



Andy Mowery <pohoaandy@gmail.com>

OVER BUDGET 2021-22 Legal Expenses

Andy Mowery <pohoaandy@gmail.com>

Sat, Oct 14, 2023 at 11:30 AM

To: Poudre Overlook at FtC <atftcpoudreoverlook@gmail.com>

Cc: Brianna.Titone.House@state.co.us, hd40aide@gmail.com, naquetta@ricks4co.com, "Altmann - DORA, Nick" <nick.altmann@state.co.us>, shindi@denverpost.com, brittanyfreeman@rmpbs.org

To the Board:

As you are aware, I have an open request for financial documents that dates back to early 2022. I requested, again, the same documents AS A DIRECTOR in August of 2022. And, I repeated the request again AS A DIRECTOR in January of 2023. Thus far, you've refused to provide the documentation which is required per CCIOA under statutory penalty for non-response 30 days after the request.

The issue is that the LOSS for the 2021 Fiscal Year was rationalized as the effect of spending our RESERVES on partially replacing the perimeter fence. The problem with that explanation is that those funds, which were supposed to be kept in a separate account because they were collected as a Special Assessment for that specific purpose, should not have resulted in any financial loss. The concept that they become an "expense" because they are connected to the ground (according to our Former Treasurer, Jen Hutchinson) fails to address the excessive spending in that calendar year on legal expenses.

It is clear that the Board at that time made a deliberate choice to move at least \$5000 of legal expenses on the books to 12/31/21, when the invoice was received no later than 11/3/21 (and the expenses were accrued in August/September). These over-budget expenses were not disclosed prior to the Annual Homeowners Meeting in November of 2021, in a month when an additional \$3.6k of legal expenses were also being rung up concurrent with the same meeting.

Only after a vote was taken approving an increase to the budget were these expenses revealed - 3 months later. No December 2021 financial report continues to be posted on the Frontsteps website, and the details only appeared on the 2021 Annual Report - long after homeowners had the opportunity to consider them for a vote.

After reviewing the monthly financial reports for 2023, it appears to me that the same method of keeping legal expenses hidden may be occurring in this calendar year. My direct requests for these records has been met with a made-up "board policy" of requiring USPS Certified Mail and a wet-ink signature, which is neither in our governing documents nor CCIOA. Therefore, my written request, which uses the proper POHOA form (multiple times), remains an active and open request which has aged more than 30 days activating the statutory penalty.

The reason I believe that legal expenses may be hidden from homeowners is the following:

- Moeller Graf charged a significant amount for revising 3 policies in March of 2023
- Moeller Graf was hired in a program generating a monthly cost
- The "dog incident" remains unresolved, contested, and appears to be heading to litigation
- The estimate for the "dog incident" from Altitude Law was \$10k if contested

Cherith Atchley <CATCHLEY@altitude.law>
to me ▾

Jan 11, 2023, 11:55 AM ☆ ↶ ⋮

Good morning!

My apologies for not responding last night! I spoke with Jeff and Melissa regarding your questions and below is what Jeff said:

It would be hourly, but would likely be 2-3 hours of work to see what the documents say and review the information you have regarding the incident.

In terms of a covenant enforcement case, they typically are \$3,000.00-\$5,000.00 but given an attorney is already involved we would guess it would be closer to \$10,000.00 if we had to go that route. Depending on all the facts, it may be best just to send a letter to the owner after the policies are adopted saying a violation occurred and that the dog will be removed from the community if another action takes place.

However, none of that can happen until they adopt the new policies.

I have attached our handout on the new policies that Jeff referenced that includes our fee for preparing the same.

Let us know if there are any additional questions!

Thank you,

Cherith Atchley :: (they- them- theirs) :: Legal Assistant

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End: OVER BUDGET 2021-22

Reviewing the monthly financial reports, there are small charges through June that appear to be monthly costs and possibly short email/phone consultations. A larger jump appears in July, which is likely the payment of the invoice for updating the policies. According to Altitude Law, it would take 2-3 hours to review documents, and then a flat fee for revising core policies. The July amount appears to be for this work.

Therefore, it appears that POHOA may be using Cash Basis Accounting to hide how much has been INVOICED by Moeller Graf regarding the "dog incident". If the bill remains unpaid, it does not appear on the financial reports that are disclosed to homeowners.

Given these circumstances and the potential for it to be an issue regarding the election of new Directors, full disclosure is required.

Dr. Tunna, who resigned, reported that he was not allowed to see Quickbooks or know how much was being spent. He commented that if the budget were to be exceeded, that the Board would have at the very least an ethical obligation to disclose to excess spending beyond the budget. This, however, is not what happened in 2021 when the books were manipulated to hide the expense until after an election - one in which I was a candidate.

I have written an article on the subject posted here: <https://poudreoverlook.com/cooked-books-how-to-hide-hoa-legal-expenses-with-cash-accounting/>

I intend to self-nominate again for the open board seats at the upcoming election. I intend to raise this issue as part of my candidacy. Therefore, I believe that the open document requests should be honored without made-up "board policies" interfering as a matter of election integrity.

6. Resignation of Directors.

- (a) A director may resign at any time by giving written notice of resignation to the Association.
- (b) A resignation of a director is effective when the notice is received by the Association unless the notice specifies a later effective date.
- (c) A director who resigns may deliver to the Colorado Secretary of State for filing a statement to that effect.

I have also awaited confirmation since January that you will honor the Bylaws Article IV Section 6(b) and recognize that my resignation preceded a vote that **should not have been allowed to go forward** in an attempt to create the appearance of "removal", and then application of a newly changed the Bylaws to ban or bar a homeowner from serving for 3 years if "removed". Dr. Tunna noted that the activation of the Bylaw by official board vote to change the Bylaws was more than a month after my resignation. And, I protested as a matter of Robert's Rules of Order at the meeting, preserving the objection for later review. President Ballweber failed to recognize privileged motions at the meeting multiple times, including ones by Dr. Tunna.

Please confirm that my resignation was accepted and valid at the time it was submitted at the meeting, per our Bylaws, as well.

Please confirm that my candidacy will be made available/known to the owners in the notice being mailed out.

Sincerely,

Andy

----- Forwarded message -----

From: **Poudre Overlook HOA of Fort Collins** <poudreoverlookhoa@gmail.com>

Date: Mon, May 16, 2022 at 9:08 PM

Subject: Fwd: OVER BUDGET 2021-22 Legal Expenses

To: Gloria Jones <jonesgjpohoa@gmail.com>, jen hutchinson <pohoajen@gmail.com>, Weatherington Jr, Herbert W <pohoaherb@gmail.com>, Brucker, Linda J <pohoalinda@gmail.com>, Young, Sara <pohoasara@gmail.com>

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 **HB1137 Price Sheet - Updated (07592854xA12BD).pdf**
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