

Welcome All

*We the People for the People
are pleased to present our 3rd Forum.*

Last Call !

Explaining the 'NO' Vote

Declarations and Articles of Incorporation

the Truth and Lies

October 24, 2018
We the People for the People

Last Call! Truth & Lies - Explaining the 'NO' Vote

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Please Note:

Information and opinions presented tonight are those of the presenters and are not to be construed in any way as legal advice or legal opinions. All of the presenters are Village Residents and are not attorneys. If you desire legal advice please consult your attorney.

Welcome All

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Our Speakers Tonight:

- **Gene Garner** Resident Owner Since 1992
- **Tom Blakeman** Resident Owner Since 2015
- **Robert Busse** Resident Owner Since 2002
- **Jim Langford** Resident Owner Since 1998

Moderator and Host:

- **Lorri Street** Resident Owner Since 2015

Thank You For Joining Us !

Our Format Tonight

- **Declarations & Articles of Incorporation**
 - *What are these things anyway?*
- **Review Declaration Vote Items (12)**
 - *Why you should Vote NO*
- **Review Articles of Incorporation Vote Item (1)**
 - *Why you should Vote NO*
- **Lies and Truth**
- **Q & A – Discussion**

What are “Declarations”?

- The **‘Constitution of the Village’**
 - Established Village & **Foundation Governing Rules**
 - Define the property and the boundaries
 - Declare the **Developer** and his **Rights**
 - Declare the **Members** and their **Rights**
 - Create POA as a non-profit corporation
 - Define POA role and responsibilities

Why are “Declarations” Important?

- Declarations **‘Run with the Land’**
 - Apply to and Transfer with all lot and home sales
 - Define all Common Properties, Easements* and Reserved Properties
 - **Continuity Stability Basis for Investment**
 - Never meant to be changed frequently
 - Changes have an effect on **Property Values**

**More on Easements Later*

How can “Declarations” be changed?

- Developer may **Assign** his **Rights**
 - **Article XIV, General Provisions, Section 4.**
 - *“The Developer reserves and shall have the right to assign, transfer or convey any reservations, rights or obligations of the Developer . . .”*
 - **Last done April 5, 2011**
 - **HSV Protective Covenants – Chapter 1. General**
 - *‘Assignment and Assumption of Developer Rights’*
 - » **Power to Appoint A.C.C. Members**
 - » **Power to Amend, Rescind, or Add to the Protective Covenants**

How can “Declarations” be changed?

- Developer may Assign his Rights
- Members have Voting Rights
- Developer has Voting Rights
- POA has No Voting Rights
- Declaration Covenants and Restrictions may be amended - Article XIV Section 1. Duration
 - *every seven (7) years*
 - *2/3 Vote of Owners in good standing*
 - *majority shall constitute a quorum*

How can “Declarations” be changed?

- Developer may Assign his Rights
- Members have Voting Rights
- Developer has Voting Rights
- POA has No Voting Rights
- Declaration Covenants and Restrictions may be amended
- No Mention of Removing Rights

Only BOD can call for a VOTE

What is POA's defined role?

- Declarations – Page 1

- ... **“construction and maintaining** *of the water system and the sewer system*
- ... **maintaining and administering** *the other community properties and facilities*
- ... **administering and enforcing** *the covenants and restrictions*
- ... **collecting and disbursing** *the assessments and charges” . . .*

What is POA's defined role?

- Declarations – Page 1

*There is no mention of POA
having a Developer Role or
Partnering with developers*

What are “Articles of Incorporation”?

- The legal entity for the corporation
- Originally recorded April 20, 1970
- Governed by Act 176, “Nonprofit Corporation Act” of 1963 in The State of Arkansas
- May be amended by vote of the Board of Directors
- Nonprofit corporations may choose to be governed by a newer Arkansas law (Act 1147 of 1993) ONLY with majority Vote of Members

Why are “Articles” Important?

- The legal framework for POA to exercise its duties as defined in The Declarations
- Authorizes and defines the Board of Directors
- Defines the original incorporators and the purpose for incorporation
- And, would declare, if Voted in, the governing law which would then apply (Act 1147 of 1993)

DECLARATIONS

- Twelve (12) items up for Vote
- Each item to be voted on individually
- We will review them one at a time

**Proposal 1: Article II, Sections 2-3.
Additions to Existing Property.**

- **Makes POA a Developer**
 - Gives POA equal status to the Developer
 - Tries to take away Developer “**Rights**” of CCI
 - Contrary to POA’s defined role
- **No effect on CCI “reserved properties”**
 - Already inside the Village boundaries
 - CCI can develop regardless of vote
- **Gives POA right to add property**
 - ***Without any VOTE BY THE MEMBERS***



Proposal 2: Article III, Section 2. Voting Rights.

- **Purpose: Equalize number of votes per class**
 - Currently Developer has 10 votes per lot
 - Currently Member has 1 vote per lot
- **Good Idea?**
 - Maybe, but CCI only has about 70 lots (700 votes)
 - Maybe, but seems to contradict Article XIV, Section 4
 - “The Developer reserves and shall have the right to assign, transfer or convey any reservations, rights. . .” (underscore added)
- **What would you do?**
 - If you were the Developer?
 - If someone tried to take your Rights (votes) away?



Proposal 3: Article VI, Section 1. Plan for Construction and Maintenance of Common Properties: Water System and Sewer System.

- **Complicated Wording. Claims to:**
 - Reduce unplanned financial liability
 - Allows ‘developer’ to share costs (*note lower case “d”*)
 - Delay improvements 24 months
- **Drawbacks are significant:**
 - Only applies to new properties added to Village
 - “**ALLOWS**” - No Guarantee costs paid by ‘developer’
 - Depends on agreement between POA and ‘developer’
 - Existing thousands of undeveloped lots not affected
- **If you liked the Jessieville sewer deal . . .**
 - Change totally removes the prohibition wording
 - POA/BOD could sell water and sewer at their will



Proposal 4: Article VI, Section 2. Plan for Construction and Maintenance of Common Properties: Ways of Access for Vehicles.

• **Similar to Proposal 3. Claims:**

- “POA has no obligation to accept permanent maintenance responsibility”
- “assure(s) newly constructed streets meet construction quality standards”

• **Wow! Sounds Good! BUT:**

- Actual **wording is wrong**
- POA - ‘**OPTION**’ to accept sub-standard construction
- Does not require a construction standard up-front
- After it is built: **Too late for “no obligation to accept”**



**Proposal 5: Article VI, Section 3.
Lakes, Golf Course, Permanent Parks
and Permanent Recreational Plots.**

- **Complicated, Convoluted Verbiage**
 - Suggests we might want another Lake or Golf Course
 - Big “D” here, little “d” there, everywhere a “d” “D”
- **They think the “d”eveloper will**
 - Maintain the new “whatever” for 5 years?
 - What flavor Kool-Aid are they drinking?
- **POA may add “reasonable construction standards”**
 - To the Protective Covenants
 - Guess what? ***They Already Did - UNREASONABLE***
 - **Now want Voters to condone their actions**



**Proposal 6: Article VIII, Section 3 (c).
Extent of
Members' and Associate Members' Easements.**

- **Tricky wording – Good sounding claims**
 - Protection from subsidizing (dues) of delinquent owners
 - Protection from “infraction of its published rules”
- **Protection already exists**
 - No need for change
- **New infraction penalties EXCESSIVE**
 - Creates indefinite privilege suspension
 - Excessive, punitive and arbitrary **POWER**
 - Residents already experiencing the infraction **POLICE**
 - **NO EVIDENCE AT ALL OF ANY NEED**

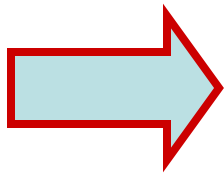


Proposal 6: Article VIII, Section 3 (c).

Members

Extent of
Associate Members

agreements.



WARNING

If the violation is not brought into compliance, you may be assessed a monetary penalty of \$150.00 and \$25.00 per day for each unresolved infraction(s) or served a citation by HSV Police Dept. for violations of Garland/Saline County Ordinances

HSV POLICE DEPT COMPLIANCE DIVISION

SORRY WE MISSED YOU

LOCATION OF VIOLATION:
[Redacted]

Exterior Property & Premises
Details: [Redacted]

Parking:
Details: [Redacted]

Make: [Redacted] Model: [Redacted]

POA Decal # [Redacted]

License # [Redacted]

Other:
Details: Political sign may be posted 25 days before Vote Nov. 5th (2 signs)

This violation must be resolved by:
[Redacted] 10/21/18

Compliance Investigator Name:
[Redacted] Ken Gilmer

Date [Redacted] 10/12/18 Time [Redacted] 11:18

If you have any questions please call the Compliance Division at 501-922-5562

Bill Hill Printers 9232



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**Proposal 7: Article VIII, Section 3 (i).
Extent of
Members' and Associate Members' Easements.**

- **The 'Yes' claims again sound good**
 - Removes veto of one class Member over another
 - Basically an anti-Cooper proposition
 - Applies to transfers (sales) of Common Property
- **But, Why do we need this at all?**
 - Would CCI object to a sensible Common property transfer?
 - What Common property needs transfer anyway?
 - Is this the POA “postage stamp size” example?
 - Really? Trying to steal another of CCI's **Rights?**



**Proposal 8: Article VIII, Section 3 (j).
Extent of
Members' and Associate Members' Easements.**

• **This One is All New**

- Sale or abandonment of Common Property
- Requires BOD approval only; No Vote
- Supposedly for “*minor*” pieces of Common Property
- Requires “*written consent*” of contiguous property Owners
- Requires only “*notice*” of adjacent Owners within 200 feet

• **It is BAD Because**

- No definition of what “*minor*” actually means
- Adjacent Owners should have “*written consent*”

• **How would you like a 7-11 or Hi-Rise**

- Within 200 feet of your home?



**Proposal 9: Article X, Section 3.
Basis and Maximum of Annual Assessments.**

• **Gives BOD Right to Increase Assessments**

- Every Year up to 5%
- Does away with CPI based adjustment
 - » *CPI, Southern Region, All Items*



• **Do we Really even need to discuss this?**

- CPI basis was just adopted in 2013
- CPI used by all military and government pensions
- No incentive for BOD to economize
- **Increase would never be less than 5%**
- How much did your Social Security go up last year?



**Proposal 10: Article X, Sections 4-6.
Covenant for Maintenance Assessments.**

- **Applies to Annual and Special Assessments**
 - For Capital Improvements (*think Town Center*)
 - Or, Increase Basic Annual Assessment (*think two-tier*)
- **Same selling points as other Vote proposal**
 - Equalize number of votes per class
- **The Same Objections Apply - Plus**
 - *Do you want it Easier to Increase Any Assessments?*
 - Same sections were modified just 5 years ago
 - What's changed since then?



**Proposal 11: Article XI, Section 1.
Architectural Control Committee.**

- **Again, Wonderful Promises**

- Strengthens Standards
- Protects Property Values



- **Baloney**

- Just went from 3 Pages of Protective Covenants
- To 120 Pages – Thanks to our BOD
- What more do they want? **JUST MORE POWER**

- **And leave in the 45 day override clause**

- Heaven Help Us!



**Proposal 12: Article XIV, Sections 1 & 6.
Duration.**

- **The Worst for Last – Duration**
 - Want to change Declarations every year
- **Declarations “Run with the Land”**
 - Similar to the U.S. Constitution
 - Never meant to be changed frequently
 - Frequent changes Lower the Value of your property
- **Votes cost Members BIG \$\$\$\$\$**
 - Look at the mess we are in right now



ARTICLES

- Only one (1) item up for Vote
- Extremely important
- Approval requires majority Vote of the Members

Proposal 13: Articles of Incorporation Amendment



- **Spin Lines:**

- Addressing many unanswered questions
- Establishing modern standards
- Providing clear complete rules

- **More Baloney - It's all about Power**

- *Reduces potential liability of Directors**
- *Officers and Directors may give business to their personally owned or controlled outside companies**
- *No need for a Board Meeting to have a Vote**
- *Corporate transactions less likely to be challenged**



** 1994 University of Arkansas Law Review*

– **More info to follow later in the presentation**




Your Vote Counts



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Our Format Tonight

- **Declarations & Articles of Incorporation** 
- **Review Declaration Vote Items (12)** 
- **Review Articles of Incorporation Vote Item (1)** 
- **Lies and Truth**
- **Q & A – Discussion**

Lies and Truth

- Declaration Changes Not Related to CMP
- Cooper Has Left the Village
- No Problem With Trust
- 1993 Non-Profit Corporation Act
- Easements and CMP
- Spending / Budgets / Personnel
- Failed / Not Needed Projects

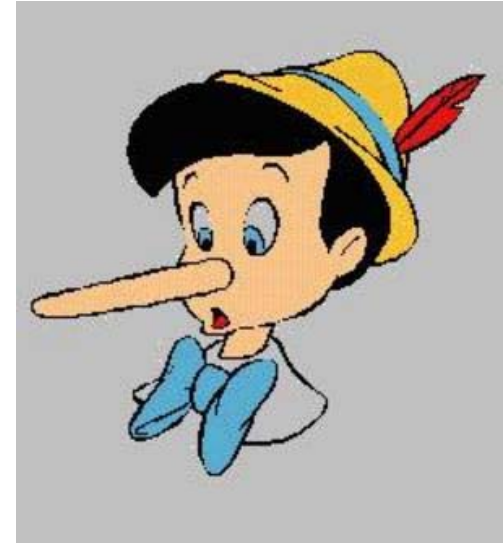
Declaration Changes Not Related to CMP

- **Proposal 1**
 - BOD Right to add property
 - No Member Vote
- **Proposal 3**
 - Relies on POA / developer agreements
 - No Member Vote
- **Proposal 8**
 - BOD Right to sell common property
 - No Member Vote
- **Proposal 10**
 - Easier Member Vote to increase Assessments
 - Provides funding for development



Cooper has left the Village

- Owns 70 Lots & 1200 Acres
- Check the 4 x 8 Signs
- Opened office at East Gate
- Spoke at WTP meeting
- Meeting requested with BOD
- Document Request Issues
- Opposed to the Vote / See His Website
- Announced new Development / Activity
 - Maderas Gardens & Cumbre



No Problem With Trust

- **Salary Disclosure**
- **Document Disclosure**
- **Executive Sessions**
 - **No minutes**
- **13 Proposals At One Time**
 - **You must be kidding**
- **Members had no input on measures to be voted on**



1993 Non-Profit Corporation Act



- **Actions by BOD**
 - Can be made without meetings
 - As Long as quorum is reached
- **Only 10% Member Quorum needed for Vote**
 - Unless Bylaws provide otherwise
- **Once new law adopted - Irrevocable**
- **The 1963 Act is not hurting us**
 - If it Ain't Broke. . . Why fix it????
 - Can always be adopted at any time after further study

1993 Non-Profit Corporation Act



- **A Large Complex Law**
 - **Some Good and Some Bad Parts**
- **Questionable BOD Issues**
 - **Meetings allowed to be out of state**
 - **Written consent is OK – no meeting needed**
 - **Any communications means is OK (simultaneous hearing)**
 - **Directors not liable for mere judgment mistakes**
 - **Only liable for gross negligence**
- **Three classifications of Non Profits**
 - **Public Benefit**
 - **Religious**
 - **Mutual Benefit**
- **HSV is an IRS 528 Mutual Benefit Corp**

1993 Non-Profit Corporation Act

- **WTP Position:**



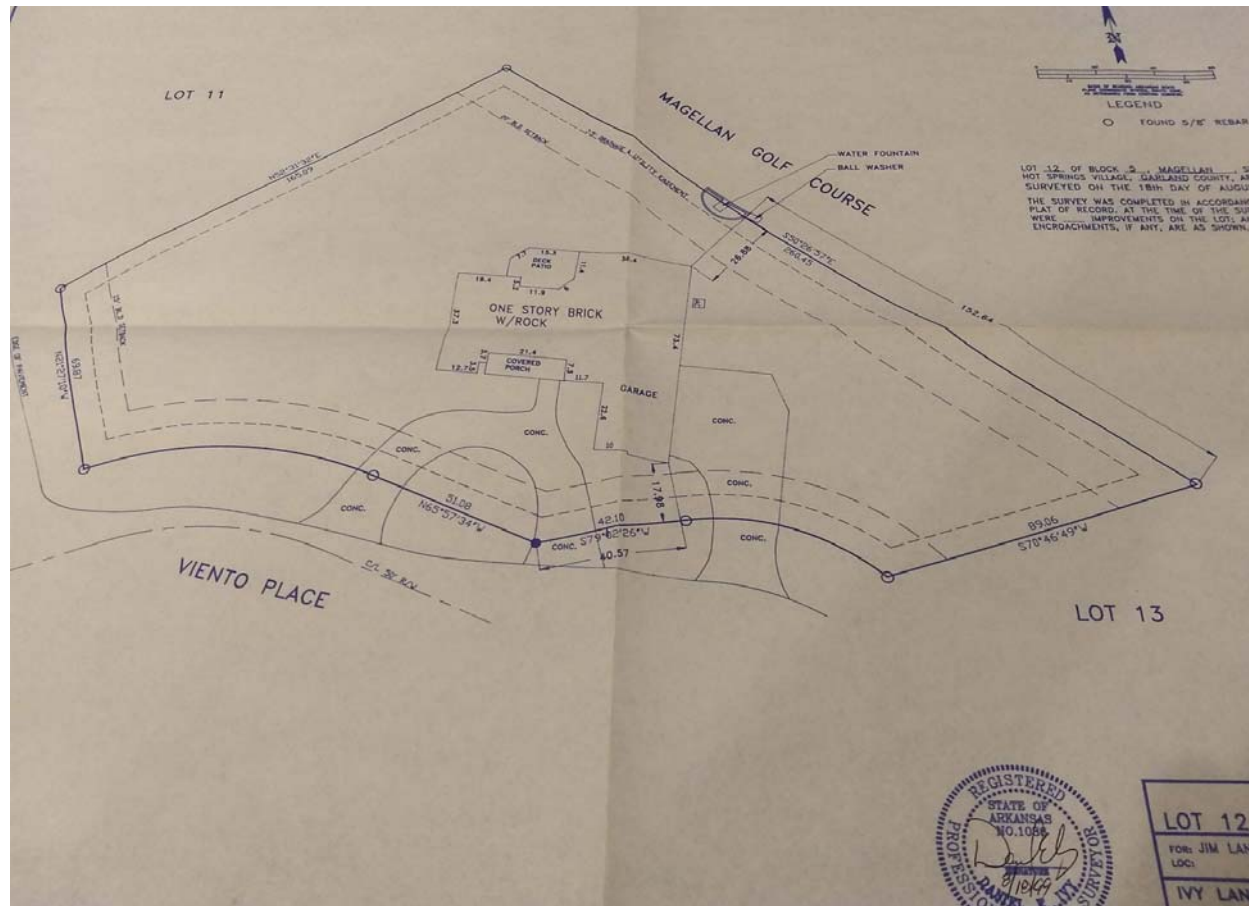
- We believe that where we are as a Village, with all the mis-trust between Property Owners and Nalley and the Board of Directors, that there are more bad items than good ones in the 1993 law.
- We recommend Voting NO on changing to the 1993 Arkansas Non Profit Act.

Easements and CMP

- Article IV, Utility Easements
- All Reserved to CCI
- In, Over and Under The Properties
- 7-1/2 foot Strip
- Along All Lot Lines



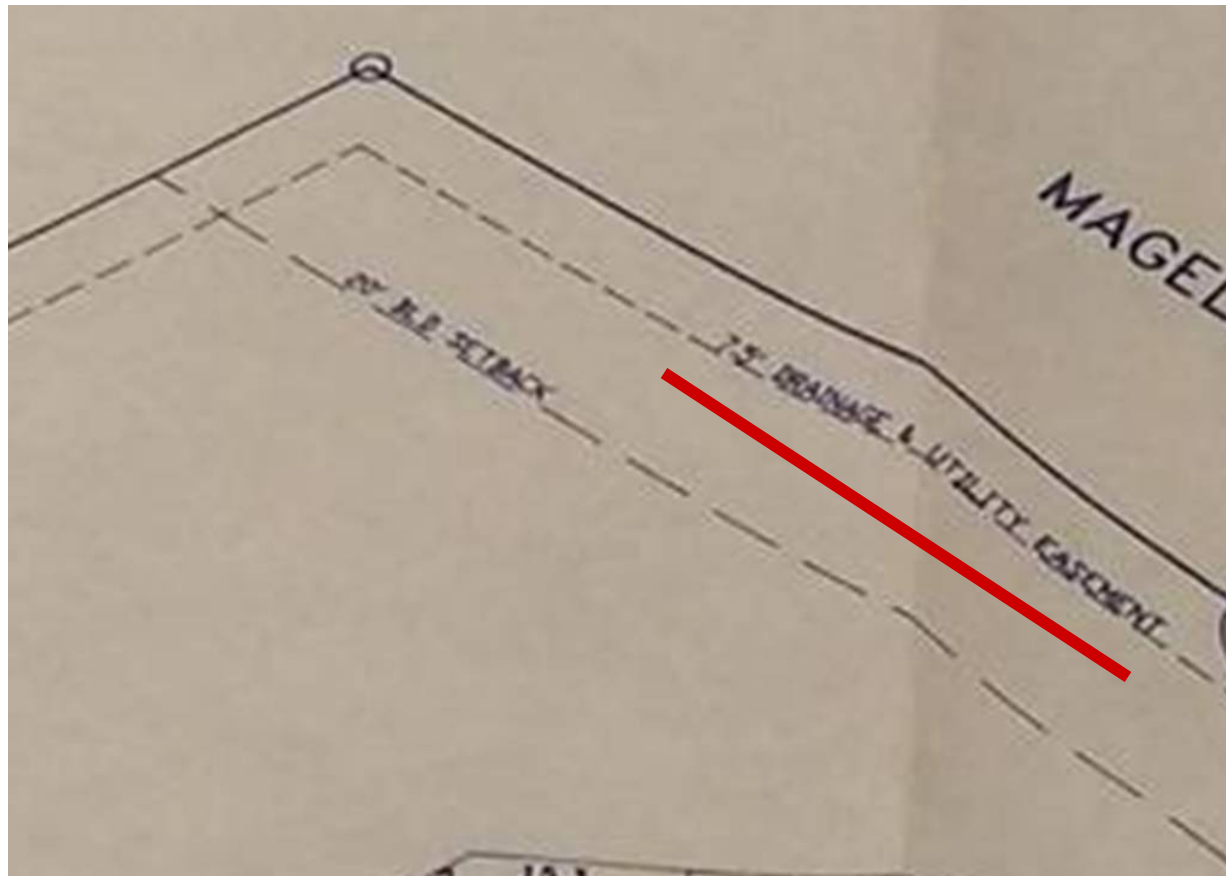
Easements and CMP



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Easements and CMP



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Spending / Budgets / Personnel

- **Cost Cutting Non-Existent**
 - New “Budget” based on Failed Prior Year
- **Spending Out of Control**
 - CMP / Consultants / Lawyers
 - Public Relations
 - Homes & Land
 - Restaurants Chronically Losing \$\$\$
- **Personnel Mis-Allocated**
 - Too Many Chiefs
 - Not Enough Indians

Spending / Budgets / Personnel

	2018 Sept YTD	2017	2016	2015
Net Revenues	\$24.4M	\$32.2M	\$33.2M	\$27.2M
Net Expenses	\$22.3M	\$32.2M	\$30.1M	\$29.9
Surplus / (Deficit)	\$2.1M	\$0.05M	\$3.1M	(\$2.6M)
Head Count	546	518		

Spending / Budgets / Personnel





- **CEO – Lesley Nalley** **21 Total**
 - 11 Direct Reports
- **COO – Linda Mayhood**
 - 9 Direct Reports
- **10 Director Positions**
- **Police Chief, Fire Chief, Controller**
- **4 Manager / Supervisor Positions**
- **2 Support Staff**
- ***And A Staff of Dozens of Consultants***

Failed / Not Needed Projects

- Geo Thermal at Balboa Club
- Failed Software @ POA
- Troon Golf
- Automatic Gate System
- Ladder Fire Truck / Vacuum Truck
- Rebuilt DeSoto Club
- CMP w/ sell job



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Q & A - Discussion

Please Pass

Your Question Cards

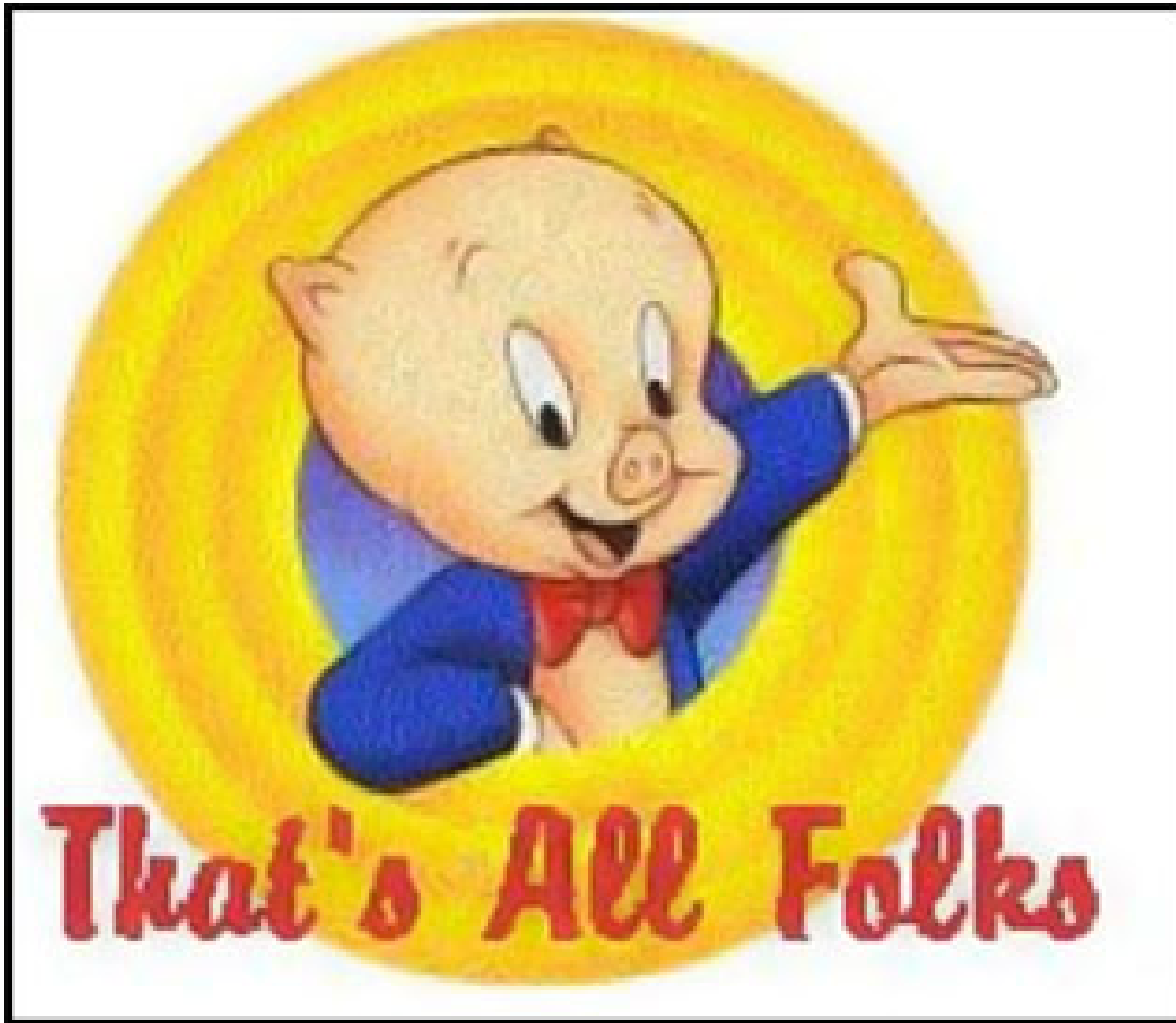
To the Aisle

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