



June 30, 2021

Bayside Homeowners,

This communication will provide clarity and direction on the Bayside Homeowners Association (HOA) Common Reserves and the Townhome Roof and Paint Special Assessments.

We are aiming to resolve these issues cooperatively so the necessary services tied to these funds are available as needed.

Background

It is important to understand the different issues in question here, as they are separate and unique.

- **HOA Common Reserve Funds.** These are actual or projected funds at a particular point in time that the HOA has identified for use to defray the repair or replacement of major components that the HOA is obligated to maintain. These components include common elements of the HOA as such roadways, sidewalks/walkways, decks/boardwalks, landscape/irrigation, outbuildings, storm sewers, driveway aprons, pavilions, mail facilities, ponds, walking trails, and other common elements used by all Bayside homeowners, or repairs that require over \$8,000.
- **Townhome Roof and Paint Special Assessments.** These are assessments used to cosmetically paint the exteriors of townhomes/duplex units as well as replace the surface shingles along with gutters and downspouts, both of which are completed at regular intervals.

HOA Common Reserves

The legal requirement for the establishment of Reserve Funds does not exist in Delaware for all common interest communities. Since 2009, when DUCIOA was enacted, the portion of the law requiring a repair and replacement reserve only applies to condominiums and co-ops, not the Bayside HOA. The Bayside Charter only recommends consideration of reserve assessments with each budget; it does not require them.

Even without this requirement, there have been four independent reserve studies or updates prepared for Bayside since 2010 by professional engineers and advisors. These were reported to the Board of Directors and the homeowner-appointed Finance Committee to guide annual budgeting efforts. Each established the threshold values recommended to be set aside for repair and replacement common community improvements over their useful life.

- In considering the HOA Common Reserves it is critical to note that no common reserve funds were collected in the early years of Bayside from 2005 to 2009.
- HOA Common Reserve funding was initiated and began to be collected in 2010.
- This practice has since been documented in each audited year-end financial report.

It has been asserted that the Developer should retroactively subsidize the HOA Common Reserves from 2005 to 2009 based on Section 13.2(d) of the Bayside Charter even though the language makes clear those reserves were optional and “as applicable.” In fact, the Developer did subsidize the HOA in these years at almost \$500,000.

\$198,394 was reserved from 2010 and 2011.

A March 2011 reserve study indicated that a recommended balance of \$329,663 should have been collected by the end of 2011. The difference between the value recommended in the study and the actual balance was only \$131,268 – less than half of the amount that was reported to the Community. This difference was NEVER collected and subsequently was paid into the fund by each owner over the past 10 years. Reserves are not static, and they can and will change with the inclusion of additional infrastructure and periodic re-inspections and updates. Since the initial report was completed, the community Reserves have been periodically re-analyzed and reviewed each year by the Finance committee and budget recommendations made for funding.

Townhome Roof and Paint Special Assessments

Mistakenly called a reserve, these assessment fees are special services being provided to a service area, in this case the owners of attached, single-family homes (Townhomes and Twinhomes).

Recent History

In 2019 the Finance Committee found a town home paint assessment shortfall and recommended that the assessments be increased for this. The Chair of the Finance Committee at the time, and a homeowner board member, advised the BOD of this but also recommended that the board not increase the town home assessments at the time due to wanting more time to analyze the information. Based upon the Finance Committee Chair's recommendation the BOD voted unanimously (with the two homeowner members as well) not to increase the town home assessments. The following year the assessment was increased, as part of the annual budget, based upon further analysis.

- Over time the cost of the painting program increased which has resulted in the need for a one-time program increase of **\$219,000** in 2021. Beyond this, only inflationary increases are called for by the current analysis. This funding was approved and included in the 2021 budget as approved by all Board Members.
- The 2020 Reserve Study by Reserve Advisors recommended that the roof replacement fund "make up" funding of **\$148,500** over the next five years. This was also unanimously approved and budgeted in 2021.
- Gutters and downspout funding was recommended in the 2020 Reserve Study to increase **\$197,500** over the next five years. Again, this was approved by all Board Members and budgeted in 2021.

All of these monies are directly correlated with benefits to each townhome unit owner (i.e. money paid in to the program over time, in makeup payments or in lump sums, all result in that unit owner having their roof/gutters replaced or their home painted).

If either special assessment were to be terminated and the assessments refunded, 100% of all money paid into the roof & gutter program would be refunded. \$340,500 in makeup funding would be required to refund all assessments paid into the painting program as of June 2021. As costs increased, this money was used overtime to paint different units.

According to Reserve Advisors the administration of this type of roof, gutter and paint program is not typical at this scale. There are no services scheduled in 2021 for any units.

Assessments at the recommended levels in the 2020 Reserve Study are in place and are being fully funded.

Reexamine the Assessment Program

- We believe that the program needs to be reexamined and relaunched.
- This effort is underway currently.
- Along with definitive guidelines for the program the interval of paintings must be reviewed and possibly lengthened to match material warranties.
- The different unit types need to be grouped in smaller cohorts so that similar sized units will have assessments based upon actual costs and not just a simple average across all of the units.
- If properly enacted both of these changes would match cost equitably while potentially reducing costs for most units.
- While these decisions will be reviewed at the HOA Board level, townhome and twinhome owners should have the opportunity for direct input.
- We will support this effort fully.

What's Next?

Clearly, there remain unresolved issues regarding both the HOA Common Reserves and the Townhome Roof and Paint Special Assessments. How the current costs have been calculated, the management, functionality, and guidelines for these programs must be determined.

Carl M. Freeman Companies looks forward to continuing to work with all Bayside homeowners to arrive at comprehensive solutions and a path forward on not only reserve needs but all transition-related issues. We plan on having this done before the end of 2021.

CMFC