Testimony of Mark Rauch

Opposition to 2823-A A4 Amendments

Before the Senate

Senate Committee on General Government, Consumer and Small Business Protection

May 29, 2013

My name is Mark Rauch. I live at [redacted] Silverton, OR, which is in the planned community known as Abiqua Heights. My wife and I moved to Abiqua Heights in 1999. I am a past president of then HOA and am currently an interim board member appointed in January of this year to fill a vacated position.

I offer the following points in opposition to the -4 amendments to HB 2823-A, and in response to the written testimony presented by Chuck Sheketoff on May 22, 2013. (Although Mr. Sheketoff's testimony was in support of the –A3 amendments, and subsequently on May 23, 2013, the –A4 amendments were introduced, the following testimony is applicable to both):

1. The Abiqua Heights CC&R sign provision. Mr. Sheketoff testified: *"At Abiqua Heights our CC&R's provide that we can have signs of any type if approved by the Board."* (May 22, 2013 written testimony, p. 1, para. 5.) While that statement is arguably "correct", it puts a spin on the actual language of the provision that incorrectly suggests the CC&R's favor signs, subject to the procedural step of receiving board approval. In other words, if someone read the rule as characterized above by Mr. Sheketoff, the most likely impression would be that signs are generally not restricted in the neighborhood. The actual language of our CC&R's, at Art. V, Sec. 14 is as follows:

   Section 14. Signs. No signs shall be erected or displayed on any Lot, Living Unit, or any other portion of the Property without the prior written permission of the Board; provided, such permission shall not be required for one sign no larger than 6 inches by 24 inches displaying the name and/or address of the Occupant, or one temporary sign no larger than 18 inches by 24 inches advertising the Lot or Living Unit for sale or lease, which shall be removed upon the sale or lease of the Lot or Living Unit. During construction the builder may advertise with a sign no greater than 32" x 48".

   That language, I would argue, leaves the impression that generally signs (other than the three express exceptions) are *not* allowed, but that there is a process to ask the

board for additional exceptions. The provision creates board discretion on sign requests. How the current board is approaching that discretion is discussed at No. 3 below.

2. The First Amendment and yard signs. It is our understanding, based on legal advice, that HOA's *are* allowed to regulate signs within the planned community *if* the CC&R'S allow such regulation. Ours do. We also understand that the First Amendment protects people from *government* interference with free speech, but that an HOA is a private party, not a government actor, and that the concept of planned communities and CC&R's as binding agreements is recognized in the Oregon Planned Community Act. We understand CC&R's are contractual covenants, conditions, and restrictions that everyone in the planned community agrees to when they buy their property. Finally, we understand an individual's freedom to contractually restrict, or even give up, constitutional rights has been judicially acknowledged in other states, and has not been eliminated by any Oregon or federal case law.

3. The HOA is actively dealing with the sign issue. In describing the HOA board's response to, and granting of, his sign request, Mr. Sheketoff's written testimony did not include the fact the HOA board had already undertaken a survey of the neighborhood seeking input and suggestions on the sign issue to help the board develop a policy for exercising the discretion granted by the CC&R's on sign approval. Over half of the property owners in Abiqua Heights (78 out of approximately 135) responded to the survey, and of that 78 a majority (41) indicated they did not want signs allowed (other than the 3 types expressly allowed in the CC&R's). Further, at the same meeting at which Mr. Sheketoff's request was granted, the board appointed a committee to study the sign survey results and draft one or more proposed policies for the board to consider adopting before the next election cycle. That committee consists of two board members, two homeowners who responded "yes" to signs on the survey, and two homeowners who responded "no" (and one "alternate" from each group). The committee has met and the work is underway to draft a proposed sign policy that is fair, equitable, and consistent with the CC&R's.

4. Mr. Sheketoff's sign request. The Abiqua Heights HOA board granted Mr. Sheketoff's request to post his yard sign because we felt a clear board policy regarding signs was not yet in place and was needed both to guide the board on future sign requests and to inform the neighborhood of the board's policy on signs. I made it clear at the time of my vote to approve Mr. Sheketoff's sign request that I was *not* voting for a general approval for anyone and everyone to post signs, because (a) the CC&R's

clearly state *no* signs can be posted on lots without prior written permission of the board; and (b) "visual clutter" is a significant concern of a number of those who do not want signs posted (50 signs is not the same as 1 sign in that respect.)

5. The proposed "business records" amendment. Finally, and this point is related to the sign issue, but more directly addresses the proposed expansion of records available to owners. Such an expansion beyond what is currently working is unnecessary and potentially harmful. It could, and likely would, have a chilling effect on the willingness of neighbors to participate in association matters. By way of examples: (1) the survey mentioned above regarding preference on signs included a place to indicate whether or not the party responding wanted their comments released to the neighborhood if requested. Some said "No". Apparently such confidentiality would not be allowed under the proposed expansion. (2) Unfortunately there was considerable unrest in our neighborhood last year resulting in a recall petition being circulated, and 4 of the 5 board members resigning before the recall vote. Signatures on such a petition should certainly be subject to independent verification. But making such petitions in the HOA context a "public record" can lead to harassment and more discontent, and would certainly discourage some from "getting involved". (3) If an owner wants to ask a question or register a concern or complaint with the board, but only wants to do so confidentially, the proposed amendment apparently would not allow that to happen. (4) Even ballots cast by homeowners on association matters would apparently be subject to disclosure under the proposed amendments. Is there a real need here that's not met by current law, and that outweighs these concerns? Or is this additional "transparency" really a tool for a disgruntled owner to harass the board with endless requests for records?

In summary, the sign amendment would intrude on the right of private parties to enter into contracts, and the "business records" amendment is unnecessary and would discourage homeowner participation in HOA matters. I urge this committee not to adopt these amendments.

Thank you.