

## **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Court Order, the Covenants, Conditions and Restrictions (CC&Rs) for the Pueblo Del Sol Property Owners Association are no longer in effect.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 who 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.**

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. Membership in the PDS POA is inherent in being an owner of a lot in PDS POA. In the past, the ownership of a lot contractually attached the property to the CC&Rs. It was a legal obligation to comply with the CC&Rs if you purchased a lot in PDS POA. Now, with the expiration of the CC&Rs, these mandatory obligations became voluntary. The PDS POA and its managing Board of Directors can no longer enforce any covenants upon the individual lot owners.

b. Although 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 and its common areas. The PDS POA and the non-profit corporation, remain intact until it is dissolved by the choice of the members. That can only happen if 2/3 of the members 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 defaults in its good standing with the Arizona Corporation Commission.

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

OPTION #1: Continue to operate the PDS POA and meet all its obligations to protect and maintain the common areas, meet all its legal and financial obligations to ensure liability insurance remains in effect, maintenance of the common areas, pay for

legal services as may be required, pay utilities and services the PDS POA uses, and cover administrative costs associated with outreach and communications with members via various means. **Success of this Option is contingent on a majority of Owners paying a voluntary annual assessment sufficient enough to meet these costs. There would be no penalty or consequence to owners deciding not to pay the assessment.**

OPTION #2: Dissolve the PDS POA altogether in accordance with the By Laws and Articles of Incorporation. This would require 2/3 of the owners agree to donate the common areas to a non-profit organization or government entity willing to take over all responsibilities for these lands and their intended usage. Divesting the common areas would essentially terminate all decision about future use of these lands by whomever assumes ownership. Alternate use and/or development of the Common Areas would be within the confines of any applicable regulations, zoning, and utilization restrictions that may exist today and in the future. **There are no guarantees about future use of the common areas. It is considered unlikely that 2/3 of owners would ever agree to divest themselves of the common areas.**

OPTION #3: 100% of all members agree to draft new CC&Rs that would again attach all properties to new CC&Rs. The new CC&Rs would be focused mostly on common area maintenance and less or no emphasis on individual lot restrictions. The critical function of new CC&Rs would be to set the a mandatory Annual Assessment to obligate members to pay their equal share (1/346). Transfer of Ownership would not terminate the membership agreement in the PDS POA as it would run concurrent with the land. **However, a single abstention or non concurrence out of the 346 owners would negate this option. This Option, although it is legally acceptable to create a new covenant protected community, is probably impossible to implement.**

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

The Board of Directors has decided to pursue Option #1 in the hope that sufficient owners voluntarily support it. It is estimated that a strong majority of owners will recognize the importance of sustaining the operation of the PDS POA. Also to voluntarily ensure good quality community maintenance conditions and their own properties in well maintained condition. Although no PDS POA enforcement is possible, all lots 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.

The PDS POA Board of Directors

Susan Lorenz    Justin Mitchell    Allan Williams    Jerry Riedel    Ted Pahle