

State of the PDS POA given at the May 21, 2016 Annual Meeting of the PDS POA Membership

Highlights of the Past Year

- New BOD Elected: Avila, Lorenz, Muriente, DiDonato, and Pahle. In December DiDonato resigned and was replaced by Alan Williams.
- Officers appointed were: Pahle, President; Avila, Veep; Guthrie Treasurer; Kelly Muriente, Secretary, and was later replaced by Shirley Williams.
- Avila and Riedel at ECC, Erescene at Election, Lorna at Grounds, Linda at Welcome, Guthrie at Budget, and Gail at the CC&R Working Group.
- Administrative Law Hearing in Sept by an Owner challenging the failure of the Association to pursue enforcement of CC&Rs, specifically on derelict vehicles. Although we prevailed in Nov, we got a wake-up call that Owners have the right to force the POA to enforce CC&R violations or be taken to task in court. We have to accept that although CC&R enforcement is unpleasant for the violators, those who do comply have as much, or more, justification and legal basis, for demanding enforcement as they are the "victims" of this disregard of compliance with the CC&Rs. Victimization happens with the denigration of quality of life, discouraging buyers, and collapse of property values caused by nearby homes with clearly visible CC&R violations. Following this case, the ECC, at the direction of the BOD, enhanced its efforts to advise Owners in a friendly but formal manner (via letter) that their properties were in violation of certain CC&Rs. There has been significant voluntary cooperation following receipt of this correspondence and greater dialogue between Owners and the ECC. However, a small group of Owners have objected vehemently to such actions and communications from the ECC and have counter-argued the legality of the CC&Rs and of inappropriate actions of the ECC. These compliance efforts will continue thru this FY (June 30th). At which time the new BOD will have to give further guidance to the ECC and set policy about more serious levels of CC&R enforcement and the associated but unavoidable legal costs.
- The CC&R Revision effort had been initiated several years prior but forced to be completed by the upcoming deadline of CC&R expiration on Dec 31, 2015. A work Group with Gayle as the head was set up to finish the task of collecting consents to Revise the CC&Rs. The effort failed and we got only 51% of the Owners to support the Revision. A majority of 66% of the Owners was required to revise the CC&Rs.
- The failure of the CC&R Revision was immediately followed in Nov by a collection of Owner Consents (we needed 55% of Owners) to Extend the current CC&Rs (without any changes). This was accomplished in mid-December and a total of 62% of the Owners agreed to the extension. 20% of Owners rejected the extension and 17% did not bother to make a decision

and respond. This decision by the Owners was formally recorded with the Cochise County Recorder prior to the Dec 31, 2015 deadline. The PDS POA CC&Rs continue in effect until Dec 31, 2030, albeit with very old and outdated CC&Rs. The CC&R Working Group did an exceptional effort to complete the gathering of consents in a short period of time. Due to the language in the CC&Rs requiring that 55% of the land of the PDS was required to pass the CC&R Extension, Jerry Riedel did an exceptional job in calculating the exact acreage of each of your lots and assigned the correct value to your consent plus an equal share of the total common areas.

- Since then, three properties have initiated a lawsuit against the PDS POA attempting to declare this extension invalid as well as several previous CC&R changes going back to 2004. In addition, they challenge the process used in getting the signatures of the Owners. They are not challenging the actual results. They are also seeking financial compensation for damages they each have suffered. The case is ongoing and will have some preliminary court dates and motions in Jun and Jul.
- The Road Runner Newsletter needs more attention but we are still in need of a dedicated group of volunteers to run this important resource and voice of the PDS POA. For the time being, much of the Owner notification is now being done as required via email...but we have about 40 Owners who do not wish to use email or have email.
- The PDS POA Website was significantly changed into a more user friendly format (Word Press) and has been current and updated regularly. It is easier to navigate but we still need Owner feedback. It is also helping to disseminate important information to the Owners and is accessible to the public. We need Owner feedback on the Website.
- We had a serious incident of a home burglary on Kiowa that destroyed the lifetime belongings of some previously deceased Owners. There was also an incident involving the assault on a neighbor who challenged the robbers. We all learned a lesson about witnessing a crime...Call the Sheriff and just observe from afar. Also, do not let your property appear to be vacant from your external lack of maintenance. This was key to target this residence.
- Completing the property transfer functions for each sale is an important administrative and legal obligation of the PDS POA and Schechter assumed these duties in Jan and is doing a great job. As a reminder, Sellers must now complete an HOA Addendum at the time of listing their properties declaring the home is under jurisdiction of an HOA. Arizona Law also directs HOAs to complete a response to each sale prior to the escrow company and to mail directly to the Buyer all the PDS POA information required by law. There were 16 transfers processed by the PDS POA this FY.
- Finally, I messed up and apologized to all for my email address mistake. Many supported me but a handful were aggressive and insulting. On the advice of counsel, any HOA officer must have a thick skin and accept criticism but does not have to tolerate hate speech, personal insults, and even

threats. By law, at a certain point, the Officer, after 2 proper warnings to the offender to cease, has the right to initiate an order of protection from the harassing party. The PDS POA Attorney costs will be covered by the PDS POA litigation liability insurance because all Directors, Officers, and Committee members are representing and acting on behalf of the PDS POA.

- It has been a challenging, productive and interesting year.

What we Face Next Year.

- A financial crisis is here. The maximum annual assessment cap of \$51.50 that will be charged this year is insufficient to meet the basic operating expenses of the PDS POA. The allowable 3% increase per year will likely prevent us from paying all our bills. Budgets are already cut to the bone. The "excess funds" we have had over the years are gone. We have to make a CC&R change raising the cap to \$100.00. We are now spending about \$54 to \$56 dollars per lot for operating expenses but have been collecting only \$50.00 the past several years. Tony will address this in his Treasurer and Budget discussion to follow.
- We need to get tough and join together in sending the message to the very few who ignore the CC&Rs that we will pursue legal actions if requests for compliance are ignored. The PDS POA does not have a choice to ignore violations. We should also be prepared to accept the legal costs in pursuing chronic violators of the CC&Rs.
- The CC&Rs are not static and must be changed to adjust to external changes within our society and labor force. If there are arguments about CC&R language and intent, then Owners must change it to be clear and specific on contentious issues. It is cheaper to change the CC&Rs than to go to court for a judge to decide our disagreements for us. The net result will be a better environment and quality of life for all Owners. The CC&Rs are a set of contractual agreements between the Owners and the Association about the standards of life within a community that all must comply with. The County and State cannot alter the community standards so long as ours do not violate any laws.
- Consider changing the "cumulative voting" procedure now in place. The intended purpose of "Cumulative voting" has never been valid in our POA and has led to "power clicks" that did not equitably represent all Owners.
- Consider establishing electronic voting within the PDS POA. Sam has already done most of the research on this fully legal and acceptable form of Owner response venue that can work side-by-side with Owners who do not wish to have electronic voting. Sam will give us a few minutes on this issue but first let me say....
- Thank you and I will speak for the rest of the BOD, Officers, and Committee members, by saying it has been a pleasure to serve you this past year.

Sincerely, Ted Pahle, President PDS POA