

Grants Mountain Annual POA Meeting Minutes May 19, 2012

Welcome

05 min

- Stephen Amsbary, President, called the meeting to order. The meeting venue was changed because Bill Hawkins is no longer a member of the Episcopal Church. This facility only cost \$25 more. The money goes towards children's programs.

Secretary Report

05 min

- Minutes from the previous meeting were accepted as written.
- Chris Amsbary, POA Member, is taking notes today because Joan Conway, Board Secretary, was not present at the meeting.

Treasurer Report

10 min

- Marie Biggs shared the budget report as of April 30, 2012 (attached to these minutes)
- Marie shared current account balances as follows:
 - ING Direct Savings: \$14,060.44
 - ING Emergency Fund: \$20,870.18
 - Fifth Third Bank (checking): \$24,631.53
- Deposits total \$250.00 which were POA dues for Lot 23
- Disbursements total \$1,059.82 as follows:
 - \$1,000 to Grindstaff & Son for the removal of 10 dead trees within 15' of right-of-way of GM roadway; \$14.85 for postage to mail 13 statements for outstanding 2011/12 POA dues and a book of stamps to mail 2012/13 POA invoices; and \$44.97 for monthly auto draft of Duke Energy bills
- Unbudgeted items include for FY 7/1/2011 – 6/30/2012
 - *Assessment Income & Other Income from sale of lot 67* in November 2011. The lot that was sold with a realized gain of \$27,133.27 which incurred an income tax liability of \$5,112 that was not budgeted. The GM POA has never had a tax liability before because there has never been a property sale. Although our POA dues and assessment income are exempt from Federal and State income taxes, realized gains from the sale of property are not tax exempt income. The tax rate is 15% for Federal and 6.9% for NC based on our YTD income as of 12/31/11.
 - The POA owns Lot 39; it is recorded on the Balance Sheet at \$8,000 – equal to the 2008 paving assessment for which it was received as payment from the previous lot owner. If this is sold at a gain, the POA will have another tax liability. This should be included as a budgeted expense in the new fiscal year.
 - The POA is required to send Form 1099-Miscellaneous to all independent contractors and attorneys for whom we pay \$600 or more in a calendar year. This was not done for any tax year prior to 2011. We are in compliance for this past tax year and we should be for all future tax years. This new precedent was set with our contractors.
 - *Bad debt write offs* for bankrupt property owners (lots 1 and 6) were also an unbudgeted expense this fiscal year. Currently, the board is researching options for

collections based on each lot owner's personal financial situation. As of 5/18/12, neither property's deed has been transferred into their lender's name. There is \$1,152.74 of bad debt attributed to lots 1 and 6. Until these lots transfer to their lender, we cannot begin to collect any POA dues.

- There are 13 owners who have not paid their annual dues which are due in June.
- Benz still owes \$10,891.61 (there is a judgment filed against them)
- Fortune owes \$1,595.25 (there is a judgment filed against them); this does not include current year interest which will be charged with the new POA annual bill on July 1, 2012
- Rich Messner asked about the taxes that were paid. Marie explained there are two forms that could be submitted; a short form which incurs a 30% tax and a long form (corporate return) which is based on overall income, including POA dues, with a 15% tax rate. Both tax returns were prepared; the POA submitted the long corporate form, which showed the least amount of tax due. This form does not exempt any tax income.
- Marie explained the assessment income from the sale of lot 67 was placed into the ING emergency fund. The remaining profit for the funds stayed in the general fund until the POA determines what to do with the money. A suggestion was made to move the remaining profit into a money market or CD, rather than keeping it in checking.
- The Treasurer's report was accepted as written and read to the attendees. (Motion made by Steve Whisenant; seconded by Bob Hayden; approved unanimously)
- Annual POA invoices will be sent in June.

Treasurer & Secretary nomination & vote

05 min

- Stephen explained that Marie Biggs is moving to Virginia and that Joan Conway is moving to Florida and has their house for sale. Thus, 2 board vacancies are open.
- Phyllis Howell has offered to be the Treasurer. She was unanimously elected Treasurer by those present at the meeting.
- Stephen asked for volunteers for the Secretary position. There were no volunteers; the board will not have a secretary going forward.

Building guideline

10 min

Requirement for patching the road

A route map from Duke Energy was shared with people at the meeting. The map shows the side of the road where power facilities are buried. If power is on the other side of the road from your lot, an owner will need to cut into the road to bring power to his or her lot. Owners are responsible for road repairs once the power is installed. Marie read the building standard amendment as follows:

“Utility line installation which causes the need for GM road repair is the responsibility of the lot owner. Road paving must meet GM POA Board approval as to the original specifications for rolled 2 inch composite asphalt. Road repair must be completed within 60 days of utility line installation unless a waiver is received from the GM POA stating otherwise.”

The updated standard will be posted on the website. (NOTE: Joel Carley has agreed to clean-up the GM website)

Marie explained the cost for this type of repair in front of her lot was \$600.00.

Security updates

05 min

- During the past several months, there have been break-ins in our community, raising security concerns.
- Peyton Miller contacted the Sheriff's Department about patrolling our community. We provided 5 remote controls for the gate as requested by the Sheriff's Dept. (one for each patrol car). After the controllers were provided, no one was patrolling the mountain. Peyton inquired about this, and Captain Chris, who is over our area, followed-up with Peyton and agreed to have a patrol car tour once a week. Please keep your eyes out for Sheriff patrol cars.
- Peyton also purchased an infrared hunting camera to mount on the inside of the gate. It will take pictures of a car and its license plate as it enters the gate. The camera holds 32G of photos. A security box was purchased which will be padlocked to protect the camera. If there is a break-in, the camera time stamps hours and dates on the photo. The board will monitor the camera. The camera will be mounted on the back side of the stone entrance on the left side so it is not obvious from outside the gate entrance. This will give us documentation of who is entering our community in the event of further break-in activity.

Road paving issue status & vote

30 min

- Kessel Engineering prepared a quote for an engineering assessment on the quality of the road. Maymead and Apac (paving contractors) were going to come the next day to evaluate the road and prepare a quote to repair the roadway. Both the lawyer and engineering company suggested we have an engineering assessment done before paving companies visit to give a quote to repair the road. The engineering company gave the POA the names of two attorneys who specialize in paving litigation. An update on the Paving Issue was shared with attendees which outlines the anticipated expenses.
- The board wants to confront the contractor who paved our roads, Southeast Paving, with an Engineering Report to try to settle road repairs out of court. The paver did not meet all the standards that were set in the contract (e.g. 2 inches of rolled asphalt) and is in violation of the contract. The POA will have an engineer follow any paver who does repairs to ensure the work is being done correctly and to specifications.
- Paving quotes do not cost the community anything. If Southeast Paving will not work with us out of court, the POA may pursue litigation through court. The expenses for litigation will be determined if Southeast Paving has an insurance policy for workmanship. If an insurance company is involved, the litigation could cost up to \$40K. Otherwise, litigation is expected to cost \$5K - \$10K.
- The board would like to get an engineering report so we know what is really wrong with our road. The board wants to spend approximately \$4,500 for an engineering assessment focused on the problems with our road and approximately \$500 with an attorney to review an out-of-court settlement document. The Board asked for approval to spend \$6,000 of funds that were set aside for the road to get an engineering report and consult with an attorney. Lawyers have advised us that we will go nowhere without an engineering report. The POA knows portions

of our road were paved with less than 2 inches. When the engineers toured the road to develop the quote for the engineering evaluation, they explained: divots in the road are caused by inadequate compaction of the roadbed foundation, or where the foundation is giving away because something is rotting underneath the roadway, or because the asphalt is giving away; parallel tears are because people are braking and the asphalt is too thin and the asphalt is being torn apart; and waves were caused when the paver was adjusting the thickness of the road. The engineer said it should have taken over a week to pave our roads properly because a paver cannot roll and compress 2 inches of asphalt on 6 miles of road in a few days. The quote for a thorough assessment, including foundation work, was \$13,000. We are only seeking a report that focuses on road problems. Without the engineering report, we cannot proceed with potential litigation. The engineer also explained that we need to fix the road because the cracks will allow water under the road, and freeze-thaw cycles will continue to degrade the roads.

- The engineer will document where there are problems. We do not know what it will cost to repair the road. Pavers would prefer to have an engineering report to determine how to repair the road. Chip and seal, an alternative that was discussed, only works if you do not have cracks in the road. Since our road has cracks, the engineer explained this is not a good solution.
- Joel said he did not like Kessel Engineering because he thought they charged too much for their evaluation when the road was being paved. Stephen explained that two other engineering firms were consulted to provide a quote for an engineering report; they were both significantly more expensive.
- Bill Hawkins said he would rather see \$4,500 go towards repair of road, rather than spending money on an engineering report.
- Two attorneys were consulted that have experience with paving litigation. They were both recommended by Kessel Engineering.
- Rich Messner asked about timelines. Stephan explained that if there is no insurance company involved, and the engineering report shows excessive problems, the court case should not take too long if litigation is required. If an insurance company is involved (because the paver has workmanship insurance), litigation will drag on because the insurance company will try to 'wear us down'.
- Walt Eastwood said that failure to perform due diligence was why we have problems with our roads now. He said that he thought getting an engineering report was a good idea.
- Stephen explained that all the attorneys that were consulted said an engineering report is critical. Paver quotes and professional opinions are not viewed as expert sources in court; an engineering report will have higher credibility in a litigation case.
- The attorney's name is Ron Anderson out of Asheville. He is recommending we proceed with the engineering report. Marie Biggs researched Southeast Paving's assets and discovered they have \$379,579 in recorded assets. The attorney advised the board that anyone who tried to declare bankruptcy in the face of litigation is committing fraud and is facing serious charges.

- The engineering report is a fixed bid contract.
- A motion made to spend up to \$6,000 to get an engineering report and attorney consultation to review an out of court settlement. The attorney suggested the POA pursue Southeast Paving on its own first to save money. If that attempt is not successful, we will follow up with a letter from the attorney.
- Bob Hayden asked if we will continue to make patches/repairs that are needed. Stephen indicated necessary repairs will be made based on the budget.
- Walt Eastwood made a motion to spend a maximum of \$6,000 to obtain an engineering report and a legal opinion to see if we can settle the case out of court. Steve Whisenant seconded the motion. There were ten in favor of the motion. Opposed were Hawkins, Carley and McCready (voted by proxy through Carley). The motion passed and the board will initiate action. The board will report back to the membership on the status of activities.

Member request - Pisgah View Cul-de-sac change

15 min

- Handouts were shared with the attendees which included legal documents that needed to be signed and copies of how Kelly Combes would reduce the size of the cul-de-sac. Kelly Combes explained his house was started by the community developer, Landstar. When they bought the house, the drawing that was shared with them looked fine. Kelly did not have any additional surveys done when they purchased the house. When the paving was being done, Kelly discovered the easement was 30 feet from the center, and their garage and front porch encroached into the cul-de-sac easement. An attorney suggested they get lots 16 and 17 (other lots on the cul-de-sac) to reduce the easement through a simple agreement. Sam Scott and Joe Summers agreed to reduce the easement of the cul-de-sac to 15 ft from center as the rest of the road. Kelly recently had a survey done, and was told by the surveyor that the cul-de-sac must be a minimum of 45 feet to allow a fire truck to turn around. Kelly had a preliminary drawing of the proposed cul-de-sac (this drawing needs to be updated). Two legal documents must be signed by the other two cul-de-sac lot owners and the POA President; one is for the Combes' garage to violate the roadway right of way, and one is to reduce the cul-de-sac size from 60' width to 45' width.
- Bill Hawkins explained that he remembered the issues differently. When Bill was on the board, Joe Summers raised an issue about the cul-de-sac because his contractors needed a place to park. This led to the next step, which was Joel Carley (a board member at the time) hiring Suttles to perform a survey on the cul-de-sac. After the survey, a meeting was held between Joe Summers, Joel Carley, Kelly Combes and Bill Hawkins, and there was an informal discussion about moving the cul-de-sac. Joe Summers offered to take care of the grading required on Sam Scotts lot to move the cul-de-sac. Then, Joe Summers came to Bill and said "I'm going to be a good neighbor so I'm not going to push this." Bill and Joel explained the issue to an attorney; he advised the board not get involved in the issue. Joel met with Kelly and Joan following that report.
- Kelly said he wants to reduce the existing cul-de-sac to 45 feet in diameter. Kelly said he has confirmed this is acceptable with the fire department. The POA is involved because the right

of way belongs to the POA, according to a legal description about our road. The right-of-way must be moved or rescinded.

- A concern was raised by Bill Hawkins and Chris Amsbary that other owners on Pisgah View may want to build on their lots someday, and that the smaller cul-de-sac may present challenges for their contractors and delivery trucks. Kelly said he has not talked with other owners on Pisgah View about his request.
- Joel Carley raised the issue that a 45 foot diameter cul-de-sac using the surveyor's center pin as a point of reference, ends in the middle of a mountain on the Scott lot, which could make the POA accountable to provide the cul-de-sac.
- Kelly explained he is not asking the road property lines to change, he is only asking the road right of way easement be changed. Normally, the road right of way is 15 ft from the center of the road for straight roadway sections. He is proposing the total easement width be 45 feet.
- A motion was made to:
 - Change the easement width to 45 ft diameter based on the cul-de-sac center pin;
 - Provide a variance for the garage to violate the right of way setback;
 - Update the plat map;
 - Document and confirm the attorney's counsel which indicated that the only people who are impacted are those who are adjacent to the cul-de-sac;
 - The property owners on the cul-de-sac must agree to this action.
- A vote was taken; those in favor were: Carley, Robinson, Miller, Howells, and Hayden. No one opposed, the remaining attendees abstained. The motion to proceed with the request passed with 5 votes, with the understanding that other owners on Pisgah View did not have an opportunity to vote because they were not present at the meeting.

Review details of community work party

05 min

- Stephen said that stain, buckets and brushes were available for those who have volunteered to help the community with painting fences. Please meet at the gate. Lynn Miller has purchased some plants to help beautify the T.

Open discussion

10 min

- Rich Messner asked about a budget for the next fiscal year. Stephan agreed the board will prepare a 2012-13 budget and share it with membership.
- Rich asked if anything was done about the erosion at the top of the mountain on the property that is owned by Crown Castle. A complaint letter was sent to Crown Castle; they did not respond. The board will continue to try to reach Crown Castle about the continuing erosion which is creating deep ruts and eroding into our drainage ditches and blocking them.
- Rich Messner asked who reviews building plans. The Vice-President, Crystal Ledbetter, explained she was the contact.

- Stephen thanked the community members who have helped with volunteering with community maintenance, including the Carleys, Messners, Ledbetters, and the Garden Club (Lynn Miller and Linda Tadlock). He thanked them for their help with removing fallen trees from the road, gate repairs and beautification.
- Crystal Ledbetter reviewed information about a new county covenant for gated communities. (A copy was provided to meeting attendees.) A county meeting will be held June 27 at 7PM to discuss the gated community ordinance for those who are interested. Our community will be grandfathered. Stephen asked to get a copy of the key for the gate. Joel Carley has the only copy. Stephen will get the key from Joel so copies can be made.

Adjourn

- A community dinner will be served about 6PM at the Ambarly's house. A motion was made to adjourn the meeting.

Respectfully submitted,

Chris Amsbary, POA Member