

Judge's Neighborhood Security News

June 2017

Hello Neighbors and Happy Summer,

This report has new and important information in it. Our neighborhood is changing quickly. Please read this and make sure other decision makers in your household read it too.

Item #1 – New Highest Sale in Marion Estates

Six weeks ago, the developer who built this new home on 42nd Street sold it for \$1,650,000. This is the highest recorded sale in the history of Marion Estates/Short Hills.



The buyer is a pitcher for the Arizona Diamondbacks. That is a fun fact, but it isn't the real news. The news is that investors and developers now know there is a new high value ceiling in Marion Estates. They all want to build a home here because this new high sale means more profits. They are looking for old homes they can buy for lot value. Lot values had previously been in the \$450,000 - \$550,000 range. The value of our lots will differ depending on size, orientation to a view, location near a busy street and how it is effected by storm drainage or the floodplain. It is fair to say that the lot values are rising. The next new home to hit the market will likely be the cul-de-sac home on Montebello Ave. This giant home is referred to by the neighbors as "The Circle K" and the construction has been a very slow process that is now over 27 months. It will reportedly be offered at \$2,000,000+. Like I said, the neighborhood is changing.

Item #2 – Recent Disagreement with a Developer

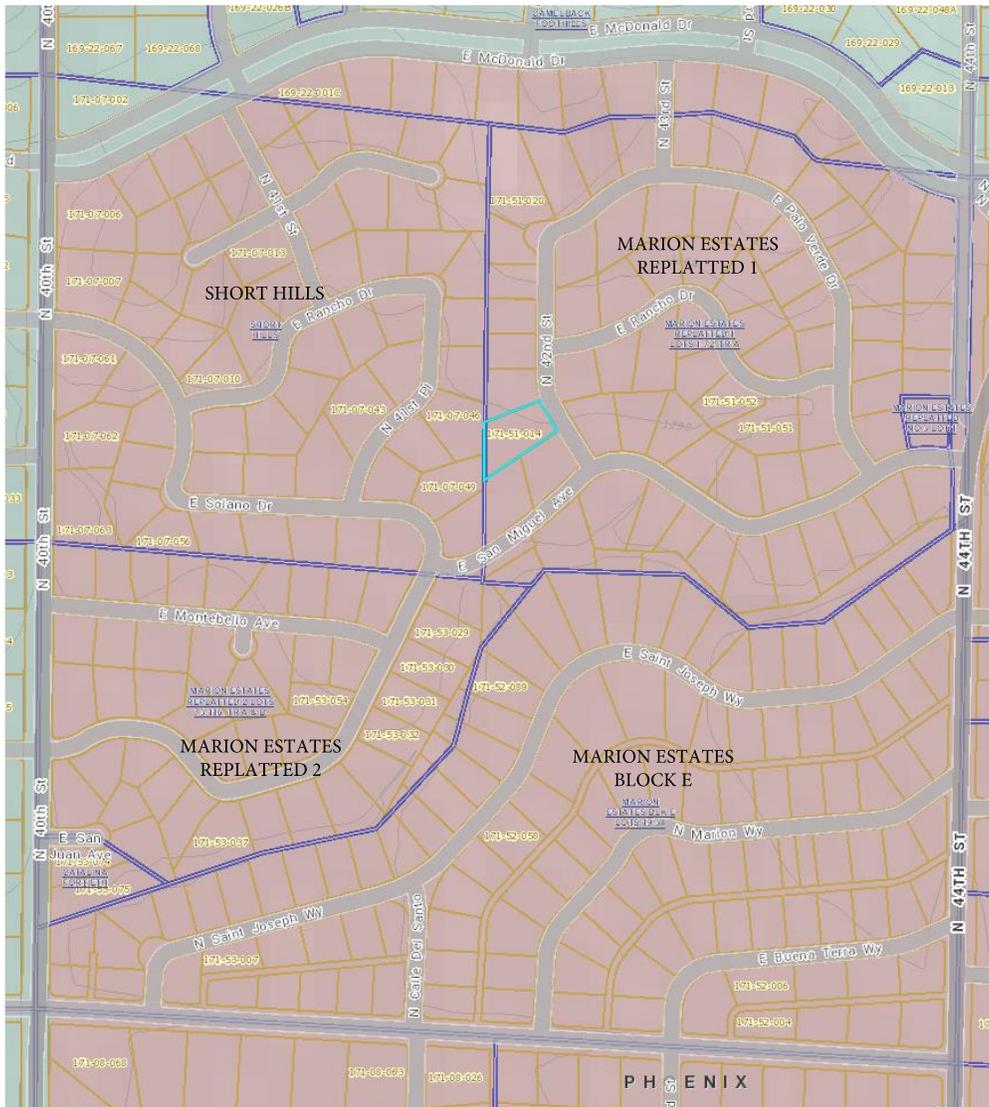
With this change comes added responsibility for all of us. Last year a different group of developers bought the old house at 4208 E San Miguel Ave. When they scraped the house, we learned that they planned to build a 26-foot tall 2-Story home there. They already had their building permit from the City of Phoenix. This height is a violation of our CCRs which limit homes to 20-feet in height and one story. Five concerned volunteer neighbors met with the developers to inform them of their oversight. The developers were not happy and the meeting ended without an understanding. I am very proud of what happened next. There are 72 homes in this portion of our neighborhood (Marion Estates Replatted 1). We contacted every homeowner and 49 of them agreed to add their name and address to a Cease and Desist letter we sent to the developers. This letter explained our intention to file a temporary restraining order and an injunction to stop construction if they didn't conform to the CCRs. The letter was written and delivered by an attorney we hired. Happily, the developers have agreed to change their plan and meet the height and size restrictions of the CCRs. This incident also served as a great opportunity to inform the homeowners in Marion Estates Replatted 1 about the challenges we face in the future.

Item #3 – Our Expiring CCRs

This leads us to the most important portion of this report. Our CCRs are very old. The original recordings were in the 1950s. They are microfiche copies and when the document is sent by Title Companies to a buyer for review, portions are illegible. For 50+ years they were rarely challenged because there was no market for giant expensive homes here. Because of this, Marion Estates existed in an unthreatened state of relative complacency, until now. Today, our original homes are nearing 60 years of age. For many of the older un-remodeled homes, the value of the lot has surpassed the value of the home. Because our subdivisions were created in the 1950s, we don't have a mandatory established Home Owner's Association to fund budgets, monitor/approve construction, pay for insurance policies, assess fines and litigate violators. We only have ourselves.

The privacy we share in our homes and backyards needs to be protected or it will soon be threatened, one 2-story McMansion at a time. Drive through Arcadia Proper and you will see 2-Story 30-foot tall \$3,000,000 homes looking down onto the backyards of the neighboring 2-story \$3,000,000 home. I walk into my backyard here in Marion Estates and I see trees, rooftops and of course, some phone poles. As much as I like rising lot values, I like the space and privacy we have and I want to preserve it. I'm hoping you do too.

While preparing for the meeting with the developers, we reviewed our old CCRs. We found something that had been previously unknown, **they will expire for two of our subdivisions in November of 2021. These two subdivisions are Marion Estates Replatted 1 and Replatted 2.** See the map below:



The verbiage in those CCRs state that the expiration will happen, “...unless an instrument signed by a majority of the then homeowners of the lots has been recorded, agreeing to change the same in whole or in part”.

So, we have time to make changes and I’m certain we can get more than half of our homeowners to agree. The question is how much change do we make?

Here are a few facts that may answer some questions regarding the CCRs.

- 1) CCR stands for Covenants, Conditions and Restrictions. They were recorded on every lot during the original development of Marion Estates and Short Hills. They outline what can and cannot be built on our lots and other restrictions for the use of the property.
- 2) The City of Phoenix does not enforce our CCRs. The City Building Department will approve plans that meet their broader codes. They will allow for a 2-Story structure that is 30-feet in height. Think Arcadia. It is up to us to voluntarily enforce our 20-foot height limit and other restrictions.
- 3) What about the other two subdivisions on the map above? Marion Estates Block E (south of the wash) and the Short Hills subdivisions have clauses in their CCRs that automatically extend them in 10-year increments (unless changed by a majority of the homeowners). Their CCRs are not going to expire. Even so, owners in those subdivisions may want to take advantage of the efforts that will be made in Replatted 1 and Replatted 2 and make similar changes to their CCRs. #4 below is an example of a change that many of us believe should be made.
- 4) Maximum building height is an issue in all four of our subdivisions. The current CCR verbiage measures the 20-foot height limit from the “highest finished grade line immediately adjoining the foundation of the structure”. Many of us would like to change that to “highest natural grade line”. This is because the current verbiage would allow a developer to bring in fill dirt to raise their lot 4-5 feet and then build a 20-foot structure equaling a 25-foot total height (looking down onto your backyard).
- 5) When a violation is discovered in any of our subdivisions, it is up to homeowners in that subdivision to organize and address the issue. If the developer chooses to fight the homeowners rather than conform to our restrictions, legal fees will mount. This is why we need to organize and communicate now.
- 6) If we invest some time and money now to amend and extend our CCRs, there will be less confusion and a better understanding of them in the future. There will be some cost associated with re-writing and recording them. We don’t have an idea yet what that cost will be.
- 7) Several of you have stated that you would like to pursue the creation of a fully functioning mandatory Association in Marion Estates. Arizona Law requires the approval of 100% of the homeowners to establish a fully functioning HOA. This is an impossible threshold to achieve. In my opinion, the best we can do is organize as volunteers and self-manage our neighborhood.

The first step is to get organized. Our efforts in Replatted 1 helped create an email list and a better understanding of the facts for 70% of the homeowners in that subdivision. With better communication, we can share information and announce future meetings so homeowners can ask questions and understand the details. If this report was emailed to you, we can communicate with you. If this report was taped to your mailbox that means we don’t have your email address and therefore, can’t communicate with you. If you want to receive periodic updates and eventually approve and sign the new CCR documents, please send your email address to judge@bellamak.com along with your name and address so we can place your contact info in the correct subdivision for updates.

Item#4 - The 40th Street Lot Construction update

Construction on the Floodplain lot north of the roundabout on 40th Street is ongoing. There is a contingent of concerned neighbors led by John Fischl and Dan Mercer keeping watch over this project to verify that the developer stays within the 20-foot height restriction and other limitations of our CCRs. As we reported last quarter, we met with Sal DiCiccio and the City of Phoenix Bldg Dept on the property but they did not offer any help. The homeowner to the east of this property is plagued with construction noise and dust (in addition to the looming 16-foot wall that will be built just outside her back wall). The monitoring of this project is ongoing.

Item #5 – The Mysterious Green Bags

Remember the Poo-Bag story?



Well, one of our neighbors saw the culprit and confronted him. Here is their email to me from several weeks ago:

We identified the poo bag culprit, the person leaving the dog poo in tied green bags. We talked with him and he denied it was him, but we are certain. Both my husband and I walked separately past an area on Solano and there was no bag. Then my husband saw the guy walking his dog with green bags at his waist. He dropped our dog at home and went back to follow him. He walked towards the guy and noticed this green tied bag of fresh (very warm) poo on the ground where none was there two minutes ago. There were no other people on the road or outside during this lag. We approached the guy a half of a block away. Of course, he denied that it was him. We told him that neighbors were concerned.

Young man about 25 years old, Caucasian, tall, slim, reddish hair, wearing knee length basketball shorts with vertical stripes, and a Cardinals t-shirt, white earbuds, said he lived in the apartments on 40th St (north of Camelback)

Dog is black retriever, probably about 60 lbs, loping gait, very calm.

Side Note from me - Last week I drove down San Miguel toward 40th Street only to see two new poo bags on the south side of the street.... sigh.

Finally, Quarterly Trash Pick-Up is here. As we head into Monsoon Season, it's a good idea to rake, bag and stack all that loose debris in your yard and put it on the street. That means less stuff to scoop out of your pool each morning after the winds come!!

Placement begins June 24

Pick-up begins July 3rd

If you have questions about the rules for Bulk Trash Pick-Up, please go to:

<https://www.phoenix.gov/publicworks/garbage/bulktrash>

More information on our efforts to update our CCRs will be coming. We will likely schedule meetings for each subdivision to explain the legal issues and possible solutions. If you want to be a part of your subdivision's organization, please send me a reply stating this. Together, we can keep our neighborhood open, spacious and most importantly.....under 20 feet in height!!

Thank you all for your continuous support of our neighborhood,
Your Neighborhood Watch Guy

Judge Bellamak



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