

NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
2021 MAR 29 P 12:06 21 CVS 4936

MARK ERWIN,
Plaintiff,

v.

MYERS PARK COUNTRY CLUB, INC.,
Defendant.

MECKLENBURG COUNTY
BY _____

COMPLAINT

Plaintiff Mark Erwin, complaining of Defendant Myers Park Country Club, Inc. alleges and says as follows:

PARTIES AND JURISDICTION

1. Plaintiff Mark Erwin ("Shareholder") is a citizen and resident of Mecklenburg County, North Carolina.
2. Defendant Myers Park Country Club, Inc. ("Myers Park") is a business corporation organized and existing pursuant to the laws of the State of North Carolina.
3. Myers Park has its principal place of business in Mecklenburg County, North Carolina, and its registered office in Charlotte, Mecklenburg County, North Carolina.
4. This Court has jurisdiction over Myers Park pursuant to N.C.G.S. § 1-75.4.
5. Venue is proper in Mecklenburg County pursuant to N.C.G.S. § 1-79.

6. Shareholder designates this case as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(a)(1) because it is a dispute arising under Chapter 55 or 55A of the General Statutes.

FACTS

7. Mark Erwin has been a member and shareholder of Myers Park since 2008.

8. Myers Park is a North Carolina Corporation governed by the North Carolina Business Corporation Act, N.C.G.S. §§ 55-101 *et seq.* and Shareholder is a qualified shareholder pursuant to N.C.G.S. § 55-16-02(g).

9. If Myers Park proves it is a North Carolina Non-Profit Corporation, then it is governed by the North Carolina Nonprofit Corporation Act, N.C.G.S. §§ 55A-1-01 *et seq.* and Shareholder is a member pursuant to N.C.G.S. § 55A-1-40(16).

The Connecting the Centuries Project

10. In 2020, Myers Park's Board of Directors (the "Board") approved an unprecedented extensive renovation and remodeling plan at Myers Park that the Board called the "Connecting the Centuries Project" (the "Project").

11. The Project raised many concerns with Shareholder and more than 200 other Myers Park shareholders and members ("Concerned Members"). These concerns included the Board's processes to ram through the Project, the Project's financial feasibility, and the Project's implication on Myers Park's financial health.

12. The Board's approval of the Project contravenes a November 28, 2019 declaration signed by the 2018 and 2019 Board Presidents that the Board sent to its

members that committed Myers Park to conservative governance that would “build the capital reserves[,] ... secure a rainy-day fund[,] ... and accelerate the paydown of existing debt.”

13. The Project will be incredibly expensive to Myers Park and its members. It is expected to cost Myers Park \$27 million – at minimum – to design and build.

14. The Board has indicated that it intends to fund the Project through a combination of large assessments, increased monthly fees, capital dues, and increased new member fees.

15. The Project is expected to double Myers Park’s long-term debt to approximately \$16 million by 2024.

16. Two years ago, before the Board rammed through the Project, Myers Park conducted a survey to assess its members’ interest in issues and major new undertakings.

17. The members largely disapproved of many aspects ultimately contained in the Project.

18. The survey indicated that 82% of the members were happy with Myers Park and that only 5% of the members would accept an assessment of the size the Board subsequently approved in connection with the Project.

19. Despite the survey results, the Board disregarded the members’ input and approved the Project.

20. The Board has also planned and approved the Project through a mostly secret process, which has raised serious governance concerns and organizational

mismanagement that Shareholder and the Concerned Members have an interest in understanding.

21. The Board has been unwilling to share much, if any, financial information about the Project with its members and shareholders.

22. From the little financial information Shareholder has reviewed, there is no evidence that the Project will increase revenues or provide any real benefit to Myers Park.

23. Upon information and belief, the Board paid "planning consultants" \$750,000 in connection with the Project.

24. The Board has refused to share any of the consultants' work with Shareholder and the Concerned Members.

25. Upon information and belief, in connection with the Project, the Board awarded a no-bid contract to a construction company that has a relationship with the Board's members.

26. The Project will also impair the full inclusion of Myers Park's membership in using Myers Park's facilities.

27. As a result, Shareholder is, in good faith, investigating whether the Project is in the best interest of Myers Park's membership and whether the Board's approval of the Project complies with Myers Park's Bylaws and North Carolina law. Specifically, Shareholder, with the Concerned Members, is investigating potential improper transactions, mismanagement, misappropriation, misapplication, conflicts of interest, or improper use of Myers Park's funds related to the Project – all of which

may give rise to individual or derivative claims.

28. Shareholder intends to communicate with Myers Park's members regarding his investigation.

29. Email is the primary form of communication Myers Park uses to communicate with its members.

Shareholder's Inspection Demand

30. On March 12, 2021, Shareholder's counsel sent a letter to Myers Park requesting inspection of certain records of Myers Park on Shareholder's behalf (the "Inspection Demand"). A copy of the Inspection Demand is attached as Exhibit A.

31. Shareholder's counsel delivered the Inspection Demand to Myers Park's registered address and also by email to Myers Park's President, Thomas Jordak, and its Registered Agent and General Manager, Mark Bado.

32. In the Inspection Demand, Shareholder requested to inspect the following books and records of Myers Park and for Myers Park to send electronic copies or make the records available for inspection no later than March 22, 2021:

- a. A list of the names, addresses, phone numbers, and email addresses of all current Myers Park members in alphabetical order by category of membership.
- b. The minutes of all Myers Park shareholders meetings and Board meetings, and the records of all final actions taken by Myers Park shareholders, the Board, or committees of the Board in place of the Board without a meeting that address or discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.
- c. All written communications to shareholders generally that address or discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.

- d. The capital and operating budgets that: (a) the Financial Committee in coordination with the General Manager recommended to the Board for adoption for 2020 and 2021, as required in Article IX, Section 2(a) of the Bylaws; and (b) and the Board approved for 2020 and 2021, along with all amendments to those budgets, as required in Article IX, Section 2(b) of the Bylaws.
- e. All capital expenditures in excess of \$5,000, which are required to be approved by the Board in Article IX, Section 2(c) of the Bylaws, related to: (a) the Project; or (b) any plans or proposals to address revenue shortfalls.
- f. All Myers Park accounting records and financial statements, including but not limited to: balance sheets, general ledgers, income/profit and loss statements, and cash flow statements. Please produce all unaudited and audited copies of these records.
- g. Myers Park's annual financial statement for 2020 that meets the requirements of N.C.G.S. § 55-16-20.
- h. All reports prepared by and communications with the planning consultants, the building contractors and subcontractors, and any other consultants or advisors that Myers Park retained in connection with the Project.
- i. All invoices, correspondence, contracts, reports, projections, plans, or budgets from any consultants or other third parties Myers Park has retained or has considered retaining in connection with the Project.
- j. All communications between any member of the Board and any other person that discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.

33. Shareholder made the Inspection Demand in good faith and for a proper purpose.

34. Specifically, Shareholder made the Inspection Demand for the purpose of investigating: (1) whether the Project is in the best interest of Myers Park; (2) whether the Board's approval complies with Myers Park's Bylaws; (3) whether any

improper transactions have occurred in connection with the Board's approval of the Project; (4) any potential mismanagement, misappropriation, misapplication, conflict of interest, or improper use of Myers Park funds related to the Project; and (5) the Project's financial feasibility and implications on costs, debt, fees, and income. See Exhibit A at 4-5.

35. In response to the Inspection Demand, Myers Park retained counsel. Myers Park's counsel emailed Shareholder's counsel on March 18, 2021 stating that:

My client fully intends to produce all documents required by law. It is in the process of gathering those records now.

My primary contact is on holiday with his family. I will need additional time to gather, review, compile and deliver the documents to you. I will have those ready for production no later than March 30th. I trust you are okay with that date.

36. Shareholder's counsel responded that he was "happy to discuss a possible extension, but cannot agree to a unilateral extension until the 30th."

37. Myers Park's counsel did not respond until March 22 at 1:33 p.m., the date of the Inspection Demand deadline, and only stated that he would "do [his] best to respond sooner, but [his] primary contact is out."

38. Myers Park did not produce any documents by the March 22 Inspection Demand deadline.

39. On March 23, Myers Park's counsel and Shareholder's counsel had a phone conversation in which they discussed the documents that Myers Park would produce that day or the next day.

40. Myers Park did not produce any documents on March 23 or March 24.

41. On March 25 at 4:15 p.m., Myers Park's counsel emailed Shareholder's counsel a 61-page pdf containing Myers Park's email communications with its members regarding the Project and what Myers Park purports to be a "roster."

42. The "[r]oster" did not include the addresses or email addresses of its members as Shareholder requested and was not organized by category of membership.

43. Myers Park's counsel indicated that he was still reviewing the Board of Director Meeting minutes, and that they would "require significant redactions (for matters unrelated to the dispute." He also stated that he "believe[d] all of the Financial Statements are already available on-line (through the web-site), but I am nonetheless getting those and will label and send."

44. Myers Park's counsel did not indicate that Myers Park would be producing any of the other documents Shareholder demanded in his Inspection Request, as required by law.

45. Myers Park's time to deliver the documents Shareholder requested in his Inspection Demand has passed and Myers Park has not provided the documents Shareholder demanded.

46. Shareholder has satisfied all statutory conditions precedent to obtain inspection of the records requested in his March 12, 2021 letter.

**CLAIM FOR RELIEF
(Shareholder Inspection)**

47. Shareholder realleges and incorporates by reference the allegations of the prior paragraphs as if fully set forth herein.

48. Shareholder is a qualified shareholder of Myers Park pursuant to N.C.G.S. 55-16-02(g) because he has been a shareholder of Myers Park for more than six months. Shareholder, as a qualified shareholder, is entitled to a complete accounting of the finances and business affairs of Myers Park pursuant to N.C.G.S §§ 55-16-01, *et seq.*

49. Alternatively, if Myers Park proves it is a North Carolina Nonprofit Corporation, Shareholder is a member of Myers Park pursuant to N.C.G.S. § 55A-1-40(16) because he is included in a category of persons specifically designated as a member in Myers Park's Bylaws and is entitled to a complete inspection of the finances and business affairs of Myers Park pursuant to N.C.G.S. §§ 55A-16-01, *et seq.*

50. Pursuant to N.C.G.S §§ 55-16-02 and 55-16-03 or 55A-16-02 and 55A-16-03, Shareholder's attorney demanded inspection of Myers Park's records by letter dated March 12, 2021.

51. Shareholder's Inspection Demand was made in good faith and for a proper purpose.

52. Shareholder's Inspection Demand described with reasonable particularity his purpose and the records he desired to inspect.

53. Shareholder is entitled to inspection of the records demanded in his Inspection Demand pursuant to N.C.G.S. §§ 55-16-02 and 55-16-03 or 55A-16-02.

54. The records Shareholder demanded inspection of are directly connected to the purpose of the request.

55. Myers Park has failed to comply with Shareholder's Inspection Demand

in violation of N.C.G.S §§ 55-16-02 or 55A-16-02.

56. Specifically, although the date Shareholder demanded in his Inspection Demand has passed, Myers Park has only produced email communications to members regarding the Project and a membership “roster.”

57. The membership “roster” does not comply with N.C.G.S. §§ 55-16-01(c) or 55A-16-01(c) or Shareholder’s Inspection Demand because it does not include the addresses of the members.

58. Further, the “roster” does not comply with Shareholder’s Inspection Demand because it does not include the email addresses of the members even though this is the form of the communication Myers Park regularly uses with its members.

59. Myers Park’s counsel has indicated that Myers Park will be producing only the publicly available financial records to members on Myers Park’s internal website, even though Shareholder has demanded financial documents that are not included on the website and those documents are necessary for Shareholder’s good faith investigation.

60. Myers Park has not indicated whether and when it will be producing the additional documents Shareholder demanded inspection of.

61. Myers Park has no basis to doubt the right of Shareholder to inspect the records demanded.

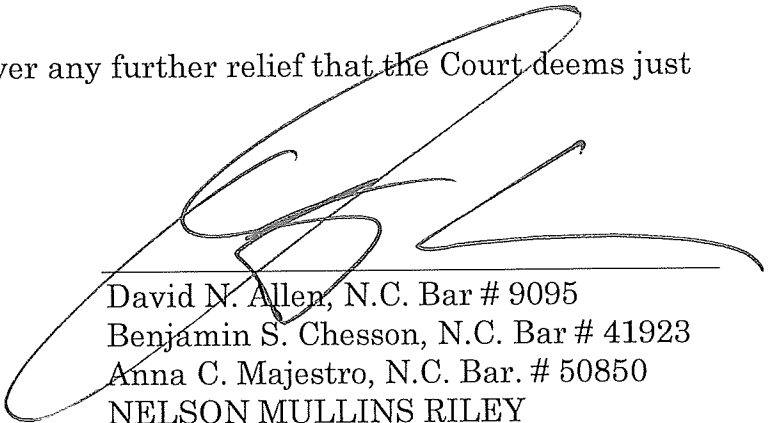
62. Pursuant to N.C.G.S. § 55-16-04 or 55A-16-04, the Court should summarily order the inspection and copying of the records Shareholder demanded in the March 12, 2021 Inspection Demand at Myers Park’s expense.

WHEREFORE, Plaintiff Mark Erwin respectfully requests that this

Court:

1. Enter judgment in favor of Plaintiff Mark Erwin and against Defendant Myers Park Country Club, Inc.;
2. Enter an order summarily directing Myers Park Country Club, Inc. to make available for inspection all books and records demanded in Mark Erwin's March 12, 2021 Demand Inspection at Myers Park Country Club, Inc.'s Expense;
3. Allow Mark Erwin to recover the costs and expenses of this action from Myers Park Country Club, Inc., including attorney's fees pursuant to N.C.G.S. §§ 55-16-04 or 55A-16-04;
4. That Mark Erwin recover any further relief that the Court deems just and proper.

March 29, 2021.



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Exhibit A

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March 12, 2021

Via Email and Hand Delivery

Thomas Jordak, President
Mark Bado, General Manager
Myers Park Country Club
2415 Roswell Ave
Charlotte, NC 28209
tjordak@gmail.com
mbado@myersparkcc.com

RE: Demand to Inspect Records

Dear Mr. Jordak and Mr. Bado,

We have been retained to represent several individuals, including Mark Erwin, who are members of Myers Park Country Club (“Myers Park”). These individuals represent the interests of approximately 200 other Myers Parks shareholders and members (“Concerned Members”) in seeking to obtain information from Myers Park about the proposed “Connecting the Centuries” project and a delay of the project so the membership can fully consider the new information. For purposes of this document demand, Mr. Erwin (“Shareholder”), who is and has been a qualified shareholder of Myers Park since 2008, is making this request to comply with the requirements of North Carolina law and for the benefit and use of all Concerned Members. As a North Carolina Corporation, Myers Park is governed by the North Carolina Corporation Act, N.C.G.S. §§ 55-101 et seq (the “Corporation Act”). As Shareholder’s attorney, we make the following demand for inspection of certain Myers Park records on his behalf by March 22, 2021.

Good Faith Basis and Proper Purpose for Records Demand

In 2020, Myers Park’s Board of Directors (the “Board”) approved an unprecedented extensive renovation and remodeling plan at Myers Park known as the “Con-

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necting the Centuries" Project (the "Project"). The Project raises many concerns ranging from the Board's process to push it through to the financial feasibility and implication on Myers Park's financial health.

The Project will be incredibly expensive to Myers Park and its members. In 2018, Myers Park sent it a letter to its members committing itself to conservative governance that would "build the capital reserves... secure a rainy-day fund... and accelerate the paydown of the existing debt." The 2018 and 2019 Board Presidents signed this November 28, 2018 declaration.

Yet now, the Board has approved a Project that is expected to cost Myers Park \$27 million to design and build. The Board has indicated they intend to fund their divergence from the 2018 commitment to conservative governance through a combination of large assessments, increased monthly fees, capital dues, and increased new member fees. Even with these drastic measures, the Project will double Myers Park's long-term debt to approximately \$16 million by 2024.

What little financial information the Board has shared about the Project is unconvincing. There is no evidence that the Project will increase revenues or provide any real benefit to Myers Park. It will instead make a bad financial situation worse. Shareholder demands the financial records that will allow him and the Concerned Members to assess the Project's financial implications.

Shareholder also demands records to assess the membership's opposition to the Project. Myers Park conducted a membership survey two years ago, which largely disapproved of major aspects or elements subsequently contained in the Project. For example, the survey indicates that 82% of the members are happy with Myers Park and that only 5% of the members would accept an assessment of the size subsequently proposed by the Board to the unpleasant surprise of most members. Shareholder demands records related to this survey and other member feedback concerning the Project's impact on Myers Park's finances and club operations.

Shareholder also demands records concerning the Board's approval of the Project, the consultants the Board paid related to the Project, the relationship between the contractors and the Board (and its individual members). Notwithstanding the Project's cost, the Board planned and approved it through a mostly secret process. As an example, the Board paid "planning consultants" \$750,000, but refused to share any of the consultants' work with the members – the people who actually paid for it. As another example, the Board's decision to award a no-bid contract to a construction company that has a relationship with the Board's members raises serious governance

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questions that Myers Park's stockholders and members have an interest in understanding. So does the Board's decision to overrule the members' input on the Project.

Finally, Shareholder demands records related to the Project's impact on Myers Park's operation. It appears the Project may impair the full inclusion of Myers Park's membership in using Myers Park's facilities. For all of these reasons and the Board's decision to limit member input into the Project, Shareholder and Concerned Members have significant concerns about organizational mismanagement related to the Project.

To that end, Shareholder is, in good faith, investigating whether the Project is in the best interest of Myers Park's membership and whether the Board's approval of the Project complies with Myers Park's Bylaws. As detailed above, Shareholder, with the Concerned Members, is investigating potential improper transactions, mismanagement, misappropriation, misapplication, conflicts of interest, or improper use of Myers Park's funds related to the Project.

During and after his investigation, Shareholder intends to communicate with other Myers Park shareholders and members about the Project, the Board's conduct concerning the Project, and the Concerned Member's research into these matters.

Records Demanded

For these reasons, Shareholder demands that Myers Park make available for inspection and copying or the production of digital copies of certain records of Myers Park on March 22, 2021 pursuant to the North Carolina Corporation Act.¹ Unless otherwise indicated in the request, the relevant time period for this Demand is from January 1, 2019 through the present. Specifically, Shareholder demands to inspect:

1. A list of the names, addresses, phone numbers, and email addresses of all current Myers Park shareholders in alphabetical order, by class of shares showing the number and class of shares held by each.
2. A list of the names, addresses, phone numbers, and email addresses of all current Myers Park members in alphabetical order by category of membership.

¹ Alternatively, if you intend to take the position that Myers Park is a North Carolina Non-Profit Corporation, then Shareholder makes this Demand pursuant to the Non-Profit Act in order to avoid unnecessarily litigating that issue at this point. Of course, Shareholder is a member of Myers Park pursuant to Myers Park's Bylaws and is entitled to demand inspection of its records.

3. The minutes of all Myers Park shareholders meetings and Board meetings, and the records of all final actions taken by Myers Park shareholders, the Board, or committees of the Board in place of the Board without a meeting that address or discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.
4. All written communications to shareholders generally that address or discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.
5. The capital and operating budgets that: (a) the Financial Committee in coordination with the General Manager recommended to the Board for adoption for 2020 and 2021, as required in Article IX, Section 2(a) of the Bylaws; and (b) and the Board approved for 2020 and 2021, along with all amendments to those budgets, as required in Article IX, Section 2(b) of the Bylaws.
6. All capital expenditures in excess of \$5,000, which are required to be approved by the Board in Article IX, Section 2(c) of the Bylaws, related to: (a) the Project; or (b) any plans or proposals to address revenue shortfalls.
7. All Myers Park accounting records and financial statements, including but not limited to: balance sheets, general ledgers, income/profit and loss statements, and cash flow statements. Please produce all unaudited and audited copies of these records.
8. Myers Park's annual financial statement for 2020 that meets the requirements of N.C.G.S. § 55-16-20.
9. All reports prepared by and communications with the planning consultants, the building contractors and subcontractors, and any other consultants or advisors that Myers Park retained in connection with the Project.
10. All invoices, correspondence, contracts, reports, projections, plans, or budgets from any consultants or other third parties Myers Park has retained or has considered retaining in connection with the Project.
11. All communications between any member of the Board and any other person that discuss: (a) the Project; (b) Myers Park revenue shortfalls; or (c) plans or proposals to address revenue shortfalls.

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Shareholder is making this demand for inspection in good faith and for a proper purpose, specifically to investigate: (1) whether the Project is in the best interest of Myers Park; (2) whether the Board's approval of the Project complies with Myers Park's Bylaws; (3) whether any improper transactions have occurred in connection with the Board's approval of the Project; (4) any potential mismanagement, misappropriation, misapplication, conflict of interest, or improper use of Myers Park funds related to the Project; and (5) the Project's financial feasibility and implications on costs, debt, fees, and income.

We request that you make copies of the above demanded documents available through an electronic transmission, if available. We look forward to inspecting the requested records on March 22, 2021.

Sincerely,



David N. Allen

DNA/bsc

cc: Marty White, mwhite@jahlaw.com