TREASURER'S REPORT ON SEPTIC COSTS

At the upcoming Annual Meeting the Association will be considering an engineering plan to address various unresolved septic issues. As part of that review, I thought it might be helpful to provide all owners with an overview of what has been spent on the septic project since its inception in 2007, with a bit more detail on spending over the last three years. Also, at the 2011 Annual Meeting the Association directed the Board to move as rapidly as possible to try and bring this project to a successful conclusion. While progress over the past three years has been slow and expensive, the approval of the pending engineering plan would be a huge step forward in positioning this project for successful completion.

COSTS- Over the past seven years the Association has spent a total of $58,060 in fees to try and develop a comprehensive septic plan. The receipt of $7,500 in state grants in 2012-13 was an offset to those costs. A breakdown of expenses is as follows:

FY 07/08	$9,922	Carstens Engineering $7,762; and Worden Thane Law $2,160;
FY 08/09	$4,212	Rowland Engineering $4,212;
FY 09/10	$2,494	Rowland Engineering $1,494; and Territorial Engineering, $1,000;
FY 10/11	$5,400	Grainey Law $5,000; and Snyder Law $400;
FY 11/12	$13,144	Territorial Engineering $8,926; and Tabaracci Law $4,218;
FY 12/13	$9,774	Territorial Engineering, $3,063; and B&H Engineering, $6,711; and
FY 13/14	$13,114	B&H Engineering $11,014; and Tabaracci Law $2,100;
TOTAL	$58,060	ENGINEERING----$44,182 LEGAL----$13,878.

PROFESSIONAL ENGINEERING REPORT- Following the 2011 Annual Meeting the Association's ability to promptly proceed with a comprehensive septic planning process was dependent on the Water Sewer District (WSD) completing its then on-going Professional Engineering Report (PER). The Association did not have the capability of funding both projects. While a PER was originally sought to obtain state grants to help subsidize new septic systems for the community, at the 2011 Annual Meeting the WSD indicated that it was extraordinarily unlikely that state grants would ever be provided to Timbrshor. The WSD wanted to nonetheless continue with the PER project to enable some owners to apply for low cost state loans to finance septic construction. The WSD's plan was problematic for a number of reasons: the cost of obtaining a PER was high (approximately $30,000, with perhaps half being paid by the state); the process could take 1-2 years or longer; benefits to the Association were not readily apparent (the difference in costs between a low cost state loan for $10,000 and a conventional loan for the same amount was less than $150 a year, and spending approximately $15,000 in community funds to position some owners to apply for those loans did not seem appropriate from a fiduciary standpoint); and it was unknown whether many owners actually wanted low cost state loans or were supportive of the PER. To the WSD's credit, it promptly acted on these concerns. In conjunction with the HOA, a survey of owners was conducted in the Fall of 2011 to identify owners who (1) wanted low cost state loans and/or (2) who supported a continuation of the PER

process. A majority of owners indicated that they had no interest in either low cost state loans or continuing with the PER. As a result, in late Fall of 2011 the WSD abandoned the PER project. That allowed the Association to avoid approximately $15,000 in costs, and cleared the way for the HOA to proceed with the development of a comprehensive septic plan. It took about six months to resolve this issue.

LEGAL PLAN- Because the County had asked the Association to comply with numerous matters pertaining to site and moratorium issues, in 2012 the Board retained the Missoula law firm of Tabaracci, Sullivan and Rhodes (Tabaracci) to help evaluate the merits of the County's position and other related issues. With the assistance of Tabaracci a counter-proposal was developed and presented to the County in the Spring of 2012 via the enclosed correspondence (Attachment A)). The County, however, has made it clear that it will not address or deal with any site or moratorium issues until the Association provides the County with an engineering plan. In short, until an engineering plan is developed and presented to the County, the Association's site and moratorium issues remain on hold. It took about six months to develop an appropriate legal plan and the cost was approximately $4,218.

FAILED PLANNING EFFORT WITH TERRITORIAL LANDWORKS- After the WSD decided to terminate its efforts to produce a PER it indicated that it would like to jointly manage the septic planning process with the HOA Board. The WSD strongly recommended that the Association retain a new consulting engineer, the highly regarded Missoula engineering firm of Territorial Landworks ("Territorial"). One of Territorial's working conditions, however, was that it only wanted to communicate with the Chairpersons of the HOA (Tom Cox) and the WSD (Sue Roy). Territorial indicated that such a process would save money by keeping the communication and day-to-day decision-making processes short and clear. The condition was approved by the Boards of both entities on the understanding that the respective Chairpersons would keep their fellow Board members fully informed. Territorial started work on the project in late 2011. While a few joint meetings were held between the HOA and WSD Boards to discuss general issues and planning, the Chairpersons essentially managed the project. While HOA Board members had very little direct access to Territorial and received most information on the project in a second and third hand fashion, it appeared that progress was being made. In the Spring of 2012 Territorial produced an initial engineering plan that was circulated to all owners for review and comment. Territorial also made an effective in-person presentation of its plan at the Annual Meeting in July of 2012. However, due to what has been described by one of the Chairpersons as a "break down", the project ground to a halt in the Fall of 2012. After a prolonged period of inaction and after discussions with the Chairpersons, the Boards of both entities unanimously agreed to look for another engineering firm to support the project. The failure of this effort cost the Association approximately $13,000, and it delayed the process by almost a year and a half.

PRESENT ENGINEERING PLAN- The Board then decided to proceed on an independent basis to develop an engineering plan, and in April of 2013 it hired Billmayer and Haferman (BH) to complete the plan at a contracted cost of $11,665. BH also indicated that it preferred to deal with only one person—the Chairman of the HOA. Because of concerns over the failed Territorial project, the Board discussed the need for all Board members to be kept fully informed of all significant issues, and that Board members retained the right to independently contact BH to discuss any and all issues pertaining to the project. In the Summer of 2013 the

Chairman provided the Board with the septic plan that he had developed with BH (the "Initial Plan"). Shortly thereafter, the Board commenced its first in-depth collective review of an engineering plan during my tenure on the Board. Independent discussions with BH were very helpful and provided much useful information. After a series of Board meetings and discussions with BH, the Board decided to make the following changes to the Initial Plan.

Drain Fields A and B- The Initial Plan made no provision for those who owned 1-2 bedroom units in drain fields A and B to potentially upgrade to 3 bedrooms, which is the minimum septic capacity that all other owners will receive from the new and revised systems. BH indicated that it would be prudent to include in the plan any expansion that owners might wish to pursue. As a result, it was recommended that the plan be amended to give all such owners with a choice to upgrade to 3 bedrooms (and if they decided not to upgrade, then to have their costs appropriately reduced). The units at issue are: 201 (Rose/O'Connor), 203 (Acher), 204 (Swindlehurst), 210 (Schwank), 211 (Fordahl), 306 (Selvig), 307 (Payson), 308 (Novinski), 309 (Johnson/Cole),302 (Rountree), 314 (Brooks/Lewis), 314 (Freireband) and 316 (Ammons/Isbell). After approximately two months of discussion and debate, the aforementioned equitable changes were approved.

Drain Field B- The Initial Plan called for 11 units to go on to a very small drain field near the wash house (8 of those units were from the lower area and 3 were from the upper area). BH advised, however, that there were a number of problems with this plan: because of the steep grade between the upper and lower sections the engineer indicated that the three sewage pipes from the upper level lots were "destined to fail"; there would be no parking near the drain field; and that it would be very difficult from an engineering standpoint to try and make the initial 11 unit design work. As a result, the Board decided not to place the three upper level units on to drain field B and to consider a variety of other alternatives that were noted in the draft plan circulated in May.

Drain Field C- In the Initial Plan this drain field was exempt from the sort of full review that was applied to almost all other drain fields. The only proposed action was moving the drain field, as required by the County, so that it is 100 feet from the well it improperly encroaches upon (the well was in place more than a decade before the drain field was improperly installed). At the Board's directive, however, drain field C was given the same in-depth review as applied to all other drain fields. As a result, it was discovered that there were two significant options that the Initial Plan overlooked: (1) there was a site in the upper section that could separately accommodate the 3 upper level lots that had initially been placed on to drain field B; and (2) drain field C could be reconstructed and a new Level 2 system could accommodate the existing 8 units and the 3 nearby upper level units that had been slated for drain field B. Because of cost considerations pertaining to drain field C, the Board opted to put the 3 upper level lots on to a new field (drain field F) in the upper section, and to move the laterals in drain field C to eliminate the encroachment problem with the nearby well.

Drain Fields D and E- Over the past few months the Board has spent a great deal of time examining other alternatives for these drain fields. While the Board has identified two additional alternatives (putting two more units on to drain field D and creating a new drain field G), options for these drain fields are limited. Also, drain field E costs are very high and raise issues of equity vis-a-vis what other owners are paying for the same basic septic capability. Bearing in mind that

the Developer destroyed the drain field of units 401 and 402 to build a road extension at the expense of the effected owners (Manning and Johnson), it is recommended that some equitable measures be considered to address this situation.

Work was also done to review the appropriate approval process for the plan and to examine the pros and cons of funding the project (See, Attachment B).

It took approximately three months to develop the Initial Plan at a cost of approximately $11,654. Adjustments to the Initial Plan and work to address other matters took approximately ten months and cost $6,069.

RECOMMENDATION- Hopefully, the approval of an engineering plan will allow the Association to move forward with the stalled site and moratorium issues with the County, and position the Association to commence construction of new systems within the near future. Continued delay is not in the Association's interest: some owners can't build, some don't have septic systems, pollution of the lake remains a significant concern, costs continue to rise, and there is concern that the values of all properties may be detrimentally effected by the unresolved issues. While this has been a long and expensive project for all owners and there is still much work to do, at the upcoming Annual Meeting it may be helpful for the Association to adopt a resolution requiring quarterly written reports on the status of this project and associated costs. Regular reporting would provide a very helpful level of transparency, and would hopefully encourage a more rapid, focused and cost efficient completion of the project.

I hope that this briefing is helpful to all owners.

Dan McCarthy
Treasurer

ATTACHMENT A

Timbrshor Association
30351 Osprey Lane
Polson, MT 59860

July 12, 2012

Lake County Commissioners
106 4th Avenue East
Polson, Montana 59860

Dear Commissioners:

Timbrshor Association ("Association") has been working closely with Lake County Environmental Health ("LCEH") to conduct a comprehensive review of the wastewater treatment facilities at Timbrshor. The Association has retained Territorial Landworks, Inc. ("Territorial") to prepare the attached report (abbreviated draft version) and to develop a plan that would bring all wastewater treatment systems at Timbrshor into full compliance with LCEH and Montana Department of Environmental Quality ("MDEQ") requirements. The plan that Territorial has developed would ensure that new or upgraded waste water treatment systems would be sufficient to serve all fifty units approved by the County in the Amended Declaration, including the remaining 7 unsold units to be designated by the Developer per Section 3 of the Amended Declaration. Susan Brueggeman has a complete draft version of the plan. If any of the Commissioners or the LCEH has any issues, concerns or questions regarding the plan, we would be most appreciative if you could let us know at your earliest convenience. We will be updating the plan in the near future and wish to make certain that we factor in any and all issues.

In order to move forward with a comprehensive septic plan we would appreciate the County's assistance in resolving the issues surrounding the location of all units in the development. First, the Association cannot proceed with a comprehensive septic plan unless there is a reasonable degree of certainty regarding the location of all 50 units to be developed. As you know, over the past few years the Developer has filed two letters identifying the final version of the 50 sites to be developed at Timbrshor (See, Developer's letters dated September 30, 2009 and October 13, 2010). The only difference between the two letters is whether unit 202 or 429 would be developed. Since the development of unit 429 would interfere with the septic plan, the development of unit 202 is included within this plan. Also, while the County has asked the Association to try and develop a new subdivision plat, attached is a letter from our attorney, John Tabaracci, that first notes that the development is a condominium development under the Unit Ownership Act (MCA 70-23-101 et seq.). Secondly he notes that the Association has no independent authority to cause a plat to be developed. The fundamental problem is that each unit owner holds a 2% interest in common property and all unit owners would have to agree to any change in common property (which is unlikely to ever occur). Mr. Tabaracci also notes that the owners of undeveloped units ought to be able to avail themselves of the same recording system that the County has allowed for more than 30 years (i.e., filing a survey after a dwelling is constructed).

As the County indicated in its attached correspondence of February 17, 2010 (see second paragraph), the proposed final locations of the vast majority of undeveloped units are not in material variance with existing County subdivision regulations, and could be approved without going through a formal subdivision application and review process.

With this in mind, we would be most appreciative if the County could consider allowing each owner of an undeveloped unit to work with the County and the Association to agree upon a final location for their condominium site that is within the approximate location shown on the condominium plan of record Once this is accomplished, an amendment to the Amended Declaration, so as to include final plans of all units in the entire project, per MCA 70-23-306(2) would be appropriate. If such an approach were utilized, it would allow owners of undeveloped units to pin down their building locations in a manner that should satisfy the concerns of both the County and the Association. It would also allow the County to lift its moratorium and focus its attention upon any specific situations that it deems problematic.

The Association is committed to working with the County to try and find solutions to all outstanding issues, including cooperating in the development of an updated condominium plan of record that would show the locations of all existing houses, surveyed units, roads, drain fields, etc. We would be most appreciative if we could obtain some time on your calendar to meet and discuss the foregoing issues.

Thank you for your consideration.

Sincerely,

Timbrshor Board of Directors
Thomas Cox, Dan McCarthy, Liahna Armstrong, Doug Rotondi, Blake Johnson

ATTACHMENT B

From: Thomas Cox <tomcox@siu.edu>
To: maggie <mstillinghast@att.net>
Cc: Doug Rotondi <djrotondi44@gmail.com>; danmccarthy7777 <danmccarthy7777@aol.com>; Johnson, Blake <blake@madrose.com>; Liahna Armstrong <lotusfire5@live.com>; manning.jack <manning.jack@dorsey.com>
Subject: Re: Latest version of DF plan
Date: Wed, Jun 18, 2014 9:21 am
Attachments: SKMBT_75414061012180.pdf (314K), TabaracciBoardAuthority.doc (34K)

Maggie,

I have attached some correspondence from John Tabaracci concerning the issues at hand.

Tom

On Mon, Jun 16, 2014 at 9:38 AM, maggie <mstillinghast@att.net> wrote:

Tom & Board Members:

I am concerned with this opt out option...this is a development wide project and no one should be able to opt out. We should all be paying the same amount, with no credit to anyone for any reason. We have all paid a great deal of money into our septic systems...whether it was yesterday, last year, or 10 years ago. You are setting up a very untenable situation. The cost should be divided by 50 (I see that you state it will be divided by 47...where did that incorrect number come from?)....no credit, no opt out, no nothing.

As to the enormous costs involved in this project, is there a reason that the job has not been opened up to bidding? We are paying nearly a half million dollars--no project of this size should be undertaken with receiving and reviewing bids from other contractors.

Thanks,

Maggie

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First Attachment to Cox Email

-----Original Message-----
From: McCarthy, G. Daniel
Sent: Thursday, April 24, 2014 4:06 PM
To: 'John Tabaracci'
Cc: 'tomcox@siu.edu'; 'blake@madrose.com'; 'djrotondi44@gmail.com'; 'lotusfire5@live.com'
Subject: Funding of Septic System

John-
Hope all is well, it's been awhile since we last spoke.

Tom Cox relayed to the Board the other day what he understood to be your advice on how the community's septic costs might be funded. I think that funding is a potentially thorny issue and I just wanted to make sure that you have a good handle on all the relevant considerations, which I believe are as follows: (1) when Timbrshor was originally created the governing documents called for the development of a community septic system where costs would be apportioned equally amongst all units; (2) due to poor execution by the Developer and poor oversight by the County a community septic system never occured; (3) instead a hodge poge of separate systems built up over the years--all of which now either need to be replaced or changed; (4) the County and State have both declared that Timbrshor is out of compliance with it's community septic authorization due to a wide variety of problems; (5) a building moratorium has been applied by the County and the general unresolved problems have adversely effected the property values of all owners; (6) the HOA had had to assume the responsibility of trying to fix the problems and after 7 years Timbrshor is close to having an engineering plan to do that; (7) per that plan 39 of the community's units will receive either new or re-built septic systems and some work will be done on the drain fields of the remaining 11 units (drain fields C and D); (8) the unit costs under the plan will vary by drain field, but in a number of cases there will be huge and inequitable differentials in what owners pay ($6,682 v. $28,650) for essentially receiving the same basic septic service; (8) it's possible to remedy such inequities and put all unit owners on an equal financial footing similar to most other condominium developments by simply having drain fields C and D incorporated into the community system and fairly compensate their 11 users for the depreciated value of their systems (the useful lives of those systems may be down to 30-40%); (9) if that occured, the intent of the governing documents could be applied to all unit owners and the remaining costs of fixing the community's septic systems, all under the HOA's direction, could be apportioned equally amongst all 50 units; (10) according to our consulting engineer such an outcome would reduce our design and installation costs and future management and maintenance fees; (11) it would also result in all future repairs,replacements and maintenance costs being paid for on a 1/50th basis; (12) the Declaration at Sections 11 (f) and 12 and the Bylaws at Article III, Section 1 make clear that if any regulatory body requires that changes be made to the septic system, or if the HOA takes on the responsibility of providing services required by the members such as septic service, that those costs need to be paid for by the members in a "pro rata" fashion; and (13) it seems like the Association needs to make a decision as to whether it wishes to now implement the intent of the original governing documents and put in place a true community septic system that is designed, constructed, maintained and paid for in an equal fashion,or whether the community wishes to maintain some version of the hodge poge system that developed over the years in contavention of the intent of the original governing documents.

With these considerations in mind, I have some legal questions and concerns.

First, if it is decided to maintain some version of the present hodge poge system, would the Board and the Association face liability from owners who were forced to pay grossly inequitable amounts to receive essentially the same basic septic service that the HOA is providing to other owners ($6,682 v. $28,650)?

Second, when the Association provides common ground via user agreements to build, replace or change septic systems, shouldn't it try and apportion that ground or build in other measures (e.g., equal costs for the same basic septic service) to ensure that all members are treated in a fair and equal fashion?

Third, while the intent of the original governing documents was frustrated by the actions of the Developer and the County, now that the drain fields of 39 units need to be re-built or built in the first instance, and the 11 users of drain fields C and D can be fairly compensated for the value of their septic equipment and their drain fields incorporated into a community system, does the Board and Association have a duty to take steps to implement what was originally provided for in the governing documents and finally implement a system where septic costs will be borne equally by all owners?

Fourth, considering that both the State and County have applied regulatory action against Timbrshor,and that the HOA has been forced to develop a corrective plan to deal with site, septic and moratorium issues, per the Declaration and Bylaws don't all owners have an obligation to bear a "pro rata" portion of those costs?

Fifth, bearing in mind that the present situation has been on-going for approximately 7 years and that some owners can't build, some don't have septic systems, and that the property values of all owners has been detrimentally effected by long-standing uncured problems, should the Board and Association be concerned about potential liability for the length of time that it has taken to develop a basic engineering plan to try and resolve the overarching issues at Timbrshor?

Sorry to drop this in your lap but these are important issues to all owners. If you could copy all Board members on your response that would be very helpful.
All the best.

G. Daniel McCarthy

On Apr 30, 2014, at 3:37 PM, "John Tabaracci" <jkt@montanalawyer.com> wrote:

Dan:

I'm writing this in reply to your e-mail of April 24, 2014 and per your request copying it to the members of the Timbrshor Association Board of Directors. Initially, I want to summarize my discussion with Tom Cox, concerning the approach to the drainfield issues. I believe this should answer most of your questions.

In that discussion, I first expressed my opinion that the drainfield project should be undertaken by the Association – in other words the Association should decide on the appropriate plan (subject of course to the approval of the county and DEQ) fund it and oversee its construction. In a similar vein I also expressed my opinion that the Association should be responsible for the ongoing maintenance of the drainfield systems. In my opinion this is well within the scope of duties for most condominium associations. It is also in keeping with Timbrshor's Declaration, Section 11(b) of which provides, "The Association, acting through its Board of Directors,shall be responsible for the maintenance, control and management of all common areas . . .". See Also, Bylaws Article III, Section 1(4). Among the common areas are the "sewage facilities". See Declaration Section 11(f). Finally, having the Association undertake the project helps assure that it gets completed, as delegating this to various groups of owners runs the risk that a group of owners fails to follow through on the project or future maintenance. Thus there is ample authority and reason why the Association should be the entity to undertake the project including future maintenance.

Presuming the Association undertakes development and future maintenance of the project, there are, as your e-mail expressed, two different approaches for allocating the costs of the project – either the entire cost could be divided equally among all the owners (the "first approach") or the cost of the various components of the project could be allocated between the owners based on the nature of system each owner's respective unit required (the "second approach"). Legal arguments are available to support or conversely to oppose either of these approaches and, as is not unusual in Montana, there is no case law directly addressing this issue.

The Unit Ownership Act, MCA §70-23-501, which provides in part, "...common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements." While typically condominium associations divide common expenses, in accord with the percent of undivided interest, per MCA §70-23-501, it is not unusual for a declaration to provide for allocation of some common expenses based on benefit, as opposed to strictly on percent of undivided interest. The Unit Ownership Act also provides "the necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws." MCA §70-23-504 And provides, "...each unit owner shall comply with the bylaws and with the rules adopted pursuant to the bylaws and with the covenants, conditions, and restrictions in the declaration or in the deed to the owner's unit."

Here, the Declaration Section 11(f) provides in pertinent part, "The members further agree that if State Board of Health regulations or any other regulatory

body requires a change in the sewage or water facilities made available to the membership, that the costs of any such change shall be paid pro rata by the members affected by such requirements." The underlined language suggests that the cost of changes to sewer or water facilities (such as the drainfield project) is to be paid other than on a straight percent of undivided interest and rather to be paid based on the effect of the sanitary requirements, which I understand require different types of systems for different units. More general statements appear in the Declaration (Section 12) and the Bylaws (Article III, Section 1) which provide, "the costs of utilities, water, roads, streets, paths and lighting and any other utility or service requested or required by the membership of the Association shall be paid by the Association or those affected thereby, and the Association shall have a right to levy against each dwelling site its pro rata share of such costs and expenses." Again this suggests that those affected (as opposed to those not affected) should pay for common expenses that can be so allocated. Certainly the Declaration and/or Bylaws could more clearly drafted on this point, among many others. Still, I understand that in the past some owners have paid for the installation of septic systems for their own units. Thus, there is some precedent for an approach where an owner pays based on the requirements for his unit; though I recognize this is somewhat distinguishable as in those instances it was the owner having the septic system installed as opposed to the Association.

I recognize that this may become a divisive issue as between the owners whose units require no or minimal work and those whose units require the more expensive drainfield systems. As noted above there are arguments supporting both approaches. In my opinion, the better of the arguments is for the second approach, based on the language of Section 11(f) and the prior precedent. This doesn't mean that a disgruntled owner might not sue or that a court might not take a different view on the legal merits of the two approaches than I have opined. The Association will need to make a choice, ultimately based on what it determines to be in the best interest of the Association as a whole. Certainly moving forward on the project is in the best interests of the Association. As to the allocation of costs of the project, the choice is less clear. While I think the Association is following a good course in soliciting the owners input, it in the end has the responsibility to make the decision.

I believe the preceding has answered your questions regarding the allocation of costs – at least as well as it can be answered give the potential divisiveness of the situation, the terms of the Declaration and Bylaws, and the resulting uncertainty. It does not however answer your last question, whether the Association and its Board should be concerned about potential liability given that it has taken seven years to get to this point. As noted above, it is my view that this project is well within the scope of the Association's duties. Whether the length of time is has (or will) take to resolve these issues creates exposure

for the Association depends largely on the reasons why it has taken this long. If those reasons are based on the Board's intentional or negligent disregard of its obligations, some exposure might result. However, if the Board and the individual Directors have been acting in good faith to address the issues, with the care of an ordinary prudent person and in a manner in which they reasonably believe to be in the Association's best interest, the Board (and thus the Association) would not likely be found liable. See MCA §35-2-416 and 441.

I hope this answers your questions.

Thanks.

John K. Tabaracci | Attorney at Law
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From: "McCarthy, G. Daniel" <dmccarthy@gibbonslaw.com>
Date: May 3, 2014, 10:09:19 AM EDT
To: "John Tabaracci" <jkt@montanalawyer.com>
Cc: <tomcox@siu.edu>, <blake@madrose.com>, <djrotondi44@gmail.com>, <lotusfire5@live.com>
Subject: Re: Funding of Septic Project

John-
Thanks for the quick response.
I agree that a Court could go either way on the funding issue and that getting input from the owners will help the Board in making a decision. My view is that many owners may be inclined to support a funding methodology that is as fair and equitable as possible and will make future management of septic issues less parochial. Also, since there is risk with either option, going with the most equitable choice might provide the greatest protection.
As to the HOA's design and maintenance of all systems, I can see how that can be easily accomplished for the new drain fields that will be built for 39 units, but it is not clear why the Association should take on maintenance costs for systems C and D. If those systems are not brought into the fold, shouldn't their maintenance and replacement costs remain with the 11 users? It would be pretty tough to ask an owner on drain field E to pay $26,000 to get basic septic service and to also support the maintenance of drain fields C and D that may need to be replaced in about 10 years.

Dan

SECOND ATTACHMENT TO (COX EMAIL)

Septic/Drainfield Implementation – It is my opinion that the Board of Directors of the Association has the authority, subject to necessary governmental approvals (e.g., DEQ and local board of health) to implement and levy the assessments for this project, without any approvals by the individual members. The Association acts through its Board of Directors. See, Declaration Section 9. Additionally, MCA 35-2-414(2) provides, ". . . all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board." The Association is responsible for the maintenance of common areas. In particular, the Declaration, Section 11(b) provides, "The Association, acting through its Board of Directors, shall be responsible for the maintenance, control and management of all common areas . . .". See Also, Bylaws Article III, Section 1(4). Among the common areas are the "sewage facilities". See Declaration Section 11(f). The Declaration also gives the Association, which acts through its Board of Directors, the authority to levy assessments to pay for these services. See Declaration Section 11(f) and 12. Hence my opinion that the Board of Directors has the authority to implement the septic/drainfield plan and to levy assessments to pay for it. Still, there is nothing that would prevent the Board of Directors from seeking a broader approval from the membership. Since such approval is not necessary, it would be up to the Board to decide how to seek such approval and to set the requisite level of approval for the Board to be comfortable to proceed.