

Questions and Answers Raised at November 6, 2010 Annual Meeting

How is the annual budget and the corresponding Annual Assessment set for Cove Pointe? The CPOA Board is charged with the responsibility of establishing an annual Association budget covering the estimated Common Expenses anticipated during the coming year, including a capital contribution to establish a reserve fund. Based on the projected Budget, Section 6.4 of the Cove Pointe's restrictive covenants provides that the Annual Assessment "*shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves.*" The Board then gives every owner a copy of the budget and notice of the amount of the coming year's Annual Assessment. The Board does not have any obligation to call a meeting for the purpose of considering the budget, but nonetheless, your Board has historically done so and like in prior years, at the Annual Meeting of the Members (held this year on November 4th), the Board sought the input of Owners on the proposed budget.

What input on the proposed Budget was conveyed to the Board by the Owners at the Annual Meeting? Lengthy discussion took place regarding the inconsistency of the maintenance of the vacant lots and the detrimental effect that had on the entire subdivision, as well as the financial, legal and practical considerations involved in pursuing maintenance enforcement action against individual lot owners. The nearly unanimous consensus of those present at the meeting was that for the good of the entire subdivision, that the Association should coordinate the regular, consistent, and community wide maintenance of the vacant lots within the subdivision as a common expense of the Association so that all vacant lots would be bush hogged on the same schedule (and not hit or miss over several disjointed weeks or months) on a regular and sufficient basis and as the only practical way to achieve a year round acceptable community-wide standard. A motion was made by Mr. Grabner (and duly seconded) to modify the proposed budget to correspondingly increase the 2011 per lot annual assessment by the amount of expense reasonably anticipated by the Board to be incurred by the Association in 2011 for the Association to undertake bush hog maintenance of all vacant lots on a schedule to be determined by the Board as necessary or desirable to achieve a uniform, consistent, and acceptable community wide standard of maintenance. It was anticipated that would require not less than three, and perhaps as many as four, community wide bush hog sessions per year. The motion passed unanimously, with the exception of Mr. Charles Nichols, who voted not to approve the motion, and with the exception of Christine Reiss, as the representative of Cove Preservation Partners, who abstained from voting on the issue.

Does the existing Declaration allow the Association to undertake community wide bush hogging of all the vacant lots and to include that expense as a Common Expense which is borne equally by all lot owners as part of the Annual Assessment on each lot? Yes. The Declaration includes in the definition of "*Common Expense*" not only those items of expense for which the Association is responsible, it also includes any item of expense for which the Association "*may*" be responsible and also any "*additional items of expense or anticipated expense approved and adopted in the manner set forth in this Declaration, the Articles or the Bylaws.*" **Section 12.3 of the Declaration specifically empowers the Association to "*maintain other property which it does not own, including property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.*"** Section 9.5 of the Declaration grants to the Association (as the successor to the Declarant) a perpetual blanket easement over, under and across all property within the subdivision for the purpose of enforcing any of its rights. This would include the aforementioned right of the Association under Section 12.3 to maintain other property which it does not own when the Board has determined that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

What did the CPOA Board do in response to the input it received from the Owners at the Annual Meeting? The Board held a special meeting on December 2, 2010, to consider revising the proposed 2011 Budget and proposed 2011 Annual Assessment in accordance with the motion approved by the majority of those present at the recent Annual Meeting of Members. It was noted that the majority of owners of improved lots within the subdivision were represented at the Annual Meeting and that with the exception of one individual, every owner of an improved lot within the subdivision who was present at the meeting urged the Board to take this action, even though it had been explained at the Annual Meeting that annual assessments are required to be levied equally on all lots and thus the increased expense associated with community wide bush hogging would be borne equally by owners of both vacant and improved lots alike. At the Special Meeting on December 2nd, the Board first reviewed the documents governing the subdivision to determine whether it was permissible to undertake as a common expense and Association activity the community wide bush hogging of all vacant property within the subdivision, and the Board determined that it was permissible (see above). The Board resolved that the Association's undertaking bush hog maintenance of all vacant lots on a schedule to be determined by the Board was desirable to achieve a uniform, consistent, and acceptable community wide standard of maintenance within the subdivision, and that undertaking this maintenance was the most efficient and economical method (perhaps the *only* realistically practical method) to achieve the desired standard. Director Reiss shared

with the Board that the owner of 17 vacant lots, Cove Preservation Partners, Inc., had expressed that it would voluntarily contribute to the Association an amount equal to the difference between the actual cost borne by the Association to bush hog 17 lots in a community wide program, and the associated increase in the annual assessment on 17 lots due to any revision to the 2011 Budget to include the cost of a community wide bush hogging effort. At the December 2, 2010, Special Meeting, the Board voted (i) to set the 2011 Annual Assessment at \$610 per lot (which is \$95 more than initially proposed by the Board prior to the Annual Meeting of Owners); and (ii) to modify the proposed 2011 Budget to (a) increase miscellaneous expense by \$5,880, (b) increase income line item for total regular assessments to \$35,380 (reflecting the change in the 2011 Assessment from \$515/lot to \$610 per lot), and (c) to add income line item Voluntary Contribution in the amount of \$425. The last page of the 2011 Final Budget Worksheet sets out how each of these amounts was calculated for those who would like a breakdown.

If a Lot Owner is dissatisfied that the Board has not pursued individual enforcement action for maintenance violations, or is otherwise dissatisfied with Board action or inaction, does that provide justification for failure to pay the full Annual Assessment levied against that Lot? No. Please see Section 5.5 of the Declaration: "*The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that either the Association's position is not strong enough to justify taking enforcement action, or the likely outcome, even where successful, does not justify the cost or effort which would be required to pursue such action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estopp the Association from enforcing later that or any other covenant, restriction or rule.*" (emphasis added.) Also see, Section 6.15 of the Declaration: "**No Owner may exempt himself from liability for Assessments by non-use of Common Areas, abandonment of his Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged or actual failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.** (emphasis added).