

Pueblo del Sol Property Owners Association  
Board of Directors Closed Emergency Meeting Minutes  
Fry Fire District Station Training Room  
APPROVED  
July 20, 2017

**1. CALL TO ORDER: 3:30 PM**

**2. PLEDGE OF ALLEGIANCE**

**3. DIRECTORS PRESENT:** Ted Pahle, Susan Lorenz, Jerry Reidel, Allan Williams, Justin Mitchell.

**4. OWNERS PRESENT:** No Owners were present as this was a closed meeting. Shirley Williams was in attendance as Recording Secretary.

**5. PRESIDENT'S OPENING COMMENTS:**

a. Ted Pahle stated that this single-topic meeting was called in urgency in order for the Attorneys to present accurate information about the recent court decision of the Arizona Court of Appeals reaffirming the Cochise County Superior Court decision to declare the PDS POA CC&Rs expired. The meeting is closed because the BOD would be receiving privileged information from the attorneys concerning an on-going legal matter.

b. Ted Pahle introduced Mr. Jason Smith and Mr. Nick Nogami our designated attorneys from Carpenter, Hazlewood PLC. They presented a detailed account of the decision by the Court of Appeals and followed it with discussion about the impact it would have on the PDS POA henceforth. The details are attached in a separate memorandum.

c. Given the current authority of the BOD to decide on behalf of the PDS POA, the Board unanimously decided to proceed with the rebuilding of the PDS POA Membership with new CC&Rs as being in the best interests of all owners within the Pueblo del Sol Village One, Sections A and B of the Development.

**MEETING ADJOURNED: 5:30 PM**

Submitted by Shirley Williams  
July 24, 2017

APPROVED: BOD August 14, 2017 by Lorenz, Riedel, Mitchell, Williams and Pahle

Attachment to July 20, 2017 Board of Directors Emergency Meeting Minutes:

**IMPORTANT NOTIFICATION TO ALL PUEBLO DEL SOL  
VILLAGE ONE OWNERS**

As many of you know, pursuant to a recent Court Order, the Covenants, Conditions and Restrictions (CC&Rs) for the Pueblo Del Sol Property Owners Association are no longer in effect. The court order was part of case number CV201600007 in the Cochise County Superior Court, titled DiDonato, et. al. v. Pueblo Del Sol Property Owners Association.

On July 20th, 2017 your PDS POA Board of Directors (Susan Lorenz, Jerry Riedel, Justin Mitchell, Allan Williams and Ted Pahle) held an in-person meeting with the two principal attorneys representing the PDS POA. Mr. Jason Smith and Mr. Nick Nogami of Carpenter, Hazlewood, Delgado, and Bolen provided the Board with the realities of the recent decision of the Arizona Court of Appeals that rejected our appeal to overturn the lower court (Cochise County Superior Court) decision invalidating the December 2015 extension of our CC&Rs. They also addressed various options to ensure the continuity of the PDS POA as an Association.

**The Effect of the Decision that invalidated the CC&Rs.**

The following are the immediate effects of the Arizona Court of Appeals' Ruling on the PDS POA.

- a. The PDS POA Village One Property Owners Association (PDS POA) remains in existence as a corporation in good standing with the Arizona Corporation Commission. The Association also still owns the Common Areas in the subdivision, as it always has. However, there are currently no members of the Association, since membership was based on the existence of the CC&Rs. While the CC&Rs are gone, the Association's Bylaws and Articles of Incorporation remain in effect. These documents authorize the existence and operation of the PDS POA as an association of owners. These remaining documents do not have any powers over the lots/owners in the subdivision in general, but rather only over the PDS POA as an association and non-profit corporation.
- b. The PDS POA, the Association and the non-profit corporation, remains intact until it is dissolved by the choice of the members at that time. That can only happen if 2/3 of the members at that given time, vote to dissolve the Association and divest ownership of the common areas (77 acres) per the Articles of Incorporation and By Laws. Dissolution may also happen if the PDS POA loses its good standing it has had with the Arizona Corporation Commission since 1974.
- c. The Association's CC&Rs that were being utilized at the time of the court decision, are permanently invalidated. Those CC&Rs were the root authority and contract created in 1974 that legally obligated all owners purchasing a lot in PDS POA Village One (a planned unit development) to be a member of the POA and be subject to its governing documents-the now invalidated CC&Rs. However, the PDS POA now has the ability to craft new CC&Rs, which will be discussed below.
- d. Without any CC&Rs, the membership in the PDS POA by all Owners no longer exists and is not mandatory. However, the POA Board has the option to circulate new membership documents

(CC&Rs) which will allow individuals to agree to again declare their Lots to be in the membership in the PDS POA. Once that occurs, these members accept their fair share of costs to maintain the PDS POA and its common areas and will benefit as we have done in the past since its creation. Members would simultaneously agree to accept new CC&Rs, to be drafted shortly by the BOD. In doing so, the members will have voluntarily decided to continue to support the PDS POA and agree to meet the obligations delineated in the CC&Rs such as costs to operate, protect, and maintain the common areas, just as the PDS POA has done in the past. Membership in the POA also allows them the ability to participate in the decisions about the Common Areas, finances, vote in elections, hold positions as PDS POA Board Director, Officer, and Committee member, attend BOD meetings and speak directly to the BOD – these rights do not extend to non-members.

### **Options Available Going Forward.**

OPTION #1: The Court of Appeals decision can be appealed to the Arizona Supreme Court but this could be costly to the PDS POA, with a low chance of even being accepted for hearing by the Supreme Court and no assurances that the decision of the Court of Appeals would be reversed. There are other options that are aimed at "looking forward" and retain the PDS POA in the future.

OPTION #2: Dissolve the PDS POA altogether in accordance with the By Laws and Articles of Incorporation. This would require the PDS POA donate the common areas to a non-profit organization or government entity willing to take over all responsibilities for these lands. This could allow the benefited party to utilize and develop the Common Areas within the confines of any applicable regulations, zoning, and utilization restrictions that may exist today and in the future. We, the Owners, would have no say in the process or what happens on those lands.

OPTION #3: Continue the PDS POA as an Association whose membership is voluntary but with agreement and acceptance of new CC&Rs that would become permanently attached to the land of each specific lot that opts to join the membership in the same way the old CC&Rs did. **This is the preferred and recommended option the Board will likely pursue.**

New CC&Rs would have to be drafted and would be different in content from the CC&Rs that were just invalidated. The new CC&Rs ideally would be focused mostly on common area maintenance and less emphasis on individual lot restrictions. They would be simple and easy to understand. They will have a very narrow focus aimed at maintaining the quality of life in our Community and retaining basic standards of maintenance for those who opt to join the membership. The biggest function of the new CC&Rs will be to set the Annual Assessment to cover the operating expenses and obligate members to pay their equal share. Transfer of Ownership would not terminate membership agreement in the PDS POA and new owner acceptance of these new CC&Rs, just like in the past.

This option, unfortunately, creates an HOA wherein some lots in the community would be members and others not. This option allows those that voluntarily agree to join as members of PDS POA. They also agree to share equally all the costs of operating the PDS POA and agree to comply with the CC&Rs that are created and accepted by every other member who joins. Lot Owners that choose not to join the PDS POA would not have access or rights to the Common Areas or be able to weigh in on

decisions regarding the same. However, all lots in the planned development, members or not of the PDS POA, are still subject to compliance with Cochise County ordinances and zoning restrictions, building codes and permits, obnoxious activities, safety and health standards, and permits and restrictions on commercial activities in an SR-43 Zoned Single Family residences.

### **Future Actions and Decision:**

At this time, because there are no members of the POA, the Board of Directors of the POA is the decision-making authority and voice of the PDS POA. The BOD has already decided and notified the attorneys not to pursue Option 1 (Appeal to Supreme Court). The BOD has also decided to delay any further action to choose one of the remaining Options until it has heard from the owners in the PDS POA community, although it does not have to.

There will not be a vote on the issue, only a survey to see which is the option that serves the broad interests of the majority of the Owners in our community. We will conduct this survey during a Town Hall Meeting to be announced in the next week to openly discuss the Options. Those who do not wish or cannot attend the Town Hall Meeting will have plenty of time to submit their own preference via a form to be mailed or emailed to them. Details to follow.

As noted, the BOD currently and unanimously believes that Option 3 is the best choice. This is based not only on the current judgment of your Directors, but also because it is likely to be supported by the many Owners who have already declared their desire to continue having the PDS POA for the benefits it has already provided over the many years.

The PDS POA Board of Directors

Susan Lorenz    Justin Mitchell    Allan Williams    Jerry Riedel    Ted Pahle