

*Board members present:* Phil Abbott (pres), Tiffany Mellow (treas), Jonny Comes (sec), Mike Ireland, Patrick Lynd. Mark Campbell (property manager), present.

*Units present:* 104, 121, 137, 202, 205, 210, 212, 309, 314, 316, 404, 412, 417, 420.

**Call to order: 6:30 PM**

**Presentation given by Phil Abbot and Patrick Lynd**

**Phil:** According to HOA records, Foundation problems have been present at 309-316 Woodcutter since at least 2004. Remediation work was performed in 2004 and extensive work was performed 2006. This work was funded by a special assessment made in 2006 which in addition to Woodcutter, funded foundation, drainage repairs, road paving, roofing and other improvements throughout the Highlands Property. We understand that close to \$250,000 was spent on 309-316 Woodcutter in 2006. Today, the problem at Woodcutter 309-316 is still with us. There are still signs of continuing movement and distortion of the structure. The main purpose of this meeting is to discuss the possibility of potential legal liability and recovery of monetary damages arising from the work performed in 2006.

Due to the statute of limitations concerning liability, we have a limited window of opportunity to bring an action for recovery and that window is closing. This Board strongly feels that we should investigate the possibility of taking legal action if it is warranted. In order to determine if it is warranted, the Association needs to engage a disinterested third party to conduct an investigation. In other words we need to employ legal counsel to perform the investigation and advise the Association.

I believe the entire Board agrees that as a board, we have a fiduciary duty to the members of the association to investigate the circumstances of the failed previous repairs and attempt to recover any funds due the Association as a result of possible liability of any party.

I'll let Pat Lynd talk about the legal aspects.

**Patrick:** I am an attorney, but not the association's attorney. I'm just a board member, speaking as a board member today. My intent is to try to persuade everyone that we should move forward and look into this.

*Fiduciary Duties of the Board:* (1) The Duty of Care: duty to act with the care an ordinarily prudent person in a like position would exercise under similar circumstances; (2) The Duty of Loyalty: duty to act in good faith; and duty to act in a manner the director reasonably believes to be in

the best interests of the HOA. These are affirmative obligations that each board member has when making decisions regarding the HOA.

*Legal issues:*

1. our engineers have told us that based on their review of the city planning documents the prior work was not done in compliance with the original plans submitted to the city;
2. They have also told us that the city records don't show why the repair was not done in compliance with the original plans;
3. They have also told us that the work that was done was not sufficient to fix the problem and that essentially the prior repair has failed and the building now requires addition stabilization at significant cost.

Given those facts and given the amounts of money at stake here I feel it is in the best interests of the Association to hire a completely objective third party to advise us on whether the association has any legal remedies that we can pursue. This doesn't necessarily mean anyone did anything wrong. There could be a simple explanation, but something doesn't seem right and \$250,000 was spent on that repair.

*Statutes of limitations:* Typically, the statute of limitations on this type of legal liability will begin to run two years from the date we knew or should have known of the problem. If there is a letter or memo in a file somewhere that would have put us on notice more than two years ago we may not have a legal remedy. That's why we called the special meeting because the clock is ticking and in my opinion we should not delay in finding out what happened. If the board hires a lawyer, the attorney will represent the association, not the board. This will be time extensive.

*Legal costs:* There are a lot of moving parts here so it won't be cheap. Based on my experience, it's possible that this could get done for as little as \$5,000. However, my recommendation is that we should authorize \$10,000 so that we're not back here for another special meeting. It could cost significantly less, for instance, if they discover early on that we were on notice five years ago.

**Phil:** *Cost of repairs:* We are just starting to get numbers back on the cost of Woodcutter. First phase will be a retaining wall which costs at worst case \$140,000. Based on the results of soil test that were done yesterday, the cost may go down. Other costs include remediation of the foundation and quite a bit of framing on Woodcutter. The 2 buildings on Stonewood have been looked at by the engineers. It's their opinion that they are not on the same magnitude as Woodcutter, but need to be addressed. Repairs

on Stonewood will likely involve retaining walls. Current (very rough) estimate for Woodcutter alone is just under \$500,000.

*Currents funds:* Of the 2006 Special Assessment approximately \$166,000 remains, of that \$70,000 is earmarked for roofs, leaving about \$96,000 available for foundation repairs. Current balance in our Capitol Improvement account is \$67,000. This is going down due to painting.

*Possible Funding of future repairs include:*

1. Maintenance fee increase next year of 15% would yield about \$50,000 a year.
2. Canceling our Comcast contract would give us \$53,000 per year. We may be able to cancel in February.
3. We are looking at the possibility of a bank loan.
4. There's always looming out there a special assessment. We don't want to do that.
5. As mentioned, there is a possibility of a recovery from legal action.

The board will be discussing these options and making a decision on in the future. Note that no more than two board members meet in person to discuss board business. We communicate via email, or if everyone needs to get together we meet at the bimonthly meetings or, as here, call a special meeting.

### Call to Public

(**P** - public's questions/comments, **B** - board's response)

**P:** Regarding legal recourse, who do we take legal recourse against? My understanding is both the engineering firm and construction firm have since gone out of business.

**B:** We don't know who we have recourse against, which is why we need an objective third party to review these documents. It's our understanding that at the time Water Brothers had a two million dollar bond, and that could potentially be a source. Not sure about the engineer. We need to look at it.

**P:** Is it true that the city did not sign off on the project?

**B:** We don't know all the facts. It appears that the engineers at least signed off on it. It may be the case that the city can rely on the engineer's final inspection, but we don't know.

**P:** Shouldn't the first step be to find out who to sue (if there is someone to sue) and if there's any money to get before we do an extensive document search of the whole job? If there's nothing to gain, do we want to spend \$10,000 (or any more than needed) to find that out?

**B:** We're not necessarily spending \$10,000. You're right, the first step is to look into what's out there and what's available. To do that requires looking at some of the documents. We're not sure the engineer is out of business. If it was Water Brothers, there is a bond out there, issued at that time. Sometimes insurance policies (and we're assuming bonds) are written in such a way that the coverage is for the time that the work is done rather than the time the claim is made. There are some simple steps. We're not envisioning that we go spend \$10,000. We're envisioning that we allocate \$10,000 to get the process started. We could do it \$1,000 at a time, but we'd be back here every couple weeks to authorize additional expenditures. We're talking about setting aside a chunk of money, and then getting the process going.

**P:** What is the cost benefit in a perfect situation? What is are goal in spending up to \$10,000?

**B:** In a dream scenario, we would find clear negligence, file a claim against an insurance policy, and get repaid in full. Possible some additional for property damage. Our feeling is we would be remiss in not investigating.

**P:** Just being devil's advocate, if there's no pot at the end of the line, it's wasted money/energy from day 1.

**B:** If we knew there was no pot, we wouldn't be proposing this.

**P:** If we think it's our responsibility to find out if there's a pot, then we should be careful in who we hire to find out, and that should be their task. To me there's no sense in getting any more information if there's nothing to gain in the end.

**B:** Agrees.

**P:** There's a large discrepancy from the repairs that we done in 2006 costing \$250,000 to today's \$500,000 estimate to do it right. Are we just putting off the inevitable that we're going to have to pay some more money? We don't want this building to go down the hill.

**P:** How much will the alternatives to assessments bring in?

**B:** Maintenance fee increase will yield about \$50,000 a year, canceling Comcast another \$53,000. This increase in income will also put us in better situation for a bank loan, if we decide to go that route.

**P:** Have we talked to past board members? A couple of them were on top of things. There should be some good history there.

**B:** We have spoken with a couple of them. We got some history from a former president of the board.

**P:** How much of the special assessments have not yet been collected? And do we get those assessments if the units are sold?

**B:** We have filed liens on some. There's \$10,393.58 still out there. So we've collected most of it.

**P:** If did away with cable, from what I understand we can't legally prevent homeowners from putting up satellite dishes if they want to.

**B:** We don't know about that.

**P:** I'm feeling a little frightened because it sounds like we're several hundred thousand dollars short on Woodcutter alone for repairs. That's frightening.

**B:** We called the meeting because we're frightened too. We are bringing it out in the open because it's a problem that we all have to deal with.

**P:** Have we explored financing yet?

**B:** Very cursory. Talked to US Bank.

**P:** I think a great benchmark would be what type of loan we could get that would be covered by the money currently going to Comcast. For years I've thought it is insane how much is spent on cable.

**P:** Where would the retaining wall on Woodcutter go?

**B:** Basically from the edge of the utility rooms out towards the end of the building in the direction of 316.

**P:** You say you've found trouble on Stonewood also. Anywhere else?

**B:** Not that we're aware of. There is a bunch of expanding soil here, so other buildings may have issues in the future.

**P:** Looking at the report from 2007 (K&A report), there were several buildings that had some sort of issue.

**B:** The board issued a report back in March 2012 called the Palmer Report to get an assessment of the entire complex. Just recently (within a couple months), one of our maintenance guys pointed out Stonewood. The Palmer report did not refer to these foundation problems. Things appeared to have gotten worse recently.

**P:** To shortcut some of the legal process. How hard is it to file a complaint against the bond for the engineer if possible?

**B:** We're not sure if engineers are required to be bonded. In the end, we don't know. If it's the contractor, then we could make a complaint to the CCB. We would want an outside attorney to do this.

**P:** How will the attorney be chosen?

**B:** We should form a committee of board members and other owners to select the attorney.

**P:** With all the work being done, I think we should do everything suggested to get money for all the upcoming costs. These buildings are getting old. Even another assessment if necessary.

**P:** How long will all of this take? When will it get started?

**B:** We called this special meeting so that we can get started.

**P:** I agree that you need to spend money to get things done, but spending too much money will cause people to leave.

**B:** We agree, every time you raise the maintenance fee, it has an adverse effect on the value of the units. However,

if we do nothing and Woodcutter falls down, this impacts the value of all the units.

**P:** Will work get started on Woodcutter before it's too late?

**B:** The engineer has talked about doing some intermediate work to shore things up.

**P:** Assuming we get a loan, how do we pay.

**B:** Mainly from maintenance fees.

**P:** Can we set a limit lower than \$10,000 for legal fees until we know that there is a possibility of getting something back?

**B:** What we foresee would be pretty clear communication throughout the process. The attorney reporting regularly and us making decisions as we go. We won't just spend \$10,000 and see what comes back.

**P:** Can we put a limit on hours?

**B:** We would like to have a situation where we have multi-levels. There might be an experienced litigation partner who puts in minimal time with a higher billing rate, and then for the less sophisticated tasks there would be lower level junior partners, paralegals, etc. so there would be multi-levels of billing rates. So to put a limit on hours doesn't make sense.

**P:** Shouldn't the attorney we hire answer some simple initial questions quickly to see if it's worth proceeding further to save time and money?

**B:** Yes.

**P:** There are lawyers who have represented properties in the south hills who should be able to help.

**P:** Big picture, \$5,000-\$10,000 is pretty insignificant compared to the cost of fixing the problems. So let's get these people's homes fixed. The foundation issues of a couple buildings affect the value of every unit in the complex.

**P:** Disclosures are also an issue. If you're selling a unit anywhere in the complex, you need to disclose these foundation issues. We are all equally responsible.

**B:** That is a good point. Especially now that all the cards are on the table.

**P:** I just want to make sure we're doing repairs in the right way so that we don't get back here over and over again.

**B:** This is another reason to find out what happened with past repairs. There was a plan that was submitted to the city, and the work that was done did not comply with the plan. We need to find out why. Our engineers said that anyone could have seen that the work done would not remediate the problem.

**P:** What was supposed to be done?

**B:** Our understanding is it was supposed to be a complete replacement of the foundation.

**P:** A critical thing a lawyer should find out is how the city could let that happen.

**P:** Didn't you say the city never signed off on it.

**B:** As board members and owners, it's not our place to investigate, but we have seen things that cause us concern.

**P:** I appreciate this forum, but I think we need to allow the board to take care of things without having to come back to ask for more money.

**P:** What is the backing of a loan for the HOA?

**B:** We will have to find out.

**P:** When will decisions on these issues be made?

**B:** Tonight we will entertain motion to authorize legal funds. You should all come to future meetings to see what we decide to do for funding.

**P:** What is the timeline on the repairs?

**B:** We don't know the answer, but once we have our finalized plan (within a month), we should have an answer to that. We hope to have more information regarding timeline and costs of repairs for at the August meeting.

**B:** Engineers we're working with are from Portland and have extensive experience with the northwest hills in Portland.

### **Motions Passed**

1. The board authorizes up to \$10,000 for legal fees to investigate the circumstances of the failed previous repairs to the foundation on Woodcutter, and to recover any funds as a result of liability. A committee will select an attorney to carry out this investigation. The committee members are Phil Abbott, Tiffany Mellow, and Ray Socia.
2. Starting in October, the bimonthly meetings will take place on the 2nd Wednesday of the month. This will allow for the minutes of the meeting to be mailed out with the same month's statements.

**Meeting adjourned: 7:50 PM**

Jonny Comes (secretary)