

# **Responses to Patrick Coolican's SUN Article on March 30, 2012**

<http://www.lasvegassun.com/news/2012/mar/30/dont-question-your-hoa-or-you-might-get-arrested/>

- **PC said:** *"They were advised to bring the issue to local law enforcement, meaning [Henderson Police](#). Bad advice."* This might seem true to some with the benefit of hindsight; but, it was not true when we filed our report, and it must not be true today.

We were told by METRO Police and District Attorney's Office that the only way to get law enforcement assistance on such a suspected crime was to file with our police jurisdiction—the Henderson Police Dept. We had no other choice, and we had no reason to mistrust HPD.

When asked, I advise citizens to follow our route in reporting suspected crimes to HPD. I doubt today's HPD and Henderson City leaders will make the same mistake as before.

- **PC said:** *"Frank and Stebbins accused two board members of "forgery" — essentially knowingly signing a false statement — which was probably also imprudent."* We had a lawful duty to make the report. Perhaps PC did not fully appreciate this point?

As a two-year former board member and retired senior military officer in procurement and logistics, I had hard evidence of what I considered to be potential fraud, conspiracy to commit fraud, and other violations by certain individuals.

But, it was "prudent" to keep this initial police report focused on a simple issue that seemed to be readily provable under NV Statutes, i.e., a willful forgery of an official record as defined in NRS205.095.

It was the least action Stebbins and I could initiate, and we were advised that if other crimes were found during an investigation, it would be HPD's duty to expose them.

We could not anticipate that representatives of a city government would apparently elect to cover up evidence of the suspected crime and punish us for asking for help.

In addition, Tim Stebbins and I were advised by NV Supreme Court Chief Justice Hardesty in 2009 that we had a lawful duty to request police assistance if convinced that a crime had been committed. Stebbins and I never had any doubts about the accuracy of our report.

- **PC said:** "Attorneys for Frank and Stebbins successfully had the venue of the case changed because a member of the HOA board was also a substitute Henderson judge."

That unnamed SCA director with widespread conflicts of interest throughout Henderson

City government was **Ann Small**—SCA Board Secretary, Member of the NV Bar, former Assistant City Attorney, and former Henderson Judge Pro Tem. Her broad conflicts of interest within Henderson City Government included the City Attorney's Office, Police Department, Municipal Judges, City Council members and staffs.

Since Ms. Small was a member of the SCA Board, and a named participant in the HPD interview concerning the investigation, she had a significant risk of being included in the list of named defendants if the District Attorney had elected to prosecute the case.

For more evidence details on this case, see:

<http://www.anthemvoice.org/arrest.html>

### **Comments on Postings to the SUN web site:**

<http://www.lasvegassun.com/news/2012/mar/30/dont-question-your-hoa-or-you-might-get-arrested/>

1. "houstonjac": This poster is misinformed and/or willfully distorting the facts.

The case records are mounted at:

<http://www.anthemvoice.org/arrest.html>

(a) Some suspected statute and federal law violations were reported in writing to the Sun City Anthem board by me as a sitting director in 2008. The facts were well documented; but, after seeking advice from the tax preparer/auditor, the board's attorney, and the Treasurer, the board majority rejected the submitted facts.

(b) The NV Real Estate Division refused to act in 2009 because the violation was not covered by NRS116 and it was over a year old. NV Statutes assign all such financial misconduct to law enforcement agencies and HPD was so informed.

(c) I asked the board in 2008 to go with me and a resident tax expert to the IRS to clear up the dispute, but I was threatened by the board with a law suit if we did not stop. If the board and finance committee was certain of its tax actions, why would it behave as aggressively and defensively as it did?

(d) After leaving the board, I teamed with Tim Stebbins to file a request to Henderson Police Department for a criminal investigation. The HPD assigned a Sgt. who admitted he was not qualified to conduct such a white collar crime investigation.

(e) HPD failed to provide independent, financial expert assistance to review the felony allegations involving the \$3.7 Million of apparently mismanaged surplus assessments.

(f) Without having independent financial assistance, the HPD Sgt. arbitrarily ruled in

favor of the Sun City Anthem board members and explained the City was obligated to "support its HOA boards".

(g) But, instead of dropping the case, the City of Henderson arrested us and charged us with a criminal misdemeanor of "knowingly" filing a false police report. This action prevented us from asking the Clark County District Attorney for a second opinion on the HPD investigation until after the arrest case was resolved.

2. "BChap": It would be a sad day for Henderson justice if such crass government misconduct was allowed to skate by without consequences. It is impossible for some people to "enjoy their retirement years" if they are shown they cannot trust their government to be fair and ethical.
7. "Birdiedreamin": This case is about government abuse of power and crass violations of laws. It is not about what is wrong with HOAs and their subcontractors. Those are different issues to be handled in different environments.
8. "pundit11": Everything in this anonymous comment is FALSE. It appears to have been written by someone close to those involved with the alleged criminal violations. It reflects how desperate some are to try to misdirect and confuse the public.
10. "JDhenderson": This post was also written by those close to the alleged crimes. Public distortions and smearing the reputation of the highly trained and competent IRS Revenue Agent (who cannot defend herself) is the only hope they have to try to stall justice. This dispute is about gross waste and abuse of the HOA member funds. Millions of dollars were claimed to have been "returned" to the 7,144 unit owners of this community in 2008, but the IRS proved the board lied. This appears to be violations of state and federal crimes. And, no issues were "settled" by HPD's incomplete/biased investigation. It is possible that more investigations into the SCA income tax case will come in the future.
11. "forthetruth": Another false, anonymous post. Considering the serious criminal consequences of the allegations involving both state and federal law violations, no one should be surprised that certain individuals would be willing to say anything and do anything to try to avoid prosecution. Would anyone expect certain individuals to admit to such allegations?
- 14: "VillaRep": This post is essentially accurate. The HPD Sgt. appeared to rely solely on the distorted/false information provided by Sun City Anthem directors, auditor and attorney. No independent forensic accounting expert was consulted by HPD to try to sort out the truth.

But, the IRS Revenue Agent totally validated the police report submitted by Stebbins and I.

In 2011, the ENTIRE City of Henderson leadership had to recuse themselves and to subcontract the prosecution and judge to North Las Vegas. This was due to serious conflicts of interest with the SCA Board Secretary/Attorney Ann Small (former Henderson assistant city attorney and judge pro tem). Ms. Small's relationship with City leaders was used as the reason for recusing themselves and transferring actions on the case to North Las Vegas.

It seems that if there had been honorable intentions by the City of Henderson on this case, the City would have dismissed the obviously biased "misdemeanor" case **instead** of subcontracting it to NLV. In addition, this Henderson decision to outsource came AFTER the IRS had already reported its audit findings that corroborated our police report. What were they thinking?

18. "doubledown deadender": This is an incorrect conclusion about Civil vs. Criminal cases.

Over one year of concentrated due diligence activity was spent by Frank and Stebbins with competent attorneys, former judges, IRS officials, and others preceded the filing of the case in Nov. 2009. HPD could not have accepted it as a criminal report unless the allegations were compelling and the format was correct. It was accurate and NOT a "civil" matter.

22. "steelpulse": The FACT was that Sun City Anthem had accumulated over \$3.7 Million in SURPLUS income by 2007—in addition to over \$5+ Million already stashed in the reserves.

The definition of "surplus HOA assessments" is when all bills have been paid, all reserve accounts are full, and there is assessment cash left over at the end of a year. To avoid having to pay income tax on such surplus assessments, they MUST be refunded to members.

Such surpluses cannot be used for anything but refunds. The money is owed to the members. It is a potential state and federal crime and case of tax evasion to fail to refund tax exempt surpluses AFTER the board had claimed on its tax return to intend to do so.

25. "express445": The HPD arrest was apparently a political tactic to prevent us from appealing to the Clark County District Attorney for a review of the case.

The so-called "independent auditor/tax preparer" was also the regular association auditor for over a decade--when the violations occurred. That CPA was asked by the board and HPD to vouch for his own work while claiming to HPD he was an "independent" auditor.

It seems certain that the HPD failed to verify what the board told it in response to the allegations, and HPD failed to get a truly independent audit/review of the evidence.

It should also be remembered that Del Webb/Pulte's recommended auditor/tax preparer CPA

Gary Lein has been the auditor for both Sun City Anthem and Sun City Summerlin. Both of these two largest NV HOAs have had major income tax disputes with the IRS in 2011-2012.

In addition, it is not feasible to hire yet another company or persons to oversee the HOA Board and professionals. When crimes are suspected, NV Statutes require citizens to ask the appropriate law enforcement agency to investigate their concerns.

29. "azsk8fan": Each year the HOA board is required to balance the accounts. When bills have been paid and the reserves account is maxed according to statute criteria, such "HOA surplus assessment funds" MUST be refunded to the members to avoid paying income tax as directed by IRS Revenue Ruling 70-604.

30. "BobRobey": This post is correct except perhaps members might not have to pay for the board's tax failures. Some people believe the auditor/tax preparer's professional liability insurance, the board's liability policy, and the board's D&O insurance can be required to compensate SCA members for the losses due to the tax preparer's professional mistakes.

One way or another, SCA members must not be required to pay for the auditor's and board's knowing and willful gross negligence.

31. "Aaronboy": Actually, the "state" does not "control" the management company. HOA management companies are not licensed by the State. NV only licenses the "Community Managers" who may or not be employed by a "management company".

In this case, the SCA management company is RMI. RMI brags it is the largest and best HOA Company in Nevada; but, RMI's results in Sun City Anthem cannot confirm those claims.

RMI has passed a long procession of unqualified/inexperienced Community Managers through Sun City Anthem since 2006. Shame on the Sun City Anthem boards, auditor, attorneys and committees for paying RMI the highest market rates to use our organization as a training ground for its novice community managers. What a profit windfall for RMI!

Sun City Anthem is the second largest HOA in Nevada. It requires highly experienced management for its annual \$8 Million budget, massive common facilities, and many millions of dollars of reserves. The financial losses related to the combination of inexperienced board members and inexperienced community managers appear to be huge. And, RMI may have earned some corporate liabilities for its apparently poor business practices at SCA.

39. "Xtlman": HOA "concepts" sell homes. The concepts are not bad. The problem is how the laws and rules are exclusively designed and implemented to favor the for-profit business and attorney interests of the companies selling goods and services to the HOA boards.

There are no constitutionally-mandated “separation of powers” for HOAs between the Executive, Judicial and Legislative branches of state government. Everything in HOAs is controlled by the Real Estate Division and the fatally flawed and possibly corrupted Commission for Common Interest Communities.

There is no such thing as “justice” for homeowners in the HOA system. The reaction by the HPD in this case shows that local governments have conflicts of interest with HOA boards.

HOA Boards are favored over homeowners at all levels of government. The evidence is clear that NV authorities favor boards over homeowner interests in disputes. And the NV Judicial Branch organizations route homeowners to the Real Estate Division--even when they know that NRS116 has no jurisdiction over financial disputes.

The whole HOA system is designed to demoralize homeowners and get them to succumb to dictatorial boards. There are reasonable ways to repair and/or replace such outrageous statutes and regulations, but many more homeowners are needed to help make it happen.

Candidates for the NV Legislature in 2012 should be required to respect homeowner (voter) needs vs. the for-profit business interests. Campaign contributions from the HOA trade organization members (CAI) cannot be allowed to continue to destroy HOA owner rights.

40. “NVFisherman”: Sun City Anthem has been serviced by auditor/tax preparer Gary Lein, CPS for over a decade. He was also the auditor/tax preparer for Sun City Summerlin. Mr. Lein has also been the “auditor representative” on the Governor-appointed Commission for Common Interest Communities for many years.

While Mr. Lein has recently stopped offering his services to SCA, his decade of IRS-discredited professional advice is just a small sign of the quality of his past work. There were many other CPAs involved over the past decade with SCA’s board and finance committee. But, as was seen during the Enron fiasco, being a trained CPA does not display anything about a person’s competence, ethics, professionalism or compassion.

44. “Harley”: You do not seem get it. Stebbins and I are smiling ear-to-ear after being released from being viciously attacked for over 2 years by the City of Henderson! Free at last to tell our story!

And, we are looking forward to receiving just compensation for such outrageously vicious government, board member and professional abuse against us and our families.

In addition, the \$1.35 Million owed by the board to the IRS may be recoverable/refundable to members via the various liability insurance policies of those organizations and individuals

involved. That growing tax liability is a big problem for the involved directors and advisors.

46. “Abbinett”: Good points—good questions! You might want to consider supporting our homeowner coalition working to solve these major HOA problems. Again, we believe the HOA “concepts” are not inherently bad. We see the “HOA governance system” has been fraudulently designed, implemented and managed to the advantage of government and trade association members. Upgrade or replacement of the flawed governance system could make NV HOAs viable for the long-run.

47. “steelpulse”: The reason why this matter has been so blown out of perspective is because I served on the SCA Board from 2007 to 2009.

I speak from first-hand knowledge, and I am willing to do what it takes to hold appropriate people accountable for their misconduct.

As a former senior military commander, professional contracting officer and small business owner, I know how to recognize fraud, how to gather evidence, and how to pursue accountability for criminal acts.

Until some HOA board members are finally convicted for their criminal violations, the abuse will continue to expand.

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