

Comments from Tom DiCecco / Margaret Walker:

From: Margaret Walker [mailto:mf.walker@comcast.net]

Sent: Wednesday, September 28, 2011 2:59 PM

Subject: Amended Declaration / Comments / Non-Responsiveness 9-28-11

September 28, 2011

To: SOTHA board members,

I had forwarded Kevin's email to Tom to avail myself of his input. Tom's response is included below, and I believe he has hit the nail on the head.

We, as current board members, should vastly improve the standing record of non-responsiveness and get back to him and other neighbors who write us with questions and comments.

Since I was not on the board during these issues, I am at a loss to respond.

Sincerely,

Margaret

Date: Wed, 28 Sep 2011 16:12:05 -0400

To: MF.Walker@comcast.net

From: Tom DiCecco <TomDiCecco@comcast.net>

Subject: Amended Declaration / Comments / Non-Responsiveness

9/28/11

Margaret, regarding the September 15th "deadline" for comments, there were only 3 responses, one of which was not actually a response regarding the covenants. It is clearly evident to me that the board's non-responsiveness has led to members' apathy. No one wants to take the time to perform research to have cogent responses be disregarded.

As I have prior stated, Kevin has taken on much more responsibility than that of Treasurer. If other board members followed Kevin's lead, the workload could be easily distributed and perhaps responses would be forthcoming. Good luck in you tenure as a board member. Tom

9/28/11 Proposed answer to Kevins recent email:

SOTHA Board:

My email to Margaret was not intended as a commentary to the proposed covenants, but just to reply to your request for confirmation. I have noticed, however, that you elected *not* to publicize

my actual comments to the proposed covenants that I had sent to you on 6/18/11 and 8/6/11, both of which are included here.

6/18/11 CC: SOTHA BORED SENT BY CERTIFIED EMAIL WITH AUTOMATIC RETURN RECEIPT

Kevin, although you have not yet answered the questions in my prior email regarding the Amended Covenants, I have proceeded with reading them. I got through page 16 and had to give up because they are so frustrating and disgusting. I can't believe these were written by a licensed attorney. The draft contains a plethora of contradictions, lacks definition in many areas, is too restrictive in some areas, and too broad in other areas. Up through page 16, there was no mention of the so-called exemption from CCIOA, that was an earlier prime objective. I believe this draft is inconsistent with the common interest of a 34 (or so) community like Shield-O Terraces. If this draft should prevail, many current residents, including Margaret and me, shall have to move out of SOT because we don't qualify under Section 4.3 requiring residences to be occupied by a "single nuclear family (being a family group consisting of a father, mother, and their children)," ...). I believe such a requirement is highly illegal and certainly shall be challenged. The majority of SOT owners do not qualify under this section.

The inconsistencies in the draft, at least through page 16, can be summed in one comment/question: WTF?

What have you paid this "attorney" to date for this work? If any checks have not yet cleared, I strongly suggest that you immediately stop payment on such.

I just can't believe this crappy piece of work.

Tom.

8/6/11

SOTHA BOARD:

Kevin, Thank you for sending a copy of the proposed Amended/Restated Declaration for SOT.

I barely started reading when I believe I came upon a major deficit.

On Page 2, under Article 2, Definitions, I found the definition for "Access Road Easement" to be *difficult to follow and incomplete*. The definition refers to Article 3 where Section 3.1, relative to "Access Road Easement," refers to Exhibit B that does not appear to exist in this draft. Article 3 goes on to state, "Subject to the other terms of this Declaration, the Access Road Easement shall be for the benefit of the Owners and the Association and may be used by the Association, the Owners and their respective Guests." There is no reference to what "other terms" to which the Access Road Easement may be subject.

So far, the proposed Declaration is very difficult to read or follow for "someone schooled in the art." I believe it would be nearly impossible to follow by anyone else.

To ascertain I was observing the complete document, I again downloaded the proposed Declaration from the link you provided. There was not any difference.

The Association may be better served by the Board conducting a *work session* or appointing a committee to review this proposed document to discover this and perhaps additional discrepancies *prior to the annual meeting*. Until this is accomplished, I believe it would be ill advised to have your attorney attempt a presentation at the annual meeting. What are your and other Board Members' thoughts on this?

I also recall that there was absolutely no response to my cited email regarding your attorney's suggestion to opt out of CCIOA. Unless this is promptly answered, I intend to pose such questions to your attorney at the annual meeting.

Tom

On 9/9/11, I had responded to Margaret's email to me, sending a copy to the board, and also never received a response. (copy included here)

9/9/11 SENT BY CERTIFIED EMAIL WITH AUTOMATIC RECEIPT NOTIFICATION

Margaret,

For reference, I have **red-highlighted** Henry Lowe's concerns below and offer these comments.

1. I have voiced similar concerns to the Board that have to-date been ignored or unanswered.
2. Regarding email or "electronic" notice of meetings, I had prior suggested that the Board use a messaging service to be able to document that receipt of meeting notices or other important notices could be documented. I had even offered my resources to provide receipt confirmation of Board notices. These too, has been ignored or gone unanswered.
3. You have already received copies of my earlier emails to the Board questioning its assumed right to grant a right-of-way. This also has been ignored and not been answered. Those of us with property adjoining or bordering any SOTHA roadway, have rights-of-way already encumbered upon our titles. It is highly unlikely that SOTHA's Board can legally issue any right of way to anyone, particularly without negotiating the provisions of the proposed right of way. Henry properly points out that SOTHA has not addressed the long-standing right of way from the BLM, subsequently assigned to Stonywood Trust.
4. My 8/6/11 email to the Board regarding the proposed revised declaration have also been ignored and remains unanswered.
5. I have received a mailed copy of the SOTHA dues, which I have paid in full for the year. (CK # 1102, \$1,100.00)

By copy of this email, I have notified Kevin that the information he has on the MJC HAWK'S NEST LLC account is correct and verified. On the back side of that confirmation request was page 32, titled "Table of Contents," further relating to Article 10, Insurance, Damage and Risk Allocation. This information was not referenced in his letter and its meaning or relevance can not be ascertained.

Also include with the mailing was a copy of Thomas Genshaft's August 31, 2011 letter containing information in which I believe to be seriously flawed. I will respond to that information later. Without response from the Board to my prior emails, at this point I believe the proposed Declaration is also seriously flawed and I will strongly oppose it with SOTHA members.

Thank you for sharing the Board email. Apparently the Board has chosen to ignore my communications and has even removed me from the mail list.

Tom

Further, on 7/25/11, having prior been convalescing, I posed a series of questions to the board that still remains unanswered.

7/25/11 SENT BY CERTIFIED EMAIL WITH AUTOMATIC RETURN RECEIPT

Kevin, if your email today constitutes the sole notice to the Board regarding the proposed meeting tomorrow, 7/26/11, I believe the notice does not comply with either Association Rules (Article 7), nor Colorado Law. I suspect this may be the case since I had been on the Board mail list and have not received any prior notice. Your one-day notice, in addition to appearing not in compliance, is also inappropriate and inconsiderate to Association Members that may wish to attend or bring inquiries to the Board.

I would strongly suggest to the Board that when sending group email to members, the BCC provision of your mailer be utilized to protect Members' privacy and to help foil spam or phisher bots.

I have several inquiries to the Board, but not to cause a *burden* to the Board, these can certainly be addressed at the annual meeting:

1. During 2009, I informed the Board that the Quast lot-line adjustment caused a new lot to be formed within the boundaries of SOT. Have the new owners been billed for assessments? If not, why not?
2. About a year ago, there was concern about severe snow-drifts on upper Shield-O Road. The Goldsmiths objected to the placement of a snow fence but graciously offered to plow the area. How is that working out?
3. There was an inquiry from Connie Harvey regarding fencing her two lots for cattle grazing. At the Board's request, I informed her of the Association restriction for commercial operations and the impact of fencing on existing rights of way. How has that worked out?
4. Early in 2010, there was communication with Shield-O Mesa regarding the exchange of Cote's use of Mesa Road to Shield-O Road with the Smith's use of Shield-O Road to Mesa Road. How has that worked out?
5. Early in 2010, there was concern regarding the division of Snow Plowing expenses between SOT & SOM. How has that worked out?
6. During 2010, there was consideration to require the Bradtke parcel's membership in SOT commensurate with his application to Pitkin County for certain steps in the development process. How has that worked out?
7. Was it ever legally determined if SOTHA is authorized to grant easements, particularly since it does not own any property?
8. What was the result of discussion of Board action regarding residents' refusal to mitigate noxious weed growth on their properties? Have they been put on "notice?" Have they been fined? How has that worked out?
9. Was it ever legally determined whether or not SOTHA is a Common Interest Community, thereby subject to CCOIA?
10. What is the status of the Board's attempt to create new covenants, particularly the very egregious section where you are attempting to restrict residential use to a single nuclear family consisting of a husband, wife, and children?
11. The Pitkin County Map of SOTHA as you have posted on the Association's website indicates boundaries that do not comply with the original SOT metes and bounds. In this regard, was there a re-alignment of SOT boundaries? When did this occur and by what authority? Why was it not brought before the membership?
12. If "Notice" was properly tendered to the Board for this meeting, why wasn't it also sent to members as considered by the Board at its 2/05/05 meeting?
13. Has there been any change to the BOCC schedule of 8/10/11 to consider Tillman's request for relief from the stay on processing the application considering Stonywood Trust's appeal to District Court?
14. Has there been further communication with the Tillman Estate regarding the prior discussed combination building?

I will look forward to the Board's answers to these concerns.

Tom DiCecco

~~~~~

I would also comment that, to date, not a single board member has responded to *any* of my comments or questions as they usually never do, which leads me to believe that the board *really* does not wish to have comments. **Could this be the reason that there were only three responses regarding the request for comments?** I assure you that such non-responsiveness will lead Shield-O-Terraces to a very costly resolution rather than it promoting an open dialogue to resolve issues. The proposed declaration clearly has many flaws and has monstrously grown into a very complex document. It should be discarded and started over.

Tom DiCecco

---

At 10:40 PM 9/27/2011, you wrote:

All,

The September 15<sup>th</sup> deadline for comments to the Draft Amended and Restated Declaration has passed, and I have made any comments sent in available for anyone to download from our website. Either go to the website ([www.shieldoterraces.com](http://www.shieldoterraces.com)) and click on ?Notices?, or click the links provided below in this email. The links for the draft declaration are also provided below.

## Notices

Amended and Restated Declaration

[Draft Declaration - PDF](#)

[Draft Declaration - DOC](#)

*[Declaration comments from Members](#)*

[Comments from Henry Lowe](#)

[Comments from Tom DiCecco](#)

[Comments from Hawley Smith](#)

Feel free to contact me with any questions.

Kevin

Kevin Michelson

707 Shield-O Rd.

Snowmass, CO 81654

(970)-923-5818 home

(970)-948-6659 cell

[kevinm@peakvisions.net](mailto:kevinm@peakvisions.net)