

**VILLAGE WALK SOUTH OF VERO BEACH  
HOMEOWNERS ASSOCIATION, INC.**

**NOVEMBER 5, 2008**

**1. CALL TO ORDER:**

Robert McKinley, President, chaired the meeting. The meeting was called to order at 6:00 PM.

Roll Call:

Hank Schulte  
Barbara Conits  
Sandy Fontana  
Tom Collins  
Bob McKinley  
Steve Guest  
Deb Coburn – Property Manager

One of the new residents, Bob Monroe, of 499 6<sup>th</sup> Manor, introduced himself and his wife, Caroline.

**2. APPROVAL OF MINUTES:**

**Motion:** to approve the September 9, 2008 minutes – Sandy Fontana, seconded by Tom Collins

**Motion:** passed unanimously.

**3. HOMEOWNERS COMMENTS & QUESTIONS:**

Nick Molczanow of 498 6<sup>th</sup> Street, requested details on the expenditure of the special assessment for litigation and drainage. Bob Mckinley indicated that his questions would be answered in the next segment. There being no other questions or comments from owners, the meeting moved on to the next item.

**4. PRESIDENT'S REPORT – Bob McKinley**

Litigation and Drainage Matters

Because of the presence of some new members, who are not familiar with the history of the litigation and drainage issues, Bob Mckinley

reviewed, at some length, the background of why VWS Homeowners Association has levied a special assessment to cover the costs of litigation and engineering costs relative to the drainage and pond issues. Bob presented background information dating back to the last phase of the development on the east side. About 2 years later, residents noticed unusual water in back yards and surrounding area. This accumulated after rain storms, resulting in muddy soil (especially on 6th Manor), and pavement on that street was breaking down. The previous board engaged the services of an attorney, whose efforts resulted in a surveyor being engaged and it was found that certain grades had not been set properly by the project engineers. The driveways on the east end of 6<sup>th</sup> Manor and 6<sup>th</sup> Street sloped toward the unit instead of the road. Efforts were made to deal with developer and Carter & Assoc. (the project engineers). Little effort was made by parties responsible to address the problems. Last year, this board was elected and took over the responsibility to deal with problems and claims related to the developer and engineers. There was a fairly extensive evaluation done to look at the options, and it was determined that the project could not properly pursue its claims against the developer or address its remedies without an additional supply of money. Based on estimates of potential costs provided to homeowners, it was felt that reserves were inadequate to deal with this, and a special assessment would be required to deal with problems. Last year a notice to all homeowners was given, and approved by my most homeowners in attendance, personally or by proxy, to be levied this year in two installments, one November 1, the other February 1<sup>st</sup>, 2009.

In evaluating the claim, we did not have any cooperation or adequate information from the engineers or developers, and so it was impossible to determine what was causing the problems. In order to evaluate what our potential claim would be, last May we retained the services of a consulting engineer out of Orlando, who in turn recommended engineers who specialize in evaluating water on the site. Over the summer, soil tests were taken, samples were sent to labs for porosity, and that information was added to overall site information, which became a detailed deficiency report.

With the driveways sloped the wrong way, we found a number of other issues that need to be addressed. There were both defects arising out of improper implementation of design and design that was improper regarding how the water would flow. We now have enough information from our consulting engineers to know what the problems are and what it will take to fix them.

We have proceeded to take the preliminary steps to commence litigation against a number of parties. Carter & Associates, VWS LLC, Ray

Kennedy, have been given notice (mid-September) pursuant to the Statutes of Florida, that there are deficiency claims, and unless they remedy them, action will follow. The Association's original attorney also has a contractor's license. At his suggestion we also retained a litigation specialist. An attorney from Orlando was hired. We had to go outside Vero Beach because of the fact that many attorneys here had conflicts of interest. Tom Collins and Bob McKinley interviewed the various prospects. The new attorney delivered the notice referred to above, detailing the deficiencies, giving time to fix them, or we will sue them.

A contractor hired by the developer, without notice, began work in our conservation area. Originally, the work had never been done, although the project engineers had certified to the County that it had been done. The contractor showed up unannounced, without board knowledge and without permits from IRC. It has been a struggle to get information from them to find out what is going on.

A county enforcement officer was here last week, and will review the work. Some work appears to have been done improperly. Other work is clearly deficient. The contractor has been given notice that some of the work will not be accepted, and that we will continue to hold them accountable. The threat of litigation resulted in some action; some acceptable, some not. All of this was initiated by Ray Kennedy. The people sent here to do the work were not licensed or qualified to do the work. They have left the site.

Carter and Assoc. seems to be responding to our claims on some level. Drawings have been presented to them which address our problems. Last week, they requested additional detail. They are communicating through their attorney.

How far we have to go, we don't know. We're funded to the extent we feel we need to be. We have complied with the Statute of Limitations. By issuing that notice, we've complied with the deadline. We do not know if we will have to take it all the way to Court. If progress is being made and we're satisfied with the progress, we will give them time. Otherwise, they will be sued. We won't spend any more or less money than we need to. Whether we are owed the money from the developer, that company was formed only to develop this project, and may not have any assets. Therefore, we are being realistic.

The matter is progressing. We hope we don't have to waste the money on attorney's fees. We can have a discussion afterwards about what to do with any leftover funds.

Bob Monroe asked what remediation measures the Board has proposed. Bob McKinley said that the measures include improvements to the system for moving water away from the affected homes and some replacement of non-porous soil with soil that has a greater percolation rate. There is additional work to be done to the pond - most notably on the north side of the pond, next to Fountainhead. If we were in a critical storm situation, there is a good chance the water would flood out of our pond into their site. We have a responsibility to prevent that. Since the north end wasn't properly dammed up, we have to deal with that. We haven't had time to get our engineers on site to deal with other issues.

The board has obtained reports, some in the course of litigation. Because we're in litigation, we have to be careful how that information is made available.

Pasquale Fiermonte of 555 6<sup>th</sup> Street complained of water coming from the parking lot of the post office next door, under the fence and into the swale at the rear of the homes on the south side of 6<sup>th</sup> Street. The Board will look into this problem.

Betty Vogt of 679 5<sup>th</sup> Avenue asked what the conservation area will look like when the developer is finished doing his work. The level of the pond has risen to an artificially high level due to the blocking of the outlet drain with a plywood form. It has had the effect of raising the water so much that it has flooded out the rabbits and small animals who find habitat there. The plywood form will be removed within a few days and the pond is expected to fall to its normal level very soon. Bob McKinley said that the water would recede to normal levels but that a channel would remain behind her house and some water would be visible. Also, the black filter cloth that has been installed to prevent sediment from entering the storm drain must remain for one year. Some of the vegetation removed by the developer will return but the requirement for an open channel means that some is permanently gone.

Pasquale Fiermonte asked about the hole in the fence behind Rosalie Wills' house on 6<sup>th</sup> Street. That appears to be a hole that a bobcat has been using to enter our property. The board will look into this matter.

Scott Howder asked a question on behalf of Erica Getz of 491 6<sup>th</sup> Street, who was not in attendance. His question related to a condition inside of Ms. Getz' unit. Bob McKinley responded that the Association has no mandate to deal with problems within the units. That is solely the responsibility of the homeowner.

5. **MANAGER'S REPORT** – Deb Coburn

The Property Manager, Debbie Coburn, indicated that the code for the pool gate had been changed on October 1, 2008. (The new code will not be included in the minutes because of their public nature. Anyone who does not know the current code can contact Debbie, a board member or simply ask a neighbor.)

The pool deck will be pressure-washed during the week of November 10<sup>th</sup>. The pool will be closed during that process.

The fan motor and blade for the pool heater were replaced recently.

As of Nov. 5, 2008, a total of \$37,775 has been received on account of the special assessments for litigation and drainage matters. This is out of a total of \$51,000 that was due as of Nov. 1, 2008.

We continue to have problems with our neighbors to the north and south, both of whom have trees and shrubs that are impinging on our fence and causing damage. Both have been spoken to but neither neighbor is cooperating in resolving the problems. The Code Enforcement people say that it is a civil matter between landowners and will not get involved. Gus and Dale are both working to remove the invasive growth and to repair some of the damage.

There are new owners for the Hashmi, Colletti and Kollman units.

Some contracts are up for renewal. The insurance contract has already been renewed at a small saving from the previous year. The Manager's contract and the landscaper's contract remain to be renewed.

Tom Collins asked about tax return preparation costs appearing in the financial statements. Barb Conits felt that the \$1,800 figure was fair.

Debbie Coburn outlined the services she performs as Manager. She has offered to renew her contract at the same rate as the existing contract.

6. **TREASURER'S REPORT**– Barbara Conits

The Treasurer reported that the Association's accounts were as follows as of Nov. 3, 2008:

Operating account: \$9,202.

Money Market account: \$43,698

Reserve/replacement fund: \$36,301. About \$1,189.42 is moved into this fund each month.

Of the total special assessments of \$102,000, about \$64,000 remains unpaid. It was noted that \$51,000 of the total will not be due until February 1, 2009.

**7. COMMITTEE REPORT – Hank Schulte**

ARC Report – Hank Schulte, Sue Jordan & Erica Getz are the ARC Committee. Hank Schulte described the difficulty the ARC is having in getting homeowners to comply with ARC guidelines on landscaping changes and in getting people to apply to ARC before making their changes. He indicated that there are good reasons for the guidelines . In one case an owner planted shrubs that have grew quite high and were blocking the sprinkler system. As a result the grass was dying where the sprinkler could not reach. The owner was given 60 days notice to remove the shrubs. The owner ignored the request, after which the ARC had the offending shrubs removed.

The problem of the driveway median strips remains. The ARC has adopted a guideline to permit shrubs to be removed and replaced with stone and pavers for a distance of 5 feet, starting 6 feet back from the garage. This permits the owner to open his car door without hitting the shrubs. The very end of the strip near the curb maybe planted with grass or treated with small stones. Mulch is not to be used at this location because it will wash out into the roadway.

Dale Bushong, our landscape contractor, has offered to come to the next Board meeting (Dec. 2, 2008) and make a presentation to owners about the reasons behind the guidelines.

**8. OTHER BUSINESS**

- A. Steve Guest indicated that the Board requires a workshop session to study the current budget and see where savings can be achieved. This will be a tedious and lengthy line-by-line process that is not necessarily appropriate for a normal Board meeting. The Board decided to hold the workshop session at the Club House at 10:00 AM on Nov. 22, 2008.
- B. Steve Guest indicated that the implementation of the reserve fund study is one of the matters the board must deal with. The addition of the roofs to the Association's responsibilities is, at the moment, a major unfunded liability. The reserve fund study indicates that we should be adding about \$53,000 more to the reserves each year to cover this responsibility. That amounts to about \$43 per unit per month. The maximum fee increase which the Board can impose without a vote of owners is 15% or \$19 per month. There followed a spirited discussion among Board members regarding the financial difficulty some owners were having and the fact that the litigation assessment has made it even more difficult. Some board

members were opposed to any increase at this time. Some felt that the obligations to properly fund the roof replacements should not be left for the future. Sandy Fontana felt that the repayment of the amounts that have been spent on litigation from the new special assessment revenue might free up some surplus monies that could be applied to beef up the reserve account for this year and allow the board to defer any increase for the time being. Debbie Coburn commented that the Board needs to create a capital improvement plan, not just have a capital improvement budget.

Regarding the cost of painting, Tom Collins noted that Phase I has 5 buildings – the first two buildings on 6th Street and all of Sixth Manor. Phase II is the last 4 buildings on 6th Street and 2 on the other side. Phase III on 5th Ave etc. One of the painting estimates for Phase 1 from two years ago was as high as \$52,000. How much of existing funds will accommodate the painting requirements of 2009? This discussion of this matter will continue at the workshop on Nov. 22 and will be finalized at the Dec. 2<sup>nd</sup> Board meeting, at which time the final budget for 2009 will be set.

Nick Molczanow asked if the reserve funds are in interest-bearing accounts? He was advised that they are.

- C. The Board voted unanimously to renew Debbie Coburn's Management Contract on the same terms as last year's.
- D. The Board voted unanimously to renew Dale Bushong's landscaping and fertilization contract on the same terms as last year's.
- E. Steve Guest reported on the status of the gate repairs. The gate technician is returning on Saturday, Nov. 8, 2008 to complete the replacement of the arms. The gates should be fully functional by this weekend and a decision will then have to be made on the hours for the gates to be in operation.
- F. Friday Night Socials. The Board felt that the regular month-end socials should be resumed on November 28, 2008.

## **9. ADJOURNMENT**

The meeting adjourned at 8:05 PM