

**Minutes of the Annual Meeting  
For the Association of Unit Owners of  
Firelight Meadows  
October 19, 2010**

**Call to Order**

President Jack Eakman calls the meeting to order at 5:00 pm.

Directors in attendance are Presiding officer Jack Eakman of unit V96, Amy Ronnigen Free of unit D17, Sam Geppert of unit C1, Garrett Baldensperger of unit C95, Sam Reznicek of unit D2, Scott O'Connor of unit D6 (via conference call), Twila Moon of unit V103 (via conference call).

There are no absent directors.

Also in attendance are guests Attorney Jennifer Farve, Accountant Doug Shanley, Andy Dreisbach of Cornerstone, Dick Hovde of Hovde Property Maintenance, Jose Morales and Markus Kirchmayr of Alpine Property Management, and Communications Coordinator Bethany Smith.

Unit owners in attendance are Ron Seher of unit C17, Nate Johnson of 3A, Curt Wilson of 2B, Joshua Savage of V23, Susan Van Eyll of V90, Ruby Delzer of V58, Laura Rydberg of units V128 and B11, Cindy Bowker of V71, Charley and Pride Fisher of V14, Chris Moon of V103, Jim Dolan of C10, Carolyn Green of C6, Dan Lakatos of V67, Jen Wilczynski of V65, and Michele Geppert of C1.

(All Directors will be identified by their last names from hereafter in the minutes.)

**Welcome**

Free welcomes everyone to the meeting.

**Open Forum**

Eakman begins the open forum with a communication from Annette Stone of unit B12. Stone suggests that some of the flood lights on the exterior units be removed to save money, energy and for better enjoyment of the night sky. Morales explains there are 32 flood lights on the exterior of the buildings. Cindy Bowker asks if the association could research the lighting and find out if it is a liability issue with the insurance. The association will look into the insurance requirements and possibly turn the lights off, replies Eakman. Curt Wilson asks if perhaps the lights could be directed out and away from the windows.

Susan Van Eyll notes the flyers posted in the doors of the units are a nuisance and create the appearance of a vacant house. Eakman agrees and adding that flyers create litter; he believes the association could eliminate the necessity of flyers through email communication.

Chris Moon announces progress is being made to the landscaping of the property and he applauds those who have worked hard for the aesthetics of the property.

Free thanks APM for all of their hard work this year.

Pride Fisher describes the plastic on the windows of some units as unsightly. Ron Seher adds, the bylaws state that the only things that should be showing from the outside of the window is white fabric or wood; APM can easily check these units out to see if they are in compliance. Chris Moon explains window insulation should not be visible if put up correctly. As Ruby Delzer adds, she noticed black plastic on the

inside of a window of a chalet. Eakman replies, he noticed this on a foreclosed unit; FLM's Attorney will need to communicate with the banks Attorney regarding this matter.

Dan Lakatos asks for a Welcome Packet for new unit owners full of all the rules and regulations, a copy of the original bylaws and a list of the top ten frequently asked questions. Eakman asks for two or three volunteers to compile these.

### **Minutes of the 2009 Annual Meeting**

Ron Seher approves the Minutes for the 2009 Annual Meeting. Free seconds the motion. All are in favor. None are opposed. The motion carries.

### **Financial Report**

Accountant Doug Shanley explains the financial report (see attachment). He explains that there are 5 bank owned properties that are currently not making payment but they are being charged interest and dues. The banks usually pay the association when the units sell. There are 7 units that have not been turned over to collections but are two quarters late on association fee payment; it is up to the board to turn these accounts over to Cbo Collections. The board has already turned \$79,199.02 over to Cbo Collections.

Ron Seher asks if turning delinquent accounts over to Cbo Collections is effective. Doug Shanley says yes, \$1342.49 has already been returned to the association and with the 30 day pre-collect letter motivated a total payment of \$8,000 to \$10,000. Attorney Jennifer Farve explains the person's credit score is affected once an account is turned over to Cbo Collections. Another advantage is Cbo does not charge a fee to the association.

The Chalet revenues \$3984 under budget; Shanley explains, this is due to owners opting into email notifications. Bad debt uncollectable is \$38,562.05 over budget yet the Chalets are still under budget by \$45,373.44. This is not due to bad budgeting, but from postponement of many things that were budgeted and must be addressed in the near future, adds Eakman.

Doug Shanley notes the Condo revenues are \$2268 under budget; again this is due to owners opting into email notifications and saving \$12 per quarter.

### **Proposed 2011 Budget**

Accountant Doug Shanley explains the 2011 Chalet and Condo Budgets (see attachments). This budget was prepared based on past analysis and previous history or contractual obligations.

The proposed 2011 Chalet Budget includes a decrease in unit owner fees from \$2697 for the year of 2010 to \$2611 in 2011 for all unit owners. The \$12 per quarter savings for all unit owners opting into email notification will increase to \$24 per quarter savings.

Ron Seher asks if decreasing the annual fee will generate enough income for the association to make certain repairs. The board has found many ways to be frugal, Eakman replies. Doug Shanley adds maintenance and repair make up a significant portion of the savings.

Ron Seher moves to approve the 2011 Chalet budget. Charlie Fisher seconds the motion. All are in favor. None oppose. The 2011 Chalet budget passes.

The proposed 2011 Condo Budget includes unit owner fees of \$2809 for the year of 2011. Again the \$12 per quarter savings for all unit owners opting into email notification will increase to \$24 per quarter.

Doug Shanley explains, the amount of money put in reserves for both the Condos and the Chalets has been increased to 11.5% of the total budget.

Nate Johnson asks the board to look into the savings of the elimination of the extra outdoor floodlighting.

Curt Wilson asks why the board budgeted for more garbage costs in 2011 when the account was under budget for 2010. Eakman explains the garbage rates are increasing and the help of all unit owners is needed with regard to lowering costs by disposing of large items such as old mattresses, furniture and cardboard boxes correctly. He asks that the owners contact APM when they need help disposing of such items. There will be more residents in 2011 due to a prediction of a big snow year, Kirchmayr responds. Doug Shanley notes condo owners will save \$5 per unit in 2011 from 2010; the dues are going down from \$390 to \$385.

Reznicek motions to approve the 2011 Condo budget. Ron Seher seconds the motion. All are in favor. None oppose. The 2011 Condo budget passes.

### **Property Managers Report**

Markus Kirchmayr and Jose Morales of Alpine Property Management provide the property managers report (see attachment). Kirchmayr thanks the board and all the unit owners for the employment. He requests that the units are heated during the winter to prevent water leaks and expensive insurance deductibles to the association.

### **Snow Removal and Landscaping Report**

Dick Hovde of Hovde Property Maintenance provides the Landscaping Report for 2010 (see attachment). This year Hovde executed an excessive amount of weed control; three times the amount of previous years. He will not charge for weed control this year. He insists that with additional spraying, each year it will get better. The fertilizer arrived today and he will start fertilizing tomorrow. Hovde will not charge for roof heat tape. He has also been re-latching the garbage's to prevent the bears from opening them. Chris Moon proposes fencing the garbage's and latching with a chain and carabineer. Hovde advises all residents to latch their garbage's and to lock their vehicles.

### **Utilities Report**

Garrett Baldensperger presents the Utilities Report. Currently the home owners association is being sued by West Fork Utilities for not paying delinquent owners cable television and water/sewage bills as well as amending the declarations to exclude cable television service from the central improvement facilities reference of section 8 of the declarations. The following is an overview of what has transpired. The suit is based on a section that was attached to the cable television contract which was part of our declarations. It states that the central improvement facilities (sewer system, water system and cable television) will be hooked up to each unit and each unit owner will be charged a fee. The fee charged shall be in accordance with the rules and regulations of the Montana Public Service Commission (Montana PSC). However, the Montana PSC has nothing to do with cable television. This was not referenced in the suit, nor was the part of the cable contract that states that members *may* subscribe to cable television, which implies a choice. They also did not reference that in the event that a member does not pay for service in a timely manner, the contractor may disconnect the service and bring about legal action for past dues. This does not imply that the contractor can charge for ongoing or forward dues. This means that unit owners have the right to cancel their cable television contract at any time. The following are some of the positions that FLM has taken with the Montana PSC.

Cable Television: The quality of service is less than industry standard. The association has been charged with the task of eliminating the perceived mandatory nature of the cable television service as well as to find an alternative provider. Early this summer the board attempted to remove West Fork Utilities as a

provider by contracting with Montana Opticom to provide DBS television service, with the options of telephone and internet service. Montana Opticom was to acquire the infrastructure that was West Fork Utilities and to obtain the contract. The bank that handles the loan for WFU would not allow them to sell the contract or the cable television facility. So FLM HOA accepted Opticom's withdrawal from the agreement.

Attorney Farve challenges the exclusivity of the contract and believes now is probably a good time to take action. Any action by WFU to resist the installation of satellite dishes will only bolster the argument that the cable television contract is exclusive and the courts should find it illegal. She recommends moving forward with the installation of satellite television, if that is the wishes of the owners. No formal action to terminate the cable television contract with WFU should be taken, allowing the validity of the contract to be decided by the courts.

The board has preapproved Bling Wireless as the preferred provider of cable television. Bling has both Dish and Direct TV and they will limit the number of dishes attached to the buildings. Zack with Bling is expecting calls from unit owners. Baldensperger recommends sending WFU a final payment along with a letter clarifying the cancellation. Bling will go through APM to set up installation.

Water/sewer: HLH, LLC originally petitioned an application for a rate increase on October 27, 2008. This is still before the Montana PSC and has not been finalized. The most recent interim order of August 16, 2010 has set a new interim rate of \$310,000 as a result of the PSC rejecting a stipulation agreement that was reached between Montana PSC and HLH, LLC. It was clear that the points made by unit owners, the board, and Attorney Farve at the Public Hearing in March had an impact. The new interim rate is slightly less than what unit owners are paying now and far less than the original \$401,000 that was requested. Baldensperger believes the association's presence and voice continue to make a difference.

Part of the rate increase includes \$36,000 per year to rent office space from one entity of HLH, LLC (cable television, aka West Fork Utilities) to another entity of HLH, LLC (water/sewer). The association believes that this is a shell game and the consumer is paying for it. As a result the board is not requesting that the PSC adjust the rent to a more reasonable rate, but instead are requesting the rent be disallowed in total and that the administration building be entered into amortization.

The other issue of cost is the sand filters. The board asks if HLH, LLC performed due diligence on their equipment because they knew that there were problems with flooding of the sand filters prior to closing. The board's position is "the cost of the new system should be born on HLH, LLC not the consuming public as it was HLH, LLC who either did not perform due diligence or worse, caused the systems failure due to lack of normal maintenance and/or negligence. Either way, it is unacceptable for HLH, LLC to now merely pass the cost of the new water/sewer treatment facilities onto the unit owners of Firelight Meadows"

Cindy Bowker asks who to contact with Bling Wireless. APM will post contact information on the website.

Pride Fisher asks the board if unit owners are locked into this contract forever and if they can ever go to the sewer system. Eakman requests she hold that question until the attorney's report.

Susan Van Eyll asks when the rate will change. Baldensperger replies, the PSC will have a decision soon and it may be a lower rate.

Eakman recognizes the amount of work that board member Baldensperger, a volunteer, has put into this endeavor.

## **Landscape Portfolio**

Eakman introduces another volunteer board member, Sam Reznicek, who now explains the Landscape Portfolio. As Reznicek acknowledges, there is a lot of work ahead and it will take time to get the landscape to a pleasing condition. They will be applying a fall fertilizer application, but the grass was in rough shape so it may take a year or two to notice the improvements. They have been allowing the native grasses to establish along Ousel Falls road and in the common areas between the Condos and Chalets. He hopes that over time these areas will fill in with native vegetation and continue to look better. This year they sprayed a lot of weeds, but they still need a lot of work. The irrigation system still needs a lot of work. There are several irrigation heads that need to be lowered and the plastic landscape edges need to be leveled and straitened. The playground area needs improvements and will be worked on next year.

Quite a few trees have been planted on property by Cashman's Nursery totaling \$4000. Several unit owners opted to purchase trees themselves to be planted. For next fall, the association is considering paying for any additional trees that unit owners request if they owner agrees to pay for its planting.

Reznicek asks the board to consider building a privacy fence around the maintenance area next year. The entrances off of Ousel Falls Road are lacking in appeal and could use some improvement.

Ron Seher asks how to prevent moose from eating the new trees other than fences. Reznicek recommends fences or planting the Canada Red Cherries rather than Aspen or Birch trees.

## **Legal Report**

Attorney Jennifer Farve provides the Legal Report. She begins where Baldensperger finished, with the PSC and the associations relationship with West Fork Utilities to clear up any confusion. Then she will move on to the litigation that is currently pending.

Firelight Meadows, LLC (FLM, LLC) was the original developer of Firelight Meadows. In 2008, they sold the cable television and water/sewer infrastructure and contracts to West Fork Utilities. The water/sewer system was initially developed with a sand filtration system in effect. This only lasted for a short period of time; shortly after West Fork Utilities closed on the sale, the infrastructure failed. Whether or not they did their due diligence is a good question.

The Montana PSC is designed to regulate the rates of water/sewer utility services. They have to approve transfers and rate increase applications. Prior to FLM, HOA's recent involvement in this process, WFU normally did not have anyone challenge rate increases. The Montana Consumer Council (MCC) is a watchdog entity that is supposed to intervene on consumer's behalf. In this case the MCC and WFU had a procedure scheduled to determine revenue requirements and the fairness of a rate increase. WFU failed to provide information back to the PSC, so MCC and WFU jointly came before the PSC and asked to settle the matter with a request to suspend the procedural schedule. The PSC agreed and suspended the procedural schedule. MCC and WFU went into settlement discussions that are protected under rules of evidence. They reached a settlement, but could not tell the PSC what that settlement was based on. The association discovered problems with the way that they were calculating their revenue requirements. The MCC acknowledged these problems but refused to change them.

During the Public Hearing in March when the association and unit owners began to express their concerns, the PSC realized that they didn't have enough information to approve the settlement. They then denied their motion to approve the stipulation. They allowed WFU to resubmit and re-file a new application. At this time the PSC allowed FLM, HOA to intervene as parties with the ability to put out evidence rather than just public comment. While this will be an additional expense, it might be worth that

additional expense. “But you have a very good advocate in Garrett and he is making the commissioners think,” adds Farve.

After the PSC made the order denying stipulation WFU has filed a motion for reconsideration asking the PSC to reconsider their decision. In the meantime, FLM, HOA has submitted comments requesting that the PSC continue to abide by the decision to deny the stipulation. The PSC is likely to deny the motion for reconsideration and they will then appeal it to the district court. During this time unit owners will be paying the interim rates. In the end, the final rates will either be greatly more or greatly less than what is currently being paid. The association could consider forming a county water/sewer district, get bonding to acquire the infrastructure. It could also consider getting FLM’s sewer system included into Big Sky Water and Sewer System. In the near future, unit owners are stuck with the current system.

West Fork Utilities has filed a lawsuit against the association based on the association’s refusal to pay the past due water/sewer and cable television of delinquent unit owners. Assessments that are over 90 days old are turned over to the association for payment. The association has refused to pay.

There are two things at play here, the Declaration and the separate cable television contract. The Declaration put conditions and restrictions in effect for all unit owners and was created by the developer. It states that the developer will install and maintain these services and the units will hook up to and use these services, with the provision that the association will pay for unpaid assessments. The separation between the cable television contract and the water/sewage contract creates exclusivity arrangement making it impossible to allow service from any other provider. This contract runs for 15 years after the last unit is sold from the original developer with the option to renew for an additional two 15 year terms. There are provisions that are contradictory to the Declaration. It suggests that unit owners may or may not subscribe and it suggests that the individual unit owners will pay for the services received or the supplier will cut off their services.

The issue is that the cable television is always on and owners are always expected to pay for it with their water/sewer bill. There is no written contract, it is just expected that it will be paid and no other providers can come in to create competition for these services. Farve’s office believes this is a violation of the Unfair Trade Practices Act. In Montana there is a statute that falls under the Consumer Protection Act that says that contracts that are entered into for the purpose of stifling competition or creating a monopoly are not enforceable. This gives consumers the right to stop them from enforcing these rules and to nullify the contracts in addition to damages. There are damages both to the association as well as to the unit owners.

The association has a counter claim pending against WFU (to be filed next week). It will ask for injunctive relief from the court that the 12 Amendment is valid and enforceable as amended by FLM, HOA, that the association is not obligated to cover the unpaid dues and that the contract is not enforceable. The statute allows for damage claims for up to two years of past damages as well as attorney fees. Individual unit owners can be referred to council if interested in pursuing this. Or this can be approached as a class action lawsuit; but after cost benefit analysis, it does not add up.

As far as cable television service unit owners can cancel the current service and get a new service provider, but there are risks involved. The association can argue the contract because the way that FLM, HOA amended the 12 Amendment is that although unit owners are obligated to use the water/sewage, they are not obligated to use the cable television. However, problems could occur when the association brings in other companies to provide service. Since it could be a while before a final determination is made, it is the law firm’s opinion that if unit owners want to move forward by cancelling current cable television services and getting a new provider, they can do so knowing that it is not without risk, but still defensible.

Chris Moon asks, if he cancels his service with WFU for cable, after 180 days WFU decides to take him to collections for the accumulated amount, what recourse he has. As Farve emphasizes, it is a unit by unit owner's choice; he/she could be taken to collections and adversely affected. Chris Moon then asks if a class action lawsuit by unit owners against WFU be an appropriate action to take. Farve explains a class action lawsuit is an option, but would include all unit owners, even those who may not want to be a part of it. There is a possibility that WFU would take action against the unit owners.

Farve also mentioned the insurance company has denied coverage for legal fees.

Ron Seher asks if unit owners stop paying their cable bills after three months, the association is billed for payment anyway, so is there a need for repercussion by WFU to the unit owners individually. The fees are accruing as owners are not paying and the HOA has refused to pay as well, responds Farve. She does not see why they would take individual unit owners to court. Since they have no contractual relationship with the individual unit owners, they shouldn't be able to take owners to small claims court. The best arguments are actually against the association, she does not really see significant risk to the individual unit owners.

Ron Seher asks what the attorney costs will be over the next couple of years. It could be anywhere between \$10,000 and \$20,000 if there is an early settlement, replies Farve. If the case moves into trial it could be as much as \$30,000 to \$40,000 on appeal. Litigation is expensive. She is hopeful that they may be able to do this without a trial and have it decided by a judge as a matter of law.

Ron Seher asks if the association has budgeted for this. Eakman replies, the board has decided to retain her. The association may or may not have the money set aside, but they do have money in reserves. Accountant Shanley replies, the association has \$27,000 budgeted in 2011 for legal counsel. Farve adds that the association does have a hope of recovering legal fees.

Eakman thanks Attorney Farve for her report

Eakman then introduces all the board members by saying "It's been my pleasure to grow with them this past year. I want to assure you that you have seven independent board members. There are quite a bit of decisions that aren't in 100% agreement. We are able to talk those things out through consensus, but everyone is an independent thinker. Even with that independence though, it seems now we've hit a stride where we can harmonize with one another and we can kind of see where someone is going and understand what they're saying through the nuances and in a way its affected our behavior, not to give anything up, but in a way to work to together probably more efficiently and effectively than any board that I've ever been on."

He added that there have been many accomplishments by the board including an official pet survey, and increase in insurance coverage, four policies that were written and are posted on the website, recommending things like deadbolt installation and un-attaching outdoor hoses in the fall and improving the appearance of the property by planting trees.

Eakman announces the county GIS will change the street addresses so that ambulances and fire trucks have the proper addresses. Candlelight drive will change to Candlelight Meadows Drive. Northern Lights will change to Aurora. Every unit will get a new address number. The association will provide all information in advance.

As Ron Seher notes, when the Firelight units were being built, they went to the city of Bozeman and to the county GIS to acquire the names. He wants to know why Firelight now has to change street names.

Dick Hovde responds that there was another Northern Light Drive years ago, but the attorney of the time said that they did not have to change the name. Eakman replies that the public good is more important than who came first. Eakman does ask Attorney Farve to look into the situation.

Curt Wilson asks if there is a timeframe for the street name changes. Eakman replies, the board will find out soon.

Eakman presents Attorney Jennifer Farve and Bethany Smith with beautiful flowers as a thank you.

### **Chalet Findings and Repairs**

Eakman now introduces Andy Dreisbach of Cornerstone who provides a presentation of the siding removal on the Chalets. Eakman explains recent findings by Hardy Plank, who went above and beyond what they were asked to do on the residing of the Condominium units by making repairs and putting on flashing where it was not installed before; they took out extra expenses to provide excellent service. They had no intention of doing the same on the chalets. They were astonished to find out how the Chalets were constructed.

Andy Dreisbach was originally hired to evaluate unit 108 for the extensive leaks. They investigated both the interior and the exterior; they found deviations and challenges that were addressed on that unit. From what he understands, unit 108 performed well last winter without any further leaks. He was called in this spring to provide further evaluation prior to Hardy Plank's arrival. Cornerstone was asked to repair units to alleviate leaks. His presentation explains some examples of his findings. Dreisbach shows several videos of his findings while walking on the roofs of several chalet buildings. He points out mold, rust and evidence of leaking. Some of the units have flashing that is not up to code. The chimneys are lacking a storm collar which also causes leaking. Many buildings have raw plywood and no counter flashing. Some side wall dormers do not have counter flashing and or underlayment up the sidewalls. Many have mold on the raw plywood indicating moisture. The birds' boxes show raw plywood in the corner and water moisture inside on the roof even on a dry day. The fascia on one unit showed black water marks and swelling of the soffits indicating ice damming.

Dreisbach shows video explaining how he is repairing these units. The partition wall that was without counter flashing has now been entirely encompassed with an underlayment. A custom cricket diverts water around both sides to the lower shingled crickets. The entire chimney has been dried in, from top to bottom, with Tamko TW. Corrections have been made on the fascia and underneath in the birds box areas where they have enveloped and created a birds box for vertical flashing. Sidewalls had been made with an underlayment over the flashing for water diversion. Hardy Plank is providing Scuppers that Cornerstone will install underneath the shingles to divert the water away from the corners where mold has developed; this will be done on all corner wall trimmed areas.

There has been discussion about changing the siding of the chimneys to metal. FLM is allotted a certain amount of square feet of siding. The dormers incur a much greater amount of siding than what was originally anticipated. FLM can take the credit that is being issued to the chimneys and apply it to side dormers; so they are looking into alternatives. Twenty eight units have had dormers removed so far. Initial reports like this have been done on 6 of those 28 units; similar findings have been made on these other units. These are the immediate concerns and these units looked at will probably leak this winter if the problem is not corrected. Even with these corrections there is not a guarantee; in order to do this properly, a much greater area of the roof would be removed. This was the best estimation of what can be done given the limited budget.

Eakman asks what the projected repair costs are. Kirchmayr replies, Hardy Plank provided an estimate of \$8 per square foot to re-install siding. Andy Dreisbach researched alternatives of metal for the chimneys



and siding from Hardy Plank on the side walls. \$50,000 is estimated to work solely with Hardy Plank for both the chimneys and the side walls. Kirchmayr informs the audience that Hardy Plank made repairs while replacing siding on the condo units without charge.

Although the cost is unknown, Eakman concludes, this is an expense that will have to be paid. If FLM waits too long, then the interior of the units will need repaired as well and the cost to repair will increase significantly. He adds that this issue was unexpected and was found too late to put in the budget. Eakman has a lot of confidence in Accountant Doug Shanley to help FLM, HOA through this. He will be begging the board that these expenses not affect condominium owners in any way. This is a Chalet expenditure to be shared with 136 Chalet owners. The Condominium units have enough shared things to pay for on their own, like common electricity. They do not share these expenses with the Chalets; therefore they should not have to share in the cost of repairs to Chalet units. In the worst case scenario, the association will consider organizing a special meeting to see if an extra \$100 per quarter will be approved by Chalet owners to pay off this extra expense. With these corrections to the Chalets, \$10,000 per year spent on snow removal from roof tops will likely go away. Money may be saved on heating. Eakman insists the association will provide as much stewardship and information to unit owners as is possible. By making these changes the association is correcting things that were not done to code, the construction was not done to the standards of the time.

Jenny Wilson asks if there are any repercussions to the builder for not building to code. Eakman replies, one of the unit owners that he has a proxy for, would like the association to investigate fully whether or not there is liability on the part of the engineer, architect or builder. If there is neglect on any of these parties, this unit owner would like the association to sue them.

Susan Van Eyll asks where the building inspector was during the building of these units. Eakman is not sure that there was a building inspector on this project. Susan Van Eyll then asks, "Isn't it the law in this state?" "No," Andy Driesbach replies, at the time, builders would have an inspector come out to look at one out of every eight units; as long as each unit inspected passed, then all the units would pass inspection. "There is no licensing required for a contractor, not even an open book test." Susan Van Eyll then asks if the association can go after the developer.

The association has two years from the date of discovery to go after the engineer, architect, builder or developer, replies Eakman. Attorney Jennifer Farve adds, there is a statute of repose to be aware of, which is a 10 year statute of limitations on building or real-estate projects. After ten years, it is too late. The units were built in 2002, so the association is close to the end of that timeline. She recommends that if the association wants to file a claim, it act quickly, even if it means filing a complaint and not serving it right away. The association would have 3 years to serve it; so they can file and then serve the claim after doing some more investigations. Just upholding the statute of limitations should be done fairly quickly.

Eakman announces that he does understand the reaction to want to get back at these developers, but for now, the priority is making these repairs immediately.

Ron Seher asks for clarification on the cost of \$8 per square foot by Hardy Plank. Kirchmayr replies, the contractor has been taking down the siding, as siding is removed it breaks and will have to be replaced. Hardy Plank will charge \$8 per square foot. This product was not available from the factory and had to be custom made. It took a long time to receive it so the project is beginning in October rather than in March.

Jenny Wilson asks if the builders remained the same for each phase of units built. Different construction is being found from building to building, Eakman answers.

Ron Seher asks if the association and Cornerstone is recommending that the chimneys be stripped and repaired to see if there is any damage.

Driesbach shows pictures of the damage to the chimney caps. The weight of the snow crushes down on the existed caps that create pocks and pivots that allow water to sit and pool on the caps. Originally the dual chimney cap had a partition wall inserted on it after installation that now shows mold and water penetration directly into the unit. Currently Cornerstone is pricing out replacement caps. They are removing the caps and re-pitching them. Typically there is a curved collar around the cap to prevent buildup of ice. These units don't have that curved collar so, the builders tried to achieve that with a storm collar that goes around the chimney cap to divert rain, not snow, away from the caps. These were then tarred in. Driesbach finds this scary, but is hopeful that the introduction of pitching and the installation of the underlayment throughout the entire underside will create a very good rain coat.

Ron Seher asks Eakman if he would like each chimney looked at and reconstructed. Every chimney cap will need to be redone Eakman replies. Kirchmayr adds that Hardy Plank will redo the chimney siding of each unit at no charge. As the siding is removed from the chimneys, Driesbach adds, Cornerstone will remove the collars, take the caps off, completely dry in, and then have Hardy Plank side, the bulk of the work is being done for free.

Ron Seher asks what the cost will be. Driesbach answers, Cornerstone submitted estimates during the spring. For the sidewall dormers, the estimate was \$594.18 for the two dormers per unit. For the chimneys it was \$846.66, to remove the caps, reframing, re-pitching and drying them back in with roof repairs if needed. If roof repairs don't need to be made, then Cornerstone will not charge for it.

Andy Driesbach was brought in to do an assessment and was asked to be an owner's representative and conduct the work. He believed that to be a conflict of interest, so he would only do the work or be an owner's representative. He was then chosen to do the work. He is trying to coordinate efforts with the unit owners association and with APM informing them of everything that is found daily.

Ron Seher asks Driesbach if all the chimney caps will be replaced off of each Chalet unit. Not the metal, the metal cap will be reinstalled, replies Driesbach. Ron Seher then clarifies his question by asking if one certain thing has to be done with all 136 units and then other repairs made as needed. He asks if Hardy Plank will be here for the next year to work on this extensive project. Kirchmayr replies, Hardy Plank workers are accustomed to the warm weather so they will work until it gets too cold and they will be back in the spring. He believes this buys the association time to have Cornerstone work.

Ron Seher asks Driesbach how quickly Cornerstone can fix a double chimney. Driesbach has completed 12 units so far and there are 28 units stripped to date; Cornerstone has been working for two days in conjunction with Hardy Plank.

Ron Seher asks what the average cost will be. Eakman's estimate is \$130,000 to \$190,000; which is, "a lot of money out of owners pockets that they did not cause."

Baldensperger asks if each chimney will be totally encased and re-pitched. "Yes," replies Driesbach, if the bird's boxes are in need of repair, they will be repaired as well. Cornerstone began making 440 bird's boxes yesterday.

Susan Van Eyll insists the decision must be made quickly to determine what type of siding will be installed on the chimneys. She asks Driesbach what the best siding would be to have on the chimneys. Kirchmayr believes the siding is more of a cosmetic issue than a protectant. Eakman will take any material less than \$3.50 into consideration for the siding of the chimney.

Baldensperger clarifies, the current material can be pulled off of the chimney and put onto another area that is needed and then the chimney can be replaced with an alternative material. Driesbach will meet with someone tomorrow for price quotes on different materials.

The chimney caps are in ill repair; they were not built well initially, claims Driesbach. Cornerstone has created several chimney caps for other condo associations for between \$520 and \$780. These are seam welded with a raised storm heal. They have not looking into getting new chimney caps for all units. The current chimney caps are lacking paint and are beginning to rust.

Eakman asks if anyone thinks the association should not make these repairs.

Chris Moon asks for a number of units that must have chimneys repaired this fall. He wonders if the association can spend the winter researching another product for the remainder of the units to be completed in the spring. Or order more Hardy Plank to finish the project.

Driesbach replies, the Tamko TW underlayment is the best product around and it creates a seal around the chimney collar. They will also us a high temperature caulk around the storm collar that is installed on top of the chimney caps. This product is not solar rated. It will fail within 45 days of solar exposure. Therefore, it is imperative that these chimneys with this product be covered immediately. This product also needs three days of 78 degree temperatures for the product to self-adhere to the chimneys. He apologizes, he was hoping for a July and August timeframe, but that was out of his control.

Chris Moon asks if the contractors have the materials to begin now and move forward while the weather holds; then worry about alternative materials or Hardy Plank over the winter. This is an exercise in saving costs, Kirchmayr replies. As Eakman adds the board will have to make that decision very shortly. Ron Seher says uniformity is what the association has always strived for. Driesbach mentions there are enough materials left to complete the 28 units that have been stripped.

Attorney Jennifer Farve advises, if a claim is to be filed, the association needs to allow the developer or whoever is responsible, proper notification and the opportunity to inspect these repairs as they are being made. Otherwise, there could be an exfoliation of evidence issue later on if the repairs are made and they were not provided the opportunity to investigate. It might actually be better to hold off on repairing the rest of the units until we have a chance to provide notice for a lawsuit.

Driesbach asks if the 28 units that are being repaired will be considered in a court case. Attorney Farve replies, they will argue the case, but it will be up to the courts to decide. Documenting the process as best as they can should help.

Eakman asks Attorney Farve if she could draft two letters, one to architect Fauve Halvorson and one to Firelight Meadows, LLC.

Ron Seher asks if the board recommend not removing snow on the 28 units that are being repaired to see how they perform. Eakman replies that he will ask the board.

### **Election of Officers**

Moon introduces the rules for electing officers. She then asks if the association if they would like to maintain 7 chairs. Reznicek motions to maintain 7 members on the board of directors. Baldensperger seconds the motion. All are in favor. None oppose.

Three positions are being voted on. Jack Eakman's three year term is available, he is running for re-election. Brian Conway resigned from the board this year and Sam Geppert was chosen to temporarily

fill that position. His position, a three year term, needs to be voted on. Stuart Koch also resigned from the board and has been temporarily replaced by Sam Reznicek. His position is a two year position and he would like to run as well.

Baldensperger asks the audience if anyone would like to run for a three year term on the Board of Directors. There is no response. He asks if anyone would like to run for a two year term; again no reply.

Each board member is running to keep their chair and no one else wants to run for these positions, so there is a request to pass a unanimous ballot.

Ron Seher instructs the secretary to cast a unanimous ballot for the three board members. Carolyn Green seconds the motion. All are in favor. None are opposed. The motion passes unanimously.

The board will assign the new positions at the first meeting of the new board in January 2011.

### **Open Forum**

Geppert thanks Eakman for all of the work that he does as chairman of the board. Carolyn Green extends a thank you to the rest of the board.

Jenny Wilson asks who will maintain the speed bumps. Eakman replies, the unit owners need to make it their responsibility to slow down and to tell renters to slow down as well.

Curt Wilson asks Attorney Farve if he is locked into the Amerigas contract. He did not sign a contract, but he did pay the bill. He wants to use propane but he does not want to support Amerigas. He has been disconnected and no longer receives a bill. Eakman replies, this contract will be up for renewal in March 2011. In the meantime, the propane will be provided by Amerigas. If he wants to use propane it will have to be with Amerigas until a new contract is available.

Ron Seher motions to approve the actions of the board for 2010. Curt Wilson seconds the motion. All are in favor. None are opposed.

Eakman thanks everyone for coming to the annual meeting.

### **Adjournment**

The meeting is adjourned at 8:00 pm.

Minutes submitted by Bethany Smith, Communications Coordinator.