



**Meeting Tuesday November 20, 2007 7:00PM Gazebo**

## **AGENDA NOTES**

### **\_\_\_ Call to Order**

*Chairman Walt Stromme*

### **\_\_\_ Introduction of Committee and Attorney**

*Chairman Walt Stromme*

### **LEGAL UPDATE:**

#### **\_\_\_ Comments from Attorney**

*Attorney Steve Cheifetz along with Associate Attorney Stewart Gross attended the meeting in the Gazebo and spoke for close to an hour. Attorney Cheifetz commented on a number of legal issues facing SAW and the AWHOA including the unsuccessful attempt to reach a settlement and the fact that in this type of case there will be no "winner", only the hope to reach a compromise between the parties that does not financially damage the Association. He stated that in his dealings with HOA disputes that he has never seen a case where the homeowners group had been as well organized as the SAW group. He strongly recommended that the homeowners seek change through the democratic process and electing a more moderate Board of Directors who would represent all of the homeowners. He emphasized that litigation is costly and has risks. Following his comments on the current legal status he fielded questions from homeowners. Both sides were well represented and had a variety of questions that ranged from recalling the Board to mediation of the dispute.*

#### **\_\_\_ Question & Answer Session with Attorney**

*Open Forum with attorney*

### **SAW COMMITTEE BUSINESS:**

#### **\_\_\_ Minutes of September Meeting**

*Secretary Karren Olsen (time constraint: to be posted on website at a later date)*

#### **\_\_\_ Treasurer's Report and Urgent Need for Donations to Legal Fund**

*Treasurer Dee Miller (time constraint: to be posted on website at a later date)*

#### **\_\_\_ Transfer Fee ruling by Judge Downie**

*In overturning the lower court decision on the transfer fee, Judge Downie cited the fact that the Administrative Law Judge had exceeded his jurisdiction by referring to a previous court case in making his decision and that the Office of Administrative Hearings can only use Arizona Law and the Community Documents (CC&Rs and Bylaws) in deciding a case.*

#### **\_\_\_ Lawsuit Amended to include Transfer Fee**

*Judge Downie did say in her ruling that "available remedies would differ if claims were being litigated in a civil action". For that reason, our attorneys have amended our pending lawsuit to include the issue of the transfer fee should we go to trial. They argue that the transfer fee is a "fund raiser" for the Association and its purpose is to bypass the Bylaw relating to a special assessment and the requirement of a vote of the homeowners.*

#### **\_\_\_ Settlement Conference status**

*In her August 24, 2007 decision on the Partial Summary Judgment, Judge Hicks ordered SAW and the AWHOA Board to submit to a Settlement Conference on October 24, 2007*

*with Judge Pro Tempore Michael Ryan serving as mediator. We were optimistic that the 4-½ hour session would lead to a settlement. However, that was not the case and 28 days later negotiations are stalled, no offers are on the table and it appears that our efforts to avoid expensive litigation for both sides has been replaced with the AWHOA Board's wish to proceed to trial. This further reinforces our contention that the AWHOA Board has little interest in a settlement with SAW and wish to proceed headlong into the uncharted waters of a trial.*

**\_\_\_ Formal Request for Documents and Deposition of "Knowledgeable Person" (if needed)**

*On October 11, 2007 attorneys for Save Apache Wells made a formal request through the Board of Directors' attorney for production of AWHOA, Inc. documents and other records. This is in response to the Board's non-compliance with ARS 33-1805 in the past, which mandates release of association documents to its members. Attorney Melanie McKeddie stated in her letter to AWHOA Board Attorney Gary Linder, "To put this simply, we know additional documentation exists, such as e-mail correspondence, surveys, contracts, proposals and all other records specified in our Request for Production. Your clients confirmed as much in their depositions. In light of this fact, we hoped a formal request would not be necessary. However, after months of waiting, we now realize formal discovery is necessary. We have been more than patient, and it is finally time for the Association to meet its obligations in disclosing records to our clients." Also, a NOTICE OF DEPOSITION has been issued for "The person most knowledgeable about efforts to provide documents requested by Plaintiffs and by Plaintiffs' attorneys, by letter and pursuant to Plaintiffs' First Request for Production of Documents and Things, and most familiar with the actual production of such documents." The deposition of the Board-designated individual is scheduled for Wednesday November 28, 2007 at 10:00AM in the Law Offices of Cheifetz, Iannitelli and Marcolini, P.C. in Phoenix.*

**\_\_\_ Upcoming Election for Board of Directors**

*On January 2, 2008, Apache Wells homeowners will go to the polls and elect 3 new members of the AWHOA Board of Directors. If we are going to return control of our community to all the homeowners this will be the first step in making that a reality.*

**\_\_\_ Candidates for Board of Directors**

*Three homeowners have come forward and offered themselves as candidates for the AWHOA Board of Directors. Each requires the signature of 35 homeowners eligible to vote. Only one signature per household is allowed. They are **Judith Teague**( Lot #196), **Joice Lange** (Lot #1205) and **Mary Ann Brookover** (Lot #496). We hope that you will throw your support behind these SAW supporters and help elect them on January 2, 2008. Board-nominated candidates are **Sandra Johnson** (Lot #870), **Don Fourcade** (Lot #299) and **Jim Brockman** (Lot #713)*

**\_\_\_ Joint Pretrial Memorandum 11/14/07**

*In granting Plaintiffs' Motion for Partial Summary Judgment on August 20, 2007, Judge Hicks further ordered: All counsel are directed to meet personally to discuss all of the matters set forth in Rule 16(b)." Counsel shall prepare and file with the Court a **Joint Pretrial Memorandum** and prepare a proposed **order for Discovery and Disclosure deadlines.**"*

**Key trial dates if no settlement with AWHOA, Inc.can be reached:**

*Complete disclosure of expert witnesses by 1/1/08*

*Complete disclosure of rebuttal witnesses by 2/1/08*

*Complete amendment of pleadings by 2/1/08*

*Complete disclosure of non-expert witnesses by 4/1/08*

*Complete discovery and depositions by 6/1/08*

*Complete Alternative Dispute Resolution (private mediation) by 7/1/08*

*Proposed trial date on or after 8/1/08*

*For complete details refer to the **Joint Pretrial Memorandum** posted on website. If you*

*do not have Internet access we will provide a copy upon request.*

**\_\_\_ Recall of Board**

*Currently on hold as we continue to assess homeowner support for a recall and research the recall procedures with our attorneys. Many in the community feel that at some point in the future this process may have to be exercised as a last resort if all other attempts to get the Board to reach a compromise settlement with the homeowners. The recall would require a majority vote of homeowners present and voting at a meeting called by the Board for that purpose.*

**\_\_\_ Bylaw Committee Update**

*Committee has been working diligently on amendments to the bylaws and will be presenting them to the Board for a vote of the homeowners at a future date.*

**\_\_\_ Homeowners to Grill Hotdogs and Burgers for the Craft Fair**

*Co-chairman Judi Teague has agreed to organize a number of our homeowners to sell hotdogs and hamburgers at the Craft Fair on Saturday November 24<sup>th</sup>. They are doing this as homeowners and not SAW members and all proceeds will go to Sunshine Acres Children's Home.*

**\_\_\_ Open Forum**

*The **BIG QUESTION** is "Where do we go from here and can we afford it?" Hold this thought! Time constraints prevented this segment of our meeting and it will be carried over to our December meeting tentatively scheduled for the December 18<sup>th</sup>. **In the future we will plan to have our monthly meetings on the 3<sup>rd</sup> Tuesday of each month unless we notify you of a change.***

**\_\_\_ Legal Fund**

*We continue to ask for your financial support to continue our efforts on your behalf. Our attorney fees continue to mount and donations to the legal fund have slowed significantly. A form at the top of our HOME page has the information to make your much needed contribution.*

We thank ALL the homeowners who attended!

Save Apache Wells Committee