

Esplanade Condominium
Special Homeowners Meeting

July 29, 2010

Call to Order at 6:40pm

1. Introductions:

Siggi Bjarnason, Sven Freitag, Karen Thompson, Barb Simpson (Esplanade Board Members), Vickie Tolson (Phillips Management), Leonard Flanagan (Levin & Stein), David Bach (David Bach & Associates)

2. Approval of 2010 Budget

- Asking for approval of the 2010 Budget as we ran out of time at the last annual meeting and approval was not done
- Budget was ratified by the homeowners

3. Lawsuit: settlement details from Levin & Stein

- Summary given by Leonard Flanagan from Levin & Stein (reference attached copy of letter sent to homeowners)
- Next steps are to triage the identified repair items in the 2010 Reserve Study (performed by David Bach & Associates) and prioritize them based on criticality of the repair and available budget.
- Currently a lawsuit has been filed by Travelers Insurance against Esplanade (for declaratory relief action) in district court to try to establish that Travelers doesn't have any coverage obligations.
- Currently Levin & Stein have received 86 declarations from the 168 homeowners. Any homeowners who have not submitted a declaration are encouraged to do so to support our claim of a violation of the Consumer Protection Act. Homeowners may contact the board or Levin & Stein for a copy of the declaration form. Phillips will also mail hard copies of the form to homeowners who haven't completed declarations.

4. Statement from David Bach:

- Based on the Reserve Study the Esplanade Board of Directors is encouraged to move forward with a plan for repairs to minimize the risk to homeowners.
- Suggested that the Board consider planning repairs using the following criteria:
 1. Issues of Life, Safety, Health concerns
 2. Repairs that would result in higher repair costs if put off until later
 3. A building by building basis

5. Juanita Creek project

- The project is scheduled to be completed in 2011 rather than this summer.
- There were some 2010 expenditures but most of the expense will be in 2011.
- We are in the process of applying for grants to help cover the costs. Also talking with the adjoining condominium complex to explore sharing some of the costs.

Adjourned at 7:25 pm

Copy of letter sent to Esplanade homeowners on 07/25/2010 below:

July 25, 2010

Dear Esplanade Homeowners,

As you may know, we were set to go to trial on our construction defect suit against the developer of the Esplanade, its parent company (A.F. Evans Company, Inc.), an affiliate, and several executives, starting August 16, 2010. The Board has agreed to a partial settlement of the Association's lawsuit regarding the construction defects at the Esplanade, which is explained below.

Please take the time to read the enclosed settlement details in their entirety prior to the Homeowners meeting this Thursday, July 29, 2010. Our attorneys will be at the meeting to talk over any questions you might have about the settlement.

Executive Summary:

This is a high-level summary and oversimplification of a complex settlement. More details follow this section.

1. One of the three insurers who may be responsible to pay any judgment against the AF Evans entities and individuals has agreed to pay \$1.5 million. After paying attorneys' fees and expert costs, the board expects to retain between \$800,000 and \$850,000. The exact amount will determine when all cost bills for consultants, stenographers, and so forth are in.
2. We will also have judgments against the corporate defendants in amounts which will be somewhere between \$7.2 million and \$12 million, depending upon a decision yet to be made by the court. The Association will then file suit to enforce the judgments against the remaining two insurers.
3. In addition, if the bankruptcy court approves, the Association will have the right to enforce the judgment against A.F. Evans Company Inc. in its bankruptcy proceeding.
4. Our attorneys believe that the claims against the remaining two insurers have significant value. One of the two remaining insurers, Travelers, has already filed a lawsuit asking the court to determine whether it has a duty to pay the judgment amount. Our attorney will file a claim against Travelers seeking the full amount of the judgments (between \$7.2 and 12 million) after the court determines the exact amount.

Settlement Details:

Most of the trial preparation, including depositions of many homeowners, of A.F. Evans executives, and of expert witnesses is complete. Our claims survived numerous motions to dismiss, and five more motions to dismiss were set to be heard within the next two weeks. Our attorneys believe that the majority of our claims would have survived those final motions to dismiss as well.

Those of you who attended the last homeowner meeting with our attorney may remember that one of the primary insurance policies for the development companies and the executives is what is called a "wasting" insurance policy. This means that the attorney fees and costs spent by the insurance company to defend the development companies and the executives are deducted from the amount of money available to pay a covered judgment against the developer and the executives, or a settlement.

In other words, the harder we fight with that insurer and the developer it is defending, the less money might be available from that insurance policy at the end of the fight. That particular insurer, RSUI, also recently filed a lawsuit seeking to have the court declare that it did not owe anything to the developer under its policy, on the grounds that the development companies had not notified it of the lawsuit within its policy period.

You might also remember from an earlier letter we sent around that one major development in late May was that we secured a judgment by default against the declarant entity, AFE Spinnaker, LLC, for just over \$8 million. Our attorneys are now preparing to secure an additional award of attorney fees and punitive damages against that company. This is likely to add several million dollars more to the judgment.

Unfortunately, a judgment is not money, and can only be converted to money if there are assets to collect against. The declarant entity, AFE Spinnaker, has no assets other than possible claims for insurance. Likewise the affiliate company we sued, A.F. Evans Development, has no assets other than possible insurance claims.

Our last information is that the parent company, A.F. Evans Company, is in Chapter 11 bankruptcy proceedings. It has, roughly, \$70 million in assets and \$90 million in debt. Approximately \$30 million of the debt is secured by a lien or mortgage on property. This means that in a liquidation of the company, there would be about \$40 million in assets to pay off \$60 million in unsecured debt. The assets are real estate, and we do not consider these estimates, which were prepared by A.F. Evans itself, to be very reliable.

In addition, there are two other insurance companies for various development entities that might have coverage obligations to pay all or part of any judgments we could get, in addition to RSUI.

After two mediation sessions and follow-up negotiations after that, following extensive Board discussions of the pros and cons of a settlement with our attorneys, we have reached a settlement agreement with the development companies and executives that we think is in the best interests of the Association. The main points are these:

1. The insurer with the "wasting" policy, RSUI, will pay \$1.5 million, and give us its rights to sue the other insurers for contribution to defense costs it has paid, that the other insurers should arguably have participated in.
2. The three A.F. Evans companies that we sued will have judgments entered against them in the amounts of \$8 million against the declarant (AFE Spinnaker) and \$7.2 million each against the parent company and the affiliate. An additional amount of money, which may be as much as \$4 million, will be added to each of the judgments for attorney fees and punitive damages. Even though there will be three judgments, the most we could collect would be \$8 million plus the award of attorney fees, costs, and punitive damages (yet to be determined).
3. The amount of the judgments will be reviewed by the court to determine if they are "reasonable", and could be reduced if the court thinks they are too high. We want the court to review the settlement for reasonableness so that it might end up binding on non-participating insurance companies, if it is later determined that they acted improperly.

4. The three A.F. Evans companies will assign us their rights to sue the two other insurers for coverage, and for not defending the development companies when they arguably should have. The three development companies will also assign us any rights they may have against their insurance broker for possibly mishandling some aspects of their insurance claim.
5. We will promise not to try to collect the judgments against the two companies that have no assets other than insurance (AFE Spinnaker and A.F. Evans Development), other than suing the two insurers who are not paying into this settlement.
6. If the bankruptcy court approves, our judgment against the parent company (A.F. Evans Company) will be collectable at whatever discount rate (cents on the dollar) is paid to general unsecured creditors in the bankruptcy case. A.F. Evans Company promises not to oppose the request to approve the settlement. Whatever A.F. Evans Company eventually pays on our judgment will be held in escrow; if are able to collect our judgments against the insurers, then money A.F. Evans pays us will be returned to be distributed to its other creditors.
7. We will not proceed with our suit against the executives personally.

Settlement Advantages/Disadvantages:

The main advantages of this deal that can tell you openly about are these:

- We get a judgment against not only the declarant entity (AFE Spinnaker), but the parent company (A.F. Evans Company); we might not have been able to get a judgment against the parent company at trial.
- We get judgments in an amount that adequately addresses our repair needs, with less risk that the jury would have come back with a smaller amount.
- We do not have to wait for appeals to be completed before being able to try to collect on the judgments against the insurers and the parent company.
- We receive a large sum of money in partial settlement with one insurer, which should allow us to deal with immediate and urgent repair needs while we proceed against the insurance companies.

The main disadvantages of the settlement deal are these:

- We allow one insurer (RSUI) that might have acted improperly off the hook.
- We are not taking judgments against the executives who worked on the project, though compared to our needs it's not likely they would have been able to make significant contributions.
- We will still be involved in lawsuits against the insurers for some time to come, but that would probably have happened after a trial against the developer companies anyway.

*Thank you,
Esplanade Board of Directors*