

5806 Crooked Stick Way  
Sparks, NV 89436

June 15, 2005

Mr. Mike McDonough  
HRPOA  
P.O. Box 1039  
Virginia City, NV  
89440

Dear Mr. McDonough,

This letter is a follow up to the letter I sent to you on June 8<sup>th</sup> expressing my disagreement with the decisions made during the May 2005 meeting where the Board decided to impose several fees in order to provide revenue for road and culvert repair.

Since that date I have spent some time reviewing NRS 116 as it relates to those decisions and possibly others. I will be asking the Ombudsman Office to assist us in determining if those decisions were fair, lawful and within the scope of the Boards authority. I strongly suggest that you suspend implementation of these decisions until you know for certain that you and we as an Association are acting with-in the law.

I would like to point out at least 4 things which I believe are in violation of NRS 116.

### **#1 Open Meeting Law**

I have reviewed the Agendas for the April and May meetings and do not find the topic associated with the assessment of additional fees to fund road and culvert repair. It seems that "Roads" are a standing agenda item but nothing is specified as "voting/decision on funding road and culvert repairs" or any other language relating to imposing any fees or penalties. I refer you to the following excerpt of NRS 116:

**NRS 116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association; request for dismissal of civil action.**

*9. The association shall provide written notice to the owner of each unit of a meeting at which an assessment for a capital improvement or the commencement of a civil action is to be considered or action is to be taken on such an assessment at least 21 calendar days before the meeting. Except as otherwise provided in this subsection, the association may commence a civil action only upon a vote or written agreement of the owners of units to which at least a majority of the votes of the members of the association are allocated*

**NRS 241.020 Meetings to be open and public; notice of meetings; copy of materials; exceptions**

“ 2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph

Additionally, I find no information in the minutes of the May 2005 meeting that describes the rationale or method and formulas utilized to determine the amounts of the fees/penalties. It seems as if this were done at another meeting for which there are no minutes

I refer you to the following excerpt of NRS 116:

**NRS 116.3108 Meetings of units' owners of association; frequency of meetings; requirements concerning notice and agendas; dissemination of schedule of fines; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.**

8. Except as otherwise provided in subsection 9 and [NRS 116.31085](#), the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

## #2 Equitable and equal assignment of assessments

Assessments are not uniformly applied towards all owner units for the maintenance of common elements. The proposed fee's for the Architectural review are designated for road and culvert repair of the entire association's common element—the roads. Yet only new construction owner units are being assessed. The current residents who have full use of the roads/common elements do not have to pay the \$1 per square foot “construction damage” assessment which has contributed to the current state of the roads. Additionally any assessment affecting only a small number of unit owners needs to have a benefit for them specifically. There is no benefit or service derived from the \$1 per square foot plan review fee for those paying it.

I refer you to the following NRS 116 excerpts:

### **NRS 116.31065 Rules. The rules adopted by an association:**

*5. Must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner.*

### **NRS 116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association; request for dismissal of civil action.**

*1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in [NRS 116.31151](#). Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and the money for the reserve required by paragraph (b) of subsection 2.*

*2. Except for assessments under subsections 4 to 7, inclusive:*

*(a) All common expenses, including a reserve, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of [NRS 116.2107](#).*

Additionally there is no exclusivity of benefit to those having to pay the plan review fee for utilizing the roads to build a home in that all other residents have use of the same roads.

I refer you to the following NRS excerpt:

### **NRS 116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association; request for dismissal of civil action.**

*4. To the extent required by the declaration:*

*(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which*

that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited

**#3 Revenue generating assessments and the process used to determine the amount of assessment and budget need to go out to the entire association.** There was no mention either in the May 2005 meeting minutes or the Annual Meeting as to the formula or method to determine the \$1 per sq foot plan review fee except to say that it was more than what the 1 acres were charging “because they have more people”. It was stated that the construction Bond , the culvert fines and the review fee were to go into the road fund which essentially is a reserve fund. Reserves need to be assessed against everyone. Additionally I am not sure where the study of the Reserve needed for future maintenance resides or how it was derived.

I refer you to NRS 116 excerpt:

**NRS 116.31151 Annual distribution to units’ owners of operating and reserve budgets or summaries of such budgets.**

(b) *The budget to maintain the reserve required by paragraph (b) of subsection 2 of [NRS 116.3115](#). The budget must include, without limitation:*

(1) *The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;*

(2) *As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;*

(3) *A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component of the common elements or to provide adequate reserves for that purpose; and*

(4) *A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by [NRS 116.31152](#).*

**NRS 116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association; request for dismissal of civil action.**

2. *Except for assessments under subsections 4 to 7, inclusive:*

(a) *All common expenses, including a reserve, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of [NRS 116.2107](#).*

(b) *The association shall establish an adequate reserve, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the*

common elements. The reserve may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance.

**#4 Imposing a fine for an unknown violation with no avenue for appeal.** It was stated at the Annual meeting that the homeowners with culverts in violation of the code would be sent a notice and given 45 days to repair the culvert or the Association would fix it for them and then bill them. If an owner is determined to have violated a law or bylaw the Association can levy a fine and the owner has the right to attend a meeting and contest the ruling. I did not hear this mentioned at the Annual meeting nor is it in the minutes. I refer you to NRS 116 excerpt:

**NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; procedural requirements; continuing violations; collection of past due fines.**

2. *The executive board may not impose a fine pursuant to subsection 1 unless:*
  - (a) *Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and*
  - (b) *Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:*
    - (1) *Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and*
    - (2) *A reasonable opportunity to contest the violation at the hearing.*
3. *The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.*
4. *The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:*
  - (a) *Pays the fine;*
  - (b) *Executes a written waiver of the right to the hearing; or*
  - (c) *Fails to appear at the hearing after being provided with proper notice of the hearing.*
5. *If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.*

The Boards decisions damage me in the following ways:

-Given that all recorded documents as of June 8th state that the review fee for new construction is \$100 I am not prepared for nor did I budget the \$3100 it will cost me if these decisions go thru. This is a financial hardship. I also feel it is highly discriminatory to have me pay for the negligence of current residents in not repairing the roads after they completed their new home construction. They will benefit from these decisions not me.

-Given that as a member of the Association I have the right to vote on any new assessments I was denied that right. I was also denied the right to participate in a meeting that I would have eagerly attended to discuss the proposed fines and assessments due to the omission of the topic altogether.

-Given that as a member of the Association I had the reasonable expectation that the Association's finances and reserves were adequate in order to maintain the common areas I am now faced with the fact that there are not adequate reserves as required by State law to preserve and protect my investment in this community.

I am interested in your understanding of NRS 116 as it applies to the legality and fairness of the Boards recent decisions regarding assessments, fines and fees if you think it is different than what I show above.

Per NRS 116.31087 **Right of units' owners to have certain complaints placed on agenda of meeting of executive board** I would like this topic entered into the June agenda so I can present it to the attendees and have it entered as part of the minutes of that meeting.

I look forward to your reply

Nicole Barde