

Questions, Answers and Comments from Hermitage Hills Subdivision General Meeting on 10-21-11

Questions related to NB West Contracting Judgment

What was it for? Payment of supplies used for asphalt repair road work (2" overlay) on Westbourne Way near Pine Haven. This repair work took place in 2000 and the Contractor did not pay the supplier for the materials.

Who was the contractor, why wasn't payment collected by the supplier from the contractor and why does the subdivision have to pay the supplier when it already paid the contractor for the work?

The contractor was Southwest Paving who filed bankruptcy and included this debt in it; therefore, NB West could not collect from them and the subdivision could not sue them for not paying this debt. After Southwest Paving declared bankruptcy, N.B West Contracting attempted to collect the outstanding debt by placing liens against the homes along the sections of road that had been repaved, but since the contract was with the HH trustees and not those homeowners, the liens were later cancelled. In Sept 2001, N.B. West Contracting sued both Southwest Paving and the HH Trustees in the lawsuit mentioned above. The HH Trustees were sued because Hermitage Hills subdivision was the party who actually received the material supplied by N. B. West Contracting. This is a standard legal procedure that protects suppliers from unscrupulous contractors. In October 2002, the Jefferson County Circuit Court issued a judgment in favor of N.B West Contracting that required Hermitage Hills to pay \$19,718.16 to N.B. West Contracting for the materials used to pave the streets. This judgment also had a 9% annual interest rate, (also the legal standard). In 2003 and 2004 several payments of \$1000 were made to N. B. West Contracting by the subdivision, but no payments were made since then, so it has been accruing the 9% interest since 2002. As of Aug 2010 it had reached a total of \$24,142.27.

The current board became aware of the judgment on January 6, 2011, when each Board member received a legal summons to a continuation hearing on this case in Jefferson County Circuit Court. We investigated what these proceedings were about and found that this hearing was a standard practice which would continue the judgment beyond the 10 year statute of limitations and allow the plaintiff (N.B. West Contracting) to continue to try to collect the money the subdivision owed them. We immediately consulted our attorney about trying to contest this matter and he advised that we had basically nothing to contest it with. The judgment had been made over 8 years earlier and not only had it not been contested, but several payments had been made to it. So any legal proceedings we attempted at reversing the judgment now would have an extremely low chance of success, and would divert the few funds we have available from operating the neighborhood to cover the legal costs of trying to get a new trial.

Our attorney advised us to enter into negotiations with N.B. West to pay off a reduced settlement over the next several years. We did make a first payment of \$3000.00 towards the judgment to

show our good faith in trying to get this matter resolved. This was to prevent N. B. West's attorney from trying other methods of collecting it such as garnishing our checking account which they had already attempted to do several months ago. The subdivision attorney has entered into negotiations with N.B. West on behalf of Hermitage Hills Subdivision and an agreement has been reached to pay this debt over a five year period.

Miscellaneous Questions

How many lot owners are there for Hermitage Hills? There are 404 lots, 394 lot owners and 316 houses.

If roads are re-done, will they be made wider? If enough funding is received to re-pave all the roads, it is the desire of the Board to widen the roads to code so it can be eligible for patrolling by the Jefferson County Sheriff's Department.

Are the subdivision streets covered by the HOA liability insurance? Yes, they are. In addition, it covers the subdivision common ground.

Is anything going to be done about the overgrowth of brush on the streets? Yes, a brush clean up day will be organized for a day in November in which volunteers will be solicited to help remove the brush with their own tools and by hand. A wood chipper will be rented by the Board to shred and discard the brush that is removed.

What can be done about the water run off problems in the subdivision? Water run off is a problem because the subdivision does not have proper drainage ditches along side the roads to collect the water. This will be corrected as the roads are corrected, but with the lack of funding from the current amount of assessments collected, this cannot take place. Some of the 04 – 06 assessment billing funds that will be invoiced in Spring 2012 can be used for road repairs; however, if the assessments are not raised there will be no funding available for road repairs beginning in 2013.

Where did the \$1,200 go that was paid at closing for past due subdivision assessments when I closed on my home in 2009? This closing took place before the current Board was organized but the money should have gone to the prior trustee for use in the subdivision general fund.

Is this money collected on every house that sells in the subdivision? Yes, at all home closings the title company is required to make sure that all past subdivision assessment fees are paid up to date and it comes out of the seller's profit. The purchaser pays a pro-rated assessment fee from the date of purchase until the end of the year they purchased the home. Therefore, if you purchased a home in 2009, you would not have any assessment fees due until 2010.

How large does a lot in the subdivision have to be to build a home on it? The indentures would have to be reviewed to see if there is a specification stated; however, all lots in the subdivision should be large enough to build a home on them.

Can we have our streets patrolled by Jefferson County Sheriff's Department? We currently cannot have them patrolled by Jefferson County because the streets have to meet county code and they do not. The streets would have to be made wider with asphalt applied to code standards.

Can we give our roads to the County? We could, but they are not accepting any more roads at this time because of lack of funding to maintain them and there is no benefit to owning the roads.

The paving project on Walnut Ridge was paid for by the lot/homeowners on the street as well as the seal coating and was not helped by the subdivision so why do they have to pay assessments if they are not getting a benefit from the subdivision? With the paving project, the lot/homeowners were able to apply the amount they contributed (average \$1,000 per home) as a credit toward past and future assessments. However, they are bound by the indentures to continue to pay assessment fees once the credit has been exhausted. With an average assessment of \$50.00 per home, it will take several years for this credit to be used. **Wouldn't it be a better way for the other lot/owners to have their streets fixed by contributing funds directly for their street repair?** This would accomplish the street being repaired; however, if multiple lot/homeowners did this, there would not be enough funding to provide snow removal, other maintenance or operating expenses of the subdivision association.

Trustees in the past have not run the association properly nor used the funds collected from assessments to do what they said would be done. What guarantee do the lot/homeowners have that the current Board is any different? Since the current Board was elected, it has been as open and transparent as possible with the activity being done, assessments being collected and how they have been spent. Ongoing communication and information is provided to the lot/homeowners through quarterly newsletters, e-mail and through the subdivision website in which minutes of the weekly meeting minutes are posted. The current Board has done everything it has said it would to date, including providing street repairs with the funding available after snow removal expenses and operating expenses. It is doing its best to build trust and each trustee spends many hours every week working towards the goal of improving the subdivision. They are not paid to do this nor are they exempted from paying assessments. The subdivision attorney is consulted on a regular basis for guidance in running the subdivision association like a business and to make sure it is operating legally. The current Board has accomplished many things the previous boards were unable to, because of the dedication the trustees give to the subdivision. Each owns a home in the subdivision and has a vested interest in improving the home values in the subdivision and the environment of the neighborhood.

Mr. Stuckmeyer stated that with the subdivision's history, he understands why there is mistrust of the trustees. However, the only thing that the current lot/homeowners can do is try again and put faith in the efforts of the current Board of Trustees. He noted that this is the first Board of Hermitage Hills that has purchased insurance that protects the subdivision against a breach of fiduciary duties by any of the current trustees. This Board is functioning as a valid Board of Trustees who does not just sit around talking about what they want to do, but are actually doing it. He noted the Board has an active website for communication purposes that posts minutes of their meetings and have been extremely forthcoming with providing information to the lot/homeowners.

Why have two of the trustees resigned in the past year? Both resigned for personal reasons in which one had health problems and the other had originally only wanted to serve a one year term and had personal issues that caused him to resign.

How do the lot/homeowners know the best price was received for the asphalt work done in the subdivision and that it actually cost as much as it was reported? Upon request, the lot/homeowners can request a copy of bids received and a copy of the invoice provided by the asphalt contractor.

In the future, can bids received be posted to the website for review of the lot/homeowners before a contractor is hired for a project? This is something that can be looked into by the trustees but would have to get permission from the contractors submitting the bids because it is public and they may not want to disclose their bids to the competitor contractors who could then under-bid them.

One of the reasons our roads are so deteriorated is because there are multiple trash companies bringing their trucks through the subdivision. Is there anything that can be done about this? The trustees have discussed implementing a unified trash service for the subdivision to eliminate this problem and are looking into how this could be enforced. The residents pay for their own trash service and have the ability to choose who provides this service. There are no restrictions in the current indentures that require this be done; however, it would benefit the subdivision by creating less traffic on the subdivision streets by large trash trucks. The trustees will be contacting trash removal services to seek a group discount for them to provide the service for the entire subdivision or based on a specific number of residents using their service. **In addition, school buses use our roads and contribute to the deterioration.** The reason the school buses come into the subdivision is because several years ago, a child was hit by a car while waiting for the bus on Saline Road.

What is going to be done with the property near the subdivision entrance where the large barn is being built? The owner of this property said the property will be used as a family farm and planted wheat last Spring and has chickens on the property. He stated the property will not be developed into a subdivision.

Questions and Comments related to Assessment Increases

Are there any grant programs or stimulus money we could be eligible for to fund road improvements in the subdivision? There are none that the trustees could find. Most neighborhood improvement grants available are for the inner city. We did find there is a bank program that will loan money to homeowner associations for subdivision improvements; however, our history of poor assessment collection does not make us eligible for this program.

A lot/homeowner who owns multiple lots on Saline Road stated she does not receive any benefit from the subdivision and does not believe it is fair that she has to pay subdivision assessments and that she is opposed to any increase because of this. She asked if the homes on Saline and others who do not benefit from the subdivision can be exempted from paying assessment fees. There has been discussion about this by the trustees and could be considered; however, it would have to be voted on by all lot/homeowners in the subdivision and approved by 2/3 of the voters. **She also asked why the assessment fee increase proposal is based per lot for those who own multiple lots.** The main reason is that each lot represents one vote as written

in the indentures; for example, if a person owns 2 lots, they have 2 votes. Only the first lot with a house on it would be assessed at \$250 each and the other lots would be at \$100.00 each which is the same as each undeveloped lots.

Why was the assessment increase not presented with multiple choices in the amount instead of only offering one choice? If multiple choices were given, it would have been difficult to obtain 2/3 approval from the voters on any of the choices.

Why was \$250.00 per developed lot and \$75.00 for undeveloped lot chosen for the assessment increase? The \$250.00 assessment is comparable to subdivisions in our area. Konert Farms has an assessment rate of \$300.00 and has concrete roads with less maintenance needs than our subdivision. Capetown Village which is the same size as our subdivision has an assessment rate of \$150.00 and although they have concrete streets, they are in very bad repair likely because their assessment fees are not enough to provide adequate maintenance in the subdivision. In addition, the assessment increase amounts were chosen to generate \$60,000 annually for on-going road repairs and maintenance rather than levying special assessments. If, after the streets are repaired it is discovered too much is being collected, the assessments fees could be lowered. He noted that the \$250.00 assessment breaks down to \$20.83 per month and each resident's sewer bill is more than this. It was also pointed out that this increase would not be effective until the 2012 assessment billing and it would be a year before this would be due.

Konert Farms has an assessment rate of \$300.00, but the homes are worth \$200,000 - \$300,000; has many more amenities than we do and is a brand new subdivision; therefore, how can we compare our assessment rates to theirs? We may not have the amenities, but we are playing catch up from the assessments not being raised for many years and no maintenance being done on our streets whereas Konert Farms does not have the same maintenance needs.

Why such a large increase when most people are paying about \$50.00 per year and not somewhere in the middle such as \$150.00 per year? The \$250.00 was used to allow more money for road repairs above the normal operating costs of the subdivision. A recent estimate of the cost to repair all the streets in the subdivision was a little over \$1 million. With the \$250.00 it will take 8 – 10 years for the road repairs and a lower assessment amount would just prolong the road repairs that are needed. It was also noted the current rate was set 45 years ago.

If the proposed assessment rate increase does not get approved, could an alternate proposal be presented to the lot/homeowners? Yes, an alternate proposal could be presented but it would be Spring 2012 before it would take place because it will take time to organize another vote. If the alternate proposal is approved in the Spring, it could not be implemented until 2013 because assessment fees cannot be changed and billed at the new rate in the same year.

The presentation showed that if all assessments for 2011 are collected at the current rate, the total will be \$23,041.80 and the back billing of assessments for 2004, 2005 and 2006 total \$34,674.69. Why isn't the amount for the three years of back billing three times the amount for 2011? The reason is that some of the houses have been sold since that time and the assessments were paid at closing and there are some residents who have agreements applied as credits during those years from the money they paid for road paving on Walnut Ridge and an area of Westbourne Way.

Questions and Comments related to unbilled assessments for prior years and uncollected assessments

What rate will the unbilled assessments for prior years for 04, 05 and 06 be billed at? They will be billed at the rate of .65 per front foot for each lot as in the indentures. This is the amount that was being billed before the assessment billings stopped going out. The back billing for these years will take place next Spring (2012).

What is being done to collect assessments from those lot/homeowners who have either never paid them or currently are not paying them? The Board is currently looking at methods of collecting these assessments through legal suits or collection agencies. There is a 10 year statute of limitations; therefore, can only try to collect unpaid assessments for the past 10 years. These measures will not be taken if the lot/homeowner contacts the trustees to set up a payment plan. The Board understands that times are tough and the economy is bad and is willing to work with lot/homeowners with collection of the assessments.

Questions and Comments related to re-writing the indentures

What are the subdivision indentures? It is the legal document for the subdivision written in 1965? that states its location; lays out the function of the Board; right away information for the roads; restrictions to the type of housing that can be put in the subdivision (i.e. no mobile homes); other restrictions in which some are outdated. For example: 1) If a lot/homeowners want to sell their home they have to give two weeks notice to their neighbor on both sides to give them the opportunity to match any offer given by someone wishing to purchase their home. This goes back to the day when there were empty lots and allowed the adjoining lot owners the ability to purchase the neighboring lot. 2) No businesses are allowed to be run from the homes in the subdivision; however, it is not written to specify what type of business it is referring to or if it includes home based businesses that can be done on-line. It also raises the question if a resident is a plumber or in another type of trade, are they allowed to park their company vehicle by their home? It was noted; however, if restrictions are modified the current lot/homeowners are grandfathered in to the restriction of the old indentures. Therefore, if something was allowed in the old indentures and they were doing it, they can continue to do it. However, anyone who moves into the subdivision after the new restrictions are in place would be required to follow the new restrictions.