



October 11, 2007

The Illusion of a Democratic HOA

Bob Metcalf wrote a piece on his discovery of an unusual HOA web site, one that declares the HOA as a truly democratic organization (See [Kentlands tragedy](#)). This Gaithersburg, Maryland HOA calls itself, in its Declaration, “Kentlands Community Charter (Covenants, Conditions & Restrictions)” (See [Kentlands site](#)).

PREAMBLE ...

WE, THE DEVELOPER, PARTICIPATING BUILDERS AND ALL TITLE.HOLDERS who come to own Real Property subject to this Community Charter within the Community of Kentlands, located in the City of Gaithersburg, Maryland, affirm and subscribe to the purposes and provisions of this Community Charter and concur as to the considerable importance and value of the mission and goals of Kentlands, as set forth in this Preamble, to all Titleholders and Citizens of Kentlands.

Bob writes, “Kentlands was conceived in 1988 and according to its own website ‘is the most successful and largest neo-traditional New Urbanist project in North America.’” He continues with,

During my “visit” to the site, I noticed something called the “Kentlands Citizens Assembly”. Aside from the fact that it sounds like something extracted from an episode of Star Trek, I was interested by the use of the word “Citizen”. In my experience HOAs had “members”, but never “citizens”. I started to search the website and came across this document, the “Kentlands Citizens Assembly Members Handbook” (<http://kentlandsusa.com/kentlands/docs/MembersHandbook.pdf>).

Once you get by the introductory paragraphs that contain the obligatory property description and benign “corporate speak”, designed to soften the blow that results from a purchaser realizing that he or she is more employee than resident, you come to this remarkable passage:

“What definitively sets Kentlands apart from other homeowners associations (HOAs), though, is its democratic system of community governance. Because HOAs must, by Maryland law be organized under the laws that regulate business corporations, they are required to be governed by a board of directors (trustees). The typical result is an essentially autocratic system of governance, one to which many homeowners object because of the lack of public participation and absence of checks and balances.”

Upon reading that, I thought to myself, this should be interesting, how are they going to address that?

As you start to read through this it speaks of setting up "three branches of government".

"Kentlands has addressed some of the structural defects that are inherent in HOAs by creating a system of governance that is modeled after traditional American public government organizations. There are, in essence, three branches of government: legislative, executive, and quasi-judicial."

This was intriguing, a bona fide attempt to establish a democracy under a corporate form of government. However, the governing documents tell another story, as Bob reports. The HOA president, while innovatively, is elected by the residents, has no power whatsoever and functions as a purely administrative head. He, for example, if Kentlands were indeed a democracy with a true separation of powers, the president would be given veto powers. He is not. Repeatedly the documents say,

The affairs of the Assembly shall be governed and administered through a governing structure consisting of a Board of Trustees, a President and a Board of Code Compliance.

As more fully set forth in the Bylaws, the Citizens shall elect a President, whose prime purpose and function shall be to carry out the policies of the Board of Trustees and to act upon and fulfill such purposes and duties as are imposed upon the office of the President by the Governing Documents.

(c) Board of Code Compliance. The principle purposes and functions of the Board of Code Compliance.

(Kentlands Community Charter).

The Board of Trustees chooses its own Chairman. The quasi-judicial function, the code enforcement board, is not elected by the people nor subject to presidential appointment with Assembly concurrence. Furthermore, the division of power is not equal, according to the Bylaws: *"The primary decision-making body of the Assembly shall be a Board of Trustees consisting of no fewer than five (5) members."* The president has very limited powers: to approve expenditures under 5%, and to appoint and hire personnel. The bylaws are silent on any discretionary power to veto, but he is allowed to appoint "judges" and remove them with Trustee concurrence.

According to the bylaws, *"The Board of Code Compliance shall have such duties as provided in the Community Charter, and as further determined from time to time by the Board of Trustees."* The bylaws do have the requirement that 1 judge must be over 65, and another must be an attorney.

What I observe is an attempt to make a private, contractual government, based on a corporate model and not on the municipality model, appear to be a democracy. The illusion of a democracy fails. First, although the Preamble is worded in a grandiose manner it fails to include the fundamentals of a democracy: *"to establish justice, ensure domestic tranquility . . . secure the blessings of liberty . . ."*

Second, the creation of a judiciary committee supposedly independent of the board, the governing documents clearly state that the Board is superior to the other “branches”. Third, Kentland’s legal structure and basis rests in the CC&Rs. In those equitable servitude laws and case history precedents all favoring the HOA. There are no protections of homeowner rights, or a bill of rights stating what the board cannot do, just the right to vote and enjoy the amenities.

Fourth, the governing documents, except for the above-mentioned changes, are the same as all other governing documents with its protection of the developer and mortgage company, and rights to amend the contract, etc. If a true democracy was indeed desired, then why didn’t this community, this subdivision elect to incorporate as a separate town or village under the municipality statutes? Where all the rules are available to everyone, and need not be made up “on the fly”. Then, the Kentland governing body would be subject to the same laws as any other municipality, yet could create its own ordinances and restrict access as is accomplished today with special taxing districts.

Bob further observes that,

In **1984**, George Orwell describes a world where individual behavior and thought are controlled for the greater good, i.e., The State. Among the many methods used the one I find most fascinating is the idea of “New Speak”. The idea behind New Speak was simple, yet effective. By systematically reducing the number and variety of words, in time you will reduce the number and variety of people’s thoughts, since people think with language. Given enough time, the resulting diminution in an individual’s, and by extension, a society’s ability to form ideas will produce a self-enforcing “ideological landscape” that has been molded in the exact image of what the powers that be desire.

I submit that what Kentlands has promoted with their version of democracy is in fact and function what I have just described. It is accomplished by using the “Philosopher’s Trap”, i.e., the redefining words to fit the idea.

He concludes with,

If this misguided attempt to extricate our social and political structures from the “messiness” of true democracy is not abated, I feel that the ultimate fate of this country is to become a collection of “Kentlands” or worse, and that truly would be a tragedy.

This is the boldest example of “new speak” that I’ve come across. It is an attempt to quietly redefine this country into the [New America](#), with the merging of old values into new values to form the authoritarian [United HOAs of America](#). It is a bold attempt to create the illusion of a democracy within an authoritarian corporate structure, using old words, and old concepts and images to give them new meanings inconsistent with the values and beliefs of the America of our Founding Fathers.

Blink your eyes Alice (See [Alice in Wonderland: recognizing HOA political governments](#)) and maybe this illusion of democracy will go away. Blink Alice! Blink and restore the true American political and social scene.

George K. Staropoli