

From: **Gerard J Tummers** [tjtummers@icloud.com](mailto:tjtummers@icloud.com)  
Subject: Consultation with Jeannette Tysinger re. units 34, 36 & 38  
Date: June 6, 2017 at 2:48 PM

To: Joe Abounader [jabounader@charter.net](mailto:jabounader@charter.net), Harry Buck [hhbuck37@gmail.com](mailto:hhbuck37@gmail.com), Paul Kelley [kelley.paul@rocketmail.com](mailto:kelley.paul@rocketmail.com),  
Tom & Marianne Simonson [algeetom@aol.com](mailto:algeetom@aol.com), Angela Webb [aw3angela@aol.com](mailto:aw3angela@aol.com)

GT

Joe Abounader and I met with Jeannette Smith Tysinger, attorney with Hunter, Smith & Davis LLP on June 5, 2017 at her office to explore ways to bring the monthly fees for units # 34, 36 and 38 more in line with the actual cost for maintaining these units in our Association. A short outline of the problem was presented to the attorney and a copy is attached. The attorney's opinion is summarized as follows:

1. Chances of amending the "Settlement Agreement" (court case # 15010), without consent of the 3 unit owners, are 50/50, even though she thinks we have a solid case. The simple reason is that we never petitioned the Court for clarification of the 50% stipulation for the last 22+ years.  
If we decide to go to Court and the Chancellor rules in our favor it is still very likely, that the Court will exempt the current owners from an increase in their fee structure, but would eliminate the 50% stipulation with ownership transfer.  
Attorneys fees for Court proceedings are likely to run \$10,000 plus.
2. Short of going to Court we could offer the current owners of these 3 units the same deal the Court might offer them: agree to amending the "Settlement Agreement" (i.e. eliminate the 50% stipulation) in return for an extension of the 50% stipulation until the ownership of these 3 units is transferred. If all they agree to this settlement we would have agreements drawn up for each of these 3 units, and have them recorded.
3. Under SPECIAL PROVISIONS, paragraph 5, page 16 of the "Settlement Agreement" the Association is responsible for the payment of any unpaid portion of an insurance claim for these 3 units. This does not mean, that the Association is liable for the "Deductible" associated with insurance claims filed by these 3 units.

If we decide not to pursue the elimination of the 50% stipulation in the "Settlement Agreement" we need to remember, that the only way units #34, 36 and 38 will pay for items like drive- and walkway restoration is through assessing all unit owners for these projects.



Issues.pages

**Limited Edition Condominium Association  
Board of Administration**

**Issues with Units #34, 36 and 38 as a result of Court Case # 15010**

In the table below is shown the *total annual expenditures minus any unit repair (Expenditures), the annual cost per unit, based on 33 units (Cost/unit), the annual association fee per unit (Fee/unit), the annual fee for units 34, 36, 38 (Fee/3 units) and the resulting annual contribution per unit for units 34, 36 and 38 (Contribution)*. A negative contribution is depicted in parentheses. Only 15 out of the 22 years were readily available, but should be representative of the total picture:

<u>Year</u>	<u>Expenditures</u>	<u>Cost/unit</u>	<u>Fee/unit</u>	<u>Fee/3 units</u>	<u>Contribution</u>
1996	\$20,259	\$614	\$900	\$450	(\$164)
1997	\$19,348	\$586	\$900	\$450	(\$136)
1998	\$27,382	\$830	\$1,200	\$600	(\$230)
1999	\$32,430	\$983	\$1,200	\$600	(\$383)
2000	\$24,664	\$747	\$1,200	\$600	(\$147)
2001	\$24,554	\$744	\$1,200	\$600	(\$144)
2002	\$33,889	\$1,027	\$1,200	\$600	(\$427)
2005/06	\$28,293	\$857	\$1,200	\$600	(\$257)
2006/07	\$31,819	\$964	\$1,200	\$600	(\$364)
2010/11	\$34,403	\$1,043	\$1,320	\$660	(\$383)
2011/12	\$43,600	\$1,321	\$1,320	\$660	(\$661)
2012/13	\$33,851	\$1,026	\$1,320	\$660	(\$366)
2013/14	\$33,828	\$1,025	\$1,680	\$840	(\$185)
2015	\$42,348	\$1,283	\$1,920	\$960	(\$323)
2016	\$46,220	\$1,401	\$1,920	\$960	(\$441)

Total contributions for these 3 units over these 15 years amounts to (\$4,705) per unit. If we extrapolate this result over the 22 years this court order has been in effect the Association has incurred a total loss in revenue of  $3 \times 22 / 15 \times 4,705 = \$20,702$ .

As a Board we are breaching our fiduciary duty with the vast majority of our members if we do not act, especially considering:

1. units 34, 36 and 38 are **not fairly sharing the cost of running the operation;**
2. units 34, 36 and 38 are not, and probably have never **contributed to the "Reserve"** we need to finance future project (i.e. driveways and walkways);
3. according to the Master Deed and By-Laws driveways and walkways are **NOT** part of a unit (2nd amendment to Master Deed and 3rd amendment to By-Laws d.d. July 31, 2007), making the Association, **and thus the other 30 units** liable for the repair/replacement of drive- and walkways for units 34, 36 and 38;
4. also, repairs to power lines (from transformer to unit) and water lines (from water meter to the unit) for these 3 units would have to be paid for by the Association, **i.e the other 30 units.**