

**Minutes of
Annual Membership and Budget Meeting of
FALL CREEK VILLAGE HOMEOWNERS ASSOCIATION
2nd Floor Conference Room, Miramonte Building, Telluride, CO
March 17, 2006
9:30 a.m. (MST)**

The annual membership and budget meeting of the members of the Fall Creek Village Homeowners Association was held on March 17, 2006, at 9:30 a.m., in the 2nd Floor Conference Room of the Miramonte Building in Telluride, Colorado.

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

Owners Present in Person: Lynn Black, President (Lot 7), Bob Franzese, Vice President (Lot 2), Lettie Kuehn (Lot 6), and Bill Shepherd (Lot 8).

Judi Balkind, Homeowners Association Manager was also present in person.

Owners Present on Conference Call: Mark Murray (Lots 3 and 4), Brian and Greg Wohl (Lot 1).

Owner(s) Absent: Susan Ross (Lot 5).

Lynn Black announced a quorum was present and called the meeting to order.

II. Motion to Approve/Waive Notice of Meeting

Upon motion made by Bob Franzese, seconded by Greg Wohl, and passed, adequate notice of the meeting was approved.

III. Election of Directors/Officers

Lynn asked for nominations. Discussion followed. Bob Franzese said that he and Lynn have spent hundreds of hours working on the septic system project and asked for others to volunteer to help. Brian Wohl said it is difficult for those who do not reside in Telluride. He said if there is a way, he would be glad to help, but he does not live in Telluride. It was noted that the Treasurer's duties could be handled via email. Brian Wohl agreed to be nominated for Treasurer. Judi said everything is on QuickBooks and she can enter the data and pay the bills, then send him the financial statements for review on a monthly basis. **Brian was nominated as Treasurer by Lynn Black, Bob Franzese seconded. Brian Wohl was elected Treasurer.**

Judi said the Secretary is usually responsible for minutes of the meetings; however, she normally does the minutes. The Secretary would be a member of the Board. **Mark Murray accepted Lynn's nomination. Bob Franzese seconded the nomination. Mark was elected Secretary.**

Lynn was nominated by Bob Franzese to continue as President and accepted the nomination. Brian seconded the nomination. Lynn was elected President.

The officers for the coming year are:

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President (Chairman)	Lynn Black
Secretary	Mark Murray
Treasurer	Brian Wohl

IV. Old Business

A. **Installation of Septic System.** Lynn said she will put on a Yahoo account the pictures of the project (start to finish). The project is very nearly completed. The back of the shed needs to be weatherproofed yet. Nothing was stored on Brian's property; however, the property will need to be revegetated (to prevent weeds) because of the truck traffic and parking. Lynn knows someone in Dove Creek that does native grass seedlings. She is going to order some for her yard and will start some on his property to prevent noxious/invasive weeds. Brian said the part where the line was dug to the river this spring needs to be redone. Lynn said the company will be back this spring to finish a few things. There were no trees cut down going out to the river. During the tests, water ran through the system, proving that the drop in elevation was correct (and above the 100-year flood mark on the river).

[Lettie joined the meeting.]

B. Financial Review for 2005.

- Lynn explained the major unanticipated expenses during construction as follows:
 - The 6,000-gallon tank could not be retained because the video of the inside of the tank revealed about 2,000 gallons of water in the tank. That tank was left in place, crushed and covered over. The 2,000-gallon tank was then in the wrong position and they could not fit in the rest of the tanks. The 1,500-gallon tank that served as the pump station back to the leach field also had to be abandoned because "you could stick a piece of rebar through it." In other words, the entire old system was abandoned.
 - Bob said the historical information for the site said it was sand and cobbles. It was not. It was a tremendous amount of clay and extremely difficult to dig out.
 - Historical information also said that the water table was much lower than it turned out to be because water tables move. So, when they dug the holes, they had to run pumps the whole time. Lynn said when they dug the sand pit in the back of her property (about 5 feet deep); they removed the old leach field. They then found another leach field. The closer they got to the river, the water infiltration became significant. The 5'-tall tanks were half submerged in water when they put them in the ground. They did a lot of work making sure the tanks would not float. There are now five 2,000-gallon tanks. Americana did a good job with their investigation and keeping the project on schedule. Lynn said there might be enough extra capacity to assist neighbors if their systems fail in order to prevent sewage from leaking into the river. Lynn said none of the contractors would warrant the system – Bob (who has experience in this field) said most likely because of the difficulty making the site meet state requirements. They had been told by numerous people that the system would be impossible. Lynn acknowledged that the cement tanks do, over time, crumble and will need to be replaced at some point. The same is true for the sand filtration system. Bob said that when they tested the old tanks,

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the concrete in them was very thin. The new tanks are much heavier and should have a longer life. Discussion continued about how they know the tanks won't float, such as weight and depth. Lynn said the HOA must monitor tree root growth in the area. Lynn said the proposed Budget does not include ongoing operation costs for the septic system. No decision has yet been made how to handle the ongoing maintenance expenses, estimated to be about \$600.00 a month.

- Bill questioned the cost of Valley Crane's 40-ton mobile crane that was supposed to be used to place tanks, but was not used for that purpose. Lynn said the crane was used – she has pictures.
- Bill questioned Lynn referring to the single-car garage attached to her house as a “shed.” Lynn said she had a shed. The homeowners were required to replace that shed, and she had it enlarged to a garage. She is paying for the finishing in the garage and expects the homeowners to pick up the rest of the costs.

Bill questioned how Lynn intended to detail the portion above and beyond the cost originally projected for the shed, and requested documentation, stating there was no vote to approve the change and it is now included in a line-item Budget under the heading of “shed” which he thinks misrepresents what it has become. As he reads the proposed Budget, Lynn has refunded \$4,500.00 for refund for a storage shed in 2005. Now the proposed Budget shows \$39,000.00 for her single-car garage. Lynn said her property value has diminished because 1/3 of her back yard is unusable, plus the tanks take up another 1/3 of her yard. She said she will pay for the completion of the interior of the garage. The storage shed would have had several key elements that are currently in the garage, such as the second door, electrical, plumbing, etc.

Bill said she bought her property (as did the other owners) with the full knowledge that there was the possibility the septic system would have to be replaced. Bill Shepherd said he has pictures of how big the garage is. It has gone from a shed to a 26' x 14' (364 sq.ft.) garage. He reviewed the size of the garage and said the project is essentially five times larger than was required for the project. Judi Balkind stated that the storage shed was actually \$13,595.00. Lynn said that did not include the concrete, plumbing, electricity, any interior finish. Bill said a tenfold increase in a line item is pretty significant.

Bill proposed that the HOA fund the mechanical portion of the garage on a square-footage basis of the percentage of the total cost for Lynn's new garage. For example, if the garage was 420 square feet and the mechanical room was 70 square feet that would be 1/6. If the total cost of the garage was \$35,000.00, dividing the \$35,000.00 by six the HOA would be responsible for approximately \$5,833.00 and Lynn would be responsible for the rest. Bill said it was a unilateral decision by Lynn to change the title of the project from a shed to a garage, unapproved by the HOA, and plans and materials have not been approved. He said the current siding metal construction is a violation of HOA building requirements. There was a tenfold increase in the Budget's line item as a result. A garage is not a shed. The HOA is not in the business of funding personal property improvement projects.

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Bill further proposed that until a full accounting of all expenses can be provided and reviewed by the HOA/members, such proposed assessment cannot be reconciled and approved; therefore, this meeting should be reconvened at such a time as the above items can be produced to the satisfaction of all members of the HOA and at that time, the HOA can approve a modified assessment on the basis of this information. Bill said there are costs not itemized and the figures are not accurate at this time.

- Bob said Bill had made numerous misstatements. Bob said the system was never envisioned to be what it is. It was never expected that Lynn would lose as much property as she has lost. There is no way Lynn could build additional on her lot. The value of her property was diminished greatly and it was never envisioned that it would have to be this size. Bob said of the many engineers, none envisioned the system to be the size this system is.

Lynn said when she purchased her property, she understood that the system was on her property and did not have a problem with that. At the time, the technology was the leach field and she had no problem with the leach field. She could still grow grass on it. The sand filtration system or the filter systems that were originally designed take up one-third of her back yard – lost land. She cannot use the land and cannot grow anything on that land.

Bob said that if the suggestion was that the HOA evaluate Lynn's lost property, pay her for that, and do an exchange, the HOA would "come on the short end of the stick." **Bob moved that the HOA approve Lynn's garage. In a second motion, Bob moved that the HOA approve the Budget.**

Bill Shepherd said Bob had made the assumption that the current system is larger than what existed underground, but had provided no proof of this.

Bill said there is a significant change in the Budget as it was proposed to the HOA. He said he is not comfortable funding the garage because: (1) Lynn knew when she purchased and knew diligence what was there....

Judi Balkind interrupted, stating that there was a motion on the table made by Bob Franzese that the HOA approve Lynn's garage. There being no second, the motion died.

Bill Shepherd moved that "we revisit this as I have requested with a full documentation of itemization, actual title rather than shed being substituted for garage; ILC's being in the general budget, plan, engineering, etc. related to Lynn. I also feel that, you know, the building materials here we have, uh, I...I have a picture here, it's an unapproved fake log wood siding that's going to go on this ___(bleep)___ I don't think that's fair, but I'd like to make a motion that we

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investigate this properly so that we can function as an HOA since I see this as a significant potential impasse to us being able to function as a unit. We can't agree, we need to agree on what we are looking at..."

Lynn Black interrupted, stating that Bill had made his motion and asked for a second.

Mark said Lynn had not heard him second Bob's motion earlier. Judi Balkind restated Bob's motion "that the HOA approve Lynn's garage and the HOA budget as presented" and asked for a second. Mark Murray seconded the motion. There being no further discussion, upon a request for ayes, there were two ayes on the phone (Mark represents two), and Greg or Brian represents one, Bob represents one, Lynn represents one... Lynn interrupted and asked for those against to signify by saying aye. Ayes against were: Bill Shepherd.

Lettie Keuhn said, "I'm not totally against. I think that somehow we need to come to a happy medium here because, um, there's no question that the cost for the shed and the mechanical that's required in the shed is going to cost more than a simple garage. No question, but I don't know that Lynn ____...when it's all covered up, I don't know that you will have given up ____." ___Lynn Black stated "The problem is you can't cover up the sand filtration system."

Mark said, "Let me...I mean...I don't want to get into a situation where everybody is making speeches, but just let me say that the incremental cost for what, if there is any, uh, difference in cost between what Lynn has built and what was there is so insignificant in the overall picture of things and so the appreciation in value that all of us will realize by having a septic system that is not only functioning but one of the best and maybe the best along the river that there is going to benefit all of us eventually, uh, in the terms of the appreciation in the value of our property. And to me this is a silly thing to be talking about."

Bill Shepherd said, "So, your position is on this, Mark, that roughly twenty-five thousand...let's just say the shed and mechanical and concrete cost fifteen grand, we're looking at forty plus thousand. You're telling me five thousand dollars or, you know, are insignificant?"

Mark said, "It's going to be extremely insignificant in terms of the impact it's going to have on the value of the properties that are here..."

Bill Shepherd said, " _____..."

Mark continued, "...for the improved, septic system that we're going to have. Yes, I...Yes, I will say that. I think it's going to be very, very insignificant."

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Bill Shepherd said, "You're talking appreciated value, I'm talking actual cost out of my family's pocket, right now, today."

Mark said, "Well, you're talking about actual appreciation in your...in your family's pocket, too."

Bill said, "That's fine. That's...I'm not disputing the value that the new system brings. What I am disputing is the difference between a garage and a shed. What we have is a twenty-six by fourteen feet structure."

Mark said, "I've seen it. And to me, it doesn't look appreciably different than what was there. I mean I...I'm sitting here looking at it, and it just...you..."

Bill said, "A shed there was twelve by fourteen feet, no concrete base on it. You're talking about major differences. If you could look at the picture here..."

Several people interrupted stating Mark was there.

Mark said, "I am...I'm sitting looking at what we're talking about."

Several people interrupted.

Bob Franzese said, "I think we should, uh, move forward. We've had a vote..."

Bob Franzese said, "We had a motion..."

Several people interrupted. **Lynn Black stated that the motion passed.**

Judi Balkind said she has all the backing for every line item. If anyone wants to see it, she will sit down and show them every invoice and line item she has put on the Budget.

Brian thanked Judi for the offer and said the HOA appreciates the "pain" she has gone through throughout the entire process.

Bob Franzese suggested it might also be helpful if this system could be made available to people downstream who have failing systems, the HOA could generate a little revenue. Lynn Black agreed that it could offset some of the capital costs and assist with the monthly operating costs.

Bob Franzese said that having a first-class superstructure available for this subdivision will pay massive dividends. Nobody else seems to have such a structure. Lynn Black said there are already a couple houses down the lane that have significant problems. She questioned whether the state will allow the HOA to open up its service area until the HOA has at least one year's data.

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Bob Franzese said no matter what, the HOA is in a far better position now than when threats were being made of shutting down the HOA.

V. New Business

A. Proposed 2006 Budget and Dues. Judi stated that she had projected for the special assessment to come up with the \$600.00 figure. Jerry Johnson will need to monitor the system on a weekly basis and there will be other expenses. The projected cost is an average of \$600.00 a month, but there will be some expenses that are unknown at this time.

Lynn said one such expense is that the system uses a phone line in the middle of the night to call "someplace." They were going to use Lynn's phone line; however, she doesn't know for sure if they installed a separate line or if they are still going to use her line. Lynn agreed that there is not enough information available at this time to establish the operational costs on a monthly basis. She explained numerous other possible expenses and said she will talk with Jerry Johnson about the various additional expenses the HOA can expect.

Lynn said the Budget and dues will be postponed until the information is available. She will email the members with the information. Judi asked whether the members want to be billed monthly or quarterly for the operational costs for the septic system. The preference seemed to be quarterly.

B. Senate Bill 100. Senate Bill 100 is a new law that was passed last year. Judi said it deals strictly with homeowners associations to protect buyers coming into associations and to protect owners, making sure there is "transparency" to the HOA. Judi said she has attended a few classes on Senate Bill 100 to be sure the association is in compliance with the legislation. Fall Creek Village HOA already makes minutes, declarations, budgets, etc. available at any time and is in compliance with the new Senate Bill 100. She said the legislation actually seems to be more for the protection of larger associations. Lynn said she didn't think this Association is large enough to necessitate posting bylaws and declarations on a Web site; however, if problems arise, they can be resolved through email unless the law requires a meeting.

C. Special Assessments for Septic. Lynn said there are two spreadsheets: one for an \$80,000.00 assessment and one for a \$105,000.00 assessment. She said, "The \$80,000.00 assessment really doesn't make sense because we're \$21,000.00 lower than the actual expenses incurred. Brian was asked to clarify about the water system. Brian said the person who did the subdivision did not grandfather a well. The time period for grandfathering an existing well and making it a permitted well passed. So, the well for the subdivision was not properly permitted. When his wife built her house and the original septic system was installed, the existing well was within 100 feet of the leach field, so the well had to be moved. It was moved to between Mark Murray's house and Brian and Val's house. The well was dug technically as a test hole and was never permitted. Now, because the San Miguel River has an over allotment, anytime a well is permitted you have to buy augmentation equal to the amount of water you might use. Lynn said the HOA is buying it out of Trout Lake which is controlled by Public Service Company and they will only sell in 4-acre-feet increments. The HOA's engineer figured the

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HOA only needed a little over one acre foot. Lynn said she has been approached by other area homeowners who would like to join in on the use of that augmentation water. She told them to contact the HOA's attorney. No one has yet done so. She said the lease says the HOA can sell what it doesn't use, but it has to be with their consent. Lynn said it is about \$300.00 per person per year. It increases by CPI. She said the lease signed by Public Service has been sitting on their desk and she has not seen it yet. Mark Hamilton, the HOA's attorney, has not let her know yet the status of the lease. Lynn said she thinks there will be calls on the river this year, so the HOA will need the augmentation. Therefore, it is important the HOA get the lease in place. She said the \$2,500.00 cost of the lease is included in the special assessment. Attorney fees have been fairly small. The only thing left to complete the matter is the lease so expenses should not increase much.

Lynn said the \$105,000.00 assessment would leave about \$4,000.00 extra, but that is either due or will be due at the completion of the septic system. The assessments are based on conversations with Mick (Mericana's homeowner's representative) concerning what has been paid, what is outstanding, and estimates for finishing. Discussion followed about the status of the outstanding bills and when the assessment payments will be needed.

Bob Franzese moved that the HOA approve the \$105,000.00 assessment to be paid within thirty (30) days of the date of this meeting.

In response to questions, the following items were clarified:

- Judi said the \$105,000.00 includes the projected additional costs.
- The assessment would be about \$13,125.00 apiece.
- The engineer needs to come out for the final inspection. The projection was based on his last trip out which was \$4,000.00.
- Following questions about individual projected costs, the question was asked why the members are being billed for costs that have not yet been incurred. Judi explained that they used information on what they knew was still to be incurred as well as "guesstimates" from Mick who has worked on the project from the start. If necessary, an overage could be refunded. The suggestion was made to wait until all the bills are in before billing/paying an assessment. Bob Franzese, who has experience in the electrical field, said the system is quite sophisticated and he thinks the charges for the work are "too cheap."
- Landscaping expenses were questioned as being too high. Lynn said they are for Telluride Gravel to come back and straighten up down to the river, clean up the lane, leveling out her front and back yards. She thought \$6,000.00 was high for that work. The other \$5,000.00 is a guesstimate for replacement of the fence and landscaping. The fence will have to "fence out" the sand filtration system and provide a small fenced yard for her dogs, from her house to the cliff, over toward Bill Shepherd's, and back.
- Lettie asked for an explanation of the spreadsheets since she has not seen a spreadsheet like these, they don't match and she doesn't want to approve it as is. Judi explained that the only piece that is "up in the air" is the sheet "Projected Costs" of the total of \$61,000.00. All the other line items (actual 2006 through actual 2002) represent invoices for work that has already been completed. Judi continued to explain the sheets to Lettie.

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The motion (above, approving the assessment) was seconded by Mark Murray. The motion passed with Bill and Lettie opposed.

Question was raised by Bob Franzese about the “dry hydrant.” He said John Moore dug a hole and put in the hydrant. Bob Franzese said the fire department was going to test it to make sure it was functional. His insurance carrier has questioned whether the hydrant is functional. Gary Whitfield said he recognized that John did it and the fire district was responsible because John was “the head fire guy.” Bob said they were out there with a truck, but he has not heard whether it is functional. Judi will call Gary Whitfield and ask if the hydrant is functional.

Judi said anyone is welcome to come to her office and view the full accounting and background records. She can also email the QuickBooks file. All invoices that have been paid have been approved and she has backing. Mick from Americana has approved the invoices and given them to Lynn and Judi, who have reviewed them. Anything under “actual” has been approved and reviewed, and she has the proper backing and accounting background.

Bill said he just wished he had more detail about a lot of the issues brought up today – where they were occurring and what line item they were occurring under.

Bill said, “You guys have agreed to approve Lynn’s garage on the basis of hardship and giving up and this and that. The HOA is obligated to provide the services of which when I started my construction project were guaranteed or assurances were given and even permits were issued, etc. for my project. Currently, there is not a tested legal system in place for me to tie into yet and in the interim, I have had considerable expenses occurred out of pocket, in other words I have incurred hardship as a result of this project. These have added up to over \$3,800.00 worth of expenses. **I’d like to make a motion that in lieu of the HOA not being able to provide the services that they’re obligated to provide me as an HOA member, that the HOA cover my expenses. These expenses include a tank and it’s about a thousand dollars; plumbing around under my house so we could accommodate the tank is about a thousand dollars; excavation is eight hundred and some dollars; the site plan’s a hundred and fifty; and I have been subjected to having my tank pumped out about four...three to four hundred dollars roughly per time. Um, this means I’m very much on a water restriction, you know with a newborn infant, uh, my daughter, you know, we’ve never even used our washer and dryer or dishwasher, etc. in our house. Um, these are real expenses that I’ve incurred out of my pocket because this system was not in place. I’d like to make a motion that the HOA, since they are covering Lynn’s expenses for hardship, cover my expenses as they are, line item for line item, I have invoices for which comes to thirty-eight hundred doll...and twelve dollars and ninety-six cents (\$3,812.96) and I’d like to make that motion.”**

Lynn asked for a second. There was no response.

After asking whether the meetings are recorded and being assured they are, Lettie Keuhn said, “Because last year, and Bill this is where I totally differ with you...Last year when you were at the meeting, I was at the meeting, you were on your...”

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Bill attempted to speak.

Lettie Keuhn continued, "...interrupt me. You were wanting your height variance and yada ya and Bob mentioned that he thought you were going to have a hard time moving ahead because the septic system wasn't in place as far as the County was concerned."

Bill Shepherd said, "Um-hmm."

Lettie Keuhn continued, "And you said, 'I don't care, I'm going ahead anyway.' Now, I remember that really clearly..."

Bill Shepherd said, "Well..."

Lettie Keuhn continued, "... 'I don't care, I'm going ahead anyway.'"

Bill Shepherd said, "I, uh, ___ at that point, let's be clear, when I **choose** to purchase the property, my due diligence was tied to Mike Havens approving a septic system. I didn't close until that occurred. Um, he did not release the funds for my construction project until after the bids were sent out in February. At that time, ..."

Lettie Keuhn asked, "How many times have you built the houses on any kind of construction?"

Bill Shepherd said, "At that time,...let me explain here, the ___ County all ___ including the Planning Department, the County Environmental Department, and the Building Department, and _____ environmental health ___ wetland **setback?** All chose to issue, to allow me to go forward with my project on the basis that the HOA had the funds and on the basis that septic system project went out. Um, since that time, I have incurred numerous County Commissioner meetings as we came into the fall and it was clear that septic system was not going to be in place. Um, the HOA had made assurances to the County Commissioners and gave a timeline for the construction of this which still hasn't been met. Look outside now. Um, four...I've...I've been ___ four County Commissioner work sessions and ___ County Commissioner meetings ___ solve this issue. At the meeting on February first of 2006, the Board of County Commissioners made a decision to issue an unconditional certificate of occupancy for me due to the hardship that I've undertaken and projected to, they've reissued it, a certificate of occupancy which I'm reading here due to the need to obtain permanent financing with the only outstanding issue is to hook up to the residence and the septic system. Um, currently the residence is being served by a holding tank that must be pumped out regularly. Um, as it stands now, the community system Mike Havens has said I can connect to it, but it's not a legal _____, although the Commissioners did not apply a condition to my certificate of occupancy, they have required me to hook up by April thirtieth and I don't know if that's going to be possible or not to a legal system. Meantime, I've incurred significant expenses ___ County Building Department, the Commissioners have hashed out several things along the way, it's taken them well over a couple hundred hours of my time and, uh, I've incurred significant expenses, I've had a loss of an interest rate that I had locked in on my financing which I wasn't able to close because I didn't have a certificate of occupancy. All I'm

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asking for is that the HOA, for hardship reasons, I've incurred as a result of this system being delayed continually supposed to be in by a certain time, I was required to provide such services as pumping, the plumbing, the excavation and site plan."

Bob Franzese asked if there was a motion and Lynn said the motion had died for lack of a second. Lynn asked again for a second and there was no response.

Mark moved that the meeting be adjourned. The motion passed and the meeting was adjourned.

Respectfully submitted,

Judi Balkind, Property Manager