

P.O. Box 40615, Grand Junction, CO 81504

## MINUTES OF ANNUAL MEETING AUGUST 21, 2008

Location: Church of Christ, Patterson Road, Grand Junction, CO

In attendance:

Karen Turner, President

Jan Cradit, Secretary-Treasurer

Mollie Dalton, Owner Linda Inglis, Owner

Stephanie and Ken Johnston, Owners

Marcos Bonfim, Owner Margaret McCaffrey, Owner Angie Antonopoulos, Owner

Matthew Miller, Acting Proxy for Kevin Miller, Owner

Laura Mettauer, Owner Helen Gray-Buskirk, Owner Kate Von Feldt, Owner

Karen and Garry Rodriguez, Owners

Karen Turner, Acting Proxy for Jane and Robert Spears, Owners

Karen Turner called the meeting to order and Jan Cradit read the minutes from the 2007 Annual Meeting.

Linda Inglis, Molly Dalton and Karen Rodriguez were given thanks for special contributions they had made during the year.

Karen Turner talked about the importance of filter cleaning by owners and that a black sock placed over the filter will help keep the filter clean and free from algae.

Each owner present was given a copy of the 2008 Annual Report which includes the proposed budget for 2009. Attached to these minutes are those reports. As the new Board will need to secure bids for landscaping and irrigation system maintenance, the proposed budget could change. Owners will be notified of the actual 2009 Budget no later than December 1, 2008.

New Board Members were elected and sworn in as follows:

Helen Gray-Buskirk, President – 314-1424 or helgb@yahoo.com Mollie Dalton, Vice-President – 263-8938 or moldally@hotmail.com Secretary, Kate Von Feldt - 210-4922 Treasurer, Stephanie Johnston – 778-1938 Alternate, Karen Turner 683-0903 or kmacrpt@bresnan.net

## Page No. 2 Belhaven 2008 Annual Meeting

The following ACCO (Architectural Control Committee) was formed:

Karen Rodriguez Garry Rodriguez Marcos Bonfim

If you are planning on installing fencing or any kind of landscaping, the ACCO is the committee that will guide you through these projects in accordance with Belhaven Subdivision covenants. Please contact Karen Rodriguez at 640-2059

#### IMPORTANT CHANGE FOR OWNERS:

Karen Turner presented an important change of Association responsibilities regarding maintenance c the sprinkler system at each individual owner's lot. All owners present were given a letter and legal opinion from Michael Gratton, III, attorney for Belhaven TOA, Inc. addressing this subject. Attached to these minutes are those documents.

A bid for replacing shrubs, trimming shrubs and removing weeds at the cul-de-sac and to the east of the sidewalk were presented by Karen Turner. \$2000 has been set aside for these projects and will be accomplished in October by our landscapers. Owners also requested Dog Waste Stations be placed at both ends of the retention pond. Garry Rodriguez and Marcos Bonfim agreed to install them if the Association would purchase them. The new Board will need to make this decision based on monies available.

It was requested by the owners that the new Board work on a rules list for Belhaven Subdivision addressing issues such as garbage cans, parking, car oil changes on the street and on driveways, etc. It was suggested fines could be imposed.

The exiting Board Members will meet with the new Board Members at 8:00 August 24, 2008 to familiarize them with events of this past year and to help with their specific duties and responsibilities.

Respectfully submitted.

Jan Cradit, Secretary-Treasurer



P.O. Box 40615, Grand Junction, CO 81504

August 21, 2008
Annual Meeting – this letter given to each attendee and mailed to those not present

#### Dear Owner:

When we took on the responsibility to operate as your Board of Directors, we were given the covenants and obligated to read them, try to understand them and determine what the responsibilities of the Association would be. We had no funds available at that time to hire an attorney, and we felt we understood the common language of the covenants in most cases. Thus, we have made decisions based on what we believed the covenants to say and what services we believed most owners would expect from their Association.

At the beginning of the mowing season this year, our landscapers requested that all irrigation boxes at the back of each property be locked and the keys removed and kept with Association records. They felt strongly that this was necessary to control times and amounts of watering, thus creating balance of the total watering system. This made a few owners upset.

A month ago we were approached by 4 owners who had contacted an attorney to get his opinion on who owned and had control of the sprinkler systems at each lot. These owners met with the Board, and they verbally expressed his opinion to us in that meeting. However, their attorney did not give them a written legal opinion. Therefore, we felt it was necessary to get a written legal opinion from the Association attorney before our Annual Meeting. After studying our covenants, he provided the attached written legal opinion.

Because we now have legal opinion that we were interpreting the covenants incorrectly regarding this issue, we are returning the keys that we removed to the boxes, and the Association will cease to maintain the sprinkler system and all related equipment within each lot's property lines. The Association will be responsible only for maintenance and costs of the common areas including the pump and all related equipment thereof.

Due to this change, owners will now be regulating their watering lengths and times. The pump will <u>not</u> be running 24 hours a day but will run between 7:00 p.m. and 10:00 a.m. Common areas will be watering between 10:00 p.m. and 7:00 a.m., so owners should be watering between 7:00 a.m. and 10:00 a.m. or between 7:00 p.m. and 10:00 p.m. Ditch water is measured to us by Palisade Irrigation District based on 1/3 to 1/2 a miner's inch of water per acre. In other words, we do not get unlimited amounts of water and must not abuse the use of our ditch water. Depending on the size of your lawn, 10-15 minutes in the front and 10-15 minutes in the back per day should be adequate to maintain your lawn.

Our landscaping and irrigation company will remain Peaceful Valley Landscaping, and if you need their services, they can be reached at 712-2133 (Troy) or 970/618-8585 (Ken). Their hourly rate is \$50 plus parts.

Board of Directors
Karen Turner, Vice-President
Jan Cradit, Secretary-Treasurer

**Attachments** 



P.O. Box 40615, Grand Junction, CO 81504

#### 2008 ANNUAL REPORT

2008 A/R as of 8-21-08	CATEGORIES	Expenditures 1-1-08 thru 8-21-08	Projected 8-22-08 thru 12-31- 08	Total Expenditures	2008 BUDGET	Proposed 2009 BUDGET
	Liability Ins	625	0	625	684	684
	Attorney Fees	0	190	190	1026	684
	Tax Prep	110	0	110	1368	684
	Office Supplies	196	50	245	1368	684
	Miscellaneous	634	*2000	2591	1026	684
	Electricity	1025	1000	1802	2736	2052
	Irr Sys Main	1204	750	1478	2052	3420
	Pump main/rep	175	1000	1175	4788	2052
	Mowing/Fert	8850	**7450	16750	13680	17100
	StartUp/Wint	125	150	275	2052	684
	Roof Repl	2647	609	3420	3420	3420
	Stucco Repl	2647	609	3420	3420	3420
	Landscaping	***New Category				***2052
	-					
\$ 29,423	TOTALS	\$ 18,238	S 13,808	S 32,046	5 37,620	\$ 37,620

This first year has been especially challenging, as we have had to operate on ¾ of our budget because 4<sup>th</sup> quarter dues must be carried over into 2009. Next year we will have a full budget to operate on.

Prepared by Jan Cradit, Secretary-Treasurer August 4, 2008

<sup>\*</sup>Weed control and bush/tree replacements yet to do

<sup>\*\*15</sup> weeks @ \$450/week plus 2 applications of fertilizer @ \$375

<sup>\*\*\*</sup>New Category for 2009 Budget

# BELHAVEN ANNUAL CASH FLOW BY MONTH

AUGUST A/R	PREVIOUS	EXPEND	% AUG A/R	AVAIL	ANNUAL
AUGUST AIR	771287000				BUDGET
Lich Ingus 4 019	(95.37)		0.00	(95.37)	684.00
Liab Insur - 1 .018 Attor Fees - 2 .027	794.43		0.00	794.43	1,026.00
Tax Prep - 3 .036	949.24		0.00	949.24	1,368.00
Office Suppy - 4 .036	864.57		0.00	864.57	1,368.00
Misc Exp - 5 .027	220.33	60.00	0.00	160.33	1,026.00
Electricity - 6 .073	1,366.90	244.26	0.00	1,122.64	2,736.00
Irr Sys Main - 7 .054	783.87	398.50	0.00	385.37	2,052.00
Pump/main/repairs - 8 .127	3,561.80		0.00	3,561.80	4,788.00
Mowing./Fert - 9 .368	4,602.82	2,625.00	0.00	1,977.82	13,680.00
Startup/Wint - 10 .054	1,463.87		0.00	1,463.87	2,052.00
***Roof Main - 11 .09	2,648.12		0.00	2,648.12	3,420.00
***Stucco Main - 12 .09	2,648.12		0.00	2,648.12	3,420.00
TOTAL				16,480.94	
TOTALS	19,808.70	3,327.76	0.00	16,480.94	37,620.00

Office Supply and	January	Warch	May	June	July	Aug
AISC EXPENSES						
Stamps	49.20					
Office Supplies (computer paper,						
travel drive,ink cartridge,labels,						
envelopes,tote)	77.77					
P.O. box - 6 mos /2 keys	48.00					<del></del>
Checking A/C Checks	10.06					
Walmart - binders/dividers	9.56					
Mesa Cty - amend covenants	6.00					
Stamps		16.40				
Walmart - Ink Cartridge/paper			24.94			
Renew Articles/State of CO			10.00			
Renew P.O. Box - 6 mos			47.00			
Debris Clean-Up			270.00			
Weed Spray			100.00	·		
Stamps '				16.80		
UPS - 1000 Copies Card					43.06	
Remove braces,etc - trees						
on north along Patterson						60.0
TOTALS	200.59	16.40	451.94	16.80	43.06	60.0
GRAND TOTAL \$788.79			·			

MEMO TO: Jan Cradit FROM: Mike Grattan

DATE:

July 23, 2008

RE:

Declaration and Bylaw Review.

I respond to your inquiries below. In responding, I make three assumptions. First, I assume the Declarations and Bylaws are signed. Second, I assume the Declarations are recorded. Third, I assume that the Declarant conveyed the Common Elements and irrigation system to the HOA as required by the Declarations. With these assumptions in mind, I respond as follows.

Issue #1: Are we as an Association responsible to service, maintain and pay for repairs to sprinkler systems at each individual lot?

In most subdivisions, an HOA is responsible for the common elements and the individual lot owner is responsible for everything else. In Belhaven Subdivision, except as otherwise specified in the Declarations, maintenance, upkeep and repairs of any residence or other improvements of each Lot is the responsibility of the Lot owners. Declarations, Article VIII, Section 4(b). Phrased differently, the Declarations state that, unless the HOA is affirmatively given a specific obligation by the Declarations, the obligation is that of the homeowner, not the HOA. The question is, therefore, whether the Declarations specifically impose service and maintenance obligations on the HOA for each individual lot's sprinkler system.

The HOA has the "obligation" to perform certain duties "for the benefit of each Lot". Declaration, Article VIII, Section 1. Included within these obligations is the power to accept real and personal property. Declaration, Article VIII, Sections 1(a), (b). Also included within these obligations are the obligations "to maintain and otherwise manage...all of the Common Elements and all facilities...thereon..." and "to maintain, repair and operate the irrigation system for the benefit of the Common Elements and each Lot...." Declaration, Article VIII, Section (1)(d),(e). The assessment provisions are similar. The HOA may assess the Lot Owners. Declaration, Article IV, generally. The purpose of this assessment is to provide and maintain the Common Elements, irrigation, drainage, [and] recreation facilities, if any, at Belhaven Subdivision. Declaration, Article IV, Section 2.

The above-referenced language leaves no doubt that the HOA has the obligation to maintain the "Common Elements". The Common Elements are defined to mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, including the irrigation and drainage facilities. Declaration, Article I, Section 4. Therefore, to the extent that an individual lot owner's sprinkler system is a "Common Element" (i.e., an element used for the common use and enjoyment of all owners), you must maintain, repair and operate it. This is the normal obligation imposed upon HOAs.

More interesting is the seeming distinction between "Common Elements" on one hand and the "irrigation system" or "irrigation facilities" on the other. Declarations, Article VIII,

Section 1(e); Declaration, Article I, Section 4. I have found no helpful law on the definition of "irrigation facilities". Nearly 80 Colorado cases have addressed the term "irrigation system" in some way but, unfortunately, I found none that specifically defined the term "irrigation system". Courts generally (though not exclusively) use the term to refer to a system applicable to a whole group rather than an individual's lot. See, e.g., Concerning Application for Water Rights of Midway Property Owner's Assoc., Inc. El Paso and Pueblo County(ies), 938 P.2d 515 (Colo. 1996); Strole v. Guymon, 37 P.3d 529; (Colo. App. 2001); but see, Vaughn v. People er rel. Simpson, 135 P.3d 721 (Colo. App. 2006). This would conform to the English definition which defines "system" to mean "a group or combination of things or parts forming a complex or unified whole". The Random House Dictionary (1st ed. 1980).

In light of the foregoing, it is my opinion that the Declarations do not affirmatively impose the duty to maintain an individual lot's sprinklers because these sprinklers are not part of the "system" or the "common elements".

Issue #2: Does the Association own the sprinkler system and equipment associated with it at each property?

RESPONSE: The Declarant conveyed the "Common Elements". Declaration, Article II, Section 2; see also, Bylaws, Article II, Section 3. See above for definition of "Common Elements". Furthermore, the Declarant transferred the "entire irrigation and drainage system, free and clear of all liens and encumbrances to the Association". Declaration, Article II, Section 7(b). This is inartful language because it does not define the terms "irrigation and drainage system". Nevertheless, using the same analysis as above, I believe that the HOA owns that portion that is part of the unified whole and not that which is applicable only to a specific lot. As a tangent, I note that the HOA has an easement to maintain the Common areas. Declaration, Article VII, Sections 1(a),(b). The Bylaws grant the HOA Board the right to cause the Common areas to be maintained. Bylaws, Article VII, Section 2(f).

P.O. Box 40615 Grand Junction, CO 81504

July 15, 2008

Dear Owner:

HON, INC. to Ling

Thompson Soul

We have an important issue that we need your help with. We received the following email from our landscapers regarding maintenance of the large irrigation filter at the back of each home.

"We are concerned about the filtration of the water and the view flow filters for the homeowners. Our weekly irrigation check last week took 3 guys 9 hours unclogging nozzles due to silt, algae and mud clogging the pop-up spray nozzles. We cleaned all the filters on June 12 and on July 9 the filters were really clogged again. This time of year we experience algae forming in the clear filters in the back of the homes. The water sits in the clear filter during the day and is exposed to sunlight causing algae to grow. We have met with some of the homeowners and showed them how to clean their own filters. We also explained to the people we met that they can put a dark sock over the clear filter to filter sunlight and slow the growth of the algae. We are experiencing high runoff this year and the quality of the river water is abnormally turbulent."

These filters need to be cleaned once a week and we simply did not budget for this job to be done by our guys at \$200 each time. We are willing to meet you at your home to show you how to take the filters apart and quickly clean them — it only takes a couple of minutes to do it. Please call Karen at 683-0903 or Jan Cradit at 245-0288 to set up a time for us to stop by.

If you are an owner with a tenant, please show them how to do it or have them call us and we will gladly meet with them. We are hearing that many Associations are having extreme problems with the condition of the irrigation water this year. Please call us to let us know how you are handling this with your unit and tenant, so we can know it is being taken care of.

On another note, some of you have been asking about weed control. Due to excessive irrigation repairs and replacements, we do not have the dollars in our budget at this time for weed control. If you see weeds in your rocks or lawns, please pull them or dig them out. If later on the budget allows for it, we will have the <u>common areas</u> sprayed. Please do not spray your lawn with any chemical that will damage the turf. Thank you.

Some of you have asked about replacement of bushes that have died in the fronts of your homes. We are planning to replace these bushes and a few trees in October when it is cooler.

We thank you so much for your help and understanding as we are learning during this first very difficult year. We know that some of the difficult decisions we are having to make will be made clearer at our Annual Meeting.

Karen Turner, Vice-President Jan Cradit, Secretary-Treasurer

## BELHAVEN TOWNHOME OWNERS ASSOCIATION, INC. P.O. Box 40615 Grand Junction, CO 81504

June 21, 2008

## Dear Owners:

We are writing to correct an error we have made regarding usage of the North Parking Lot of Belhaven Subdivision. We only just today discovered that our covenants directly refer to this parking lot on Page 4, <u>Section 8</u>. <u>Common Driveways</u>, as follows:

"Tract "B" serves as a common (shared) driveway and as additional parking for Lots l-4, Block 2, Belhaven per the City of Grand Junction TEDS Manual. Maintenance responsibility for Tract" B" is the responsibility of such lot owners."

Lots l-4, Block 2, are 593, 593 ½, 595 and 595 ½ Belhaven Way. This means that the owners of those properties and their tenants, if applicable, have exclusive rights to that parking lot. These owners are also responsible for maintenance of that lot should that become necessary.

We are truly sorry for the misinformation we inadvertently gave you, and any inconvenience it may have caused anyone. We appreciate your cooperation in adhering to Belhaven covenants.

On another note, we will be electing board members at our Annual Meeting in August. If you wish to nominate someone for the position of president, vice-president or secretary-treasurer, you can submit that name in written form to The Nominating Committee at the above address or drop it off at 585 Belhaven Way. We will also need a letter from the person you are nominating stating that they are willing to serve in that position, their address and their telephone number. Board members are elected for one year. Also, if you yourself are interested in serving as a board member, let us know in writing. All submissions need to be received no later than July 3<sup>rd</sup>. Thank you for considering these important positions.

We are looking for people to serve on an ACCO (Architectural Control Committee). These people will work directly with the Board of Directors and will need to familiarize themselves with the covenants regarding fencing and landscaping, etc. They will handle calls from owners regarding these issues and meet with owners when necessary. If you have an interest or would like more information, please contact Karen Turner at 683-0903 or email her at <a href="mailto:kmacrpt@bresnan.net">kmacrpt@bresnan.net</a>.

Belhaven Board of Directors Karen Turner, Vice-President Jan Cradit, Secretary-Treasurer

P.O. Box 40615 Grand Junction, CO 81504 \$330 for both units

June 1, 2008

Dear Owners:

REMINDER - DUES is due JULY 1<sup>ST</sup>!!

Due to time constraints, Lisa Sprague has felt it necessary to step down as our President. We will be filling this position at our Annual Meeting in August. We want to thank Lisa for her time, effort and invaluable expertise as President of the Association.

## If you are an owner with a tenant, please share any applicable information with your tenant.

Summer is here at last! Peaceful Valley Landscaping is handling our landscaping needs this summer. If you have any questions or problems, please email-them to Karen Turner at <a href="mailto:kmacrpt@bresnan.net">kmacrpt@bresnan.net</a> or in an emergency call Karen at 683-0903. PLEASE do not call Peaceful Valley. We are in close contact with Peaceful Valley, and by now you've noticed that mowing is on Tuesdays, weather permitting. Please have everything off the lawn before they get there so they can do the best job possible. This includes trampolines, leashes, lawn furniture, swimming pools, dogs, dog waste, etc.

If you are considering fencing the back of your property or plantings of any kind that could disturb the irrigation system, electric lines or gas lines, please contact one of us to insure compliance with our covenants. We hope to have an ACCO (Architectural Control Committee) in place very soon.

Another reminder regarding the church property east of Belhaven. The wooden fence is the property line. The church has asked that we not drive or park on any of their property – that includes our guests.

The north parking lot between buildings 1 and 2 is intended for 48-hour temporary guest parking or, when needed, for maintenance vehicles. An owner may want to park their car(s) in this lot temporarily to give their guests close access to their home. This parking lot is not intended for long-term parking or storage of vehicles not in use. Please contact a board member if you need additional time for a guest or information.

Correction le Herabout We really appreciate those of you who have volunteered to work with us to make this a beautiful place to live with the standards we all want. We especially appreciate the work Linda Inglis is putting into getting the cement islands removed to allow for more parking.

Please be thinking of some ideas to discuss at our Annual Meeting in August. We will be sending out notices a month before that meeting.

Jan Cradit is available to help with dues or various projects and concerns at 245-0288 or <a href="mailto:jbdgc1@hotmail.com">jbdgc1@hotmail.com</a>. In your emails to us, please be sure to put "Belhaven" in the subject line.

In the event of an <u>emergency</u>, please feel free to come to our doors (583  $\frac{1}{2}$  or 585 Belhaven Way). If it is not an emergency, please contact us by phone or email, and we will set up a convenient time to meet. Thanks for your consideration.

Belhaven Board of Directors Karen Turner, Vice-President Jan Cradit, Secretary-Treasurer

P.O. Box 40615 Grand Junction, CO 81504

January 25, 2008

#### Dear Owner:

We wish to thank those of you who sent Absentee Ballots or attended the Special Assessment Meeting January 2, 2008. After much lively discussion, annual dues of \$660.00 and amendment of the covenants to reflect that amount were approved with a 2/3 majority vote. Attached is a copy of the amendment for your covenants. If you do not have covenants and wish to have them, please send us your email address and we will send them to you as an attachment.

Many of you have already paid your first quarterly dues. If you have not, they are due immediately in the amount of \$165.00 to the above P.O. box. Quarterly dues are due <u>January 1<sup>st</sup></u>, <u>April 1<sup>st</sup></u>, <u>July 1<sup>st</sup></u> and <u>October 1<sup>st</sup></u>. We will NOT be sending dues notices, so please mark these dates on your calendars. As a reminder, dues not received within 30 days of the due date will have interest charges from the date of delinquency at the rate of 1-2% per annum. Please refer to your November 30 letter about this subject.

Also, if you wish to receive notices regarding meetings, etc. via email, please send us your email address. We would like to save the Association the cost of stamps if possible. However, we will continue to send notices by mail to those who do not have an email address or do not wish to submit their email address.

Many thoughtful suggestions were given at the meeting, and we will be discussing and considering them at our next annual meeting in August. We will be sending a notice regarding the August meeting.

## Following is information for all owners and tenants: Owners - imperative to share with tenants.

- We have been in meetings with the church directly east of Belhaven Subdivision regarding trespass driving and parking on their property. The Belhaven Subdivision property ends at the wooden fence, and any driving or parking east of that fence line is trespassing. Access to your property is Belhaven Way or Cascade Avenue only. With our approval, the church has informed us that any trucks, cars, etc. parked on their property will be towed at the owner's expense. Any access to church property needs express approval by the church. Dogs are not allowed on church property for any reason.
- In our November 30 letter we explained our covenants regarding trailers, RV's, 5<sup>th</sup> Wheels, inoperable vehicles, etc. We asked that these be removed immediately. Beginning February 1, 2008, those in non-compliance will be towed at the owner's expense.
- It was brought to our attention in the January 2, 2008 meeting that owners are concerned about dog eliminations not being picked up and disposed of properly. In consideration of your neighbors and for all common areas of Belhaven, please pick up after your dog. Please know that if you are not cleaning up after your dog in your own yard, it is a health hazard and the odor is offensive to your neighbors. In respect to our landscaper, all dog eliminations need to be cleaned up the night before mowing, as the landscaper can refuse to mow your property if they so chose.

Please know that we are trying to work in the best interests of all concerned. Thanks
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Lisa Sprague, President Karen Turner, Vice-President \_\_ Jan Cradit, Secretary-Treasurer

RECEPTION #: 2420213, BK 4586 PG 575 01/15/2008 at 03:04:38 PM, 1 OF 1, R \$5.00 S \$1.00 Doc Code: COVENANTS
Janice Rich, Mesa County, CO CLERK AND RECORDER

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELHAVEN SUBDIVISION

<u>First Amendment</u> - whereby ARTICLE IV, COVENANT FOR MAINTENANCE ASSESSMENTS, Page 5, <u>Section 3</u>. <u>Maximum Annual Assessment</u> only is amended to read:

Until January 1<sup>st</sup> of the year immediately following the conveyance of 75% of the lots to nondeclarant Owners, the maximum annual assessment shall be Six Hundred Sixty Dollars (\$660.00) per lot.

IN WITNESS WHEREOF, the undersigned being the President herein, has hereunto set its hand this 15 day of 1000, 2008.

BELHAVEN TOWNHOME OWNERS ASSOCIATION, INC.

	•
STATE OF COLORADO	) ) ss.
COUNTY OF MESA	)
The foregoing instruments January, 2008	nt was acknowledged before me this <u>15</u> day of 3.
WITNESS my hand and My commission expires	official seal. : 11/28/09
ARY PUBLIC MAREN	Maren Laglinage Notary Public