

To: Board Members Joe A., Harry B., Paul K., Bob S. and Angela W.
 From: Joe T., Board Member.
 Date: March 12, 2017.
 Subject: Units #34, 36 and 38.

Ever so often the question arises whether the "Settlement Agreement" (Case No. 15010 in the Law Court for Washington County) is fair to the remaining parties (units # 34, 36 and 38 vs the other 30 units). The latest doubt arose, when the Association was confronted with the cost of replacing the power line to unit # 44. Would the Association be liable for a similar expenditure to units 34, 36 and 38?
 So, I have decided to look into the resulting financial aspects of the court case and scour my archives for the contributions of both parties to the financial well-being of our community.

In the table below I have used 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 34, 36 and 38 (Contribution). A negative contribution is depicted in parentheses. Only 15 out of the 22 years were readily available to me, 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 liable for the repair/replacement of drive- and walkways for units 34, 36 and 38;
4. also, repairs to power lines (as in the case of unit #44) and water lines (from water meter to the unit) for these 3 units would have to be paid for by the Association.

What can we do to make this issue more equitable for the majority of our members? According to the "Settlement Agreement" amendments are permitted "by written consent of all the parties" (Miscellaneous Provision # 7, page 20). To my understanding this can only mean, that if we can come to an agreement with the owners of units 34, 36 and 38 about eliminating the 50% clause in the last sentence of paragraph 4 on page 15 of the "Settlement Agreement", we can have an attorney draw up the needed amendment, sign it and deliver it to the Court. Then we can effectively assess units 34, 36 and 38 their share of the cost of running the Association's operation as it is (ironically) stipulated in that same paragraph: "the owners of Units 34, 36 and 38 shall pay reduced Association fee based solely upon fire and hazard insurance, mowing, street maintenance, general cost of lighting the streets, and any other Association expense not for the purpose of unit repair and maintenance, except repairs as hereinafter set forth".

The only sore, remaining point will be, that these 3 units have not contributed a penny to the reserve amount (currently about \$57,000), but will be eligible to draw on it for certain repairs. However, that issue will become mute over time.

If, however, we cannot come to an agreement about the status (i.e. fees) of units 34, 36 and 38 the only remaining option is to petition the Court for redress.

Note: there may be another, more elusive (26 of 30 owners would have to approve) option and that would be to convert all units in Limited Edition to P.U.D.'s (Planned Unit Developments), making them the same as #'s 34, 36 and 38. Everyone would own their unit and the land it is situated on. This option is also likely to be more expensive, since the Master Deed and By-Laws would have to be amended.

FYI

- Through 1998 the Association paid for pest control (approx. \$2,250/yr);
- In 1998/99 the association incurred cost in connection with City taking over streets (\$16,500);
- In 2002 the Association paid for "fancy" streetlights (\$7,740);
- In 1997/98 the Association paid for the replacement of 3 driveways (\$7,300)
- Through 2002 the Association paid the gas bill for the streetlights (\$3,000 - \$4,000/yr);
- In 2011 we replaced all the trees behind Units 62 - 68 and installed a root barrier behind units 2 - 20 (approx. \$13,400);
- In 2015 and 2016 the Association employed a management company to run the day to day operation (approx. \$6,000/yr).

Original Signer
 Wilson #24
 Ledbetter #2
 Saylor #6
 Aboumadel #10
 Stickleland #3
 Cooper #1