

1 Warren J. Stapleton, 018646
2 Christopher Simpson 018626
3 OSBORN MALEDON, P.A.
4 2929 North Central Avenue
5 21st Floor
6 Phoenix, Arizona 85012-2793
7 (602) 640-9000
8 wstapleton@omlaw.com

9 Attorneys for Lakeside Legionnaires

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 CONTINENTAL COUNTRY CLUB, INC., an
13 Arizona Non-profit corporation
14 EIN 86-0414438,

15 Debtor.

16 No. Chapter 11 Proceeding
17 Case No. 3:21-bk-00956-EPB

18 **THE LAKESIDE**
19 **LEGIONNAIRES'**
20 **SUPPLEMENTAL OBJECTION**
21 **TO THE DEBTOR'S FIRST**
22 **AMENDED PLAN OF**
23 **REORGANIZATION**
24 **ADDRESSING THE DESIGN OF**
25 **WATER RECREATION AREA**
26 **FOR CLASS 6 OPTION B**

27 Pursuant to the Court's August 4, 2022 minute entry, and 11 U.S.C. § 1129, the
28 Lakeside Legionnaires, hereinafter the "LFOs," (a certified class arising from pre-petition
litigation involving the Debtor and those class members affected by the Debtor's
obligations to maintain Lake Elaine currently pending in the Coconino Superior Court,
William R. Schulz, et al., v. Fairfield Sunrise Village, Inc., et al., Case No. CV 87-42997)
file their supplemental objection to the Continental Country Club's (hereinafter "CCC"
or the "Debtor") First Amended Plan of Reorganization, Dkt # 317 (the "Plan")
addressing the design of the water recreation area in Class 6 Option B, Dkt #350 (the
"Design Plan"). The LFOs incorporate by reference their earlier filed Objection to CCC's
Amended Plan of Reorganization, filed at Dkt #345 (the "LFO Plan Objection").

1 **I. Introduction.**

2 CCC provided a design for its so-called “stream and ponds option,” Class 6
3 Option B in its Amended Plan, on August 2, 2022. Dkt #350. The design demonstrates
4 CCC’s intention to permanently decommission Lake Elaine – a gorgeous 30-acre lake –
5 by converting Tract D to a mostly dry, desert landscape with very limited water features
6 at best. The plan calls for developing four tiny, shallow ponds connected by an 18-inch-
7 wide drainage ditch the CCC falsely calls a “stream.” The design schematics offer little
8 detail and leave a number of unanswered questions.

9 As explained in more detail below, CCC’s Design Plan confirms the arguments
10 made in the LFO Plan Objection. Specifically, that CCC has failed to provide a water
11 recreation area as required by the applicable covenants and deed restrictions. See Dkt
12 #345, pp. 3-11. In addition, CCC’s withdrawal from negotiations with the LFOs prior
13 to filing its Plan and CCC’s failure to include any LFO input in the design process has
14 resulted in numerous design flaws and potential regulatory compliance issues that might
15 have been corrected had the LFOs been permitted to participate in the process. Finally,
16 and perhaps most urgently, CCC’s Design Plan did not contain any updated cost
17 estimate. The inclusion of this information was a requirement in the Court’s May 20,
18 2022 Order approving the Disclosure Statement, which stated: “The design plan shall
19 include the location, surface area, and depth of any water features, *as well as any*
20 *updated cost estimates*, to be included in the Lake Redesign Project.” Dkt #331, p. 2, ¶
21 4 (emphasis added). The omission of this information is important because, as
22 explained in the LFO Plan Objection, the arbitrary amount of money that the LFOs will
23 receive for their Class 7 damages claim is \$2.5 million less the amount used to construct
24 the Class 6 Option B Design. Dkt #345, p. 24.

1 **II. Supplement Objection**

2 **A. Failure to include cost estimate.**

3 CCC’s failure to include an updated cost estimate is unfair because it prevents the
4 LFOs from evaluating the impact of choosing Option B on their Class 7 rejection damages
5 claim. As stated in the LFO Plan Objection:

6 CCC’s Plan places the LFOs rejection damages into Class 7, which will
7 be funded out of what remains after the costs of the construction of Option
8 B are subtracted from \$2.5 million. According to the information provided
9 with the Disclosure Statement (which is not the actual design) the amount
10 that CCC’s Option B will cost is \$1,921,081. Dkt #316, p. 123. In other
11 words, the total amount available to pay millions of dollars’ worth of
12 claims will be less than \$600,000, and that is only if there are no budget
13 overruns during construction that would draw down the total award for
14 damages. CCC has still not provided contractor bids that would allow the
15 LFOs to evaluate actual costs associated with the repair and there is no
16 guarantee that CCC’s estimates will be managed to achieve the budget. If
17 the CCC does not manage costs and the repair balloons, the LFOs could
18 be left with zero payment for damages.

19 Dkt #345, p. 24. Comparing the Design Plan with the Option B provided with the
20 Amended Disclosure Statement (Option 8) several things are notable. *Compare* Dkt
21 #350-1, pp. 1-6 and Dkt #316, pp. 107, 114-15, 123. First, the Design Plan expressly
22 contemplates year-round water in the form of tiny, unaerated ponds with an 18-inch-wide
23 drainage ditch moving water to the ponds as opposed to the ephemeral (“dry”) channel
24 mentioned in Option 8. Presumably, this would increase the costs, both for the
25 infrastructure – the pipes in the Design Plan that carry water to the ponds, along with the
26 pumps and power source – in addition to the annual reclaimed water cost that will be used
27 in connection with maintaining water flow. Second, the Design Plan contemplates a
28 slightly larger surface area for the ponds than Option 8, which anticipated 4 ponds
covering .5 acres, *see* Dkt #316, p. 107); as opposed to 4 ponds with a surface area of
approximately 2.2 acres (Design Plan). Third, the design plan fails to incorporate a
topographical grading design to create a positive drain in the north end of the lakebed to
avoid pooling of stormwater runoff that currently attracts bugs, grows algae and creates

1 stench. Essentially, CCC's Plan appears to leave the lake's incised structure "as is" and
2 adds a few ponds without re-grading the remaining lakebed. LFOs believe the amount of
3 grading and dirt work needed to correct this problem would create substantial costs and
4 technical challenges. Further, the LFOs do not believe that state regulatory agencies,
5 including the applicable environmental and health agencies, will allow or approve a
6 restoration plan that fails to resolve pooling and standing water issues.

7 Undoubtedly, these additions would considerably increase the costs from the
8 \$1.9 million presented with the Amended Disclosure Statement. Finally, the Design
9 Plan does not state whether the design will require additional work related to the dam
10 (which CCC has previously suggested would add \$500,000 to the costs of any project).

11 On this point, the Amended Disclosure Statement indicates the following:

12 Additional consideration of the downstream impact would need to be
13 included during a full design effort as it is unclear what capacity there is
14 in the downstream fairways, greens and neighborhoods to accept
15 additional stormwater flow. To that end, the valley restoration may need
16 to be designed to continue to serve as a detention/retention basin.

17 However, given the seepage rates and the relatively minor stormwater
18 flows into the valley, this would not likely have a significant impact to the
19 overall construction cost of the project.

20 Dkt #316, p. 107. While this language highlights the problem – and suggests it
21 may not cost as much as CCC now evaluates – the recent rainstorm that flooded the area
22 downstream from the dam (without any water on Tract D) suggest that this issue will
23 need to be dealt with. In other words, additional costs.

24 CCC's failure to provide a cost estimate is mainly a disclosure problem, but it
25 also affects confirmation in at least three ways. First, Class 8 unsecured creditors (a
26 total of \$33,000 in claims) may not understand that the additional undisclosed costs in
27 the Design Plan could essentially mean that they are getting nothing. Under the
28 Amended Plan, the only money that Class 7 and Class 8 unsecured claims receive is
their pro rata share of what remains after payment for the construction of Class 6 Option
B. That could have impacted Class 8's voting (which is already done). Second, it

1 affects class discrimination issues. If the Design Plan costs \$2.5 million or more, it
2 would mean that the LFOs are getting nothing for their rejection-based damage claims.
3 (It would also mean Class 8 gets nothing.) But other unsecured creditors – like Aspen
4 Valley are getting paid, albeit in a different class. Third, the fact that CCC will not even
5 attempt to obtain costs for the Design Plan (as required by a Court order) shows that
6 CCC is operating in bad faith. CCC has no desire to provide a plan that is consistent
7 with the objectives of the Bankruptcy Code. CCC just wants to ensure that it
8 permanently decommissions Lake Elaine and returns Tract D to what is essentially a dry
9 landscape. CCC’s unwillingness to restore Lake Elaine, even to a lower elevation with
10 a smaller footprint, is baffling to the LFOs given that CCC owns and maintains the
11 Walnut Canyon and Humphrey Lakes in the same geology and in close proximity to
12 Lake Elaine. CCC will spend approximately \$2.7 million to maintain these lakes from
13 2023 to 2036 – more than the entire settlement that CCC is proposing for Lake Elaine.
14 This includes spending between \$110,000 to \$170,000 per year in annual maintenance
15 costs compared to an earlier CCC estimate earmarking only \$2,700 in annual
16 maintenance for the Lake Elaine tract. These decisions create continued questions about
17 the inequitable treatment of LFOs. Further, CCC has identified no reclaimed water
18 availability or maintenance issues with those lakes, only with Lake Elaine.

19 **B. Design Flaws.**

20 **1. Violations of the applicable covenants.**

21 The LFO Plan Objection has already explained why an 18-inch drainage and tiny
22 ponds do not equal a “water recreation area” or a “lake” as those terms were used in the
23 deed restrictions and covenants and this supplemental objection incorporates those
24 objections here. *See* Dkt #345, pp. 3-11. Now that the actual surface area and parameters
25 are known, however, the LFOs would add that four small ponds – each five feet or less in
26 depth, with a total surface area less than 10% of Lake Elaine’s (30 acres v. 2.2 acres) does
27 not constitute a “water recreation area,” i.e., a lake – which is what the deed restrictions
28 and covenants require. These unaerated ponds offer no functional value and would not

1 allow for any water recreation activities whatsoever. CCC members and the LFOs have
2 enjoyed boating and fishing on Lake Elaine for over 30 years. Instead, the proposed
3 ponds quickly will be filled with algae and sediment. Due to their shallow depth, the
4 ponds will operate more like a swamp than an aesthetically pleasing water feature.

5 Further, the LFOs now have empirical evidence demonstrating that the proposed
6 tiny ponds and narrow channel are not structurally sound and will easily flood and
7 overflow during heavy rain. Even though CCC drains Lake Elaine stormwater runoff,
8 recent monsoons filled the dry lake bottom, effectively connecting proposed ponds 2, 3
9 and 4 into one body of water. (A picture of this problem is attached hereto as Exhibit
10 A.) In other words, the Design Plan is not only legally insufficient and structurally
11 unsound, it is poorly conceived. And, it is likely to create additional costs for CCC.

12 Similarly, the Design Plan's 6-inch-deep irrigation channel that measures only 18
13 inches across does not amount to a "water recreation" feature and cannot be considered a
14 stream or an aesthetic feature. Indeed, an average person could walk across such a feature
15 without even breaking his or her stride.¹ Such a channel might constitute an irrigation-
16 ditch for a single-family residence, but Tract D is a large 30+ acre parcel of land. It is
17 also downstream on a watershed – meaning that water flows into it. That water carries
18 dirt and stones that would quickly block the channel virtually every time there is rain or
19 snow. Again, the Design Plan is not just legally and structurally flawed, it amounts to
20 putting something there that is worse than doing nothing.

21 The Design Plan also appears to violate the law in at least one other way: It
22 proposes to put a parking lot on Tract D right in between LFO homes. It is unclear to the
23 LFOs that such a plan would be consistent with applicable zoning, which the LFOs
24 understand to be residential only.

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27 ¹ The average walking stride of a normal man is 2.5 to 3 feet, while that of a woman is
28 [2.2 feet according to Arizona State University Extension. See
https://livehealthy.chron.com/average-walking-stride-length-7494.html](https://livehealthy.chron.com/average-walking-stride-length-7494.html)

1 **2. What the Design Plan does not do and its impact on Plan feasibility.**

2 Because the Design Plan does not account for other potentially expensive
3 problems, such as basic maintenance of many of its features, the design raises potential
4 questions about the Amended Plan’s feasibility. For example, the Design Plan does not:

- 5 • Provide a grading and dirt balance plan to smooth the incised holes in the
6 topography that capture rain and create standing water across the lakebed as
7 earlier described. These areas currently create environmental issues by holding
8 water, growing algae, attracting bugs, and creating stench.
- 9 • Provide a plan to remove the lake collar, or repair, restore, or beautify the dam.
- 10 • Provide any explanation of the power and pumping system to feed the channel
11 and ponds.
- 12 • Provide any explanation of how sedimentation will be removed from the ponds
13 or the irrigation ditch.
- 14 • Provide any plan for diverting or capturing runoff to reduce erosion during
15 precipitation events.
- 16 • Provide any design for the seeding or irrigation system to restore the land, and no
17 discussion about the density of shrubs or trees to be planted per acre.
- Provide any plan to maintain trees, shrubs or grassland damaged by wildlife
 browsing.
- Provide a maintenance plan for the proposed walking path, landscape, or water
 features.
- Provide a plan for site maintenance including trash pickup.
- Provide a timeline for start or completion of the project.

18 The one thing that all of these issues have in common is that they cost money.
19 Admittedly, CCC has demonstrated that it will raise a substantial amount of money
20 (\$16.8 million) to address deferred maintenance issues at the club. But if the result of
21 the accumulation of the Design Plan’s unaccounted-for expenses is that they amount to
22 more than \$2,500,000, it will mean that CCC cannot provide the LFOs what they
23 promised them under the Amended Plan. That would mean that the Amended Plan is
24 not feasible with regard to the LFOs’ treatment. This is certainly possible because when
25 these unaccounted-for maintenance issues are added to unaccounted-for water delivery
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1 infrastructure, grading costs, and dam-related expenses, the missing costs could likely
2 exceed CCC's self-imposed \$2.5 million cap.²

3 **C. Rejection of the Plan.**

4 Although the LFOs remain hopeful that negotiation can produce a mutually
5 acceptable resolution of the dispute that treats LFOs consistent with other CCC lakefront
6 owners and club members, they have submitted their ballot rejecting CCC's Amended
7 Plan concurrently with the filing of this supplemental objection.

8 **III. Conclusion.**

9 The CCC largely has blamed its bankruptcy on Lake Elaine, yet CCC has failed to
10 develop a workable design plan to restore the lake. Instead, CCC's Amended Plan
11 appears calculated to use the bankruptcy to walk away from its legal obligation to
12 maintain Tract D as a lake – as required by the applicable land covenants. CCC's
13 Amended Plan suffers also from at least five major flaws that are fatal to confirmation,
14 not the least of which is bad faith. For the foregoing reasons – and for those previously
15 expressed in the LFO Plan Objection, Dkt #345 – the Court should decline to confirm
16 CCC's Amended Plan. The Lakeside Owners respectfully request any further relief that
17 the Court deems appropriate.

18 DATED this 25th day of August 2022.

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24 ² The \$2.5 million limitation is just a limit on what can be paid to the LFOs for a
25 combination of the costs of construction of Class 6 Option B and their Class 7 rejection
26 damages. CCC also contemplated spending an additional \$2,707.50 for annual
27 maintenance on Option B according to the Amended Disclosure Statement. *See* Dkt
28 #316, p. 123. By way of comparison, CCC contemplates paying between \$110,000 to
\$170,000 per year on annual maintenance for Lake Humphrey and Walnut Canyon
Lakes between 2023 and 2036. Dkt #316, pp. 125, 132. That is 40 to 60 times what it is
willing to spend on the LFOs.

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OSBORN MALEDON, P.A.

By /s/ Warren J. Stapleton
Warren J. Stapleton
Christopher Simpson
2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012-2793

Attorneys for Lakeside Legionnaires

Certificate of Service

I hereby certify that on August 25, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

/s/ Peggy Nieto

EXHIBIT A

