

Dear Roosevelt Ridge HOA

We are clearly at a difficult crossroads and choosing a path forward has become a very unpleasant task for many members. There is a lot of noise out there and I am going to do my best to respond to it.

Before we dig in, I think we need to step back just a little bit and review some of the established rules that guide my responses (presumption, facts, making statements). I see a lot of opinions being stated as fact and instead of asking a question regarding an issue, these questions are being reframed to imply a different set of circumstance. This is blatantly obvious when you consider these statements:

- *Maintain the 17.5-acre minimum as currently specified by...*
- *the fact that he will have to recuse himself from declarant-related issues as a future BOD member...*
- *...we need to hire an experienced HOA attorney...*
- *...some of the current Bylaws and Design Guidelines have been changed without notice to current HOA members...*

I am not a lawyer, in fact there are no qualified members with in the HOA that can provide a legal opinion on the issues at hand, but I can read. And I have read. And not just a “few hours” but have spent days on addressing various issues that have been raised by members. When things are not clear, or concise, contradictory, or difficult to interpret, then I defer to an expert in the field. I am going to address the first two bullets from three vantage points, one from my personal point of view and one from an expert’s opinion and what the board did. The second two, I will just opine on as well as provide additional feedback on other items presented. Most of this was already covered in my letter(s) to the community, but will expand here as well.

Minimum Lot Size

The world according to Ted:

Roosevelt Ridge was developed in two phases, phase 1 and phase 2. Phase 1 has specific requirements and Phase 2 has different requirements. Lots 1-17 are Phase 1, Lots 18+ (technically, annexable area as defined by the Declaration) are phase 2. So in the case of minimum lot size, you need to consider the following;

- What Phase are you referring to?
- Is this the creation of a lot or a subdivision of an existing lot?
- What is the difference between a parcel and a lot?

In the case of Parcel D, this is an 11 acre parcel from Phase 2, which was converted into a lot. Admittedly, there is all sorts of language about lot size, so how can this be legally annexed? Of primary importance is that this was not a subdivision of an existing lot. OK, so what is the implication? The primary argument in section 12.2 (and 15.6) and has some interesting language;

...the right to subdivide any Lot owned by Declarant, provided that in no event shall any Lot be less than 17.5 acres in size.

In both paragraphs, the key word here is subdivide. The creation of lot 25 is not a subdivision of an existing lot, but the transition of a parcel of land into a lot status. You may think this is a minor technicality, but obviously it has important implications.

So what about other documents? There are numerous documents that also regulate Roosevelt Ridge, these include County resolutions, amendments and easements. Members have argued this issue referencing other supporting documents, but I believe they have actually failed to interpret them properly.

2005 conservation easement clearly states in section 4(k) *to divide the undivided parcel (Phase 2) into no more than ten lots.* There is nothing on minimum lot size regarding Phase 2.

Gilpin County Resolution SBE 05-01 part 2 clearly states: *Phase 2 shall include a maximum of 10 additional parcels...* There are no restrictions on lot size for Phase 2.

2010 Gilpin County Amendment to Resolution SBE 05-01: *deletes condition 1 and 2 and replacing them in their entirety with the following: Roosevelt Ridge final build-out shall include a maximum of 20 parcels which may be increased to 27 parcels by transferring the development rights from any of the California or Iron Cross mining claim parcels or as the County may otherwise approve at the County's sole discretion.* There are now no County Resolutions on the restriction on lot size for either phases, but this is contrary to other guiding documents.

There is nothing in the Bylaws that I am aware of that regulates minimum lot size. In the interest addressing concerns, please forward me what language [any of] you have discovered in the Bylaws that does cover lot size and I would be happy to address it.

Lastly, to voice a concern about having 50+/- lots is completely out of the question. Numerous documents, included the resolution referenced right above, restrict the total number of lots.

HOA legal advice

That whole part of about not being a lawyer and not having any qualified opinions within the community on the subject matter, well this is where that comes into play. The BOD recognized the potential nature of this issue and went to the HOA's lawyer to provide some guidance. Her distilled response, which has been provided to many dissenting members already, is below.

- Lone Pine Real Estate, LLC is selling Parcel D, the Association is not a party to that contract
- Lone Pine Real Estate, LLC could take the action to exercise its development rights without consulting with the Association or seeking its input on the Supplemental Declaration to annex Parcel D
- If the County approves the development of Parcel D, then concerns about interpreting what the County will approve is moot
- Declarant hereby reserves for itself, its successors and assigns the right to amend this Declaration to create additional Lots
- the right to reconfigure (including changing the size of) and/or replat any Lot or Lots owned by Declarant
- This is not a subdivision of a Lot but an annexation of a portion of the Annexable Property

What did the board do?

Since the Board is not party to the contract and the HOA lawyer has made it clear that the Declarant is exercising their rights, then to take any action based off of a minority's unqualified opinion is risky and problematic. Furthermore, the Declarant can sell it with or without annexation into the HOA. Annexation was favored unanimously by the board and vigorously endorsed by Mr. Nolan as shown below along with numerous calls and emails.

This is from Charlie Nolan's priority list dated 12/21/18

1. Annex Parcels C & D

Parcel D is under contract — but it's imperative that, before Parcel D closes, Scott S must exercise his "Special Declarant Rights" under Declaration §12.2(a)(i):

Section 12.2 Development Rights.

(a) Declarant hereby reserves for itself, its successors and assigns:

(i) the right to supplement or amend this Declaration and Plat to add all or any portion of the Annexable Property to the Project Area;

Annexation is a simple matter of recording a supplemental declaration at Gilpin County, and I suspect that Parcels C & D can be annexed simultaneously.

To summarize minimum lot size

There is no argument that I am aware of supported by County documents that specify a minimum lot size for lot 25 / Parcel D and that the Declarant can amend or supplement this Declaration to change the lot size if there was a legitimate restriction further deflates this argument.

Conflict of Interest

The world according to Ted

I have a target on my chest. This has been apparent since day one. When Raj decided to take out his frustrations on me personally after the Special Member's Meeting, it became even more apparent. Yes, I am the brother in law of the Declarant, Lone Pine LLC, Scott Schorer and I see my involvement in Roosevelt Ridge as a both problematic and helpful. I have a direct line to the Declarant, I am invested in the vision of Roosevelt Ridge and I can move the community forward. On the flip side, some perceive me as a coconspirator bent on destroying the community for my personal gain. I try to be fair, I reach out to members to seek input and address issues, and I coordinate resources and share information. For those who doubt my true intent, sorry. I have nothing to hide and that feels pretty good. I listened to the naysayers and attempted to address what was their perception of conflict of interest by releasing a document that exceed the requirements by orders of magnitude. I stand by my statements.

So, what am I supposed to do? Well, the Colorado Revised Nonprofit Corporation Act provides guidance on Conflicting Interest Transactions, which is really the requirement, not all this noise from the periphery about "Declaring your conflicts". 7-128-501 spells out the requirements and this is what I read: The CRNCA does not care that I am related to the Declarant or that there may be a perceived

conflict of interest. The CRNCA only cares about transactions that occur where I am related to a party, that involves the HOA, where there is financial benefit, and the acting directors are unaware. So what are the facts?

- I am related to a party
- The Board was fully aware of my relationship with the Declarant
- The Board is not party to the contract
- The Board was advised that the Declarant exercised their rights to annex Parcel D

I am under no obligation to write a letter to the membership and make the statements I did, but I did it anyway to provide transparency.

HOA legal advice

Again, I am not a lawyer, nor do I pretend to be one. This is Jessica Miller's response.

The annexation of Parcel D could be argued to be a conflicting interest transaction, and it is probably not worth it to debate whether this is or is not a conflicting interest transaction. I would argue that--even if we were to accept that this was a conflicting interest transaction for the sake of argument--it is explicitly permitted by C.R.S. §§ 7-128-501(3)(a) and (c). Specifically, it was disclosed and approved by the board and the transaction was fair to the Association

To summarize

Raj Sharma made a false statement regarding conflict of interest. This is not his opinion, but included the word FACT. *the fact that he will have to recuse himself from declarant-related issues as a future BOD member.* I recognize that there are perceived conflicts, we all have them, and I made a concession to minimize my exposure (perceived or otherwise) with this statement and I continue to stand by it:

I will abstain from a vote or recuse myself from any BOD or counsel discussions involving Lone Pine Real Estate LLC, or Scott Schorer as a personal owner of a Roosevelt Ridge lot if the board unilaterally believes a significant COI exists.

We need to hire an Experienced Attorney

To challenge the HOA attorney's credentials or her allegiance to the HOA in an attempt to undermine the decisions made that run counter to perceived interpretation is a poor strategy and I expect more from this community. Jessica Miller has been providing legal services for over fifteen years and working with this HOA for two years. She has been extremely helpful addressing many of the issues presented to the board during her time here. The Board's ability to limit scope and keeps costs down while adequately addressing the issues that have come up is no small task. My efforts in conducting independent research, going to the County (with Mr. Nolan), writing opinion and providing supporting documentation has cut our expenditures by more than half. To suggest that Jessica Miller is representing Lone Pine or Scott Schorer is a serious accusation and one that should not be taken lightly. Attached is a letter from Jessica Miller to help address this. Further information on Jessica Miller and her law firm can be found at www.jhmillerlaw.com.

Changes made by the BOD

some of the current Bylaws and Design Guidelines have been changed without notice to current HOA members

Again, I am being asked to explain an inaccurate and false statement. No Bylaws were changed, if you or anybody else has knowledge contrary to this, then please let me know. As for notice on the Design Guidelines, this was provided on October 24th, 2018 via email, to the entire community and Raj Sharma responded that day acknowledging receipt and asking why there was “no vote”. I addressed it immediately:

Section 9.4 of the CCRs: "Upon expiration of Declarant's rights under this Article 9, the Design Review Committee may amend the Design Guidelines with the consent of the Executive Board. In addition, any new Design Guidelines adopted by a Design Review Committee after the Development and Sale Period shall require the consent of the Executive Board."

This is why you have an executive board.

Other Miscellaneous bits.

Mr. Nolan has worked very hard to present a number of issues to the Board and in the end, essentially shut it down. Addressing his concerns has cost the HOA in excess of \$2,000. It's a difficult place to enforce HOA policy when you have no authority. As such, the board limped through the last six months keeping essential services afloat and moving the community towards a compliant election.

The Declarant was notified of his obligations by the Board of Directors via email on January 3rd, 2019 and a list of deliverables (including an audit) was included.

Regarding communications, I have sent numerous emails, letters and had discussions covering a multitude of items. Clearly, there is something wrong with the process. As a Board, we never had a chance to organize a proper meeting. Our budget meeting for the fall of 2018 was shut down by Mr. Nolan when he insisted we use proper notice (which is a good thing) and before that mechanism was executed, the entire board was shut down for legitimacy concerns or inundated with numerous other concerns that the board inherited. Improvements will be made, this was already addressed in my candidacy letter.

The Roosevelt Ridge infrastructure committee reviewed a number of options and openly discussed them. This committee, per their charter, reviewed and discussed options and recommendations to the BOD. Grapes and Sons No Bid and recommended Black Diamond. Sterling – No Response. Coal Creek was \$160,000 for a “better quality surface”. Martin Marietta was \$568,850 to pave. Black Diamond did the material excavation, transport, resurfacing and compaction for approximately \$21,000. We made a decision and executed it. This committee should stand up again, review options and continue to make improvements.

The last thing I would like to address is the execution of this Q&A session. I have tried to address the misinformation that is rampant, but I know it will continue. There is no moderation and questions asked

or issues raised are being presented in a biased manner. This is inappropriate and causing more harm than good. If you have a question, please feel free to ask away, but consider tone and think about what you are asking while removing preconceived notions.

So where do we go from here?

Well, to say that I am disappointed with the situation is an understatement. To see this community divided in such a way and see members disseminate statements that are contrary to fact is disheartening. All of you have a choice to make and you know where I stand. You know what I have done for this community and what I have the potential to do. I am running for a position on the Board and I fully support the nominations of Mike Wallace and Lee Mayberry.

Thank you for your consideration and hope to continue serving this great community.

Ted Bertele