

1/22 7pm

TIMELINE – HASTINGS GREEN HOA DISPUTE WITH DEVELOPER

Introduction

Below is a brief timeline history of the dispute between the Hastings Green HOA and the developer, Mr. Patrick Jackson. The purpose of this timeline is to give owners a relatively quick overview of the dispute and to enable them to chart the steps taken so far in resolving it. The information in this timeline has been gleaned from the official minutes of Association and Board meetings, from legal documents and communications, from expert investigations, memos and communications, and from memos, e-mails and other communications among the parties involved. In the online version, which will be available on the HOA website within the next few days, links will be provided to all documents used in preparing this timeline.

2003

- 9-29 **Meeting.** Concerns were raised about quality control of work and punch list items not being completed before construction was scheduled to begin on new cottages.
- 10-3 **Meeting with Developer.** The developer assured owners that work would be completed on schedule and that he would begin working again on punch list items in the following week.

2004

- 1-11 **Meeting with Developer.** Concerns were raised about drainage problems. It was reported that the soil was very packed and not permeable. It was also reported that the developer was trying a new technique in place of swales for handling storm water, called "turf dispersal."
- 3-22 **Meeting with Sterling.** More concerns were raised about punch list items not being completed, including a discussion about getting an inspection and hiring a lawyer to send a letter to the developer.
- 4-? **Letter Sent to Developer** regarding punch list items.
- 5-5 **Meeting.** Concerns were raised about the developer's partiality in approving individual owner landscape plans. Also, there was a discussion about taking the warranty problem to the Construction Board. It was reported that the developer had allowed his bond to expire and that his permit from the city had not been finalized. There was also a discussion about having a drainage expert out to discuss the drainage problems and more discussion about talking with a lawyer about these issues.
- 5-6 **Meeting.** More dissatisfaction was expressed about the developer's failure to complete work on punch list and warranty items. It was decided to locate an attorney with condo experience.
- 6-10 **Meeting with Developer.** The developer agreed to meet with an inspector and a group of owners regarding individual and common area warranty items. Also, there was general acknowledgement of the drainage problems and an agreement that a subcommittee of HG residents would work with the developer, DEQ and the City of Portland to reach an acceptable solution. Also, the owners asked the developer to commit to a timeframe of 30-60 days for addressing individual and common area warranty items. He refused to commit to a timeline and informed the owners that he would be on vacation for the next two weeks.
- 7-14 **Meeting with Developer.** After meeting with DEQ and City of Portland, the developer announced that he would install swales in place of drainpipes between several units and another type of swale in the southwest corner of the green in Phase I. **He also acknowledged that the drainage issues were his problem.** In addition, in response to some concerns raised about roofing issues, the developer said he would hire a roofing inspector to identify the problems.
- 8-18 **Association Meeting with Developer.** The developer announced that another swale would be installed in the low area next to the rose garden in Phase II.
- 10-20 **Association Meeting with Developer.** The developer was questioned about when warranty work would be completed on units. He said that warranty work is done in three-month intervals at three, six and nine months.
- 11-17 **Association Meeting with Developer.** It was reported that work was continuing on the new swales in Phase I but that work had not yet begun on the proposed swale in Phase II.

1-6 Association Turn Over Meeting.

3-20 Board Meeting with Developer. Punch lists were discussed with the developer but he would not provide completion dates. Drainage issues were also discussed and some ideas were presented on how to correct the problems but no clear solutions were agreed upon.

4-5 Board Meeting. It was reported that no progress had been made on the roofing repairs because the developer had not yet contacted the roofing company to schedule them.

4-26 Board Meeting. There was a discussion with Mr. Joe Tripi, association lawyer, about the drainage problems. A motion was approved to have Drainage Masters investigate them.

5-10 Board Meeting. It was reported that the developer would schedule the roof repairs when he got back in the following week. It was also reported that Drainage Masters had been down to the city twice and had not found the development's storm water dispersal plan. According to them, the documentation should have been there.

5-24 Board Meeting. A motion was approved to send a Tort claim to the City of Portland outlining the drainage issues and soliciting help from the City. A second motion was approved to have a small group of owners meet with the City on the drainage issues.

6-7 Board Meeting. There was a report on the meeting with Mike Ebeling of the City of Portland regarding the drainage issues. He said that the depressions, or swales, are acceptable, that low point drains were not required, that the set back requirements of the depressions from the buildings were acceptable, and that he would issue a letter of non-compliance to the developer, saying that the system was not working as designed or as remedied. The question as to whether the project permit was finalized was not resolved. A motion was approved to contract with Drainage Masters to inspect the site, including the crawl spaces, and to document the drainage problems.

6-17 Notice of Construction Defects. A letter was sent to the developer by the association's attorney, outlining construction defects, including drainage failures, improper design, function and construction of the irrigation system, defects in roof installation, plat errors and punch list items.

6-20 Oregon Tort Notice Claim. A letter was sent to the City of Portland by the association's attorney, claiming that the City was responsible for the negligent design and/or approval of defective drainage systems and failure to inspect all aspects of development.

6-23 Drainage Masters Report. The report called for 11 depressions, the rerouting of 40 downspouts, 3 fixes for depressions, 500 feet of French drains and 10 sump pumps at the cost of \$60,000. Willamette estimated the cost to fix the landscaping associated with these remedies to be \$25,000.

7-5 Board Meeting. The Drainage Masters Report was discussed and a motion was approved to draft a letter to the City.

8-16 Board Meeting. It was reported by the association's attorney that the developer had not yet responded to the association's 6-17 letter. A motion was approved to call an Association Meeting to discuss the lawsuit.

9-1 Association Meeting. A motion was approved to not file a lawsuit against the developer by 9-17-05 and to authorize up to \$2,300 beyond the \$5,000 legal cap in the documents for the creation of RFP's for engineers and designers regarding the drainage to allow us to pay for legal assistance in creating the RFP or engineering response to the RFP (20 yes, 0 no, 2 abstentions). Another motion was approved to bring Steve Kenworthy of Drainage Masters and Matt Triplett of Willamette Landscape to a meeting to educate owners on the drainage and irrigation research (22 yes, 0 no, 0 abstentions).

9-13 Board Meeting. It was reported that the developer was asking for a tolling agreement in order provide more time for the association and him to reach an agreement. A motion was approved to sign the tolling agreement.

9-14 Board Meeting. Matt Triplett of Willamette Landscape Services and Steve Kenworthy of Drainage Masters met with the Board regarding the landscape, irrigation and drainage problems. Mr. Triplett said that the soil was overly compacted and not prepared well, and that the irrigation system did not function well, mixing sun and shade zones. He said that drainage was the main problem and said that, if money was no object, he would tear everything out and start over. Mr. Kenworthy discussed the recommendations in the Drainage Masters Report.

10-11 Board Meeting. It was reported by the association's lawyer that he had sent the tolling agreement to the developer but that it had not been returned with a signature because the developer was out of town.

11-8 Board Meeting. It was reported that the association had come to an agreement with the developer on a revised tolling agreement, which would extend the agreement out to 5-1-06. A motion was passed to approve of the revised tolling agreement.

12-13 Board Meeting. After learning that the developer was dragging his feet on getting the tolling agreement signed and notarized, and that the statute of limitations would run out in early January, a motion was approved directing the association's attorney to pressure the developer to sign the tolling agreement, to do whatever necessary to protect the association's claim, up to and including the filing of

a lawsuit, and to proceed quickly with the RFP for the irrigation and drainage investigations. There was also a discussion about exterior issues. It was emphasized that owners were responsible for ensuring the completion of their units, including weather proofing their exteriors. At the same time, the Board agreed to seek advice from the association's attorney on how to proceed.

- 12-30 **Board Meeting.** After hearing that the developer had not signed the tolling agreement, a motion was approved to sue him. Another motion was approved to investigate the building envelope using the RFP process. A third motion was approved to contract with an expert to investigate the drainage problem. A fourth motion was approved to call an Association Meeting for 1/3/06 to discuss these issues. Still another motion was approved to have a special assessment to pay for legal expenses already incurred, and for the drainage and envelope investigations.

2006

- 1-3 **Association Meeting.** The association's attorney recommended several companies for the building envelope inspection. He also recommended that the association file a lawsuit prior to 1/6-06 to preserve the right of individual owners to file claims based on their sales agreements. A motion was approved to authorize the Board to incur legal expenses in excess of \$5,000 in order to sue the developer (18 yes, 5 no). Another motion was approved to take assignments from unit owners to preserve their one-year period for non-warranty items (19 yes, 2 no, 2 abstentions).
- 1-5 **Tolling Agreement Signed.** It provided more time, until 5/1/06, for an agreement to be reached with the developer.
- 1-6 **Class Action Lawsuit.** This lawsuit was filed by the association's attorney in order to preserve the right of individual homeowners to pursue building envelope and individual punch list claims against the developer. It also allowed more time for the completion of the building envelope investigation. In addition, it allowed the building envelope issues for which the HOA was responsible to be included in the tolling agreement.
- 1-27 **Developer Response to Notice of Construction Defects.** In a letter that was sent to the association by the developer's attorney, the developer agreed to a limited number of remedies for the drainage problems, including the construction of two additional swales and minor regarding. The developer also agreed to correct the plat errors and some common area punch list items. In addition, he asserted that the roofing issues had been resolved.
- 2-1 **Association Meeting.** A non-binding motion was approved to have the association pay for a visual inspection of the building envelope (10 yes, 8 no, 1 abstention, 1 absent).
- 2-6 **Board Meeting.** A motion was approved to have the association fund the Class Action Lawsuit, which was approved by the previous Board. It was agreed that the funding would continue until a decision was made to stop and/or decertify the lawsuit.
- 2-13 **Board Meeting.** A motion was approved to respond to the developer's 1/27-06 letter. It was agreed that the letter would include individual items that the Board accepts, items from the tolling agreement that were not addressed and items requiring further. Another motion was approved to fund up to \$12,500 for a drainage investigation that would include an analysis of the problem and potential solutions.
- 2-20 **Board Meeting.** A motion was approved for a special assessment of \$14,030 to pay for the building envelope and drainage investigations and legal fees through 5/1/06. In addition the Board agreed to send out an e-mail survey asking owners to report on their units' water issues (water in crawl spaces, standing water up against foundations, cracks in foundations, etc.).
- 2-27 **Association Response to Developer Response to Notice of Construction Defects.** The Board requested a meeting with the developer to review his proposal and identify areas of agreement and disagreement. The meeting was eventually scheduled for 6-2-06.
- 3-2 **Building Envelope Report.** This report determined the scope of building envelope issues, identified areas of potential moisture intrusion and recorded the presence of construction issues that may have compromised structures' weatherability systems.
- 3-2 **Board Meeting.** In an effort to clarify the purpose and meaning of the Class Action Lawsuit, it was agreed to circulate to all owners a copy of a recent letter by the association's attorney. The Board also approved a motion asking the association's lawyer if the construction defects identified in the Forensic Report could be included in the tolling agreement. Another motion was approved to have WRG and Hal Beighley modify their drainage proposal to reduce the impact on limited common and common areas.
- 3-20 **Memo from Association Attorney.** In this memo, the attorney for the association identified those issues in the Forensic report that he believed were the responsibility of the HOA Board, and therefore could be included in the tolling agreement.

- 3-31 **WRG/Beighley Report.** This report determined the scope of drainage problems and recommended two approaches to fixing them, one involving the construction of 22 infiltration basins at an estimated cost of \$35,000. This option also included extensive landscaping at an estimated cost of \$59,100. The other option involved the installation of a stormfilter and several drywells at an estimated cost of \$348,200. The report also recommended a geotech study to verify its soil composition and infiltration rate assumptions.
- 4-2 **Letter from Association Attorney.** In this letter to the City of Portland, the attorney for the association, noted that the City had denied the association's tort claim against the City.
- 4-4 **Board Meeting.** A motion was approved to ask Forensic for cost estimates for those items identified in the 3-20-06 memo from the association's attorney. The Board also listed a number of questions they had regarding the WRG/Beighley Report, including the size and appearance of the swales, the type of maintenance that would be involved with them and the cost estimate for fixing the irrigation system after the swales were installed.
- 4-24 **Board Meeting.** A motion was approved to extend the tolling agreement to 7/15/06. Another motion was approved to proceed with a 6/02/06 meeting with the developer, lawyers and experts. (It was explained that a mid-April meeting had not occurred because of booking problems with the lawyers and experts and the fact that the developer had plans to leave town for several weeks.)
- 5-11 **Tolling Agreement Extension.** The Tolling agreement was extended to 7/15/06 in order to provide more time for the association and the developer to reach agreement.
- 6-2 **Negotiation Meeting with Developer.** The developer agreed to remedy 80% of the items contained in the building envelope report and agreed to correct the plat errors. Both sides agreed to have their respective experts meet at the site to review the drainage problems and try to develop a common understanding of them.
- 6-26 **Association Meeting.** The attorney for the association reported on the status of the Class Action Lawsuit. He said there were three options: 1) the class suit could proceed with Laura Moore and possibly others from the association; 2) Ms. Moore could proceed with an individual suit in addition to or in lieu of a class action suit; or 3) she could discontinue her involvement in the class action suit and forgo an individual suit. It was also reported that the developer was willing to make most of the repairs identified in the Forensic report but that he would not begin the repairs until an agreement was reached on the drainage issue. After a background report on the drainage issue, the need for a geotech study was explained. In a non-binding vote, the association approved a special assessment of approximately \$6,000 to pay for a geotech study (18 yes, 2 no, 2 not recorded due to no proxies).
- 7-10 **Board Meeting.** A motion was approved to hire GeoEngineers to perform the geotech soil testing for a total cost of \$4,800. It was agreed to ask the developer to share the cost of the study and to request that the envelope repair agreement not be tied to the drainage negotiations.
- 7-17 **Tolling Agreement Extension.** The Tolling agreement was extended indefinitely to provide more time for the association and the developer to reach an agreement.
- 7-27 **GeoEngineers Report.** This report provided subsurface soil information and infiltration rates of the soils at Hastings Green, confirming the assumptions in the WRG/Beighley Report as to why the site does not infiltrate properly.
- 7-28 **Board Proposal to Developer.** The Board sent a proposal to the developer asking him to complete the agreed upon building envelope work and a limited number of other items prior to the rainy season in exchange for some minor concessions.
- 8-3 **Negotiation Meeting with Developer.** An agreement was reached on the Board's 7/28/06 proposal. The developer agreed to commence work on the agreed upon building envelope problems. He said he would have his attorney put the agreement in writing. Both sides also agreed to have their respective experts review the GeoEngineer Report and attempt to reach an agreement on the drainage problem.
- 8-15 **Board Meeting.** It was reported that the Board had received a written proposal from the developer outlining the envelope agreement that was reached at the last 8/3/06 negotiation session. The Board concluded that it could accept most of the items in the letter but that it needed to clarify the language about releasing individual owner claims. In addition, the Board decided to set up a meeting with WRG to clarify how the Geotech Report impacted the drainage plan and cost estimates.
- 8-16 **Developer Proposal.** In this e-mail communication, the developer proposed to put in 4 additional swales with the idea that they would be watched during the winter to see if they worked.

- 8-21 **Meeting with WRG.** At this meeting, WRG confirmed that, based on the Geotech Report, the area required for the proposed swales could be reduced to 20% of what it was in the original plan. These reduced swales would take up approximately 5% of common and limited common areas. WRG added that because of the reduction in the number and size of the swales needed to solve the drainage problem, it would probably not be a problem to work around existing patio and personal garden areas. And, as a result of these reductions, WRG said that the costs would be reduced as well. It was estimated that excavation and swale building costs would be reduced by 30-35% and costs for plant material would be reduced by 70%. WRG added that costs could be reduced further by having Hasting Green owners complete some of the work.
- 9-6 **Board Meeting.** A motion was approved to: 1) reject the developer's latest proposal on building 4 swales (because the swales most likely would not be built to the specifications proposed by WRG and the Geotech study and, therefore, would not be adequate; and 2) propose that our expert (from WRG) and the developer's expert meet on the Hastings Green site during wet conditions and come to an agreement on the size and specifications of swales for the worst drainage locations.
- 9/26 **Board Meeting.** The Board continued to discuss concerns about the developer's written envelope proposal, including the sections on vent wells, the French Doors and the release of individual owner claims. It was agreed to meet with the association's attorney to discuss these issues. In addition, a motion was approved for a special assessment of \$26,716 for the following purposes: to recover the difference between what the association had spent and what had been collected for professional investigations and legal expenses, to pay for reserve studies, and to continue negotiations with the developer on drainage, envelope issues and common area punch list items. Finally, since the Board had not yet heard back from the developer on its latest proposal to have experts walk the Hastings site, it was decided to check with WRG to see if the developer's expert had contacted them yet.
- 10-19 **Board Meeting.** The Board discussed edits by the association's attorney and the developer's attorney to the latest version of the written proposal on envelope issues and the common area punch list. The Board agreed to have the association's attorney formalize the letter by 10-27-06, if possible, so both parties could sign it. It was agreed to call the association's attorney to find out whether or not the Class Action Lawsuit had been decertified yet and to find out if the developer had responded yet to the Board's latest proposal on drainage.
- 11-14 **Board Meeting.** A motion was approved to accept the most recent edits of the developer's attorney on the written proposal on the envelope issues. It was also agreed to set up a 11/20/06 meeting with the developer to go over the final details of the agreement. It was also reported that the Class Action Lawsuit was in the process of being decertified.
- 11-20 **Negotiation Meeting with the Developer.** At this meeting both parties signed the agreement on the building envelope. The drainage problem was also discussed. The Board summarized the meeting notes of the 9-1-06 conference call between the experts of both sides in which they agreed that a site visit would be the next logical step. The developer said that he had not heard anything from his expert about this meeting. In addition, the Board learned for the first time that, by law, the developer had the "right to cure" on the drainage problem, meaning that he has the first shot at doing the work on any negotiated solutions, and, if the association does not give him that first shot, it would forfeit any claim it has against the developer. It was suggested again that the next step should be a site visit by th experts from both sides.
- 12-14 **Board Meeting.** It was reported that the Board had agreed to accept the developer's proposal to fix the vents on four units and the vents on any other units that showed evidence of water intrusion. In addition, the Board agreed to continue to push for a site visit of experts from both sides to identify the locations of our major drainage problems. It was noted that one problem in scheduling this site visit has been that the developer's expert lives in San Francisco. A motion was approved to ask the developer to have a local representative from the company that he is using to be made available for a site visit.