

How To Collect Reserve Funds Owed By Developer?

August 9, 2009 by Bob Frank

In response to recent posts on Ron Johnson's Blog by Forrest Fetherolf and Norman McCullough:

1. Forrest, I hope the rumors of coming management improvements by the current board turn out to be true. The Property & Grounds and Finance Committees are a VERY long ways from performing their duties to anticipate and help prevent waste and abuse by RMI. Having been promised so much, for so long, by so many, and receiving so little progress in terms of quality purchasing and contracting, I am compelled say "show me" before I can be encouraged.
2. Norm, agree that the Reserve Study contractor should be replaced. I should have included that in my list. After about 10 years of such engineering and financial services by only one company who was originally hired by the developer, the community should demand replacement based on just good management. A new reserve specialist would be motivated to scrub down the old company's work and see if a fresh view of such an important element of SCA's resources could be used to significantly improve our future financial posture.
3. Norm, you are right that only through a forensic audit of the reserves processes between 2004 and 2008 could the community be assured of being able to collect money owed by the developer. Since the boards have publicly agreed via its look-back study and during board meetings that the developer owes SCA over \$700,000 for our reserves, we need an (independent) law firm working on a "contingency fee" basis in order to finally settle the long-standing financial disputes in this reserves area.

Two separate law firms specializing in such matters told the board in 2007 that they are usually highly successful in collecting underfunded reserve

funds from big companies like Pulte/Del Webb. But, such action needs to be done on a recovery basis by a law firm that does not have conflicts of interest with the developer.

As a board member, I have often proposed the above method to resolve this dispute, but our association attorney, the finance committee, and the board members who trust everything the attorney says, have refused to even seriously consider the possibilities of such an alternative approach. Those failures to act since 2005 have been costing the members hundreds of thousands of dollars—while the statutes of limitation are expiring.

Who benefits from such consistent board failures to act since 2005? Only the developer and the association law firm. Such flagrant misconduct and negligence by the finance committee and the board are serious breeches of the statutes and the CC&R contracts. No matter how much good work is done by the “volunteers”, why should such major failures be tolerated or forgiven?

If the jobs are too big for them to handle, board and committee members should resign and let more capable members be elected or appointed to deal with such complex issues. Losses of hundreds of thousands of member assessment dollars are NOT trivial matters.