

## VILLAGE OF ANGEL FIRE

### Resolution 2015-33

*Resolution Revising and Amending the Wildfire Protection Fee (Resolution 2013-22) Billing Rate and Method for All Undeveloped, Uninhabited and Inaccessible Lots in Chalet Units 3, 3A, 3B, 5, 5A, and 6 Subdivisions To Be Billed as a Single "Large" Lot for Each Subdivision Unit Area and Granting Certain Credits and Refunds for Past Payments to the Owners Thereof.*

**WHEREAS**, the Village Council has previously adopted a Wildfire Protection Fee (Resolution No. 2015-22) to fund the Community Wildfire Protection Plan (CWPP) Ordinance; Title 9 of the Village Code, § 9-6-1, *et seq.* and as Title 9 was amended by Ordinance No. 2010-05 (Implementation of the Community Wildfire Protection Plan) in 2010; and

**WHEREAS**, the Village Council finds and concludes that current Wildfire Protection Fee billing rate and method as applied to certain undeveloped, uninhabited, and inaccessible lots in certain platted subdivisions, being Chalet Units 3, 3A, 3B, 5, 5A, and 6, and including such undeveloped lots therein owned for AFPO memberships privileges only, is inequitable and disproportionately high as compared to the value of this undeveloped land for the owners thereof; and

**WHEREAS**, the Village Council finds and concludes that it would be equitable and appropriate to revise and amend the billing rate and method for such Wildfire Protection Fee against such undeveloped lots for these owners thereof so as to bill all such undeveloped, uninhabited, and inaccessible lots as one single "Large" lot (5.01 Acres and Larger - \$13.00 per month) for each such Subdivision Unit as long as and for only as long as, each or any such platted lot therein remains undeveloped, uninhabited, and inaccessible; and

**WHEREAS**, the Village Council further finds and concludes that it would be equitable and appropriate to grant certain credits and/or refunds for past payments of such fee for each such affected lot to the Owners thereof for their past years' payments of the Wildfire Protection Fee in the amount they paid over such adjusted billing rate and method for such Large single subdivision unit lot; provided, however, that the credit may be taken by non-AFPO membership owners against their future billings to said owners of future Wildfire Protection Fees and by cash reimbursement by the Village to AFPO membership-only owners.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF ANGEL FIRE** that based on the opinion of legal counsel dated July 16, 2015 attached hereto regarding the amending and revising of the Wildfire Protection Fee billing rate and method for all undeveloped, uninhabited, and inaccessible lots, including those platted subdivision lots in Chalet Units 3, 3A, 3B, 5, 5A, and 6 Subdivisions in the Village of Angel Fire for all owners thereof, including owners who purchased such lots

for AFPO membership rights only, so as such lots are reassessed and billed as a single, Large lot for each subdivision unit area and to further grant a credit for past payments of such fees to said owners all as follows:

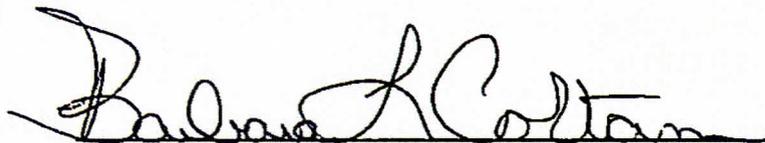
1. All undeveloped, uninhabited, and inaccessible lots in Chalet Units 3, 3A, 3B, 5, 5A, and 6 and all similarly situated platted subdivision lots in the Village shall be billed and assessed as one single Large subdivision unit lot (at 5.01 acres or larger – rate of \$13.00 a month) as one subdivision unit area until any such lots therein are developed, inhabited, and/or made accessible, at which time such developed lots shall be assessed by their actual platted lot size under the Wildfire Protection Fee billing method set forth in Resolution No. 2013-12; and

2. A credit refund is granted to the owners of such undeveloped, uninhabited, and inaccessible lots in Chalet Units 3, 3A, 3B, 5, 5A, and 6, including to those owners of such lots who purchased such lots for AFPO membership rights only, for past payments of the Wildfire Protection Fee over and above this amended billing rate and method as a single subdivision unit "Large Lot"; provided that:

a. The credit may be applied to and taken only against future Wildfire Protection Fee billings by non-AFPO membership-only owners; and

b. The Village will refund to individual AFPO membership-only owners the amounts of their credit as a one-time cash refund

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL OF THE VILLAGE OF ANGEL FIRE THIS 25<sup>th</sup> DAY OF AUGUST 2015.



BARBARA COTTAM, MAYOR  
VILLAGE OF ANGEL FIRE

ATTEST:

Approved and adopted by the Council of Village of Angel Fire at its regular/special Meeting held on 8/25, 2015.



TERRY CORDOVA, VILLAGE CLERK

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July 16, 2015

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*\*Also admitted in Massachusetts*

***By Email***

Mayor Barbara Cottam  
Village Manager Rick Tafoya  
Village of Angel Fire  
P.O. Box 610  
Angel Fire, NM 87710

***Re: Revision of the Wildfire Protection Fee Billing Rate and Method for All Undeveloped, Uninhabited, and Inaccessible Lots in Chalet Units 3, 3A, 3B, 5, 5A and 6 Subdivisions (and for all AFPO Membership Lots Therein) to be Billed as a Single Large Lot for Each Such Subdivision Area***

Dear Mayor Cottam and Manager Tafoya:

You have asked me to review amending the billing rate and method for this past year's Wildfire Protection Fee as assessed against certain uninhabited, undeveloped, and inaccessible (without road access) mountain subdivision land areas within the Village. Specifically, these land areas in question include the Chalet Units 3, 3A, 3B, 5, 5A, and 6 subdivisions. These large, undeveloped land areas are currently and predominately owned by the Resort and/or by a limited number of third party purchasers from the Resort who purchase these remote lots from the Resort solely for the purpose of obtaining AFPO membership rights and the benefits attendant thereto.

The lots in all of these subdivisions are now assessed by the Village based on the size of each individual lot without regard to their development status. The assessment results in a disproportionate (to land value) assessment methodology. The Resort and AFPO member purchasers have protested this billing method as unreasonable and confiscatory and seek reconsideration of the rate method to consider each subdivision a one (1) large assessment lot under the Wildfire Protection Ordinance until developed.

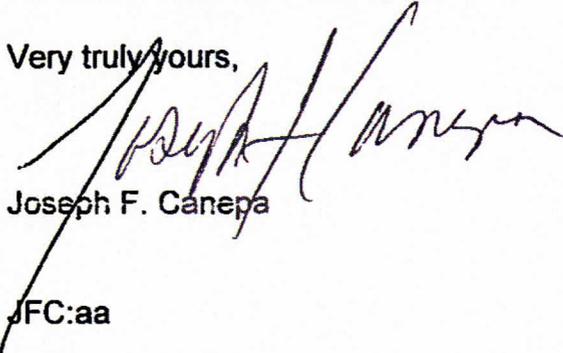
I am of the opinion that it would be equitable, lawful, and appropriate to grant the reconsideration petition of the Resort and the AFPO membership-only owners therein and reassess and rebill such uninhabited, undeveloped, and inaccessible lots in the above-referenced Chalet Subdivision areas as one (1) large parcel for each such

platted subdivision area, at the "large parcel" rate of \$13.00 per month per subdivision area. Such billing rates would be considered a reasonable adjustment and produce a non-confiscatory (disproportionate penalty or "taking" situation) by the Village and would avoid litigation of this billing rate on constitutional due process and inverse condemnation grounds. It is also my opinion that such billing adjustment should also include those lots purchased from the Resort by third parties (in each Chalet Subdivision) solely for obtaining AFPO membership and the benefits that flow therefrom. Also, it would be appropriate to grant a waiver of any late fees or penalties on the outstanding billings if this adjustment to the billing is granted.

Finally, my opinion is that this single "undeveloped" subdivision assessment rate and method should continue until such time as any individual lots therein are, in fact, developed, inhabited and/or are made accessible by road improvements by the Resort or third parties or if any individual subdivision lots therein are individually developed or built on by any owner, at which time such individual "developed" lots would then be separately assessed as an individual lot to its owner based on its size under the current Wildfire Protection Fee billing assessment method.

This revised assessment rate and method for billing large, undeveloped, uninhabited, inaccessible lots as a "single large billing parcel" for future assessment should then be approved by Resolution of the Council going forward for all similar undeveloped, uninhabited, and inaccessible areas within the Village that are otherwise subject to the Wildfire Protect Fee Ordinance.

Very truly yours,



Joseph F. Canepa

JFC:aa