

*The Board held a special Work Session on the budget on October 3 to iron out many of the details ahead of adopting it as a draft on October 4. While it was an open meeting, it was not an official meeting of the Board that required minutes. What follows is a summary of the discussion, which the Board on November 1 indicated it wanted to have posted on the website.*

**New Mark Commons Homeowners Association  
Notes on October 3, 2018, 2019 Budget Work Session  
7:00 p.m., Clubhouse**

*Board Members Present:* John Daroff, Kathleen Moran, Alex Belida, Ellen Stein  
*From the Community:* John Hansman, Arthur Katz, Martin Lizak, Jonathan Muller  
*Notes taken by:* Pat Reber

President John Daroff opened the meeting and invited the few residents who attended the session to weigh in during the discussion.

Treasurer Kathleen Moran recapped how the draft budget was developed at a meeting at Abaris with Board members Ellen Stein and Alex Manolatos and herself. Abaris Chief Financial Officer Tom Kunjoo and New Mark's former administrator Jim Denny also had input into the draft budget.

John explained that the big issue now facing the Board was how to accommodate the large increase in insurance costs due to complaints brought by resident Richard Berman against New Mark. The item in question was insurance for directors and officers of New Mark Commons, not the separate liability insurance that covers accidents on commonly owned ground.

John explained as follows: The original insurer, USLI, cancelled the old policy in September, citing the three complaints brought by resident Richard Berman against the HOA. Only one of those cases to date resulted in a financial loss – the ruling in 2016 by the Montgomery County Commission on Common Ownership Communities (CCOC) over the payment of storm water management fees through resident dues. The CCOC ordered New Mark to pay out \$43,000 to townhome owners to make up for past charges, a cost covered by USLI insurance. In addition, New Mark had about \$30,000 in legal expenses in that case.

The second complaint brought by Richard Berman did not result in financial loss. In that case, New Mark agreed to digitize all minutes since New Mark's inception and post them on its website.

Volunteers carried out the scanning work.

John explained that Richard Berman's third complaint involving the reserve fund is in a sort of limbo. Although it has been withdrawn after Richard's several requests for delays, it

is considered a “loss run” by the insurance companies that could result in an estimated \$122,000 loss claim if Berman revives his complaint and the CCOC rules against the HOA.

This situation forced the Board to find a replacement for the dropped insurance, which had cost about 2,500 to 3,000 dollars a year. “Our insurance agent worked feverishly to find a replacement. He had to go to the excess and surplus market, and there were only two bids. One from a subsidiary of Liberty Mutual (LM) and one from a subsidiary of Lloyds of London,” John said.

The L& M bid had the lower premium of 13,000 dollars but had a “retention” (deductible) of 25,000 to 50,000 dollars and a total exclusion for any damages as the result of any future Richard Berman complaint. “Our insurance agent said he had never seen an exclusion like that,” John said.

The Lloyds subsidiary premium was 15,700 dollars; had a 10,000 dollar “retention” for payouts and legal fees; but did cover any future Richard Berman complaints, for an elevated deductible of 25,000 dollars.

As time was of the essence on the insurance issue, John consulted with Kathleen and Board Secretary Alex Belida, and they agreed on the Lloyds offer since it offered at least some protection from Richard Berman. They also opted to pay for a one-time finance charge of \$300 to allow monthly payments over the coming year, in light of the current large paving project and financial costs and the need to protect cash flow. In addition, the community had to purchase a “prior claims” insurance of \$5,000 from USLI to protect the officers and directors from pre-September 2018 cases.

“We decided that unlimited coverage was what we needed to purchase, although we hope to be back in [the regular] market next year,” John said. He also noted the need for unlimited coverage given the pending consideration by the ACC and Board of steps against residents who are not complying with Covenants.

QUESTION FROM Arthur Katz: “So this is just because of one person?”

Alex Belida responded, saying: “I wouldn’t have participated in any future decisions without it.”

John Hansman questioned why such an expense was necessary, because it was unclear about to what extent current officers and directors were involved in the cases of Berman’s complaints.

Alex Belida: “Actually, in the last claim, he wanted to bring personal charges against each member of the Board.”

John Daroff: “He also threatened me with a complaint to the Bar Council.”

The Board then proceeded to discuss the overall budget situation. Kathleen noted that “we have overspent our [current] budget for a total of 44,000 dollars.” [much of that was for tree removals and tree care]

After some estimated cost calculations, the Board members realized they had to find about \$23,500 in the 2019 budget to cover what will remain in charges for the September to September policy for 2018-2019; and for the future 2019-2020 policy.

The details and their impact on budget lines were as follows, as summarized after the meeting by Kathleen:

DECREASE the proposed budget in the following lines:

#50070 consultant fee lake dredge – decrease by \$10,000 which removes the line item

#50700 entertainment – decrease by \$2,500 for a new total of \$7,500

#52320 snow removal - decrease by \$5,000 for a new total of \$30,000

#53280 tree care – decrease by \$6,000 for a new total of \$34,000

**Note: The above decreased items total \$23,500**

THEN INCREASE

#59100 insurance – master pol – **increase by \$23,500** for a new total of \$68,500

[represents Directors and Officers insurance as well as \$45,000 for liability on commonly owned grounds, an amount that has not changed from prior year]

The informal breakdown of expenses as discussed during the work session is:

\$4,500 cash down payment already made for 2018-2019 Director and Officer insurance  
\$11,250 premium balance for 2018-2019, to be paid monthly starting this year and into next year.

\$15,700 for the 2019-2020 policy.

Resulting need for the 2019 budget, which starts in January: About \$23,500.

“We have to accept we cannot do everything. We’ve identified priorities: Parking lots, retaining walls, drainage. Those come before everything else,” Alex said.

QUESTION FROM John Hansman: John H. challenged that the repayment of the \$750,000 line of credit had been put into the operating budget instead of the reserve budget. He said that’s how they did it at his church. “So fix my problem,” he challenged.

John D countered that General Accounting Principles call for payment out of operating funds. Alex noted that paying out of Reserve fund would undermine current efforts to increase the Reserve fund, in accord with the Reserve Fund analysis done recently.

There followed a discussion between Board members and John H and Arthur K about the Reserve fund, into which Townhome owners pay on a 4 to 3 ratio compared to the

detached homes and Tegner townhomes. The ratio is intended to compensate for the additional cost of maintaining TH parking lots and TH common grounds.

John H felt it was important to repay the line of credit out of the Reserve Fund so that the detached owners were spared some of the financial pain.

Arthur K said that detached homes get little direct benefit from the Reserve fund. "You don't do our trees or our driveways," he said, although he conceded benefit came from the lake and other common use areas like Clubhouse and Pool. Arthur called for a long-term discussion about equity, with the townhome parking lots probably being the biggest differential.

John H: "You are sticking detached and Tegner homes with expenses that are not appropriate."

John Daroff responded, saying that "we are a community" and that the precedent was established. Eventually, John said, he wants the community to take a good look at governing documents and make appropriate changes.

"We have done things that have benefitted the whole community. This is tough because we have detached and townhomes. I wanted to attack governance issues but infrastructure needs have dominated. I don't think this is a case of unfairness. It benefits everyone if the parking lots are in good shape, because as a community our home values rise and fall together. If a potential buyer come in and checks out both, they want to see that the whole community is being taken care of," John said.

Alex Belida asked: "How badly do we want to preserve the unity of New Mark in a traditional sense? There is gross injustice. One homeowner has to remove eight pine trees on their own while across the street, seven were removed at NMC cost."

John H lamented that the Reserve Fund, when it was conceived in 1986, should have called for a 2-1 ratio instead of the 4-3 ratio.

John D responded: "You're right, it is inherently unfair. That's why we desperately need to revisit our documents. That's not going to happen overnight."

Kathleen noted that the huge 50 per cent dues increase hardly covers the needs for 2019. "The hardest conversation will be a year from now," she said.