

**CONCERNED CITIZENS OF SUNRISE LAKE, INC.  
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**A REVIEW AND ANALYSIS OF DEVELOPER, AKA GRANTOR,  
(SUNNYLANDS, INC./SUNRISE VENTURES, INC.) OBLIGATIONS  
AND OPERATIONAL RESPONSIBILITIES AND ACCOUNTABILITY  
DURING THE ON-GOING DEVELOPMENT PERIOD (INCEPTION  
THROUGH DECEMBER 21, 2005)**

**FEBRUARY 26, 2008**

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## **Review and Analysis Background**

The following review and analysis has been prepared at the request of the Concerned Citizens of Sunrise Lake, Inc., a Pennsylvania Corporation, comprised of property owners and residents of Sunrise Lake, a residential community situated on PA Route 735, Dingman Township, Pike County, Pennsylvania.

The Sunrise Lake Community since inception, has been developed by and on a property parcels owned by Sunnylands, Inc. (aka Grantor). An affiliated company, Sunrise Ventures, Inc. has served as the operating company responsible for the oversight, operation and maintenance of the Sunrise Lake Community common facilities. Such specific responsibilities include, but are not limited to: developing an annual budget, collection of annual assessments, overseeing and/or providing maintenance services for the common facilities, labor and equipment to implement such services and making the associated cash disbursements for the annual services aforementioned.

The Concerned Citizens of Sunrise Lake, Inc., by virtue of their deeded ownership to a residential lot situated within the Sunrise Lake Community are encumbered and subject to certain Property Reservations, Covenants, Restrictions, Easements and Conditions, a copy of which is hereby attached and referenced from time to time.

This same deed references certain common facilities which will be developed and maintained by the developer (Grantor) and available to the owners for annual fees (both voluntary and mandatory). These common facilities consist of but are not limited to: lake, roadways, pool, tennis courts, mailboxes, playgrounds, etc.

As of this writing, all common facilities are still owned, maintained and operated by the developer and a formal Community (Property) Association has not been formed nor incorporated.

### **Purpose for Review and Analysis:**

The purpose of the Review and Analysis is to determine the following:

1. Whether the developer has met the development obligations contained within the context of the Property Reservations, Covenants, Restrictions, Easements and Conditions.
2. Has the developer maintained an adequate financial administration procedure which would assure owners within the Sunrise Lake Community that due diligence "best practices" are incorporated with regard to the operation and

maintenance of the common facilities, annual dues collection and administrative expenses?

3. Has the developer's financial practices had any adverse impact on establishing "reasonable" annual fees charged to Sunrise Lake community owners for maintenance and use of common facilities?
4. Does the developer's maintenance and operation of a commercial activity within the Sunrise Lake Community conflict with the residential scheme of the Community, produce accelerated and/or excessive wear and tear on the common facilities (i.e. roadways), and/or subject the developer to certain financial reimbursements (i.e. payment for access) to the Sunrise Lake Community Member operating and/or reserve account?
5. Finally, has the developer negatively impacted the Sunrise Lake Community Owner's ability to maximize use enjoyment (i.e. common facilities) and/or their overall individual property investment value?

### **Documents Reviewed and Analyzed:**

Documents reviewed and/or analyzed specific to the litigation consisted of:

- Complaint & Notice: Concerned Citizens of Sunrise Lake, Inc., a Non-Profit Pennsylvania Corporation, Plaintiff V.  
  
Sunnylands, Inc., a Pennsylvania Corporation and Sunrise Ventures, Inc., a Pennsylvania Corporation, Defendants
- Depositions of Defendant's Corporate Officers and/or Employees:
  - William Ramagosa, Jr.
  - Robert B. Ramagosa
  - Sharon Snyder
  - R. Symonies
- Analysis of Road Maintenance Fees and Common Facility Fees, prepared by Eric D. Davis, CPA.
- A sample, fully executed deed agreement between the Grantor and Mr. and Mrs. John Margiore, property owners in the Sunrise Lake community.
- A sample, fully executed agreement of sale between Sunrise Ventures, Inc. (SV) and Mr. and Mrs. John Margiore.

- The Grantor's internally prepared Income Statement for the years ended December 31, 2003, 2004 and 2005, respectively.
- The Grantor's internally prepared Balance Sheet as of December 31, 2003, 2004 and 2005, respectively.
- The Grantor's 2004, 2005 and 2006 annual billing statements for fees to Mr. and Mrs. John Margiore, property owners in the Sunrise Lake community.
- The 2005 Sales Journal for Sunrise Ventures, Inc. (SV). SV is affiliated with the Grantor through common ownership and management. SV provides 100% of the road maintenance and common facility materials, repairs and services to the Sunrise Lake community.
- Certain 2005 invoices from SV to the Sunrise Lake community for materials and services and certain supporting invoices and documents from vendors to SV.

**Related "Other" General Documents Reviewed:**

- Report #4, Financial Operations (Best Practices), Foundation for Community Association Research
- Gap Report # 3, Transition from Developer Control, Amanda G. Hyatt
- PA Uniformed Planned Community Act, 1997
- 2005 Lake Naomi Community Center Study
- Sample Regional Community Surveys Conducted by Appletree Management Group, Inc., AAMC®

## Analysis and Findings:

- I. Whether the developer has met the development obligations contained within the context of the Property Reservations, Covenants, Restrictions, Easements and Conditions.

The developer has failed to meet its obligations with regards to the following Covenants, Conditions and Restrictions.

**"UNDER AND SUBJECT NEVERTHELESS, that the hereby granted lot or lots or piece of ground, or any part thereof, and the building now thereon erected or any which may hereinafter be erected shall be and remain subject to the following covenants, conditions and restrictions:"**

"1. All lots and parcels of land in the section of which the subject premises is a part in the subdivision known as Sunrise Lake, Pike County, Pennsylvania, shall be reserved and used for single family residential purposes exclusively, and for no other purpose."

- The developer had (has) the obligations to reserve parcels and lots for residential purposes. The fact that certain parcels have been (or are) utilized for commercial activity is in violation of the covenants, conditions and restrictions.

"3. Said premises, in addition to the restrictions and conditions herein contained, are to be conveyed subject to all rules, regulations and ordinances and zoning regulations of the Township of Dingman."

- The developer is potentially in violation of ordinance and zoning regulations within Dingman Township by operating a commercial activity within a residentially zoned subdivision.

"6. That the lot or any building thereon erected, or any part thereof, shall not be used or occupied as a club, profit or non-profit, or for carrying on any trade or profession."

"7. That the lot or any building thereon erected, or any part thereof, shall not be used or occupied for any industrial, commercial or business use whatsoever."

"8. That no oil or gas well shall be drilled on any lot or part lot conveyed, nor shall there be any excavation for the extraction of minerals."

- Although not specific to parcels, it is evident that the developer had obligated itself and all lot owners against the operation of any commercial activity within the subdivision known as Sunrise Lake.

“10. **Certain “common facilities” are available for the use** of Sunrise property owners. Among these facilities are **Sunrise Lake, a swimming pool, picnic and playground areas** located at the north end of Sunrise Lake, **a tennis court** bordering lock 1 section 3, and mailbox areas at each entrance to the community. These common facilities are owned by Sunnylands, Inc. Sunnylands, Inc. **agrees to maintain them** and to limit their use to Sunrise Lake property owners and their guests. Sunnylands, Inc. imposes an annual fee for their use, however, property owners who choose not to make any use of any of the facilities during a billing year may so notify Sunnylands in writing at the beginning of the billing year and thereby not be obligated to pay the common facility fee for that year. Sunnylands, Inc. does not intend to transfer these facilities to the lot owners or any lot owner association. However, Sunnylands, Inc. reserves the right to sell or lease the facilities to any person, Association or Corporation subject to the terms hereof, after first giving lot owners the first right of refusal for a period of sixty (60) days of a bona fide offer to purchase the facilities.”

- The developer has failed to maintain and make available for use certain common facilities such as the pool and tennis courts. (Later in the analysis, we discuss the closure affects on the personal use enjoyment and individual property investment.)

II. Has the developer maintained an adequate financial administration procedure which would assure owners within the Sunrise Lake Community that due diligence “best practices” are incorporated with regard to the operation and maintenance of the common facilities, annual dues collection and administrative expenses?

- The report provided by Eric D. Davis, CPA dated December 18, 2006 concludes on page four (4) the following:

**“The Grantor’s income statements were prepared using the cash basis of accounting. This means that revenues were recorded when they were received, and expenses were recorded when paid. However, the Grantor’s balance sheet was prepared using the accrual basis of accounting. This means that the fees from property owners were recorded when they were billed out, not when the payments from property owners were received.**

**In the accounting profession, no entity is allowed to issue a set of its own financial statements using two different methods of accounting within the same document. The entity has to choose a method and apply it consistently throughout its statements. The reason is simple: the use of different accounting methods within a set of financial statements could easily mislead the users of the financial statements, such as stockholders, members, lenders, vendors and customers."**

- Basically, there are two commonly used bases of accounting, the accrual basis of accounting which is required by Generally Accepted Accounting Principles (GAAP), and the cash basis of accounting which is considered to be an Other Comprehensive Basis of Accounting (OCBOA). OCBOA is not in accordance with GAAP. Generally, developers (and Community Associations) who are professionally financially advised and a subject to audit utilize the accrual basis of accounting. **Therefore, Mr. Davis's final statement in the above conclusion is accurate: "The use of different accounting methods within a set of financial statements could easily mislead the users of the financial statements, such as stockholders, members, lenders, vendors and customers."**

### **Annual Dues Collection**

- The Sunrise lake covenants, conditions and restrictions and Pennsylvania State Law specifically permit the developer to annually assess and collect such assessments for the maintenance and available use of the common facilities.

**"UNDER AND SUBJECT NEVERTHELESS, that the hereby granted lot or lots or piece of ground or any part thereof, and the building now thereon erected or any which may hereinafter be erected shall be and remain subject to the following covenants, conditions and restrictions:"**

"10. Certain "common facilities" are available for the use of Sunrise property owners. Among these facilities are Sunrise Lake, a swimming pool, picnic and playground areas located at the north end of Sunrise Lake, a tennis court bordering lock 1 section 3, and mailbox areas at each entrance to the community. These common facilities are owned by Sunnylands, Inc. Sunnylands, Inc. agrees to maintain them and to limit their use to Sunrise Lake property owners and their guests. Sunnylands, Inc. imposes an annual fee for their use, however, property owners who choose not to make any use of any of the facilities during a billing year may so notify Sunnylands in writing at the beginning of the billing year and thereby not be obligated to pay the common facility fee for that year. Sunnylands, Inc. does not intend to transfer these facilities to the lot owners or any lot owner association. However, Sunnylands,

Inc. reserves the right to sell or lease the facilities to any person, Association or Corporation subject to the terms hereof, after first giving lot owners the first right of refusal for a period of sixty (60) days of a bona fide offer to purchase the facilities.”

“11. All roads and streets within the Subdivision are owned by Sunnylands, Inc. Lot owners must pay an annual road maintenance fee. The amount of such fee shall be reasonable and shall be determined by multiplying a per lot road maintenance charge set by Sunnylands, Inc. by the number of lots owned. Seller reserves the right to vest maintenance, control, ownership in any person, association or corporation or transfer same to a Lot Owners Association if any, or dedicate same to public use.”

- The developer has the fiduciary responsibility to collect assessments in a timely, systematic manner which is uniformly enforced.

It is obvious that the developer has failed to meet its financial administration fiduciary responsibility based on three (3) notable observations and facts.

- (1) The developer’s 12/31/05 financial statement indicates an accounts receivable balance of 1.8 million dollars.
- (2) Common facilities have been closed.
- (3) There has been no attempt to create a cash reserve for future replacement/repair of facilities.

It has been Appletree Management Group, Inc., AAMC® experience (via survey) that uniformed planned communities (and in particular with similar development schemes as Sunrise Lake) have annual collection rates of 90% or better. Therefore, the lack of a uniformed and aggressive collection procedure has (will) lead to higher annual assessments (mandatory or voluntary), deferred maintenance, less use, etc.

Eric D. Davis, CPA on page five of his report indicates:

**“Had the Grantor collected the \$1.8 million as of December 31, 2005, it would likely have a cash balance of \$1.679 million at year-end (Cash would equal the Capital Balance per Exhibit I). If the Grantor had cash of \$1.679 million on account, it could afford to waive fees to the property owners for at least two years. It is obvious that the Grantor is either incapable or unwilling to collect the fees it assesses each year.”**

- As I have not reviewed specific work papers that lead to Mr. Davis’s conclusion (\$1.679 million), I would assume that the \$1.679 million would need to be adjusted based on a delinquency charge consisting of monies

uncollected due to legal inability to collect (i.e. foreclosure, bankruptcy, etc.). However, even after the adjustments are made, it can be assumed the cash balance would well exceed 1 million dollars.

### **Administrative Fee:**

- The developer has annually charged two (2) types of administrative fees. The first is according to W. Ramagosa, Jr. in his deposition dated 11/05/07 called “... **an annual charge that multiplies the number of property owners times \$25.00**”. The second charge is a 25% mark-up on service invoices to Sunrise Lake as confirmed by W. Ramagosa, Jr. in his 11/05/07 deposition which works as follows “... **what we do is indirectly charge the property owners for those kinds of things by marking up invoices, third party, 25 percent. This 25% is above and beyond the primary service charges incorporated in invoices submitted.**”

Based on my review of the covenants, conditions and restrictions of Sunrise lake, there is no mention that the developer will assess or is eligible to receive such fees (either \$25.00 or 25%). The basic inherent problems with such individual administrative fees and/or mark-ups are as follows:

- (1) The \$25.00 charge does not have a basis of support in the annual budget nor year-end financial statements.
- (2) The 25% mark-up on service invoices is 25% above the administration and profit charge already incorporated within the primary service invoice.

**Meaning** – two entities have covered their administration and profit margins in the same invoice. Certainly, an unacceptable practice.

III. Has the developer’s financial practices had any adverse impact on establishing “reasonable” annual fees charged to Sunrise Lake community owners for maintenance and use of common facilities?

- The developer’s lack of financial administration “best practice” does have an adverse impact on establishing “reasonable” annual fees (mandatory or voluntary).
  - The two (2) administration charges (\$25.00 + 25% mark-up) unfairly penalizes the property owners for services and significantly elevates the real cost to maintain and operate the community.

- The lack of a formal, uniformed and consistent collection system has burdened the property owners carrying costs rather than make the carrying cost more cost effective (i.e. poor collection rate, lack of interest earned on invested funds, etc.).
- The lack of an adequate cash reserve account for the future.
- There is an underlying potential for the developer to become mainly dependent on mark-ups and administrative fees to subsidize "other developer operations" when cash generated from other development activities (i.e. real estate slump) is either minimal or non-existent.
- Mark-ups remove the desire and/or motivation to utilize a formal bidding process for contracted services (i.e. the Hanson Road improvement service). The lack of a formal bid process (or any bid process) only questions the sincere motivation of this developer with regards to looking after the best interest and use of property owner funds.

While an effective bid process should produce both a quality service at the best cost and produce a savings on the service and the associated mark-up, the lack of such a process would permit potential lack of quality but surely inflate the cost of the service and, in turn, the mark-up.

IV. Does the developer's maintenance and operation of a commercial activity within the Sunrise Lake Community conflict with the residential scheme of the Community, produce accelerated and/or excessive wear and tear on the common facilities (i.e. roadways), and/or subject the developer to certain financial reimbursements (i.e. payment for access) to the Sunrise Lake Community Member operating and/or reserve account?

- o I have previously discussed this matter in I. above as it relates to violations of specific obligations of the developer and lot owners under covenants, conditions and restrictions. Besides the above, there are several other adverse impacts to be considered.
  - Commercial traffic within the Community presents additional high truck traffic and pedestrian liability.
  - The exposure associated with potentially un-insured and unregistered vehicles and/or unlicensed operators operating on private residential roadways.
  - The accelerated wear and tear on the residential roadways that are not constructed to township/state specifications required for potential turnover to the municipality. This accelerated wear and tear (although not immediately noticeable) caused by concentrated use will, in the long run,

cost the property owners more and sooner in roadway rehabilitation.

- The fact that such commercial use goes for the most part unrestricted and without a charged fee or developer contribution (which would go back to property owners operating account), will not permit the financial offset of the future accelerated rehabilitation.
- Most mining permits have a reclamation requirement once the mining has ceased. Although we are not privy as to whether the developer is required to reclaim, or has posted a bond or letter of credit for such, I am aware of planned subdivisions whereby the Association (by default) took on the reclamation to avoid liabilities.
- The existence and potential income from the mining activity again creates another developer activity that produces income strictly to the developer which compromises the developer's best interest in maintaining and operating the community.

V. Finally, has the developer negatively impacted the Sunrise Lake Community Owner's ability to maximize use enjoyment (i.e. common facilities) and/or their overall individual property investment value?

- o The developer, by virtue of its continued ownership of the common areas, remains encumbered by the deed covenants, condition and restrictions. And, as long as ownership of the common facilities remains in the name of the developer, the obligations under the encumbrances will continue. Therefore, with ownership comes control. Control can be mismanaged in particular after many years of perceived comfort and/or being unchallenged which appears to be the case until now.
- o The developer's lack of properly administering the property owner funds, non-existent collection procedures, lack of creating a reserve account, conducting commercial activity for personal gain, closing facilities and clearly overlooking "best practices" are all characteristics of mismanagement. Such mismanagement occurs because the developer of Sunrise Lake conducts several business activities (real estate development, real estate sales, mining, lumbering, common facility maintenance) all of which, from time to time, compete with or conflict with each other. In the long run going unchallenged, someone loses priority. In this case, it is the property owner's interests and common facilities.
- o The closed facilities and overall common area and facility condition minimizes attraction and curb appeal and results in both loss of existing property owner use enjoyment but also adversely impacts resales and

individual property owner values. In a 2005 study conducted by Davis R. Chant Realtors, Milford, PA and Shepstone Management Company, Honesdale, PA for the Lake Naomi Club and related community(s), when evaluating the potential impact of a new proposed Community Center on property values the researcher's indicated the following:

- Study indicates that a strong relationship of amenities such as pools (indoor/outdoor) and other recreational facilities to both home prices and rents. The positive impact typically ranges from 5% to 15%. (Imagine the adverse impact should such existing facilities then be closed.)
- The market population in one of Pennsylvania's largest growing counties (Pike) consists of both families and baby boomers. Not only is this market segment looking for quality, services and recreational opportunities, they are also very astute purchasers. Many have bought and sold prior homes and/or properties. Therefore, they (and their lenders) review and analyze the financial health of the environment they are considering, evaluate facility maintenance and services, respect and understand the value of curb appeal and read the issued resale certificates issued from seller to prospective owner, which in this case, if properly presented would be fairly negative.

Has the developer's lack of "best practices" adversely impacted individual (and future developed) property values? Most certainly. The non-collected account value of \$1.69 million may be small when compared to the overall sum of the discounted individual property values.

### **FINAL COMMENTS AND RECOMMENDATIONS**

I would submit that there are three (3) possible mediation strategies for consideration.

#### **Optional Strategies:**

1. The first and certainly more extensive would be to have the developer (Sunnylands, Inc.) voluntarily undertake a "**comprehensive transition**" whereby the developer deeds ownership and control of the common areas to a property owner controlled Association. My experience in the common interest community industry would reflect that such a transition will happen at some time in the future as the transition of ownership is "final" with regards to true long term control. Despite the possibility that "comprehensive transition" may ultimately happen, I would not recommend this strategy at this time for the following reasons:
  - a. A full comprehensive transition would take twenty-four (24) to thirty-six (36) months assuming both parties can agree to such a comprehensive stipulated agreement.

- b. An "immediate" transfer of ownership combined with control may only create greater conflict between the two (2) parties.
  - c. There is no current "formal association" nor trained owner's group which is ready to accept ownership and control.
  - d. Time would not permit such, a third party professional (management) remains necessary.
2. The formation of a short and/or long term **"trust agreement"** may be of consideration. Simply, the developer would voluntarily convey the common areas to a Trust, a Trustee appointed and Advisory Committee appointed by the Trustee made up of both developer and property owners. The Trustee would be responsible for all common area and facility oversight on behalf of the Trust (budget development, financial administration, facility maintenance, etc.). The Trustee would report monthly to the Advisory Committee. Of course, this would involve the legal creation of the Trust, bylaws developed, appointment of the first Trustee, conveyance of common areas and facilities to the Trust. The Trust Agreement would require that the common areas and facilities be held and operated in the best interest of the exclusive use rights granted to each property owner. The Trust Agreement would also include continuation of certain developer rights that would be required for further development of undeveloped property, developer obligations, etc. There is a good possibility that this Trust Agreement would be adequate for the long term.
  3. The third strategy would be to simply appoint **"A Receiver"** or **"third party professional"** to manage the common areas and facilities. This Receiver would in essence act as the conscience and trustee for all property owner funds as they relate to the operation of the common areas and facilities. This Receiver would appoint an Advisory Board (similar to the Trust) comprised of developer and property owner representatives. The Receiver would act as described above in the Trust strategy. Again, such a strategy would need to be defined in a stipulated agreement that would incorporate the duties of the third party Receiver, time period, reporting methods/frequency, etc.

Assuming the parties would agree to either of the last two (2) strategies, there are several important immediate priorities the Trustee or Receiver would need to address.

1. Development of an independent financial, operational and capital (improvements and reserves) plan for the operation of the common areas, facilities and oversight for the subsequent twelve (12) months. Reduce to equitable assessments and invoice the property owners and developer for each property owned. Provide a monthly or quarterly accounting for all funds received and expensed.
2. Determine the capital improvement costs to immediately restore (physically) the common area and facilities to full use potential. It would be this writer's position that the developer fund the costs of such immediate restoration and improvements.
3. An escrow account would be created to manage the funds identified in (2) above.
4. Immediate incorporation of a delinquent debt collection system focusing on the auditing of all delinquent owner accounts, determination of what is collectible and instituting immediate collection procedures. Strong consideration should be given to

contributing all collected delinquent funds to a **property reserve account** established specifically for the capital repair and future replacement of common areas and facilities.

5. Immediately evaluate current service providers and incorporate competitive bidding (where applicable) for all services provided to the common areas and facilities.
6. Conduct a reserve study in order to predict the life expectancy of the common areas and facilities (after all initial repair and improvements) and the funding required over the life expectancy to assure the ability to replace in the future.

Lastly, the Receiver would have third party responsibility for directing and evaluating the operations. Therefore, in order to be cost effective, the last two (2) strategies should require the appointment of an experienced Professional Community Management Company (or Professional) who has direct experience in both financial administration and recreational amenity operations.

Questions regarding this report may be submitted to:

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