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The Business of HOAs is Business: Commentary on “Call & Response”

By George K. Staropoli

I believe that “the business of HOAs is business” is an accurate paraphrase of the statement made by the CEO of CAI, Mr. Skiba, in CAI’s *Welcome to Ungated* forum. I must also assume that the business must be directly related to maintaining property values, the prime objective of all HOA Declarations. Just what this business is, Mr. Skiba fails to make clear. Is it a landscaping business? An architectural business? Trash collection? A resorts management company? A hotel management company?

All these businesses deal with material things and services, and not with the regulation and control of the people living within a territory. Do any of these businesses have the right to lien your home? To foreclose on your home? To tell you how to live on and in your private home? Or to make decisions for you regarding your private property? NO! In other words, the business of HOAs is really that of a municipal corporation. And those laws, that Ms. Conlon proudly makes reference to in her comments in the Call & Response article, reflect the special needs of HOAs to be treated as if they are indeed a municipal government, not to be part of a truly democratic government, but only to obtain those one-sided powers needed to achieve its goals. As Mr. Skiba clearly acknowledges, “*HOAs aren’t governmental entities per se*”, meaning that they are not de jure (by law) public governments, but de facto (in reality they have governmental powers) public governments.

These state laws protect HOAs while denying homeowners their fundamental rights, rights, which they would be entitled to if the HOA were recognized as a governmental entity, or state actor (as I’ve argued many times, but unreported in the CAI article). There are no civil penalties against HOA board or management violators, just fines, liens and foreclosures against homeowner violations, that second-class ownership group of the HOA, the group that supports and maintains the HOA. In fact, Mr. Skiba is right in the sense that state laws regard the HOA board as the “management class” as a distinct and separate class from the “employee” class of homeowners. There are no state protections of homeowners with any oversight or approval of the Declarations, or the requirement for a bill of rights. All that needs to be added to every valid Declaration is just the simple wording that the HOA is subject to the US Constitution and Bill of Rights, especially in regard to the 14th Amendment protections of homeowner rights, is. It’s that simple, but for over 33 years, CAI has not been able to support this demand.

Spears of the COCA (management hired hands in Florida), CAI, and all other HOA supporters still fail to realize that the game is up, that the state protection of authoritarian private governments is un-American. Yet, they insist that “*better bricks and mortar make a better America*” should dominate all other beliefs and values, and that the homeowners willing have

surrendered these rights for better property values – to hell with the Constitution. Sort of reminds you of those totalitarian governments, those dictatorships, where the goals of the state, the maintenance of property values for the HOA “state”) rise above all else.

What’s the big problem, CAI? Are you for the US Constitution or not? Your amicus curiae brief in the Twin Rivers case seems to say no. Could it have something to do with the grand plan for the current planned community model with “*automatic homes association*” and the creation of CAI? CAI was created some 10 years after the publication of the handbook in order to make the planned community concept with automatic homes association work. CAI well knows the document to which I refer. The one produced by the Urban Land Institute and supported by several federal agencies, including the FHA, the Department of Civilian Defense (perhaps even then they knew planned communities were a national security concern), the US Public Health Services (not for sociological studies of good communities, but matters for relating to water purification, etc as new developments tore up undeveloped acreages), Veterans Administration and Urban Renewal Administration. And, there was the National Association of Home Builders support, too. But no one from any public interest organization, like the American Enterprise Institute or the Cato Institute to provide guidance with respect to political science issues and American system of government.

I may be argued by CAI and those associations of associations -- ECHO (should be ECHOA for Executive Council of Homeowners **Associations**) -- oops, those other organizations mentioned in the Common Ground article are not HOAs, but the hired hands, the vendors who live off the HOA industry – CACM and COCOA that the handbook is not applicable today. However, not only does the handbook contain sample “guideline” CC&Rs, Bylaws, and Covenants to create HOAs, but advice on how to sell the concept to the government, to real estate agents and to unsuspecting homebuyers. And yes, I’ve always wondered where this mantra came from, the one about HOAs being democratic because homeowners can vote. Mr. Spears raises this mantra again in his comments, “*the boards of directors of community associations are duly elected*”. Well, specific instructions are given in the handbook to developers that the Declaration allow homeowners to vote otherwise problems may arise with the insistence that the association be mandatory. Period. Pure economics -- must keep those assessments coming. And no discussion of democratic principles of checks and balances, or a separation of powers, or even independent election inspectors, all what really makes a democracy work.

No Mr. Skiba, my logic regarding the application of the Bill of Rights is not flawed. You indeed admit to the validity of my arguments that “*authoritarian private governments ... are not subject to the prohibitions of the 14th Amendment*” when you wrote, “*Actually, that could be changing*”. There is no flaw in my arguments. Rather, it’s the misguided un-American attitude and insistence that HOAs not be treated as a municipality or state actor, in order that they are able to coerce homeowners into compliance without these protections for homeowners, that is flawed. Still the article quotes Spears of the COCA (management hired hands in Florida) that the industry must remain self-policing and unaccountable to the people, as it has been for over 40 years. CAI also continues to insist, and has repeatedly opposed even with several statements made in the article, that the HOA boards and management companies remain unaccountable to the state as independent principalities, reflecting what CAI considers good public policy in the best interests of the republic.

Note: I will not reply to Common Ground where my viewpoints are subject to editing by my opponents.