

## QUESTIONS AND ANSWERS REGARDING THE RECENT BUDGET INCREASE

**1. What is the responsibility of the Association with regard to budgets?**

Per Article III, Section 3.18 of the Covenants, the very first responsibility of the Board of Directors is, “preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner’s share of the Common Expenses and Neighborhood Expenses, if applicable” So there are two distinct sets of expenses, Common Expenses and Neighborhood Expenses.

**2. What are “Common Expenses”?**

Per Article II of the Covenants, Common Expenses are defined as:

The expenses which the Association incurs, or expects to incur, in exercising its authority and performing its responsibilities under the Governing Documents and Georgia law, and reasonable contributions to reserve funds, as the Board may find necessary and appropriate.

The Association dues paid by homeowners to fund the Common Expenses are called General Assessments.

**3. What are “Neighborhood Expenses”?**

Per Article II of the Covenants, Neighborhood Expenses are defined as:

The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

The Association dues paid by homeowners to fund the Neighborhood Expenses are called Neighborhood Assessments.

**4. What is the Supplemental Declaration referred to above?**

The Supplemental Declaration is a legal addendum to our community covenants. The Supplemental Declaration was recorded on July 13, 2005, filed by Bowen Family Homes, before they handed the community over to the homeowners.

**5. Why weren’t we told of the Supplemental Declaration when we moved in?**

You should have been. Unfortunately, it appears that nobody was given a copy of the Supplemental Declaration as part of their closing paperwork. Since it would certainly have a large effect on Association dues, it is unconscionable that the developer would not be forthright about its existence.

**6. If nobody was told of its existence, how did the Association even know about the Supplemental Declaration?**

The existence of the Supplemental Declaration was brought to our attention by a previous Board member, who found the document while doing a search for public documents on the Internet.

**7. How can I get a copy of the Supplemental Declaration?**

It is posted on the website, [www.shadowbrooktchoa.com](http://www.shadowbrooktchoa.com), under the HOA Documents section.

**8. Can you summarize for me, what does the Supplemental Declaration say?**

In a nutshell, the declaration does two things: 1) Declares the townhomes as a separate neighborhood and 2) Requires the Association to maintain the exteriors of the townhomes.

**9. What do you mean by, “Declares the townhomes as a separate neighborhood?” I thought we were all just one neighborhood?**

According to the Covenants, Article II, a Neighborhood is defined as, “A group of Units...for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units”

**10. Can you summarize that for me?**

In other words, the townhomes have been designated separately from the rest of the community because they receive benefits above and beyond what is given to the community as a whole.

**11. What specifically are the benefits the Townhome Neighborhood is entitled to?**

Per the Supplemental Declaration, Article I, Section 1.1:

The Association shall have the obligation to maintain the exterior portions of the dwellings on the Units within the Townhome Neighborhood, including, but not limited to, painting exteriors, roofing materials, window wells, and exterior doors. Such maintenance shall not include glass surfaces, HVAC and utility pipes, stacks, and other components serving only one Unit.

The Association shall further have the obligation to maintain yards and landscaping on Units within the Townhome Neighborhood, but shall have no obligation to maintain any Limited Common Area assigned to a Unit that has been fenced in. The Association's responsibilities with respect to maintenance of such landscaping shall be limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers, and other plantings, and clean-up and removal of cuttings, trimmings, and dead plantings.

**12. Can you summarize that for me?**

The Association is responsible for all exterior maintenance and landscaping of the townhomes.

**13. What does “exterior maintenance” include?**

Basically everything outside of the townhome, including: exterior painting, roofs, window wells, wood trim, exterior doors, iron railing, brick maintenance and replacement, gutters and downspouts, and all landscaping.

**14. What is not included?**

Glass windows, HVAC units, utility pipes, decks and the deck supports, and other structures servicing only one unit.

**15. So I have to maintain my own townhome deck?**

Yes. The Board considered having the Association maintain the townhome decks since we are responsible for most other exterior maintenance. The advantage would have been a consistent look across the community. However, the Covenants state that, “components serving only one Unit,” are the responsibility of the homeowner. For this reason and for liability considerations, the Board decided to leave this to the individual homeowners.

**16. How are the Townhome Neighborhood benefits different than what the single-family homes are entitled to?**

There is no such establishment of a “Single-Family Home Neighborhood” in our Covenants, nor in any Supplemental Declaration, so the single-family homes are not entitled to any benefits above what everyone in the community is entitled to. Single-family home owners are responsible for their own exterior building maintenance.

**17. Do the Townhome Neighborhood owners have to pay more for these “extra” benefits they receive?**

Yes; this is called a Neighborhood Assessment. According to Article VII, Section 7.6, “the cost of any special services or benefits provided to a particular Neighborhood shall be assessed against the Units within the benefited Neighborhood as a Neighborhood Assessment.”

In addition, the Board is responsible for establishing a separate budget for the Townhome Neighborhood Expenses. According to Article VIII, Section 8.3,

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year'. Each such budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 7.6 and any contribution to be made to a reserve fund pursuant to Section 8.5.

**18. So what do the Common Expenses cover?**

Two main things: 1) Maintenance of the common areas and, 2) operating the business of the Association.

**19. What is included in “maintenance of the common areas”?**

According to the Covenants, Section 7.3:

The Association shall operate the Common Areas and maintain the Area of Common Responsibility in good repair and in a neat, clean, and attractive condition consistent with the Community-Wide Standard. By way of example and not limitation, the Association's responsibility shall include:

- (a) maintaining and operating the Common Area and the facilities, improvements, and landscaping thereon, including, without limitation, alleyways and other private right-of-ways, entry features, entry signage, any detention ponds, and any street lights or other lighting located on Common Areas, except to the extent that Owners are responsible for maintaining Limited Common Area pursuant to this Declaration or a Supplemental Declaration;
- (b) maintaining those portions of Units for which the Association is assigned or assumes responsibility pursuant to this Declaration; and
- (c) maintaining the community's perimeter fencing, as such fencing may be located on Units and Common Areas

**20. What kinds of things make up the “business of the Association”?**

The By-Laws, Article III, Section 3.18 list the duties of the Board in detail, but included are things like collecting assessments, hiring personnel such as for property management, enforcing the Covenants, and purchasing insurance.

**21. It sounds like there are really two budgets, one for the Common Expenses, and one for the Townhome Neighborhood Expenses, is that correct?**

That's right.

**22. How did the Board come up with a budget for the Common Expenses?**

Depending on the line item, we either based our estimate on the actual contract price for the service or on the actual cost based on last year's spending.

The largest budget items, like Management, Landscaping, and Sanitation, are very straight-forward because they are based on a contract agreement. The annual budget for those line items is based on the contract price for one-year of service.

The other budget items, such as water and electricity, are not based on a contract price, but the cost should be relatively consistent over time. Because of this, we took the actual numbers for 2007 and assumed the same numbers for 2008.

**23. How did the Board come up with a budget for the Townhome Neighborhood Expenses?**

The generally accepted method to come up with estimates for future capital expenses like those required for the townhomes is to do a reserve study. This is a recognized best practice for Home Owner Associations. The Board requested a reserve study in October 2007.

**24. What is a reserve study?**

According to Ray Engineering, the vendor we commissioned to do our study, a reserve study, or Capital Reserve Analysis, is

A report giving an estimate of the amount of money which must be put aside to replace or restore the common elements and building components that will require replacement before the community's use expires. Typically, the items included are limited to those with a useful life of 30 years or less.

**25. Who did our reserve study and what are their qualifications?**

Ray Engineering, Inc. was founded in 1990 by Steven W. Ray, a licensed professional engineer in 12 states. Their organization of licensed professional engineers and architectural support has extensive experience in the single-family, multi-family, and commercial construction markets.

The engineer who did our study is Mr. N. Wayne Johnson. Mr. Johnson received his Bachelor of Science degree in Civil Engineering from the University of Missouri-Columbia, and has been a Registered Professional Engineer since 1972. He has over 30 years experience as a Project Manager and Construction Manager.

Ray Engineering does many reserve studies for communities around Atlanta, and has done work for most of the management companies in the area, including GW & Associates, our management company.

**26. Can I see the reserve study report?**

Absolutely. The report is available on the website, [www.shadowbrooktchoa.com](http://www.shadowbrooktchoa.com), under the HOA Documents section.

**27. How much did it cost?**

The Association paid \$2,700.00 for the study.

**28. Wouldn't it have been cheaper to just try to come up with the numbers ourselves?**

Probably, but it would not have been as accurate. We needed a professional analysis to accurately predict our capital expenses 20-plus years into the future.

**29. Why do we have to put money in reserves? Couldn't we just pay for expenses with Special Assessments when the money is needed?**

We are required by the Covenants to fund a reserve account for any assets which have an expected useful life of three years or more. Article VIII, Section 8.1 of the Covenants states:

The budget may include a contribution to one or more reserve funds, and shall include an annual contribution to a reserve fund for repair and replacement of any assets for which the Association is responsible which have an expected useful life of three years or more. The amount of such contribution shall be based upon the Board's reasonable estimate of the annual contribution needed over the remaining estimated useful life of each asset to provide sufficient funds for repair or replacement of such asset as required.

**30. How much money do we have in reserves now?**

Today's reserve fund balance is \$0.

**31. Shouldn't money have been going into reserves since day-one?**

Yes, but any money that was previously put into reserve has since been depleted. We are still looking into all the reasons why.

**32. In order to save money, could the Board just ignore the requirement to take care of the exterior maintenance of the townhomes?**

Absolutely not. The Supplemental Declaration is very clear that we are obligated to take care of the Townhome Neighborhood, as specified in Supplemental Declaration, Article I, Section 1.1. It is the Association's legal responsibility to adhere to the Covenants.

**33. Okay, so the Association has to pay for the exterior maintenance, but do you have to spend as much as the reserve study specifies? Maybe we can find work cheaper.**

We do not have to spend as much as specified in the reserve study—these are merely estimates. However, the estimates were put together by a very knowledgeable person using industry standards. When it comes time to spend the money to do work, the BOD will be conscientious with the Association's money, as always. We will get multiple quotes and select a vendor who has both a reasonable price and a verifiable track record.

**34. I am a bit of handyman and prefer to do my own home maintenance. Can't I opt out of paying the reserve portion of my dues?**

Absolutely not. As a community, we are bound by the Covenants of the community. The Covenants clearly state that it is the Association's responsibility to take care of the exterior maintenance, so we all have to abide by that.

In addition, Article VIII, Section 8.3 of the Covenants states that residents of the Townhome Neighborhood must be assessed equally: "The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.4 to fund Neighborhood Expenses;"

**35. I've never heard of this. It seems strange that the Association would be responsible for my townhome's maintenance.**

Not at all. It is far more common to have a townhome neighborhood where the Association is responsible for the exterior maintenance than to have one that is not responsible. This is because the units often share common exterior walls, roofs, downspouts, etc. It would be difficult, if not impossible, to have individuals take care of this on their own.

In addition, having the Association take care of this ensures that maintenance is timely and consistent across the community.

**36. Why didn't the Board of Directors come to the community and ask our input before establishing the budget?**

Some homeowners mistakenly believe that the Association is more like an "absolute democracy" where all major actions must be pre-approved by the members. However, the governing documents and Georgia Law grant broad authority for the Board to act on behalf of the members, and one of the primary responsibilities of the Board is to maintain the finances of the Association. That is what you elected us to do.

If we allowed the community to influence a decrease in our budget, we may end up in an unwinnable situation. The Association is still bound by the Covenants to provide certain services and reserve funds, but the homeowners would not be allowing us to collect enough money to pay for them.

Besides, getting 201 households to agree on a budget would be just about impossible. Especially when there are proposed increases; most people would vote "against" the budget, as individuals tend to look after their own self-interests first.

This is not to say that we do not value your opinions. This is the reason we are holding a budget meeting to make sure we completely explain the budget, answer your questions, and gather your input. And remember, budgets are not forever.

**37. So a budget can be changed?**

Yes, in addition to being prepared anew on an annual basis, it can also be altered during the year. Per Article VIII, Section 8.1 of the Covenants, "the Board may revise the budget from time to time during the fiscal year to reflect unanticipated expenses or changes in anticipated expenses, as the Board deems appropriate."

**38. But what if we disagree with the budget? Can't the Members veto the budget?**

Yes and no. As mentioned before, there are 2 budgets: the Common Expenses budget, and the Townhome Neighborhood budget. Referring to the Common Expenses only, according to the Covenants, Article VIII, Section 8.1:

The budget shall automatically take effect on the date specified by the Board unless Members entitled to cast at least 75% of the total Class "A" votes in the Association veto such budget at a meeting of the Members.

This means that if 75% of the eligible members in the community voted to veto the Common Expenses budget, it could be withdrawn. But to do so would be of questionable logic. Your Board of Directors has worked very hard to save money on common expenditures by renegotiating contracts, and by giving serious consideration to all monies spent. It is our opinion that you would be hard-pressed to run an Association on less money.

If the 75% of the homeowners did decide to veto the budget anyway, the previous budget (2007) would then take effect. Considering dues for common expenses are the same as 2007, this would have a negligible impact to your 2008 dues.

**39. OK, then what about the Townhome Neighborhood budget? Can we veto this?**

Technically, no. The Covenants, Article VIII, Section 8.3, provides that:

Such budget and assessment shall become effective unless disapproved at a meeting of the Neighborhood called by Owners of at least 10% of the Units in the Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment

This means that the Members can only disapprove line items that the Neighborhood has requested. For instance, if the Townhome Neighborhood all took a vote, and decided that they wanted to pay more for nicer landscaping for their neighborhood, then later decided they wanted to disapprove this expense, they could.

But any item which the Documents require to be assessed cannot be disapproved. As explained earlier, the Documents require the Association to maintain the townhome exteriors and landscaping, so these items cannot be disapproved.

**40. I heard that the Board of Directors delayed the release of the budget so the community would not have an opportunity to give their input.**

Not at all. The Board has always committed, both internally and externally, to releasing the budget numbers 45 days before the start of the fiscal year, and we stuck to our commitment.

**41. Why not just make everyone's dues equal? Why the great disparity between what the townhomes pay and the single-family homes pay?**

With regard to Common Expenses, the dues are equal among townhome owners and single-family home owners. But it is the Townhome Neighborhood expenses that really increase the townhome dues above the single-family home dues.

It would be extremely unfair to the single-family homeowners, who are responsible for their own exterior maintenance, to have to subsidize the exterior maintenance of the townhomes. The single-family homeowners would essentially be paying twice for exterior maintenance.

In addition, it is in violation to the Covenants to do so. According to Article I, Section 1.1 of the Supplemental Declaration, regarding Neighborhood Expenses, "The cost of all maintenance to be performed by the Association shall be a Neighborhood Expense for the Townhome Neighborhood."

This means that the Association is not entitled to levy assessments associated with the Townhome Neighborhood on units that are not part of the Townhome Neighborhood (i.e. single-family homes).

**42. I'm afraid that my property values will decrease if the dues are too high.**

This is highly unlikely. The dues are now set at a more appropriate amount to fund the reserves that are required to maintain the community per the Covenants.

In fact, according to many real estate experts, it is a bad sign if an Association's dues are too *low*, as this indicates that the Association is not properly managed and is not collecting enough dues to fund ongoing maintenance.

What will almost certainly cause your property values to decrease would be if the townhomes or common areas are not adequately maintained. The indisputable fact is that the association cannot maintain them properly without raising assessments.

**43. But I have a friend who lives in Community X, and they only pay \$Y for their Association dues.**

You cannot easily compare the dues among different communities, as you are rarely comparing apples-to-apples. For instance, Community X probably has different amenities, such as swimming pools, tennis courts, a clubhouse, or perhaps it is a gated community. In addition, Community X will have a different set of covenants. Those covenants may or may not call for the Association to be responsible for the same things.

In addition, the costs of maintaining the community are dependent on highly variable factors such as the community's size, the amount of common area, the quality of materials used, type of materials used, etc.

**44. I only plan on living here for X more years. Why should I have to fund maintenance when I won't even be here when the work is done?**

Even if we wanted to, there is no practical way to administer such a plan. Would owners have to commit when they purchase the townhome to how many years they expected to be there and then be charged accordingly? What if the residents stayed longer?

In addition, this plan does not consider depreciation. For instance, let's say a townhome owner bought a new property with a 20-year roof and stayed there for 5 years. Upon move-out, the roof now has a useful life of 15 years. That means the original owner consumed 5 years of useful life of the roof, so it is not unreasonable to expect them to pay for the 5 years of the roof's life they "used."

**45. Why did Bowen set dues at such a low number to begin with?**

Unfortunately, it is common practice for developers to set unrealistically low Association dues. Remember, they are more interested in selling houses than funding the Community's future. It then becomes the Association's problem to raise dues later when they realize there are not enough funds to cover expenses.

**46. Why is the Board doing this to us?**

The Board is required to follow the Covenants, and as you can see, every decision we make is driven by the Covenants. It is not personal. Remember we are homeowners too and are affected by the decisions of the Board just as you are. The Covenants were written to protect all homeowners'

investment interests. If you ever have a question as to the Board's motivation for a particular decision, chances are you will find the answer in the Covenants. So please, read your documents!

**47. I've read my documents, but it sounds like a bunch of legal "mumbo-jumbo" to me.**

We agree that the documents are not always easy to read or interpret. If you have any questions, please feel free to contact our property manager, Jessica Mooney at GW & Associates at (678) 407-6307 or [jmooney@gwmgt.com](mailto:jmooney@gwmgt.com). Of course, you can always find one of your Board of Directors and ask them, or e-mail us anytime at [shadowbrookhoa@gmail.com](mailto:shadowbrookhoa@gmail.com). If we don't know the answer, we can go to our lawyer John Lueder for clarification.

**48. When is the Budget Review Meeting?**

The Budget Review Meeting is scheduled at 7:00pm, on Wednesday, December 19 at the Suwanee Branch of the Gwinnett Public Library (361 Main Street). On-hand to answer your questions will be your Board of Directors, Jessica Mooney from GW & Associates, John Lueder from Lueder Law, and Wayne Johnson from Ray Engineering.