

**MINUTES of THE ENCLAVE ASSOCIATION, INC.**  
**ANNUAL HOMEOWNERS MEETING - Draft**  
 March 3, 2019

1. Roll call and certification of proxies

Mel Blumenthal, President of the Association, called the meeting to order in the meeting room of The Enclave in Snowmass Village, Colorado at 3:30 P.M. Non-members Mike George, Paul Parkerson, Andy Ford, Joseph Zuena, and Luke Arnold from Wyndham were present for the meeting.

Members Present	Unit #	Points	Rental Non rental	= R = NR
Stiles	102	1170	R	
Klein	105	1170	NR	
Blumenthal	106/107/206	3885	NR/NR/NR	
Henderson	108	1545	NR	
Burns	109	1170	NR	
G. Novo	203	1170	NR	
Lustberg	204	1170	NR	
Barford	208	1545	NR	
Patenaude	212/313	2715	R/R	
O. Novo, Jr.	303	1170	R	
Word	304	1170	NR	

Members Present By Proxy	Unit #	Points		Proxy given to
Dybala	101	1860	R	M. Blumenthal
Canfield	110	1545	R	O. Novo Jr.
Weybright	111/211	2340	NR/R	M. Blumenthal
Jacobs	201	1860	R	M. Blumenthal
Kwarciak	202	1170	NR	M. Patenaude
Eldean	205	1170	R	M. Blumenthal
O. Novo Sr.	207	1545	R	O. Novo Jr.
Duvoisin	209	1170	R	O. Novo, Jr.
Handler	213/312	2715	R/NR	M. Patenaude
Smith	302	1170	NR	M. Blumenthal
Garon	307	1860	R	J. Henderson
Crowe	310	1545	R	M. Blumenthal
Fisher	311	1170	NR	M. Blumenthal

Members Present By Phone	Unit #	Points	Proxy given to
Losi	104	1170	

Kwarciak	202	1170	M. Patenaude
Garon	307	1860	J. Henderson
Crowe	310	1545	M. Blumenthal

**TOTAL: (43,775/52,515 = 82.98%)**

Verification of the signed proxies established that the required quorum of one-third (33%) of Enclave owners by square footage was achieved.

2. Proof of notice of meeting

Paul Parkerson presented proof of notice of meeting.

3. Reading and approval of minutes of March 11, 2018, meeting.

Management had previously posted the minutes of the March 11, 2018, meeting on the slcassoc.com website. Mr. Barford made a motion to waive the reading of the minutes and approve them as written. Mr. Lustberg seconded, and the motion passed.

4. State of the Property

Completed projects last year and through this fall

1. Completed projects

- Replaced air bubble jet pumps to hot tub
- Repaired Enclave property sign
- Performed annual test and inspection on the fire alarm system
- Performed annual fire extinguisher tests - recharged and replaced, as needed
- Repaired concrete to west side of pool deck
- Installed drain pan at bottom of driveway along with heat tape to prevent ice build-up in the road
- Upgraded radio communications network
- Negotiated improved internet service with no price change
- Purchased new industrial dryer
- Purchased new pool towels for common use
- Cleaned and sealed east end walkway near ground floor
- Replaced a snowmelt sensor
- Repaired trash bay door damaged by bear
- Replaced exercise equipment with newer models
- Located three leaks in snowmelt and turned off affected areas
- Sanded and re-stained unit doors
- Power washed and resealed all pool and concrete stairs, along with front steps of the office

- Cleaned interior and exterior of windows
- Inspected and clean chimneys
- Landscaping and irrigation work paid for by Base Village Developer to accommodate new bus stop and sidewalk
- Performed annual pool boiler system flush, boiler pressure vessel certification, and backflow preventer inspection
- Performed annual roof inspection and maintenance
- Purchased and installed new pool cover

## 2. Projects proposed to be completed this 2018/2019 fiscal year

- Consider installing dryer vents in crawl space to prevent future lint buildup
- Continue Intensity of Use Survey through October 2019
- Continue survey of parking lot retaining walls

## 5. Financial Position

The external audit of the Association is presently underway. The completed audit will be made available to any member upon request.

Current year operations through the first four months show The Enclave to be at a \$494 deficit to budget, with various line item variances essentially offsetting.

There are four delinquent owners at present on assessment receivables. Management has contacted each of them and requested payment. EN104, owes \$86, EN301 owes \$9,252, EN306 owes \$5,820, and EN311 owes \$5,820, as of March 03, 2019.

The Reserve Fund (unaudited) at fiscal year-end 2017-2018 amounted to \$562,224.

## 6. Election of Directors

Mr. Blumenthal noted that this year three Board seats are open for election – two are currently held by Mr. Blumenthal and Mr. Fisher – both have indicated that they are running for re-election. The third was held by Oscar Novo, Sr., who resigned his position on 2/21/19. At the October 2018 Board Meeting Mr. Blumenthal volunteered to be up for re-election this year as opposed to his previously scheduled time of 2021 to better balance the number of candidates up each year. Mr. Blumenthal noted that Oscar Novo, Jr., owner of 303, and Mr. Kwarciak, owner of 202, have announced their candidacies for the remaining one year term of Mr. Novo, Sr., owner of 207. Mr. Blumenthal asked if there were any other members present who wished to declare candidacy for the Board of Directors at this time. Mr. Novo, Jr., and Mr. Kwarciak announced their candidacies for the seats presently held by Mr. Blumenthal and Mr. Fisher. Mr. Blumenthal then closed the nominations. Mr. Parkerson then circulated ballot forms for the use of the attendees and proxy holders.

Ms. Word read a letter from Mr. Kwarciak to the members at large into the record (Attachment 1).

Mr. Blumenthal then invited Mr. Novo, Jr., to make a statement to the attendees. Mr. Novo commented that he would like to solicit the membership for more input prior to the Board making a decision on continued future investment on the entitlement project.

Mr. Blumenthal and Mr. Fisher were elected to three year terms each. Mr. Oscar Novo Jr. was elected to fill the remaining one year term vacated by Oscar Novo, Sr.

## 7. Old Business

### Phase II Entitlement Renovation/Development & Soft Costs (RSC)

In order to obtain final Town of Snowmass Village approval for the Enclave's proposed renovation/development project, the Board at its meeting on January 15, 2019 approved further expenditures totaling up to \$213,000 in addition to the special assessment of \$95,065 levied for fiscal 2018-2019. The expenditures are to be made from the overall Reserve Fund and replaced via a series of annual special assessments that are scheduled to occur in fiscal years 2020/2021, 2021/2022, and 2022/2023. Cumulative costs through 01/15/19 covering entitlements, architectural services, legal services, etc., for renovation work already completed for these efforts amount to \$412,139. Funding via approved assessments or surplus transfers to date (including those approved on 01/15/19 by the Board for fiscal years 2020/2021, 2021/2022, and 2022/2023) amount to \$621,732 – leaving a present remaining budget for these efforts of up to \$209,594.

An extended discussion period then ensued regarding various member opinions about the investment strategies of the HOA into this process. Mr. Blumenthal explained that these decisions were made by the Board, and that the HOA had obtained an opinion from legal counsel pertaining to the legitimacy of these decisions. He also noted that, after the election of Mr. Novo Jr. to the Board during the earlier part of the meeting, any or all of the Board members could request the Board to reconsider that decision at a subsequent board meeting.

Mr. Blumenthal then invited any of those members present, either on the phone or in the room, to join the committee that is investigating this matter and is directly involved in current negotiations with potential developers who have expressed interest in the project. Ms. Word expressed interest, and Mr. Blumenthal invited her to contact Mr. Garon, who is chairing that committee for consideration to join that committee.

Mr. Barford then requested that the Board forward the legal opinion from counsel to the membership at large regarding this matter, and Mr. Blumenthal advised that the HOA would make that request of its legal counsel (See Attachment 2).

Mr. Blumenthal advised the attendees that, should the HOA successfully complete the final TOSV review process prior to January 2020, the project would then not incur expected changes in the land-use code that will likely increase the cost and complexity for the renovation/development project.

### Insurance

The Enclave continues to be insured under a master policy that includes Woodrun Place and Chamonix. The master policy allows these three properties to share in their combined, aggregate replacement value for the purposes of paying for a claim, while maintaining separate claims history evaluations. The aggregate replacement value of all three properties under the master policy is \$96,109,774.

Of this amount, The Enclave has an allocated replacement property limit of \$29,800,479. Under just its allocated limit the Association has average replacement coverage of roughly \$479 per foot, based upon exterior square footages, and including the carports and the arrival center building.

If a unit owner has renovated kitchen or bath areas, performed other interior modifications, or purchased a unit that had interior modifications performed subsequent to initial construction, the Board strongly recommends that those unit owners have their units appraised on a replacement cost basis. If there have been any upgrades or improvements to a Unit and/or its contents, the owner needs to insure the value of those upgrades and/or contents. The Board advises each and every owner to have his insurance agent review existing association and owner's policies to make sure that each and every owner has appropriate coverage for his personal property and unit improvements. The Board has decided to maintain liability insurance coverage on a blanket basis for \$1 million per occurrence and \$2 million aggregate, with a \$25 million umbrella. Increased costs of construction are separate from the property limits at \$1,000,000 under the building and ordinance section of the Package coverage. Demolition has a limit of \$1,000,000, separate also from the property limits. For fiscal 2018-2019 the Association purchased a minimum premium worker's compensation policy, primarily to protect against uninsured subcontractors working on site who might become injured.

Guillermo Novo asked how much money the HOA saves by participating in this group coverage. Mr. George, while stating that this is just an estimation, said \$60,000. G. Novo requested that the management company ask the insurance broker for an estimate of how much the policy costs would change to increase the coverages for The Enclave, alone, to obtain \$96,109,774 in coverages as a stand-alone entity.

John Wilkinson of Aspen Neil-Garing Insurance Agency is available to discuss any specific insurance questions owners may have for either the Association or their private needs. The Board encourages you to contact Mr. Wilkinson at (970) 925-7285 and/or your insurance broker to review your private insurance needs related to unit ownership within the Association, especially if you have made improvements to your unit.

### 8. Staffing and Services

Management reports that staffing is at 93% of target, with 3.00 housekeeping, 0.58 guest service, and 1.00 reservations/owner rep positions open. Management notes that 1 guest services candidate has had a successful interview for this department, and management is in the process of extending an offer. Management continues to struggle to source housekeeping candidates, other than via a 3<sup>rd</sup> party provider. Also, the person that was hired to be the reservations/owner representative quit in early February. Management notes that 2 current guest service agents have each applied for this res/owner rep position. A hiring decision for this position has yet to be made.

Management commented that its staffing team, while making significant progress over our performance during the winter of 2017-2018 and summer 2018, has a long way to go to improve on processes, standards and service etiquette. To that end, Wyndham has approved increasing the number of full-time year round guest service positions from 1 to 6, and a new guest services manager, Jeff Bingham, was promoted into his position in February of 2019 to help us bring about these improvements.

#### 9. Rental Program

Mr. Arnold and the WYN team presented a rental program performance report and marketing plan. The WYN program continues to out-perform the local market by a wide margin. As the minutes are publicly available on the website, management will provide a copy of the report upon request, versus asking the board to include it as an attachment to these minutes.

Mrs. Patenaude questioned why Wyndham doesn't require a security deposit for rental guests. Mr. George responded that currently no management company in the local market requires security deposits, and he is of the opinion that being first to market with a security deposit requirement could reduce rental revenue to a greater amount than the benefits of instituting a security deposit policy.

Mr. G. Novo then commented that he was dissatisfied with management, although he noted that he did not have very much data. He requested that management compile a performance report similar to what it had done for the rental program. After further discussion the attendees agreed that it would include a survey of owners to provide feedback about general categorical performance.

#### 10. Report of Officers and Property Manager

##### Status of Snowmelt Leak

The addition of the glycol feeder and efforts of the staff and Young services have allowed us to isolate three separate leaks in the snowmelt system. These sections of the snowmelt system have been turned off, and maintenance staff manually clears these sections, as needed. Our current plan is to replace these snowmelt sections as part of our

renovation project.

### Roof

The new roof membrane, installed in the previous fiscal year has not had any discovered defects to date.

### Retaining Walls

The Retaining Walls have been reviewed since 2014 by an engineer. After reporting minor movement at the commencement of the engineering review, the engineer reports no further movement over recent months. The latest survey of the retaining walls, which was conducted in fall of 2017 confirms that no movement has occurred during the previous year. These retaining walls, according to our architect's advice, will need to be replaced in the near future. Due to the age and condition of our original garage roofs, replacement of these retaining walls should occur at the same time as replacement of those roofs. There is currently no line item funding within the Reserve for replacement of Retaining Walls. Management will schedule a subsequent survey to be conducted on the retaining walls in spring of 2019. Mr. Henderson asked if insurance covered the retaining wall failing. Mr. George said that management would pose that question to the insurance broker and provide the reply to the board.

### Potential Future Problems

G. Novo asked what potential problems the Enclave could expect to face in the years to come. Mr. George responded that the pool deck slab has sunk approximately 2 inches at the east gate adjacent to the elevator landing and may continue slowly sinking, which could create leaks in the snow melt system. The final stage of the crawl space project to extend the dryer vents to the exterior walls was discussed. Mr. George also noted that the membership may want to consider some type of chimney caps and to repair/replace crumbling chimney mortar and bricks from over 4 decades of exposure to the elements; the need to consider replacement exterior siding on the bottom two levels of the property; the potential for the aging snow melt system mechanicals and tubing in the driveway to fail; and the need to replace the retaining walls because of deterioration, water damage, and weathering over time. He also explained that the recently replaced roof overhangs have improved, but not eliminated, the problems that can be expected from having water drip onto the walkway band boards and other exterior wooden components of the structures.

## 11. New Business

### Other

Mr. Blumenthal reported that the Board had recently adopted a series of Rules that had previously been noted as approved in various prior minutes of meetings of the Association – Attachment 3. The Rules will be posted to the SLCASSOC.com website. They pertain

to when and under what conditions owners may perform renovation, upgrade or repair work within their Units. All members are encouraged to read these Rules, as all members will be required to adhere to them.

#### Motion to Ratify the Acts of the Board and/or Directors


Mr. Klein made a motion to ratify the acts of the Board and/or Directors for the 2017-2018 fiscal year and through the date of this meeting. Mr. G. Novo seconded, and the motion passed.

Mr. Barford noted that it may be beneficial to study the value of the Enclave land without any improvements. Mr. Blumenthal commented that, if the HOA so desired, it could obtain such a valuation, at a cost to be determined, with and without the presently developed asset.

#### 12. Adjournment

Mr. Klein made a motion to adjourn the meeting at 7:00 PM. Mr. Henderson seconded, and the motion passed.

Respectfully submitted,

Mr.  President



Dear Enclave Owners,

ATTACHMENT #1

I apologize but due to late notice of the meeting my schedule did not allow me to attend in person. Nevertheless we are passionate about the Enclave. My wife and I were dismayed when we learned in late January that the Board decided on its own, without a vote of all owners, to use the HOA Reserve Funds for research for future use of land on the west side of the property. I thought it was clear at the 2018 annual meeting that the owners were in agreement not to incur any further cost relative to the development project, but rather seek a developer who would assume all costs.

Consequently, I requested that the Board and/or management share with all owners the applicable association document(s) concerning permissible expenditures of reserve funds and special assessments. The reserve funds should be used for the existing property maintenance issues.

After repeated requests I was advised that the Board claimed authority to utilize reserve funds in this instance under the guise of "improvement". The Board has exceeded its authority in this case and the word 'improvement' as justification of future development is far-fetched and not at all the intended meaning of the bylaws.

At this point, I believe the proper way to proceed is as follows:

1. **Halt** any use of reserve funds in an attempt to obtain approval from Snowmass Village for a development application.

2. Withdraw the special assessment to replenish the reserve fund.
3. Allow all unit owners to vote for or against a three-year special assessment of \$213,000.00 (as well as breaking down the applicable pro-rata share per unit owner) in an attempt to obtain final approval from Snowmass Village for the development/redevelopment application.

Spending hundreds of thousands of owner's dollars on researching and working on this new development is a decision that should be made by all owners. If this were a desirable opportunity... I think we would hear that from the market...And we have not. We are pursuing developers, they are not pursuing us. I believe that alone shows that currently the Enclave parcel is not in a place that an outside developer would want to make a full investment.

I am running for a Board position and will actively seek input from all owners and will be an advocate for all Enclave owners.

Respectfully submitted,

Rick Kwarciak

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MEMORANDUM

ATTACHMENT #2

TO: Mel Blumenthal and Mike George  
FROM: Michael Hoffman  
DATE: March 2, 2019  
RE: Authority to Adopt Supplementary Assessments

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Question: Must the anticipated additional costs of the renovation/development project be included in the Association's budget and be ratified by the members pursuant to C.R.S. § 38-33.3-303(4)(a)?

Relevant provisions of the Declaration:

- Assessments shall include Regular and Supplementary Assessments. (§ 6.1)
- Subject to the provisions hereof, the Board of Directors of the Association shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Owner shall comply with all such determinations. (§ 6.1)
- To determine the total amount required to be raised by Regular Assessments, the Board of Directors shall prepare or cause to be prepared and approve a budget for the fiscal year showing, in reasonable detail, the estimated costs and expenses which will be payable in that fiscal year, the amount necessary for any capital reserve and maintenance fund, if any, and for a reasonable carry-over reserve. (§ 6.2)
- In addition to Regular Assessments, the Board of Directors may levy Supplementary Assessments, payable over such period as the Board of Directors may determine: (a) for the purpose of defraying, in whole or in part, to the extent the amounts in the capital reserve fund are insufficient therefor, the cost of any construction or reconstruction, repair or replacement of the Project or any part thereof; (b) for the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration; or (c) to cover the deficiency, in the event that, for whatever reason, the amount received by the Association from Regular Assessments is less than the amount determined and assessed by the Association.

C.R.S. § 38-33.3-303 provides, in relevant part:

((4)(a)(I) Within ninety days after adoption of a proposed budget for the common interest community, the executive board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the association's website, a

summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws.

(II)(A) Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

Section 38-33.3-303(4)(a) became effective against pre-CCIOA associations, like The Enclave, as of July 1, 2017.

#### Discussion and Conclusion:

It is clear from the Declaration provisions quoted above that costs to be paid through Supplementary Assessments need not be included in the Association's regular budget. As defined by the Declaration and as relevant here, Supplementary Assessments may be used to pay (a) "construction or reconstruction, repair or replacement" costs when the balance of the capital reserves accounts is insufficient pay those costs or (b) "the purpose of defraying any other expense incurred or to be incurred as provided in this Declaration."

It appears that the anticipated additional costs of the renovation/development project are properly characterized as falling within one of these two categories. For that reason, these costs need not be included in the Enclave's annual budget and thereafter be subject to potential veto at the meeting of the members held pursuant to C.R.S. § 38-33.3-303(4)(a)(II)(A). Pursuant to Section 6.1 of the Declaration, the Board of Directors has power and authority to determine the amount of the Supplementary Assessments without subsequent ratification by the membership. Although ratification of the Board's approval of the Supplementary Assessments might be helpful in addressing future questions regarding those assessments, member approval of the Supplementary Assessments is not a necessary element to their legitimacy and enforceability.

Enclave Rules - Draft  
Supplemental to the Plat, Declaration, Bylaws, Articles of Incorporation, and Colorado  
Common Interest Ownership Act  
Adopted and in effect as of March 3, 2019

1. Enclave members must first submit a written request to the Board, prior to commencement of any in-Unit work, that adequately describes any work in units that would require any disturbance, change, replacement, movement, etc., of any limited or general common element that an owner desires to undertake. The Board will consider the proposal for the work and may, or may not, impose conditions to which the applying member must agree and to which the applying member must adhere in order for the Board to subsequently issue written approval for the commencement of any such work. It is the responsibility and obligation of the applying Enclave member to contact the Town of Snowmass Village Building Department (TOSVBD) to advise the TOSVBD of the scope of work under consideration and to subsequently obtain and post any building permits required by that entity. Members should refer to the Declaration and other controlling documents of The Enclave Association, Inc., for other rules and information regarding such work.
2. During annual winter seasons (Thanksgiving through the last day that the Snowmass Ski Area is open for business, approximately the middle to end of April), and annual summer seasons (approximately June 15 through September 30), members may not perform discretionary repairs, replacements, additions, renovations, or remodel work within their Units without first obtaining written permission from the Board by submitting a written proposal describing the nature of the planned work, and the duration over which the work is scheduled to occur. The Board will consider the proposal for the work and may, or may not, impose conditions to which the applying member must agree and to which the applying member must adhere in order for the Board to subsequently issue written approval for the commencement of any such work. It is the responsibility and obligation of the applying Enclave member to contact the Town of Snowmass Village Building Department (TOSVBD) to advise the TOSVBD of the scope of work under consideration and to subsequently obtain and post any building permits required by that entity. Members should refer to the Declaration and other controlling documents of The Enclave Association, Inc., for other rules and information regarding such work.
3. Any member whose Unit is located above another Unit and desires to perform the installation of tile, wood, or other non-carpeting flooring is required to install soundproofing materials in the flooring system. Members desiring to install such systems must first present their written plans to the Board for consideration prior to the commencement of any such work. The plans must include specifications that adequately describe the sound transmission rating of the flooring system to be installed. The Board will consider the proposal for the work and may, or may not, impose conditions to which the applying member must agree and to which the

applying member must adhere in order for the Board to subsequently issue written approval for the commencement of any such work. It is the responsibility and obligation of the applying Enclave member to contact the Town of Snowmass Village Building Department (TOSVBD) to advise the TOSVBD of the scope of work under consideration and to subsequently obtain and post any building permits required by that entity. Members should refer to the Declaration and other controlling documents of The Enclave Association, Inc., for other rules and information regarding such work.