

The Smugglers' Notch Homeowners' Association, Inc.

Update and Minutes

9:00 AM - SNHA President Tom Gangi called the meeting to order

- Introductions
 - New homeowners present since last meeting introduced themselves – Andrew and Kacie Gillespie from Telemark 1

Committee Reports

- **2012 SNHA Annual Meeting Minutes** - Bob Oehrlein, Secretary asked if there were any changes or additions to the 2012 Annual Meeting Update/Minutes. There being none, a motion was made and seconded to approve as posted. All approved by voice vote.

(See web link below)

http://www.snha.net/images/docs/AnnualMeetings/2012/homeownerannualmeeting2012_letters08-03-12_sh_8-6-12.pdf)

- **Financial Reports and Projections** – Herb Lewis, Treasurer reported:
 - Audits 2011 and 2012 – the audit for 2011 was deferred to 2012 due to the rising cost of audits in 2012 by accountants in the local area. At the end of the 2012, the SNHA Board secured Braver, a firm in the Boston area to perform audits for both 2011 and 2012 in the post Tax - April 15 period at a competitive price. The audit can be found on the SNHA.net site at
http://www.snha.net/images/docs/AnnualMeetings/2013/smugglersnotchhomeownersassociation12_31_12_2final.pdf
 - **2013 Current Year - SNHA is currently operating within budget for FY13 and expects to complete the year without significant variance.**
- **2012 SNHA fee structure** review and projections for 2013 – Steve Hoey reported – In 2012 SNHA Board instituted a new structure of fees that are set according to the level of services received by the Homeowners and by the Regimes. A complete description of this fee structure can be found on the web site at:
<http://www.snha.net/home/111-2012-snha-new-structure>

This new structure provides a basic set of services to all homes for a 2013 fee of \$360/home. Additional fees are charged Regimes and homeowners for additional services as the Regime Directors and homeowners elect to use them. These include:

- Regime accounting, collections, projects, and planning
- Reserve fund management
- Master Policy Insurance program
- Regime maintenance and project management
- LP Gas service to homes at discounted group rates for fuel
- Meeting organization and record keeping
- Homeowner inspections, special projects and tasks specific to an individual home upon request

This new structure is working well and has resulted in an allocation of association expenses to those who use the services that are available which are in addition to basic functions of the SNHA Board as funded by the \$360 annual basic service fee. Fee increases in most cases will be driven by cost of living increases and increases in related materials and products connected to the additional services.

- **Smugglers' Village Fee** – A discussion of open issues for Full Homeowners regarding the fees charged to homeowners by Smugglers' Notch Management Company - Steve Hoey and Craig Greene presented.
 - Overview – Steve and Craig reported that prior to 2009, the Village Fee was defined and incorporated within the homeowner contracts with origins going back to agreements made in the late 1980's. The Village Fee provides the funds from homeowners paid to Smugglers' in turn for services provided by Smugglers Notch Management for Resort road maintenance, care of the common grounds, security, and other common area functions that have grown and expanded since 1988. When the past agreements ended at the close of 2008, no agreement had been reached between Smugglers' Management and the SNHA Board for either an extension of the past fees using the historical basis for calculating the fee, or for what services should be included in the fee. Since 2009, Smugglers has charged homeowners for these services in a fee first called "Utilities and other services fee" and more frequently returning to the traditional name "Village Services Fee". When the SNHA Board objected to the level of the fee set by Smugglers in 2009, they suggested that homeowners withhold a portion of the payment of funds beyond \$1000 per home per year until such time as agreement would be reached. Smugglers' has ignored the homeowners' request and continued to deduct the fee in full as they have calculated it from the homeowners' rental accounts and to charge the non-renters the full fee plus interest on what non-renters have withheld. Several attempts to negotiate an agreement for the Village Fee and for which services should be included in the fee have not produced agreement, and Smugglers' Management and the SNHA Board remain far apart on the fundamental issues:
 - the basis of the fee – allocations for what should be paid by homeowners and what should be paid by Smugglers' Management for their business use of the common property, and
 - the list of service items that should be included.
 - Craig Greene introduced Bill Stritzler, Managing Director and Owner of Smugglers' Resort. Craig mentioned that last summer when he and the Board negotiated a settlement that resulted in each homeowner receiving \$310 per year for 7 years from Smugglers, it was a part of the agreement that Bill would present Smugglers' perspective on the Village Fee at the 2013 SNHA Annual Meeting. The Board wishes homeowners to hear both sides of the issue at this meeting. Also according to last summer's agreement and to address the Village Fee, Bill sent to all homeowners last winter a detail of the Village Fee by service categories. A review of these categories raises questions as to why categories that are specific to the business operations of Smugglers are included. For example, there were amounts listed for "Smugglers' Gold" as a part of the fee expense. We question that and other items on the list and wish for Bill to have an opportunity to present and address the homeowners.
 - Bill Stritzler spoke and presented his goals for this presentation to be:
 - Smugglers intends to be transparent in regards to the funds and service items that make up the Village Services. The numbers presented today may not be completely accurate, but they are close.
 - Describe the methodology of how the fees are calculated
 - Dispel the mythology around the Village Fee
 - Present and discuss in a non-contentious manner

Bill noted that prior to 2009, the services to Regimes and the services to the common areas were a part of a single contract delivered by a single department source-Smugglers. Starting in 2009, the services to Regimes were set aside in a separate

agreement available to each Regime group with the option to use Smugglers or to engage a provider from outside. Bill stated that Smugglers can be very competitive in pricing each of these similar service groups by providing the services from the single source for both sets of services thus gaining efficiencies in using the same equipment and staff for service delivery.

Regime Property Services		Village Services
Provided to the property of a specific Regime as a separate agreement with each Regime		Provided to the common property and needs of all homes
Drives and parking belonging to the regime		Roads used by all homes
Snow removal from parking and walkways owned by Regime		Snow removal from main roads used by all
Trash removal for Regime		Security services
Yard care of Regime		Common grounds – yard care
		Common Area Trash

In general, Property Services to Regimes are those within the deeded footprint of the homes and property owned by the homeowners, and the Village Services are those provided outside that deeded footprint. The subject today is the Village Fee. The total bill for the all common services is about \$3,000,000 for all services to homeowners and to Smugglers.

- The allocation of the total costs to be charged to Regimes, homeowners common, and Smugglers business interests are as follows. Bill used an example of a condo complex in Florida who faced cleaning up goose poop to illustrate the several options for how the common fees might be allocated. He then described how Smugglers allocates the Village Fee.
 - Smugglers' isolates work done exclusively for Smugglers business. This category adds up to 1.4 million
 - The 1.6 million balance is for combined services to Regimes and Common areas. The distinction and allocation between Regime and Common services is then calculated based on several factors. Square footage of property plowed, fuel and labor used, time studies, and best professional estimates by Mark Delaney are all used to make these allocations. The end is about 50-50, \$795,000 to Regime Property and \$865,000 to Village Services. Thirdly, Smugglers goes to the Property Tax Grand List of Values to further determine allocation among the properties:
 - Interval-Fractional properties 27 million
 - Club homes – 77 million
 - Full – 56 million
 - Smugglers' - 18 million
 - Total – about 180 million
 - When the amount for Smugglers' Properties is backed out based on Grand List there is about \$780,000 left to allocate among all homes based on their portion of the Grand List
 - Interval-fractional 27 million
 - Club – 77 million
 - Full owners – 56 million
 - Summary of rounded numbers
 - 3, 074,000 Total cost

- 1,600,000 allocated to Regime and Common
 - 865,000 to Common Village Services
 - 780,000 after Smugglers 10% is removed
 - 350,000 – is the allocation to Full owners and is divided among all full owner homes equally or \$1200 to each home.
- Bill concluded by inviting the Board to review and audit the process and numbers and then discuss and debate the issues.
- Craig Greene - Analysis from homeowners' perspective including questions and answers – Craig thanked Bill for the presentation. He asked if Homeowners present had questions. Craig commented as follows:
 - Transparency – Is the Village fee really \$1200, Craig believes his fee has been closer to \$1400. While the services are generally well delivered, homeowners deserve to see the details without the expense of an audit.
 - Allocation – Craig questions the rationale for using the Grand List (10% assigned to Smugglers' property) to back out the Resort's portion and arrive at the homeowners' portion. When Craig asked Bill for an explanation earlier about why this method is being used, Bill referred Craig to Smugglers' attorney Carl Lisman who directed Craig to review Vermont Statutes where it is stated, to paraphrase, "where there is no other agreement as between homeowners using the land in the same way, they shall pay their portion of the cost based on a ratable basis". Craig noted that as Bill has presented, Smugglers' is using property values as the ratable basis. Craig then described the language from the full owner property deeds as below:
 - "The Grantor, for itself, its successors and assigns, agrees with Grantee, its successors and assigns, [for homeowners] to share on a pro rata basis with all others having similar rights and easements in the expense of maintaining, repairing and replacing said roadways. Grantor's share and that of any person claiming by, through or under Grantor to be determined in accordance with the same standards which apply to all others so obligated, provided that such standard shall be based on relative use and not area."

Craig pointed out that the deeds specifically state the basis should be relative use, not property value. The question was asked earlier if anyone is using the property for profit. Smugglers' is using the common property to operate their business and that operation is different from the homeowners' use. Smugglers is using the common property to run a multi-million dollar business. They should factor business use and define what portion of the upkeep is directly related to the wear and tear from that use into the basis and calculation for the Village Fee allocation. Consider the wear and tear on the common property from snow mobile rentals, county fairs, sugaring operations, construction vehicles going up and down the roads....these uses are not bad, but they are commercial and money making for Smugglers' not for the homeowners, and represent a dramatically different use from how homeowners use the common property. The homeowners should not have to pay for the wear and tear on the common property from Smugglers' commercial use of these same properties. The SNHA Board respectfully but strongly disagrees with the basis Bill has outlined in his presentation. While it can be argued that the commercial uses are valuable to the resort, it is unfair to have the homeowners pay 90% of the cost to maintain the common properties. In the old contract, the resort's portion was also 10%. Is that a coincidence? The

basis for the previous agreement was a contract, and as long as that agreement was in place, that was the allocation. When the contract was cancelled, the SNHA Board pointed out that the annual adjustment to the Village Fee had previously been contractually calculated and tied to an equivalent increase in rental rates paid to homeowners. In the new rental agreement, the linked adjustment to rental rate increases was dropped, and in that light the Village Fee should be looked at again. When the 1988 contract was set in place, the Village was a very different place than it is today. Summer activity was light and there was a lighter impact on the common property from the commercial operations of the resort. Smugglers has maintained the position that the Village Fee should be rolled forward as it was before. The Board wants the Village Fee to be calculated differently.

- Service items in the charge - Craig referred back to Steve's point that the Village Fee includes items that are clearly Smugglers' business, and do not relate to common property maintenance. While these may be relatively small amounts, all items add up, and in total become significant to the Homeowners as a group. He invited homeowners to review the details.
- Summary – Craig stated that the Board disagrees with Smugglers on both the basis they are using for the charge and for the items that are included in the pot. How can we resolve this disagreement?
 - Friendly “law suit” – maybe a judge or mediator will have to help find the resolution.
 - Discussions will continue in a respectful manner.
- Questions and points – from the floor
 - Where are the Club and Timeshare owners in this issue? Craig noted that Smugglers' had removed the Club and Timeshare owners from membership in SNHA, so that there are no Club or Timeshare member homes currently involved in SHNA.
 - Question regarding final calculations – once the total amount for full owner homes is derived, the final allocation is equal among all full owner homes (i.e. \$1200).
 - Has the Board calculated the fees as to how they believe it should be done? Craig replied that it would be very complicated and would be expensive in order to complete a draft allocation. It was recommended that the Board draft such an allocation by taking out the items that are clearly not belonging, and come to some number. Craig replied that the Board has done some work, but that the major difference lies in the method of allocation. Final point from the floor, was that the Board needs to put a counter offer together and move the discussion forward.
 - Point was made from the floor that trying to allocate the fee based on use as outlined in the deeds would be very difficult. That said, some way to charge back the resort for heavy use such as trucks and commercial activity is needed. Craig turned the mic to Steve Hoey. Steve replied that there are some new dynamics revealed today in the first split that need to be studied, but that doesn't address the rest of the pot that needs review.
 - Point made from floor – two sides need to agree to negotiate. Craig stated that SNHA Board is willing to negotiate. Steve Hoey reviewed how he sees a path to resolution:

- Friendly law suit – a third party participating to achieve a binding agreement
 - A mandatory Homeowner Association similar to the original deeded model where homeowners are required to participate and give authority to board to negotiate with a method for settling with one voice.
 - Unfriendly law suit – not desired, but is an option
 - SNHA seeks to incorporate the Resort as a “real” Village with taxing regime
 - Maintain status quo – not desired
 - Point made from the floor that if homeowners are expected to pay for common area, but access to some of the facilities is limited, how does that work? Craig stated that there has also been an ongoing discussion and disagreement about what does constitute Common Property. Craig stated that these questions will be a part of future discussion.
 - In closing, Craig pointed out that there needs to be incentive for both parties. Smugglers does not seem to have an incentive at this time since they are able to take the money for the Village Fee from rental income in spite of objections from many renting homeowners. Both parties need an incentive to negotiate.
- Real Estate Update – Barbara McGee reported:
 - Sales continue to lag behind Industry
 - Impact unknown from increased Wyndham expansion
 - Only 2 Full Ownership Homes were sold in 2013 as of 6/30/13
 - Large Inventory of 32 Full Ownership Homes are for sale
 - 9 Studios
 - 5 - 1 Bedroom
 - 7 - 2 Bedroom
 - 7 - 3 Bedroom
 - 3 - 4 Bedroom
 - 1 - 5 Bedroom
 - From the Smugglers Notch Real Estate Office:
 - Homes for sale in Smuggs are now part the MLS and also appear on Coldwell Banker's site (Jane Hurd Kiley, agent) as well as Smuggs' website.
 - Smuggs RE has 3 local banks they work with for financing
 - Smuggs lowered their sales commission from 10% to 6%
 - Quality Home Program – Florrie Paige reported
 - Our Homes Need to be Regularly Updated to Remain Contemporary
 - Reviews on Trip Advisor and Elsewhere Affect Guest Reservations
 - Flat Screen TV's are now the Norm- You cannot Even Purchase Anything Else!
 - All Hotels Offer Hairdryers to Guests
 - ADA Requirements will be Presented with as Much Notice as Possible
 - Initial First Impressions Include the Exterior of the Building
 - Insurance Update – Joe Ingram and Mike Conte reported that we continue to have a good relationship with our agent – Associates of Glens Falls who specialize in resort property insurance. We did change carriers this year starting in April 2013 and rates did increase. The master policy provides excellent coverage and value for the building structures and general liability outside the home. Homeowners need to be sure they are covered separately and with

their own Unit owner policy for contents, loss of use, individual liability, and betterments and improvements on interiors. Homeowners should call the SNHA office with any questions.

- Maintenance and Housekeeping Update – Bob Oehrlein reported that his committee has been very active with issues raised regarding the potential for asbestos to be present in the materials of homes. If positive results are found with testing, procedures for maintenance are required to maintain a safe environment for those working in the homes and comply with laws regulating disturbance and disposal. Undisturbed materials in the homes present no problems to homeowners or guests. The SNHA committee is working with professional contractors and with Smugglers' to address the questions that have arisen and to establish protocols for maintenance repairs and renovation projects.
- Nominating Committee Report – Bob Oehrlein, Florrie Paige, and Lonny Gee, members of the nominating committee reported. 4 positions for Directors whose terms are ending today need to be filled. The directors listed below are all interested in being elected again with terms to end 2016. The nominating committee has recommended to the Board that they be elected, and the Board approved nominations as follows for Directors for terms to end in 2016:
 - Tom Gangi
 - Steve Hoey
 - Barbara McGee
 - Craig Greene

A motion was made from the floor and seconded to accept the slate as presented. The vote was taken by voice with no objections.

Associate Directors - The committee also noted that they will be recruiting associate directors to serve on various committees and welcome volunteers. Contact a committee member at the close of the meeting or send an email to Joe (joe@snha.net) in order to be considered. The committee will recommend appointments and assignments to work with Board members in the various committee activities.

There being no other Business a motion was made to adjourn and all approved by voice vote at 12:10 noon.

Respectfully Submitted,

**Joe Hester Ingram, Executive Director
Bob Oehrlein, Secretary**