



Special News Flash

20 March 2015



Dear members

MESSAGE FROM THE PRESIDENT

BULLETIN: BACKGROUND AND CURRENT POSITION VIS-A-VIS THE CO-OPERATION AGREEMENT BETWEEN THE MOSSSEL BAY GOLF CLUB AND THE HOME OWNERS ASSOCIATION.

This communication to all members is done in the interest of transparency and is deemed to be expedient to inform members of the actual position as well as the background to the unintelligible unanimous acceptance by the then Mossel Bay Golf Club Board of the Co-operation Agreement in 2010. It must also be made known that the HOA Board has in terms of the provisions contained in the Agreement unilaterally renewed it for a further 5 years until 30 June 2020.

BACKGROUND

The developer of the Mossel Bay Golf Estate, Mr. Urs Windholz (Innside Investments (Pty) Ltd) in 1997/98 approached the Mossel Bay Municipality (Owner of the Mossel Bay Golf Club) with a view to obtaining a portion of the then golf course to develop a residential estate adjacent to the golf course.

At the time the Mossel Bay Golf Club leased the the golf course, together with the existing facilities from the Municipality in terms of a lease agreement due to expire only in 2017. No transaction with any third party was therefore possible before 2017 without the Golf Club agreeing to release the existing lease agreement.

After exhaustive discussions, the Golf Club opted for release of the lease agreement which cleared the way for the Municipality to sell a portion of the property for the purpose of developing a residential estate for an amount of R2 000 000, subject to the following 4 principal prior conditions:

- 1 The developer was to contractually commit to the upgrading of the existing golf course to a minimum standard which was mutually agreed to.
- 2 The developer was to contractually commit to the upgrading of the club house and surrounds according to specifications which were mutually agreed to.
- 3 The developer was obliged to contractually undertake to ensure that the Home Owners Association Rules specified that a portion of the levies paid by the 393 individual owners be paid over to the Mossel Bay Golf Club ad infinitum. This levy was initially R80 per month and would thereafter increase pro rata to any increases in the other levies paid by the home owners. Kindly note that this levy was in no way connected to membership of the Golf Club, and
- 4 The signing of a tripartite lease agreement for a period of 99 years between the Municipality, the Golf Club and the Home Owners Association for the lease by the Golf Club of the golf course and facilities from the Municipality.

The above conditions are inter alia contained in the Agreement of Sale dated 22 October 1997, a document which is filed in the Deeds Office under registration document No. 96/06188/07. Conditions 1, 2 and 4 above were duly complied with.



After having conformed to the payment of the levies in accordance with the conditions of paragraph 3 above for about 10 years, the then HOA Chairman (Mr. Dick Baird) unilaterally declared a dispute with the Mossel Bay Golf Club and ceased paying the levies in 2010 for a period of about six months. As far as can be established the dispute was declared because Mr. Baird reportedly claimed that because the undertaking to incorporate the payment of the levies into the HOA Rules was not executed, they were not obliged to pay the levies to the golf club. It is not understood why the Chief Executive Manager and Board of the Golf Club at the time did not seek legal advice in this matter, as the omission to incorporate the undertaking in the rules does not absolve the home owners from their obligation to pay the levies in terms of the Agreement of Sale (1997).

The Co-operation Agreement was drafted and presented by the HOA Board to the M.B. Golf Club Board as a precondition for the reinstatement of payments to the club, which now in terms of this agreement was defined as a Golf Club subscription fee. At the same time the payment of the levy in terms of the Agreement of Sale referred to above was superseded for the term of the co-operation agreement. The Mossel Bay Golf Club Board unanimously approved the acceptance of the document and signed it on 26 July 2010. All the signatories of the document in question were home owners. As a result of the replacement of levies by subscriptions, HOA members who are also Golf Club members, started claiming a discount on their Golf Club membership fees to an amount equal to their proportionate share of the HOA subscription fee paid on their behalf. At present this discount to HOA/Golf Club members amounts to more than R 200 000 per annum.

It is the considered opinion of the current Board of the Mossel Bay Golf Club that the approval of the Agreement was "Ultra Vires" because the then Board had no authority from the members of the club to effectively sign away more than R 5 000 000 in levies over the period of the validity of the Agreement. The Agreement inter alia provides that each home owner may obtain a 3 day membership from the M.B. Golf Club for free, a membership, the value of which is equal to the levy. The Co-operation Agreement was never registered as a legal document in the Deeds Office and as such it is doubtful whether it could legally supersede the Agreement of Sale (1997) as is stipulated in paragraph 16.2 of the Co-operation Agreement.

The aforementioned contentious situation was uncovered by the Mossel Bay Golf Club Board which was elected in 2011. The matter was discussed with the Chairman of the H.O.A at that time and it was agreed that a sub committee consisting of 3 members from each of the Boards be appointed to jointly investigate the circumstances and revert to the M.B. Golf Club Board with their recommendations. The delegates were Mr. Emil Kaltenbrunn (leader), Dr. Andre Bruwer and Mr. Koos Snyman representing the HOA. The golf club delegates were Messrs. Wessel Pieters (leader), Henk Vosloo and Andrew Harrison. The sub-committee unanimously recommended that the Cooperation Agreement be cancelled with effect from 1 July 2014. Some of the considerations which influenced the voluntary cancellation of the Co-operation Agreement included the following:

1. Was the Agreement in the best interest of future co-operation between the parties?
2. Does the rebate of membership to home owners in terms of the Agreement negatively impact to the ability of the Golf Club to maintain a golf course which would contribute to the enhancement of the value of the properties on the residential estate?

It was resolved that the Agreement of Sale (1997) and the Notarial Agreement of Lease between the Municipality, the HOA and the MBGC were sufficient and the only legal agreements the two bodies would forthwith be guided by.

On 16 September 2013 the HOA Board submitted a draft Cancellation Agreement to the Mossel Bay Golf Club Board for consideration, which would effectively cancel the Co-operation Agreement on 30 June 2014. Because the cancellation document contained a proviso which stated that the cancellation would be effective from the date of signing "without recourse of whatever nature or originating from whatever course", the Chairman of the MBGC was not prepared to sign the document without first consulting with the members.



Before this could be done, a new HOA Board was elected under the Chairmanship of Mr. Barend Nortje, who resigned from the HOA Board before the matter could be taken up with the new Board. At the next HOA Board election, Mr. John Blythe-Wood was elected Chairman. The newly elected Board, after several meetings between the two bodies rejected the MB Golf Club Board's offer of granting a free social membership to all of the 393 home owners with effect from 1 July 2015 in lieu of the current 3 day membership. The HOA Board informed the MB Golf Club in writing on 14 November 2014 that they had decided to honour the Co-operation Agreement and that they had decided to approve the extension thereof until 30 June 2020. Following this, an audience was requested by Messrs. Koos Snyman and Gabriel Smith, which was granted at a board meeting of the golf club. Mr. Snyman undertook to request a Special HOA Board Meeting at which time he would attempt to persuade the other members to accept the free social membership in lieu of the 3 day membership. A letter signed by Mr. Blythe-Wood dated 11 February 2015 confirmed the previous decision Dated 14 November 2014.

The current position is thus that about 100 home owners who have joined the Mossel Bay Golf Club are receiving a rebate on membership fees equal to the levy amount and are in fact not paying any "levy" to the golf club. The other 300 home owners who are not members of the golf club are the only persons paying "levies" to the golf club. The rebates annually amount to about R 200 000, while the levies collected amount to about R 500 000. If all of the 300 non-member home owners decide to join the golf club, as they are entitled to do in terms of the Co-operation Agreement, the golf club would collect no "levies", which is contrary to the spirit of the conditions contained in the Agreement of Sale dated 22 October 1997 between the Municipality and the Developer.

CONCLUSION

The signing of the Co-operation Agreement by the office bearers of the Golf Club without the authority of the majority of the members may render their actions ultra vires, but does not negate the conditions contained in the document and the Golf Club is thus obliged to honour the stipulations until the Agreement expires on 30 June 2020. The only other recourse would be to consider instituting claims against the individual office bearers of the Golf Club and the Board at the time.

Another option by which the Golf Club could be relieved of this financial burden of more than R 1 000 000 over the next 5 years, would be for the HOA Board to voluntarily offer to honour the decision reached by their previous Board and to cancel the Agreement, the first term of which expires on 30 June 2015.

If the above does not materialise, the Co-operation Agreement will terminate on 30 June 2020, after which date, the payment of levies as prescribed in the Agreement of Sale (1997) will again come into operation.

Copies of all the documents referred to in this communication are available on request at the reception desk of the golf club.

Hierdie kommunikasie sal in Afrikaans vertaal word indien daar lede is wat dit in voornoemde taal verkies.

Noel Hudson
President

RULES

Rita Herholdt, one of our very active lady members and well known among the Southern Cape Ladies Golf management structures, recently paid a visit to the Royal and Ancient home of golf at St Andrews, Scotland.

She attended, and completely aced her level 3 Referee and Tournament Administrator rules course. Knowing the complexities of golf rules and how little people really know their rules, I am convinced that she will be a huge asset as well as an ambassador to our Club all over the country. Well done Rita !!



ON THE COURSE

- Let asb op dat die area tussen 10 en 11 wat tradisioneel as GUR gemerk was, vanaf **1 April** nie meer as GUR gemerk sal wees nie. Die area sal dan as normale rof beskou word met die normale reëls wat dan geld.

Please note that the area between 10 and 11 have been satisfactorily rehabilitated. Effective **1 April**, this area will no longer be treated as GUR, and therefore the normal rules for rough will apply.

- Aan die linkerkant van 18 het een van die HEV lede wat besig is om te bou 'n tydelike bou heining opgerig wat die speelperke van die 18 putjie oorskry. Tot tyd en wyl dit reggestel is word die spelers 'n vrygooi toegelaat.

On the left of the 18th hole a member of the Golf Estate erected a temporary building fence breaching the out of bounds line. Should this fence interfere with your stance or swing the player will be allowed to drop.

COMPETITION RESULTS



MOSSELBAAI GHOLFklub



BB STABLEFORD 14 MARCH 2015

AANTAL SPELERS: 137		SCORE	HICAP
A DIVISION 0-24			
1	MICHAEL PARKER / KAROOLS HAUPTFLEISCH	45	18
B DIVISION 25+			
1	FANUS MINNAAR / GERT PIETERSE	47	32
3	KOSIE OTTO / CHARL DE VILLIERS	47	35
4	PIERRE DE VILLIERS / JOHAN MARITZ	46	53
5	ROELOF COMBRINCK / PIVOT	45	21
NEAREST THE PIN			
4	J J JOUBERT		
12	DANIE VAN LANGELAAR		
UPCOMING COMPETITIONS			
WEDNESDAY 18 MARCH 2015 BB BONUS BOGEY			
SATURDAY 21 MARCH 2015 COMBINED STABLEFORD			
DIE BURGER:086 689 6067			

BB BONUS BOGEY 18 MARCH 2015

AANTAL SPELERS: 142		SCORE	HICAP
A DIVISION 0-24			
1	GUSTAV STEINHOBEL / PIVOT	+10	21
B DIVISION 25+			
1	INA SWART / DAWN WESSELS	+13	35
3	TOESIE DERCKSEN / RICUS SERFONTEIN	+13	33
4	JAN JOUBERT / NOEL DOMINGO	+11	29
5	WALDO VORSTER / CARLOS PINTO	+10	29
NEAREST THE PIN			
8	L D GRIESEL		
12	NOEL DOMINGO		
UPCOMING COMPETITIONS			
SATURDAY 21 MARCH 2015 COMBINED STABLEFORD			
WEDNESDAY 25 MARCH 2015 BB STABLEFORD SAKEMANNE DAG			
DIE BURGER:086 689 6067			

Enjoy your golf this week.

Louw & Team

