

## Southfork Property Owners Association

11605 Meridian Market View, Unit 124, PMB 147 Falcon, Colorado 80831 719-884-1262 president@southforkpoa.com

To all Association members:

### **! IMPORTANT !**

Please check the name and address used on this newsletter for delivery and verify that the person listed is the correct owner of record (property owner) for the address specified; this information will be used for issuing ballots in the upcoming membership vote. If there are any problems with the name or address, please contact the board via the contact information listed at the top of the newsletter.

Thanks!

Recently the Southfork Property Owner's Association board has found itself in the position of having to deal with a number of issues related to board member resignation and retention as well as other community issues surrounding the past actions of boards, the state of association documents, and other problems. Dealing with the situation has, unfortunately, left little time to provide communication with members about the changes that have been occurring, outside of a few meetings. In an effort to permit better understanding of what is happening, the board has prepared this letter in an effort to address the rampant speculation over the board's actions and intent. In the next month, ballots will be sent out related to these changes, so please be patient and try to become informed about these matters as much as possible.

Some sources about general association information:

<https://www.colorado.gov/pacific/dora/hoa-information-and-resource-center>

[https://en.wikipedia.org/wiki/Homeowner\\_association](https://en.wikipedia.org/wiki/Homeowner_association)

<https://www.hoa-usa.com>

<https://www.cscono.org>

<http://www.cohoalaw.com>

<http://www.ochhoalaw.com>

- 1) **Why have an association at all?** Home owner's associations currently are viewed, for situations such as those in Southfork, to be a means to protect member equity in their homes. While the county assessor may show increases in valuation, this is derived only from improvements related to building permits enacted on a property and from a "market approach" valuation (ref. <http://asr.elpasoco.com/>, C.R.S. 39-1-103(5)(a)). "Aesthetic appeal" plays no direct role, only sale prices of other properties considered similar in the same area are taken into account. The recent recovery of the real estate market has caused valuations for virtually all properties to rise, regardless of area condition. In the past, some communities have suffered from a "domino effect" of deteriorating properties resulting in losses to other residents. To counter this, associations were enacted to prevent individual properties from adversely affecting their neighbors. In a sense, this could be considered "bad neighbor insurance".
- 2) **What is a home owner's association?** The association is a nonprofit corporation established to maintain the "common interests" of its community. As such it has established articles of incorporation and bylaws that govern its operation. Recently, there has been some confusion with respect to what nonprofit and what tax exempt mean with respect to the association. The current association is nonprofit, not tax exempt. Tax exemption has not been necessary as the association has no tax liability relating to its normal activities (assessments/fees are not considered income and costs for operation/maintenance are not considered expenses for tax purposes for home owner's associations; ref. Internal Revenue Code section 1.528).
- 3) **What does the association do here?** The association has three general tasks:
  - a. Maintain "common areas". Out here, this mostly means maintaining the areas around the detention basins and adjacent to both Falcon Highway and Curtis Road. More specifically: Mowing those areas periodically and maintaining the white fence around the Falcon

Highway/Curtis Road boundaries. Additionally, things like community signs are also included.

- b. Enforcing covenant restrictions. If the purpose of having an association is to prevent some properties from degrading the values of others, these standards must be maintained uniformly. In the past, achieving this standard has been somewhat sketchy.
- c. Administrative activities. This includes things like being registered with the appropriate regulatory agencies, maintaining accounting information, responding to realtor/title company requests, maintaining documentation, establishing budgets and assessments, and member communication (yes, smell the irony).

- 4) What are covenants?** Covenants are legally binding documents that can restrict property use. Here, they were properly recorded with the county by the original developer (in 1999) and are enforceable (mostly, see further along). Because of this, all property owners within the Southfork subdivision are both members of the association and subject to its restrictive covenants. Many have believed they were not, but legally speaking, the failure of your real estate company and title company to properly inform you of their existence does not exempt you from their requirements. The only part of the covenants that cannot be enforced are those which are in direct conflict with county, state or federal law.
- 5) Is the association board going to enforce the covenants?** Yes... eventually. There are numerous problems relating to enforcement that need to be addressed. The first is the covenants themselves. They are a bit of a mess with endless references to the "Declarant" (original developer) that are no longer applicable, some restrictions that are contrary to state law, vague requirements for some items, and unnecessarily restrictive requirements in others. Please be clear that it is in no way going to be the policy of the board to enact covenants that are restrictive beyond the original document; rather, for the most part, the requirements are simply going to be relaxed or clarified. Examples will follow further on. Beyond this, changing the covenants requires a vote of the membership, and everyone will have an opportunity to review and vote on changes. Additionally, provisions for not imposing excessive financial or physical burdens on individual members need to be established.
- 6) Why were the amendments to the covenants removed?** Supporting documents validating the covenant amendment votes for those enacted following the developer amendments were not available sufficient to satisfy legal requirements (per C.R.S. 38-33.3-217 and covenant requirements of section 10; though this has its own problems, see further on). It was not that the board wanted to remove them, but that it needed to per the lawyer consultation. These will be reintroduced along with others in an upcoming ballot.
- 7) Why is the board contracting with a management company?** To date, none of the board members have been what may be considered "experts" with respect to association management. All members have simply been residents of the community willing to volunteer time (with no compensation) to help maintain the subdivision and keep the association functioning to the best of their ability. This lack of experience and familiarity with association operations has expressed itself as a less than perfect record of activity by all boards. Utilizing a management company will help in many areas of association management, including: Familiarity and experience with all the legal requirements for association operation, maintaining continuity between boards, documentation requirements and document maintenance, routine accounting and taxes, consistent availability for realtor/title company and other document requests, and covenant enforcement. Note that with respect to enforcement, the management company can only do as much as the board permits, and the board can only act based on what is written in the covenants. At this point, board members are not available to perform the accounting and realtor/title company interface functions. Without these, the association cannot effectively function. As no member of the community has volunteered to take on these responsibilities for free, it becomes necessary to engage a professional paid service to perform these functions.
- 8) What happens if the budget including use of the management company is not approved?** Without any volunteers from the community nor help from a management company, the

association will be unable to effectively function. A ballot will be prepared to dissolve the association and sent to the association membership including a requirement that the members disclose any mortgage holders for their properties (by company; not specific account). Should the resulting ballots total an amount wherein the percentage of votes to terminate the association is sufficient (per covenants section 10; but also see below), certified letters will be sent to all mortgage holders and advertisements placed in local papers for two weeks concerning the association termination (required per covenants section 29 and C.R.S. 38-33.3-217). If, after 60 days, responses from the mortgage holders are not sufficient to override the membership vote, filing to remove the association will begin. This is both a lengthy and costly process.

- 9) What changes to the covenants are being considered?** Numerous ones... Some examples:
- a. The covenants section 10 requires a 75% vote to amend or terminate the covenants; this is in direct conflict with C.R.S 38-33.3-217 which sets the maximum percentage as 67%. The state statute automatically overrides the requirement to 67% (no vote required), but it would be nice to have the covenants match the state requirements.
  - b. The covenants section 22 g does not provide an exception for flags or political signs related to the requirements of C.R.S. 38-33.3-106.5.
  - c. In covenants section 22 p, what's wrong with having a garage door open temporarily, or having hobby vehicles that are in enclosed areas or otherwise covered and not visible?
  - d. Per covenants section 22 s: No commercial business or trade shall be permitted. Why? There are countless ways to engage in business activities that do not in any way interfere with your neighbors.

There have also been many misconceptions about what requires approval. An example would be things like trees. The covenants literally only reference trees in the context of removing dead ones (22 i) and could only be considered in the context of section 22 k, which is another questionable restriction. Outside the covenants, however, please consider where you plant trees carefully. Call to locate buried utility lines before digging (particularly in the front of properties) and consider the long term potential for root related problems (you may deeply regret planting too close to septic lines).

The overall philosophy for the updates will revolve around how much the restrictions really affect neighbors. Ones that are unnecessarily restrictive will probably be modified to be less so.

Once voting is completed, the board and management company will only enforce to those elements of the covenants that have been selected by the membership. Once all proposed updates have been implemented and seem to be stable, the covenants can themselves be modified. This isn't something that should be done piecemeal, as every "official" update costs money.

- 10)What will be involved with the ballots that are being prepared?** Each property will receive a ballot, signature sheet, and return envelope in the mail. Each respondent should fill out the ballot, sign the signature sheet, and return both the ballot and sheet in the provided envelope. To be a valid ballot:

- a. There can be only one ballot per property, and
- b. The signature on the sheet must be the owner of record for the property.

For 30 days following the mailing, the ballots will be collected. A volunteer committee will then be responsible for validating, counting and reporting the ballot results. This volunteer committee must be composed of residents who are not on any board of the association nor have any immediate plans to become a board member (ref. C.R.S. 38-33.3-310).

Future association activities, for any function requiring voting, will also be done via written ballot.

Further reference:

The C.R.S. references refer to the Colorado Revised Statutes; online, the most up to date statutes can be viewed (though the interface is a little obtuse) at: <http://www.lexisnexis.com/hottopics/Colorado/>

The association documents can all be viewed at: <http://www.southforkpoa.com/index.php?page=240>

**The Association needs your help!**

**Volunteers are needed for the validation and counting of ballots! Roughly in early to mid-November, volunteers will be needed for a one day ballot counting meeting. There will be a brief instruction session describing the process that will be used to ensure accuracy and secrecy of the ballots, followed by the performance of the ballot validation, counting and reporting. Individuals performing this function cannot be current board members, or prospective board members. Please contact the board if you can help!**

Southfork Property Owners Association  
11605 Meridian Market View, Unit 124, PMB 147  
Peyton, CO 80831

**«Address1»**

**«Address2»**

**«Address3»**

**«Address4»**

**There will be an association board meeting on Thursday, September 21st, 6:30pm at the Falcon Fire Station Meeting Room (7030 Old Meridian Road, Falcon, CO 80831)**

Association members are invited to attend and observe the proceedings and there will be an opportunity to inquire about the ongoing changes following the proceedings.