

SPYGLASS POINT CONDOMINIUMS OF PENSACOLA FL

**HOA BOARD/BUDGET MEETING
OCTOBER 13, 2022 (Thursday)/5:30 PM**

**PLACE OF MEETING:
Pensacola Library
239 N. Spring Street PENSACOLA, FL 32502**

AGENDA

1. Call meeting to order and establish quorum

6 of 7 Board members present: Patty Martinez, President; Daniel Dorman, Vice President/Secretary; Jason Robbins, Treasurer (zoom); Angela Heinrichs (zoom), Clif Kirk, Natalia Chapman

1 Board member absent: Taylor Loftin

Also present: Kevin Etheridge, Etheridge Property Management; and Suzanne Blankenship, Association Attorney from Emmanuel, Sheppard, and Condon (ESC).

2. Review of minutes from Board Meeting 9/29/2022

Meeting minutes from 9/29/2022 are not yet complete; meeting minutes from the 9/29 and this meeting (10/13) will be reviewed at the November board meeting.

3. Financial review ending 9/30/2022 & Review Aged Receivables

We have not been approving the financials, but have been reviewing them due to the ongoing financial audit with the CPA – this is due to the issues in the bookkeeping with the prior management company; there was a duplication of entries that made it appear as though Spyglass has more money than we do; CPA has been notified of these discrepancies.

Total current capital listed in the financial report is \$207,964.32; actual figure is \$103,597.73 as of September 30; correction to entry 85900 for tree work to be moved to different category per the Engineer.

Aging Report: owners who have not paid their association dues.

1-30 days past due (DPD): \$4,289.28

31-60 DPD: \$1,969.51

61-90 DPD: none

90+ DPD : \$7,330.87

Total of \$13,589.66 in delinquent dues owed to the Association.

Etheridge has referred four (4) of the delinquent members to the attorney for further action.

Daniel Dorman motioned that we table the financial review ending in 9/30/2022 due to the ongoing CPA audited, Jason Robbins seconded; no discussion, passed unanimously.

- 6 YES votes: Patty Martinez, Daniel Dorman, Jason Robbins, Angela Heinrichs, Clif Kirk, Natalia Chapman.

4. Old Business:

a. Status on membership vote - Special Assessment

- SPECIAL ASSESSMENT COST PER UNIT FOR CY- 2022 - \$617.62

67 out of 120 members approved the Special Assessment; the threshold for approval was 61 approvals. Letter of approval and notice of special assessment was sent to the unit owners; due no later than November 4th, 2022.

b. Status on financial audit

Hoping that the financial audit will be concluded soon; a lot of information was in many different places due to poor record keeping by the previous management company. Our CPA believes that one of their auditors may need additional information; report is nearing conclusion.

c. Status on M & H Insurance Claim Status/Repairs – Hurricane Sally

Daniel Dorman motioned to table an update on the claim; however, Suzanne Blankenship was able to offer additional information as the Association Attorney. Suzanne shared that Shane Row, Attorney at ESC, is working on the insurance claim. A new sworn proof of loss has been submitted, the claim has been reopened by the carrier; everyone is hoping to avoid litigation and Shane is hopeful we can negotiate the claim. It is in process but there are no guarantees, it is being worked on as quickly as possible under the circumstances.

d. Credit line for the use of emergency

Board is not prepared to address this topic as the research has not yet been completed, issue tabled.

5. New Business

a. Annual Budget review for CY-2023 to include review of following reports:

- Review Reserve Study Survey (Online at Etheridge website)

<https://www.epmfl.net> > Association > Spyglass Point > Documents > 2022 Reserve Study

- Review Engineer Report - (Online at Etheridge website)

<https://www.epmfl.net> > Association > Spyglass Point > Documents > Engineers Report

Suzanne Blankenship, Association Attorney from ESC, addressed the Board of Directors and the Community regarding the Reserve Survey and its impact on the proposed budget for CY2023:

- Suzanne's purpose tonight was to educate the owners on the budgeting process and what the board's doing. The owners hold the power; however, the board has a really tough task; have to make up for some lost years, Spyglass reserves are not in a good place, and the Board has a duty that they have to perform under Florida law. Their duty is to put together a budget, which has two components: operating side and a reserve side. Certain items under the reserve budget are required, and others are discretionary. As far as the board's duty is concerned, no matter what has been done in prior years, it may be right or

it may be wrong. There may be an argument “well we’ve always done it that way” – it doesn’t matter; the Board’s duty is to put together a “fully funded budget” – and on the reserve side there are three categories that required: roofing, paving, and painting, and then you have a fourth item which is for “any item which is over \$10,000.” Suzanne clarified that she does not represent owners or the board as individuals, she represents the corporation, or the Association, which the owners are members of. Everyone should be acting in the best interests of the association; the board is attempting to do that tonight by developing a budget, holding a budget meeting, and determining the budget before you that is adopted. What Suzanne meant by “you have the power” which works in a couple of ways: You have in your Declaration of Condominium what is called “Kaufmann Language” which means the declaration incorporates the version of the Condominium Act as “amended from time to time”, which incorporates the current version of the Condominium Act. The way that this works under the current version of the Condominium act, once the board adopts this budget – the owners have two methods for changing the budget if they don’t like it. Suzanne “caution[ed] you as your association counsel...that when you put together a condominium budget, things are sometimes ‘out of sight, out of mind’, and the maintenance comes out of the reserve part of the budget – even though you [the owners] have the power to act, [she] urges [owners] to exercise discretion.” The reason is that because if you don’t fully fund the reserves, and the board does its duty to fully fund the reserves and it shifts to you and you decide “no we want to waive those” ultimately those monies are going to be needed – you’re going to need roofs, you’re going to need siding...when those things then are due, the method for funding those [when reserves are waived] are by special assessment. You can pay now, or you can pay later, that is not Suzanne’s choice to make and she urged owners to really think about that.

- How would the owners go about changing the budget if they do not like the budget as adopted; there are a few procedures to accomplish this:
 - 718.112 of the Florida Condominium Act has two procedures:
 - First way (Substitute Budget): can petition the Board to have a meeting to have a substitute budget; up to the owners and is not discretionary with the board, it is for owners to request.
 - The substitute budget is for the owners to tell the board; you have to tell them and give them a copy of what the substitute budget would look like.
 - Owners have 21 days to provide a substitute budget from the date of the meeting where the board’s budget was proposed/passed.
 - Second way (Reserve Waiver): have an agenda item placed on the annual meeting agenda to waive certain reserves (this is different than the process to challenge the budget if it exceeds 115% of the last years’ budget).
 - Owners need to tell the board exactly what kind of waiver language the owners want; general proxies are not allowed under the condominium act; requires limited proxies which contain a particular question to be voted on. Details of the questions must be brought by the membership to the board.
 - There will be a disclosure put on the proxies required by the Condominium act that lets owners know that if you are voting to waive the reserves, the funds will be due by special assessment.

Suzanne mentioned the Division of Florida Condominiums puts out a publication on Condominium budgeting; can also go to ESCLaw.com under the community practice area that has publications for review and educational purposes.

Suzanne wanted to make sure everyone was clear on the legal requirements: “Don’t shoot the messenger”, the Board does not have discretion to waive or reduce mandatory reserves, the owners have that power and they get to choose.

Daniel Dorman, Vice President and Secretary of the Board delivered a presentation as a high-level overview on the Reserve Study and Engineers Survey (see Exhibit A).

- Question came up during the presentation regarding the number of board members for Spyglass: This is on the agenda; however, this board is not sure it can push through the amendment using the required procedures. Florida statutes require association covenants to specify the number of board members on their boards; Spyglass covenants do not specify and so it will default to five (5), whereas earlier this year we proposed seven (7), however because of the timeframe it may be up to the new board (2023) to pass an amendment to the bylaws for seven board members versus five. Suzanne Blankenship stated that we can amend our bylaws after the election process has been completed, which starts 60 days prior to the annual meeting; since we are in that window we cannot make a change to the number of directors. The bylaws can be amended, and the amendment has been drafted, but because we are within the 60-day window, we cannot pass the amendment and it will be up to the incoming board for 2023 to amend.
- Disagreement among homeowners and Board on the legal requirement of the board to fully fund the reserves at \$265,500 per year came to the fore. Suzanne Blankenship offered the following: The statute and the regulation that the Division promulgates requires that associations use a certain formula for mandatory reserve items (roof, painting, paving, items \$10,000 or more). Calculations can be redone each year, revisited when items are replaced. Fully funding obligations are for the budget year, and are breaking down the “fully funded reserves” through the Reserve Study to determine what is needed in the budget year; Reserve study companies do this for us. The \$265,500 is a portion of the “fully funded” *balance*. The board did not even consider the \$1.0MM dollar assessment this year as a “catch up” contribution, in addition to the \$265,500 – which is mandated by the statute, which is the number the Reserve Study company gave Spyglass which would fully fund the reserves for this year.
- Suzanne: The situation that Spyglass finds itself in is a prime example of why it is extraordinarily risky to not fully fund the budget each year. If the reserves were at a level that they should be, Spyglass would not have a number like we received (\$265,500 per year); your reserves are woefully inadequate. Spyglass is almost starting from scratch. Owners can waive the entire reserve side of the budget; what would happen? Well, when these numbers are revisited next year, those numbers would only increase because you’re a year into the useful life of your assets and you don’t have the funds to fix it.

- Kevin Etheridge: When the reserve budget was being funded years ago, the board was working with numbers from the 90's and early 2000's; the numbers in the reserve study and budget are reflective of 2022 costs for replacement costs.

At the conclusion of the presentation, Daniel Dorman presented the amended budget to the homeowners which removed the insurance deductible funding which is not required (see Exhibit B). This means the homeowners will be Special Assessed in the event of a casualty or named storm at an estimated \$1,800 .00to \$2,600.00. The board retained the Engineers funding of \$72,000 for Phase 1 and Phase 2. Total monthly assessed values are: \$540.38

Daniel recapped that the board has an obligation to pass the budget; and the community has the power to do what it will regarding the budget or the annual meeting.

- Member Allen Davis addressed the board and homeowners: The homeowners would like to officially object to the board's proposed budget; primarily as the budget has overstepped its authority according to the bylaws, which specifies the board cannot adopt a budget that exceeds 115% of prior year's budget without 70% of the unit owner's approval; the board has not sought that approval from the homeowners. No one is suggesting we ignore the reserves or maintenance, but that the owners cannot catch-up all in one year.
- Suzanne Blankenship wanted to clarify the process following Allen's address. Suzanne confirmed that the objection is to the increase over 115% of the budget, and that the homeowners want to propose a substitute budget, the owners confirmed this was correct. Confirming this, Suzanne shared with the homeowners the following: The statute states if the board adopts in any fiscal year an annual budget that includes annual assessments which exceeds 115% of assessments over the preceding fiscal year; the board shall (board is required to) conduct a special meeting of the unit owners to consider a substitute budget, if the board receives within 21 days (of October 13, 2022) a written request for a special meeting from at least 10% of the voting interests; the devil is in the details – the owners need to offer the board a substitute budget. A limited proxy will be sent out with a notice of the meeting which will basically say “do you approve this substitute budget.”
- Allen Davis questioned how the board was able to overstep its bounds and pass a budget over 115% of the assessments without 70% of the homeowner's approval per the bylaws; Suzanne stated “not based upon the statute, which Kaufman language has grafted into your documents, in my opinion.”
- Daniel added that the board evidenced the same language in our bylaws and communicated this to the attorney to confirm and ensure that the board was not violating the bylaws.
- Allen suggested that we paid a lot money for a report that informed the community that we are underfunded, when we could have figured that out on our own, and now they tell us we have to have the \$265,000. Suzanne confirmed that the company applies the formulas from the statutes and come up with that calculation; most condo association Suzanne represents has a reserve study done periodically. They're no longer required under Florida law; but she always suggests it to her clients. The reason is, is because in developing your budget with those required items and those required calculations, most

people would have difficulty putting those together; will also have difficulty without a reserve specialist to identify all of the items that exceed the \$10,000 threshold. Suzanne's opinion is that the Board acted very properly.

- Suzanne added that the other thing that will need to be looked out for is that Florida law is changing, there was a change to the law that was adopted this past legislative session; there is some confusion about whether it will apply to Condominiums that are less than three stories. We are expecting the statute that will be amended in the spring, but the way it currently reads, although it may not require you to get the structural integrity reserve study, the plain language appears to require ALL associations to still reserve for those items; and for those structural integrity reserves you will NOT be able to waive those. Owners are well within their rights to bring forth a substitute budget within 21 days and request a special meeting and to vote on the substitute budget by limited proxy.
- Allen asked Suzanne "if we [the owners] submit a proposed amended budget and it does not have the \$265,000 reserve amount, are we in violation of the law?" Suzanne stated that the owners can waive total waive all the reserves if you want to. Allen retorted that "we're being told that you guys are bound by law." Suzanne stated that there was a misunderstanding about what she's stated: The board puts together an operating and reserve side of the budget and develop the reserves based on the statute she cited (718.112); it will walk you through the process, the formulas are in there. Take a look at the training manual the Division of Condominiums all of the questions are addressed in those things.
- A homeowner spoke and summarized the position: "We either have to pay the COA fee, or we end up paying by assessment." Suzanne said that is correct, you "pay now, or pay later." The choice is yours; she is not here to convince the owners one way or another, what she wants the owners to understand is that if the owners decide the monthly assessments are too much and can't pay that and adopt a substitute budget, then the owners need to know that there isn't going to be money there to pay for repairs that are needed and you will be specially assessed and will have to pay and that may hurt a little more; that's not for Suzanne to decide, that's for homeowners to decide.
- Suzanne stated that one way to "shift costs" (and reduce reserve funding) is to reclassify common elements as "limited common elements" which serve only your unit; the Condominium Act allows us to reclassify those items and shift the burden of maintenance and repair to the owners; this has benefits and drawbacks and needs to be thought out.
- Suzanne addressed Spyglass Election issues: The deadline has come and gone for individuals to submit their candidacy for the board (October 8th, 2022 was the deadline); no requests for candidacy were received; there are hard deadlines under Florida law for when requests for candidacy can be received. You have not received enough requests for candidacy to fill out a board for next year. So, the methodology for dealing with that is, we have no discretion to ignore the Divisions timelines – timeline has come and gone – how do we address that? You've got to have a functioning board, there are lots of issues your community faces, these folks won't be there to face them next year. Some of you are going to have to step up so this Association can function. So, your bylaws allow the board to serve until their successors are elected; so, no successors will be elected at the annual meeting since no candidacy forms were received by the deadline. Suzanne would ask the current board not to resign, and for those of you who would like to be considered for the board that you would then submit your request to be considered, the existing

board would appoint their successors and those who choose to resign if they choose to do so. These are hard deadlines, and the Division will fine you if you ignore them.

- Daniel Dorman stated that the Board would now vote on the fully funded budget as required. Allen Davis formally objected and hand-delivered to Daniel a copy of the *Spyglass Point Owners Action Committee: Petition to Reject Proposed Budget and/or Replace Current Board Members*, which included 70 signatures.

Daniel motioned that the board adopt the CY2023 budget as amended, which includes fully funding the reserves and removed the insurance deductible, for a monthly assessment amount of \$540.38; Patty Martinez seconded; motion passed with majority vote.

- 5 YES votes: Patty Martinez, Daniel Dorman, Jason Robbins, Angela Heinrichs, Natalia Chapman
- 1 NO vote: Clif Kirk

b. Proposed Bylaw Amendment Change

- Specific number of Board of Directors to sit on the board

6. Member Comments/Concerns

7. Schedule next Board/Budget Meeting – November 10, 2022 (Thursday) @ 5:30 PM; Pensacola Library, 239 N. Spring Street PENSACOLA, FL 32502

Completed by Daniel Dorman, Vice President and Secretary

A handwritten signature in black ink, appearing to read 'Daniel Dorman', with a long horizontal flourish extending to the right.

EXHIBIT A – Reserve Study & Engineer Survey Presentation

Reserve Study & Engineers Report

A PRESENTATION OF THE BOARD OF DIRECTORS OF SPYGLASS POINT CONDOMINIUM ASSOCIATION OF PENSACOLA, INC.

Reserve Study & Engineers Report: Introduction

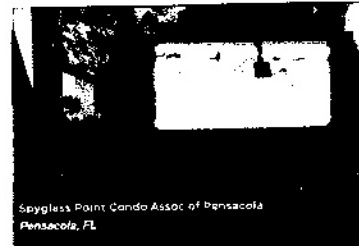
- > Fiduciary Obligation of a Board of Directors
- > Reserve Survey
 - > What is it and what are reserves?
 - > What the COA is responsible for?
 - > Executive Summary
- > Engineers Report (Limited Structural Assessment)
 - > Overall conclusions
 - > Site examples: balconies, walkways, stairs, foundations/stops
 - > Recommendations

The Spyglass Point Condominium Association Board of Directors...

Has a **Fiduciary Relationship** - 718.111(1)(a), F.S.
The officers and directors have a fiduciary relationship to the unit owners.

- > This means that the officers and directors must keep the interests of the association above their personal interests, and:
- > They shall discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interest of the association.
- > The Board has regularly engaged professionals in the course of exercising its fiduciary duties to the association. This includes attorneys, insurance representatives, certified professional accountants, reserve professionals, engineers, etc.

Reserve Survey



Reserve Survey: What is it and what are Reserves?

- > A "Reserve Survey" is a **roadmap** of anticipated expenses for the maintenance, repair and replacement of components of the common elements and condominium buildings.
 - > "[The] very moment construction is completed, every major building component begins a predictable process of physical deterioration" [Association Reserves, 2021].
 - > Florida legislature has attempted to mandate Reserve Surveys in the past; potential for this issue to be revived.
- > "Reserves" are funds set aside by the association to pay for the maintenance, repair, and replacement of components that have reached the end of their useful life.
 - > Some reserves are statutorily required and must be fully funded.

Reserve Survey: What the COA is Responsible for Maintaining

Types of Reserves to Establish
Section 718.112(2)(b), F.S. provides that associations must establish reserves for the following capital expenditures and deferred maintenance items:

- Roof Replacement
- Building Painting
- Pavement Resurfacing
- Items Having a Deferred Maintenance Expense or Replacement Cost More Than \$10,000

The proposed budget must include a reserve for each of these items, a pooled account for all of these items, or some combination of individual and pooled reserves. To implement earlier, associations may establish other reserves in addition to those required by law. To determine whether additional reserves have been established, you should review your board meeting minutes, prior budgets, and year-end financial reports.

(Florida Department of Business and Professional Regulation (DBPR), 2022)

What the COA is Responsible for Maintaining (cont).

- > 14 Buildings (and Pool house):
 - > Siding
 - > Roofs
 - > Gutters
 - > Windows
 - > Breezeways/Walkways
 - > Sidewalks
 - > Perimeter Fencing
 - > Landscaping
 - > Polybutylene Replacement
 - > Exterior Electrical
 - > Mailboxes
 - > Pool house/Pool/Pool deck
- > 16 Buildings:
 - > 120 Units
 - > 240 Front/Storage doors
 - > 120 Front door lights
 - > 120 Dryer vents
 - > 64 Breezeway lights
 - > 64 Corner lights (approx.)
 - > 60 Balconies
 - > 60 Patios
 - > 60 Unit Fences
 - > 32 Stairwells
 - > 32 Water spigots

TA is a high level summary only; not all inclusive - please reference the Reserve Survey.

Reserve Study Executive Summary		Full
Spyglass Point Condo Assoc of Pompano Pompano, FL		Report # 2022-0 # of Units: 120
Level of Service: "Full"		January 1, 2023 through December 31, 2023
Findings & Recommendations		As of January 1, 2023
Projected Monthly Reserve Balance		\$88,500
Projected "Fully Funded" (60% Minimum Balance)		\$7,282,500
Average Reserve Deficit (assumed Per Owner)		\$60,574
Percent Funded		13%
Recommended Funding Contribution		\$605.62
Multiple Contributions Required per Month/Annual Cycle		None
Recommended 2023 Special Assessments for Reserves		None
Must Reserve Reserve Contribution Rate		None
Reserve Fund Strength: A	Weak < 20%	Fair 20% - 70%
Rank of Special Assessment:	High	Medium
Low		> 70%
Economic Assumptions: 10% Annual After-Tax Inflation Adjusting to Reserves 30-year inflation Rate		0.00 0.00 0.00

Engineers Report

JOE DERRELL ASSOCIATES, LLC
STRUCTURAL ENGINEERS

LIMITED STRUCTURAL ASSESSMENT

1001 N. W. 11th St.
Pompano Beach, FL 33062
Tel: 954.425.1111

Engineers Report

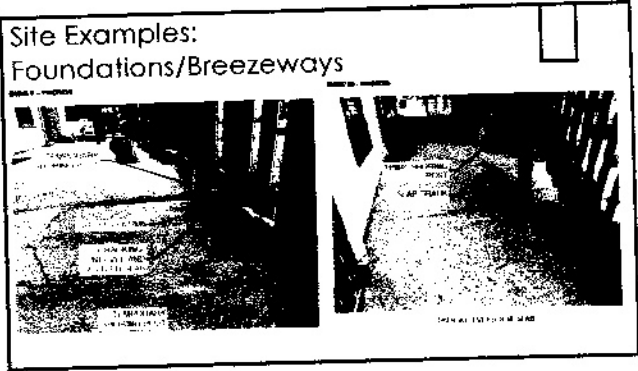
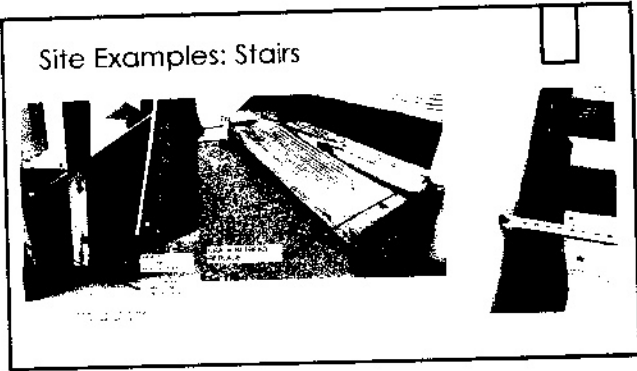
- Report is a "Limited Structural Assessment" of 3 buildings
 - > Intended as a case study for the remaining 13 buildings in Spyglass
 - > Issues discovered in the Limited Assessment should better inform the Board and Community on repair and replacement of Unit:
 - > Balconies
 - > Breezeways (MSF)
 - > Stairs
 - > Foundations

Overall Conclusions of the Limited Structural Assessment:

- ▶ In the buildings studied, the following was tested and observed:
 - ▶ Balconies may require substantial repairs
 - ▶ Substantial rebuild of stairs (triggering code update)
 - ▶ Deficient foundation conditions; severely cracked
 - ▶ Steel columns corroded requiring repair or replacement

Site Examples: Balconies





Engineer's Recommendations (PG 15)

- ▶ The owner should work to obtain funding for the repairs so that repairs can commence within the next 12 months
- ▶ Temporary shoring should be monitored by qualified personnel on a regular basis.
- ▶ The report should be discussed on-site with the Engineer and Owner. Repair approaches should be discussed.
- ▶ Repair documents should be prepared by a Registered Professional Engineer.
- ▶ The pre-selected licensed general contractor should submit the drawings along with an application for permit. Upon permit award, the contractor should commence repairs.
- ▶ The registered design professional should observe and report on the repair process.

Thank you!

QUESTIONS?

EXHIBIT B – Amended CY2023 Budget

AMENDED BUDGET

	0.00
Late Fees	0.00
Interest Income	0.00
Interest Income - Reserves	265,000.00
Reserve Funding (EST)	30.00
Bank Charges	220,000.00
Insurance	0.00
Bad Debt Expense	500.00
Licenses & Fees	15,000.00
Legal Fees	9,000.00
Accounting Fees	540.00
Fees to Division	1,000.00
Stationary & Printing	800.00
Postage	5,000.00
Termite Bond	29,000.00
Management Fees	7,000.00
Pool Monitoring/Cleaning	2,000.00
Pool Maintenance/repair	0.00
Pool Furniture	0.00
Tree Trimming (2 days)	4,000.00
Landscaping repairs	48,000.00
Lawn Maintenance - Contract	15,000.00
Sprinkler Maintenance	40,000.00
General Maintenance	0.00
Poly Pipe Repair	550.00
Income Taxes	15,000.00
Electricity	6,720.00
Water & Sewer	22,000.00
Garbage	0.00
Pool Upgrade	0.00
Future Capital Improvements	0.00
Contingency	0.00
Upgrade Reserve Funding	0.00
Water Pipe Replacement	0.00
Engineer Cost	72,000.00
Insurance Deductible	
TOTAL EXPENSES	778,140.00
MONTHLY ASSESSMENTS	\$540.38

SPECIAL ASSESSMENT FOR Insurance Deductible-(2% of total BLDG value -limits - ESTIMATED

Cost \$220,566.48

Share Cost per unit **\$1,838.05 to \$2,600 (Estimated)**

BOARD HAS AUTHORITY TO EXECUTE SPECIAL ASSESSMENT IN THE EVENT OF CASUALTY