2018 Declaration & Articles of Incorporation Vote
Opposition White Paper

Preamble

The Hot Springs Village POA and BOD recently authorized creation, publication and mailing (all at Villager's expense) of a 30 page, glossy, 4-color document with regard to the 2018 Declaration & Articles of Incorporation Vote. They have called this document a . . .

"White Paper"

So, one might ask: Just what is a "White Paper" anyway? From Wikipedia we learn the following: "A **white paper** is an authoritative report or guide that informs readers concisely about a complex issue and presents ***the issuing body's philosophy*** on the matter. . . . In business, a white paper is closer to a form of marketing presentation, ***a tool meant to persuade customers and partners and promote a product or viewpoint***."

The casual reader of the POA-BOD "White Paper" will likely come away with a positive sense that everything presented is a good thing and in the best interests of Hot Springs Villagers. For this reason the following *(only 15 pages in black and white)* is titled the. . .

"Opposition White Paper"

In other words, the intent is to call readers attention to the very serious pitfalls, problems, objections and costs of this proposition. In other words this document is: ***The Other Side of The Story.***

About the Author

Tom Blakeman has been a full-time resident home owner in Hot Springs Village since January 2016. His background includes:

- Bachelor of Science Degree - Engineering
- Masters Degree - Business Administration
- Licensed Real Estate Broker *(Texas)*
- Over 20 years experience in various corporate positions
- Over 20 years as owner of his own small business

While not a attorney, Tom's work experiences have included, among other things, extensive business writing and review and interpretation of contracts. The opinions expressed herein are just that, opinions, and are solely those of the author and no others. Please take time to read these opinions with an open mind and take them in the spirit with which they are being presented: ***The Best Interests of the Property Owners of Hot Springs Village, Arkansas.***

Article II, Sections 2-3. Additions to Existing Property.

As the title suggests, this section is about "Additions" to the Village. The proposals are justified by the POA and BOD claiming that they will help manage and forecast Property Owners' obligations to fund infrastructure that benefits for-profit real estate developers. The following is what's wrong with this picture:

1. At roughly 26,000 acres HSV already has plenty of land within it's boundaries. It is a known fact that POA already has serious problems maintaining the land currently within the boundaries of HSV. Therefore, if a change should be made to this portion of the Declarations it would better serve HSV if the entire section were deleted or modified to *prevent* addition of any additional lands or properties by Developer, POA or any other parties.

2. The changes attempt to place the POA on an equal or superior (see 3. Below) footing with the Developer and, in essence, make POA a Developer and the sole controlling authority in Hot Springs Village. There is simply no justification for POA to take on the roll of a Developer.

3. The changes, specifically new paragraph (d), would give POA the right to approve any and all additions of property to HSV to become subject to the Declarations. Further, the changes leave such approval solely in the hands of a majority vote of BOD. Notwithstanding the objections in paragraphs 1. and 2. above, should there be additions of any new lands to or within the boundaries of HSV, such approval power should only be allowed by majority vote of the Members (Property Owners).

4. The proposed changes also ignore the fact that Developer (CCI) already owns extensive areas of "Reserved Properties" within the existing boundaries of HSV. Those "Reserved Properties", per Article V of the Declarations, are not subject to any of the Declarations or Supplemental Declarations unless same are added under provisions of this Article II. This means that CCI can at any time develop those Reserved Properties in whatever way they might wish with no obligation or responsibility to POA regardless of any vote.

5. Similarly, CCI have the sole ***right*** under the current provisions of Article II to bring said "Reserved Properties" or other lands under the Declarations at their option. It is totally unreasonable to assume that CCI would relinquish such ***right*** to their Reserved Properties. Why should they? (*See further discussion of rights on the next page).*

6. The very idea that the Developer, its successors and assigns, would be agreeable to such changes is flawed. If implemented, POA would become equal in stature to CCI while CCI would have lesser authority than the POA. The result for CCI would be immediate loss of both intrinsic and real value of their current real estate holdings in HSV. Why would they want or accept that?

Recommendation: Vote NO

Article III, Section 2. Voting Rights.

As stated by POA and BOD these changes, if approved, would equalize the number of votes per property class (Class B / Developer and Class A / All Others) such that both Classes have only one vote per lot or living unit. Currently the Developer (CCI) has 10 votes per lot or living unit. The following problems and questions exist with this concept and these changes:

1. This sounds like a great idea for POA and Property Owners but the question again begs asking: Why would CCI want or allow this to take place? What benefit do they gain by giving up their votes? For that matter, why would we want this? What is CCI doing or not doing that is harming HSV?

2. The Declarations allow voting by the various classes of Members. The Declarations in ***Article XIV, Section 4. Assignment, Transfer or Conveyance by Developer*** also prohibit anyone but Developer from transferring any of Developer's rights: *"The Developer reserves and shall have the right to assign, transfer or convey any reservations, rights or obligations of the Developer hereunder. . ."*. Voting by the Members to change the vote allotments in the Voting Rights paragraph would contradict Developer's specific ***right*** to have 10 votes per lot or living unit owned. This would be a conflict and therefore be invalid or at least subject to legal contestation.

3. Given 2. above it is puzzling that CEO Nalley, in her June 26, 2018 "Greeting from the CEO" message declared: *"we think there are good possibilities to cooperate with CCI for our mutual benefit."* If there's going to be cooperation with CCI then why doesn't CCI just give up their voting rights? Why does POA think we need a vote to try and garner this benefit for ourselves? For that matter, why are we not hearing some kind of statement from CCI directly on any or all of this? Is there an undisclosed agreement with CCI regarding these issues?

4. The following is purely speculation. Could it be that POA hopes to get a majority of votes FOR this and the other Declaration changes, which all serve to diminish CCI's Developer position, so that when a lawsuit is filed by CCI said votes will help bolster POA's legal defense?

Recommendation: Vote NO

Article VI, Section 1. Plan for Construction and Maintenance of Common Properties: Water System and Sewer System.

As proposed, this Amendment claims to reduce unplanned financial liability, allow for developers to share in costs of water and sewer systems and delay start of water and sewer system improvements ***"until at least 24 months after property is made subject to the Declarations".*** Sounds good, doesn't it? Well think a little harder:

1. The proposed changes will only apply to properties currently NOT subject to the Declarations. That means that only properties currently outside the Village boundaries or Reserved properties currently owned by CCI will be impacted. So, ask yourself, what outside properties do you want added to the Village?

2. The proposed changes are attempting to limit POA's current obligation to construct or extend the water and sewer systems *"at the earliest time practicable"* [wording in the existing Section 1.]. The issue here is that all of the thousands of undeveloped lots in the Village are already *"subject to this Declaration".* Therefore, the touted 24 month period does not apply and no relief is granted to POA from extending services immediately upon request to remote or isolated lots within the Village. ***Case in point: CCI currently has been granted approval to build homes on two lots which currently do not have services. The cost to extend services for these two lots alone is estimated by POA to cost between $500,000 and $600,000. The proposed changes have no impact on these or similar future cases.***

3. The proposed changes may "allow" but do not guarantee or require that developers bear the cost of construction for new water and sewer systems to serve their new development. Indeed, the changes do require that such be paid from assessments against each Lot and Living Unit ***(this means: your lot or living unit)*** unless ***"otherwise agreed between the Association and the developer"***. This means that POA alone will be deciding if, how, and when your money will be used to fund outside developers' projects.

4. Finally, the original and existing Section 1. specifically prohibits furnishing of the water and sewer services to the public for compensation. This prohibition is deleted from the proposed new verbiage. Clearly this is an attempt by POA and BOD to validate after-the-fact their decision made in a recent Board Meeting to allow Jessieville School District and others to tie into the HSV sewer system. Anyone want to guess who might be next in line?

Recommendation: Vote NO

Article VI, Section 2. Plan for Construction and Maintenance of Common Properties: Ways of Access for Vehicles.

This proposed amendment ties in closely with the previous one and has similar defects. It is touted that *"POA has no obligation to accept permanent maintenance responsibility"* and *"assure(s) newly constructed streets meet construction quality standards".* Again, this seems to make good sense but there is more to the picture:

1. Simply put, the wording is wrong. If there are to be new streets constructed by a developer then it should be clearly stated that the developer shall be required to build said streets in full accordance with standards dictated by the Village. But, the proposed wording actually says: "The Association shall have no obligation to accept. . ." This is very different. After it is built accepting or not accepting is too late. This wording gives the Association the **option** to accept sub-standard construction. There is no reason whatsoever for the POA to have weasel room to allow a developer to install something sub-standard.

2. Additionally, the wording is incomplete and insufficient. If the Section 2. provision for street construction were to be amended it should clearly call for the developer to provide a warranty against materials and workmanship for some period post acceptance, say 10 years. If POA truly wants to reduce maintenance costs and reduce unplanned financial liability then this should be a paramount requirement.

Recommendation: Vote NO

Article VI, Section 3. Lakes, Golf Course, Permanent Parks and Permanent Recreational Plots.

The "Key Messages" for this amendment promise high-quality development and supposedly balance responsibility of Common Property between the Developer and the POA. The Key Messages also promise reduction of unplanned financial [liability] and creation of construction standards by the POA along with a 5 year maintenance requirement for developers. But, do they really?

1. The verbiage created for this revised section is so convoluted it is hard to follow but it suggests that some developer (small letter d) might construct new lakes, golf courses, etc. Among other things what happened to Developer (capital letter D)? And, why would we ever want another golf course or lake? The whole concept makes no sense.

2. The idea that any developer (capital D or otherwise) would construct a new facility and then pay to maintain and pay the expenses for it for a five year period after it is placed in service is nothing less than ludicrous. No developer would even consider doing such; unless, of course, the new developer is the POA.

3. The proposed amendment further authorizes the POA to include "reasonable standards" in the Protective Covenants for construction. This appears to be an after-the-fact authorization by the voters for POA to utilize the 120 page Development - Zoning Code which was purchased as an adjunct supplement to the CMP. It is noted that the Protective Covenants currently being displayed by the POA on both websites now includes said Development - Zoning Code as being the sole body of the Protective Covenants and claims they were adopted by the Board on April 18, 2018. The prior three page Protective Covenants, adopted on 5/21/2014 has disappeared. This trick-play, quarter-back-sneak, end-run or whatever you want to call it is totally unacceptable.

4. Finally, the concept put forth that POA would not be obligated to pay operating costs, etc., for a project that did not meet the "reasonable standards" is further display of incompetent thinking. By its wording it assumes that a project might actually get built that is sub-standard. If we are going to have any developer build anything such project clearly needs to be fully code compliant and "reasonable standards" approved prior to any construction. Putting it in convoluted writing of any form such as that proposed is a recipe for disaster.

Recommendation: Vote NO

Article VIII, Section 3 (c). Extent of Members' and Associate Members' Easements.

This proposal claims to protect property owners from subsidizing delinquent property owners. It further claims to extend the length of time for suspended privileges for unpaid balances and infractions. It is dangerous! Read on.

1. Here again the devil is in the wording. There is no problem in the existing Section 3(c). with property owners protection from subsidizing delinquent owners. If an owner does not pay he can be suspended for ***"any period during which any assessment. . . remains unpaid"*.** Therefore, there is no need to change the wording on the basis of subsidizing.

2. What is different is that if the new language is adopted a property owner may be **indefinitely** deprived of their privileges for ***"any infraction of published rules"***. . . etc. The new wording does not merely extend the suspension as described.

3. If such wording is allowed the POA suspension power becomes excessive, punitive and arbitrary. This travesty, instead of helping enforce rules, will create an environment where violators are more likely to file lawsuits and will most likely win, thus causing more expense to all Property Owners.

Recommendation: Vote NO

Article VIII, Section 3 (i). Extent of Members' and Associate Members' Easements.

This amendment for transfer of Common Property is proposed to remove the veto of one class of Member over another. But why would we want to? There is much more to this story than meets the eye.

1. As noted with regard to the proposed voting amendment one must ask: Why would CCI want or allow this to take place? What benefit do they gain by giving up their votes? For that matter, why do we care? What is CCI doing or not doing that is harming HSV?
2. Similarly, and as noted before, if there's going to be cooperation with CCI then why doesn't CCI just give up their voting rights or veto power? Why does POA think we need a vote to remove this veto situation? What problem is this going to resolve for us?
3. Why are we not hearing some kind of statement from CCI directly on any or all of this? Is there an undisclosed agreement with CCI regarding these issues?
4. Voting to confirm this will likely end up causing CCI to take legal action. Do we really need another big lawsuit to bounce in and out of appellate courts and the Arkansas Supreme Court - all at Property Owner's expense?

Recommendation: Vote NO

Article VIII, Section 3 (j). Extent of Members' and Associate Members' Easements.

Note: This is an entirely new amendment paragraph which POA wishes to add. Ostensibly it is needed to allow small parcels of Common Property to be disposed of or developed. It claims to provide contiguous or nearby property owners approval and/or specific notice opportunity. It is seriously flawed.

1. The proposed amendment as written excludes Lakes, Golf Courses and Water/Sewer systems. It should also exclude Permanent Parks and Permanent Recreation Plots.

2. The written notice part of the amendment for Owners within 200 feet is insufficient. Such Owners should have written consent rights the same as those proposed for Contiguous property owners.

3. Property Owners who have purchased Lots or Living Units almost always did so with the specific knowledge that the Common Property was proximate to and benefited their Property. It is highly doubtful that those Property Owners would like to have a hotel, hi-rise or mini-mart constructed within 200 feet of their front door.

4. A Property Owner Vote should be required. Intuitively speaking, there is no difference between the need for a Property Owner Vote for this type of abandonment or sale and the already required Vote for similar abandonment or sale of Common Properties to a public or private agency, authority or utility [see Article III, Section 3(i).]

Recommendation: Vote NO

Article X, Section 3. Basis and Maximum of Annual Assessments.

The justification for this proposed amendment claims to "provide(s) a clear picture to property owners of annual assessment increases" by doing away with a CPI based adjustment. This is pure hogwash.

1. The current provision of this Section was only just Amended effective April 30, 2013. If nothing else there has been insufficient time past to be thinking about reinventing this wheel.

2. Furthermore, CPI based adjustments are the cornerstone of almost all government agencies and business contracts. There is no reason why they should not be good enough for Hot Springs Village.

3. CPI based adjustments were created in the aftermath of rampant inflation of the 1970's so that beneficiaries could keep their heads above water when the national economy goes out of whack. A fixed cap arrangement would provide no such security in the future. Perhaps staff or consultants proposing to do away with CPI based adjustments are simply not old enough or experienced enough to understand?

4. It is true that over the last few years the national economy has seen zero inflation and zero interest rates and consequently the CPI has not lately been any windfall for money hungry organizations. But, changing a system proven over decades just to fix a short term blip is nothing short of irresponsible.

5. Should the POA and BOD be concerned with revenue shortfalls it would behoove them to consider the significant and uncalled for expenditures they have taken on in recent years. The Comprehensive Master Plan is a prime example of this reckless spending.

6. Finally, if the foregoing arguments are not enough, ask yourself the questions: Why would any POA using a fixed cap rate not ratchet up the fee every year to the Max allowed? Where would the incentive to economize be?

Recommendation: Vote NO

Article X, Sections 4-5. Covenant for Maintenance Assessments.

As with the previously proposed amendments related to Voting, this amendment would remove the requirement of a majority vote of each class of membership. It is proposed as removing the ability of one class to veto the will of another.

1. In the interest of brevity, the previous comments against such a voting change apply here as they did for the other proposed voting amendments.

2. It is further interesting to note that the Sections being proposed for modification here were only just modified in April 2013. One must ask: Why is the wisdom of only 5 years ago so shortly deemed lacking and in need of revision?

3. And, again one must ask: Where is Cooper Communities standing on all of this. As probably the single largest stakeholder in the Village one would think that POA management would have already gotten them on board with their desires. Or did they?

Recommendation: Vote NO

Article XI, Section 1. Architectural Control Committee.

This amendment is promoted on the premise that it will strengthen the standards and processes related to architectural control and protect property values. That all sounds good but let's look deeper.

1. To begin with the Architectural Control Committee has been functioning quite well these many decades. To propose such far reaching changes begs the question: If it's not broke, why fix it?

2. Paragraph (b) is attempting to tie this Section to the Protective Covenants under Article XIII. That might be acceptable if it were not for the fact that the Protective Covenants have just been hijacked by the *POA (see earlier comments regarding Article VI, Section 3. on this topic)* with the full text and complexity of the Development - Zoning Code of the CMP (all 120 pages), none of which has been voted on by the Property Owners.

3. Lastly, if the proponents of this change really wanted to protect value they would remove the 45 day override clause currently in the Section. Why would anyone want an inadvertent time lapse or oversight by the ACC or BOD to result in some monstrosity being built or modified in our Village?

Recommendation: Vote NO

Article XIV, Sections 1 & 6. Duration.

Sometimes you can tell the validity of any request by the length of and resonating sound of the promotional verbiage. Such is the case here*. **"Arkansas Supreme Court; Duration of the Declaration is not changed; Current best practices; Owners can make amendments at any time."*** But, guess what? There's more here than meets the casual eye.

1. The original (current) Section 1. allows for Declaration amendments by a vote of the Owners. And, such amendments will bind for a period of no less than seven (7) years. The new version of Section 1. proposed allows only for a Declaration change by a vote of the Owners for a period of no less than seven (7) years that would terminate the Declarations. You have to ask yourself: Why would we want to terminate? What has changed since this section was amended just twelve years ago in April 2006?

2. The new and highly promoted Section 6. allows for amendments to be proposed, voted on and be effective any time the Chair, or Vice Chair and Secretary of the Association care to request them and call for an election. There is no seven year time limit. If this is passed we will find ourselves having elections called frequently and, of course, all at our expense. As you may know the official POA White Paper you recently received in the mail cost over $50,000 by itself. The cost of an election, according to CEO Nalley is upwards of $20,000 each time. What's more, we also now know that there is going to be a "Road Show" by POA to promote their vote to non-resident owners. This is even more of ***your*** money.

3. One must remember: Simply because something is permitted by a court ruling, Supreme Court or otherwise, it does not necessarily mean it is a good thing.

4. Similarly, who is to say what is "current best practice"? As with most of the rest of the existing Declarations, they have been working fairly well for almost 50 years now. So, if it's not broke, why fix it?

Recommendation: Vote NO

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Articles of Incorporation Amendment

If approved by the voters, the existing Articles of Incorporation will be revised and HSV will then be governed by a law called the Arkansas Nonprofit Corporation Act of 1993. The Overview and Key Messages hailed by the POA and BOD tout this idea as: ***"Addressing many unanswered questions; establishing modern standards; and providing clear complete rules"***. But, what is POA and BOD really trying to accomplish here?

1. In 1994 University of Arkansas Law Review published a 27 page article titled: The Nonprofit Corporation Act of 1993: Considering the Election to Apply the New Law to Old Corporations. It is worth reading.

2. The article clearly notes that a corporation may 'elect' to adopt the New Act but is in no way required to do so. Therefore, such an election is purely optional. So, one must ask: Does Hot Springs Village really have unanswered questions, lack of modern standards, and unclear rules? The Village lacks many things including state of the art broadband and cellular service but not the things cited.

3. The article does mention in its preamble some of the "selling points" noted by POA / BOD. However, there are also discussed potential drawbacks to adoption of the New Act. A few of these follow.

4. According to the article, one of the changes in adopting the New Act is that it reduces the potential liability of Directors of non-profit corporations. In the past few years the Village has been buzzing with the talk of the "fiduciary responsibility" of the BOD. What is not clear is why Villagers might want to reduce the potential liability for untoward acts of the Board Members. Have any of the former board members been subject of a lawsuit related to their service?

5. Also, the article points out that the New Act makes it more acceptable for a non-profit to have business dealings with outside companies which are owned or controlled by Directors or Officers of the non-profit. It notes that often charitable non-profits must select their Directors from outside company executives in the region and therefore said business dealings are an "acceptable" practice. Hot Springs Village has no need for this type Director or Officer nor a pathway to recruit and allow same. So, the Village gains nothing; but we could open ourselves up to new problems.

6. The most alarming change that would result from adoption of the 1993 Act is in how voting would be allowed by the Directors. Under the 1993 Act voting by Directors may take place without need for a Board Meeting. To quote the article: ***"the authorization for taking action without a meeting, all facilitate the approval of corporate transactions in a manner which is less likely to be challenged"***. How would this be good for Hot Springs Village Property Owners?

Recommendation: Vote NO

Epilogue

In discussions with Hot Springs Villagers there seems to be a common theme. The quotes go like this: ***"The BOD does not listen to us." "The POA does whatever they want." "There is too much secrecy." "We get a sense of arrogance from the POA." "There is no transparency." "Homeowners have no voice." The POA has way too much power." "The BOD rubber-stamps whatever POA wants."***

Villagers feel that the Board of Directors should represent them. But we are told that the Board of Directors only represents the Association. And, that there is no choice, it is a legality. Not to worry though, by representing the Association they in turn look out for our best interests. Legal or not, this sounds hollow, patronizing and condescending, no matter how eloquently the words are spoken.

We hear a lot about fiduciary responsibility. That is what we heard during the last Board election. We hear it at Board meetings and in E-blasts. We just heard it at the August 7th Woodlands "Town Hall" presentation. Yet no one appears to have been held accountable for poor decisions made in the years past. Blame seems to only go to CCI, or a vendor who did not perform, or Mother Nature.

Prior to the upcoming election the most contentious item we had was the Comprehensive Master Plan. Seemingly out of nowhere POA told us a half million dollars was being spent hiring consultants to show us how to fix all our problems. But, it was OK because it was only $250,000 in each of two years, allowable under the authorities given to the CEO. The problem is that the consultants were asked to produce "deliverables" most notable of which was a Town Center. It might have been one thing if those consultants had come up with a Town Center idea all on their own. But they didn't. They were told by POA to figure out how to justify and promote one.

What it all boils down to is <u>Trust</u>. Neither the BOD or the POA have the <u>Trust</u> of Villagers. And now we have another challenge. POA and BOD want Villagers to <u>Trust</u> that their proposed amendments and changes are good for us, in our best interests and will help solve all our problems.

But then, you have just read. . .

The Other Side of The Story.