HOA "town hall" debate on AZ legislation

Today, a town with the pleasant name of Green Valley located halfway between Tucson, AZ and Nogales on the Mexican border, held a debate on the HOA reforms bills that went before the legislature. It has a population of some 18,000 residents with an average age over 72, well above the median for the metro Phoenix area of about 32 years.

In this pretty desert town, some 125 residents turned out for this debate sponsored by the Republican Party, moderated by Pat Bradley and held at the Friends in Deed office. On the homeowner side was Barbara Epperson, Executive Board member of the Arizona Silver Haired Legislature who had also spoken in favor of HB2402, the anti-foreclosure, anti-lien bill. The proponent for HOAs was none other than a CAI attorney and Secretary of the Southern CAI chapter (not the same as the Ekmark-Carpenter central chapter), Carolyn Goldschmidt.

Both sides presented their arguments well, given the rules: a 15 minute statement, followed by a rebuttal and a Q &A period. The debate lasted a little over an hour. A video documentary is being prepared and will be available for viewing over the Internet at a time specified later. If not on HOANET or HOAA, send me an email for times and dates.

It was a very informative and well mannered debate. Why such cities as Phoenix or Scottsdale can't hold such a TRUE debate is beyond me. Why the Arizona Legislature failed to conduct such a debate, followed by Q &A, by the Interim HOA Committee of 2000 in a solid methodology to arrive at the facts, is beyond me.

I keep hoping that more debates of this nature on a broader spectrum of HOA problems would be sponsored by civics groups here in the metro Phoenix area, an area that constitutes over 60% of Arizona's population. And each of these problems would themselves be handle in 15 minute debates so the whole story can be told for all to hear. Maybe then our government will perform its obligations to protect homeowners and let the truth be told.

I congratulate the Green Valley Republican Party for sponsoring this debate. It was a fine job, a true civic contribution to the community of Green Valley and to the state of Arizona.

April 21, 2004

StarMan Publishing, LLC

Scottsdale, AZ

George K. Staropoli, Publisher

Phone: 602-228-2891
Fax: 602-996-3007
Email: info@pvtgov.org

The HOA Citizen

HOA citizens are US citizens first!

May 2004

eNewsletter

Inside this issue:

Presumption of constitutionality

Getting my education with respect to our legislative process over the past 5 years, I had initially believed, naively, that these onerous HOA laws would be found unconstitutional. And that those bills would never pass the Rules committees -- that body responsible for making sure the bills were technically correct and constitutional. That didn't happen. So I looked into Arizona's Legislative Manual, all states have a similar document explaining the process and rules of the legislature, and saw, "All bills have the presumption of constitutionality". In other words, if you think not, take it to the Supreme Court and YOU get a ruling to the contrary. We saw this in Arizona in regard to a Clean Elections bill.

To my dismay, uou are protected, but many, many times you have to go to court to enforce your rights. And then I read some of the court decisions, from the USSC to state appeals courts on HOA issues, and the opinions offered by the judges in arriving at their decisions. I wondered what the hell were they doing.

I attended the Goldwater Institute / Federalist Society book forum promoting Prof Barnett's ***Restoring the Lost Constitution: The Presumption of Liberty.*** It was an eye opener.

In short, the Constitution had the presumption of Liberty by virtue of the 9th and 10 Amendments -- the enumeration of powers and those other rights not mentioned belong to the people; Art 1, SEC 1, "All legislative power **herein granted** shall be vested in the Congress"; Art 1, SEC 8, "Congress shall have

(Continued on page 2)

The Foreclosure Honey pot

[special to The HOA Citizen]

April 18, 2004

By AHRC News Services

San Juan Capistrano, California -

Michael Kolber's article - "Couple's Plight Raises Questions" (Sacramento Bee, April 18, 2004) - simply misses the point - and presents a very distorted picture as a result.

The article explores the question why the foreclosure auction took

(Continued on page 3)

... constitutionality

(Continued from page 1)

the power ... To make all laws which shall be **necessary and proper** for carrying into execution the foregoing Powers and all other powers vested by this Constitution in the Government ...." And there was the 14th amendment to apply to the states.

Prof Barnett argued that the USSC has so reinterpreted the Constitution so as to curtail our rights and subject them to government control; namely in our case, eminent domain abuse and planned community abuse. Only those rights expressly stated in the first 10 Amendments were considered as "fundamental rights" and were argumentable cases. All those laws affecting those other rights, those broad rights not enumerated in the Constitution and belonging to the people, fell into the category of a presumption of constitutionality and were not arguable. You had to relate your particular case to some fundamental right in the first 10 amendments.

You should be familiar with such arguments made by proponents of HOAs, as Barnett mentioned in general, "Show me where in the Constitution that it says you have this right". So, freedom of speech is upheld, but the loss of the homestead exemption for a particular class of citizens in not arguable because, "Show me where it says you have this right".

Also, Barnett mentioned that you may indeed cite your case as a violation of your rights under one of these 10 amendments, but obviously your opponent would call it something different and argue that it was not a violation of any fundamental right. You heard this before, if you listened to any of the CAI speeches before the legislature. We argue private contract violations and they argue a covenant running with the land. This allows the judges to decide what argument they will support and what they won't support. And, given today's attitudes and views of society by the policy makers -- called public policy -- we lose.

Enough for now. You get the picture of why we are having such a hard time enforcing the US Constitution as it applies to our rights. And why legislatures continue to ignore them to support that other hidden and implied purpose of government. You know, the one that is buried deep in the Preamble that says, "And to maintain private property rights first and foremost among all other rights expressly stated or those belonging to the people".

... foreclosure

(Continued from page 6)

real estate assessment taxes, the equivalent of private association assessments -- thereby allowing the draconian measure of immediate foreclosure and the loss of one's home without any possible recourse, especially if the homeowner had been under a financial crisis for some reason or another.

And, finally, what was also stricken was the requirement to sell the home at fair market value so the homeowner could retain as much equity as possible from the forced sale of his home. Failing to pass this provision can be viewed as cruel and unusual punishment by the HOA -- another question of constitutionality.

The committee members were all made aware of these arguments through emails, letters and in some of the media over the past few months. A copy of the April issue of ***The HOA Citizen*** was delivered to each member a day before the meeting. Yet, only the restriction on foreclosures due to fines was passed.

Let me close with this quote from the Declaration of Independence:

In every stage of these oppression we have petitioned in the most humble of terms; our repeated petitions have been answered only by repeated in-

Citizens Against Private Government HOAs, Inc
supporting principles of democratic government

HOA survival: foreclose or reserves?

Seems to be an unfair position by the legislators to punish homeowners with draconian foreclosure laws, but not punish HOA boards that fail their obligations to homeowners and the community at large. Especially with respect to maintaining adequate reserves.

Jim Wasserman, Associated Press, wrote in the ***Tucson Citizen*** that "Many states lack reserve fund requirements for privately run communities, while those with laws typically set few requirements. But underfunded reserves could threaten the 40-year-old culture of living in a privately run neighborhood."

"Many states lack reserve fund requirements for privately run communities ... at least one third have steadily deferred raising necessary assessments for fear of political conflict"

"It could be the fate of thousands of privately run communities flirting with declines by failing to spend adequately on upkeep, even as owning a home in private communities has become the nation's fastest-growing lifestyle. Amid more than 260,000 private communities nationally, at least one third have steadily deferred raising necessary assessments for fear of political conflict, and now need repairs and facelifts for which they significantly lack money, say those who monitor homeowner association finances."

… foreclosure hearing video

(Continued from page 5)

committee members.

Closing

There you have it.

The Arizona Senate Government Committee rejected the "due process" bill, as I call HB2377, sponsored by Representative Chuck Gray. It would have restored the 5th Amendment rights of due process to prevent rogue and abusive HOA boards from filing "vendetta", retaliatory, frivolous or unsupportable fines and then to lien a homeowner's property. The higher courts in several states have ruled on the unconstitutionality of fines as a governmental power, and as a result of a lack of due process protections in the state statutes.

> "the Senate committee has allowed the HOAs to continue to act with impunity"

Failing to pass this very important, self-enforcing bill, the Senate committee has allowed the HOAs to continue to act with impunity and to continue their "legalized extortion" practices to intimidate, ostracize and remove homeowners who dare speak out against the board or the HOA.

Homeowners and their advocates did manage to save an important part of Representative Farnsworth's anti-foreclosure, anti-lien bill, HB2402, thanks to the willingness of Representative Farnsworth to give his word not to modify the amended bill later in the bill approval process. An almost identical bill was defeated in its entirety last year by this committee.

The approved amendment retained the exclusion on non-assessment liens from being used to foreclose on a homeowner. However, this provision still permitted the filing of a lien and the payment of penalties and fines for frivolous, unsupportable and "vendetta" liens because the due process bill, HB2377, was defeated,

What was removed from the bill was the attempt to provide the equal protection of the laws to homeowners living in associations, as one would have expected them to be protected by the 14th Amendment, relating to the loss of their homestead exemption, taken away in 1996 by ARS 33-1807 for no reason except to validate certain provisions in the CC&Rs prepared without regulation or oversight by the developers.

Also removed was the equivalent of a redemption period -- a time period found in regard to the sale of a home as a result of the failure to pay state

(Continued on page 7)

… the honey pot

(Continued from page 1)

place at all. The original debt of the Radcliffs' was only $120. At the time of the auction, it had risen to $2,047.40. That was the minimum bid. As the house was worth approximately $289,000, there were many bidders. It sold for $70,000.

The article asks why didn't the Radcliffs did not pay off the alleged debt and then sue, or at worst, declare bankruptcy. The article then quotes Grant Nelson, a UCLA law professor specializing in real estate finance who declares that such foreclosures only happen "where people don't act rationally." Michael Kolber concurs: "A touch of irrational behavior."

What is irrational here is that there are laws that allow such foreclosures. Or maybe it is rational if you think that legislation should be made by special interest groups such as CAI, who had key legislators in their grubby little hands.

But, of course, that is not rational. A country cannot long survive when key legislation is made in whole or in part by a few who stand to reap millions at the expense of the millions. All around us, we see the crumbling of the essential infrastructure of the country because of this modus operandi. The bigger threat to the country is not the external terrorists, but those internal terrorists who devour the fundamental lifeblood of the country.

Community Association Institute (CAI) lawyers and their minions are one such group. They were the ones who got the non-judicial foreclosure provision included in the Davis Stirling Act. They had no problem doing this because their former national president, Katherine Rosenberry, was the one entrusted with writing the bill by Gray Davis and Larry Stirling. Is a homeowner association going to go bankrupt because of an unpaid $120 bill? Clearly no.

> "why allow CAI lawyers the massive power of non-judicial foreclosure?"

"But what if everybody started to do it?" asks the homeowner association. The response is simple. The overwhelming majority of homeowners pay their assessments in full and on time. Of the remaining few, only a handful are deadbeats - and these can be dealt with through small claims court. The percentage that would be collection proof is minuscule.

Hence, why allow CAI lawyers the massive power of non-judicial foreclosure? The reason is simple. Because they make a lot of money off it. One lawyer, Larry Rothman, boasted that he filed 250 liens a month. If his average fee for doing this was $3,000 each, you can do the math. Court records shows

Continued on pag 4)

... the honey pot

(Continued from page 3)

that the law firm of Peters and Freedman, operating primarily in San Diego, Orange and Riverside counties on behalf of homeowner associations have filed thousands of notices of sale on association homes.

Kolber's article quotes the recommendation of the National Conference of Commissioners on Uniform State Laws. It recommends that foreclosures be allowed to occur with brokers and financed purchases. Allegedly, "That would ensure sales closer to market value and more protection of equity for homeowners, while still guaranteeing that dues are paid."

> "The real reason is that foreclosures are a giant honey pot for so many"

First of all, Mr. Kobler should let the public know that this organization is a private one, not public. Second, he should let the public know that it is riddled with special interests. In this case, brokers and lenders would get substantial business if this proposal became law.

Indeed, Mr.Kolber's article is basically lacking any input from homeowners at the grassroots level. The closest he comes is a quote from a Consumers Union attorney that homeowners lose their homes "because they don't understand the process."

But that is not the fundamental reality driving foreclosures. The real reason is that foreclosures are a giant honey pot for so many - lawyers, managers, investors, real estate agents, title companies etc.

Until that day comes when non-judicial foreclosure is banned from the homes owned by 50 million Americans in homeowner associations, the country will continue to bleed the life blood out its fundamental institution - the home. Reporters would better serve the country if they contacted real homeowners, rather than those who profit so handsomely from the honey pot.

CAI

Save Our Homes.

American Homeowners Resource Center

Over the Rainbow video of AZ foreclosure hearing

The following is a transcript of my narrative for the video documentary titled, "Over the Rainbow", of the Arizona Senate Government Committee hearing on two HOA bills on April 6, 2004.

Opening

On April 6, 2004, the Arizona Senate Government Committee met to hear two very important homeowner association reform bills. Representative Chuck Gray's HB2377 pertaining to the requirement of associations to get a Justice of the Peace Court approval of liens for violations of the CC&Rs. This would have met the constitutionality requirements of due process protections against frivolous, "vendetta" and punitive claims of violations by association boards.

The second bill to be considered, that failed in its entirety last year, is Representative Farnsworth's HB2402, the anti-foreclosure, anti-lien bill that would have restored the equal protection of the laws to homeowners. This bill has been the objective of intensive lobbying by the business trade group, Community Associations Institute, CAI, both last year and this year. CAI is a lobbying organization of "stakeholders", but actually dominated by those groups who earn their income from associations - the lawyers and the management firms.

Homeowner advocates reject its claim of having an interest, a stake in the homeowner's private property, his home. Homeowner advocates believe that many of the problems with HOAs are related to the interference of these attorneys and management firms that have a vested interest in keeping the status quo - all the powers to the association and no homeowner's bill of rights that would be identical to and applicable to their situation -- the US Bill of Rights. Under the devise of the sacredness of no government interference in private contracts, homeowner rights and freedoms have been relegated to almost a non-existent status.

> "homeowner rights and freedoms have been relegated to almost a non-existent status."

The two sides of the argument center around the right of and the necessity for the association to survive, as current laws and the CC&Rs provide, without any reforms that would create a truly democratic community subject to the laws of the land, as homeowner rights advocates argue. You will hear from CAI, the lobbyist trade group, about the costs to the association, scare tactics that the HOA will fail, and no discussion of the rights and freedoms guaranteed to all citizens of this country by CAI, but argued by the homeowner advocates.

Let's see what took place. Please pay close attention to what Rep. Farnsworth is saying in his opening exchange with the

(Continued on page 6)