Questions of board for meeting September 22

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Questions:

- Bylaws state (page 10, item 6.1) that Special Assessments shall "only be used for the specific capital improvements described in the resolution". The 2009 SA SOW says Asphalt Phase 1 includes "blacktop overlay back to the cul-de-sac" to be done in 2011. The April 2011 minutes have the only such reference saying, "The board liked the Vancouver Paving proposal for paving and sidewalk repair".
    - Do you believe that a Special Assessment should be treated like a contract between the BOD and homeowners? For example, who decided, and when was it decided, to change the scope of work for the paving project?
        - Other deviations from the Special Assessment SOW include:
            - Moving 2012 sidewalk trip hazard repair ($17,170.00) forward to this year (at least in the front)
            - Moving clubhouse heating and air conditioning ($8,160.00) forward from 2012 to this year.

Assessment Proposal dated June 13, 2009 does not reference a "Special Assessment" please refer to Article VI - Budget, Expenses and Assessments in our Bylaws, then refer to Article VII - Budget, Expenses, and Assessments in our CC&R's. CC&R's will take precedent. Please see Article IV – Board of Directors (4.2), (4.3). Also Article V - Officers (5.4).

It is precisely because I have read them that it becomes obvious it is a Special Assessment. CC&R's 7.6 says, "In the case of any duly authorized capital Improvement to the Common area as set forth in 7.4"….. and 7.4 says " In the case of making Capital Expenditures (cost of construction made with the expectation of existence for an indefinite period), the board of Directors shall give written notice to all members of the association of intent to pass a resolution to authorize the expense of a capital improvement to the common area". Call it what you like, it is by definition, a *Special Assessment by virtue of how it was presented to the homeowners.*

By the way, the minutes of the meeting refer to the assessment as an increase in the "Annual Assessment". Annual Assessments are subject to annual increases, not three year increases. This makes it subject to bylaws that govern proportionate payment based on square footage of homes, and also subject to the CPI increase. Is this why it was not called what it really is?

But the question you have avoided is if this was a CONTRACT. Please see the "Elements of a Contract" attached as Addendum A. It was a contract between all individual homeowners and the Millridge Homeowners Association, on whose behalf the BOD was acting.

Work done pursuant to that contract has deviated substantially from the terms of the agreement, and is in serious breach of contract.

- Millridge bylaws state (page 7, item 4.11) "The directors and officers shall **not** be liable to the Association for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith".
    - Do members of this BOD consider it *willful misconduct* or *bad faith* if revenues collected from every homeowner are spent in such a way that it benefits some, but not all? Please explain?

Related to buildings only, Assessment work has been preformed in both Tracts. The 2010 Assessment (3 year) was to finish work the (5 year) Assessment did not plus other items. I believe I am the only current board member that was on the board at that time of the (5) year assessment; I was a member at large. Jerry Weinert was President and was currently living in building 7, then, Karen Serrianne of building 8 took over that post when Jerry's term expired. This current board is planning on a complete inspection of buildings 7 – 12 and will take action where necessary, as we are doing this year inside your (1718) courtyard. Right now we are starting our maintenance cycle. I'm not sure how or why this could be "willful misconduct or bad faith".

We try to use the Regenesis Report as a guide for maintenance, occasionally other things will come up and we have to deviate a bit usually because of lack of funding.

Thanks for the history lesson. Please see addendum B. It is the current update supplied by CMI detailing expenses paid under the Direction of the BOD for the current xxxx Assessment. These have been authorized under the direction of THIS board. It shows expenditures in Tract A of $271,702.00, and expenditures of $31,993.00 in Tract B. There are 56 homes in Tract A and 41 in Tract B. this is clearly disproportionate, and appears to me to have been done in Bad Faith, as offered in the CC&R's.

Your assertion "This current board is planning on a complete inspection of buildings 7-12, is woefully uninspiring to those of us in Tract B; particularly, if as you say, the assessment was also to "finish work the (5) year Assessment did not". That work has still not been completed, at least as it compares with work done on buildings 15 and 16, which includes building back sides and garage courtyard walls.

- Millridge financial statements show aggregate spending by accounting category. They do not reflect specifically where Special Assessment funds and dues are spent within Millridge. In light of the stark contrast in the level of maintenance and landscape care between Tract A and Tract B, do you think more descriptive records of expenditures should be kept? Why or why not?

Most of the expenditures you are referring to are in previous Financial Statements. Yes, I think a file for each building and, unit should be kept in the office, files should include repairs, maintenance and requests with actions taken. That way it would be easy to see when a roof or siding was replaced. CMI has descriptive records of expenditures through bids and payments made for work completed. They are always open for member's inspection. You would have to call CMI and arrange a time. Food for thought: It would be perfect open a position for a Record Keeper (Chairperson) to start and maintain a good filing system in the Millridge office. The Board has talked about this in the past, but no one has volunteered to take that on.

Please take another look at addendum B. You will see that Cedar Mill Construction has been allowed to submit billing with multiple references to work on "building 1/4/5/8/14/15". Building 8 has had nothing but calking and primer done. You will get a volunteer soon to be the Record Keeper if you just ask at a meeting open to the public.

Easier Questions:

- Where in the Bylaws, Homeowner's Manual, or Roberts Rules of order are there limits to the number of questions allowed to be asked of board members?

According to Roberts Rules of Order there are no limits to question as long as presented in the proper form, however we can limit the time spent on all items on the agenda. So I guess that would make this a yes/no answer.

- As suggested in 2009 Regenesis Reserve study: "Each year, selected areas of asphalt and concrete sidewalks and steps should be pressure washed to remove oil spots, algae and moss which could cause slipping hazards."
    - When will the power washing be done in back? It has now been 3 years.

See September 22, 2011 board meeting minutes.

See my Owner Request dated prior to that meeting (9/21/11)

- When will side-unit fences that badly need paint get it?
    - Units # 1710, 1712, 1736, 1698, 1684 and 1682

Please look at these building again, maintenance cycle has begun.

Photos were placed on the website for your review, and subsequently removed. If the "cycle has begun", it has not gotten to any of these side unit fences yet.

- What percentage of the 2011, line item 7890 (Landscape improvements) was spent on buildings 7 through 12?

The Board approves, but does not maintain the documents. The Landscape Chairperson, Betty Lukins, keeps accurate records of all Landscaping improvements.

Betty, and her records, are in Arizona until May, 2012. Is this really acceptable?

- Are roofs being treated annually to remove algae and moss as recommended in 2008 Regenesis Maintenance Plan?

Yes

Payments on file with CMI show none to any company for roof treatment in the last 12 months

- Now that the rules have been conveniently changed, are homeowners consulted before paint colors are chosen for their building?

Are you referring to our AMENDED AND RESTATED DECLARATIONS? Reference Article IV – Board of Directors, (4.2 a), Also see Article VII – Maintenance and Use of the Planned Community Property (7.1 a, b), (7.2 c, d).

Each homeowner has the opportunity to attend monthly board meetings,

And it would be nice if they all could attend. I suggest that something as critical to a homeowner's quality of life at Millridge should require a more proactive effort. Contact with them to get as general a consensus as possible is appropriate.

- Why was the money spent on a sidewalk in front of 1736, over the owner's objections, and the recommendations of Absolute Landscape and the head of the Landscape committee?

Money was spent because it was a muddy mess in wet weather and the large rocks are slippery. This is common ground. You are misinformed about Tim Long, Landscaper and Betty's (Landscaping Chairperson) recommendation. Tim looked at the area and decided there were too many roots to lay down pavers, Betty agreed and told me what Tim told her.

Carol sent you and all the BODs an email stating she had spoken to Betty and Tim Long. She appealed to you to not put the sidewalk in. If you need another copy of it, I will provide it.

- What evidence is required to enforce dogs on leash and waste pickup for levying fines?

A photo would be nice also documentation from more than one homeowner is helpful.

- What are the rules governing common area landscaping?
    - You supply it – Millridge landscapers plant it – who maintains it.

If it is on common ground it would be safe to say the HOA would maintain it. Also see Article VII – Maintenance and Use of the Planned Community Property (7.1 a), (7.2 c & d).

- Are records kept of homeowners given permission to deviate from these rules? Are there records kept of the reasons for allowing exceptions to some homeowners, but not others?

Requests for a few homeowners who have purchased plants were submitted to the Landscape Committee for approval, the landscapers plant them and maintain them. Due to occasional budget restraints, a few homeowners have made such requests. In the past, occasional homeowners who chose to not follow HOA rules were told that their common areas would not be maintained if the changes were made without approval.
I have not seen any. I know there are a lot of exceptions here that go way back. The current Board cannot be held responsible of exceptions that were ignored going back to 1970 when Millridge opened its doors.

- Are residents consulted before plants are removed or added?

Landscape Committee Reports are given in detail at every meeting informing the Board of work completed, work in progress and new work to be considered. Removal and additions to a resident's front yard area, which is considered common ground, is discussed with the homeowner. Removal and Additions to "non front yard" common ground is fully discussed at Board meetings.

The Landscape Committee removes plants because they are dead or diseased. Prior to changes the Committee submits suggested changes at the Board Meetings. I would hope we could trust the Committee's judgement to add plants that would improve the area.

Noticeable differences between conditions in Tract A and Tract B

These were not intended to be treated as questions, but thank you for taking the time to address them.

- Asphalt and new sidewalks in front.

Front entrance and exit asphalt was crumbling and needed replacement two years ago; from they're on to the back just needs an overlay. Next year we will get three (3) more bids and see how much we can do. I will tell you right now we will do the most damaged areas first, front or back, we will also let the three contractors tell us where those areas are.

- Trip hazard repairs done on front sidewalks only.
- Exterior color rules changed when it came time to do front buildings.
  - Little, or no, trim color differences in back.
- Not one side unit fence in Tract A is in a condition even close to Tract B side-unit fences.
  - Units # 1710, 1712, 1736, 1698, 1684 and 1682 are in dramatic state of disrepair.

Dramatic state of disrepair? Why weren't maintenance request ever submitted? I do know for a fact that 1698 was replaced about four (4) years ago.

- 3 year old moss on asphalt and concrete sidewalks

Redundant.

- Dead or dying plants everywhere.
  - Conflicting rules over who plants and maintains common area

Redundant.

- Inferior barkdust in rear.

Our Landscape Committee Chairperson expressed those same concerns to the vendor.

- Lampposts in front replaced with larger, more ornate fixtures. Several in the back are still the very old ones. Was that project abandoned? It's also time to paint them.

No. We have given Shirley Carlson at least a dozen fixtures and Al Kramlich was installing them in his spare time. There are about seventy five (75) lampposts, I hope we can get the ball rolling again soon.

Addendum A

Legal Elements of a Contract

The essential elements necessary to form a binding contract are usually described as: [i]

- An Offer
- An Acceptance in strict compliance with the terms of the offer
- Legal Purpose/Objective
- Mutuality of Obligation – also known as the "meeting of the minds"
- Consideration
- Competent Parties [ii]

Offer

An offer is defined as the manifestation of the "willingness to enter into a bargain so made as to justify another person in understanding that his assent to the bargain is invited and will conclude it."[iii]

Acceptance

Acceptance of an offer can occur in several ways: Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.[iv] An acceptance must not change the terms

of an offer. If it does, the offer is rejected.[v] A material change in a proposed contract constitutes a counteroffer, which must be accepted by the other party.[vi]

Legal Purpose

The objective of the contract must be for a legal purpose. For example, a contract for illegal distribution of drugs is not a binding contract because the purpose for which it exists is not legal.

Mutuality of Obligation

This element is also known as the "meeting of the minds". Mutuality of obligation refers to the parties' mutual understanding and assent to the expression of their agreement.[vii] The parties must agree to the same thing, in the same sense, at the same time. The determination of a meeting of their minds, and thus offer and acceptance, is based on the objective standard of what the parties said and did and not their subjective state of mind.[viii] Unexpressed subjective intent is irrelevant. In determining whether mutual assent is present, the court looks to the communications between the parties and to the acts and circumstances surrounding these communications.[ix] The offer must be clear and definite just as there must be a clear and definite acceptance of all terms contained in the offer.[x] Where a meeting of the minds is contested, the determination of the existence of a contract is a question of fact.[xi] If the fact finder determines that one party reasonably drew the inference of a promise from the other party's conduct, that promise will be given effect in law.[xii]

To be enforceable, the parties must have agreed on the essential terms of the contract.[xiii] However, parties may agree upon some contractual terms, understanding them to be an agreement and leave other contract terms to be made later.[xiv] Full agreement on all contractual terms is the best practice and should be the norm. It is only when an essential term is left open for future negotiation that there is nothing more than an unenforceable agreement to agree.[xv] Such an agreement is void as a contract.[xvi]

Any contract or mutual understanding between parties that differs materially from the original offer is open to legal challenge. Should any component of a negotiation tend toward a final result where a contract or agreement differs materially from the offer, that component of the negotiation should cease. If the component in question is critical to the provision of a service or goods, the issuance of another offer that incorporates that component should be considered.

Certainty of Subject Matter

In general, a contract is legally binding only if its terms are sufficiently defined to enable a court to understand the parties' obligations.[xvii] The rules regarding indefiniteness of material terms of a contract are based on the concept that a party cannot accept an offer so as to form a contract unless the terms of that contract are reasonably certain.[xviii] Thus, the material terms of a contract must be agreed upon before a court can enforce the contract.[xix] Each contract should be considered separately to determine its material terms.

As a general rule, an agreement simply to enter into negotiations for a contract later also does not create an enforceable contract. Parties may agree on some of the terms of a contract and understand them to be an agreement, and yet leave other portions of the agreement to be made later. [xx]

Sometimes terms are omitted from contracts and assuming the omitted term is not an essential term, the courts have implied terms to preserve the enforceability of the contract should a legal challenge arise. A court may uphold an agreement by supplying missing terms.[xxi] Historically, Texas courts prefer to validate transactions rather than void them, but courts may not create a contract where none exists and they generally may not insert or eliminate essential

terms. Whether or not a court will imply or supply missing contract terms will depend on the specific facts of the transaction. An example of terms that have been implied or supplied are time and place of performance.[xxii]

Consideration

Consideration is an essential element of any valid contract.[xxiii] Consideration consists of either a benefit to the promisor or a detriment to the promisee.[xxiv] It is a present exchange bargained for in return for a promise. It may consist of some right, interest, profit, or benefit that accrues to one party, or alternatively, of some forbearance, loss or responsibility that is undertaken or incurred by the other party.[xxv] It is not necessary for a contract to be supported by a monetary consideration.[xxvi]

Competent Parties

Parties to a contract must be competent and authorized to enter into a contract.

Millllridge Townhomes - Operating Assessment Report

2010-2012

DATE	ITEM	INCOME	EXPENSE	Tract A	Tract B	
Jan 2010	Operating assmt fund & prepays	$79,667.00				
Feb 2010	Operating assmt fund & prepays	$38,989.00				
Mar 2010	Operating assmt fund	$9,694.00				
Mar 2010	Apex roofing & construction - bldg 9 roof		$11,208.00		$ 11,208.00	Why is bldg 9 listed twice?
Mar 2010	Board approved - transfer to reserves to pay off funds borrowed from reserves to pay operating overages.		$21,314.66			see cost of similar roof below for builing 12
Apr 2010	Operating assmt fund	$9,694.00				
Apr 2010	Apex roofing & construction - bldg 9 roof		$22,252.00		$ 22,252.00	
May 2010	Operating assmt fund	$9,694.00				
June 2010	Jun 2010 operating assmt fund	$9,694.00				
June 2010	Cedar Mill Construction - bldg 1/4/5/8/14/15		$25,442.76	$ 25,442.76		
July 2010	Operating assmt fund	$9,694.00				
July 2010	Cedar Mill Construction - bldg 1/4/5/8/14/15		$17,010.14	$ 17,010.14		
Aug 2010	Operating assmt fund	$9,694.00				
Aug 2010	Cedar Mill Construction - bldg 1/4/5/8/14/15		$17,570.95	$ 17,570.95		
Aug 2010	Verhaalen Painting - bldg 4/5/14/15		$10,733.00	$ 10,733.00		
Sep 2010	Operating assmt fund	$9,694.00				
Sep 2010	Cedar Mill Construction - bldg 1/4/5/8/14/15		$4,317.80	$ 4,317.80		
Sep 2010	Verhaalen Painting - bldg 4/5/14/15		$21,467.00	$ 21,467.00		
Sep 2010	Cedar Mill Construction - bldg 1/4/5/8/14/15		$8,524.35	$ 8,524.35		

Sep 2010	**Cedar Mill Construction - Credit**		-$260.00					
Sep 2010	**Dick Luchs Masonry - brick entry posts**		$1,950.00					
Oct 2010	**Operating assmt fund & prepays**	$13,100.00						
Oct 2010	**Columbia River Vinyl - back pool house**		$5,600.00					
Nov 2010	**Operating assmt fund**	$9,563.00						
Dec 2010	**Operating assmt fund**	$9,563.00						
Jan 2011	**Operating assmt fund**	$9,563.00						
Feb 2011	**Operating assmt fund**	$9,563.00						
Mar 2011	**Operating assmt fund & prepays**	$12,314.00						
Apr 2011	**Operating assmt fund**	$9,432.00						
May 2011	**Operating assmt fund**	$9,432.00						
May 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$802.51	$	802.51			Only one bill in files show
May 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$14,444.98	$	14,444.98			spending on Clubhouse
May 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$26,006.16	$	26,006.16			The amount was $5360.00
June 2011	**Operating assmt fund**	$9,432.00						deducted below
June 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$16,584.35	$	16,584.35			
June 2011	**Verhaalen Painting - bldg 15/16**		$13,275.00	$	13,275.00			
July 2011	**Operating assmt fund**	$9,432.00						
July 2011	**Clow Roofing bldg 12**		$20,785.00			$	20,785.00	
July 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$3,391.70	$	3,391.70			
July 2011	**Verhaalen Painting - bldg 15/16**		$13,275.00	$	13,275.00			
July 2011	**Cedar Mill Construction - clubhouse / bldg 15 & 16**		$6,604.30	$	6,604.30			
Aug 2011	**Operating assmt fund**	$9,432.00						
Aug 2011	**John Berger Heating - clubhouse HVAC**		$5,285.00					
TOTALS		**$297,340.00**	**$287,584.66**	**$**	**199,450.00**			
	actual work on Clubhouse			**$**	**(5,360.00)**			
	Trip hazaed repair - front only			**$**	**17,000.00**			
Pending	Asphalt in front only			**$**	**37,400.00**			
				$	**248,490.00**	**$**	**54,245.00**	