

The Views of Asheville Homeowners' Annual Meeting

December 4, 2014

Minutes

The meeting was called to order by HOA President Richard Green at 7:04 p.m.

Roll Call: Homeowners in attendance: Richard and Judy Green; Paul and Diane Summey; Joanie and Mark Yungbluth; Diane and Neil Altman; Bill and Chandra Uhle; Joe Bonamarte and Jill Sagarin; Dan and Eva Steward; Mike and Nancy Osborne; Bill and Holly Reynolds; and Gerry and Margaret Stanley.

Homeowners represented by their proxies: Daniel and Amber Baseman; Al and Kay Patel; Margaret Lancaster; Linda Jorgensen; Jo and Steve Betso; Linda Landwirth; Jay and Tess McDermott; Beth and Skip Garrett; Bobbie Greenebaum; Jane Robison. (Quorum established.)

Proof of Notice of Meeting: Confirmed by Secretary Diane Summey and homeowners in attendance.

Reading of Minutes of Preceding Meeting: Waived

Incidental news: Greeted new neighbors Mark and Joanie Yungbluth; announced Curley Greenebaum passed away in September.

Selection of New Directors: Richard Green, Bill Uhle, Diane Summey were nominated and approved by a unanimous vote to serve another year.

Reports of Officers/ Unfinished Business: Additional street parking considered, but would be too costly and would benefit only a few homeowners; traffic mirror on curve near 66 Park Ave was not acceptable to Park Ave HOA, instead they trimmed pine trees and removed some other trees/bushes to open the view for drivers at the curve; homeowners were reminded to not trim trees on The Views or Park Ave common land without HOA coordination and approval; Bill Uhle, Richard Green and Gregg Kroman thanked for their efforts in getting Views' website up and running.

Jill Sagarin presented the 2014 year-end financial review and requested we change due date for 2015 dues from Jan. 1 to Feb. 1 so that all dues would be collected in the same year. Homeowners agreed. However, it must be voted on after a 10-day notice to homeowners of proposed change. Jill will send out 2015

due's notice at end of December (so that no one sends 2015 dues during 2014). Notice of the proposed change and a vote will be accomplished via email.

Reports of Committees: No committees for several years. However, Joanie Alston volunteered to head Landscape Committee and Nancy Osborne volunteered to help. Joanie offered to contact Park Ave HOA president in order to work with their landscape committee as well.

New Business:

1) Legal opinion on the procedures and votes required to change/amend the HOA governing documents (see attached info paper). Board hired Robert Dungan, of the Dungan Law Firm, and solicited firm's opinion on issues related to the storm water system. During the review of the HOA documents Dungan determined that the current CC&Rs restrict HOA until 2020 to 100% affirmative voter to effect changes to CC&Rs and as such, the changes to the CC&Rs approved by at least 51% of homeowners in 2013 and 2014 (Landscape Guidelines; Parking of Travel Trailers, etc.; and Walls and Fences, etc.) were not valid. Dungan suggested that the content of the existing CC&R changes were not actually changes to the CC&Rs but instead were implementation and enforcement guidance which can be promulgated by the Board issuing a "Policy Statement" (which does not require a homeowners vote to enact, but can be changed or rescinded by a majority vote of the homeowners). Homeowners offered several statements in opposition to the need for a 100% affirmative vote, but there was no objection to setting aside the three existing changes and enacting HOA Policies in their place.

Eva Steward proposed the following motion, which was seconded, but not voted on due to the requirement for a 10-day notice to homeowners and to give the Board time to determine the legal consequences of the motion:

A majority vote of at least 51% is required of all lot Owners needed to modify, add, and/or remove the existing bylaws, covenants, conditions, and restrictions of The Views of Asheville community.

Alternatively, the Views HOA could adopt the NC Planned Community Act (NCPCA) with a 67% affirmative vote. Once adopted, the CC&Rs could then be changed or amended with a 67% affirmative vote. Long term, the Board needs to study NCPCA and encourages homeowners to do the same to see whether this is a good fit for Views' HOA. Documents are available on Views website.

2) Storm water drainage system (see attached info paper). Several storm water drainage issues were identified during 2014. Approximately 20% of the system lies within the Street Right of way (25 feet from the street centerline) and is the responsibility of the City, approximately 15% of the system lies on

private lots and is the responsibility of the lot owner, and the rest lies within HOA common land and is the responsibility of the HOA. There was a general consensus that the system benefits all the residents and as such the HOA should take some form of responsibility for all parts of the system that are not the responsibility of the City of Asheville. However, more than 1 owner expressed the view that the HOA should only be responsible for maintaining the system and not for the repair on private property of any discovered deficiency that existed prior to the HOA assuming maintenance responsibility. Any such discovered deficiency that warranted repair rather than maintenance should be the responsibility of the property owner. Discussion topics included specifics on the problems on Lot 106; whether homeowners could convey land that contained storm water system to the HOA, and whether the Board could in a Policy Statement make the storm water system part of the “common elements” that are already covered in CC&Rs, since good maintenance of storm water system falls under idea of “the common good.” Bill Reynolds mentioned the possibility of HOA applying for a grant from the city after an assessment is completed to help defray costs for any necessary repairs to the existing system.

3) 2015 Budget. The 2015 budget was presented, voted on and accepted (see attached). The budget includes a line item for \$3500 to hire Landworks Engineering to visually investigate the condition of the entire storm water system and report any observed problems, areas of concern, or where the infrastructure does not comply with the City standards. The use of a non-competitive contract was unanimously approved. Also, \$1000 was added as miscellaneous expenses and dues will remain at \$400/year for 2015.

4) The HOA attorney will be engaged to determine the feasibility and consequences of the items discussed in (1) and (2) above.

Meeting adjourned at 9:30 pm.

Attachments:

1. Info Paper: Governing Documents (as distributed prior to meeting)
2. Info Paper: Stormwater Drainage System (as distributed prior to meeting)
3. CY2015 Budget (as approved)
4. CY2014 Income and Expense Sheet (final as of 31 Dec 2014)
5. CY2014 Income Statement (final as of 31 Dec 2014)
6. CY2014 Expense Statement (final as of 31 Dec 2014)

Diane Summey, Secretary/Treasurer

**Attachment 1: Information Paper:
Requirements to change/amend The Views of Asheville (VOA) Governing Documents**

- The Dungan Law Firm has been engaged to replace previous HOA attorney, who retired
 - Robert Dungan and his associates have extensive expertise representing NC HOAs
 - Legal findings on requirements to change/amend VOA Governing Documents are as follows
- Declaration of Covenants, Conditions and Restrictions for the Pinnacle Phase 3 (the “Declaration”)
 - 33. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the 31st day of December, 2020, at which time these covenants shall be automatically extended for successive periods of ten (10) years unless by a vote of those persons then owning a majority of the lots in the Subdivision it is agreed to change these covenants in whole or in part.
 - Until 31 Dec 2020, changes/amendments require 100% affirmative vote of all owners
 - After 31 Dec 2020, changes/amendments require a majority vote
- Bylaws of The Views of Asheville Homeowners Association, Inc.
 - Art IX: These Bylaws may be amended by the affirmative vote of a Majority of owners
 - Applies only to the Bylaws
- Chapter 47F, NC Planned Community Act (NC PCA)
 - Reconfirmed that VOA HOA is a pre-1999 HOA, thus the NC PCA does not, in its entirety, apply
 - Per Section 47F-102(c), Section 47F-2-117, Amendment of Declaration, applies to pre-1999 HOAs unless the articles of incorporation or the declaration expressly provides to the contrary
 - Legal opinion is that the Term wording above in the Declaration provides to the contrary
 - However, pre-1999 HOAs can adopt the NC PCA with a 67% affirmative vote of owners
 - If adopted, “Declaration” can be changed/amended with a 67% affirmative vote of owners
- HOA Policy Documents
 - Provides guidance on implementation of the rules and regulations in the “Declaration”
 - Drafted and Promulgated by the Board of Directors (owners vote not required to enact)
 - Can be changed or rescinded by a majority vote of the owners
- How deal with the three existing changes to the Declaration?
 - Three changes were previously passed, but not IAW the legalities described above, and they were never officially recorded at Buncombe County (as required by law)
 - The three changes are: #1 Landscaping Guidelines, #2 Travel Trailers, Campers, Boats, and Recreational Vehicles, and #3 Walls, Fences, and Hedges
 - All three changes fit the above definition of a HOA Policy Document, as they provide clarifying guidance on how the HOA will implement/enforce the rules and regulations in the Declaration
- Solutions
 - Near Term: Board of Directors at the Annual Meeting will
 - Set aside the three existing changes to the Declaration
 - Enact The Views of Asheville HOA Policies (#1, #2, and #3)
 - Long Term: Board of Directors during 2015 will
 - Seek volunteers to assist the Board in reviewing all details of the NC PCA
 - Inform the owners of the pros and cons of voting to adopt the NC PCA in its entirety
 - If a vote to adopt NC PCA passes, then form a committee to rewrite the Declaration
 - Fix “developer” language and address Stormwater System responsibilities

Attachment 2: Information Paper: The Views of Asheville (VOA) Stormwater Drainage System

- Stormwater Drainage System Facts
 - System includes 11 catch basins along Distant View Drive (DVD), high-density polyethylene corrugated plastic underground drainage pipes, concrete junction boxes, a drainage ditch behind most homes, and a retaining basin
 - Approximately 2,650 feet of underground pipe, 950 feet of ditches, 3600 sqft retaining basin
 - Parts of the system are located on private lots
 - Lot 76 driveway, Lot 82, Lot 84, Lot 91, Lot 95, Lot 102, Lot 104, and Lot 106
 - The Stormwater Drainage System is beneficial to all Lot Owners, as any erosion resulting from a system problem could affect all Lots (above and below) within the Subdivision
 - Most homeowners policies do not cover Mudslides due to stormwater erosion unless a special flood policy is purchased at an additional cost

- Homeowners and The Board have discovered several problems with the Stormwater System
 - Pipe from Catch basin #10 (near Lot 111) is buried and not connected into the system
 - No ditch exists behind Lot 110, Lot 108, and a portion of Lot 106, creating a potential for erosion
 - Improper connection of two pipes on Lot 106
 - Standpipe within ditch on Lot 104 is obstructed (results in the forming of a pond forming during heavy rains)
 - Standpipe within ditch on HOA land behind Lot 99 is low and frequently clogs with debris
 - Erosion discovered within a small section of the retaining pond behind Lot 77

- Legal opinion on who is responsible for the maintaining and fixing the Stormwater System
 - City of Asheville is responsible for parts of the Stormwater System that are within DVD and the street right-of-way
 - Right of Way extends twenty five (25) feet from the center of Distant View Drive
 - City also responsible for any parts of the system within “a dedicated storm water easement”
 - However, a “dedicated easement” was not granted nor recorded, even though a VOA Stormwater As-Built Survey was accomplished, delivered to, and accepted by the City
 - VOA HOA is responsible for parts of the Stormwater System that are within HOA common land
 - Owners are responsible for parts of the Stormwater System that are within a private lot

- Why is the HOA not responsible for parts of the system within a private lot?
 - Declaration of Covenants, Conditions, and Restrictions does not allow as it is clear that the HOA can only maintain “common elements”
 - 25. “...The Homeowners Association has been created for the purpose of (1) providing for the enforcement of these restrictions; and, (2) providing for maintenance of the common elements of the Subdivision.”
 - 1g. “Common elements shall mean all property included within the Development Area which is not part of a lot ... “
 - While easements in general are addressed in 10. Easements, nothing was found in the Declaration that specifically addresses responsibilities for the Stormwater Drainage System

- Board of Directors recommends the following
 - Perform a professional engineering examination of the entire stormwater system at cost of \$3500 to assess health of the system and the adequacy of current maintenance practices
 - Disseminate final report to owners, then engage in further discussion as to future actions

Attachment 3:

**The Views of Asheville Homeowners Association
Budget for Calendar Year 2015 (as approved)**

Landscaping	\$7,100
Indigenous Design	\$6,100
Bi Weekly Mow, Edge, Blow	\$3,200
Bed Maintenance	\$1,700
Culvert cleaning (2x per year + as needed)	\$1,200
Arborist - Pest Control, Invasive Species	\$1,000
Stormwater System	\$4,775
City of Asheville Tax	\$1,275
Landworks Engineering - System Report	\$3,500
Legal, Regulatory and Insurance	\$1,225
Tax Prep (Dixon Hughes)	\$275
Legal Advice (Dungan Law)	\$500
Insurance	\$450
Other Expenses	<u>\$1,210</u>
HOA Website	\$135
Postage/Supplies	\$75
Miscellaneous	\$1,000
Total Budget for 2015	\$14,310

Attachment 4:

**THE VIEWS OF ASHEVILLE HOA
2014 INCOME & EXPENSE SHEET**

1/1/14 BEGINNING BALANCE:				<u>\$19,687.17</u>
		<u>2013</u>	<u>2013</u>	
		<u>SUB-TOTAL</u>	<u>TOTAL</u>	
			<u>2014</u>	<u>2014</u>
			<u>SUB-TOTAL</u>	<u>TOTAL</u>
INCOME				
Dues Paid	\$11,600.00		\$6,200.00	
Non-dues	\$43.20		\$47.60	
<u>TOTAL INCOME</u>			<u>\$11,643.20</u>	<u>\$6,247.60</u>
EXPENSES				
Legal/Acct./Banking		\$275.00		\$620.00
Dungan Law Firm	\$0.00		\$345.00	
Dixon Hughes	\$275.00		\$275.00	
Landscaping		\$7,068.00		\$4,724.50
Indigenous Design	\$6,158.00		\$3,150.00	
Bed Maintenance			\$1,574.50	
View Preservation Consult	\$120.00		\$0.00	
Arborist	\$790.00		\$0.00	
Stormwater		\$898.56		\$2,187.28
Indigenous Design	\$0.00		\$970.00	
City of Asheville	\$898.56		\$1,217.28	
Insurance		\$400.00		\$450.00
Nationwide	\$400.00		\$450.00	
Misc.		\$288.51		\$81.88
Postage	\$20.45		\$0.00	
Custom Wood Design	\$145.00		\$0.00	
Postage (Diane Summey)	123.06		\$13.00	
Website (William Uhle)	\$0.00		\$59.88	
Asheville Savings Bank	\$0.00		\$9.00	
<u>TOTAL EXPENSES</u>			<u>\$8,930.07</u>	<u>\$8,063.66</u>
Actual account balance				\$17,871.11
12/31/2014 ENDING BALANCE				\$17,871.11

Attachment 5:

THE VIEWS OF ASHEVILLE HOA 2014 INCOME STATEMENT	
Dues	
2014 Dues paid in 2013	\$5,400.00
2014 Dues paid in 2014	\$6,200.00
TOTAL 2014 DUES	\$11,600.00
Other Income	
Asheville Savings Bank	\$47.60
TOTAL NON-DUES	\$47.60
TOTAL INCOME	\$11,647.60

Attachment 6:

The View of Asheville HOA 2014 Expense Statement			
PAYEE	AMOUNT	DATE PD.	COMMENT
LANDSCAPING			
indigendous Design	\$225.00	01/02/2014	12/2/2013 pruning
indigendous Design	\$840.00	03/10/2014	Mulch, culvert cleaning
indigendous Design	\$453.50	04/29/2014	Maintenance
Indigendous Design	\$618.50	06/17/2014	5/5, 5/19, 5/29, bed maintenance
Indigendous Design	\$453.50	07/03/2014	6/10, 6/20, bed maintenance
Indigendous Design	\$618.50	08/02/2014	7/1, 7/12, 7/29, bed maintenance
Indigendous Design	\$989.75	09/04/2014	8/5, 8/15, 8/27, bed maintenance, culvert
Indigendous Design	\$453.50	11/04/2014	9/9, 9/26, bed maintenance
Indigendous Design	\$862.25	11/20/2014	10/8, 10/30, bed maintenance, clean drainage ditch
Indigendous Design	\$180.00	12/19/2014	12/16 clean-out
TOTAL LANDSCAPING	\$5,694.50		
LEGAL/ACCOUNTING/BANKING			
Dixon Hughes	\$275.00	03/11/2014	2013 tax prep
Dungan Law Firm	\$345.00	10/07/2014	August representation
TOTAL LEGAL/ACCOUNTING/BANKING	\$620.00		
TAXES/FEES			
City of Asheville	\$449.28	06/22/2014	Stormwater
City of Asheville	\$768.00	11/22/2014	Stormwater
TOTAL TAXES/FEES	\$1,217.28		
INSURANCE			
Nationwide	\$450.00	07/14/2014	Liability, D&O insurance
TOTAL INSURANCE	\$450.00		
MISC.			
Asheville Savings Bank	\$9.00	08/27/2014	Deposit Ticket fee
Diane Summey	\$13.00	11/20/2014	Postage
William Uhle	\$59.88	05/25/2014	HOA website hosting
TOTAL MISC.	\$81.88		
TOTAL EXPENSES	\$8,063.66		