

**President's Annual Report  
December 8, 2022**

I will conclude my fourth and final year as president of Southwinds Association, Inc. December 31, 2022. During my tenure, three questions often asked by some homeowners were: (1) Are homeowners required to be members of Southwinds Association, Inc.? (2) Why does the board of Southwinds Association, Inc. expend annual dues to conserve, maintain and protect 9-acres of its open space and the 14-acre Birch Mill Pond? and (3) What is the status of the lawsuit regarding 32 Birch Mill Trail?

To answer questions #1 and #2, the following historical documents were reviewed: (1) Developer's Declaration of Restrictions and Easements, filed March 21, 1979; and (2) Certificate of Incorporation (Non Stock Corporation) filed March 21, 1979.

**Are homeowners required to be a member of Southwinds Association, Inc.?**

The "Certificate Of Incorporation" states in part: "The name of the corporation is Southwinds Association, Inc." (paragraph 1). "Members of the corporation shall be owners of lots in Southwinds, a subdivision in the Town of Essex, Connecticut" (Paragraph 3). "The management and control of the corporation and its property shall be vested in a three member Board of Directors" (Paragraph 3).

The Developer's Declaration Of Restrictions And Easements, states in part: "The acceptance of a deed to said lots shall constitute an agreement that the provisions of the Certificate of Incorporation, the By-Laws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, and all provisions shall be deemed and taken to be covenants running with the land and shall bind said owner as though such provisions were recited and stipulated at length in every deed of conveyance thereof". (Paragraph 7)

**Why does Southwinds Association, Inc. expend annual dues to conserve, maintain and protect 9-acres of open space and the 14-acre Birch Mill Pond?**

The Developer's Declaration Of Restrictions And Easements, states in part: "The undersigned, its successors and assigns, does hereby grant as an appurtenance to each of said lots 1 through 61, the non-exclusive right and privilege to use for recreational purposes land designated as 'open space' and 'Birch Mill Pond' ...Said right and privilege is subject to the right of reasonable regulation and/or development of said 'open space' and Birch Mill Pond' by Southwinds Association, Inc." (paragraph 5). "The undersigned, its successors and assigns, hereby agrees to hold title to said "open space" and Birch Mill Pond" for the benefit of the future owners of said lots 1 through 61 and the Southwinds Association, Inc" (paragraph 6) "...the undersigned, its successors and assigns, hereby agrees to be responsible for the upkeep and maintenance of said land, including the payment of all real estate taxes due thereon and the provision of adequate liability insurance coverage" (paragraph 6).

### **What is the status of the lawsuit regarding 32 Birch Mill Trail?**

There is no longer a threat of a lawsuit against Southwinds Association, Inc. or its board. On June 30, 2021 Southwinds Association, Inc. and each of its homeowners, were threatened with a lawsuit by Ms. Terry Lynn McDonald and her attorney, Mr. Peter Royer, regarding an Adverse Possession claim. The board, with approval of its homeowners, retained Mr. Greg Carnese, attorney. We learned that Ms. McDonald wanted to exchange property she owned for two sections of open space owned by Southwinds Association, Inc. One section related to property that had supposedly been improved by previous homeowners without prior knowledge of the board. Those improvements included planted grass, installation of a sprinkler system and electrical outlets. The second section included a stone wall, patio, conduit and lighting that had been constructed without the benefit of permits (i.e. wetlands, zoning and health) resulting in a lawsuit filed in Superior Court by the Town of Essex, Inland Wetlands and Watercourses Commission (IWWC). The lawsuit identified Ms. McDonald and her son as defendants. The essence of the lawsuit relates to Ms. McDonald failing to obtain a permit from the Town of Essex, constructing a stone wall and patio in the wetlands and within the 100-foot upland review area, removing plants and shrubbery resulting in soil erosion and dredging a portion of Birch Mill Pond in front of her property.

Southwinds Association, Inc. and Mr. Carnese, reviewed Ms. McDonald's proposal and rejected it. The proposal would violate state law and therefore would not be approved by The Town of Essex, Zoning Commission.

The board continues to monitor the status of the lawsuit by attending the monthly meetings of the IWWC, via Zoom or in person. The board has formerly notified the IWWC verbally and in correspondence, that it wants the stone wall, patio, conduit and lighting removed from its open space and restored to its original condition. The cost of the removal is the responsibility of Ms. McDonald. To date, the amended application submitted by Ms. McDonald's representatives, includes most of the expectations of Southwinds Association, Inc.

As of this writing, a pre-trial conference has been scheduled for December 8<sup>th</sup>. The trial date is set for December 19<sup>th</sup> and 20<sup>th</sup> in Superior Court.