



## State of the Association

October 1, 2009 - The Beverly Oaks Homeowner's Association is facing serious financial challenges in the upcoming years. The purpose of this letter is to inform you of these challenges so that we may work together as a community to resolve them.

This report is candid for the purpose of clarity. There is no desire to assign blame – it will not help us resolve the problem. There are many that have served on the Association Board and who have volunteered their personal time selflessly and for the greater good of the community. We all owe them our sincerest gratitude.

### The Problem

Our problem is threefold. Our expenses exceed our dues for a number of years – there was a \$20K (K= \$1000) spending deficit for the period 2006 through 2008. The Association began 2009 with past due and unpaid obligations of \$75K. The methodical build up of reserves/savings that began in the early 90's were effectively discontinued and the reserves have been depleted rather than grown.

Year	Annual		End of Year		Net Equity	
	Dues	Expenses	Cash	Obligations	Actual	Needed
2008	\$52 K	-\$80 K	\$36 K	-\$75 K	-\$39 K	\$80 K
2007	\$52 K	-\$47 K	\$66 K	-\$60 K	\$06 K	\$75 K
2006	\$51 K	-\$50 K	\$66 K	-\$54 K	\$12 K	\$70 K

The way the Association became “upside down” was largely through: (a) misallocation of the painting program funds, (b) wrongly claiming sales tax and reseller exemptions and not paying taxes, (c) not balancing the budget as the Association's costs escalated, and (d) disavowing the Association's financial responsibility for the water mains, sewers, storm drains, and roadway.

#### (A) Misallocation of the Painting Funds

The most expensive project of the Association is the painting of homes. Since the inception of the program in 1987, the objective has been to paint each home every 5 or 6 years (16-20 homes per year

at an annual cost of \$15K-\$20K, on average,).

Painting represents over a third of the annual expense obligation, and as such, postponing the paint program in any one year would free up \$15K-\$20K, which

could be used spent in other ways. This is what has been done – several times. You could say we were “*borrowing from Peter (the paint program) to pay Paul (new projects)*”.

To compound this problem, the delays were shifted on some homeowners and not on others. Homes in the Brentwood cul-de-sac, for example, were repainted 4 times since the start of the program (every 5.5 years) at a total cost of ~\$4K per home. Homes on Wilshire (1900, odd side of block) were painted only once in 17 years for a total cost of about ~\$650. These residents were personally “*shorted*” \$3.35K in dedicated services and this money was used to pay for general community expenses.

In all, 64 homes have been shorted in varying amounts - 30 were painted three times, 24 were painted twice, and 9 were painted once diverting a total of \$58K for other uses. The “*skip overs*” began in 1999 the first time the Brentwood cul-de-sac was bumped ahead of other homes in the published rotation.

In addition to unfairness/inequity of this in the past, this problem also affects the future. It has obscured the fact that Association costs have exceed the dues collections. There is a backlog of 45 homes over due to be painted in 2009-2010.

#### *(B) Wrongly Claiming Sales Tax Exemptions*

The Association is not on the IRS list of non-profit corporations ([www.irs.gov/app/pub-78](http://www.irs.gov/app/pub-78)). The Association is not on the state’s list of sales tax exempt corporations (see attachment). According to the Association’s auditor, the Association would not be

awarded this status under current law if we applied.

However, at the direction of a one senior community leader and past president, sales tax exemption certificates were wrongly filed for many major purchases. This action, which carries both civil and criminal penalties, continued for years despite being questioned by vendors and the Association’s management company.

The tax money that was diverted to other Association expenses. The Association now has a potential \$25K liability for the repayment of taxes - plus penalties and interest which could be as significant.

#### *(C) Not Balancing the Budget*

The cost of running the Association has increased over the years as a result of inflation. Costs have also increased because the community is aging and requires more repairs and replacements. Costs have increased because of special projects.

The homeowners dues, however, have not increased to cover the spending.

Budgets presented to the owners routinely did not included painting expenses (~\$15K - \$25K per cycle). They did not include many of the community improvement projects such as changing the color of the exterior trim (\$9K) or changing the lamp post heads, etc. These expenses, large expenditures of the Association, were mostly done on a supplemental basis.

None of this is to question the appropriateness of past projects, it is only to say that there were costly expenditures which needed to be financially reconciled. They weren’t - now we have to pay for them.

(D) Disavowing Responsibility for the Infrastructure

The Association's most important role is to provide access to the homes (roadways), clean water and sewer services, manage the storm water runoff, and screen the subdivision from commercial areas (required by code). The infrastructure in place has an estimated replacement value of about \$1.3 million.

The Association started setting aside reserves in the late 1980s to cover the inevitable and very expensive future replacement and repair costs. Resurfacing the concrete roadway will ultimately cost \$400K (\$70K if paved). Replacing the City mandated screening walls on either side of the exit alley will eventually cost \$125K. At some future point, this will need to be done.

Additionally, a single water line or sewer break has been estimated by utility contractors to cost \$15K - \$40K to repair. Similarly, the estimated cost to repair a fallen wall panel in the exit alley is \$20K. The estimated cost to repair a sinkhole in the roadway is \$20K - \$50K.

Although easy to take for granted, even a minor interruption in these services would be hugely traumatic for the community. Just imagine, for a moment, if the water supply to the community was cut off for two weeks or even two months.

Since 2000, the Association has operated with the assumption that the City of Irving would repair these assets if needed. As

such, there was no long term planning, no dedicated capital reserves were set aside, and no property was insured.

This policy was advocated by one community leader/Past President who served on the City of Irving Building and Standards Commission and one whom many felt to be a credible source on this matter. However, the City Attorney, the City Planner, and the head of Irving Code Enforcement have all confirmed that the Association has both ownership and repair responsibility for all of these assets.

Furthermore, the City's role is not that of "*White Knight*", but rather that of enforcer - like the police - to enforce compliance with building and safety codes, and take action if these codes are not met. What does this mean? For example, if a water or sewer main broke under the street, the City would cut off water service to the community. If the Association did not rapidly repair it - the City would likely declare a health and safety hazard and condemn and evacuate the community until it was safe to occupy. If the Association did not have funds on hand (or insurance), a large special assessment would need to be collected from each homeowner before work could begin. The Association has no collateral to borrow money. This could take weeks or even months.

Responsible communities insure where they can and accrue reserves over decades to protect owners from risks and hardships.

## **How did the owners not know of these problems?**

- (1) Owners have not given comprehensive reports on actual spending. Owners have only been informed on planned future spending.
- (2) The painting schedule has not been published in the last decade. Owners could not know that there was a mounting back log of unpainted homes or that homes were not painted in rotation. Prior to this, the painting schedule was published and followed for years.
- (3) Budget over runs were not disclosed. In 2007 – 2008, for example, the Association paid \$9K for photocopies and database charges, a 1800% increase over the prior years. Overruns will happen, but owners had no knowledge of them and no opportunity to discuss them.
- (4) There has been no capital budget/spending plan. Each year a CD (s) presented as the reserve, however, the CD was simply unspent painting funds from homes that were skipped in the rotation. There is not even a category in operating budget for capital reserves.
- (5) No audits were completed for 2006, 2007 or 2008, either and the records for 2001 – 2005 have been reported as missing. The State passed a law in 2006 requiring Homeowner Associations to perform annual audits. An audit was initiated for 2006, but records were never given to the auditor.

## **Who is to blame? What is the prognosis for the future?**

To be fair, we all had a role in this, directly or indirectly. The situation is very much a product of the priorities we have communicated and the time we have individually invested in Association activities. There will continue be problems if volunteerism is low and the operation of the Association falls to 1 or 2 people for extended periods because no one else will actively serve.

The good news is that the Association has not experienced a catastrophic event, a financial collapse or a default/foreclosure. Our situation is serious, but it early enough to resolve it.

We will all have a role in how well this is resolved or if it is resolved. Ideally, there should be an orderly rotation whereby all owners serve terms.

Dues collections are good and the community is mostly composed of long term residents that care. We have a modest amount of money in the bank (again, unused paint funds) that we can use to make an orderly transition into a more healthy situation without a special assessment.

The prognosis really is very dependent on how well we come together as a group and sort this out.

## **What can be done?**

Open Disclosure of Records – The Board is trying to get as much information out as possible to the owners so that we are all working with the same facts. Many records are now available online and others are available for physical inspection upon request.

Completion Prior Audits - The Board is attempting to resolve the 2006 – 2008 audits and is trying to reconstruct the missing financial records from 2001-2005. Prior records (1985 - 2000) are intact. If anyone has bank statements, cancelled checks, contracts, receipts budgets or meeting minutes from this period – please supply copies to the Board.

Apply for Not-for-profit Status - The Board has conducted a preliminary investigation into the requirements for not-for-profit status or a sales tax exemption. The Association does not appear to qualify under the current federal and state statutes. Anyone wanting to review this is welcomed - copies of the statutes are available upon request.

Petition the City to Takeover Assets - The Board has explored the possibility of donating the roads and water lines/sewers to the City. The City will only accept this if the road is brought up to city specifications which would require widening the road by 15 feet and creating a 10 ft easement on either side. The Association has neither the money nor the space to do this. It appears that this is the reason why communities like Beverly Oaks and Las Brisas own their roads and utilities to begin with. The city planner is very accessible to anyone wanting to investigate this further (972 721-2600).

Purchase Insurance - The board is investigating insurance policies that would reduce the need for emergency reserves in the short term. Insurance has been purchased for the above ground structures. No insurer has been located to insure for the more costly below surface assets. Volunteer help on this is welcomed.

Expand the Paint Cycle - The board is looking into painting materials and warranties to see if the future paint program can be extended to 7 or 8 year cycles rather than 5-6 year cycles.

Amend the Bylaws – The board will recommend bylaws amendments and guidelines next year to help solidify any solutions we adopt.

Develop Alternate Revenue Sources - Volunteers are needed to explore the possibility of building a revenue generating billboard at the end of the exit alley.

## **What's next?**

There needs to be time for everyone to absorb this - to come to an understanding of the issues, and think of solutions. A blog has been set up where we can post online in a

community wide discussion. The Board also welcomes questions, thoughts and ideas via [www.beverly-oaks.org](http://www.beverly-oaks.org).

- 1) **Call for Volunteers** We need volunteers. We need help exploring insurance options. We need help developing an emergency response plan for the a water or sewer failure with the utility contractor. We need help developing a long range asset plan for the roads and other structures with the City department heads. We need help redesigning the accounting process with the management company so that we have separate capital and operating budgets and a reporting system that is easy for owners to follow and understand. We need help with bylaw amendments. We need help exploring the billboard suggestion.

Anyone wanting to help, but not able to contribute to the above, could help by getting involved in other projects like the garage sale/block party, or negotiating with the State on the Highway 183 property acquisition so that others than work on the above.

- 2) **Owner Survey/Input into Finances** We intend to meet with owners November to determine what services (and associated costs) we, as owners, want. We all need to work together to build a financial plan that balances the needs/desires of the community and the costs.

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Note: This document is posted on line with numerous attachments including are actual spending figures for recent years, invoices, federal tax filings, etc.

**Beverly Oaks Homeowners Association**

<b>Income</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009 (est)</b>
Regular Assessment	\$49,575.00	\$51,255.00	\$51,300.00	\$51,300.00
Dues Discount	\$0.00	(\$1,530.00)	(\$1,395.00)	(\$1,395.00)
Grants	\$0.00	\$0.00	\$0.00	\$0.00
Late Fees	\$169.98	\$195.08	\$503.88	
Fines	\$0.00	\$0.00	\$645.39	
NSF Fees	\$0.00	\$25.00	\$25.00	
Miscellaneous Income	\$0.00	(\$301.92)	\$0.00	\$ 800.00
Interest Income	\$1,303.02	\$2,586.05	\$1,298.92	\$600.00
<b>Total</b>	<b>\$51,048.00</b>	<b>\$52,229.21</b>	<b>\$52,378.19</b>	<b>\$51,305.00</b>
<b>Administrative Exp</b>				
Answering Service	\$16.00	\$48.00	\$16.00	
Website	\$0.00	\$0.00	\$0.00	\$241.00
Bad Debt Expenses	\$0.00	\$405.00	\$916.68	
Bank Charges	\$0.00	\$5.00	\$5.00	
Collection Services	\$74.33	(\$147.26)	\$543.87	\$750.00
Copies and Postage	\$1,309.00	\$1,828.74	\$2,770.24	\$500.00
Record Archiving	-	-	-	\$200.00
Data Processing	\$106.71	\$535.75	\$1,952.91	
Rental/File Storage	\$0.00	\$65.21	\$547.93	
Meetings	\$0.00	\$150.00	\$150.00	\$500.00
Miscellaneous Expenses	\$6,161.50	\$36.74	\$133.09	\$150.00
Social Committee	\$0.00	\$0.00	\$401.39	\$500.00
Member Relations	\$75.00	\$179.76	\$35.71	\$50.00
<b>Subtotal</b>	<b>\$7,742.54</b>	<b>\$3,106.94</b>	<b>\$7,472.82</b>	<b>\$2,891.00</b>
<b>Professional Services</b>				
Accounting/Audit	\$675.00	\$128.00	\$275.00	\$2,200.00
Legal and Professional	\$0.00	\$876.30	\$0.00	\$750.00
Management Fees	\$6,894.05	\$7,410.00	\$7,410.00	\$8,400.00
Management Fees-Other	\$0.00	\$0.00	\$2,000.00	\$250.00
<b>Subtotal</b>	<b>\$7,569.05</b>	<b>\$8,414.30</b>	<b>\$9,685.00</b>	<b>\$11,600.00</b>
<b>Taxes and Insurance</b>				
General Liability Insurance	\$2,499.00	\$2,433.96	\$2,433.52	\$2,433.08
Property Insurance	\$0.00	\$0.00	\$0.00	\$2,000.00
Property Tax -2023, 1700	\$0.00	\$0.00	\$0.00	\$1,500.00
Income Taxes	\$0.00	\$230.80	\$0.00	\$150.00
Franchise Taxes	\$0.00	\$0.00	\$5.14	\$0.00
Taxes-Other	\$0.00	\$0.00	\$603.00	-
<b>Subtotal</b>	<b>\$2,499.00</b>	<b>\$2,664.76</b>	<b>\$3,041.66</b>	<b>\$6,083.08</b>
<b>Utilities</b>				
Electricity	\$825.95	\$516.48	\$619.36	\$900.00
Faxes/Telephone	\$116.42	\$10.14	\$44.22	\$0.00
Water/Sewer	\$5,033.91	\$2,847.21	\$6,426.26	\$6,500.00
<b>Subtotal</b>	<b>\$5,976.28</b>	<b>\$3,373.83</b>	<b>\$7,089.84</b>	<b>\$7,400.00</b>
<b>Repairs</b>				
Common Area Main	\$190.65	\$266.84	\$0.00	\$0.00
Electrical	\$211.00	\$153.35	\$645.39	\$700.00
Fences/Gates/Walls	\$0.00	\$0.00	\$0.00	\$0.00
Miscellaneous Mainte	\$200.00	\$0.00	\$0.00	\$0.00
Sprinkler/Irrigation	\$1,928.00	\$4,138.37	\$4,094.76	\$8,000.00
<b>Subtotal</b>	<b>\$2,529.65</b>	<b>\$4,558.56</b>	<b>\$4,740.15</b>	<b>\$8,700.00</b>
<b>Maintenance-annual</b>				
Lawn/Fertilization	\$15,086.68	\$14,903.76	\$16,356.72	\$16,000.00
Tree Trimming	\$0.00	\$0.00	\$325.00	\$1,000.00
Painting/Siding	\$0.00	\$0.00	\$26,225.00	\$10,000.00
Landscaping/Seasonal	\$0.00	\$6,528.16	\$3,747.90	\$800.00
Gate Maintenance	\$0.00	\$0.00	\$0.00	\$50.00
<b>Subtotal</b>	<b>\$15,086.68</b>	<b>\$21,431.92</b>	<b>\$46,654.62</b>	<b>\$27,850.00</b>
<b>Maintenance-scheduled</b>				
Unknown	\$8,075.00	-	-	-
Roadway	-	\$2,908.00	\$1,492.16	\$0.00
Fire lane stripping	-	-	-	-
Roof Storage Garage	-	-	-	-
Replace rear area fence	-	-	-	-
Schrub Replacement	-	-	-	\$900.00
Bed edging	-	-	-	-
Paint the exit alley	-	-	-	-
Lamppost Replacement	-	-	-	-
Replace mailboxes	-	-	-	\$75.00
Traffic - Gate	-	-	-	-
Signs	\$566.00	\$400.58	\$0.00	\$800.00
<b>Subtotal</b>	<b>\$8,641.00</b>	<b>\$3,308.58</b>	<b>\$1,492.16</b>	<b>\$1,775.00</b>
<b>Architectural Coord</b>				
Roof (350)	\$0.00	\$0.00	\$0.00	\$0.00
Garage Door (100)	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00
<b>Subtotal</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Contribution to Reserves</b>				
Emergency	\$0.00	\$0.00	\$0.00	\$0.00
Capital	\$0.00	\$0.00	\$0.00	\$0.00
<b>Subtotal</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Expense</b>	<b>\$50,044.20</b>	<b>\$46,858.89</b>	<b>\$80,176.25</b>	<b>\$66,299.08</b>
<b>Net</b>	<b>\$1,003.80</b>	<b>\$5,370.32</b>	<b>(\$27,798.06)</b>	<b>(\$14,994.08)</b>

Note 1: (no painting in 2006) (no painting in 2007)

Note 2: No reserves set aside No reserves set aside No reserves set aside No reserves set aside