

**Minutes of
Annual Meeting of the Membership of
FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION
Wilkinson Library Conference Room, Telluride, CO
August 6, 2007
10:30 a.m. (MST)**

The annual meeting of the members of the Fall Creek Village Homeowners Association was held on Monday, August 6, 2007, at 10:30 a.m., in the Conference Room at Wilkinson Library in Telluride, Colorado.

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

Bob Franzese called for a roll call:

Owners Present in Person or Via Teleconference: Mark Murray, Bill Shephard, Susanne Ross (represented by law partner Charlene Sinclair), Lynn Black, Lee Zeller, Lettie (Elizabeth) Kuehn, Valerie and Bob (Robert) Franzese, Brian Wohl on conference call.

Also present were: Judi Balkind, HOA Manager, and Herb McHarg, HOA Attorney.

Lettie Kuehn announced that she was recording the meeting (in addition to the recording being made by the Verizon operator).

Bob Franzese announced a quorum was present and called the meeting to order.

2. Motion to Approve/Waive Notice of Meeting

Lynn Black moved to approve/waive notice of the meeting. The motion was seconded by Mark Murray. Motion passed.

3. Old Business

- a. Question about voting privileges if in arrears. It was noted that Article I of the Fall Creek Homeowners Association Declaration, Section K, the Association's Board may suspend an owner/member's voting rights in the Association during any period or periods during which such owner/member fails to comply with the Association Rules and Regulations or one or more additional obligation or obligations imposed upon such owner/member by this Declaration. This is an option the Board may suspend during any period somebody is in arrears. Bill Shephard said he would rather continue with what happened at the last meeting. Heated discussion ensued about what to talk about first. Lynn Black asked that nobody interrupt a speaker. Bill Shephard started to speak and was told that he was out of order and was told to stop his discussion.

Bob Franzese noted that Susanne has made her monthly payment and has been forthright and very clear. He said that on page 3 is a summary of who owes what.

Herb McHarg went back to item 3.a. of the Agenda (a vote on suspension of voting

rights). He said the question raised by Bill Shephard was whether it was appropriate to address this initially. Herb McHarg said his answer is it would make sense for the Association's Board to address this initially because if they determine, as a Board, to suspend the voting rights, then that would apply at this meeting. Additional very heated discussion.

Valerie Franzese called for vote on Agenda Item 3.a. She stated that discussion has been non-productive, so she was calling for a vote on the suspension of voting rights for members that are in arrears. Lynn Black seconded. Assertion was made by Lettie Kuehn that the "numbers" were wrong. Lettie Kuehn said the HOA owes her. She said she's tried to get the HOA to resolve the issue of the smell and to fix her fence and there's no discussion. Charlene Sinclair said she and Susanne Ross went over "these" and ascertained she's been double expensed. Page 5, Item M (Association Assessments) says vacant lots are only responsible for half the full fees for all the services including sewer, water or road maintenance. She said Susanne's lot is the only vacant lot; correction was made that Brian's lot is vacant also and he's overpaid, too. She asked that Judi and "you all" take another look at Item M on Page 5, where it's clear what is supposed to be done, stating, in part, "...provided, however, Lots 9 and 10 shall not be obligated to pay for any water, sewer or road maintenance since they are unbuildable lots subsequently will not be using these services. Vacant lots shall be charged for half of the full fees for these services," which is sewer, water or road, i.e. she's double paid. Mary Murray said he thought the conclusion had been reached that special assessments were capital improvements are separate. Charlene Sinclair continued that Item M covers association assessments for common expenses (what leads to the ability to lien property). She said their position would be that she gets no water, she gets no sewer, it's an issue to be determined if that even came into her lot line at this point, in fact it's obvious the Decs say vacant lots should only pay one-half. She's also been paying the full share of the sewer per month and she doesn't get sewer. Bob Franzese asked if they think she only owes half of special assessments also. Charlene Sinclair said yes because it says for water, sewer or road maintenance and would apply whenever an assessment is made for any of that. Charlene Sinclair said that in other words the HOA has improperly put her (Susanne) in arrears by its interpretation of this provision, which she and Susanne think is clear that vacant lots don't pay at the full rate as the improved lots.

Bob Franzese said he doesn't understand the capital expenses. Herb McHarg that this provision would apply to standing assessments and monthly assessments. He reminded that the HOA just recently decided to do a monthly assessment. So, Susanne's concern may be correct in that since the \$225 has been assessed, the amounts that could be allocated to maintaining the sewer system and to maintaining any of the water systems out of that \$225 should be cut in half for Susanne's lot and anyone else's in the same position. Uncertain whether the same applies to Bill's vacant lot where he has had the ability to tap in but has not done so.

Charlene asked what provision of the Bylaws/Declarations is being used to say that the

Association's assessment doesn't mean "special assessment." Herb McHarg said the intent of the provision "vacant lots shall be charged for one-half of the full fees services." He said it's a service, not a capital expenditure for an infrastructure. He said all lots (vacant or constructed) benefit from having sewer infrastructure. He could not provide a specific provision. Discussion. Charlene said the Declarations have a provision otherwise. She said the HOA is "getting ready to vote to deny somebody their voting rights who are double-paid." Discussion continued. Valerie said the vote is for suspension of voting rights for members who are in arrears, not for members who may have double-paid.

It was clarified that Susanne has made all monthly payments. The only question is to the amount in question that was postponed. Bob Franzese asked for clarification of the amounts. The \$3,125 was the amount the HOA voted to postpone on the initial special assessment. He said he didn't think Susanne was in arrears and may have paid too much. Discussion continued. Bill Shephard said nothing has been done by the HOA to address the tie-in and questioned several other items from the previous meeting. He said he is willing to pay right now the \$1,100 in assessments he has not paid, but he wants to see actions from the HOA as he continued to discuss. He asked the Board to describe how it viewed certain actions that have or have not happened in the past 11 months. Discussion continued.

Herb McHarg said Bill's discussion is out of order; however, he did explain what has been done in the past year: Foley has now completed its survey (about a month ago), there are now pending proposed easements to Lynn Black and Bob and Val, and there is a First Amendment to the Declarations. Bill continued to discuss his objections.

It was stated that there had been a motion and a second and a vote was needed.

Bob Franzese told Lettie Kuehn she was out of order with her arguments.

Charlene Sinclair suggested that items later on the agenda be moved up for discussion at this time then vote on the outstanding motion. **The motion was tabled**, discussion will continue about 3f on the agenda (pertaining to sewer line to lot line – the amendment to the Declarations).

F. Herb McHarg explained that at the last meeting, he was asked to prepare an amendment to the Declaration that would involve an extension of the lines from a tap point to the main junction of the central sewer system. Last week, he distributed to the members a draft of an amendment. He has received some comments on the proposed First Amendment. He itemized what was covered in the proposed First Amendment. He stated that this proposed amendment will not apply to Lot 7 – the easement with Lot 7 (Agenda Item 3b) will supersede this amendment to the Declaration as it applies to Lot 7. He said there is another easement for Bob and Val for an electric line from a point on their lot boundary, across their lot to the well facility. He said the Foley survey also disclosed that part of the sewage system discharge pipe is on Lot 1 (Brian's lot), so

another easement. Charlene Sinclair requested that the members be allowed to see the Foley survey.

Following question, Herb explained that at the last meeting, the members and the Board voted to allow the expenditure of \$5,000 to Foley & Associates regarding the central sewer system, a survey of the electric line, the sewage discharge pipe, the roads, the well, etc. (a survey of all the common "stuff"). For the limit of \$5,000, so far Foley has completed a survey of the central sewer system on Lot 7, a survey of the central sewage system discharge line on Lots 1 and 2, and a survey of the electric line and the quit claim area for the well house and the water shed. The HOA does not have a survey of the exact locations of the existing pipes that may cross other people's lots or of the exact tap points in existence. An as-built survey can be done once those lines are installed. With regard to the road easement, he recommended a larger road easement so any new pipes can go within that side area of the road. Foley said it would be pretty expensive to do a survey of the pipes that are currently buried because they don't know exactly where they are located.

Charlene Sinclair said the pipes currently being used are included in the as-built drawings done by Telluride Gravel. To gain access to those drawing, the HOA has to first pay off Telluride Gravel. Discussion followed about what was revealed by the various existing maps, drawings, etc. Charlene Sinclair objected to Herb's suggestion of an easement wherever the lines are found, stating that the members cannot agree to that until they know where the lines are because the easement could be where a member wants to build a house.

Discussion continued, with Bob Franzese reviewing the history of the platting, etc. and accuracy of the documents. Bob Franzese stated that it is his belief that the existing line through the back end of Lettie's property is totally nonfunctioning. He was there when they ran the camera. Discussion continued about his suggestion to run a new line along the road and the possibility of adding additional lots (outside of the HOA lots) to the line. Before that could happen, though, the HOA must have the system fully paid for and operational.

Herb McHarg suggested giving direction to work on the First Amendment to the Declaration to reflecting changes as discussed that was made at the meeting which addresses the easement of utilities on the property. Bob Franzese gave the direction to make the necessary changes as noted above and in two weeks that the owners can vote on by email. Agreement was received. Discussion of verbal agreement Charlene Sinclair has with Susan McCormick about granting an easement for a line across the property in return for Susan quit claiming to Lynn Black a triangular area in the back of her lot. Bob Franzese said that came from him. He told Susan that the original line did go through the back end of Lettie's property. He discussed his reasoning, etc. Discussion about details. Following additional discussion about adding additional (outside) lots to the line, he asked for an agreement that if the HOA gets it done, and they say yes, they want it and are willing to commit and they will spend "this much

money” in 60 days.

When asked if he had concerns about not having a tie-in to his lot, Brian said he wants a tie-in and he wants to make sure that when he’s ready to build he doesn’t have any issues with everyone saying he was “part of a conversation four years ago and we told you what was going on and you agreed to this and now you’re going to have to pay extra money”; he wants some way to make sure he can build and utilize the system. Discussion continued with Bill explaining his concern and how his position is similar to Brian’s. Bob discussed history of the line. Bob noted that the HOA had agreed to put a line to every lot, so a line to Brian’s lot should be no issue. Brian said Telluride Gravel failed to provide him with an adequate tie-in point.

- G. i. Herb McHarg gave a brief synopsis regarding an easement on Lynn Black’s Property. The draft of the easement has been presented to Lynn Black but has not yet been sent to all owners. Lynn stated that some owners believe an easement isn’t necessary and she has what’s that’s based on. Herb would send the agreement to owners but Lynn asked if it could be tabled until her attorney, Tom Kennedy could represent her.

B. Discussion on easement agreement continued. Bob Franzese felt that the without the easement Lynn Black’s property in order to continue and this should be tabled. He would like to postpone the \$3,125.00 because it’s tied into the easement on Lynn’s property.

Bob Franzese moved to adjourn this meeting because of verbal abuse. Mark Murray seconded the motion. Discussion continued concerning the motion.

Valerie moved to remove anyone who uses any verbally abusive language. Mark Murray seconded the motion. The motion passed.

- C. Discussion on Filing of liens, etc. Discussion continued but became abusive.

Brian again asked why his lot was not tied in. Herb McHarg said the First Amendment recognizes that the HOA will take the lines to the tie-in point (as part of the Association’s line); and the owner is responsible for everything from the lot line to their line. The owner has to install, but the Association will credit back. Discussion continued.

Bob moved that the Association accept the First Amendment as written. Herb McHarg said there were a couple changes to the First Amendment, and requested that the motion say “substantially as written with changes that need to be addressed to be done by the attorney and then it will be sent around for everybody’s signature.” **Bob changed his motion and Mark Murray seconded the motion as changed.**

Discussion. It was pointed out that this amendment would require the approval of every homeowner and the amendment may be premature. Herb said there are signature blocks for every owner’s acceptance and the existing Declaration is set up for a 75% vote of those entitled to vote. He said the way “this” (the amendment?) is phrased recognizes

that there is an unknown and that the Association would have to perform a survey and provide that survey to the owner. He said the intent is not to take up someone's property entirely; rather, if there is a line currently existing, that would be the easement area. He said the HOA could change the motion to state that this would be "accepted substantially as written, changed by the attorney based on the conversation today." He said the HOA members could say they accept this, but then the Association would have to obtain a separate easement from any lot owner whose lot a particular line crosses, and the HOA is going to try to avoid that by putting that in the road easement; that the HOA would obtain that easement and such grant of easement will not be unreasonably withheld by that lot owner. The easement could be defined, etc. Discussion continued about how the proposal might not work and Lettie could not sell her lot with the current/suggested wording. Herb then suggested that Lettie and Susanne Ross devise a document which everyone will accept. Discussion continued about additional alternative solutions. Brian requested that the "credit to owners" language be removed. Discussion. Bill Shephard said he would like (at this meeting) to see agreement reached outside of an easement agreement that he can, without liability, have a contractor rip out the existing tie-in and put in a proper tie-in. Discussion. Herb said what the language would require is that an owner who is not currently connected present to the HOA a plan with cost estimates from at least two contractors, each bid subject to a guaranteed maximum cost. The Association shall approve or disapprove of such plan in writing within 30 days of receipt. In the event the Association disapproves of such plan, the Association shall include in its determination the reasons for disapproval so that the plan may be corrected by the owner and resubmitted to the Association for consideration. He said there is an agreement to work together in good faith. Discussion continued. Herb suggested Bill could submit a plan and the HOA could speed up the time frame to accommodate Bill's request.

Bill moved to allow him and his construction entities to submit bids and the HOA agrees and the Board that's going to be making those decisions agrees to review them in a timely fashion within fifteen (15) days. Bob Franzese seconded the motion. Discussion about Lynn approving equipment going on her property. Lynn wants to see the plans and wants to know the extent of damage to her property by all equipment and how it will be repaired. Bill agreed to pay his back dues (5 months) if the HOA in good faith moves forward with it; however, he first wants to see the HOA move forward in approving a plan before he pays any more dues to the HOA for services he's not receiving.

Determination was stated that the "resolution" had already been seconded. Discussion continued. The discussion included what has been previously been discussed with Susan McCormick about water rights, what Susan needs to do regarding her water rights, etc. and what others have done re water rights.

The pending motion was "scratched."

Discussion was continued about how to amend the Declaration at this point. Suggestion

was made to give direction again to work on the First Amendment to the Declaration, reflecting changes or discussion made at the meeting, and then call a vote on the First Amendment by email. The First Amendment, addressing utility easements, should be available for vote by email in about two weeks. In the event further discussion is necessary, another meeting may be necessary. Herb McHarg said a Declaration amendment would need to be approved by 75% of the members.

Bob Franzese moved: “Within sixty (60) days, that we will give Susanne Ross a yeah or nay regarding those people upstream and at that time, we will make a commitment to put your line in, and the only condition that I’m aware of is the condition that, in fact, the Amendment to the Decs is agreed upon.” Discussion. **The motion was seconded by Suzanne Ross.** Bob pointed out to Brian that the same Amendment to the Decs includes Brian and his line to his property; the only thing they are doing as part of this is to have a time frame specifically for Susanne Ross to provide a yeah or nay within 60 days regarding those people upstream (who may want to tie in but are not committing). **The motion passed.**

g. Easement on Lynn Black’s property. Herb said this document was prepared according to the direction given to him by the Association with Lynn Black’s attorney Tom Kennedy, Lynn Black has seen the document, and they are now moving forward with the verbiage of that easement. He explained the easement. The document has not yet been distributed to the members because Lynn has not yet accepted the verbiage. When she has done so, he will distribute the document for comment. A map was passed around. Lynn said she has heard from other members that they don’t believe an easement is necessary and asked what that is based on. Discussion. He pointed out and discussed the documents already in existence with regard to this matter. Discussion continued. Herb McHarg advised moving forward with how the Association can

(Brian left the meeting at this point.)

Discussion continued re actions by previous owner and other history.

Lynn agreed substantially to the verbiage of the document. The document will now be distributed to all.

h. The \$3,100 matter was postponed because it is tied clearly to the easement on Lynn’s property. Discussion as to whether this matter is tied to the easement or is a separate matter.

i. Filing liens and foreclosure. Bob Franzese discussed history of assessments owed by Brian and Elizabeth. He stated that Elizabeth has not lived up to her agreement with the Association. She had agreed to sign a promissory note and pay her monthly assessments. This has put the HOA in a position of being unable to pay its bills. He said the \$3,125 should be deducted from the \$12,191.00 Attorneys fees, filing fees, etc. might not be included in this figure. Bob Franzese asked for a resolution. **Bob Franzese made a motion that the HOA (1) file a lien on Elizabeth Kuehn’s**

property, (2) begin foreclosure, and (3) all attorneys fees, filing fees, etc. are added to it. Herb McHarg noted that there are other actions the HOA can take in this matter. **The motion was amended to include any enforcement actions available to the Association. With that amendment, Mark Murray seconded.** Discussion. Charlene Sinclair requested that Lettie be allowed to pay all her back dues within thirty (30) days; and with regard to the smell coming into Lettie's house from the sewer, the Association does what is necessary to provide information to the HOA and Lettie concerning what problems, if any, exist so that the problems can be corrected. Bob Franzese said a variety of experts have looked at the system (not inside Lettie's house) and said it is a sewer treatment facility and there will be an occasional smell. Extended discussion.

Herb McHarg stated a "point of order" that Lettie spent at least one entire day in his office looking over documents that she requested from the Association. There were additional documents that Lettie requested the Association provide to her at her cost; the Association had those documents there for Lettie. He presented those documents to Lettie and asked her to pay for those documents. She left his office without paying the Association. He asked that it be noted on the record that these documents have been available to Lettie and that it was an assessment that everybody discussed at the last meeting – it was discussed and it was voted upon. It is a special assessment and is not open to additional discussion or negotiation.

Bob Franzese told Lettie that, so she understands and is fully aware, this is her notice that the Association does intend, if so voted, to file a lien against her property and to move forward with foreclosure or any other enforcement actions/legal actions available to the Association. He asked if she had any additional comments for the Association. She asked for the opportunity to take the invoices to Paper Chase and have them copied so she could look at them at her leisure. He told her that yes, she could do that, but it doesn't change the fact that there is a special assessment due and owing and the fact that she had that opportunity a year ago to do that. Lettie was told that she could bring up her "other issues" under the agenda item "Fencing Issues." It was pointed out that Lettie never signed the \$5,000 promissory notes. The portion(s) of previous Minutes pertaining to Lettie's promise to pay, etc. were read by Bill Shephard.

Bob Franzese made a motion to lien her property. Bob Shephard abstained from voting and explained why. Susanne abstained. Brian was still not back with the meeting to vote.

The matter of late charges was discussed as well as Brian's request for a short-term note. It was noted that the Association is being "back charged" for interest on invoices.

Discussion continued about Brian's temporary financial situation and request for a short-term note by which he could make payment. Bob stated he would bring his situation to the members. Brian doesn't dispute the amount.

Upon request for a vote on Lettie's matter, it was stated that a vote had taken place.

Discussion followed about what was included in the motion pertaining to late fees and other fees, what portion of interest should be attributed to Brian, etc. **Bob Franzese restated his motion and added the following: All interest and late fees imposed by contractors, all administration cost to property management company, all attorney fees attributed to costs for lien and foreclosures of Lettie's' attorney. Motion seconded by Mark Murray.**

The vote on the amended motion, including the late fees, was retaken.

**Lynn Black – aye,
Bill Shephard decided not to abstain on the retake of the vote, to change his vote to yeah, and explained why.
Susan Ross – aye
Bob Franzese – aye
Mark Murray – aye**

During additional discussion concerning litigation against Lettie, it was noted that the cost of litigation would fall on Lettie.

For the record, Lynn Black needed to leave the meeting and assigned her sister, Lee Zeller as her proxy.

D. Discussion re whether to pay for contractor to state that Lettie's fence is fine. **Mark Murray moved that the members direct Bob Franzese as President to get somebody to inspect the fence and spend that money to do so. Lee Zeller on behalf of Lynn Black seconded. Discussion. The motion passed.**

F. Bob Franzese discussed the history of the contract for monitoring the system and said the Association needs to work out a simple, straight-forward contract with the new monitor. Discussion. Bob Franzese asked for a motion for his requested contract. Discussion continued. **Bill Shephard "directed" Bob Franzese to move forward to initiate contractual negotiations and come up with a contract. Motion Passed.**

4. New Business

a. Bob Franzese discussed other issues, including contract items that were to have been included in the work but were not because the contractor was not paid and so abandoned the project after he finished the system. He said he had a contractor look at Lettie's fence and the contractor said the fence was fine. With regard to Lynn's yard, he suggested the HOA take care of these lines and repair Lynn's yard and also reimburse Lynn the \$4,000 she paid to a contractor to do a lot of the clean-up – it just isn't complete. He said he personally doesn't care about getting money, he wants his yard fixed – the walkway put back in and the grade restored (the trees will grow back). He asked for agreement that these matters are the responsibility of the HOA and the HOA will get them done.

Bill Shephard said he's uncomfortable with Lynn's allocation of amounts for "landscaping" without supporting bids or documentation. Discussion.

b. Discussion about the location of the electric line which is the line to the pump house.

c. Bob Franzese requested that the Association set a dollar amount for when something happens, he can just have it taken care of instead of discussing all the little things in the annual meeting. Discussion. **Mark Murray moved to give "him" authority to spend to "that amount" \$800.00 as a contingency fund. Val Levy seconded the motion. The motion passed.**

d. Bob Franzese said the system is not insured and this is a serious potential problem. He explained what could happen and the potential liability to the Association. He asked for permission to enter into discussion with insurance experts about this matter. It was also clarified that the Association has no insurance at all for the common elements. It was suggested that the Declarations be amended to state that the Association shall insure each of the items. Discussion. He will look into the insurance matter. He was given permission to enter into a contract, which can be ratified by the Association or canceled even after it is entered into. Discussion of liability issues. Bob Franzese proposed that the Association find out what is required in the way of training with regard to the matter of testing and that two members be trained and that the training be paid for by the Association, in order to avoid serious consequences/penalties. If the cost is prohibitive, then the Association will not do this. Discussion.

Bob Franzese moved to adjourn the meeting. Suzanne Ross seconded.

Respectfully submitted,

By: Jarmik Property Management, Inc.
Judi Balkind, HOA Manager