In Oct 2017 SHDC responded to NRED investigator's July 2017 questions related to my Third Amendment complaint. My observations follow;

The investigator requested a response in 10 days. The response was received almost three months (nearly 90 days) later.

The investigator specifically requested a "notarized written response" on the enclosed affidavit form. This was not provided- only the October 16, 2017 and apparently (per footnote 7) OMS's VMS Log.

The investigator also sought "each board member's notarized written response". Interestingly, it is not clear why the investigator addressed her letter to SHDC then asked it provide affidavits from SHCA board director's. SHCA is a separate and distinct entity from SHDC who had separate and different counsel.

Examining the context of NRED's letter we find the first question by investigator Pitch asked was a "response and supporting documents showing that the 1,079 "builder units" reflected on the Southern Highlands Adopted 2015 Budget were assigned Declarant Rights." (pg 1). **This was never answered.**

- Nor does it appear any documentation was provided showing any builder units listed on the budget and assessed in 2015 were assigned Declarant Rights. Nor did SHDC claim such assignment(s) were made. Had rights been assigned to "builder units" sold by Olympia, it would have been required the assignment be recorded (not just held in a private, unrecorded contract). When used any assignment of rights is accomplished in the sales contract. I examined several of the builder sale contracts recorded (and other documents associated with the APNs conveyed) and found nothing about the assignment of declarant rights.
- In the final Part D section of SHDC's letter it is asserted the 1079 builder unit number "is not and should not be used in determining the actual number of units conveyed…" As justification, the letter states:
    - "First, this number is nothing more than an estimated projection…" (pg 6) This is false. CC&Rs section 8.1 limit the total number of units used to calculate the base assessment to the number actually annexed.[1] An examination of year-end financial statements consistently finds the total units assessed always exceed budgeted units. The budget is always equal to or less than those at the end of the year. The budget reflects the beginning/actual units at the time the budget is approved. It is a floor. As expected, units budgeted are less than year-end as units are annexed during the year. The budget number is not an estimate. Nonetheless, even if it were an estimate (and again it is not), the estimate would have to be off/lower by more than 40% to preclude triggering, when added to toral residential units, the 75% threshold.
    - "Second, the builder in not an end user and often owns nothing more than raw land. Which has yet to be developed." (pg 6). This is true. Rulis then writes, for the purpose of calculating the threshold "[it] was always based on the conveyance of the unit to the "end user", which is the purchaser". False. While Olympia may have used the end user in calculating the threshold, the law does not support this position and because Olympia uses it certainly does not make it right. Raw land intended for residential use is a "unit" as defined under NRS 116.093[2]. And NRS does not limit using units in the threshold calculation until sold to the "end user." NRS only requires a unit "conveyed" to other than the declarant. Sales to a builder is a sufficient conveyance.[3] Only if the declarants rights are conveyed as part of the sale, as the NRED's investigator in her letter appears to be seeking to understand, would the units held by a declarant) be unchanged (thus far less than 5 total units are held by a declarant).

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[1] "Accordingly, the formula for calculating the Base Assessment against each Unit shall be the total budget amount for the coming year divided by the total number of Units created under and subject to this Declaration." Excerpt from SHCA declaration section 8.1 underline added.

[2] The SHCA CC&Rs provide for different definition of "unit". Nonetheless, NRS is controlling.

[3] The AG opinion attached to the NRED letter closing my complaint used units "sold" as extracted from the budget- not units "conveyed". Interestingly, the AG did not find an issue in using the budget numbers. His error was in not using builder units noted in the budget. Presumably, because of his flawed reading of the statute to include units not in the end user and/or the number collected by NRED prior to 2018, that asked association to provide total units with Certificates of Occupancy.

- Rulis' assertion "The approach [as noted above- only counting units to end users] has been accepted by the Nevada Real Estates Division. This is false. Based on my email exchanges with NRED, it specifically claims the Division does not track declarant control. The "per door" collect identified by Rulis is required under a different section of NRS that specifically limits the fee to "occupied residential units."[4] Builder units (raw land or under construction) are not subject to the fee- but are counted in control change.
- The audits, identified by Rulis as justification for Olympia's counting of units, are limited to a count of units subject to the fee- not total annexed units in the association.
- Finally, Mr Fitgerald's investigation (case IS 11-2404) closed for insufficient evidence proves noting- certainly not as being constructive in showing how Olympia properly counts units in determining the control threshold. It should also be noted the case occurred in 2011, years prior to the 2015 budget issue and Mr Rulis acknowledges "a detailed decision by the NRED could not be located" (pg 7) but nonetheless seeks to use this investigation as proof of NRED's approval of SHCA unit count as it related to declarant control.

Question 2 had two parts- 1) the "Master Declaration conformed with NRS 116.2122..." and 2) "therefore would increase the number of units to 10,400"

- Rulis' acknowledged he was "specifically requested [to] response to the allegation that the Third Amendment did not conform [...] with NRS 116.2122", Yet, what he said is a clear red herring worth examining.
  - First, he asserts "...flaws [exist] in the complainant's argument..." (pg 3). How did he know my argument? NRED holds the complaint as confidential. Pitch's letter never asserts, I argued the issue.
  - Second, he asserts the additional units "were not for unspecified real estate." Apparently, he was trying to imply NRS 116.2122 was not applicable- but never specifically makes this assertion. In any case this is absurd. It is clear the additional real estates added by the Third Amendment was not in the original declaration. Rulis acknowledges this fact asserting the amendment "corrected a scrivener's error in the original declaration" (pg 4). Thus, by definition real estate/units (APNs) added would be previously *unspecified*- even if added in the amendment due to an error.
  - Third, Rulis writes the following nonsensical claim: "Thus, only if no description of the planned estate being added is included or added to the declaration, then the amount of real estate added to the planned community "may not exceed 10 percent of the real estate..." (pg 4). It is impossible to add real estate with "no description" much less measure the acreage of the real estate not described to assure it does not exceed 10%. At bottom, a declarant can add real estate that was not specified in the original declaration provided it does not exceed 10% of the total real estate speicifced in declarant. It is clear the added real estate in the Third Amendment violated NRS exceeding 10%.
  - Fourth, Rulis goes on, arguably intending to mislead the reader even more, using language misstating the statute "... ***and then*** the declarant may not "increase the number of units in the planned community beyond the number stated in the original declaration." (emphasis by Rulis). The actual statute is reprinted below and is much different than represented by Rulis. The statute provides "the declarant may not in any event increase the number of units..." (underline added). It is unambiguous the langue makes no exceptions. (See SHDC own letter, pg 5 for the background on why this provision exists and supports my understanding.)

NRS 116.2122 Addition of unspecified real estate. In a planned community, if the right is originally reserved in the declaration, the declarant, in addition to any other developmental right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in paragraph (c) of subsection 1 of NRS 116.2105 and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to paragraph (d) of that subsection.

(Added to NRS by 1991, 556; A 1993, 2363)

Is not disputed Olympia reserved the right to add additional real estate. But a limit on any addition is set forth in NRS 116.2122- 10% of the total acreage in the original declaration. In amending the declaration (Third

[4] This is fee mandated on all HOA owners to fund the Ombudsman's office

Amendment) Olympia added several parcels to the community. One parcel added, APN 191-01-501-016, is recorded as approximately 318 acers, thus singular exceeds the 10% threshold established in NRS 116.2122. The parcel was not purchased by Olympia until 2004 in a BLM sale- five years after the original declaration was executed.

SHDC asserts, Olympia "contemplated and described in the Declaration" the BLM land it added in the Third Amendment units described in the Third Amendment sit. Yet another red herring is created and needs to be deconstructed.

- I do not dispute the possibility real estates added four years after the declaration was executed was "contemplated" by Olympia. But that is not relevant here. What is relevant is the land was not specified in the original declarant and supported by the fact it was *added* in the Third Amendment.
- Yes, as Rulis writes, the Third Amendment may add additional units. But the additional real estate is exceeding the 10% limit and "the declarant and not in any case", unilateral increase the units planned in the original declaration.[5]

I do not accept the absurd assertion Rulis made in his SHDC letter on behalf of Olympia that additional real estate could be added "...without having to describe the location of that real estate." (pg 4) Equally absurd is his assertion: "As stated in the title of the section, however, this provision is focused on and limited to the addition of "unspecified" or undescribed real estate." Rather, it is my position the title of the section reflects the ability to add units *unspecified* in the declaration at the time of execution and conditioned on any addition not exceeding 10% of the original acreage. Rulis' own letter, pointing to UCIOA, justifies my reading of the statute on this point.

SHCA asserts NRS does not prevent or impeded the Declarant from rectifying a scrivener's error (pg 4). I agree. But using scrivener correction(s) to contracts has very specific requirements before valid- requirements not met by Olympia. **The scrivener error claim is not credible.**[6]

Some general observation:

Interestedly, SHDC opines on the adoption of the Third Amendment despite not being asked by the investigator to do so. In doing so, SHDC constructs yet another red herring that contradicts the position taken by NRED in my litigation *Kosor v NRED*- at the very opening of its response.

- On page 1 Rulis writes "this complaint, which comes 12 years after the Third Amendment was sent to every homeowner in Southern Highlands, adopted, and recorded, has not merit. His strange sentence is intended to misrepresent. The amendment was not adopted, just sent to owners and recorded (as would any unilateral amendment). My complaint alleged it was not adopted. But reading it quickly it could appear Rulis is asserting it was adopted. Owners never approved the amended at the "November 17, 2005 meeting" as one could assume from the manner in which Rulis structured his sentence. But it evident is the amendment was recorded a month earlier. "It became part of the official documents of the Association" Rulis writes (pg 2) - but it was never adopted by owners. The "notice" provided owners was that of an amended never approved and void on its face.
  Olympia's declarant authority to unilaterally record amendments only extends to adding/removing real estate. Had the amendment not included the change in maximum units, the declarant would have had the authority.
- The repose on challenging the amendment is limited to adopted amendment. This is the argument I lost in *Kosor v NRED*.

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[5] See NRS 116.2122. The maximum units can only be increased by an amendment adopted by owners and properly recorded

[6] The amendment changed an important term of the declaration--the maximum units--more than five years after it was established, after approximately 7,000 units had been annexed, nearly simultaneously with Olympia obtaining a major change to its development agreement with Clark County increasing the maximum units it could build in Southern Highlands, and followed six prior amendments and/or supplemental changes. And now Olympia claims it just found a mistake? BS.

- Actual notice does not in and of itself satisfy the criterial for adoption (as implied on pg 3, Part A third paragraph)
- Part B of SHDC's letter asserts "...**The Declarant Had the Right to Execute and Record the Third Amendment.**" (pg 3). Yet in filing with the Court, NRED asserts the amendment was an action for association, not a unilateral effort of the declarant.

In footnote 7 of the SHDC letter, at the very end of the letter, it is asserted as evidence "the Association has never met the threshold [ ] under NRS 116.31032" The note goes on providing "only 7,157 unit's had been conveyed to unit's owners of as October, 2015. See VMS Log, enclosed herewith. Based on these number, the percentage of conveyed units was approximately 69%, well below the declarant turnover threshold." First, the VS log is maintained by SHCA's manager and a record of SHCA, not the developer. Second, it is not clear how the record is constructed. Any claims of total annexed units conveyed to owners other than declarant, as established by NRS, cannot be satisfied based solely on any count produced by the log.

The 2005 amendment could, and I argue should have been challenged by the SHCA Board on similar skepticism. But this did not occur. The Association's Board was comprised of three directors all appointed and employed by Olympia. The Association's contracted legal counsel, holding a clear fiduciary duty to act on owner's behalf was Angel Rock- a then junior associate with a local firm. She would end here relationship with SHCA and leave her firm a few months later to become the President of Olympia Management Services (OMS) where she remains today.

The 2004 and 2005 SHCA budgets show over 7,000 units assessed. Only 6,750 (75% of 9,000) were needed to affect control change prior to Oct 2005- which did not occur.