



August 9, 2022

Additional Details and a Response to Allegations Made by the Summit Park Property Owners Coalition

Even in light of having the property lien issue resolved, the Summit Park Homeowners Association (the "Association") would like to share with our community responses to the various allegations that the Summit Park Property Owners Coalition (the "Coalition") has publicly made regarding the issue of what they claim are wrongful liens emplaced by the Association for properties located in the Summit Park community. It is unfortunate that a retort is even needed, but the degree to which the Coalition has portrayed the Association and its Board of Directors requires such a response to clear up a litany of inaccuracies and misinformation that has been spread verbally and in print by the Coalition.

Background

The Association first became aware of the Coalition's concerns following signage that was posted throughout our community in the first week of April of this year that boldly stated that "YOUR PROPERTY DEED WAS CHANGED WITHOUT YOUR PERMISSION." Soon thereafter, on April 25th, the Association received a letter from the Law Firm of Snell & Wilmer demanding a release for their client, a local property owner, under a wrongful lien claim (the "Claim" or "Demand Letter"). A copy of the Demand Letter, along with a response from the Association to our members, were previously posted on the Association's website (<https://summitparkutah.net/>).

Following receipt of the Demand Letter, the Association engaged the law firm of Rosing Davidson Frost to provide legal advice on options that could be used to address the Demand Letter and those made by the Coalition. On May 11th, the Association notified the community of 1) the threatened legal action being pursued by the landowner, 2) the options that the Association was considering to address the matter, and 3) additional background information on the nature of the wrongful lien claim as the Board understood it.

Because the Demand Letter requested a release from the lien within 10 days, and, if the Association failed to release the lien, it would be subject to a fine of "*\$10,000 or for treble actual damages proximately caused by the wrongful lien, whichever is greater, and for all reasonable attorney's fees and costs,*" the Board elected to immediately have legal counsel prepare a release to that landowner, have it recorded at the Summit County Recorder's office, to avoid the prospect of potential fines or incurring additional cost by taking it to court (where a judgement could be made on the actual legitimacy of the Claim). Incurred legal fees ended up costing the Association \$3,094.45 (and to be fair, 100% of that amount collectively comes from paying members of the Association) to satisfactorily address the Claim. That total also included a full legal review of the Association's existing and proposed updates to its corporate governing documents, as well as time and effort spent by legal counsel in research and providing their legal advice on various options that could be pursued.

The release required that a legal document be drawn up by the Association's attorney and submitted to the Summit County Recorder's Office for it to become official, as the Association's Board did not – and does not – have the legal authority to provide a release letter directly to the landowner (or any other landowner requesting such a release) on its own since it would involve rewriting the corporate governing documents, resubmitted them for further legal review, and finally submitting them to the appropriate government agency so those revised governing documents would become legally binding.

On August 2nd, the Coalition conducted a mass emailing that made additional allegations against both the Association and its Board members that, in addition to the various allegations made in that posting, also made a



request for a “*final call to action*” that asked for those so inclined to send a \$250 check to the law firm of Morris Devoe by August 19th, presumably to bring a lawsuit against the Association soon thereafter.

Allegations and Responses

To set the record straight, presented below are a series of allegations made by the Coalition that the Association would like to respond to for the benefit of those interested. Please be aware that the Association’s responses below are written by those not directly involved in the legal profession, and therefore some of what follows is written in the way that was explained to us through the Association’s legal counsel.

Coalition Allegation: “*As of January 11, 2019, EVERY property in Summit Park was encumbered by the Summit Park HOA’s actions to file documents against our properties in what we believe is an illegal and wrongful lien.*”

Association Response: There is quite a bit to unpack in that statement. Whereas the Coalition may like people to believe that something illegal has been committed by the Association in terms of a wrongful lien being placed on a property, only a ruling in a court of law can make a determination on whether such a matter is legal or illegal. Furthermore, regarding the statement that on January 11, 2019, “*EVERY property in Summit Park*” had a wrongful lien placed on a property deed is quite erroneous (more on that below).

Whereas resubmission of the Association’s corporate Constitution and Bylaws did occur at the Summit County Assessor’s office on that quoted date, “*wrongful liens*” did not magically begin on that date due to the resubmission of those documents to the County on that particular date. The issue of wrongful liens (which will be explained below) actually is a relic from the original time that the Association was first created back in 1957, over which time, no current or prior member (to the best of our knowledge) of the Board were ever aware or made aware of the alleged issue until it was raised earlier this year.

Two issues come into play here on how it happened. First, the way the original corporate governing documents were originally drawn up, there was never a direct tie-in between the corporate bylaws and the associated Covenants, Conditions, and Restrictions, commonly called “*CC&Rs*,” that, over the years, has resulted in 13 separate CC&Rs being generated for Summit Park based on specific plat numbers in which lots resided. Because there was no tie-in, it could be argued that the CC&Rs were not enforceable because the Association could not claim that they had jurisdiction over them, and vice versa. Second, there was a legitimate issue that only those whose property resided in Plats A and B were required to be members of the HOA, and all those residing in other plats (Plats C through M) membership was voluntary since no language regarding mandatory membership can be found in the CC&Rs for Plats C through M. The result of all this was often confusing, not only among property owners, but also by legal professionals and title companies involved in property transfers.

The issue of wrongful lien arises because some – not ALL – property deeds may contain language that references restrictions incurred because of the existence of CC&Rs for our community. Of course, nearly all communities where an HOA exists typically have language written into their property deeds that reference the presence of CC&Rs in their community, so any actual reference to CC&Rs in a property deed is not at all unusual. Lien language (which is quite common for properties that resides in an area operated by an HOA) on some properties in Summit Park (not ALL, as claimed) were placed there by property title companies that failed to understand the eclectic nature of our HOA (e.g., voluntary or mandated areas). Ultimately, it is up to the property owner to ensure that the deed documents that title companies prepare on their behalf are accurate, and it always remains the responsibility of the property owner to check their title documents and have any identified errors corrected – and that includes amendments placed there by government agencies.

Lastly, it needs to be pointed out that the issue of wrongful lien is something that lawyers and courts have been arguing for years. It is our understanding that the original intent of the so-called wrongful lien law was to restrict what some individuals were doing years ago in placing liens on properties in an effort to harass those



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Individuals where they had some sort of issue with, or were intended to stop those with nefarious or criminal intent. That original law has, however, been more broadly interpreted by some in more recent years. Earlier this year and significantly, the Utah Supreme Court issued an opinion (*WDS v. Hi-Country Homeowners Association*) that effectively narrowed the definition that was more in line with the law's original intent. It is our understanding that any such lawsuit that implied that the Association was associated with a wrongful lien would likely have been unsuccessful and shown to be without merit.

To summarize, the issue of wrongful lien has nothing to do with when the bylaws were last updated in January 2019, nor can a claim be made that there are references to CC&Rs in property deeds for ALL properties (and I trust that the Coalition has no proof of that since they could not review ALL property deeds in Summit Park, and furthermore, we are told, there exists today a sizeable number of deeds that contain no such language). And lastly, responsibility for such language existing in some property deeds within those areas where voluntary membership in the Association resides is strictly with the title company that put the deeds together in the first place along with the property owner for failing to check the accuracy of their documents prior to their finalization.

Coalition Allegation: *"The Summit Park HOA Board filed the [HOA's Constitution and Bylaws] documents without any notice or vote to the property owners of Summit Park."*

Association Response: False. The original 1957 Constitution and Bylaws of the Association were originally enacted in 1957, and in 2019, the amended Bylaws, of which minimal changes were made from the original version established in 1957, were approved by unanimous vote by the Board of Directors of the Association at a properly noticed Board meeting on August 7, 2018, which followed all requirements under Article VI, Section II of the 1957 Constitution that states that *"the By-Laws may be adopted, amended, or repealed at any regular Board meeting by a two-thirds vote by the Directors present."*

Coalition Allegation: *"[As a result of a lien encumbering property deeds,] a group has been formed, the Summit Park Property Owners Coalition (SPPOC), to call out and to reverse this deliberate and egregious violation of our property rights."* The Coalition further states that *"Please understand YOU HAVE RIGHTS AND THEY HAVE BEEN INTENTIONALLY VIOLATED by the SPHOA Board. The Summit Park HOA continues to attempt to add rules and regulations with power they do not currently possess. It is well documented that these people know your CC&Rs."*

Association Response: As previously pointed out on how a wrongful lien may have come into existence and how the current and all previous Boards were never made aware of this issue over the years, the statement that it was *"deliberate and an egregious violation of our property rights,"* or that your rights *"were intentionally violated,"* or that the Association continues to *"add rules and regulations with power that they do not possess"* are all statements that are totally without merit. It is unclear what the last statement that *"it is well documented that these people know your CC&Rs"* is even talking about, but we can add this to this overall discussion: It is indeed ironic that the draft bylaws and CC&Rs (that were provided in draft form to the community for input earlier this year) actually simplified the existing CC&Rs and did away with legalize language that made all of those earlier documents difficult to read and understand. Those drafts were also intended to 1) do away with the 13 existing and outdated CC&Rs and pull the whole community and one set of CC&Rs (which were, interesting enough, being called the "Neighborhood Code of Conduct" to indicate that the intent going forward was not to be restrictive on what people wanted to do with their properties, nor be identified as typical CC&Rs, 2) that membership in the Association would be voluntary for all those that reside in Summit Park, and 3) that the issue of wrongful lien would likely have been identified during final legal review and fully addressed when those documents were eventually finalized.



Lastly, and quite surprisingly, the Coalition has elected to pursue what appears to be an impending lawsuit even though the Association's May 17th Board minutes – a copy of which had been posted for weeks on the Association's website for the community to read well before their Coalition's August 2nd email – clearly stated that a discussion with the Association's legal counsel was scheduled for May 27th to finalize a path forward that would, as clearly stated in those Board minutes, "*satisfactorily address the issue of property deed restrictions*" and "*result in a path going forward so the issue can be resolved once and for all.*" It was also clearly stated that it was believed that full resolution was expected to occur in July or August, which is indeed the case.

Coalition Allegation: The Association has been unwilling to engage with the Coalition and its demands.

Association Response: The Association has never once received any written or other correspondence from those that lead the Coalition. Not once. The Coalition has conducted their campaign strictly through social media outlets and emails to those so inclined to receive their messages. You may be interested in knowing that some members of the Board did attend the first public meeting of the Coalition to answer any concerns of those attending if so asked, but after being asked just one question by attendees and being asked to respond, leadership of the Coalition stated that we should sit down because "we don't need to hear no more sales pitches from the HOA." Because of that, nothing more was said by Board members, even when answers to concerns of those attending would have helped them and others in better understanding concerns of theirs.

A New Summit Park HOA...

Now that the issue of wrongful lien has been fully addressed to the 100% satisfaction of those concerned about it, the question many of you may ask is what is the future of the Association going forward. The Board has been giving that question a lot of thought, and while nothing is finalized, the following is a likely outcome:

- There are those that would prefer that Summit Park does not have an HOA at all, as it restricts their "rights" on what they can and cannot do on their property and its mere existence lowers their property value. On the other end of the spectrum, there are those that would actually prefer a stronger HOA that has strong CC&Rs in place that help maintain or increase their property values. Unfortunately, there is little in-between those two extremes. Perhaps down the road, the community may elect to put in place a strong HOA that is somewhat similar to those that exist in neighboring communities, but there is a cost associated with that, and currently, even getting people to contribute \$50.00 a year on activities that benefit the whole community has proven to be relatively difficult (approximately half of all property owners currently and voluntarily contribute to the Association). For the foreseeable future, the Board's vision is to remain a low-key and fully voluntary organization whose main goal is to continue to fortify our community against the threat of wildfire (by maintaining a robust FireWise program) and hold an annual Dumpster Days that, that in a small way, helps keep our community clean. Few could argue that those two activities do not benefit all those that live and own property in Summit Park.
- Maintaining the HOA as a non-profit corporation will allow the Association's access to funds and grants that would be largely unavailable without that status. For those that are unaware, the Association has been able to access very sizable grants (currently totaling in the \$100s of thousands) that have been used to further mitigate the chance of wildfires directly impacting our community. Not too shabby, right?
- The Association will be run more like a membership "club" whose sole purpose is for the betterment of the Summit Park community and those that call this place home. Those that wish to join the "club" will always know that 100% of all funds that members contribute to it are plowed back into the community for its betterment. It is hoped that property owners in Summit Park will recognize that their \$50.00 a year contribution goes far in helping each and every one of us that call this place home a better and more secure place to live. Those that prefer not to contribute will no longer have any say in how the HOA is operated



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since membership will be strictly voluntary with no demands placed on those that feel that there is no need to be a member or that \$50.00 a year is too much of financial burden to take on.

- The Association will do its best to maintain an annual voluntary contribution of \$50.00 a year for membership. We strongly believe that our members believe in what the Association does on behalf of the community is well worth the minimal contribution that it asks, even when inflation takes its toll on eroding what that contribution can be used for. Of course, those that do not wish to join will have no obligations whatsoever to the Association, nor the Association to them.
- The Association's Articles of Incorporation and corporate bylaws will be rewritten to reflect that it is a purely voluntary organization with no mandatory commitments by those that live in Summit Park. The CC&Rs will be done away with in full and replaced by a "Neighborhood Code of Conduct" that will not be enforced by the HOA (as they always have) but can still potentially be used as a mechanism for dispute resolution among neighbors. To reiterate that last point, there will be NO CC&Rs established as part of the Association. And for those that may be wondering, it is entirely legal to operate an HOA without having any CC&Rs in place.
- It must be recognized by the community that the commitment by those that volunteer their time and efforts to the Association has limits, including taking away from others activities that they we often rather be doing. As our community has grown, so has the number of hours spent on Association-related matters. The current Board nevertheless remains committed to answering and addressing significant concerns of the community, but the community must also recognize that the Association cannot reasonably be asked to be responsible for many matters that can easily be accomplished by residents – such as notifying the county about some road sign being down or complaining about parking issues or neighbors. Responsibilities to address such matters need to be placed more on those that have the concerns or issue in the first place. The Association simply does not have the bandwidth to continue to remain active in addressing all types of complaints and concerns that it receives. People need to simply recognize that the Summit Park HOA is not your typical HOA that you may be used to when living elsewhere and/or where a strong (and expensive) HOA exists.

In the coming months, more information will be forthcoming on how the Association will look like and be operated in the future. We will continue to be transparent to the community as things progress forward.

If you've come this far in reading all of this, apologies if you think it was too long or too detailed, but there was quite a bit to share with you. We trust it was worth your time reading through it.

All the best to those that support *YOUR* Summit Park Homeowners Association!

The Board of Directors of the Summit Park Homeowners Association