

**CORBIN B. GORDON, P.C.**  
**ATTORNEY AT LAW**  
**345 WEST 600 SOUTH, SUITE 108**  
**HEBER CITY, UTAH 84032**  
**PHONE (435) 657-0984 • FAX (888) 822-8796**  
**CORBINGORDON@YAHOO.COM**

September 16, 2009

Midway City Council  
75 North 100 West  
P.O. Box 277  
Midway, UT 84049

***Re: Sunburst Ranch HOA***

Dear Council Member:

I represent Sunburst Ranch HOA. You are likely aware of the numerous issues facing this particular development. The HOA is on the agenda to appear before the Council on September 23, 2009. The purpose of this letter is to set forth the reasons for the appearance and the legal basis for the request that the HOA will make.

**I. HISTORY OF THE DEVELOPMENT**

Some history is necessary to put the HOA's request in context. The Sunburst Ranch Development was annexed into Midway City on October 17, 1997 through ordinance 97-6. Ten days later, on October 27, 1997, Crystal Springs Land and Cattle Company, Inc., the developer, entered into an Annexation Agreement For Sunburst Ranch Planned Unit Development with Midway City. A copy is attached. Steve and Bob Condie are the principals of Crystal Springs.

The infrastructure was put in place in the subdivision and the first 14 lots were built and sold. Later, Condie sold the remaining lots to a man named Jake Shoff, who resold the lots to individuals, and continued work as the builder of the remaining homes.

As the economy faltered, Shoff went bankrupt on all 16 lots, walking away from homes that were 90% complete, having done none of the drainage or landscaping. All of the homes were ultimately foreclosed on by several different banks.

The HOA board inherited the problem of no landscaping and the possibility of the flooding of these homes in the early spring of this year. I was hired in April, and we have been working diligently to resolve the issues before the snow flies.

Initially none fully understand the full scope of the landscaping problem. Through engineering analysis done by Paul Berg it was determined that Shoff left large piles of

dirt on the development that altered the approved drainage plans. Ultimately the costs to resolve these issues approached \$100,000.00.

In meetings with Condie and Shoff it has become apparent that they are not going to agree on whose fault the drainage problems are. Condie claims that he installed all infrastructure and had it inspected prior to turning the development over to Shoff. He further argues that by buying all of the remaining lots Shoff became the developer, and that it was Shoff's dirt that caused the problems.

Shoff argues that he is not the developer, and that he purchased what he was told were finished lots. He argues that the infrastructure was not appropriately installed and that the as-builts did not accurately show where the utilities were. He claims he spent hundreds of thousands of dollars digging around in the development to locate and alter the utilities to make them work with the approved plans. He claims Condie breached his contract, and that this was the primary reason he went broke on the project.

There is presently \$57,000.00 in an escrow account that both Condie and Shoff must sign to release. Through the summer neither have agreed to release it, leaving the HOA in an almost impossible situation.

In August the Condie's agreed to put up \$27,500.00 to complete the grading portion of Berg's engineering plan. This left a bill of approximately \$55,000.00 to complete the drainage portion of the plan.

In August, the Mortensens, purchasers of one of the foreclosed lots, agreed to loan the HOA the \$55,000.00, but only if the City promised to enforce its Annexation Ordinance, and refuse to issue any additional approvals or building permits in phase 2 and 3 of Sunburst Ranch until "the Developer" pays back the HOA for the money spent on the grading and drainage work.

In a meeting with City officials in early August, Kraig Powell stated that the City would "enforce" its ordinance. Based on this statement the HOA proceeded to borrow the money from the Mortensens and proceed with the grading.

In the next meeting, however, Kraig expressed concern about the City's ability to enforce the ordinance and stated that it was unlikely, if Condie or Shoff sued the City, that the City Council would approve enforcement of the ordinance through litigation, due to costs. This was obviously frustrating to the HOA and particularly the Mortensens who loaned the money based on the promise the ordinance would be enforced.

As set forth below, the HOA has strong legal grounds to demand that the ordinance be enforced, and requests a promise from the City Council that no additional permits or approvals be issued on phase 2 or 3 of Sunburst Ranch until the Developer, whoever this is determined to be, pays back the HOA for its costs.

## **II. ANALYSIS OF THE ANNEXATION ORDINANCE**

I have attached a copy of the Annexation Ordinance for your review. You will note that the City agreed to annex the property where Sunburst Ranch sits, on the conditions that the Developer, who is stated as Crystal Springs Land and Cattle Company, Inc., perform certain items outlined in the attached "Annexation Agreement For Sunburst Ranch Planned Unit Development."

Section IV of the Agreement deals with the Developers obligations. Of primary concern is Paragraph G, which states in full: "The final plans for the development shall provide for the retention on-site of the difference between the existing non-developed conditions and developed conditions for a 25 year, 24 hour storm event as shown on the Plans. Developer shall also construct an off-site storm drainage discharge line to an approved location. These features of the Development shall be constructed by Developer at Developer's sold expense." (emphasis added).

As stated above, drainage and grading issues have cost the HOA \$55,000.00 to install, and it wants reimbursed for these costs. At this point, the HOA does not care who the quote "Developer" is. For purposes of the Annexation Agreement, the Developer is Crystal Springs Land and Cattle Company, Inc., which is Condie. If Condie wants to proceed with his future phases he either needs to pay for the items he agreed to install in the Annexation Agreement or prove he transferred his development rights to Shoff.

Either way, refusing to issue any additional permits on future phases will force Condie and Shoff to resolve their issues, and will likely result in the release of the \$57,000.00 that can be used to reimburse the HOA.

Further, Paragraph B requires that the Developer install "... a secondary irrigation system to provide for all outside irrigation requirements of the Development." It states further that "No building permits shall be issued until all water distribution facilities ... are fully operational and approved by the City ...". It has been determined that no irrigation water line exists behind Units 22 through 25. The line has been installed at a cost of approximately \$3,000.00 to the HOA, that it should be reimbursed for.

## **III. LEGAL ANALYSIS ON WHY IT IS ILLEGAL FOR THE CITY TO NOT ENFORCE ITS ORDINANCE**

Utah municipalities are subject to the Municipal Land Use, Development, and Management Act. The Annexation Agreement, made part of the Annexation Ordinance falls within the purview of this act. Section 10-9a-802, entitled "Enforcement" establishes that "A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter occurs" may seek injunctions, or other

appropriate actions to remedy the violation, including the refusal to issue future building permits. A complete copy of the section is included in the footnote below.<sup>1</sup>

This section establishes standing for the HOA or its individual members to seek enforcement of the existing ordinance, and further establishes that a request that no further building permits be issued without reimbursement is a reasonable request under the code.

A recent line of cases in the Utah Supreme Court establishes that failure to enforce existing ordinances can have serious consequences for both municipalities and developers.

In *Culbertson v. Board of County Commissioners of Salt Lake County*, 44 P.3d 642 (Utah 2001) the court analyzed claims under section Utah Code Ann. § 17-27-1102, which is the identical enforcement provision found in the land use code that applies to Counties, instead of cities.

In *Culbertson*, the Plaintiffs sued the Board of County Commissioners of Salt Lake for failure to enforce existing road standard ordinances. A development group named Hermes was seeking to enlarge an existing shopping center. In doing so, one of its planned buildings encroached onto an existing public street, restricting access to the Culbertson's home. Culbertson, petitioned the Board to enforce its existing road standards and a conditional use permit (CUP) that it had issued. The Board would not do so, and Culbertson sued for injunctive relief under the statute.

While the law suit proceeded, Hermes moved forward and built its buildings. Ultimately the suit landed in the Supreme Court, which held that the City had failed to enforce its existing ordinances, had illegally allowed Hermes to proceed with building within the public street, and suggested strongly that the remedy ought to be to tear down the existing buildings and restore the right of way. The court relied heavily on the fact that Culbertson had given notice of the violation and that the City had chosen to allow Hermes to proceed anyway.

---

<sup>1</sup> **10-9a-802. Enforcement.**

(1) (a) A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

- (i) injunctions, mandamus, abatement, or any other appropriate actions; or
  - (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
- (b) A municipality need only establish the violation to obtain the injunction.

(2) (a) The municipality may enforce the ordinance by withholding building permits.

(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a municipality without approval of a building permit.

(c) The municipality may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

Further, in subsequent litigation, the Culbertson's attorney's fees were awarded against the City. *See generally Culbertson v. Board of County Commissioners of Salt Lake County*, 177 P.3d 621 (Utah 2008).

In accordance with the *Culbertson* case, the Sunburst Ranch HOA gives notice to Midway City that it feels it has failed to enforce ordinance No. 97-6. The HOA wants a promise that all future building permits will be denied in phase 2 and 3 of Sunburst Ranch, in accordance Utah Code Ann. § 10-9a-802(2)(a) until full reimbursement is paid to the HOA for costs incurred to comply with items set forth in the Annexation Ordinance. If future building permits are issued without receiving reimbursement, the HOA may seek injunctive relief to stop the development from going forward, as established in the *Culbertson* case, and seek recovery of its attorneys fees to bring the action.

### CONCLUSION

The one issue that has been clear from the beginning of the problems in Sunburst Ranch, is that the HOA did nothing wrong. It got left with a complete mess, that it has worked diligently to clean up. The last remaining issue in this saga is the need to obtain assurance that it will recover its costs before future development is allowed. I have set forth the legal basis establishing that Midway City has a duty to enforce its ordinance. In my opinion, this obligation is clear, and will likely result in the release of the \$57,000.00 in escrow, thus solving the problem.

I am hopeful that this issue can be dealt with expeditiously in the meeting. There are high emotions concerning everything that has happened in Sunburst Ranch, this issue being one of the foremost.

I look forward to being in front of you on September 23, 2009.

Sincerely,

Corbin B. Gordon

**ARTICLES OF INCORPORATION  
SUNBURST RANCH HOMEOWNERS ASSOCIATION**

In compliance with the requirements of Utah Nonprofit Corporation and Cooperative Association Act, Utah Code Annotated, 1953, as amended, the undersigned all of whom are residents of the State of Utah and all of whom are of full age, hereby certify that the following are the Articles of Incorporation of Sunburst Ranch Homeowners Association.

**ARTICLE I**

The name of the corporation is Sunburst Ranch Homeowners Association, hereinafter called the "Association."

**ARTICLE II**

The period of duration of the Association shall be perpetual.

**ARTICLE III**

The initial principal office of the Association is located at 220 South 200 East, Salt Lake City, Utah 84111.

00219309 Blk 00443 Pg 00093-00095  
WASATCH CO RECORDER-ELIZABETH N PARCELL  
SUNBURST RANCH EBY, UTAH \$99.00 BY HHH  
REQUEST: SUNBURST RANCHES  
1999 NOV 08 13:39 PM FEE \$99.00

**ARTICLE IV**

Robert Miller is hereby appointed as the initial registered agent of the Sunburst Ranch Homeowners Association located at 220 South 200 East, Suite 330, Salt Lake City UT 84111.

**ARTICLE V - PURPOSE AND POWERS OF THE ASSOCIATION**

1. This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide, for maintenance, preservation and control of a subdivision known as Sunburst Ranch within this certain tract of property described as:

Lots 1 through 86, inclusive, SUNBURST RANCH, according to the official plat thereof, as recorded in the office of the County Recorder of Wasatch County, Utah.

2. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions hereinafter called "Declaration," applicable to the property as recorded or to be recorded in the Office of the Wasatch County Recorder, State of Utah, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as set forth at length.
3. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.
4. Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.
5. Borrow money and with the assent of majority of members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
6. Dedicate, sell or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by a majority of members, agreeing to such dedication, sale or transfer.

PAGE (●) INDEX ( ) ABSTRACT ( ) PLAT ( ) CHECK ( )

7. Participate with members and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and common area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members.

8. Have and to exercise any and all powers, rights and privileges which a corporation organized under the Utah Nonprofit Corporation and Cooperative Association Act by law may now or hereafter have or exercise.

**ARTICLE VI - MEMBERSHIP**

Every person or entity who is a record owner in any lot which is subject to the declaration or record or to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

**ARTICLE VII - VOTING RIGHTS**

The Association shall have two (2) classes of voting membership:

1. Class A. Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot.

2. Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease to be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

-When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

-On December 31, 2006, provided, however, that the Declarant shall transfer control of the Association after 75% of the units in the project have been conveyed to unit purchasers.

**ARTICLE VIII - MANAGEMENT COMMITTEE**

A Board of Trustees consisting of three individuals, who need not be members of Association, shall manage the affairs of this Association. The number of Board of Trustees may be exchanged by amendment of the Bylaws of the Association.

<u>Name</u>	<u>Address</u>	
Robert Miller	1632 N. Northshore Ct., Park City UT 84098	00219309 Bk 00443 Pg 00094
Bruce Robinson	1947 E. Yalecrest, Salt Lake City UT 84108	
Steve Condie	60 E. South Temple, #1325, SLC UT 84111	

At the first annual meeting the Declarant under the Declaration or members shall elect one (1) member of the board of Trustees for a term of three (3) years, one member of the Board of Trustees for a term of two (2) years, and one member for a term of one (1) year. At each annual meeting thereafter, the members shall elect a number of memberships then becoming vacant for a term of two (2) years.

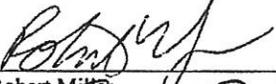
**ARTICLE IX - DISSOLUTION**

The Association may be dissolved with the assent given in writing and signed by not less than three-quarters (3/4) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for

purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE X - BYLAWS

The initial affairs of the corporation shall be related by the Bylaws adopted by the Board of Trustees.

  
Robert Miller

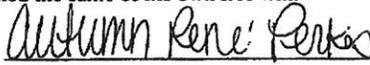
  
Bruce Robinson

  
Steve Condie

00219309 Blk 00443 Pg 00095

STATE OF UTAH  
COUNTY OF WASATCH DAVIS

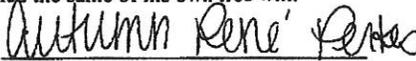
On the 20 day of October, 1999, personally appeared before me Robert C. Miller, the signer of the foregoing instrument individually and as registered agent and after being duly sworn acknowledged to me that he signed the same of his own free will.





STATE OF UTAH  
COUNTY OF WASATCH DAVIS

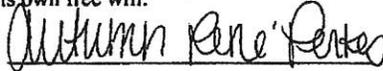
On the 20 day of October, 1999, personally appeared before me Bruce G. Robinson, the signer of the foregoing instrument individually and as registered agent and after being duly sworn, acknowledged to me that he signed the same of his own free will.

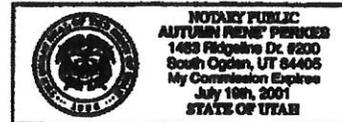




STATE OF UTAH  
COUNTY OF WASATCH DAVIS

On the 20 day of October, 1999, personally appeared before me Steve Condie, the signer of the foregoing instrument individually and as registered agent and after being duly sworn, acknowledged to me that he signed the same of his own free will.





## Key Quotes from the 3/5/19 City Council Meeting

### (1) 1:42:06 Celeste Johnson states:

"The Sunburst Ranch Master Plan Amendment which was approved by the planning commission without conditions"

Association: Disagree, the resolution approved by the planning commission was the one with the cul-de-sac not the one being proposed by this resolution, the planning commission has never seen the one you are being asked to approve tonight and they made their recommendation without any notice or consult with the Association. The Resolution the Planning Commission approved is completely different than the one before you tonight, it was approved based on layouts and open space that has now completely changed. Regardless of your feelings for this Resolution or the 2010 Resolution, this should be sent back to the Planning Commission to investigate, address and recommend conditions regarding layout, open space, runoff, retention ponds, density and amenities.

### (2) 1:46:05 Michael Henke states:

"What's being proposed now are two separate concepts and **I think back in 2017 we really had both of these concepts presented**, if I remember correctly, Kent might need to correct me, we looked at a connector road back then, we also looked at this plan that had a separate cul-de-sac and so I think this was the plan that was initially proposed and then there was this alternate plan of connecting the two together, this plan has the 36 units in it, one of the concerns from the HOA was connectivity to the cul-de-sac they wanted, at least my understanding from the HOA for Sunburst was they didn't like this cul-de-sac to be its own island, they would rather have some connectivity between all parts of the PUD, so that was one of the concerns, another concern that was brought up back in 2017 was reducing the count of units from 36 to 33, the concern was there would be less HOA dues collected unless there was some modification to how much everyone paid, and so that was also an issue that was brought up at that point in time."

Association: Disagree, in 2017 at both the planning commission and city council meetings only the cul-de-sac plan was presented, the current proposed plan had not even been created yet. The concerns the Association expressed in 2017 that Michael stated are correct, but incomplete, there has been an emphasis throughout the meeting that removing the amenities is a problem, that is correct, **but the greater concern was the location of the amenities, trails and open space**, simply shoving the amenities behind some homes without adequate parking or access will simply never work. **The 2010-07 layout of the open space and park put it at the center of the phase with great parking, access and separation from homes from the noise, and it presented itself as the crown jewel of the PUD not just some afterthought**, also another big concern for the Association was the larger lots that are on the proposal, this was raised right from the start as not fitting in with the rest of the PUD, each home currently in the PUD only has a lot size that the home fits on and all surrounding ground is Association members common area where we can easily landscape, maintain and prevent fencing.

### (3) 1:47:15 Michael Henke states:

"As for how these plans work with the code, **both of these plans are actually closer to our current planned unit development code than the 2010 plan**, we have more open space, the plan with the cul-de-sac has more of a view corridor crossing the property and so as you drive along Swiss Alpine which is a local street but it acts as collector in the area you can see all the way thru the property up to the Lundin property with this plan, so there were some very positive aspects, one was reducing density with this plan another one was creating the view corridor that is listed in our general plan, so there were some positives, some of the resistance that was ran into, I mentioned two of them, another one was the amenities themselves, originally in 2017 the amenities were proposed to be removed, the Condis have now put those back on the plans, these amenities, we do have the question of who would be able to use those amenities and so that is something we will talk about tonight."

Association: **Disagree**, the plan proposed for approval tonight is not closer to the current PUD code regarding open space, there are the same number of units (36) as the 2010 plan but all of the proposed homes are singles with larger lots, whereas the 2010 plans had several double units, **we feel it is mathematically impossible to have more open space with the proposed plan than the 2010 plan**, and again the amenities are unusable with the proposed plan. There is no question as to who can use the amenities since the entire PUD was always expected to and is required to be one Association.

(4) **1:48:57 Michael Henke states:**

"The open space would increase with both of these plans, so I actually wrote down some of the numbers for that, seems like the 2010 plan, if I remember correctly showed, I think about **36%** open space, the 2010 plan had 36 units, 6.9 acres of open space at **41%**, the cul-de-sac plan, well actually we will do the connector road plan, still 36 units 7.32 acres of open space at just over **41%** and then the cul-de-sac plan went down to 33 units at 8.9 acres of open space at **50%** open space."

Association: Clearly the connector road plan cannot have more open space than the 2010 plan, again there are more single homes and larger lots, we would like to see presented the detailed analysis of open space for all the plans prepared and analyzed by someone other than the Condies.

(5) **1:50:39 Corbin Gordon states:**

"Under the annexation agreement it does state that the developer can make minor adjustments to the lot configuration but if those changes are considered major then both parties need to agree to it. **The open space for the approval for phase 1 and 2 was all pushed up into phase 3, so phase 1 and 2 could not have been approved without having the included open space in phase 3**"

Association: **Agree**, this could not be any clearer that there is one Association, by binding the approval of phase 1 and 2 to phase 3 the city has guaranteed all Association members would have control and use of those open spaces just as they would have had if those open spaces were in each phase as was required by city rules at phase approval time.

(6) **1:51:20 Corbin Gordon states:**

"**The next document that we have that is actually binding is the amended master plan agreement resolution 2010-07**"

Association: **Agree**, again this could not be any clearer, the city attorney has given you his legal opinion that all sections of the 2010-07 resolution are binding on all parties, and all parties have followed that agreement to the letter, except for the Condies now with the resolution that is before you tonight, **the 2010-07 resolution should be enough to DENY the Condies resolution.**

(7) **1:51:53 Corbin Gordon states:**

"Under the amended master plan agreement there is an agreement to build phase 3 with the amenities and I think that was one of the concerns back in 2017, was that I think the proposal if I remember was saying they were not going to put the amenities in, the city council was deeply concerned about that and said wait no go and talk to the HOA and work that out, we are not willing to agree to not having the amenities put in, in the discussions, and it sounds like I guess there is a dispute, they (Condies) tried to work this thru with the HOA, I don't know what has happened there, it sounds like they are not agreeing to this."

Association: **Yes and No**, this statement makes it again sound like the Association is being unreasonable when in fact the Association has no obligation to agree to any changes to the 2010-07 resolution, especially if those changes are a negative impact on us, but non the less the Association met with the Condies multiple times to discuss their proposed changes but the Condies were absolutely dead set on

taking back the prime land where the open space and amenities were required to be and to only grudgingly shove the amenities into a non-accessible corner right behind homes. **It is clear that neither the City nor the Association are required to allow any major modification to the 2010-07 layout of phase 3.**

(8) 1:54:30 Corbin Gordon states to the Council:

**"You do not really have any legal obligation to alter that [2010-07 resolution], you can basically say hey look build it the way we agreed"**

Association: **Agree**, the association entirely agrees and asks the city council to follow the legal advice of Corbin and DENY the Condies proposed resolution as those proposed changes are adding no value to the Midway or the Association and are in fact taking value away from both by putting homes on prime open land instead of leaving it open for all to enjoy.

(9) 1:55:35 Corbin Gordon states

**"No separate HOA, I think there is just, there is some examples in the county where you have multiple HOAs in small communities and it just tears things to pieces."**

Association: **Agree**, as the Association presented, the City and the Condies are already bound to one Association thru resolutions and recordings.

(10) 1:56:12 Corbin Gordon states (regarding split HOAs)

**"There are things that are communal to the entire development that you get into arguments about, as far as maintenance of entry ways and open spaces and some of the irrigation lines."**

Association: **Agree**, it is the duty of the city council to do what is best for the City and clearly splitting HOAs is not, **you are under no obligation to allow split HOAs so please do not.** A strong single Association is absolutely best for the City otherwise the City Council will constantly have issues regarding HOAs in fighting appearing before them.

(11) 1:56:12 Corbin Gordon states

**"I would recommend we have one HOA"**

Association: **Agree**, the City Attorney has made it absolutely clear that there should only be one HOA.

(12) 2:04:03 Condies state

**"The current developer of Phase 2 has just had a lot of problems dealing with the HOA, the HOA wants a significant amount of say in everything and to put everything to a vote amongst the HOA members and in a year plus you have one, two units built, that's an incredibly slow development and in fact that one likely, you can see it heading for failure, we see that same issue here, we think there is just too much interest in getting involved in every aspect of the development, the original CC&Rs passed in this development back in the 90s and then has been amended twice have always provided that phases 2 and 3 had the option of electively being part of original HOA or not, and we don't have that legal option, there is currently a lawsuit pending, the lawsuit is over the issue of whether phase 3 has to be part of the original HOA or not, it is very clear and I think Corban can address it, very clear in the declaration there is no obligation to be part of that HOA, subsequent to the build out of this phase it may be advisable to have one HOA, that may be a fine thing but during the building process we think if we are subject to the HOA it is going to result in failure, you're going to have a phase that just doesn't get built and it is going to be an eye sore up there, you're going to have real problem and that is just not something we want, we want this project to be completed and finished in a timely manner and had it not continued to take the time of the city staff, it's probably taken too much time of the city staff, we want to get this project completed, that's the dispute that is going on."**

Association: **Disagree**, the Association has never put anything to do with Phase 2 out for a vote of the members and we have had minimal contact with phase 2 and have never delayed them. The Association has gone out of its way to support and help phase 2 where ever we can. When we told the phase 2 developer what the Condis said he was furious and stated **"I can promise you I have never said that"**, the Condis called the phase 2 developer before the last meeting and asked him if they could use his name to state that he has had such a substantial hard time building and the phase 2 developer stated **"None of my hard time building has been any part of the HOA"** he told them it was "simply me, I have taken longer on these houses to build because I kind of use them as when I am not busy I run up there". **BTW, it took 17 years for all of the homes to be completed in phase 1.**

(13) **2:10:47 City states**

"Hold ups with the HOA on that kind of stuff"

**Condis state**

"That is one thing but for instance there have been votes, the HOA has held votes as to what color the front door should be and put it out to an entire vote of the HOA and that is just an unworkable situation from a build out perspective you just can't do that, there are other issues besides that but that really highlights some of the issues that are being faced"

Association: **Disagree**, we would like to say something stronger than disagree but won't. As the Association has already stated we have never had an Association vote on any issue with phase 2.

(14) **2:13:35 Condis state**

"The Condis of crystal springs built out the first 12 or 13 units, if you look at those first 12 or 13 units the quality of construction, the quality of those units far exceeds what was built later by the other builders."

Association: **Disagree**, of those homes built by the Condis we have had one house that sunk at the foundation enough that the doors to the deck would not open and the owner had to pay for a company to come in and dig down to the foundation and jack it up, we had another unit that had leaked from the chimney for years and had to have the chimney and roof connection rebuilt, another unit had the sewer connection fail and the front yard sunk by feet and had to be fixed, filled and sodded back in at Association expense and that unit still has the ground under its front deck settle many feet, there are several units that have had some of the rock facades fall of, the front sidewalks and back patios on several units have sunk, some over a foot, and nearly all of the first units built by the Condis have grading problems where drainage is going towards the homes and some have had basement floods, the Association has paid for and regraded three of them so far and has budgeted money this year to regrade 3 more.

(15) **2:14:43 Celeste Johnson states**

"If it even makes sense to pursue this resolution right now."

**Corbin Gordon states**

"My analysis on this is twofold, number one, what we don't want to do is be in a situation where we are giving the land authority from the city away to the HOA and just saying that unless you agree to this were not going to do anything, so I think you need to analyze this independently and look at the plan to determine if you feel like this is a better plan and you can put conditions on whatever you want to do as far as this proposal, but I don't think that if, I mean the concern last time was get HOA approval before you come back, but that was specifically the amenities, with that resolved I think you are probably OK there, the issue of one HOA, two HOAs, I mean you are going to fight that out, that's a really difficult scenario there, the reason that I was asking questions is you can put a condition on there if you want that it would all be one HOA"

Association: **Agree and Disagree**, the association **agrees** with Celeste, it make no sense to pursue this resolution right now, **disagree** with Corbin that the main concern last time was the amenities, as we have stated before it goes far beyond just the amenities, the main concern is the location of the amenities, **agree** with Corbin that the council needs to analyze this independently and determine which is the better plan, **clearly the 2010 plan is superior.**

(16) 2:17:45 Corbin Gordon states

"That ultimately the HOA does not have veto power over what you are deciding"

Association: The Association feels this statement is misleading the council into believing you have no obligation to enforce previously approved and binding resolutions and recordings. The Association believes the City Council are very honorable and dedicated to do what is right for Midway City and its residents and we strongly feel the phase 3 modifications in the resolution before you tonight is not in the best interest of anyone but the Condis. **The Association would support this resolution if all references to the Condie proposed modifications were replaced with all the requirements contained in the 2010-07 resolution.**

(17) 2:17:53 Condis state

"Quick question on the CC&Rs and the obligation, we think it is obviously quite clear that paragraph 3.05 of the declaration states no obligation to annex or develop, declarant has no obligation here under to annex any additional land and additional land is defined as Phase 2 or 3 to the development or to develop or preserve, so we think it is quite clear, but that is a matter for the court and however the court resolves or decides it we are bound by it, both sides are bound by it."

Association: **Disagree**, The CC&Rs were written **by the Condis for the Condis**, the HOA members never voted for any versions of the CC&Rs. The City did not approve the CC&Rs, they are not bound by the CC&Rs and they do not enforce the CC&Rs. **Anything written into the CC&Rs that is contrary to City rules or legally binding agreements cannot be overridden by CC&Rs.**

For example the CC&Rs cannot state that the height of homes in the development can be up to 40 feet since that is contrary to city rules, they also could not put into the CC&Rs that cul-de-sacs in the development are allowed to be over 500 feet in length.

The city approved Phase 1 and 2 which are part of the Association without the city code required open space and specified a binding agreement that the required open space for the those phases, and thus the Association, would be part of phase 3, these approvals and recorded documents legally bound phase 3 to be part of the Association and this cannot be undone by the developer simply putting a statement in the CC&Rs stating they don't have to.

The city has stated many times and in multiple documents that it has always considered all phases of Sunburst Ranch PUD to be one development and one Association and the Condis have voluntarily accepted, signed and recorded these documents.

While the Condis now state that they never agreed or intended for all phases of the development to be part of one Association we point to the "**Articles of Incorporation Sunburst Ranch Homeowners Association**" that the Condis created and recorded 11/8/1999 that state the Association is "**Lots 1 through 86, inclusive, Sunburst Ranch, according to the office plat thereof, as recorded in the office of the County Recorder of Wasatch County, Utah.**", this makes it absolutely clear that the Condis always accepted and intended on one HOA.

(18) 2:23:20 Condis state

"We allowed the water to go into the upper pond when it was flooding the basement in the first home in Phase 2"

Association: **Incomplete**, the Condis did open up the upper retention pond as a carrot to get their changes to phase 3 approved but as soon as the Condis did not get their way they closed the pond off,

again sending everything down to phase 1 and posing a flooding problem for the Association. Regardless of who is responsible to take care of the runoff from Swiss Mountain Estates it certainly is not Phase 1 and 2 but yet that is where everything ends up. The Condis could have easily mitigated this problem by not closing the upper pond but they chose to close it in order to cause the Association problems because we would not support their resolution. Leaving the pond open would have had no impact or cost to the Condis.

The Condis statement that having the upper pond open would cause costs to the developer is without merit, Swiss Mountain Estates would and could easily scoop out the gravel during heavy runoff times, in the long run the pond and runoff would be the problem of the Association not the developer. Some years ago when the pond was open Swiss Mountain Estates would periodically clean out the pond with their bobcat that is up until Condie called the Sheriff on them and claimed they were trespassing and then pushed dirt up to block it off, sending everything down to phase 1.