

# LAKE WALLKILL COMMUNITY, INC.

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January, 2017

Dear Member,

On behalf of the Management Committee, Brendan & Glenn, I wish you and your family a happy and healthy new year.

Key information about our community:

**2017 Budget/Dues:** The Management Committee met in open meeting on November 20<sup>th</sup> to discuss the budget for 2017. The Management Committee voted to implement dues of **\$1,150.00 in 2017**. This dues amount represents NO increase versus 2016. This past year continued to be challenging in terms of legal costs related to the lawsuit. We expect to spend \$55,000 **in 2016** to defend the lawsuit and, now, the appeal of the court's judgement (details below). The increased legal costs were substantially offset by reduced spending in certain accounts most notably Building and Grounds as we completed the Clubhouse renovations and painting with volunteers. We also deferred survey work on the dam spillway that will now be scheduled for 2018.

Our income in 2016 was strong despite an increase in delinquent properties. Of note, we received the payment of the court judgement from the Visconti's in the amount of \$38,163. This income from the lawsuit judgement will be reserved on the Balance Sheet until the Appeal is decided.

**Lawsuit Update:** See the attached update with details of the lawsuit and Appeal.

**Irene Reimbursement:** The FEMA appeal remains under review by FEMA. We continue to work through the Vernon Township Mayor to receive updates on status.

## **Payment Plans – IMPORTANT INFORMATION:**

The Management Committee voted to modify the Payment Plan Fee beginning in 2017. For members that complete a signed payment plan by April 1<sup>st</sup> the payment plan fee remains unchanged (\$30). IF a payment plan is initiated after April 1<sup>st</sup>, the payment plan fee increases to \$60. In addition, late fees apply after April 1<sup>st</sup>. ALL Payment plans must be in writing and **signed** by the property owner by the April 1<sup>st</sup> deadline to be effective.

More members are finding **Payment Plans** a convenient and confidential way to manage their dues bill especially in a case of financial hardship. We have a Finance Committee to handle the administrative process confidentially. You may e-mail us at [officemanager@lakewalkill.com](mailto:officemanager@lakewalkill.com) or members may use the enclosed dues form to indicate they are interested and need to be contacted about a payment plan. If you need a payment plan, **please request it early to avoid any late fees**. For more information on payment plans you may stop by the office or find it on line at:

<http://www.lakewalkill.com/pdfs/fcp.pdf>

## **Dues Collections:**

It is each member's responsibility to make sure their dues are paid, or a payment plan signed on time. The following dates are important milestones to be sure your dues are timely and you avoid extra cost/fees:

March 1 <sup>st</sup>	2017 Dues are due
March 31 <sup>st</sup>	End of grace period, Late fees applied; 1.5% per month on outstanding balance.
May 1 <sup>st</sup>	Suspend Membership AND Initiate referral of all delinquent accounts to Collections*

***\*If your balance is unpaid and/or a signed payment plan has not been executed, your account will be referred to collections including collection fees up to 30% of your outstanding balance.***

## **Planned 2017 Meeting Dates (Subject to confirmation, with details, at least 14 days in advance)**

Saturday March 18 & May 27, Friday (evening) July 7, Saturday July 29 & September 2 and the annual Budget meeting on Saturday November 18.

Based on real estate taxes paid by our community, the amount allocated to each member in good standing is **\$59.44** which may be used for income tax purposes.

Sincerely,



Bob Smith  
President, Lake Walkill

## Lawsuit Update:

### Background:

In 2013 the Management Committee voted to institute a collections process and authorized our attorneys (Dolan & Dolan) to pursue collections on delinquent accounts up to and including the filing of Liens on any delinquent property referred by Lake Walkkill for collections. The program was initiated with the dues bills in 2014. This action was precipitated by an increasing number of delinquent accounts (60+) putting financial pressures on Lake Walkkill and our paying members.

In October 2014, three property owners (Visconti's, all related) filed a lawsuit against Lake Walkkill claiming the filing of liens was illegal and that in filing the liens the Lake Slandered their Title. The Visconti's would later add a claim their Civil Rights were violated (due process).

Our insurance carrier provided legal defense for count one (Lien Filing) but our policy had an exclusion for Slander of Title which required the Lake to retain Dolan & Dolan for the defense of count two.

Lake Walkkill filed a counter claim including: (note: the counter claims were handled by Dolan & Dolan)

- Demand of payment of dues arrears
- Breach of Membership Agreement
- Trespass

### Motions for Summary Judgement:

Judge Hansbury decided some of the issues on Summary Judgement and carried over others to trial. The following items were decided on Summary Judgement:

- Slander of Title: the judge found that there was no slander and dismissed this count of the lawsuit.
- Granted partial summary judgement dismissing the Plaintiffs claims for punitive damages and attorney's fees
- Trespass: Because the plaintiffs required access to their property via Lake Walkkill's private roads the judge found it unreasonable to withhold access and claim use of the roads was trespass. It was a matter of what they should pay for use of the roads which would be decided at trial.

### The Lawsuit/Trial:

The issues to be decided at Trial included whether the Lien filing was legal, if yes, then what was fair relative to the amount the plaintiffs should be paying. The trial would also answer the Lake's demand for payment and whether the Plaintiff's breached their membership agreement.

The trial was held in January 2016. The judge's decision was handed down in March 2016.

The judge ordered the plaintiffs to pay arrears in the amount of \$38,163.

The judge found that the liens were filed legally and relied on an equitable servitude. Lake Walkkill as a common interest community, where members are required to use the private resources of the community, that the community has the responsibility to maintain and therefore, the members have the responsibility to pay the costs as determined by the Management committee in accordance with the By-Laws for Lake Walkkill.

The judge found that Lake Walkkill By-Laws include mandatory membership that comes with the purchase of property in Lake Walkkill. As such, the Visconti's claims that they resigned their memberships were not valid because they could not resign without selling their property in Lake Walkkill.

The Appeal:

In May of 2016 the Visconti's filed an appeal of Judge Hansbury's decision.

Lake Wallkill has filed an appeal of the following aspects of the Judge's decision:

In awarding the payment of arrears to Lake Wallkill the judge did not include Collection Fees. There was no rationale provided for why these were excluded from the judgement. As the Management Committee passed a resolution authorizing the collections process and the application of fees up to 30% of the outstanding balance we believe the collection fees should have been included in the award.

In the awarding of arrears to Lake Wallkill the judge reduced Michael C Visconti's arrears to the point in time when he purchased his property. In this case, Michael had purchased the property from his brother. The Judge reasoned that at that time Lake Wallkill had not filed liens and so Michael did not have notice of the arrears amount. However, in determining that Michael should be liable for arrears the judge reasoned that there was physical notice that Lake Wallkill was a private community; in the deeds, in the sign in the Glen notifying all people that enter that Lake Wallkill is a private community. The judge found that Michael had inquiry notice and should have contacted the community to find out what the membership and dues entailed. The same inquiry notice would have provided Michael with the arrears amount accumulated by his brother on the property and for that reason we believe the award should include all the arrears.

Documents have been filed in the appeal and we are in the process of the attorneys filing answers to the documents filed. We then anticipate a 15-18 month timeframe before the case is heard at the appellate court.

In-The-Meantime, the Visconti's have paid the judgement amount for all three properties involved in the lawsuit (\$38,163). The Management Committee has voted to reserve this amount on our Balance Sheet until the appeal process is concluded. This action will effectively exclude these funds from our operational budget.

We hope this information is helpful to you in understanding the lengthy and costly process that has been undertaken to protect and ensure the financial future of Lake Wallkill Community, an interest that you all share. As of the end of November we have more than \$525,000 in dues arrears related to delinquent accounts. Each year, dues paying members pay approximately \$50,000 in additional dues to make up for non-dues paying members to provide for the operational costs of the community. That translates into an "extra" \$190 in dues each year that members pay to cover the fair share of those that are not paying their dues. This is inherently unfair which causes the Management Committee to take collections action and vigorously defend Lake Wallkill's right to collect money owed to the community.

Regards,

Bob Smith

President, Lake Wallkill Community INC.