

**Minutes of  
Special Meeting of the Membership of  
FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION  
Law Office of Doug Tueller, Telluride, CO  
September 15, 2006  
10:30 a.m. (MST)**

A special meeting of the members of the Fall Creek Village Homeowners Association was held on September 15, 2006, at 10:30 a.m., at the Law Office of Doug Tueller in Telluride, Colorado. This meeting was held as a continuation of the special meeting held on August 16, 2006.

**1. Roll Call, Determination of Quorum and Call to Order**

**Bob Franzese** called for a roll call:

**Owners Present in Person or Via Teleconference:** William Clarence (“Bill”) Shephard III; Elizabeth (“Lettie”) Kuehn; Robert (“Bob”) Franzese; Susanne Ross; Mark Murray (via teleconference); Brian Wohl (via teleconference).

**Also present were:** Judi Balkind, HOA Manager, and Mr. McHarg McHarg, HOA Attorney; Tom Kennedy, attorney for owner and President Lynn Black (Lynn was not present); Doug Tueller, attorney for owner Bill Shephard.

**Present by Proxy to Bob Franzese:** Lynn Black, President (Lot 7), Mark Murray (for the portion of the meeting when he could not be present).

Bob Franzese called the meeting to order.

**2. Motion to Approve/Waive Notice of Meeting**

**Brian moved that the meeting was noticed adequately.** Mark seconded the motion. The motion passed.

**3. Approval of Transcript as Minutes of August 16, Special Membership Meeting of Fall Creek Village Homeowners Association**

Judi stated that the August 16 minutes have not yet been transcribed.

**4. New business**

**A. Discussion/Vote to Fill Vacancy of Office of President**

Lettie Kuehn nominated Bill Shephard for the office of President. Mark Murray nominated Bob Franzese. Bill Shephard said he is willing to assume the Presidency of the HOA once the assessment issues and other issues have been resolved. He explained his qualifications and what he would like to accomplish as President. Mr. Tueller explained plans for litigation should the current issues reach that point, stating that if litigation is undertaken, it would be inappropriate for Mr. Shephard to be President. Bill suggested that, in the interim, the association move forward without an acting President

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and attempt to focus on the issues to arrive at a resolution, etc.

Angry outburst by Bill Shephard defending Mr. Tueller's right to speak.

Bill withdrew his candidacy for President, leaving Bob Franzese as the sole nominee for President. Judi called for a vote for by roll call. Susanne, Lettie and Bill abstained from the vote. **Bob Franzese was elected President.**

**B. Discussion/Vote on Amendment to Declaration Regarding Central Sewer System**

Mr. McHarg said he emailed everyone yesterday with different alternatives for language for an amendment to the Declaration. Doug Tueller asked Mr. McHarg not to read the alternatives as written, but rather to explain them in layman's terms. Mr. McHarg explained the alternatives as follows:

- Central Sewer System. There could be a central sewer system defined as (1) everything that extends out to the property line boundary of each owner or (2) the central sewer system could be terminated as part of the main system and everybody would own their lines that go from their home all the way to the main tap. The central sewer system (including the lines up to the property boundaries of each owner, which would include the lines that already have been installed) would be owned by the association and the association would be responsible for it. Those owners who have already installed their lines (everybody except Susanne and Bill) would be given a credit on the next special assessment in the amount of \$1,000.00. The association would pay for the lines to the property lines for Susanne Ross and Bill Shephard.
- A variation to the above would be ownership in the association all the way to the property lines (the tap point). Because some owners are farther from the central system than others and, therefore, would have more cost than others, the association would credit \$20.00 per linear foot to that tap point, up to a maximum of \$1,000.00.
- A second concept would be that the association would own the main sewer system but would not own the lines that extend from the main system to the property line boundaries.
- A variation of the second concept would be that the association would credit \$20.00 per linear foot to the tap point, up to a maximum of \$1,000.00, for the installation of the lines.

In no scenario would the association be responsible for, own, or control a line extending from a property boundary to an owner's house.

Extended discussion continued about the following:

- the definition of "the system,"
- proof of payment by those who have already installed lines in order to qualify for a credit,
- limiting the credit to \$1,000.00,
- what the contract with the company that installed the system provided for in terms of installation of lines,
- additional history of the system and lines,
- another wording for a motion provided by Mr. Tueller,
- continued discussion about the \$1,000.00 maximum reimbursement,

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- the line depths and tie-in points (in particular with regard to Bill Shephard's house),  
Mr. McHarg asked for a poll on the proposed alternatives for language for an amendment to the Declaration. The concepts were repeated as:
  - “The association owns the line and the community septic system includes all the lines up to a tap point at the property line. And that the association would credit the owners of each lot that already have a tap connection to that system in the amount of \$1,000.00 and that the association would put forward \$1,000.00 toward assisting any owner that does not yet have a line.”
  - Variation: Mr. Tueller said that proof of payment by owners for the installation of their lines could be by any “reasonable” evidence.
  - “The association does not own the lines that extend from this main box to the owners’ property lines.”

The alternatives were reiterated by Mr. McHarg as:

- Alternative 1: The concept of association full ownership with \$1,000.00 credit.

Mr. McHarg was interrupted by Mr. Tueller who proposed, “that the owners approve directing you to draft \_\_\_\_ to them the alternative that I outlined and in that connection work with Tom and us and Lettie \_\_\_\_...” with discussion about looking only at Alternative A with “tweaks” adding wording stating an owner seeking reimbursement must demonstrate that he or his predecessor(s), and not the association, incurred the cost, a standard for depths of lines. Discussion continued about Jerry Johnson’s knowledge re standards, etc. Bill Shephard said he thought the proposal was good and fair because some owners are tied to their lot lines and some are not. Mr. Tueller reiterated that his proposal is that “we’re asking for approval for Mr. McHarg to draft and work with all of us and bring this draft for an up or down vote.”

Mr. McHarg asked how the amounts should be handled. Discussion continued. Mr. Tueller proposed “that the credit be up to a thousand dollars for owners...existing owners that can prove that they or their predecessors constructed or the developer didn’t construct their...so that’s a thousand dollars. And that for the lines that are yet to be installed, there not be a cap.” Discussion continued about who should have to prove payment – the owners or the association – following which Mr. Tueller amended his suggestion to be “that there will be a thousand dollar credit unless you can find evidence the HOA paid it and that’ll be capped at a thousand, and there’s no cap for the costs that were incurred.” Discussion continued. Mr. Tueller again revised his proposal saying that, “The existing hooked up owners shall be provided a thousand dollar credit unless the association can find evidence that the association incurred the expense and they need to ask Judi really to go back and check the records. My guess is there’s not going to be anything, so it’s almost guaranteed to be a credit. But that that will be capped at a thousand dollars and that the lines to the new residences will be extended at the proper \_\_standard? \_\_ as we talked about with no cap.”

Discussion continued regarding the following:

- About eight years ago, Mark and Bob paid (amounts unknown) to have the septic system redone and the money was “blown.”

Vote was called for on a motion that Mr. Tueller said Bill made [possibly the last quote from Mr.

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Tueller above]. \_\_Male\_\_ said “we have a second.” [I was unable to tell whether he was stating that “We have a second.” or whether he was asking “Do we have a second?”] \_\_Male\_\_ was unable to hear the motion and so Mr. Tueller said, “Bill has made a motion to request that the owners approve directing your counsel to work with the other owners’ counsel and whoever to generate a proposal for resubmission to you for approval in the form of an amendment to your Declaration that would reflect that the association is responsible for installing, maintaining, insuring and everything else the sewer system from its centralized location to all the lines extending to the property boundaries of all the lots with the tap points at the lots being installed at adequate depths and standards to meet the county and state standards as is confirmed by consultants or the county people and that in connection with that, all owners of lots with currently installed lines would be granted a thousand-dollar credit against the next special assessment dues unless the association, in reviewing its records through Judi’s efforts, is able to establish that any or all of those owners’ lines were installed at association expense, and that the future lines to be installed to the three lots I think that don’t have lines, that those lines would be installed to the appropriate standards at the costs incurred and that...”

Bob Franzese interrupted saying, “But no cap on that cost.”

Mr. Tueller continued, “...No cap on that cost, exactly.”

Mr. Tueller then said, “That’s the motion. It’s been made and seconded and what we’re asking you guys to vote. And what you would be doing in essence is Mr. McHarg with us would work on a ‘Dec’ amendment and come back and say just, ‘Here’s how you’re amending your Decs.’ He’d record it and going forward that would, hopefully, be clear to everybody.”

Herb McHarg suggested adding at the end: excepting there from Lots 9 and 10 that have already been determined to be unbuildable. He said the motion should just say “the current lots that are owned” and not those other lots.

Tom Kennedy (attorney for Lynn Black) said there was another issue.

[First side of tape ended, second side begins as quoted below.

“...somebody else’s lot to get to the service lot. You all agreeing to grant easements for that?”  
Mr. Tueller said, “Let me supplement that motion with the point that Tom just made is that the Declaration amendment would, by definition, include in there a grant of easement from all affected lot owners over which the community system...the association’s portions of these lines extended. So, what would happen is in the actual document, there would, by definition, be grant of an easement for where the lines exist and/or where they’re being installed....?”

Discussion about whether an easement can be done without everyone’s signature or via a “Dec.”

Bob Franzese said there were a motion and a second and called for a vote. The vote passed unanimously. The vote was directing **Mr. McHarg** to do a draft to be brought back to the members to be voted on.

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**C. Discussion/Vote on Survey of Sewer System**

This issue was raised by a couple homeowners (including Bob) who have concerns about a part of the sewer system that extends across Bob's property; much of the system extends on Lynn Black's property...

Tom Kennedy interrupted to state that in light of the previous discussion, the association needs to come up with an easement, figure out where the system currently exists and where it might go to accommodate, through an easement, the existing system and where the extensions run.

The survey would be done to accurately describe an easement for authorization by the association.

Bob Franzese would like to add the well and the pump house to the easement because they are on his property and no appropriate easement has ever been given.

Mr. Tueller said, "Somebody's going to need to make a motion to authorize engagement of Foley's to do an adequate survey to locate the system - water and sewer, it sounds like - facilities, the lines, the structures and to lay the foundation for us to be able to get adequate amendments to the Decs to show where the easements are." Discussion about expense. Mr. McHarg was asked to tie in Foley to the project and give him a range for authorization up to a certain amount. It was noted that Foley has already begun the project without the vote. Tom Kennedy stated this would be a vote on the authorization to get the survey complete and Bob wants to include in that motion, not only the central sewer system, but also the water system.

Lettie Kuehn asked who ordered Foley to go down there, how much it's going to cost, and what he's doing. Bob Franzese said, the members might want to "vote on the authorization, put an amount, and then Judi can coordinate with Foley and find out how much it would cost. If it's beyond a certain cap, that amount you guys all vote on, we could come back to the association and explain that Foley says it's going to be Y dollars more than that." Tom Kennedy said that at the last meeting, he pointed out that an easement was needed on Lynn's property for the facility. So, he drafted an easement which he presented to Mr. McHarg to review on behalf of the association. The easement contemplates that there will be a map/drawing/exhibit showing where the easement will run. He asked Foley to create that exhibit for the association. He said that now the scope of the work has grown. He advised that the association needs this.

Mr. Tueller said what he heard from the above was that "Lynn, in preparation for dealing with these issues, has authorized Foley to come down and work for establishing the exhibit. So, if they're down there working, it's on Lynn's behalf and at her direction."

Tom Kennedy said that as part of the easement grant, she would want reimbursement for her costs. Discussion. Mr. Tueller said he thought the issue was that the board and association haven't committed "us" (the members?) to any funds that aren't authorized.

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Tom Kennedy said that if the association wants to take over the work to cover the current scope, the association can direct...

Tom Kennedy said the plat originally showed a sewage facility. There was no easement. The system is now in a different location and is larger. Lynn is prepared to grant an easement on her property for the system. Tom said he has prepared and emailed to Lynn and Mr. McHarg a proposed easement. Bob Franzese said he would add an easement on Brian's property, "our" property, and including the well and the pump house. Discussion. Mr. Tueller suggested the owners approve of the concept and role the grants into one document or companion documents. Tom Kennedy said a Dec amendment and a Declaration easement will probably be needed. Mr. Tueller recommended all the grants and abandonment's of easements should be done at one time, showing all systems and making all grants and conveyances to the HOA at once. Discussion. Tom noted Lynn's expectation was that the compensation for the significant diminution in value of her property would be the addition of a garage.

Tom said a motion should ask legal counsel to provide easement documents to the group. Mr. Tueller asked if Tom was requesting supplemental approval from the owners to direct Mr. McHarg to work on these documents. Tom said it was. Tom Kennedy voiced the motion "to direct legal staff to construct documents, whether it's one document or a series of documents, to cover easements for water, sewer, and utilities and, if necessary, for roads or other community facilities, that he be directed to prepare those documents and circulate them to the unit owners for review and comment." Tom Kenney said, "Lynn just so moved." Discussion. Tom said he drafted the easement document at his cost – at no charge to Lynn or the association – and the association can use that as a template to work from. It was noted that the association would have to pay for surveying costs and Mr. McHarg's time. Bob Franzese said the association owes Tom a huge thank you for doing that.

The motion was reiterated by Tom Kennedy as "authorization for your legal counsel to take the template that's been presented by Lynn on behalf of her for review by the association to turn it into a document or a series of documents that will provide easement grants to cover the water system, the sewer system, the utilities, the roads, and any other community facilities that require an easement to create a document or a series of documents that will perfect those easements for review by all the owners for review and comment.", stating that the vote is not on the documents, but rather on authorizing counsel to develop the documents and circulate them to the members for further review and comment. Mark asked if the garage matter ties in with this. Tom Kennedy this would be an authorization to proceed with the drafting of document(s) only.

Suzanne Ross seconded the motion. The motion passed. No opposition. Lettie abstained.

Mr. Tueller recommended that Judi be given authorization to proceed to get a proposal and/or proceed with the necessary survey work as long as the cost doesn't exceed a certain amount. Discussion. Bob Franzese said there need to be an easement and a description for the power line that sits on the surface in his front yard.

Tom Kennedy said to make sure the easements in place and the owners whose properties are burdened by the easements are going to want to be sure they are association owned and maintained and the association's responsibility for insurance purposes. Discussion. Tom Kennedy asked what the members

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want the drawing to cover. Discussion. Mention was made of the roads also. Mr. Tueller advised it is less expensive to have Foley do it all at once.

Mr. Tueller moved, on behalf of Bill, that the owners “direct Judi to work with engaging Foley Associates for purposes of preparing a survey of the community facilities, which would be deemed to be, in order, sewer, water, roads and electrical, in that order.” “And telephone. And to direct her to engage Foley to perform those services up to an amount not to exceed Five Thousand Dollars for survey work and to the degree that the cost exceeds Five Thousand Dollars, to cut out items lower on that priority list coming up. And to have her proceed with that work as promptly as possible. Also for purposes of allowing the attorneys and parties to generate the document that you just approved. That would be my motion.” Discussion. Mr. Tueller clarified that Judi would be authorized to spend up to Five Thousand Dollars. Discussion. The order of importance of the items on the list was reiterated by Tom Kennedy as being (from the top): sewer, water, utility, roads. Discussion.

Upon question, Mr. Tueller said he had made the motion and there is no second. Suzanne Ross seconded the motion.

There were two ayes. Lettie abstained.

Judi was instructed by Mr. Tueller to do it as cheaply as possible. If he can't do it for Five Thousand Dollars, then Judi is instructed to start cutting things off from the bottom up. Judi said there are not funds to advance to Foley at this time. Mr. Tueller said he will discuss suggestions for payment later. Herb McHarg said that by approving the motion, everyone has authorized the expenditure and agrees to pay it.

**D. There was no break at this time**

**E. Discussion/Vote on Easement From Lynn Black to the Association**

Tom Kennedy said the plat originally showed a sewage facility. There was no easement. The system is now in a different location and is larger. Lynn is prepared to grant an easement on her property for the system. Tom said he has prepared and emailed to Lynn and Mr. McHarg a proposed easement. Bob Franzese said he would add an easement on Brian's property, “our” property, and including the well and the pump house. Discussion. Mr. Tueller suggested the owners approve of the concept and role the grants into one document or companion documents. Tom Kennedy said a Dec amendment and a Declaration easement will probably be needed. Mr. Tueller recommended all the grants and abandonment's of easements should be done at one time, showing all systems and making all grants and conveyances to the HOA at once. Discussion. Tom noted Lynn's expectation was that the compensation for the significant diminution in value of her property would be the addition of a garage.

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Suzanne Ross seconded the motion. The motion passed. No opposition. Lettie abstained.

**F. Discussion/Vote on Liens for Non-Payment of Special Assessment Due and Owing as of April 30, 2006 and Approved at the March 17, 2006 Annual Membership and Budget Meeting (the “Special Assessment”), the Notices/Affidavits of Lien and Enforcement by Foreclosure (including but not limited to the obligation of defaulting Owner/Member to pay all costs and expenses of such proceedings, the costs and expenses for filing the Notice of Lien, the highest rate of interest permitted by law, all reasonable attorneys fees, and any damages)**

Tom Kennedy and Mark left the meeting at this time. Mark stated that Bob has his proxy to carry on with the balance of this meeting.]

Herb McHarg said the special assessment is Thirteen Thousand One Hundred Twenty-five Dollars as approved at the March 17, 2006 meeting and became due and owing after April 30, 2006. There were three members who had not paid as of the August 16, 2006 meeting, at which time it was approved by vote that any member currently in default of such special assessment must deliver to Judi Balkind a cashier’s check in the amount of Ten Thousand Dollars as partial payment of such special assessment no later than 5:00 p.m. Wednesday, August 23, 2006, in order to suspend the association from recording a notice of lien and pursuing other legal remedies under the Declaration and other community documents. He said it was also approved that this meeting today (September 15, 2006) would be held and that the members in default would be given an opportunity to discuss any remaining concerns they have with such special assessment and that, unless otherwise modified, such members would promptly deliver to the association the remaining amounts owed under such special assessment on a date to be determined at today’s meeting. Susanne and Bill did timely deliver their \$10,000.00 partial payments to the association. Lettie paid \$3,000.00 to the association on August 16, 2006 and delivered another \$5,500.00 to the association on August 24, 2006 (Total: \$8,500.00). Lettie still owes

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\$1,500.00 of the \$10,000.00 partial payment.

Herb McHarg asked that because there would be many options, the discussion today follow the agenda (as noted under "F." above). The timeframes were, however, extended because there were not as many people present to speak as had been anticipated when the agenda was prepared.

Mr. Tueller listed the issues as Bill, Susanne and Lettie see them:

- Making it clear to the owners what the three of them see as the issues and problems
- Ideas for resolution for assessments, proper credits, cash needs

He said the two assessment issues of concern to Bill, Susanne and Lettie are the garage shed and landscaping issues. It is their understanding that of the \$105,000.00 special assessment, \$39,300.00 was for the garage shed and \$11,000.00 was for landscaping. Still at issue is \$4,800.00 of the \$10,000 Bill paid. Mr. Tueller stated "they" (Mr. Tueller and his client/clients) had done a review of the history of the projects and bids, etc.; he then discussed same. He said the total construction project figure of \$18,381.00 for the shed is the figure they believe should be charged for the shed. Lynn has asked for compensation for the difference between the \$18,381.00 and the actual expense of \$39,000.00.

Clarification was made that when Dozer Dan backed out at the last minute and Integrated Water Systems was asked to come back, Integrated Water Systems would not uphold its original \$18,000.00 bid due to changes in the project and submitted a new bid with the new specs from Church and Associates. Discussion continued of the history...

[end of tape (where Lettie is looking for her copy of a document), start of next tape (next tape was apparently rewound a little and started where Mr. Tueller was reviewing the issues)]

...with \_\_Male\_\_ stating that it was his understanding that any changes in the system were very minor having to do with the materials. Discussion continued about the changes. Mr. Tueller said, "\_\_\_\_\_ understanding that that was \_\_\_\_\_ willing and able to do that, so we said that would be an appropriate number." [the tape was cutting out]

Mr. Tueller then said they cut the landscaping figure down to \$4,000.00 because they understood \_\_\_\_\_ [tape cutting out]. Judi said the \$4,000.00 is just for the sod and doesn't include everything that should have been done but was not, such as a new fence, etc. The HOA projected the costs to be about \$11,000.00 when everything is done. Discussion continued [the tape is not clear] with Mr. Tueller stating what he thinks transpired and what the issues are and others stating different perspectives of what happened to arrive at the costs used for the special assessment. Mr. Tueller raised the issue of Lynn being President and her fiduciary duties vs. changes made for her benefit.

Herb McHarg pointed out that these issues were all discussed at the March 17, 2006 meeting and a vote was held on it.

[Mr. Tueller continued an explanation of figures used to arrive at credits owed to Bill and others (except Lynn). Discussion. Mr. Tueller said the owners would have credits of differing amounts owed

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to them and Lynn would owe the association about \$28,000.00. Mr. Tueller then discussed what he thought might be the appropriate compensation for Lynn. He suggested that when a new special assessment is figured, the credits would be applied toward that special assessment.

Judi reiterated that ongoing operating costs for the system need to be paid. Suzanne Ross said she didn't think anyone would have a problem with paying their share of the operating costs.

Mr. McHarg agreed with Doug that the members need to resolve what would be an adequate compensation owed to Lynn. Mr. McHarg said, as attorney for the association, he needs to reduce the association's exposure as to what Lynn could come back on the association for in terms of compensation. He's also looking at what the association has already established, and that is a vote and approval on March 17.

Mr. Tueller continued to reiterate the issues as he sees them.

Suzanne Ross suggested looking at the needed operating expenses first, then revisit the current discussion at a later date when more information is available. Discussion re immediate cash needs. Judi has the pertinent invoices for the operating costs and can present same. She reminded those present that she did present a proposed budget, the matter just has not been discussed at any of the meetings.

Discussion continued about whether the amounts currently owed were included in the proposed budget. Judi said it would help if the operating budget for 2006 were approved and they move on to 2007, stating it's set up as a monthly basis. She said the biggest outstanding amount due is about \$22,000.00 to Telluride Gravel, and Eagle Plumbing is owed about \$5,000.00. Other bills need to be paid also. Judi said to cover everything, she will need about \$35,000.00 to \$40,000.00. Discussion continued about how much cash is needed right now to pay all outstanding bills and operating **through December.**

Mr. Tueller said what he thinks is being said is that the cash requirements need to be dealt with today and cleaned up, and the credits, etc. can be resolved/corrected later. Discussion.

Brian said his thoughts are that the vendors need to be comfortable with the association's payment plan in order to avoid litigation.

[Brian left the meeting at this point. Bob has Brian's proxy.]

Discussion continued and frustration was vented by Lettie. Lettie noted she had spent about seven hours in Mr. McHarg's office the other day reviewing invoices, and Mr. McHarg said he did not bill the association for that time. Mr. Tueller said she had done the work that he did not do because of the cost involved. Lettie reviewed the items she does not understand.

Mr. Tueller directed the meeting back to figuring out what amount would be needed to satisfy the vendors and avoid litigation. Lettie said she would have to pay by way of a "payment plan." Discussion continued of frustrations and possible solutions.

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Mr. McHarg said by his figures, each lot owner would need to pay about \$6,250.00 to meet the cash needs. Discussion.

Discussion continued about concerns over Lettie's inability to pay her share. Lettie stated she could not pay anything today. Mr. Tueller suggested that the "\$40,000.00" be split seven ways, and the association accept a note from Lettie for her share. Discussion continued about legal matters involved.

Mr. McHarg counseled the association that one thing the association can do is get a promissory note from Lynn to the association...

Mr. McHarg was interrupted and discussion continued.

[15-minute break – the tape continued running]

After the break, Mr. Tueller reviewed and discussion continued about what needs to be paid and how to pay it. Judi said it would take about \$40,000.00 to pay all outstanding bills as of this date. She said it would take \$36,000.00 to pay current everything that is on the books as of this date. Another \$8,000.00 was authorized at this meeting. The continuing operating expenses will be in addition. The \$2,500.00 water rights bill has not yet arrived. Mr. Tueller made a suggestion that the association not pay 100% at this time. Mr. McHarg objected, stating that Judi has been doing the best she can to hold off the vendors; the vendors have been calling him also. He said the association should not continue to expose itself to potential liens. Mr. McHarg said that Doug's proposal is to pay 75% at this time, and he does not think it wise to leave the association with 25% exposure to liens. Divided among 8 people, it only amounts to a couple hundred dollars more each. Mr. Tueller's objection was that he keeps hearing people discuss having been over billed already. Mr. McHarg explained that the association had an owner's rep through Americana and one of the things an owner's rep does is negotiate with contractors and set up the best scenario for the association. Mr. Tueller and Mr. McHarg continued to discuss whether or not to pay 100%.

Upon question, Judi said \$40,000.00 would pay all vendors to date and some of the operating costs for the system. It would not pay the \$8,000.00 due Mr. \_\_Foley?\_\_.

Doug Tueller asked if a special assessment of \$5,000.00 for everyone except Lettie (who would need to pay the \$1,500.00 now owing and give the association a promissory note on the \$5,000.00) plus a monthly assessment/dues payment of roughly \$225.00 each for operating costs would work. Discussion continued. Judi said she proposed a 2006 and a 2007 budget (reduced because there would no longer be legal fees for the water attorney, etc.). Discussion and explanation continued.

\_\_Male\_\_ said he wasn't worried about something and \_\_Another Male – Mr. McHarg?\_\_ said as an association you do have to...Mr. Tueller said something about "private fiduciary breach." [I could not understand what was being discussed.] Mr. Tueller said, "She's not going over that. That's not even an option." \_\_Male\_\_ said, "She doesn't even want to play that game." Mr. McHarg said, "As counselor for this association, I can't let anyone here think that that's not a possibility. There's always risks involved with anything."

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Lettie Kuehn said, "You also can't represent Lynn." Mr. McHarg agreed, stating he represents the association and as part of that he has to say there are risks involved either way. He said Mr. Tueller presented one risk and he (Mr. McHarg) had to present the other.

Mr. Tueller said \$5,500.00 would work. Discussion.

Herb McHarg reiterated, "We're doing a special assessment of \$5,500.00. Lettie has to get to the \$10,000.00 and then we'll finance the \$5,500.00 as a promissory note..." Short discussion about what Lettie owes. ... "Everybody else will pay \$5,500.00 per lot and we're going to, basically, a monthly assessment of \$225.00." Bob Franzese said the terms of the note should be "prime plus one" (approximately 9%) with monthly payments. Discussion about terms of note and explanation why interest needs to be included in the note from Lettie. Mr. Tueller suggested 6%, P&I, over 24 months. [I didn't hear any objections, but also couldn't tell if there was agreement from all. There was not a vote.]

Judi Balkind suggested that at the end of one year a capital reserve fund could be set up if there is an excess.

Doug Tueller moved that "we approve the budget, approve the \$225.00 a month, and approving the \$5,500.00 special assessment, and approving the note from Lettie a part of that being the \$1,500.00 that she has to pay."

Mr. McHarg said, "What has to be added to that motion is that the association doesn't waive its right that it has under the special assessment that was approved on March 17 and was due and owing as of April 30, 2006, and..."

Mr. Tueller said for the record nobody waives any rights.

Clarification was made that the motion is for a fiscal year budget for 2006-2007, beginning September 1, 2006.

Mr. Tueller called for a second to the motion. Susanne Ross seconded the motion.

[end side 4 of tape, begin side 5]

Decision was made that in an effort to save time and money, Judi will email invoices and correspondences and send hard copies to only if needed.

Lettie asked for vendors and vendor amounts for the spreadsheet; Judi clarified that those were "projected" amounts.

Mr. Tueller restated what he thought the motion was: **"A motion's been made by Bob in one of his five capacities for the members to approve a fiscal year operating budget for the association based on the current 2006 proposal of the budget by Judi, which reflects \$225.00 a month. That**

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**fiscal year budget will be approved for September 1 through August 31, 2007. First. Secondly, and attendant with that would be that the owners would approve a special assessment for a total of Forty Thousand Dollars which would result in a payment...” A male interrupted and Mr. Tueller continued, “...a special assessment of Thirty-eight...let me state it here, it’s Thirty-eight Five, which would result in a payment by each of seven owners except for Lettie of Fifty-five Hundred Dollars and a payment by Lettie...” Mr. Tueller was again interrupted and then continued, “Okay, it would be a one-time special assessment for a total of Forty-four Thousand, which would result in payment by the seven owners other than Lettie of Fifty-five Hundred Dollars. It would be attended with a cash payment by Lettie of Fifteen Hundred Dollars to make up for her previous Ten Thousand Dollar commitment. It would also be attended with a promissory note executed by Lettie that would be dated as of September 1, 2006, that would be for a term of twenty-four months that would provide for interest rate at six percent and monthly principal and interest payments based on the twenty-four-month amortization. It would also provide for a...I would say a five percent late penalty and a twelve percent default rate \_\_\_\_\_, and be a no-right-to-cure note. Finally, that the owners approve within this context they’ve acknowledged that nobody...none of the owners or the association are waiving any rights with respect to prior special assessments and/or challenges thereto and that the contemplation is that the issues related to those will be revisited once legal counsel is returning with the documents...that’s what they’ve been directed to do at the next meeting.” Bob Franzese asked when the \$5,500.00 would be due. Lettie said her note would have to start October 1. Bob Franzese said there was one modification “that the note will begin October 1 and run to September 30 and then the special assessment is due and owing on September 30 and Lettie will pay the Fifteen Hundred Dollars by November 1.”**

**A second was called for the motion with the above modifications. The vote was unanimous.**

Background discussion continued among the members and attorneys. It sounded like they were thinking about how and when payments will be made on the above as well as to vendors, and who will be out of town and when. Discussion was held about when the next meeting could reasonably be held. Bob Franzese said there will be another meeting on this, but not before November 15, at sometime to be determined thirty days after Foley completes their survey.

Herb McHarg said, “Bob Franzese just made a motion to adjourn. Is there a second?” Bill Shephard seconded. Bob Franzese said, “We’re adjourned.”

Respectfully submitted,

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Judi Balkind, Property Manager