

VIRGINIA :

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

OGUNQUIT DEVELOPMENT, LLC)
601 Utterback Store Road)
Great Falls, Virginia 22066)
))
Directly and Derivatively on behalf of)
LAKE HOLIDAY COUNTRY CLUB, INC.)
))
Petitioner,)
))
v.)
))
LAKE HOLIDAY COUNTRY CLUB, INC.)
231 Redland Road)
Cross Junction, Virginia 22625)
))
SERVE: Ian Williams, Resident Agent)
21 South Loudoun Street)
Winchester, Virginia 22601)
))
- and -)
))
The Directors/Officers of Lake Holiday)
Country Club, Inc.:)
))
CHRISTOPHER ALLISON, President)
217 Fairway Circle)
Cross Junction, Virginia 22625)
))
- and -)
))
M. FRANK HEISEY, Vice President)
238 Fairway Circle)
Cross Junction, Virginia 22625)
))
- and -)

Chancery No. _____

**BILL OF COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

CHARLES JAMES, Treasurer
413 Masters Drive
Cross Junction, Virginia 22625

- and -

JUDY PLATT, Secretary
1084 Lakeview Drive
Cross Junction, VA 22625

- and -

HARRIET SMITH
633 Lakeview Drive
Cross Junction, Virginia 22625

- and -

LOUIS EINSTMAN
111 Sunset Circle
Cross Junction, Virginia 22625

- and -

MICHELLE PATTERSON
314 Overlook Drive
Cross Junction, VA 22625

- and -

DOUG LEGGE
109 Par Court
Cross Junction, VA 22625

- and -

KAY PETTERSEN
102 Point Place
P.O. Box 509
Cross Junction, Virginia 22625

- and -

**BILL OF COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

JEANNE SECKMAN
207 Crestwood Lane
Winchester, Virginia 22602

- and -

DOLORES SMITH
105 Point Place
Cross Junction, Virginia 22625

- and -

KRISTINE TIERNEY
330 Overlook Drive
Cross Junction, Virginia 22625

- and -

JAMES TRAYNOR
903 Lakeview Drive
Cross Junction, Virginia 22625

- and -

THOMAS WALLACE
124 Lake Shore Drive
Cross Junction, Virginia 22625

- and -

LAKE HOLIDAY ESTATES UTILITY
COMPANY
231 Redland Road
Cross Junction, Virginia 22625

SERVE: Ian Williams, Resident Agent
21 South Loudoun Street
Winchester, Virginia 22601

Respondents.)

**BILL OF COMPLAINT FOR
INJUNCTIVE AND
DECLARATORY RELIEF**

BILL OF COMPLAINT INJUNCTIVE AND DECLARATORY RELIEF

Petitioner Ogunquit Development, LLC (“Ogunquit”), directly on behalf of itself as a member of Lake Holiday Country Club, Inc. (the “Association”), derivatively on behalf of the Association and its members, directly against Lake Holiday Estates Utility Company (the “Utility”) as a beneficial owner and derivatively on behalf of the Utility and its other beneficial owners states as and for its Bill of Complaint for Injunctive and Declaratory Relief as follows:

NATURE OF THIS ACTION

1. Lake Holiday Estates (“Lake Holiday”) is a gated, planned community in the town of Cross Junction in Frederick County, Virginia.
2. Petitioner owns a number of lots at Lake Holiday and, by virtue of that ownership, is a member in the Association which performs the functions of a property owner’s association at Lake Holiday.
3. With respect to a vote scheduled to take place on September 24, 2005, Petitioner brings this Bill of Complaint, directly and derivatively, to seek a declaration that the officers and directors of the Association can not vote membership interests owned by it, and to enjoin the Association from taking unauthorized and illegal action to vote membership interests owned by the Association, to effect wholesale changes to the basic organizational documents governing the affairs of the Association and fundamentally changing the ownership interests and rights of Petitioner and the other members of the Association.
4. With respect to a vote scheduled to take place on October 22, 2005, to replace the seventeen (17) Deeds of Declaration for the eighteen (18) different sections of Lake Holiday, Petitioner brings this Bill of Complaint, directly and derivatively, to seek a declaration that officers and directors of the Association may not count votes with respect to the new declaration

except in a section-by-section fashion. In other words, the Association may not, and should be enjoined from, adopting the new declaration for any section which does not vote to accept the new declaration by a super-majority vote, even if the overall vote for all sections carries by a super majority.

5. Petitioner, directly and derivatively, also seeks a declaration that certain actions and recommended actions by the Association with regard to its dealings with certain real estate investors constitute waste of the assets of the Association, violations of the governing documents and breaches of fiduciary duty by the Association and its officers and board of directors to the members of the Association and to enjoin any such further action.

6. Petitioner, directly and derivatively, also seeks a declaration that the officers and directors of the Association may not sell the Utility to a third-party utility company without the approval or vote a super majority of the members of the Association and to enjoin the Association from selling the Utility without a vote of the members.

7. Last, Petitioners seek monetary damages against the officers and directors of the Association for waste and breach of fiduciary duty and for lost profit caused by the actions of the officers and directors of the Association as described herein below.

THE PARTIES

8. Petitioner is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at the above address in Fairfax County, Virginia.

9. Ogunquit is a member of the Association by virtue of the fact that it owns a total of twenty-three (23) lots in Sections 2, 4A, 5A, and 8A of Lake Holiday.

10. Ogunquit brings this action on behalf of itself and, derivatively, on behalf of the

Association and the Utility.

11. The Association is a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at the above address in Frederick County, Virginia.

12. The Association is a property owner's association with regard to the common areas of Lake Holiday and was, as of October 31, 2004, and upon information and belief still is, the owner of approximately 223 lots in Sections 2, 3A, 4A, 5A, 6A, 6B, 7 and 8A in Lake Holiday.

13. Respondents Allison, Heisey, James, and Platt are, upon information and belief, the officers of the Association (the "Officers") with residence addresses at the above addresses in Frederick County.

14. Respondents Allison, Heisey, James, Platt, Smith, Einstman, Patterson, Legge, Pettersen, Seckman, Smith, Tierney, Traynor and Wallace are or were, upon information and belief, the members of the board of the Association (the "Board") in the period from January 1, 2004 to the present.

15. The Utility is a stock corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business at the above address in Frederick County, Virginia.

16. As of October 31, 2004, the Utility was, and upon information and belief still is, the owner of approximately 7 lots in Sections 2, 3A, 6A, 6B and 7 in Lake Holiday.

17. All of the stock of the Utility is owned by the Association for the benefit of its members including Petitioner.

JURISDICTION AND VENUE

18. This court has subject matter jurisdiction over this matter because the amount in controversy exceeds \$500 and Petitioner seeks injunctive and other equitable relief with regard to Virginia corporations with their principal places of business in this county.

19. This court has personal jurisdiction over Respondents pursuant to Va. Code Ann. § 8.01-328.1.

20. Venue is properly laid in this County under Virginia Code § 8.01-261.

FACTS

A. Organizational Background

21. Lake Holiday is a residential real estate development situated around a man-made lake located in Frederick County, Virginia.

22. Lake Holiday was originally owned and developed by Lake Holiday Estates, Inc., a Virginia Corporation, and Lake Holiday Associates, a Virginia limited partnership (the “Initial Declarant”).

23. By a Plan of Subdivision and a series of Deeds of Dedication filed among the land records of Frederick County between 1970 and 1975, the Initial Declarant established certain restrictions on the development of lots at Lake Holiday.

24. The Association was established in 1973 as a non-profit entity for the purposes of, inter alia, owning and maintaining common roads, road easements, walkways, riding trails, boat landings, beaches, recreational facilities, utility companies and other common elements of Lake Holiday and otherwise to act as a property owner’s association for the common benefit and to protect and further the interests of the members of the Association.

25. Independence Land and Capital, Inc., a Delaware corporation (“Independence”),

or its predecessor, upon information and belief, provided funding to the Initial Declarant for development of Lake Holiday.

26. Sometime after 1975, Independence foreclosed on Deeds of Trust from the Initial Declarant and thus became the fee owner of the lots and common elements of Lake Holiday then owned by the Initial Declarant, and otherwise became a successor to the Initial Declarant.

27. The Association brought a lawsuit against Independence alleging claims arising from the foreclosure.

28. On or about June 1, 1984, Independence and the Association entered into a Release and Settlement Agreement (the "Settlement Agreement").

29. Pursuant to the Settlement Agreement, the Association acquired title to some of the land then owned by Independence at Lake Holiday, including all of such lots in Sections 1, 2, 3A, 4A, 5A, 6A, 6B, 7, and 8A of Lake Holiday, the Lake Holiday clubhouse facility, the first nine holes of an associated eighteen (18)-hole golf course (along with an option to acquire the remaining nine holes without charge), an administrative building, the roads, the entry area, the lake and beaches, and the Utility. See Settlement Agreement attached hereto as Exhibit A.

30. Pursuant to the terms of the Settlement Agreement, on or about December 28, 1984, Independence and the Association recorded among the land records of Frederick County, the Declaration of Covenants (the "Declaration"). See Declaration attached hereto as Exhibit B.

31. Among other things, the Declaration exempted Independence and its successors, transferees and assigns from paying property owner's dues and restricted them from voting as more fully described below.

B. Voting Rights

32. Although the Association is a non-stock corporation, each owner of a lot in Lake

Holiday is, with certain exceptions noted below, required to become a member of the Association and is entitled to vote on matters for which stock holders in stock corporations are entitled to vote.

33. Any proposal to change certain fundamental incidents of the Association, such as amendments to the Articles of Incorporation and/or Bylaws, amendments to the deeds of declaration, changes in the corporate purpose of the Association and/or a proposed sale of all or a substantial part of the assets of the Association require approval by two-thirds of the members eligible to vote (i.e., “super majority”).

34. Pursuant to the Declaration, Independence and its successors, transferees and assigns and Developers as defined therein, are not permitted to be members of the Association or to vote in Association matters

35. Under paragraph 5 of the Declaration, the term “Developer” is defined as Independence and any entity purchasing two or more lots for development of land formerly owned by Independence.

36. Pursuant to the Declaration, a Developer is not required to pay dues to the Association and may not become a member of the Association or vote in Association matters.

37. Because the Association is the fee owner of certain lots at Lake Holiday as a result of the settlement with Independence and because a corporation cannot vote its own stock, the Association is ineligible to become a member of the Association or to vote in Association elections or other matters.

C. Breaches of Fiduciary Duties by the Officers and Board of the Association

i. Improper Delegation of the decision to extend Water and Sewer Access

38. There are 2707 total lots at Lake Holiday and approximately 676 existing homes

or homes under construction.

39. Lots which have access to water and sewer are ready for immediate construction of new homes (“Buildable Lots”).

40. Lots which do not have access to water and sewer services cannot be used for new construction until such time as the Association decides to have the Utility extend such services to that lot (“Membership Lots”).

41. Both Membership and Buildable Lots are obligated to pay annual dues to the Association and failure to do so may result in the suspension of voting rights.

42. A lot in Lake Holiday must obtain water and sewer services from the Utility.

43. Under the Articles of Incorporation, it is the obligation of the Association to decide to which lots new water and sewer services will be extended.

44. The Association is obligated to make its decisions with regard to the extension of water and sewer services in a fashion that benefits and promotes the best interests of the Association and its members.

45. The decision to extend water and sewer to a Membership Lot, thus making it a Buildable Lot, greatly increases the value of the lot.

46. Of the 2031 vacant lots, 381 are Buildable Lots and 1650 are Membership Lots.

47. Membership Lots comprise eighty-one percent (81%) of the vacant lots and sixty-one percent (61%) of the total lots at Lake Holiday.

48. Petitioner owns both Buildable and Membership Lots at Lake Holiday.

49. Miller and Smith, Inc. (“Miller and Smith”) and Oakcrest Companies (“Oakcrest”) are real estate investors which, inter alia, buy and finish lots for resale to other builders or build homes on lots purchased and/or finished by them in planned communities such

as Lake Holiday.

50. Lake Holiday LLC is a joint venture of Miller and Smith and Oakcrest.

51. Lake Holiday Land, Inc. is, upon information and belief, owned and controlled by Miller and Smith. Lake Holiday LLC and Lake Holiday Land, Inc. are hereinafter collectively referred to as the "LH Investors."

52. The LH Investors each have purchased lots at Lake Holiday.

53. On or about May 21, 2004, the Association, through its Directors and/or Officers, entered into a "Development Agreement" with the LH Investors. A true copy of the Development Agreement is attached hereto as Exhibit C.

54. The Development Agreement provides certain rights to the LH Investors for little or no consideration to the Association or to its members, including Petitioner.

55. Among the rights granted to the LH Investors in the Development is the right to determine where new water and sewer service will be extended to Membership Lots.

56. The LH Investors, with the permission and approval of the Officers and Directors of the Association, have used the right improperly delegated to them by the Association to extend water and sewer in a fashion that benefits the LH Investors to the detriment of the Association and its members, including Petitioners.

57. The Association has allowed the LH Investors to extend water and sewer utilities to one hundred and fifteen (115) Membership Lots in Section 10 of Lake Holiday.

58. LH Investors are not paying fees for the Membership Lots in Section 10.

59. Owners of Membership Lots who have been paying due to the Association for years do not have the same access to water and sewer as was granted to the LH Investors in Section 10.

60. Petitioner requested the right to extend water and sewer utilities at its own expense to two of its Membership Lots (Lots 136 and 138 in Section 8A).

61. Petitioner pays dues for its Membership Lots, including Lots 136 and 138 in Section 8A.

62. Petitioner's request to extend water and sewer utilities to its Membership Lots at Petitioner's expense was denied.

63. The right granted by the Association to the LH Investors to determine the sequence of installation of water and sewer access to Membership Lots in advance of the knowledge of the other Association members or to the public, gives the LH Investors certain "inside information" which is very valuable to the LH Investors and is harmful to the Association and its members, including Petitioners.

64. As a result of this inside information, the LH Investors are able to acquire Membership Lots cheaply, including lots owned by the Association, knowing that by having the ability to extend water and sewer to those lots, the market value of those lots will be greatly increased.

65. Because the overwhelming majority of the vacant lots at Lake Holiday are Membership Lots and because of the significant difference in the value between Membership and Buildable Lots, the responsibility to extend water and sewer to Membership Lots is a valuable asset of the Association.

66. The decision to extend water and sewer to Membership Lots is a duty of the Officers and Directors of the Association which has been improperly delegated to the LH Investors to the detriment of the Association and its members, including Petitioners.

ii. **Improper Sale of Assets**

67. Another of the rights granted by the Officers and Directors to the LH Investors, is the right of first purchase of any lot to be offered for sale by the Association.

68. Pursuant to the Developer Agreement, the price of lots offered for sale by the Association to the LH Investors must be determined by an MAI appraisal to achieve a fair market value for the lot.

69. Upon information and belief, the Officers and Directors have offered lots for sale to the LH Investors at grossly inadequate prices and without following the appraisal method described in the Developer Agreement.

70. As evidence of the foregoing, on or about April 4, 2005, Petitioner made an offer to the Association to purchase Lot 1168, Section 7 (the "Lot"), a Membership Lot, for \$50,000.

71. Petitioner knew that this offer was substantially in excess of the market price for a Membership Lot, but was willing to risk that this lot would be among the next lots to which the Association and/or the LH Investors would extend water and sewer access.

72. On May 5, 2005, the Association informed Petitioner, in writing, that the Lot was not for sale, but that the Association would inform Petitioner when it was.

73. On August 9, 2005, the Association sold the Lot and eight (8) other parcels in Section 7 to Lake Holiday, LLC (one of the LH Investors) for an average price of \$25,000 per lot.

74. Despite its promise, in writing, to do so, the Association did not inform Petitioner that it intended to offer the Lot for sale.

75. By selling the Lot to Lake Holiday, LLC, the Association accepted \$25,000 less than the price offered by Petitioner.

76. Had an appraisal been used to determine the value of lots sold by the Association to the LH Investors, that value should have reflected the offer to purchase made by Petitioners for the Lot.

77. As further evidence of the waste of Association assets by the Officers and Directors, included in the August 9, 2005 sale of nine (9) lots to Lake Holiday, LLC, the Association sold three (3) lots in Section 7 (Lots 1151, 1152, and 1153) presently used as a school bus stop for residents of the Association.

78. These three lots were sold for \$25,000 each, or a total of \$75,000.

79. Because the Association would be without a school bus stop, it signed a contract with Pine Knoll Construction to construct a new bus stop for \$139,662.

80. Therefore, the sale of the lots to Lake Holiday, LLC resulted in \$64,662 in additional expense to the Association.

81. In December 2004 and January 2005, the Association conveyed to Lake Holiday, LLC thirty-one (31) lots at \$25,000 each.

82. Lake Holiday, LLC immediately resold three (3) of these lots for \$65,000 each.

83. At a special meeting of its Board of Directors on May 20, 2004, the Association agreed to convey all of the Association-owed lots in Sections 1A and 7 (representing all of the lots in Section 7) – a total of forty-eight (48) lots – to Lake Holiday, LLC for \$25,000 per lot.

84. Further, in addition to agreeing to a fixed sales price for purchases to be made over a two (2) year period, the Association agreed to waive both regular and annual assessments and Utility fees for a period of twenty-four (24) months or until a house is built on the lot, whichever comes first. The waiver of fees agreed to is approximately \$132,800.

85. The Officers' and Directors' agreement to sell these lots to Lake Holiday, LLC

for grossly inadequate consideration and to waive fees on these lots for twenty-four (24) months is a further waste of Association assets and a violation of their fiduciary duty to exercise ordinary care and business judgment.

iii. Improper Delegation of Creating New Declarations and other Corporate Documents to the LH Investors

86. As noted above, the Initial Declarant recorded a series of declaration between 1970 and 1975 for each new section of Lake Holiday as each section became available for the sale of lots to the public.

87. As a consequence, there are seventeen (17) different declarations controlling the rights and obligations of the Association and its members, and those rights and obligations vary from section to section within Lake Holiday.

88. Currently, the Association, which owes a duty to act in the best interests and to promote the welfare of the members, including Petitioners, is the Declarant under all of the declarations.

89. The Association and its members have long believed that a single declaration which consistently defined the rights and obligations of the Association in all sections of Lake Holiday would be in the best interests of the Association and its members.

90. Despite the critical importance of this revision and the duty of the Officers and Directors to create a unified Declaration which protects and promotes the interests and welfare of the Association and its members, the Officers and Directors of the Association have improperly delegated to the LH Investors the responsibility to create a new unified declaration.

91. Attorneys hired by the LH Investors have presented a new declaration (the “LH Investor Declaration”) to the Association for its consideration and review.

92. Although the LH Investor Declaration is not scheduled for a membership vote

until the annual meeting of members in October of this year, the Officers and Directors have stated their intention to vote the lots owned by the Association in favor thereof.

93. The Amended Declaration proposes to appoint Lake Holiday LLC as the sole Declarant for all eighteen (18) sections of Lake Holiday which includes many sections in which the LH Investors own no or only a small fraction of the lots in that section.

94. The LH Investors have also drafted proposed new Articles of Incorporation and Bylaws which dramatically change the basic governance of the Association (the "LH Investor Articles").

95. The Association has failed to articulate any overriding reason why the Articles and Bylaws need to be amended at this time.

96. Among the changes proposed by the LH Investors in the LH Investor Articles, are taking away from the members the right to vote on the sale of the common areas of Lake Holiday, changing certain crucial votes from sixty-seven percent (67%) to a simple majority, lowering the number needed to make a quorum for Board activities, allowing conflicts of interest for Officers and Directors of the Association if disclosed to Directors but not to members, and otherwise taking away from the members and ceding to the Board the right to make fundamental changes to Lake Holiday.

97. Despite these dramatic proposed changes which give greater authority to the Officers and Directors and which do not advance the interests of the members, including Petitioner, the Officers and Directors of Lake Holiday have scheduled a vote on September 24, 2005, recommending the adoption of the LH Investor Articles and Bylaws.

98. In late August of 2005, the Association mailed ballot cards for the upcoming vote on the LH Investor Articles and Bylaws. However, the documents themselves on which

members were being asked to vote were not included. In a cover letter accompanying the ballot card, delivery of the documents was promised by September 15, 2005.

99. In early September 2005, with less than twenty (20) days remaining to the date of the scheduled vote (and even less time remaining to the response date required for mailed ballots), the Association mailed the LH Investor Articles and Bylaws along with an explanatory memorandum. The documents total almost forty (40) pages and represent significant revisions to documents revised as recently as 1999.

100. The material distributed by the Officers and Directors do not disclose that the proposed Amended Articles of Incorporation and Bylaws were drafted by attorneys for the LH Investors.

101. The Officers and Directors have also indicated that they intend to vote the lots owned by the Association as if the Association was a member of itself.

102. In prior litigation between certain members and the Association, this Court has ruled that the Association and/or the Utility cannot vote lots owned by them. See Evitt v. Lake Holiday Country Club, Inc., 16 Va. Cir. 255 (Cir. Ct. Fred. Co., July 7, 1989), a true copy of which is attached hereto as Exhibit D.

103. Any attempt by the Officers and Directors to vote the Association's or the Utilities' lots in upcoming votes is violation by the Officer and Directors of their fiduciary duties to the Association and its members, including Petitioner.

104. The commitment by the Officers and Directors to vote the Association's lots and the separation of the ballot card from the documents to be voted on indicate an effort by the Officers and Directors to distort election results in violation of their duties to the Association and its members, including Petitioner.

105. The Officers and Directors have also announced their intention to have the members vote for approval of the LH Investor Declaration for the annual meeting of members scheduled in October of 2005.

106. By scheduling the vote for the adoption of the LH Investor Declaration for a time after the vote on the LH Investor Articles and Bylaws, the Officers and Directors are intending that this vote be subject to approval by a simple majority rather than a super majority as required under the current bylaws.

107. Further, upon information and belief, the Officers and Directors intend to require approval of the LH Investor Declaration by a simple majority of the entirety of the Association members, even though there are seventeen (17) different deeds of dedication covering the eighteen (18) sections of Lake Holiday.

108. The sequencing of these votes and the application of an entire majority rather than a section-by-section majority is an abandonment by the Officers and Directors of their fiduciary duties to the Association and the members, including Petitioners.

iv. Improper proposed sale of the Utility

109. Pursuant to Article IV of the Articles of Incorporation of the Association (the “Articles”), the Association was formed, among other things, to own and operate water and sewer utilities.

110. The Association owns all of the shares of the Utility for the benefit of the members.

111. Article XI of the Articles provides that Association shall have the authority to sell common assets subject to approval of sixty-seven percent (67%) of the members.

112. The Utility is a common asset of the Association.

113. The Officers and Directors have recently announced that they have voted among themselves to sell the Utility to Aqua America, Inc. (“Aqua America”).

114. The sale of the Utility to Aqua America constitutes a sale of all of the assets of the Utility and thus requires approval of a super majority by the members who are the beneficial owners of the Utility.

115. Upon information and belief, Aqua America is a publicly-traded, for-profit corporation.

116. As such, unlike the Association and the Utility, Aqua America has no fiduciary or other duty to the members, including Petitioner, to promote their interests.

117. The Officers and Directors have stated that they do not intend to allow the members to vote on the proposed sale of the Utility to Aqua America.

118. The Officers and Directors have exceeded their authority by purporting to agree to the sale of the Utility without a vote of the members and have thereby breached their fiduciary duty to the Association and to the members.

D. Demand on the Officers and Directors of the Association

119. Petitioner has notified the Association and its Officers and Directors of the foregoing and asked the Association to take suitable action to correct the practices outlined above.

120. Though a reasonable amount of time has passed since such demand, the Officers and Directors of the Association have failed and refused to take any corrective action.

121. Allowing the foregoing practices to continue will cause irreparable injury to the Association and its members, including Petitioner.

COUNT I
(Direct and Derivative)

122. The allegations contained in Paragraphs 1 through 121 are incorporated herein by reference.

123. The Defendant Directors/Officers have sold lots at less than half of their value, given away development rights for less than full value and have delegated crucial Association duties such as the determination of the extension of water and sewer services and the revisions of governance documents and other non-delegable duties, to the LH Investors.

124. Defendant Directors/Officers have a duty to promote the benefit and welfare of the members. The foregoing actions have been inconsistent with this duty.

125. Defendant Directors/Officers foregoing breaches of duty constitute willful misconduct.

126. Defendant Directors/Officers actions have caused and are continuing to cause damages to the Association and to Petitioner.

COUNT II
(Derivative)

127. The allegations contained in Paragraphs 1 through 126 are incorporated herein by reference.

128. Defendant Directors/Officers are fiduciaries of the Association and its members. Defendant Directors/Officers breached their fiduciary duties by using assets of the Association for purposes that conflict with the stated intentions of the Association, all to the detriment of most of the Association's members. Defendant Directors/Officers, through action and/or inaction, have caused and are continuing to cause the assets of the Association to be jeopardized and wasted.

COUNT III
(Direct and Derivative)

129. The allegations contained in Paragraphs 1 through 128 are incorporated herein by reference.

130. The Association by and through the actions of the defendant Directors/Officers have engaged in ultra vires acts.

131. These ultra vires acts include the sale of its lots to Lake Holiday, LLC at less than half of their fair market value, allowing Lake Holiday LLC and Lake Holiday Land, Inc. the right to determine the sequence of extending water and sewer to Membership Lots, and granting Lake Holiday, LLC and Lake Holiday Land, Inc. the right to vote lots owned as successors and assignees of Independent.

132. Defendant Directors/Officers actions have caused and are continuing to cause damages to the Association and to Petitioner.

COUNT IV
(Direct)

133. The allegations contained in Paragraphs 1 through 132 are incorporated herein by reference.

134. The Association's decision, acting by and through its defendant Directors/Officers, to give Lake Holiday, LLC and Lake Holiday Land, Inc. and their affiliates the right of first offer, to refuse to sell lots to Petitioner, the refusal to allow Petitioner to pay the cost of extending water and sewer to its lots, have caused Petitioner economic harm and loss.

COUNT V
(Derivative)

135. The allegations contained in Paragraphs 1 through 136 are incorporated herein by reference.

136. The Association and its defendant Directors/Officers may not vote the Association owned lots in any Association matter, and certainly may not vote these lots in favor of the proposed Amended Articles and Bylaws and/or the Amended and Restated Declaration.

137. Only Association members can vote, and the Association cannot be a member of itself.

138. Moreover, any vote in favor of the proposed Amended Articles and Bylaws and/or the Amended and Restated Declaration by the Association would not be in the best interests of the Association and its members.

COUNT VI
(Derivative)

139. The allegations contained in Paragraphs 1 through 138 are incorporated herein by reference.

140. The Association cannot approve the sale of the Utility without putting that sale to a vote by the members.

141. The stated intention of the Officers and Directors to sell the Utility without a vote of the members and approval by a super majority is a breach of their fiduciary duties to the Association and its members including Petitioner.

WHEREFORE, for the reasons stated above, Petitioner Ogunquit, directly and derivatively, respectfully requests that this Court enter judgment in its favor and/or in favor of the Association against Respondents as follows:

A. Issue a declaration pursuant to Va. Code Ann. §8.01-184 that the Officers and Directors of the Association and /or the Utility:

i. may not vote memberships owned by them in any Association matter including, but limited to, the votes scheduled to take place on or about September 24, 2005 to amend the Bylaws and Articles of Incorporation of the Association and the vote scheduled to take place in October of 2005 to adopt proposed LH Investor Declaration;

ii. may not adopt any proposed amended declaration unless approved by a super majority for each section of Lake Holiday and that the proposed amendment be effective only if carried by a supermajority vote in that section;

iii. may not sell Association lots to the LH Investors pursuant to the Development Agreement without an MAI Appraisal which reflects the market value of the Lots;

iv. sell the Utility without the vote by a super majority of the members approving such a sale;

B. a preliminary and permanent injunction restraining the Defendant Directors/Officers from continuing in their wrongful conduct, and removing the Directors/Officers from their positions;

C. compensatory damages against the Officers and Directors, jointly and severally, in favor of Petitioners in an amount to be determined at trial,

D. compensatory damages against the Officers and Directors, jointly and severally, in favor the Association for and derivative damages, in an amount to be determined at trial, but in no event less than \$4,000,000;

E. the costs in this action, including reasonable attorneys' fee; and

F. such other relief as the Court deems just and proper.

Respectfully submitted,

OGUNQUIT DEVELOPMENT, LLC, Directly and
Derivatively on behalf of LAKE HOLIDAY
COUNTRY CLUB, INC.

By: _____
Counsel

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Dated: September 15, 2005