is to highlight some of perceived significant issues/concerns/questions regarding the Dual Association relationship in a concise format.

REF NO	BACKGROUND
0	<p><b>BACKGROUND:</b> Port Trinitie is composed of <b>two</b> associations, i.e., Dual Association:</p> <p><b>0.A.</b> the <b>Port Trinitie Association (PTA)</b>, which is a condo, or time-share, association, consisting of <b><u>25 co-ownership houses</u></b> that has been active since the 1980's and is the <b><u>owner of the Community Facilities</u></b> (tennis courts, swimming pools, roads, beach etc.) and,</p> <p><b>0.B. Port Trinitie Home Owners Association (PTHOA)</b>, which recently has become active after a number of years of being dormant, represents <b><u>32 Home Owners</u></b>. The PTHOA uses the PTA Community Facilities for a fee that is consistent with the fee charged the PTA condo (time-share) membership for the use of the same facilities (currently \$105.00 per month). Based on Deed Document 505, Page 638, "<b><u>the Port Trinitie Homeowners Association shall be entitled to elect and be represented by two of its Board members as members of the Board of Directors of the Condominium Association.</u></b>" <b>This representation is for matters related to <u>Community Facilities issues.</u></b></p> <p>The two associations have been negotiating an agreement to articulate an understanding on how the two entities would co-existent and have the PTHOA pay for only expenditures related to the Community Facilities. This initial agreement is formalized in a <b><u>Memorandum of Agreement (MOA)</u></b> dated 8 March 2008 and is available on the Port Trinitie Website (<a href="http://www.port-trinitie.org">www.port-trinitie.org</a> – Page 13, 4<sup>th</sup> Blue Link).</p> <p><b>0. C.</b> Cites in this document denoted by <b>QR-(Number)</b> refer to a <b>Quick Reference</b> compilation found on the PTA web Site - <a href="http://www.port-trinitie.org">www.port-trinitie.org</a> - See Upper Left Hand Page Index and go to <b>Page 16, Item #19 (Pages 1- 18)</b>.</p>
	<p><b>0.D. Underlining</b> has been added to some of the Documentation text cites.</p>

	<b>OBJECTIVE</b>	
<b>1</b>	<p>Ensure that the <b>PTA operating procedures, division of the common elements/Community Facilities, and fund reallocation</b> have a legitimate basis and do not violate any PTA or North Carolina law(s) while <b>protecting the rights of the PTA CONDO ownership and respecting the PTHOA Community Facilities interests too.</b></p> <p>1. A. What is the recommended procedure for resolving the issues:</p> <p>(1) Have the PTA Attorney ( Mr. Trimpi/Mr. Nash) do a written "<b>summary review</b>" of the MOA and Dual-Association procedures and advise the PTA President if there are any Red Flags in the PTA and PTHOA relationship and/or procedures. The intent is not start with a <b>detailed</b> Attorney tasking for an in-depth research report but <b>instead first confirm that there are legitimate issues that should be addressed by an attorney representing the PTA interests.</b></p> <p>(2) If there are issues of legitimate concern then the PTA President would convene a "<b>Special Board of Directors (BOD) meeting</b> (PTA members only?)" to discuss and obtain a formal board vote (Yea or Nay) before pursuing any "<b>detailed</b>" legal analysis.</p>	
	<b>DUAL ASSOCIATION ISSUES</b>	
<b>2.</b>	<b>ISSUE: BOUNDARIES QUESTIONS</b>	The current known documentation consisting of Dare County Deeds does not appear to <b>delineate the powers</b> of the two PTHOA Representatives on PTA Board. For Example:
<b>2.A.</b>		<b>How much control does the PTHOA have over the administration of the PTA owned facilities?</b> Can the PTHOA vote for or against the individuals that the PTA hires as <b>supporting personnel</b> e.g., Accountant, Attorney, Insurance Agent, Property Manager, etc?
<b>2.B.</b>		Can the PTHOA use the <b>PTA By-Laws Special Meeting clause</b> (PTA By-Laws , Page 5, Article III, Section 3) to unilateral call for a special meeting on the <b>PTA Budget</b> or other <b>non-Community Facilities issues</b> (Reference Don Hale 30 September 2008 "Slippery Slope" Email)?
<b>2.C.</b>		Do the Two PTHOA representatives, who serve for the limited Community Facilities issue(s), count toward the minimum of 5 members of the <b>PTA Quorum requirement</b> (QR-25-01) PTA By-Laws, Page 10, Article V, Section 6?

<p>2.D.</p>		<p>If a motion to have a legal review of the MOA is tabled in a meeting of the PTA Board of Directors (BOD) can the two PTHOA representatives vote yea or nay on this motion?</p>
<p>2.E.</p>		<p>Do the PTA (Condo) members have a right to ensure their ownership interest in the Common Elements/Community Facilities is not compromised?</p>
<p>3.</p>	<p><b>ISSUE: ONE HOUSE – ONE VOTE</b></p>	<p>There appears to be a concern on the part of some <b>PTA Board members</b> that the <b>PTHOA can call for a vote</b> by their membership (<b>32 Houses</b>) on <b>any issue</b> (Budget, hiring/firing of support personnel, etc.) and out vote the <b>PTA (25 Houses)</b> on that issue. "</p>
<p>3.A.</p>		<p><b>Deed document (QR 60-06) 505, page 638, Exhibit A</b> contains this language "<b><u>Any matter affecting the Community Facilities</u></b> which requires or provides for the right of a dwelling owner of the Condominium to vote shall likewise also provide for the right of each lot owner in the Subdivision to vote on the same basis and upon the same notice. <b><u>On all such matters, each lot in the subdivision and each dwelling unit in the condominium shall be entitled to one vote.</u></b>"</p> <p>It is believed that the concern cited in paragraph 3 Issue above fails to consider the operative words "affecting the Community Facilities..." This clause is interpreted as meaning that if the PTA BOD were to request a vote of the 25 condo dwellings on a particular <b><u>Community Facilities</u></b> issue then the cited clause could be invoked, which has not been done to my knowledge in the 24+ years history of the Condo Association.</p> <p>What is the correct interpretation of this clause?</p>
<p>4.</p>	<p><b>ISSUE: PICK &amp; CHOOSE</b></p>	<p>The <b>8 March 2008 Memorandum of Agreement (MOA)</b> incorporates the <b>division</b> of Port Trinitie physical area and Community Facilities into three categories:</p> <p>(1) Items that the <b>PTHOA</b> home owners will contribute to;</p>

		<p>(2) the items that only the <b>PTA</b> Condo (Time-Share) will pay for and ;</p> <p>(3) Items that both associations will pay for.</p>
<p><b>4.A.</b></p>		<p>The <b>North Carolina law (QR#10-05) NC-47A, Section 7 states:</b> “The <b>common areas and facilities shall remain undivided and no unit owner or <u>any other person</u></b> shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this Article as provided in G.S. 47A-16 and 47A-25. Any covenant to the contrary shall be null and void. This restraint against partition shall not apply to the individual condominium unit. (1963, c. 685, s. 7; 1983, c. 624,s. 2.)”.</p> <p>This clause is interpreted as <b>precluding any division of the Common Areas/Facilities by Condo Owners</b> but yet the <b>MOA</b> incorporates <b>a division of the Common Elements/Community Facilities into elements that the PTHOA will pay for and elements that the PTHOA will not pay for.</b> This division is viewed as promoting the Condo Owners to an inferior position relative to property that these same Condo owners hold title to?</p> <p>Is the <b>MOA division of the PTA Community Facilities</b> assets legitimate under NC-47A, Section 7?</p>
<p><b>4.B.</b></p>		<p>The <b>Deed 505, Page 635 (QR#60-04) states:</b> The Association (PTA) shall have all rights and causes of action to enforce assessments with regard to the community Facilities against all owners, condominium or otherwise; in the Development Area. <u>No owner may waive or otherwise escape liability for assessments for his share of expenses of the Community Facilities by <b>no-use of the facilities thereof or abandonment of his interest herein.</b></u></p> <p>Does the MOA, Paragraph 2. a. Definitions (Community Facilities) and Paragraph 5. Language nullify the “<b>no-use</b>” clause above since specific components of the Association property appear to be excluded, e.g., Ocean Middle &amp; Southern Platform, specify walkways, and land areas?</p>
<p><b>4.C.</b></p>		<p>Are there any established North Carolina legal <b>guidelines</b> controlling the interaction between the owner of Common Areas/Facilities and the user of these facilities by another association?</p>

5.	<b>ISSUE: INFORMAL AGREEMENT</b>	One of the discussion arguments relative to the MOA is that it is seen as an <b>informal agreement</b> between two associations and therefore was not recorded with the Register of Deeds in Dare County.
5.A.		The existing version of the Budget requires the PTA Condo Owners to pay for Condo specific items based on the <b>division on the Common Elements/Community Facilities</b> . This action changes the <b>funding allocation</b> that has been in place for approximately 20+ years in the PTA. Since there is <b>fund reallocation based on division of association property</b> should this stipulation by itself not require a summary legal review to ensure the algorithm is valid and formal recording of this agreement with the Dare County Register of Deeds?
		<b>END OF DOCUMENT</b>