

Save the Lakes  
Town Hall meeting  
March 9, 2019

*Save the Lakes Golf Course in Ahwatukee*  
Protect open space, community, and golf in Phoenix, Arizona



# Welcome to the Town Hall meeting

Today's speakers:

- Tim Barnes, attorney for Ahwatukee homeowners who filed a lawsuit against the golf course owners for failing to operate a golf course.
- Wayne Smith, the land planner for the retirement area of Ahwatukee, including its golf courses.
- Buddie Johnson, a golf course appraiser and developer, who testified as an expert witness about the feasibility of restoring Lakes course in the court case.
- Don Rea, owner/operator of Augusta Ranch Golf Course in Mesa, an executive course similar to Ahwatukee Lakes.
- RJ Hawley of Millenium Golf , former manager of Tempe Municipal Golf Courses.
- Kevin Nordby, a golf course architect who has been involved in the design and construction of more than 100 projects.

# Save the Lakes is a volunteer organization

- Save the Lakes is an organization of volunteers committed to defending the CC&Rs that govern the use of the Ahwatukee Lakes Golf Course and the Ahwatukee Country Club Course.
- STL's educational mission is supported by contributions of individuals.
- Join our email list, visit our website, or follow us on Facebook or Twitter.

# Please support the Lakes Golf Course Legal Defense Fund

- Litigation to protect your property rights is expensive.
- This year, a campaign is underway to raise \$15,000 to pay for the appeal. About half the amount has been collected so far.
- Contributions may be made to the Lakes Legal Defense Fund. Envelopes are available for your donations.

# Contributions may be returned

- The judge in the Superior Court trial has awarded the homeowner plaintiffs attorney's fees, which have not been paid.
- If the case is successful and attorneys fees are paid, contributions to the Legal Defense Fund will be returned on a pro-rated basis.

# Today's purpose

- Speakers will briefly discuss key points about the lawsuit, land-use issues, golf in Ahwatukee and golf in general.
- You are invited to ask questions.
- Questions can be submitted in writing or during the Q&A session.

CC&Rs restrict the land use of the Lakes and Country Club courses to golf



# It's all about the CC&Rs. What are they?

- CC&Rs, short for Covenants, Conditions and Restrictions, are land-use rules.
- They spell out rights and responsibilities of property owners.
- The CC&Rs say that homeowners in the “benefitted area” are entitled to enjoy the benefits of the open space on the golf courses.

# CC&Rs are your seat at the table

- The CC&Rs give homeowners' a DIRECT voice in the future of Ahwatukee Lakes and the Country Club golf courses. It is YOUR choice to keep or change the CC&Rs.
- Once property owners agree to a CC&R change, developers, city councils, and zoning boards will refine what any project actually looks like.
- Once CC&Rs go, homeowners will be able only to express their views to the decision makers.

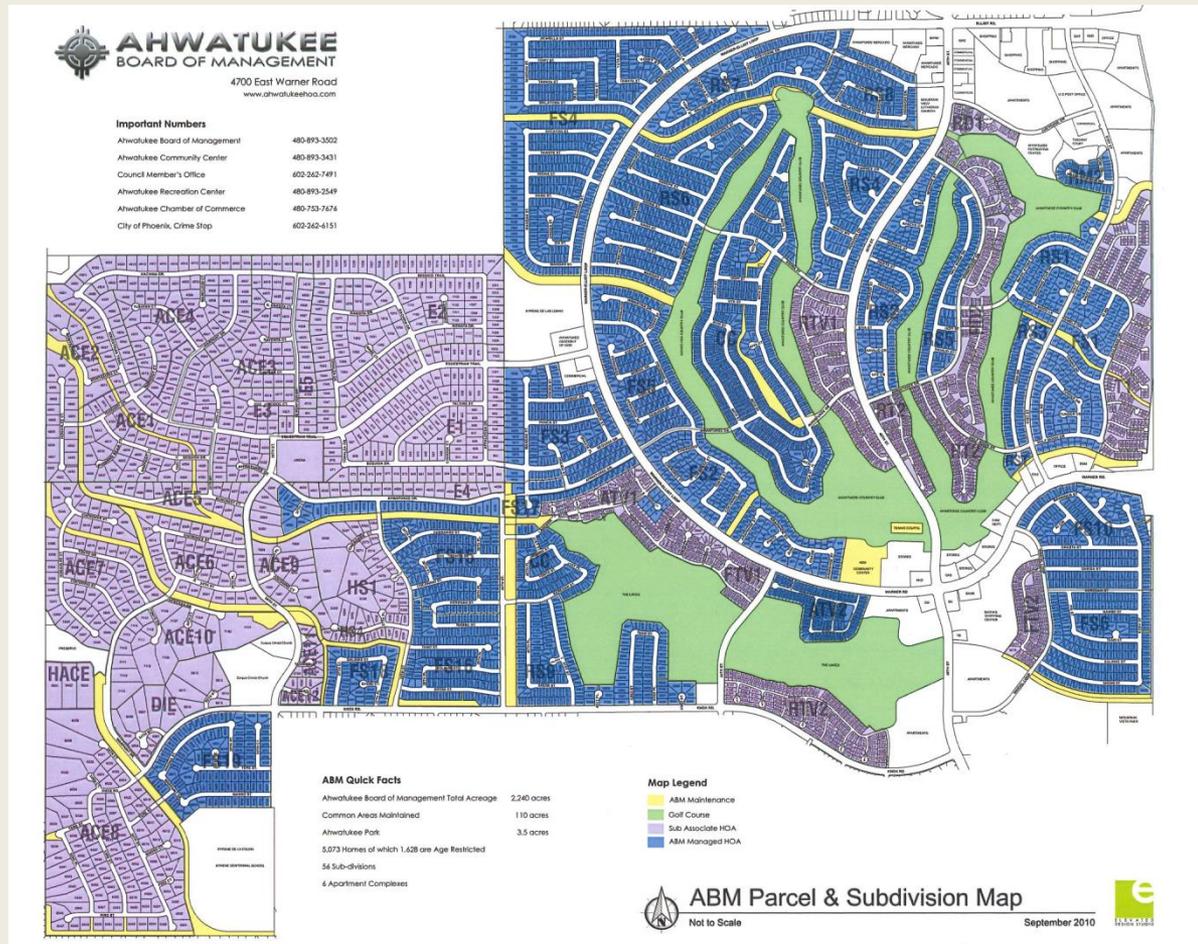
# The Lakes course occupies 101 acres near Warner and 48<sup>th</sup> Street



# Who gets a say on the CC&Rs

- Every property owner in the “benefitted area” has one vote about changing the CC&Rs.
- The CC&Rs define the “benefitted area”, roughly bounded by South Mountain east to the I-10 Freeway and from Elliot Road south to Knox Road.

# Benefited area boundaries: homeowners in Ahwatukee Board of Management area



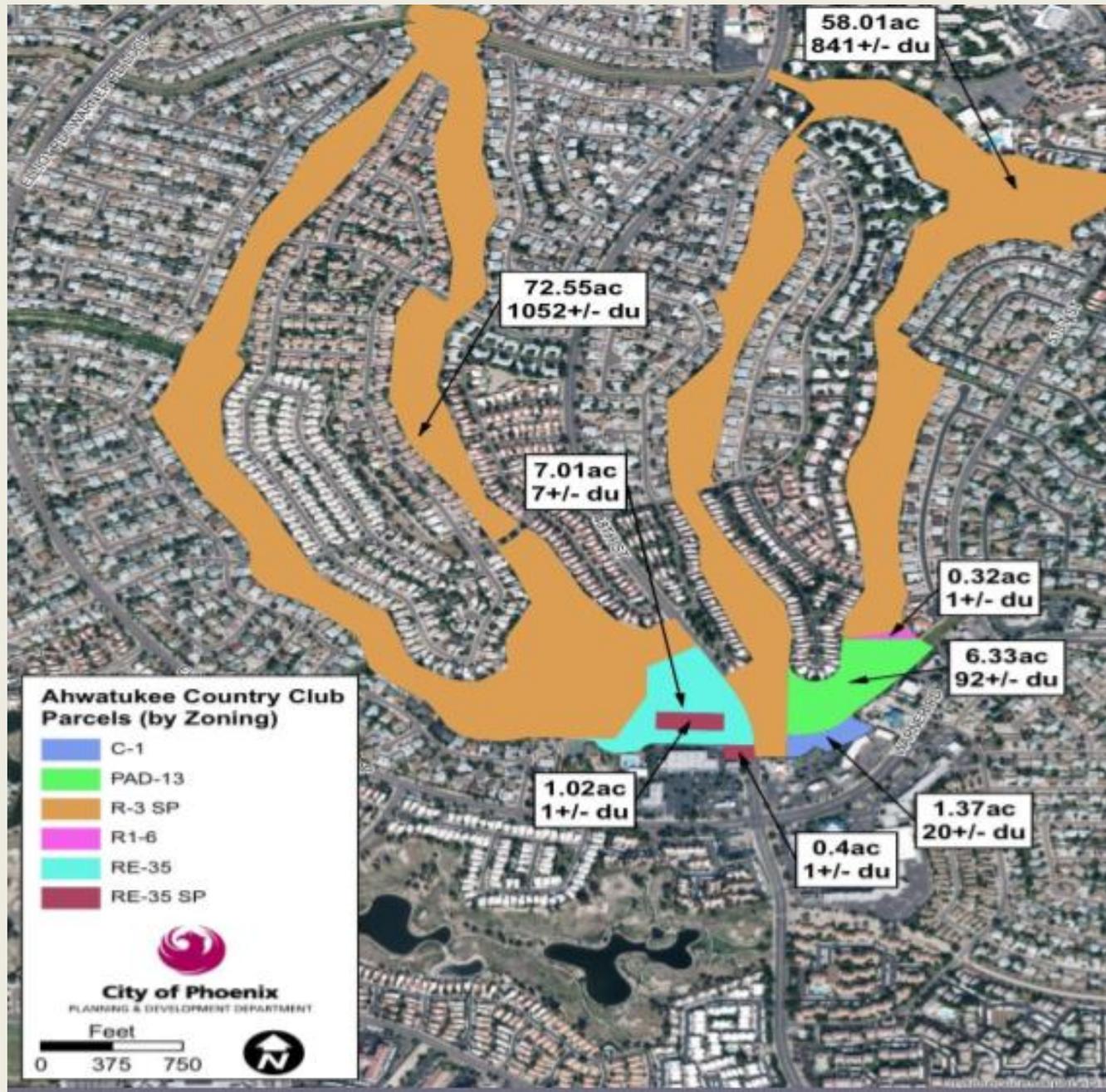
# The Lakes case matters a lot

- Overturning Ahwatukee Lakes Golf Course CC&Rs will overturn Ahwatukee Country Club Course CC&Rs.
- The same CC&Rs affect both courses, which are owned by the same investment group headed by Wilson Gee.
- If a judge allows True Life's proposed modification of the CC&Rs, the path to develop both courses is opened.

# Lakes case is important, continued

- The Lakes case is likely to become legal precedent for interpretation of CC&Rs in Arizona.

For example, the land for the Ahwatukee Country Club is currently zoned for 2,100 apartments; only the CC&Rs prevent that from happening.



# CC&Rs limit property use to golf

Ahwatukee's developer established the CC&Rs, or land-use rules, for the Country Club and the Lakes golf courses in 1992 to protect them from land speculators. The CC&Rs state:

- “The property shall be used for no purposes other than golf courses and such improvements and facilities ... and uses as are reasonably related to, convenient for or in furtherance of golf course use or the accommodation of golf course patrons and guests....” Paragraph 2.

- The lawsuit against the developers was filed in 2014 after the developers closed the golf course in 2013.



# Two methods to change CC&Rs

The CC&Rs provide two methods for modification:

- Approval by 51 percent of the homeowners in the benefitted area
- Persuading a judge of a “material change” in conditions.

# Developers' CC&R efforts fail twice

True Life tried to change the CC&Rs using each method, and failed both times.



- True Life failed to secure enough signatures to change the CC&Rs, despite the enticing bait of the Ahwatukee Farms “concept.”



- True Life asked a judge to change the CC&Rs based a “material change” in conditions, but the judge in January 2018 declined to change them.



The Lakes was once wildlife habitat, as shown in the previous photos, which were taken before the developer shut the course.



*Now the course and the land are neglected, and the developers and their backers blame homeowners who expect the course owners to follow the land-use rules.*

# Developers appeal to Arizona Appeals Court

- In June 2018, True Life and Wilson Gee appealed to the Arizona Appeals Court
- They asked the judge to modify the deed restriction to permit development of 450 homes.
- They also seek to overturn a judge's order that they restore the course.

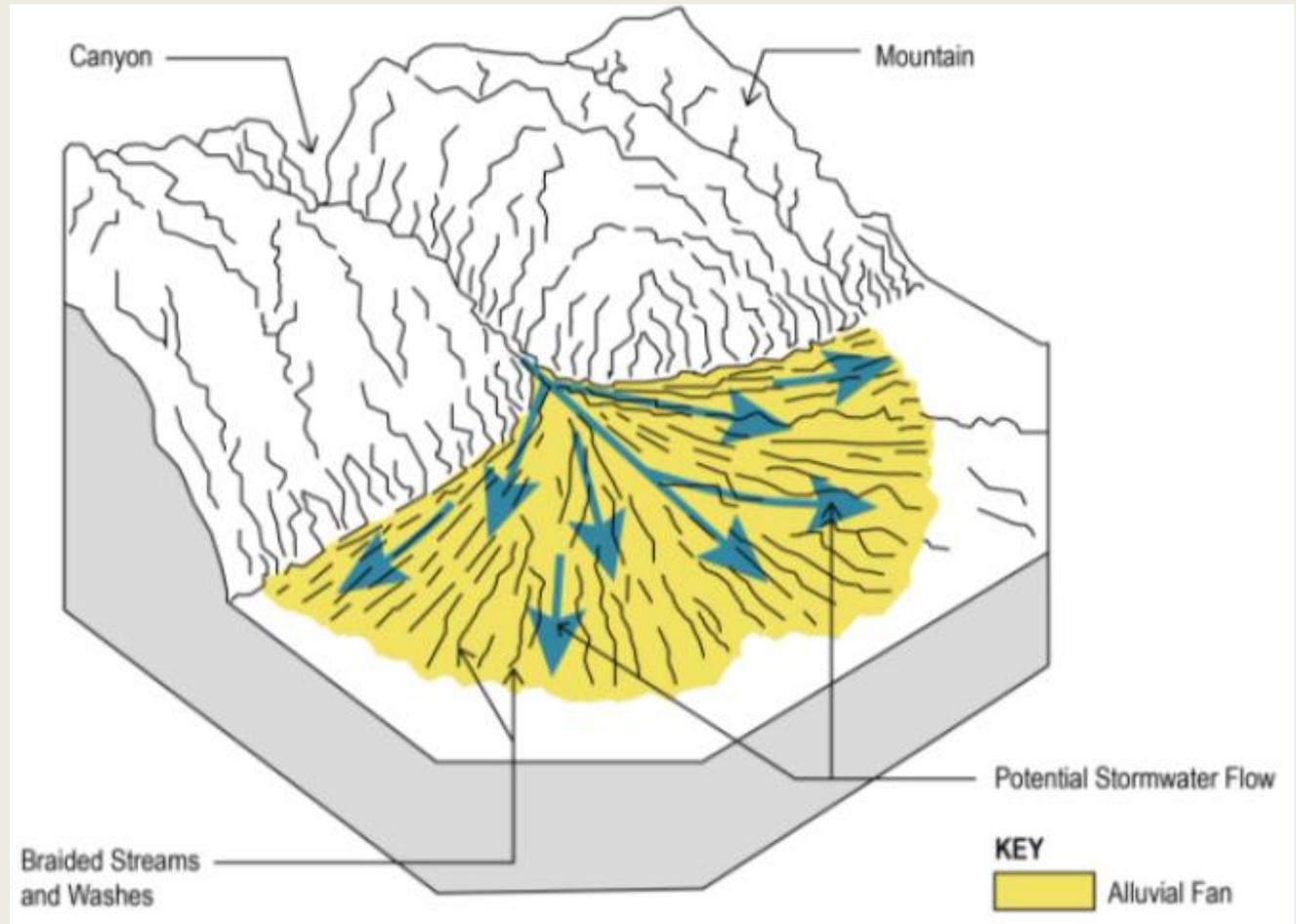
# Appeals case moves forward

- Attorneys for the homeowners and the developers have filed their legal briefs in the appeals case.
- The case could be decided with or without a hearing, depending on the appeals court's view of the law.

# Ahwatukee Lakes: The “accidental” golf course

- Ahwatukee developer Randall Presley had not planned two golf courses; he planned 18 acres of open space where the course is now.
- However, his drainage engineer Jerry Sudbeck advised him that 18 acres was woefully inadequate for the water torrents that come off South Mountain.
- Planners allocated 101 acres for the Lakes course to accommodate the water.

Ahwatukee is built on a dry-land delta created by seasonal runoff and flash floods



# Golf addressed a drainage problem

Presley's solution was to build a second golf course on 101 acres. In turn, Presley

- Charged more money for the lots along the golf course.
- Increased the housing density on the land that has houses.

# The Lakes are engineered to handle monsoon water, part 1

- South Mountain acts like a funnel that collects rainwater and channels it to Ahwatukee.
- The Lakes Course features a series of five connected lakes.
- When the water from the mountain fills the most upstream lake, the excess flows over grass to the next lake, and so on until all the lakes are filled.

The Lakes is at the lower center of this view looking north.



# The Lakes engineered to handle monsoon water, part 2

- Gradually the water collected in the lakes seeps into the soil and recharges the underground aquifer.
- Engineers determined the sizes and configuration of the lakes to handle runoff from South Mountain.
- Despite major storms, only rarely is water discharged from the final lake, at the west side of 48<sup>th</sup> Street just south of Warner.

Five lakes make up the water management system. This view looks eastward.



# What happens without the Lakes to disperse water?

- Without the lakes to slow and disperse water, large volumes of fast-moving water could be directed across 48<sup>th</sup> Street through the drainage channel toward the “borrow pit” at Interstate 10 and Warner.
- Many homes are located between the “outfall channel” and the borrow pit.

Water exiting the final lake crosses 48<sup>th</sup> Street behind the Ace Hardware/Basha's shopping center (the arrow in aqua)



Water from the golf course crosses 48<sup>th</sup> Street at the “outfall channel”.



Note the sediment at collected on Wakial Loop, downstream from the Lakes golf course after the torrential rains in August and September 2014



# Is there an alternative way to handle water?

- True Life had stated that engineers could design an alternative system to handle to monsoon torrents
- True Life DID NOT actually hire any engineers to do the detailed calculations to determine if it could be done and if it could be done at a reasonable cost.

The “borrow pit” on the east side of I-10 (at the top of picture) rarely contains any water because the Lakes system retains it or allows it to dissipate.



# Indian Bend Wash Greenbelt performs a function similar to the Lakes course

- Indian Bend is an oasis of parks, lakes, paths and golf courses traversing 11 miles through Scottsdale.
- Both were designed by land planner A. Wayne Smith

The Indian Bend Wash Greenbelt in Scottsdale helps control flooding while providing recreational opportunities.



Coming next, a surprising  
announcement ...

# Golf IS NOT dead



- Golf is not dead, but it has seen some hard times.
- Like most business, its prospects rise and fall.

# Golf popularity and participation rises and falls with:

- Age demographics
- Consumer tastes
- The economy and the housing market
- Competition from other forms of recreation.



# Will golf's past repeat?

- Golf was proclaimed dead when Baby Boomers were in their twenties.
- Eventually, maturing Boomers embraced golf.
- Will young adults take up golf? The answer is probably yes. Like previous generations, their bodies will probably age and force them to give up more active sports.

# Golf is not a monolithic market

- Some golf market segments are hurting more than others.
- When Baby Boomers took up golf, developers built thousands of homes around scores of courses.
- Many of those courses, which were never intended to operate as standalone businesses, are now in financial distress or closing.

Ahwatukee Lakes Golf Course was an 18-hole executive course.



# Executive courses aren't in the same market as championship courses

Executive courses are popular among some types of golfers because they are usually:

- Easier to play
- Require less time to play
- Cost less to play
- Less likely to provide a “frustrating” outing

Executive golf courses are

- Shorter distances: Mostly par-3 and par-4 holes; sometimes a par 5.
- Played in about half the time as regular courses (two hours vs. four hours)



# Executive courses in Ahwatukee area are alive and well

- Augusta Ranch, Mesa      par 61
- Rolling Hills, Tempe      par 62
- Springfield, Chandler      par 61
  
- A regulation course is often par 68 to 71.

# The Lakes: Once, a jewel of a course



# The Lakes Course was designed by Gary Panks, ASGCA

“I’m convinced that it could be successful with  
the right operator.”



Gary Panks,  
*Ahwatukee Foothills  
News*, Sept. 7, 2016

# A top-10 executive course in the *United States*



- The 18-hole Lakes course was listed in the *Golf Digest* as a top-10 executive course in the United States, and was considered by many the top executive course in Arizona.

# The 101-acre Lakes course opened in 1977



Breaking ground for the Lakes course

“The Lakes at Ahwatukee offers terrific views and challenging play for golfers at every skill level.” – GolfNow.com



The Lakes isn't looking so good these days.....



# Golf course owners are behind in property taxes

- The owners of the Lakes Golf Course owe Maricopa County about \$2 million in back property taxes.
- Under Arizona law, golf course owners pay property tax at a lower rate than normal. When the Lakes course ceased to be a golf course, the county shifted it back to the normal rate.
- The owners of the golf course rejected paying the normal rate, despite their intention never to run a golf course there. The case is on appeal.

“We are contesting that penalty because,  
in our minds, the use has not yet  
changed...”

-David Sabow, managing director, TTLIC in *AFN*, Aug. 9, 2016





Besides flood risk, other reasons why developing housing on the Lakes Course is a bad idea...

# High-density housing added to high-density housing

- Developers were allowed to build high-density housing in the original, age-55-and-older part of Ahwatukee in exchange for leaving open space in the form of golf courses.
- Putting housing units in regions that were intended to remain undeveloped would raise overall density to unacceptable levels and stretch capacity of streets.

# Can central Ahwatukee handle a lot more traffic?

- The main streets of central Ahwatukee, Warner, Forty-eighth, Forty-fourth, and Elliot, were designed for current housing density.
- Traffic engineering guidelines estimate that each additional household typically generates 10 car trips per home per day.



Four hundred and fifty housing units, the number sought in the current appeal, would add 4,500 trips per day to central Ahwatukee streets, according to traffic engineering guidelines.

# Does family housing belong in retirement community?

- Ahwatukee Lakes Golf Course and Ahwatukee Country Club Golf Course are mostly surrounded by age-55 and up housing.
- Would families with small children feel comfortable amid a retirement community, and vice versa?

# More reasons development is a bad idea

- Open space is an oasis on an urban environment.
- Lakes, shrubs and trees provide animal habitat.
- Open space is a community resource – the developers intend to take it without compensation. The developers take their profits out of the community and leave development's undesirable side effects to the community.

# How we got here....



# Gee began development bid in 2008

- In June 2006, an investor group headed by Wilson Gee, a Los Angeles area financier, acquired the Lakes and the Country Club courses for \$5.6 million.
- In 2008, Gee announced plan to build apartments on the course. His plans met stiff opposition.

# Course shut in 2013

- In May 2013, Gee closed the Lakes course, which had been falling into disrepair, claiming that he was losing money.
- Gee has never provided any documentation that the course was losing money.

# Enter Pulte; exit Pulte

- Pulte Corp., a national home builder, joined with Gee's group with a plan to build in-fill homes.
- Pulte abandoned the project in 2015 in the face of community opposition.

# Lawsuit filed in 2014

- Two homeowners near the Lakes course, Eileen Breslin and Linda Swain, filed a breach of contract lawsuit in October 2014 against the course owner. They cited the owners' obligation to run the property as a golf course as required by the CC&Rs.
- The lawsuit is the basis for the homeowners' challenge to the developers.

# True Life enters; True Life exits

- In June 2015, Gee's company sold the Lakes Golf Course to The True Life Cos. for \$9 million plus an accrued property tax liability of \$1.3 million. True Life put down \$750,000.
- Faced with two defeats to change the CC&Rs, True Life did not make a scheduled payment in the summer of 2018, in effect walking away from the project.
- After a trustee's sale, the property reverted to Gee's investment group.

# Homeowners win first important decision

In July 2016 after a trial, Judge John Hannah affirmed that

- The CC&Rs require that the property to be used as a golf course
- The company would have to follow the procedures in the CC&Rs for changing them.

# Ahwatukee Farms “concept” designed for maximum voter appeal

- Faced with winning approval from a majority of homeowners, as the judge ruled, True Life announced its “concept” for the site, Ahwatukee Farms.
- The school, agriculture, and food-themed community appealed to a many people, such as parents with children and people who like fresh ingredients and quality food.

Ahwatukee Farms recalled an idyllic small-town lifestyle...



*“We could have had Ahwatukee Farms,”  
some people claim.*

Ahwatukee Farms could  
NEVER have been built. It  
was a sales pitch.

# Ahwatukee Farms was a “concept”

- Ahwatukee Farms faced criticism for lacking design specifics and practical necessities.
- Artist renderings left out essentials like parking for residents and customers.
- The “concept” didn’t show enough space for the school and a farm, and didn’t have a source of revenue to support the community facilities.
- True Life never called Ahwatukee Farms a “project” or a “plan.” It was a “concept.”

Is there room for school, parking, streets, community center, restaurants, a farm, community garden, and 350 houses?



# True Life's marketing campaign fails

- To sell Ahwatukee Farms, True Life launched a campaign to persuade homeowners to agree to change the CC&Rs.
- It spent thousands of dollars on community meetings and full-page newspaper ads.
- Save the Lakes told the other side of the story, despite a tiny budget.
- Despite outspending STL by 10 to 1, True Life's campaign failed.

# Persuasion fails, TTLC turns to courts

- When True Life realized the referendum would fail, it persuaded the judge to allow them to argue in court that changed economic circumstances warranted a change in the CC&Rs.
- After another costly trial, Judge Hannah declined to change the CC&Rs in a decision filed Jan. 2, 2018.

# Judge orders restoration

- In May 2018, Judge Hannah ordered the owners of the course to begin restoring the course to comply with the CC&Rs, which require operation of a golf course on the property.
- The owners have not begun to restore the course despite the court order.
- The developers have appealed that ruling.

# Ahwatukee Lakes Golf Course, before



# Ahwatukee Lakes Golf Course, after



When will the sun next set on a Lakes  
golf course?



Thank you for attending today's Town Hall meeting and thank you for your financial support.

