To the East Mountain Home Owner,

The East Mountain HOA board is seeking feedback concerning an issue that has the potential to impact HOA membership of certain homes within our subdivision and which could result in a significant loss of income for the HOA. The issue at hand is whether the East Mountain HOA includes all of the plats in the East Mountain Subdivision.

HOA Options:

The board feels there are four potential options the HOA could pursue (additional details pertaining to each option are included below):

1. **Let Plat J Go**
2. **Continue as is; eventually use a lien on homes anywhere in the HOA (including Plat J) if they do not pay monthly dues/fees or abide by other HOA requirements**
3. **File a "Friendly Lawsuit" in court**
4. **Disband the HOA**

****Please note – The board is seeking feedback from ALL of the homeowners, please return the attached form by October 15, 2018 (via USPS, in person, via email/text an image of the form, etc.)**

Background Information:

When the development was initially laid out and presented to the city, the developer defined the entire subdivision as members of the HOA, with the responsibility to maintain and upkeep the common areas of the subdivision. (See the Apr. 1994 CC&R's Declaration of properties and several documents presented to the city during the planning phases of the subdivision found on the online share).[1] The April 1994 version of the CC&Rs was modified and subsequent versions define only Plat A (the first homes developed in this subdivision along Tennessee Ave)[2]. The latest version of the CC&Rs filed in December of 1994 only describes the land defined as Plat A in the description found in Article III of the CC&Rs. Article 3.03 allows for the annexation of additional properties and article 3.04 puts limitations on the ability to annex the lands. Exhibit A of the CC&R's does describe the entire subdivision and identifies all of the land in the subdivision. Article 3.03 describes a "Supplemental Declaration" that is to be filed when new Plats are developed and recorded with the city. The "Supplemental Declaration" then makes the property described therein subject to the CC&R's. Article 3.04 lists several limitations on annexation including a cause that states, "Declarant's rights to annex land to the Development shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah."

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[1]HOA documents found during the HOA Board's research, including the various versions of the CC&R's, plat maps, & lawyer opinions can be found at the following online share: https://drive.google.com/drive/u/1/folders/0B7-gQN7NOWR1bkE3M0ptMHFsZzQ?ogsrc=32

[2] Plat maps of the subdivision have been downloaded from the county land records website: http://www.utahcounty.gov/LandRecords/Index.asp

Several Supplemental Declarations were filed after December 1994 annexing Plats B, C, D, E, G, & I. Supplemental Declarations were not filed for Plats H, J, K, L, & M. Plat J is the largest of these plats with 23 lots. The other four plats are a total of 4 homes. The entire HOA (including the plats in question) totals 121 homes. Plat J represents 19 % of the HOA. The question at hand is does the HOA included the homes that were not annexed via a Supplemental Declaration. The HOA board was advised by the management company's lawyer of potential case law that would support inclusion in the HOA. That since the homeowners and developers of those lots paid HOA dues from the beginning this would suggest a voluntary commitment to be part of the HOA. Another argument supporting the claim of inclusion is the access to the benefits provided by the HOA from the beginning of the plat development, which has been the case with snow removal and common area access.

HOA Options discussed:

The board discussed the options and came up with the following list of pros/cons for each option:

1. Let Plat J go
    a. This assumes it is legal to do so, meaning they never really were part of the HOA due to the paperwork error.
    b. If legal to do so, then the board does not really need to do anything except stop seeking fees/dues from them, and stop patrolling for landscaping/etc. violations. Because it assumes they are not really part of the HOA, there is no need for a general HOA membership vote to move forward.
    c. Plat J members would also like to have legal paperwork ensuring their title is clear of HOA membership to prevent confusion in the future.
    d. Per the changed opinions at the annual meeting, assuming they correctly speak for all Plat J members, the HOA would be able to keep all past dues.
    e. This is largely an easy way out (if legal).
    f. Downsides for the HOA (other than possibly being illegal per CC&Rs) include not being the best long-term option for the rest of the HOA due to loss of participation by about 1/5 of the current HOA.
    g. The loss of membership could result in increased dues to cover the costs of maintenance and upkeep of the common areas and entrance.
    h. This is the Plat J members' preferred option as expressed at the annual meeting.

2. Continue as is; eventually use a lien on homes anywhere in the HOA (including Plat J) if they do not pay monthly dues/fees or abide by other HOA requirements.
    a. This assumes the precedents brought up by the FCS (management company) Attorney prevail, and the original developer's intent, as well as everybody's understanding and behavior prior to ca. 2017, was correct.
    b. If legal to do so, the board does not need to do anything as this has been how the HOA has operated since its creation.

c. Plat J members do not like this option, as they would prefer to leave the HOA.
d. This could lead to legal issues in the future, particularly if/when liens are placed, or further action is taken, for those not paying dues or otherwise abiding by the CC&Rs. If the liens are found to be incorrectly placed, the resulting fines and potential back pay of previously collected dues could bankrupt the HOA.
e. If assumptions that Plat J is part of the HOA are correct this is the best option for the HOA financially.

3. "Friendly Lawsuit"
    a. In summary, let a judge rule on what is best, as it seems clear to the board that this could go either way depending on which evidence (history, benefit and intent vs. missing paperwork) takes precedence.
    b. This also should ensure finality in the decision, as it would involve a court decision.
    c. This could help with neighborhood relationships, as it does not involve the HOA Board "choosing sides".
    d. This option is definitely legal to pursue, where the prior two could be argued either way.
    e. It is unknown how "friendly" this really is, even if the HOA agrees to pay all legal fees regardless of outcome.
    f. It is unknown if the Plat J expression regarding back dues at this past meeting would still apply with this option. If so (assuming that is agreed upon by all of Plat J members) this is still an expensive option, but may work. If not and those are all at risk, then that risk may push the HOA to one of the other options.
    g. The past year and change of research has likely accumulated most of the documentation required for this; prior case law may apply and be found/applied based on attorneys involved.
    h. Downside for the HOA is there is no certainty in outcome, only in price (expensive due to attorney fees covered, even if only the HOA's side). If found in Plat J's favor, back dues could also be jeopardized.
    i. Downside for Plat J members could be attorney's fees unless covered by the HOA regardless, and it may go either way.

4. Disband the HOA - This option would be extremely difficult to achieve because of the shared ownership of common areas and legal requirements laid out in the CC&Rs
    a. This may not immediately meet the desires of Plat J, but eventually, if possible at all, removes everybody from the HOA.
    b. Downside for HOA members (vs. the HOA legal entity): maintenance of common areas, including the entrance to the neighborhood which the board feels provides a value to all by its very nature (including Plat J members, who primarily enter and exit via that entrance).
    c. What about the basketball and volleyball courts? Likely could not be sold for building anything due to belief that one or both are part of a required water retention basin/area. But, could still possibly be sold.

d. What about the playground? Could possibly be used to build a new home, but that would be a significant loss to the community. For any who bought assuming there would be a very convenient playground they (or their renters) could use, it is a loss. Could potentially sell to somebody, discussion with Provo City suggests that Provo City would likely not be interested in taking over a park this small.
e. What about UDOT right of way along State Street? It is believed that the area outside the fence/wall must be maintained. The board is not sure what UDOT expects from the HOA or homeowners along State Street.
f. Conversations with Provo City suggests that the city does not care that much about whether or not the HOA continues on its own.
g. If the HOA does not provide value to match dues, this may be the right option for everybody.
h. HOAs are designed to add value to a neighborhood, so the loss of one may, in many people's eyes, result in a loss of value for all those within, even without losing the paid-for amenities provided due to less access to enforcement of CC&Rs, etc.
i. To avoid this, particularly if Plat J and the fence/wall issues can be resolved well, dues could likely be decreased as the HOA does not need to make money just for the sake of making money. See the Reserve Study for more.

East Mountain HOA – Request for Feedback

Name: _____

Street Address: _____

Signature: _____

HOA Options to Consider:

1. **Let Plat J Go**
2. **Continue as is; eventually use a lien on homes anywhere in the HOA (including Plat J) if they do not pay monthly dues/fees or abide by other HOA requirements.**
3. **File a "Friendly Lawsuit" in court**
4. **Disband the HOA**

As a homeowner in the East Mountain Subdivision what is your first choice? _____

Second choice of action to pursue? _____

Third choice? _____

Any feedback or comments (including potentially additional options to consider)?

_____

_____

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**Please return this completed form to a member of the HOA board by October 15, 2018. If you are unable to return the physical copy, please scan or take a picture of the completed form and email it to board@eastmountain.net

HOA Board:

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