Gentlemen:

Regarding the letter announcing the proposed amendment to annex Lots 18–25[1] into Roosevelt Ridge HOA, here are my concerns:

1. **Legitimacy of the Board to Act**
   I am concerned that the current Board of Directors for Roosevelt Ridge HOA was not lawfully elected and therefore does not have authority to act on behalf of the HOA:

   A. Can the directors give "proof of notice" (Bylaws §§ 4.5, 4.11(b)) for the meeting whereat the election was held? (During our phone conference on December 17, 2018, the directors informed us that the meeting was not noticed in accordance with the Bylaws and that Roosevelt Ridge had not used the US Mail in several years.)

   B. Can the directors demonstrate that proxies were delivered to the HOA Secretary by the proxy owner, as required by law? (During the phone conference you said the HOA has never had a Secretary.)

   C. Can the directors demonstrate that the election was held pursuant to CCIOA, which requires a "secret ballot" for contested elections?

   D. Can the directors confirm no candidate counted any ballots, as required by CCIOA?

   E. Can the directors legally justify only two seats on the ballot instead of the requisite three?

   F. Can the directors confirm the election results by showing me the minutes for the April 2018 meeting when the election was held, as required by the Bylaws and CCIOA? (You said Scott Schorer never kept minutes.)

   G. Can the directors confirm that the participation of Lots 18–24 in the election, both on the ballots and in the booths, did not taint the results?

   H. During our meeting on December 17, 2018, the directors assured us the HOA attorney "certified the election results." Does this certification address these concerns about the election? I would like to see it.

[1] Lot 25 needs a new Supplemental Declaration because the current amendment contains an error in § 5: "Roosevelt Ridge Homeowners Association now has 25 total Lots. Common expense liabilities are allocated among only 25 Lots. . ." This mistake disqualifies because Roosevelt Ridge only had 18 Lots after Lot 25 was annexed. This was the decision of *Ryan Ranch Cmty. Ass'n, Inc. v. Kelley*: "a declarant must record an amendment to the declaration actually reallocating the already allocated interests among all units . . ."

If the answer to any of these questions is "no," then this BOD may be illegitimate and unqualified to act on behalf of the HOA.

2. **Disrespectful Blindside of the Owners of Lots 18–25**

As the directors consider this point, please remember how long it took you to understand annexation. In Forest Ridge, it took us about a month before we fully grasped the subject. I know it took Ted about a month as well, and in late January he told me the other directors were still catching up.

Now put yourself in one of these Owner's position. You've been minding your own business, faithfully paying dues for several years. Then you get a notice in the mail informing you that you're not a member of the HOA and that you are expected to voluntarily annex your Lot in two weeks at an HOA meeting. Given that annexation takes time to learn, how would you feel if the directors put you on the spot by asking you to annex in two weeks? More specifically, if any of you received this letter two months ago, would you have understood it? I doubt it.

I am sure you mean no disrespect, but this is a very unprofessional approach to a very difficult situation. I think the original idea of targeting Lot Owners one at a time is much more respectful and much more professional. It may be more time consuming, but it will go a long way towards building trust, which ultimately incentivizes annexation. Regardless, I strongly advise against blindsiding anyone. This is bad form and it undermines the good faith you want to engender.

3. **Counsel's Letter**

In Forest Ridge we asked counsel to write two letters. Both times she laid down all the facts, specifying the upsides and the downsides of the issue, and she advocated for one position, which she stated was *in the HOA's best interest*. She did not let the board dictate her position. She advised that if she disagreed with us, she would explain the BOD's position and why she disagreed. This was her legal & ethical obligation *to the HOA*.

A. Jessica Miller did not state, "As the HOA's attorney, *I believe this amendment is in the HOA's best interests* for the following reasons. . ." And she should not state this. It's not true.

B. It is in the best interest of the HOA for the Declarant to accept responsibility for his colossal oversight by exercising his "Special Declarant Right." It is in the best interest of the HOA for the Declarant to pay an attorney to fix his mistake instead of the HOA paying our attorney to fix it.

C. This is a significant hole in the letter: The BOD should state up front that the Declarant has abdicated his responsibility pursuant to the Declaration and therefore the responsibility & liability to annex falls on the HOA — thus the proposed amendment.

D. The second sentence of the letter is incorrect and creates a false impression:

> "A critical issue that came up was the legitimacy of the annexation of Lots 18–25 created after the initial formation."

Lots 18–25 were *never* annexed, therefore this could not have been an issue of legitimacy. It should state:

> "A critical issue emerged during my research: The Declarant never annexed Lots 18–25 in accordance with the Declaration, which means these Lots never became legal members of the HOA. This is the reason for this letter. . ."

E. The letter contains a number of typos, too many to cite (spellcheck won't catch these).

F. I believe the most powerful argument for annexation is property values, which is mentioned once. Strong community is great, but strong property values is greater. I wouldn't send the letter, but if I had no choice, I would stress property values.

4. Excursus

A common denominator has emerged that deserves attention. On January 31 Ted informed me that the BOD decided to "move forward" past annexation and that the BOD decided to invoice Lots 18–25 for annual dues. Two hours later I cautioned the directors to beware of "bad faith," which apparently moved the BOD to reverse its decision.

Now the BOD wants the Declaration amended to allow the HOA to annex the Lots. Interestingly, the decision to amend and the decision to "move forward" share the same common denominator: In both cases the BOD relieved the Declarant of his responsibility to exercise his "Special Declarant Rights," at the expense of the HOA.

5. Questions About Citations

A. In footnote 3, Jessica Miller cites C.R.S. § 38-33.3-217(4)(a), which states:

> (4) (a) Except to the extent expressly permitted or required by other provisions of this article, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit or the allocated interests of a unit in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

I am unclear why this text from CCIOA, which allows 67% majority, controls here, but in the next paragraph of the letter 75% from the Declaration controls. Hopefully someone can explain this.

B. Jessica Miller wrote:

> "an affirmative vote for this Amendment from members holding at least sixty-seven percent (67%) of the votes of the Association, including sixty-seven percent (67%) of the votes allocated to units not owned by the Declarant"

I am concerned that the Declarant (Scott Schorer) appears to be using HOA director Ted Bertele as a placeholder for two of his Lots (1 & 3; see below). In the future, they intend to exercise a "Special Declarant Right" to subdivide these Lots to sell. Where does Ted fit in the "units not owned by the Declarant"? And does Ted need to state his conflict of interest or recuse himself in this matter?

These are my concerns,
Charlie

From: Ted Bertele [mailto:tbertele@msn.com]
Sent: Wednesday, December 19, 2018 1:40 PM
To: carolus@planetchunk.com
Subject: Re: Update

Daurice McMillan confirmed all is good, Lone Pine keeps the property. Ted gets to be the bank...

Scott is working on the annexation documentation with his lawyer for D and checking the status of the other properties.

Looking forward, this is one possible idea for Parcel C, it would be 12-18 acres depending on where we draw the blue / grey boundary...

Redraw the lines, I am lot 1, Scott is lot 2. See if we can't sell the excess triangle to either of the two neighboring lots, or we keep it.

Scott is confident he can provide an easement across the mine site for utilities, but we both agree its not ideal as a driveway.