

## **THE HISTORY AND THE CAUSES OF THE LANDSLIDES IN BELLA VISTA HEIGHTS**

This document is a chronology of the significant dates of **(1)** the development of the “Bella Vista Heights Subdivision Phases 1& 2 “ (“BVH”), and **(2)** the landslides in Lots 70, 72, and 73, and **(3)** the subsequent collapse of Carino Lane caused by all these landslides.

**Before 2004** - For a sales price of **\$8000**, Arthur R. Dubs bought BVH (46.9 acres) from the trustee of the “Opal Guetzlaff Trust”. Opal died aged 94 on 12/14/2003 in a Redding care home. The BVH property transfer record is no longer in the Jackson County property website. Opal had lived on 4195 Rachel Way Medford, and she was a teacher in Lone Pine Elementary School in 1961.

**December 13, 2004** - For **\$7,920,560**, Dubs sells BVH to Pacific International Enterprises Inc. (“**PIE**”), a US film production company whose founder and president was Arthur R. Dubs. PIE had filed for Chapter 7 bankruptcy on November 30, 2001, but it was still in existence on January 2014.

**July 28, 2005** - The City of Medford approves the Planned Unit Development (“PUD”) for BVH that PIE submitted in file PUD-05-25.

**January 5, 2006** - For **\$13,835,000**, PIE sells BVH to “Excelsior Development Company LLC”, a Jacksonville, Oregon LLC formed on 6 December 2004.

**March 2006** - Marquess and Associates start the mass grading on BVH and laying the roads (including Carino Lane and La Strada Circle) and the underground utilities. See Marquess’ progress in the City of Medford aerial photos (“**aerial photo**”) website:

<https://opendata-medford.hub.arcgis.com>

**April 24, 2006** - For **\$14,100,000**, Excelsior Development Corporation sells BVH to Bella Vista Heights LLC of Jacksonville.

**May 25, 2006** - The “Bella Vista Homes Homeowner’s Association” (“**BVHHOA**”) is created as a **Mutual Benefit** nonprofit corporation “with members”.

BVHHOA’s “Articles of Incorporation” define:

*“Distribution of Assets upon Dissolution”: “On dissolution or final liquidation, the assets of the corporation shall be transferred, subject to any contractual or legal requirements, to its members, or if it has no members at such time, to those persons whom the corporation holds itself out as benefitting or serving.”*

**June 2007** - US financial collapse starts.

**July 2007** - Marquess & Associates completes the grading and the installation of roads and utilities in BVH.

**October 2008** - A “Google Street View” photo, taken in October 2008 shows the SW extremity of Carino Lane is included in here:

<https://www.bvhaccess.com/landslide-gallery>

The photo is titled “Carino Ln October 2008”; it shows that a 10ft wide Public Utility Easement (“**PUE**”) once existed atop and within Lots 72 and 73.

**April 21 2009** - For **\$7,900,000** (a **\$6.2M loss**), Bella Vista Heights LLC sells BVH to Bank of the Cascades.

**June 2009** - US financial collapse ends.

**July 24 2009** - BVHHOA is dissolved.

**2010** - Bank of the Cascades have planted vegetation in the Ag Buffer, as shown in the 2010 aerial photo here:  
<https://opendata-medford.hub.arcgis.com>

**2007 - 2011.** The Mail Tribune of 3/29/2012, describes BVH as an *“empty reminder of the residential building boom/bust and is a millstone around the neck of developers and bankers”*.

**June 8 2011** - Amrhein Associates, Inc. (“**AAI**”), of Ashland, OR, produces a “Geotechnical Report” for Ender Ilkay of BVH USA LLP Vancouver, B.C.

A July 24, **2023** report by Carlson Geotechnical for **Aaron Fedora**, *quotes from the Amrhein report that describes Lot 70 as a “steep slope”, Lot 72 as “Very steep grade, **unbuildable**, slope instability.”, and Lot 73 as “Very steep slope, **requires extraordinary measures, slope instability.**”* The Carlson report is here:

<https://www.bvhaccess.com/landslide>

**January 2012** - Mark Amhrein of AAI leaves for a year-long *“summer vacation”* on the Pacific Coast Trail.

**March 25, 2012** - Lots 70, 72, and 73 collapse on the night of Sunday 3/25/2012.

**April 4 2012** - Medford Water Commission’s (“**MWC**”) meeting minutes quote a Marquess and Associates’ report on the 2012 landslide that evasively states: *“**the water line probably broke after the hillside slide**”*, in paragaph 9.1 of the MWC minutes:

<https://www.bvhaccess.com/landslide>

**May 2012** - A chainlink fence is installed around the collapsed Lots 70, 72 and 73; its is in here:

<https://www.bvhaccess.com/landslide-gallery>

**June 1 2012** - Amrhein Associates Inc. is dissolved.

**June 11 2012** - Shannon & Wilson, Inc. (S&W) of Seattle publishes a **75-page** “*Preliminary Bella Vista Landslide Report, Medford, Oregon,*” dated June 11, 2012; the report’s client is unknown, and this report is not available. Carlson’s 2023 report paragraph 5.2 references the 2012 S&W report.

**S&W concluded that the landslide resulted from high temporary groundwater levels** caused by annual rainfall data that showed March 2012 was the fourth wettest March through the 25th since 1974.

The aerial photo for 2012 shows that Lots 70 and 72 have collapsed, and, to a lesser extent, so has Lot 73. A chain link fence surrounds all three lots.

**July 17, 2012** - The “Prepurchase Geologic Hazard and Geotechnical Evaluation, Bella Vista Heights, Medford, Oregon,” is a draft report dated July 17, 2012, prepared by **Robin L. Warren** of Applied Geotechnical Engineering & Geologic Consulting (“**AGE**”) for Ender

Ilkay of BVH USA Limited Partnership, Vancouver B.C, (“**BVH USA LLP**”), a foreign corporation formed on September 20 2012.

The 2012 AGE report states, under its “Lot 70, 72, and 73” subheading, that: *“The existing slump materials are fine grained...a majority of the slide debris **will need to be removed from the site. The new slope fill** may consist of imported granular material such as 4-in.-minus crushed rock compacted using a smooth-drum vibratory compactor. Subsurface drainage should be installed behind the backside of the fill...slopes should be graded no steeper than 2H:1V”*.

The *“fine grained”* materials used in the **2006 “Mass grading”** were **unsuitable** for lots **70, 72, and 73**.

**July 30 2012** - For **\$2,200,000**, (A **\$5.7M loss**) Bank of the Cascades sells BVH to **BVH USA LLP** (the “Declarant”)

**August 8, 2012** - Pahlisch Homes files BVHHOA’s *“Application for Reinstatement/Reactivation”* with the Oregon Secretary of State.

**August 21 2012** - Ender Ilkay of BVH USA LLP records an “Assignment of Claims” document between BVH USA LLP and the Bank of the Cascades: <https://www.bvhaccess.com/basic-documents>

The **2013** aerial photo shows the regrading on Lots 70, 72 and 73 that was done in an attempt to restore these lots to the original slope shown in the **2007** aerial photo.

This regrading photo **does not show** any “*new slope fill*” consisting of “*granular material such as 4-in.-minus crushed rock compacted*” and so it **does not conform** to the recommendations that were described in the draft report, dated July 17, 2012, that was prepared by Robin L. Warren of AGE for BVH USA LLP.

**2013** - Aerial photo shows that the AG buffer is no longer vegetated.

**June 2013** - PIE founder, Arthur R. Dubs, dies.

**July 2013** - Mark Amrhein, formerly of AAI, starts working at SHN Consulting Engineers & Geologists, Inc. of Ashland.

**February 25 2017** - After no landslides on Lots 70, 72 and 73, on 2/25/2017, **heavy rains cause Lots 70, 72 and 73 to collapse.**

On 2/25/2017, I emailed Crystal Lake Community Management (“**CLCM**”) to inform them of this collapse.

**March 2 2017** - CLCM sent an email to all BVHHOA members about the **2012** collapse in Lots 70, 72 and 73. This email describes the **2012 remediation** of these three lots as:

*“This was **non-engineered fill** meant to **temporarily patch** the previous landslide that occurred approximately 8-10 years ago **due to a ruptured City of Medford water main**. The water main is now abandoned by the city and once building starts on this property **the entire building site will be engineered**. The recent give in earth was the **patchwork** that was done a few years back when the project was acquired which was **simply for Aesthetic purposes**. Please use caution if walking in this area”.*

**CLCM’s email implies that it was deficiencies of the 2012 restoration that caused the 2017 collapse.**

Note CLCM’s attempt to **rekindle the falsehood** that it was MWC’s pipe that caused the **2012** collapse, a claim disputed by MWC.

CLCM probably did this because the directors of CLCM and Pahlisch Homes are the same persons, and Pahlisch homes might have organized the **“temporary patch”** and now Pahlisch**(1)** wants to disguise the true cause of the 2012 collapse, and say **(2)** the **“entire building site”** will have to be **“engineered”** anyway.

**Summer 2017** - The **Declarant** repairs the collapse of Lots 70, 72 and 73, and the West fork of Carino Lane.

These repairs include, in accordance with the 2012 AGE report's recommendations, the installation of an **earthen buttress** on Lots 70, 72 and 73 that is intended to provide lateral support to Carino Lane, and cover the disturbed soils on Lots 70, 72 and 73 with compacted 4-in.-minus crushed rock to prevent further erosion and collapse.

This buttress is shown on the 2019 aerial photo here:

<https://opendata-medford.hub.arcgis.com>

**December 2 2017 - Robin L. Warren** of AGE sends a “*Slope Remediation*” letter to Pahlisch Homes Inc. that states (**bold added**) : “*The cut slope on Lots 70, 72, and 73 failed in the spring of 2012. The failure consisted of a large slump that extended uphill from East La Strada Circle onto all three of the lots. **The cause of the slope failure could not be determined with certainty at the time, but a large water main (located between Lots 70 and 72) failed causing significant erosion on the hillside. Based on the relatively small amount of movement of the cut slope, we anticipate that the factor of safety of the cut slope was slightly less than 1.0 at the time of the failure. A significant amount of the slope damage to the lots was due to erosion of the hillside from the failed water line. Remediation of the slope failure was completed in summer 2017.***”

In **2012**, MWC capped the water main; later, MWC, Marquess & Associates, and S&W all say that a broken pipe was **not** the cause of the 2012 landslide.

But **Robin L. Warren's** 2017 AGE report insinuates that the **2012** capped water line caused the **February 2017** landslide. ***Really? Why the ambiguity?***

**March 2017 - July 2023** - ***For six years, Lots 70, 72 and 73 do not collapse.***

**The buttress that the Declarant installed in Summer 2017 remained intact and effective up to April 2024.**

**June 8, 2023** - BVH HOA board minutes report Aaron Fedora's words:

*"Carino Ln: Aaron – Met with geotech consultant on site. Declarant is aware of possibility of movement. Further investigations required."*

( Access board meeting minutes here: <https://www.bvhaccess.com/board-minutes> )

**July 24 2023** - Carlson Geotechnical ("**Carlson**") submits a report to BVH USA LLP, Vancouver, B.C. This report concluded that, with respect to the south portion of Carino Lane that is subsiding and cracking:

*"It is difficult to pinpoint the cause(s) of this distress at this time due to relatively limited information available detailing the 2017 reconstruction of this portion of Carino Lane."*

Paragraph 7.2 of the Carlson report states:

***"it is our geotechnical opinion that the buttress is performing as intended."***

This means that the Declarant's 2017 buttress provided the essential support to Carino Lane, and provided effective erosion control to Lots 70, 72 and 73.

Carlson's July 2023 report proves that ***the Declarant's summer 2017 buttress has effectively done this now for six years.***

**December 7, 2023** - On this date, for a sales price of **\$99,000**, BVH USA LLP sold Lots 70, 72 and 73 to Southridge Builders LLC.

According to the Oregon Secretary of State, Southridge Builders LLC ("**Southridge**"), **(1)** was created in 9/1/2021, **(2)** reported no business activity on 1/11/2022 and 11/29/2022, then **(3)** reported an "administrative dissolution" on 11/2/2023, and **(4)** requested a "reinstatement amended" on **November 20 2023:**

[https://egov.sos.state.or.us/br/pkg\\_web\\_name\\_srch\\_inq.login](https://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login)

By 12/7/2023, visible subsidence, tension cracking, gullies and erosion are in Carino Lane, in the PUE that is within Lots 70, 72 and 73, and far down within them.

The Declarant-appointed board remains in office.

Southridge is now responsible for maintaining Lots 70, 72 and 73, and the PUE within them, in a secure state, and prevent these lots from collapsing and taking Carino Lane down with them.

By 12/7/2023, the buttress installed by the Declarant in Summer 2017 still remains intact.

**December 14, 2023** - The Declarant-appointed board called BVHHOA's **2023** Annual Membership Meeting ("**AGM**") **two weeks** after the **Bylaws' mandatory** last date of **12/1/2023**.

This AGM's minutes state:

*"1- What was the work just completed at the end of Carino Lane? – The storm water line was scoped and some bellying of the pipe was noticed. The Declarant opened up the street to examine the pipe and ensure everything was functioning properly. No leaks were found and the pipe and the catch basin have been deemed to be functioning properly. The bellying is a result of the storm line routed under other utility lines that cross the line.*

*2- Who paid for it? Declarant"*

There it is. The Declarant is in control: Nothing to worry about. Nothing to see. Move along.

**Winter 23/24** - Photos taken earlier in 2023 show tension cracking, erosion, gullies, and slumping in

Carino Lane, and in the PUE, and within Lots 70, 72 and 73, here:

<https://www.bvhaccess.com/landslide-gallery>

**March 5, 2024** - At a non-statutory Turnover meeting and election, the Declarant-appointed board is replaced by a new board, and the Declarant is relieved from all further responsibility for the administration of BVHHOA.

By 3/5/24, Lots 70, 72 and 73 did not collapse in winter 23/24, and Carino Lane remained accessible. From 11/1/2023 to 4/1/2024, the Declarant's buttress worked.

The Declarant's 2017 buttress remained intact and in place to the end of 2024; proving that it had prevented collapse and provided effective erosion control on Lots 70, 72 and 73 during the 23/24 winter.

**April 4, 2024** - The new board holds its first board meeting. The meeting minutes mention Carino Lane, stating:

*"1) Carino lane was discussed. Too much information to add to minutes and a **special committee** needed to be formed. **Motion made, seconded, and passed unanimously to form committee. a. Dana Henderson & Bruce Nelson** volunteered to be on the committee. **Craig Hansen** will represent the board."*

The Carino Lane Committee was established by the board on 4/4/2024; Bylaws Article Committees 5.1:

*“General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution.”*

What were the specific tasks assigned to the Carino Lane Committee? What was the board’s “resolution”?

**April 11, 2024** - The new board holds another board meeting. The minutes mention Carino Lane:

*“b) Discussion about the Board members tour of our community with Robert Rood (QPM). Saw there is a lot of property being maintained by US Lawns from frontage on both sides of Mc Andrews, 3 entrances to HOA, AG barrier, **Carino Lane sinking**, 2 collection ponds, the park walkway deterioration along with other points of interest.”*

Notice the **stark absence of any reference** to **(1)** the Declarant’s buttress and whether it was, **or was not**, **(a)** in the process of being removed, or **(b)** if it had been removed, or **(c)** if it was still in place, and **(2)** the ongoing steady deterioration of the slopes of Lots 70, 72 and 73, and the PUE within and atop them.

The 4/11/2024 minutes refer to an Architectural Control Committee (“**ACC**”), and state:

*“c) 7:35 ACC discussed such as, approvals, documentation, and **starting fines** as we move forward. **ACC committee started with Judy***

*Henderson & Ria Cordeiro heading up. QPM handles applications & sends out approvals from ACC committee. **More members needed.***

This statement shows that the new ACC members are, starting right away, ***“heading up”*** to **fine homeowners for violations.**

The purpose, duties, and regulations that define the function of the ACC are found throughout BVHHOA’s Declaration, but mainly in **Articles II** and **Article VIII**.

Article II (“USE AND MAINTENANCE OBLIGATIONS”) is **14-pages long** and list all the covenants, conditions, restrictions, and reservations of easements and rights that apply to all private lots, common areas and common property.

Article II **(1)** restricts the activities of homeowners and residents, and **(2)** details the actions that the ACC can take to enforce homeowners’ conformity to Article II.

Declaration Article VIII is **7 pages**; it is not easy reading.

The two new ACC members would be expected to embrace the work that they have volunteered for.

This work is defined not only in **(1)** Articles II and VIII, but also in **(2)** the 13-page “Architecture and Design

Guidelines”, **(3)** the two Request Form documents of 3 and 9 pages, the **(4)** 2-page “ACC Guidelines (*Condensed Version*)”, the **(5)** 2-page “Review Procedures”, the **(6)** 6-page “General Policy Guidelines”, and **(7)** a one-page Construction Fine schedule.

All these documents will have to be brought up-to-date, if only because by now **(1)** the Declarant has gone, and **(2)** the management company has changed.

The rules for homebuilders and homeowners, other than those defined in the Declaration, Bylaws and Amendments, are found in all the Architectural Control Documents, that were last updated in 2020:

1. Bella Vista Home Homeowners Association ARCHITECTURE & DESIGN GUIDELINES (3/3/2020)
2. BELLA VISTA HOMES HOMEOWNERS ASSOCIATION ARCHITECTURAL CONTROL COMMITTEE REQUEST FORM (03/12/19)
3. Bella Vista Homes Owners’ Association Architectural Control Committee Request Form (For Use on Proposed New Residential Construction) CONSTRUCTION FINE SCHEDULE (by Susan Rook of CLCM, 8/23/2018)
4. Bella Vista Homes Owners’ Association Architectural Control Committee Request Form (For Use on Proposed New Residential Construction) (3/5/2020)
5. BELLA VISTA HOMES HOMEOWNERS ASSOCIATION ARCHITECTURAL CONTROL COMMITTEE (ACC) GUIDELINES "Condensed Version" (04/02/2025)
6. BELLA VISTA HOMES HOMEOWNERS ASSOCIATION ARCHITECTURAL CONTROL COMMITTEE REVIEW PROCEDURES (02/08/13)

7. BELLA VISTA HOMES HOMEOWNERS ASSOCIATION GENERAL COMMUNITY  
POLICY GUIDELINES PROCEDURES AND FINE SCHEDULE (04/02/2025)

One of the ACC's duty is to keep these documents up-to-date, and to submit changes to Declaration Articles II and VIII to the board for approval. (Declaration 8.2)

**April 2024** - An April 2024 **"Google Street View"** photo of Carino Lane shows cracking, erosion, and slumping in **(1)** Carino Lane, **(2)** the PUE within Lots 70, 72 and 73 and **(3)** far down into Lots 70, 72 and 73.

This photo is titled "*Carino Ln. Google Street View taken on April 2024*" and is in here:

<https://www.bvhaccess.com/landslide-gallery>

**April 17, 2024** - A **Facebook photo** of Lots 72, and 73 shows that, on April 17, 2024, the Declarant's 2017 buttress **was in the process of being removed.**

A screenshot of this Facebook photo, titled "*Lots 72 73 April 17 2024*" is here:

<https://www.bvhaccess.com/landslide-gallery>

**Which ACC approved the removal of the Declarant-installed buttress that Carlson assessed as *"performing as intended"* in its 7/24/2023 report?**

Was it **(1)** the “old” ACC controlled by QPM, or **(2)** the “new: ACC of **(i)** QPM, **(ii)** Henderson, J and **(iii)** Cordeiro, R that the board established at the 4/11/24 meeting?

Which ACC signed the approval document for the buttress’ removal? Does a stamped approval exist?

**May 30, 2024** - The board had a regular board meeting whose minutes are so vague in places that they are worthless. This pattern of opacity will continue, and will only get worse with time.

The 5/30/24 minutes mention Carino Lane, but they refuse to mention its obvious and immutable geophysical and geomechanical connection to Lots 70, 72 and 73 that provide essential lateral support to Carino Lane.

The 5/30/24 minutes do not mention the visible fact that the Declarant’s 2017 buttress has been removed, and this has left disturbed soils covering Lots 70, 72 and 73, and the PUE within these lots, that are now exposed to erosion.

The 5/30/24 minutes mention the Carino Committee:

*“m. Dave Mathews wants to have updated about a **committee that is overseeing repair of Carino Lane.***

*i. Mark suggested that affected homeowners should be contacted.*

*ii. Who is responsible, the Declarant.*

*iii. Ask our attorney, which Joy did. He suggested that a geotechnical study needs to be done. Having the HOA do study doesn't imply we are at fault.*

*iv. Long discussion about liability, who is involved, what has happened in the past, attorney involvement, on and on.*

*v. The board needs to have geotechnical drill Carina to see condition of road before we move forward.*

*vi. Craig will contact Rebecca Hicks, and Dave Mathews to see their perspectives.”*

Were these six comments the formal findings from the Carino Committee that the board appointed on 4/4/24 to perform such tasks as the board designated by resolution.

“Mark”, “Joy”, “Craig”, “Rebecca”, “Dave” and “our attorney” are mentioned here, but there is no mention of “Dana” nor “Bruce” of the Carino Lane Committee.

Note:

1. *“Affected homeowners” all BVHHOA homeowners* are “affected” by damage to their Common Property as it is their money at stake.
2. *“Who is responsible, the Declarant.” No.* The Declarant left on 3/5/2024 at the Turnover and BVHHOA and the new board accepted all administrative responsibility from the declarant; the declarant was then relieved from further responsibility for the administration of the association.
3. *“Ask our attorney, which Joy did”.* Not Craig & the Carino Lane Committee? Is Joy noe a member of it? What attorney: the board members’ or BVHHOA’s?
4. *“Long discussion about liability”,... “on and on”.* They’re talking it to death!
5. *“The board needs ...geotechnical drill”* The board delegated the Carino issue to a committee that ignored the condition of Lots 70, 72 and 73 ever since the ACC and the board permitted the owner of Lots 70, 72 and 73 to remove the working buttress and leave Carino Lane without support. It is the **PUE** in Lots 70, 72. 74 and 75 that is subsiding and cracking that needs a “*geotechnical drill*”. because the PUE collapses, so will Carino Lane.

6. “Craig will contact Rebecca Hicks, and Dave Mathews to see their perspectives.” Why do these persons “perspectives” matter more than those of BVHOA’s rank-and-file members?

The “**ACC/ARC**” mix up. The 5/30/2024 incorrectly refer to the “ARC”, but the correct abbreviation for the Architectural Control Committee is “**ACC**”.

The history of this confusion follows below:

On **April 8, 2013**, the Declarant recorded the “FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS 44) OF BELLA VISTA HEIGHTS SUBDIVISION PHASES 1 & 2 IN MEDFORD, JACKSON COUNTY, OREGON”.

This amendment **(1) illegitimately** increased the ***Declarant’s special rights***<sup>1</sup> and **(2)** attempted to change the ACC’s purpose by removing the ACC’s ability to “**enforce**” architectural standards, that was stated in the original version of Declaration 1.3.1 as:

*“Architectural Control Committee” or “ACC” or will consist of Bella Vista Heights, LLC and their designated representatives **to enforce the Architectural standards of the Property and to approve or disapprove plans for improvements proposed for any Lot or parcel of the Property, as described in Section 8.1.**’*

The “FIRST AMENDMENT...” changed this to:

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<sup>1</sup> This was done using ORS 94.600(4) that is an **absurd** statute. Ask me why!

*“1.3.1 “Architectural Control Committee” or “ACC” shall mean the committee appointed pursuant to Article 8 below.”*

The “FIRST AMENDMENT” also completely changed Declaration paragraph 8.4.8.

The 5/30/24 minutes, and several subsequent minutes, continue to mix the abbreviations ARC and ACC.

The abbreviation “ARC” was introduced in Pahlisch Homes’ minutes to enhance the Declarant’s “FIRST AMENDMENT...” attempt to suppress ACC enforcement.

Pahlisch implied that the “ARC” was merely a **Review** committee, and ***not*** an **Enforcement** committee.

However, Declaration Article VIII para. 8.8 is titled “Enforcement”, and paragraphs 8.2.2 and 8.8.2 both include the word “enforce”.

The 5/30/24 board minutes state:

*“3) OldBusiness*

*ARC committee discussed and the following homeowners to serve.*

*1. Judy Henderson*

*2. MartyLemke*

*3. David Swearingen*

*4. Ria Cordiero*

*5. Doug Dollard as board member.*

*ii. Rober Rood (QPM) manages the process for ARC requests.*

*iii. The committee will discuss whether a separate admin is required for infractions.*

*iv. **Committee submits its recommendations to Board for final approval.***

*v. Mark motioned, Ed 2nd, **unanimously approved.***”

By 5/30/24, were the six “ARC/ACC” committee members named above aware of the requirements of **(1) Declaration Article VIII that is 3691 words long**, and **(2) the complete replacement of Article VIII paragraph 8.4.8** **(3) there are still no up-to-date published “Design Guidelines”** as required by Declaration paragraphs 8.1 and 8.2 and **(4) Article VIII was written by, and for, the Declarant**, and **(5) the most recent edition of the “Design Guidelines” was dated 3/3/2020** when BVHHOA still had a Declarant-appointed board.

Today it is 12 months after the “ARC/ACC” committee was formed and still no up-to-date “Design Guidelines”!

The first tasks of the ACC should have been to rewrite Declaration Article VIII to **(1) eliminate all references to the Declarant** and **(2) produce an amendment that was approved by BVHHOA’s membership.**

But they didn’t do this, so what did this so-called “ARC/ACC” committee actually do over the last 12 months?

As far as can be elicited from the vague and ambiguous 5/20/24 board minutes, by July 2024 the ARC/ACC had sent out an undisclosed number of violation letters, as shown later below.

The members of the “old” ACC are unknown.

The ACC - the “old” or the “new” - the approved the removal of the Declarant’s buttress remains unknown.

The 5/20/24 minutes make a vague reference to a lawsuit in connection with Carino Lane, and the involvement of a lawyer, but these, and no other minutes, mention the indisputable facts that the Declarant’s buttress **(1)** gave Carino Lane essential lateral support, and **(2)** protected the underlying soils in Lots 70, 72 and 73 from erosion during the winters from summer 2017 onwards.

Since summer 2017, the Declarant’s buttress, had, ***performed as it was intended to perform*** before Southridge Builders removed it.

Neither the Board’s minutes, nor the ACC/ARC, nor the Carino Committee ever mention this fact.

**June 14, 2024** - This was a “Special” “Carino Meeting” where a “*consensus*” decided that **(1)** Carino Lane was

solely to blame for its own subsidence and cracking, and **(2)** the focus of this “*consensus*” was solely on Carino Lane, and no other factor.

The “Carino Meeting” states that another unspecified committee was to be formed and:

*“Craig will **hand pick** members that **he best feels** represents the homeowners.”*

The emphasis of picking Carino Committee members based on **(1)** “Craig’s” “*feelings*”, and **(2)** representing unnamed “*homeowners*” instead of the BVHHOA membership at large, proves **(3)** that there is no evidence that a conventional, standard method of dealing with the subsidence on Carino Lane has been established, and, **(4)** “Craig” has demonstrated **(i)** a distinct bias in favor of the interests of a few anonymous homeowners, and **(ii)** more concern for the interests of Southridge Builders than the interests of the rank-and-file members of BVHHOA.

Loyalty to BVHHOA is a board director’s fiduciary duty.

**June 20 2024** - Extensive directionless discussions relating to the “ACC/ARC” and the “Carino Lane Committee”. They have to be read to be believed.

**July 25, 2024** - A regular board meeting, but the minutes indicate that nothing substantial relating to Carino Lane was discussed.

By 7/5/24, several board and Carino Committee members have already spoken to government agencies even before they reviewed and acquired all the existing evidence in geological reports, previous minutes, photographs, etc.

The 7/25/24 minutes show a shared belief that Carino Lane is solely to blame for its problems, and the geological history of Lots 70, 72 and 73 is being ignored, as if it was banned.

And, in a demonstration of bias in the interests of Southridge Builders, the 7/25/24 minutes state:

*“Medford City Emergency, Oregon Land Conservation, and Oregon Geologist that **no work should be done on Lots 70, 72 & 73 until we have further reports on Carino.**”*

Nonsense!

Carino Lane rests on, and relies wholly on, the buttressed support it gets from all the undeveloped lots to the west of it. If this ground collapses, Carino Lane will also collapse.

The board, the Carino Committee, and the ACC, refuse to consider **(1)** the history of the collapse of Lots 70, 72 & 73, **(2)** the contents of the available geological reports, **(3)** the outstanding objective fact that Lots 70, 72 and 73 provide essential support to Carino Lane.

They have reversed the logical order of dealing with the problem that should instead be:

***“no work should be done on Carino until we have further reports on Lots 70, 72 & 73.”***

or, better still:

***“no work should be done on Carino until it gets adequate support from Lots 70, 72 & 73.”***

**August 18, 2024** - By 8/18/2024, it was evident from the minutes of all the preceding meetings, that neither the Board, nor the ACC/ARC, nor the Carino Committee had a *viable strategy*; nor did they demonstrate a collective ability to ***methodically*** tackle the problem of all the **(1)** subsidence, **(2)** the tension cracking, **(3)** the gullies, and **(4)** the erosion within Lots 70, 72 and 73, including in the reduced PUE atop and within these three lots, and on the SW extremity of Carino Lane.

It was evident that the Board, the ACC/ARC, and the Carino Committee were **not** conducting a formal **Board of Inquiry** into Lots 70, 72 and 73 and Carino Lane.

On 8/18/2024, I produced a document titled **BOI.PDF** and emailed it to **(1)** news.bellavistahoa@gmail.com and **(2)** Paul Faubion ( paul.faubion@gmail.com) who, with Laura Wilson, had joined the Carino Committee on 6/20/2024.

BOI.PDF is here: <https://www.bvhaccess.com/board-minutes>

In contrast to the original members of the Carino Committee (Henderson, D; Nelson, B; Hansen, C), it was my hope at that time that the two newcomers to the Carino Committee would, unlike their colleagues, possess the ability to read and absorb enough facts before the 2024/2025 winter, and develop an effective method of dealing with the imminent danger of another collapse of Lots 70, 72 and 73, that would inevitably drag Carino Lane down with it.

By August 2024, weather forecasts said that La Niña was already gathering strength in the Equatorial Pacific.

**August 26, 2024** - Henderson, J and Cordeiro, R **resign** from the ACC.

The ACC is now: Marty Lemke, David Swearingen, Doug Dollard, and Robert Rood of QPM.

There is no evidence that the ACC had made any progress in updating any ACC-related documents.

**September 11, 2024** - The Board had an “*executive meeting*”. There is no such thing. The correct term used by Oregon Statutes chapter 95 and BVHHOA’s Bylaws is “*executive session*”.

ORS 94.644 does **not** allow its “*executive session*” rules to be overridden by the Declaration or the Bylaws.

This “*executive meeting*” did not comply with the letter of statute ORS 94.644(2).

Maybe this is why the board fatuously characterized it as a “meeting” instead of a “session”, and why the board later met in secret “work sessions”, as shown in the minutes of the 1/29/2025 meeting.

This secrecy is impermissible, as are all the board’s insipid attempts to disguise their ORS 94.644 executive session violations by renaming their secret meetings.

The 9/11/24 board meeting's theatrical opening of a "moment of silence" was far less one of tragic grief than gauchely contrived fake emotionalism.

The minutes state: "d. Carino Road was discussed." and also that a "new geological report from Robin Warren (AEG)" (**who else?**) had been commissioned.

This is now Robin's **third** geological report: one each in 2012 and 2017, and now a 2024 one.

But Robin's 2024 report, that cost BVHHOA **\$1000**, has now been kept secret from the BVHHOA membership, as shown in the 1/29/2025 meeting's transcript.

The board, the Carino Lane Committee and the ACC resolutely remain **dazzlingly silent** about any plans to enforce Southridge to install erosion prevention methods on Lots 70, 72 and 73 before the City of Medford's mandated date of **11/1/2024**; see the **City of Medford Municipal Codes ("MMC")**, MMC 10.929 to 10.933 "Hillside Ordinance", "Standards for Erosion Control", in MMC 10.931 (6), here: <https://medford.municipal.codes/Code/10.931>

*10.931(6) Standards for Erosion Control. All **disturbed soil surfaces on slopes** in excess of 15 percent shall be covered from **November 1st to April 1st**. If planned impervious surfaces (i.e., streets, access drives, etc.) are not installed prior to November 1st, a **temporary treatment adequate to prevent erosion shall be installed on disturbed soil surfaces** until the impervious surfaces are installed or April 1st, whichever is sooner. Alternatively, for disturbed soil surfaces in areas in which impervious surfaces are not planned to be installed, a temporary treatment adequate to prevent erosion shall be installed on disturbed soil surfaces or such surfaces shall be*

*replanted with plants and/or trees with erosion control characteristics that are listed in the August 2006 version of the Oregon State University Extension Service publication Fire-Resistant Plants for Oregon Home Landscapes, a copy of which is maintained on file in the Planning Department.*

First, consider the following plain and objective facts:

1. There is a well-documented history of the geology of BVH and the landslides on Lots 70, 72 and 73. Two of these documents **are still kept secret** from the BVH membership: **(a)** the 14-page Amrhein report of 2011 and **(b)** the 75-page Shannon and Wilson report of 2012. Their contents are probably far too truthful on the subject of BVH's geology for them to be released.
2. In April 2024 Southridge Builders removed the Declarant's summer-2017 buttress that had operated as an effective buttress **for six years**.
3. Southridge Builders removed the Declarant's buttress in April 2024 leaving Lots 70, 72 and 73 covered with exposed "**disturbed soil**".
4. After the removal of the Declarant's buttress by Southridge Builders, **no effective erosion and landslide control measures** were installed on the disturbed soil of Lots 70, 72, and 73. and the PUE within them.
5. By 9/11/2024, all these facts had been published in emails and in minutes, and brought to the attention of the BVH HOA board, the ACC, and the Carino Committee well before December 2024.
6. **Even if MMC 10.931(6) did not exist, prudence and common sense showed that the soil on Lots 70, 72 and 73 now needed protection from erosion since the Declarant's buttress was gone.**

By September 2024 Southridge Builders must have known about the perilous condition of Lots 70, 72 and 73 as the 24/25 winter approached.

The past minutes show that the owners of the lots at the southern end of Carino and La Strada (i.e. lots 68-74 and 44-47) were wholly aware of the imminent problem on their doorstep.

It did not require a City of Medford erosion control code mandate to highlight the potential danger of a collapse of Lots 70, 72 and 72: the danger was in plain sight!

Meanwhile, on another matter, the 9/11/24 minutes show that the ACC has been very busy:

*“4) c. A homeowner complained about receiving a letter of violation related to moving trash cans. **Multiple violation letters** went out to homeowners, and ACC was pleased that the majority homeowners complied. Discussion about wording, timing of the violation letters was discussed. This will be reviewed. Also discussed was the violations sent were not random, they followed our HOA By Laws.”*

Regrettably, the board and its ACC immediately started enforcing “HOA By Laws” at homeowners while, at the same time, the board and its delegated committees ignored many Oregon Statutes and rules in the Declaration and the “HOA By Laws” that govern the functions of the board and its committees.

BVHHOA’s governing documents contain rules and regulations that govern the rank-and-file BVHHOA membership, but there are also many more rules that regulate the board’s activities.

One way to find some of these rules is to search for the word “**shall**” that appears in **640** places in the Declaration and Bylaws, and then examine each

occurrence to see if it applies to **(1)** the BVHHOA's board, or **(2)** the BVHHOA's rank-and-file members.

Although Declaration XVI, paragraph 16.1 defines an agreement that is intended to avoid litigation between the *“Bound Parties”* defined therein, it would be nonsensical for a violation of a provision of Oregon Law to be subjected to the procedures of Article XVI, and not treated according to the Oregon statutory legal remedies defined in ORS 94.780.

The Bylaws state:

*“6.3 Conflicts: If there are conflicts between the provisions of Oregon law, the Articles of Incorporation, the Declaration, and these Bylaws, **the provisions of Oregon law, the Declaration, the Articles of incorporation, and the Bylaws (in that order) shall prevail.**”*

The Declaration states:

*“3.6 Rights of Enforcement. The Board shall have the first right to enforce the provisions of this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument relating to the Property which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced either by the Association or by Declarant. **If, however, both the Board and the Declarant fail or refuse to enforce this Declaration or any provision thereof after reasonably informative written notice of a violation of these Declarations is provided to them, then an Owner may enforce them on behalf of the Association by any***

***appropriate legal action, whether at law or in equity and the Association and the Declarant may pursue whatever rights and remedies might be available to them at law or in equity.”***

However, because of a reluctance of Jackson County lawyers to take on a rank-and-file HOA member’s case against the HOA’s board of directors, Oregon statutes provide no feasible, nor effective, nor worthwhile remedy to a rank-and-file HOA member.

Accordingly, BVHHOA’s board is, in effect, accountable and answerable to no-one.

BVHHOA operates under a two-tier system of law, and there is no ***effective*** legal remedy that a BVHHOA member can turn to when the board violates its own rules and duties repeatedly and with impunity.

Within this “two-tier” system of law in BVHHOA, there was, and still is, special treatment for lot owners that are **(1)** builders, **(2)** property speculators, **(3)** insiders.

For example, homeowners used to get violation letters from CLCM, but lots owned by CLCM’s “*preferred builders*” who committed the same violations did not.

BVHHOA is **not** a “mutual benefit” corporation.

BVHHOA is like a Sovietesque oligarchy, just like many other HOAs are, and exists under a secretive, authoritarian, illegitimate, and delinquent culture.

**10/9/2024** - The meeting minutes state that the board held : ***“3) Work meeting discussions 6:00 to 6:45”***.

A 10/3/2024 email notice from news.bellavistahoa@gmail.com stated:

*“The upcoming Bella Vista board meeting is next Wednesday, October 9, at **6:45 pm**. Library doors close at 7:00 pm Location: Medford Library Carpenter Room”*.

The minutes of the 10/9/2024 meeting state:

*“3) Work meeting discussions **6:00 to 6:45**  
a. New property management company  
b. Carino  
c. ACC”*

**This means that on 10/9/2024 the board held an illegal secret meeting from 6pm to 6:45pm.**

The rest of the 10/9/2024 board meeting included ACC and Carino Committee “updates”; but both showed no worthwhile progress.

**11/20/2024** - This meeting’s minutes state:

“i. Carino Committee ...

3. Laura is finishing timelines for all the documents she has acquired from QPM, Dana Henerson, Morgan Butler, City, County & State.

4. AEG Geological report is completed. We have provided the report to the homeowners who are directly impacted: Eric Pena, David Mathews, Michael Menefee & Rebecca Hicks. This report will be available to BVHOA when Chris Hearn finishes reviewing our committee’s documents & questions.

5. Craig is putting together a report with all documentation & questions to be handed over to Chris Hearn for review.

6. The board approved \$7,000 expenses for Carino Committee. Financial outlay so far is \$2,056.10. Ferman Coating \$800 asphalt berm, AEG report \$1,000, and supplies like wattle tubes \$256.10.”

By 11/20/24, the Board, the Carino Committee, and the owner of Lots 70, 72 and 73, **had now collectively failed for 20 days to install the necessary erosion prevention measures on the disturbed soil within Lots 70, 72 and 73** that are required by the City of Medford’s “Standards for Erosion Control”, in MMC 10.931 (6):

*“(6) Standards for Erosion Control. All disturbed soil surfaces on slopes in excess of 15 percent shall be covered from November 1st to April 1st. If planned impervious surfaces (i.e., streets, access drives, etc.) are not installed prior to November 1st, a temporary treatment adequate to prevent erosion shall be installed on disturbed soil surfaces until the impervious surfaces are installed or April 1st, whichever is sooner.”*

The expenditures for the items enumerated in the 11/20/24 minutes do not include any materials that provide effective erosion prevention on the disturbed soil that covers Lots 70, 72 and 73 and the PUE within these lots, as mandated by MMC 10.931 (6).

The subsidence, erosion, slumping, and tension cracks, that, by 11/20/24, were clearly visible within Lots 70, 72 and 73 and in the PUE within these lots, shows that the board is violating its duty to protect Carino Lane that is a part of BVHHOA's Common Area.

By 11/1/24 the board should have expedited its duties using all the powers awarded to it in Declaration paragraphs Violation of Law, 2.28 Nuisances, 2.43 Safe Condition, 7.3 Improper Maintenance and Use of Lots, 7.4 Right of Entry, and elsewhere in the Governing documents, **to enforce Southridge Builders to comply with MMC 10.931 (6).**

It was homeowners' money paid for Robin L. Warren's **2024 secret** AEG geological report, so all homeowners **must get a copy**, not just the privileged few in the minutes.

Submitting AGE's professional geotechnical report to a lawyer ("*Chris Hearn's for review*") taints the reports **geotechnical validity**, and AEG can disclaim responsibility for its report's adulterated contents.

Withholding a report from the BVHHOA members proves again that the board is biased in favor of the interests of a few privileged homeowners, and has a

lesser concern for the interests of the rest of the members of BVHHOA.

More proof that: *“All homeowners are equal, but some homeowners are more equal than others”*.

The 11/20/24 meeting’s minutes mention the ACC:

k. ACC Committee ...

ii. Homeowner responses to violation letters have been positive.

...

iv. New Communication & Resolution letters have been written and will be presented to the board for approval.

v. CC&R’s will be changed for board approval. Joy & Mark will review changes and report to the board. John at CPM will inform the board how to record changes with the city.

What are these “positive” responses? Why are their details withheld?

Today, CPM’s BVHHOA website stated:

*“Architectural Review Request. Coming soon. ACC is currently updating their forms.”*

It is still not clear what the **five-member ACC** has been doing for the last seven months.

**Annual Meeting of the Membership.** The 11/20/2024 board meeting’s minutes state:

*“p. Next Board Meetings i. **December19th** ii. January & February haven’t been set yet.”*

## The following Oregon Statutes **mandate** an Annual Membership Meeting:

- “ORS 65.201 Annual and regular meetings. (1) A corporation with members shall hold a **membership meeting annually** at a time stated in or fixed in accordance with the bylaws.”
- “ORS 65.201(4) At the annual meeting: ... (a) The **president**, and any other officer the board of directors or the president may designate, **shall report on the activities and financial condition of the corporation**; and (b) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of ORS 65.214....”
- “65.214 Notice of meeting. (2)(b) Notice of an annual or regular meeting **includes a description of any matter or matters that the members must approve...**”
- “ORS 94.635 (4)(a) Association bylaws. ... The method of calling the annual meeting and all other meetings of the owners ...”
- **Bylaws 2.3 state:** “*Subsequent regular annual meetings shall be set by the Board so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board.*”
- The “SECOND AMENDMENT TO THE BYLAWS”, that was affirmatively voted by the membership, and recorded on March 5, 2024 states: “1. Article 3, Sections 3.2 of the Bylaws is deleted in its entirety and replaced with the following:

*3.2 Election of Directors and Terms of Office. Notwithstanding anything herein to the contrary, the initial Board of Directors shall serve as the Board of Directors and govern all affairs of the Association until such time as all of the lots have been sold or voluntarily elects to do so sooner, and until the Turnover Meeting as provided in Article III hereof. At turnover, the Board of Directors shall consist of five (5) Members. Each Director shall be elected to a term of three years except that for the initial election, the terms shall be as follows: **two (2) Directors shall serve until the first annual meeting following their election; two (2) Directors shall serve until the second annual meeting following their election; one (1) Director shall serve until the third annual meeting following her/her election. At the expiration of the term of each Director at the respective annual meetings, the lot owners shall elect a successor (which may be the Director whose term is expiring) to serve until the third annual meeting following his/her election or until a successor is elected and qualified. All elected officers must be Owners. All elections of Directors will be by plurality.***

*2. This Second Amendment to the Bylaws is effective upon recording this Amendment in the deed records of Jackson County, Oregon.*

By 11/20/24, the board had been seated for eight months, and they, and all their established committees, have had plenty time to learn what their duties and responsibilities are, especially the Bylaws and amendments.

But the Annual Membership Meeting defined in Bylaws 2.3 was ***not*** “set by the Board”.

**No explanations were given for this gross error of omission that is so egregious that it must be deliberate.**

**12/2/2014** - “news.bellavistahoa@gmail.com” published a lengthy email that stated:

***“Our next Board meeting will be on Thursday, December 19”.***

**12/5/2014** - I emailed a response to “news.bellavistahoa@gmail.com”, and to 91 other homeowners, to ask about the annual membership meeting that was now four days past due.

**12/10/2014** - “news.bellavistahoa@gmail.com” published an email that stated:

***“...Next Thursday, 12/19/2024, the Board Meeting has been Canceled due to Holiday commitments. January & February board meeting dates will be announced at a later date along with a general open meeting. There will be an election next year to replace two current board members, Craig Hansen & Ed Guerrero.”***

**Previous Board Meetings.**

**BVHHOA had no annual meetings from 2014 to 2021.**

Regular board meetings were held at the “CANAL VIEW CONFERENCE ROOM” in **Bend**, and all these meetings’ minutes stated clearly that were “*no homeowners present*”.

BVHHOA did **NOT have a board of directors** from June 2020 to September 2021: **this means that there was no BVHHOA for 12 months! Who was in charge?**

BVHHOA had **NO board meetings from June 2020 until November 8, 2022** when the Declarant-appointed board had an “Annual General Meeting” (“AGM”) for Fiscal Year **2022**.

The Declarant-appointed board held the Fiscal Year **2023** AGM on **December 14, 2023**.

**12/10/2024** - By 12/10/2024 it was clear that the board had decided against holding an Annual Membership Meeting for Fiscal Year 2024, nor to hold even a **regular** meeting, “due to Holiday commitments.”

The preponderance of evidence that, by now, had been evinced by the board’s delaying excuses shows that the board **deliberately evaded** the Second Amendment to the Bylaws **that had been amended specifically by affirmative vote on 3/5/2024!**

This evasion occurred **under the nose of CPM** who claims in <https://cpmrealestateservices.com/homeowners-associations/> that:

*“We are current on all regulations and **help enforce CC&Rs**”.*

CPM knew about “*Board and Annual Meetings*” as they are referred to in paragraph 6.4 of CPM’s so-called “management agreement”, that violates BVHHOA’s statutory, rights, and BVHHOA’s Declaration and Bylaws.

Despite CPM’s claim of “CC&R” expertise, and CPM’s experience with dealing with many other HOAs, CPM ignored BVHHOA’s AGM Bylaw, and did not “*help enforce the CC&Rs*”’,

BVHHOA’s board deliberately and illegitimately put off the 2024 AGM in an absurd and fatuous tactic to avoid Mr. Hansen and Mr. Guerrero from being ***termed out*** at a 2024 AGM, and to abet them to **illicitly remain on the board**.

BVHHOA is a nonprofit, mutual benefit corporation with members.

BVHHOA’s board of directors must comply with the duties of **(1) Diligence (2) Loyalty and (3) Obedience**:

[https://postgresql.us/media/pgus/files/State\\_of\\_Oregon\\_Guide\\_To\\_Nonprofit\\_Board\\_Service\\_Jan\\_14\\_2020.pdf](https://postgresql.us/media/pgus/files/State_of_Oregon_Guide_To_Nonprofit_Board_Service_Jan_14_2020.pdf)

The Statues and Bylaws are abundantly clear: they demand that **(1)** the board must post notice of an annual membership meeting, and **(2)** at the annual membership meeting, certain directors **shall be termed out** in accordance with their appointed terms that were fixed at the previous annual membership meeting, or at a Turnover meeting.

Obedience to the Statutes and Governing documents ***is not optional.***

**A board director's term of service has only got two options:** (1) a director **must** complete its assigned term of office that was affirmed when it was elected to the board or (2) a director **must** resign. **No ifs and no buts.**

The generally accepted “**Rule of Law**” prevails in the USA.

Whether you violate a rule deliberately or not, you cannot take advantage of your violation to gain something from it.

There are no justifiable reasons for the BVHHOA board failing to call a statutory AGM in 2024.

My patience with the board had expired by **12/5/2024**, and I emailed the board and 91 other BVHHOA members to draw their attention at the failure of the board to set up an AGM.

**news.bellavistahoa@gmail.com's “holiday committment” email response of 12/10/24 was a transparent and deliberate ploy to stop the 2024 AGM.**

In accordance with the letter of the Bylaws, and the spirit of the Rule of Law, Mr. Hansen and Mr. Guerrero were effectively **termed out by December 1, 2024** as a result of a puerile and illegitimate tactic that was concocted to keep them on the board.

Mr. Hansen and Mr. Guerrero had no right to remain on the board after 12/1/2024.

**12/31/2024 - BVHHOA's Fiscal Year ends.**

There are now only three legitimate board members: **(1)** Wright, J. **(2)** Wilson, M. and **(3)** Dollard, D who would soon resign; Mr. Guerrero and Mr. Hansen are not legitimate board members.

By 12/31/2024, the board had **failed to complete several mandatory tasks**. Here are a few:

1. Annually determine a Reserve Study ORS 94.595(3)(a)
2. Annually adopt an Annual Budget ORS 94.645. Bylaws 3.17(e)(i)
3. Distribute the Annual Budget to the owners. Bylaws 3.17(e)(i)
4. Annually determine a Reserve Budget. Declaration 5.12
5. Call the Annual Membership Meeting. Bylaws 2.3. ORS 65.201.
6. Annually review the insurance coverage of the association. ORS (4.640(3))
7. Prepare an annual financial statement consisting of a balance sheet and income and expenses statement for the *preceding* fiscal year. ORS 94.670(4).
8. Establish Rules for Inspection. Bylaws 6.4.

Wherever the statutes and governing documents describe a task using the imperative word “shall”, that task **is not optional**, the task **is mandatory**.

“Shall” appears **649** times in the Declaration & Bylaws, **408** times in ORS 94, and **176** times in ORS 65.

Normally, a board would examine each occurrence of the word “shall” in these documents to determine if **(1) “shall”**

applies to BVHHOA, and, if so, **(2)** then “shall” defines a task that the board must expedite.

**After the 11/20/24 meeting, there were no more lawful board meetings in the remaining 41 days of 2024.**

**1/1/2025** - The historical record of the winter weather in Medford up to the winter of 2024/2025 (12/1/24 to 2/25/25) is here:

<https://weatherspark.com/h/s/679/2024/3/Historical-Weather-Winter-2024-in-Medford-Oregon-United-States#Figures-Temperature>

These records show the rainfall in the winters of 2017/2018, 2018/2019, and through to 2022/2024 when the Declarant’s buttress protected Lots 70, 72 and 73 from collapsing, and also the winter of 2024/2025 when rainfall saturated the unbuttressed Lots 70, 72 and 73 that then collapsed and took Carino Lane down with them.

An image of the SW extremity of Carino Lane titled “Dec 2024” is here: <https://www.bvhaccess.com/landslide-gallery>

After the rain in late December 2024, more cracks appeared throughout Lots 70, 72 and 72, and within the PUE, and in the Carino Lane’s SW extremity.

By January 10, 2025, a huge flow of light brown clay progressed downwards on Lots 70, 72 and 73 towards La Strada.

By January 23, 2025 Lots 70, 72 and 73 collapsed, including the PUE atop of them, bringing down Carino Lane’s SW extremity.

**1/7/2025** - "news.bellavistahoa@gmail.com" sent the following email to “*undisclosed recipients*”:

*“This is a quick update from the Carino Lane Committee.*

*“Carino Lane is starting to slide again, as it has 3 other times over the last 20 years. Our committee has spoken to Oregon State, Jackson County, City of Medford, and past geologists about Carino. This is a very difficult problem for one homeowner. It is also not a simple problem for the HOA, but a very complicated issue. Especially the repair, which history has shown us, is even more complicated. But at this time I'm unable to share any details of our work with you. ... Craig Hansen”*

**1/11/2025** - [“news.bellavistahoa@gmail.com”](mailto:news.bellavistahoa@gmail.com) emailed yet another update on Carino Lane to “undisclosed recipients”.

But, by now, it was a case of “too little, too late”, especially after the Board, the Carino Lane Committee, and the Architectural Control Committee had all received, and ignored, several warnings that the removal by May 2024 of the Declarant’s summer 2017 buttress by Southridge Builders had exposed Lots 70, 72 and 73 to possible collapse unless standard prevention methods were applied to these lots.

**1/29/2025** - The illegitimate board held a regular meeting. Mr. Dollard has resigned from the board. Mr. Hansen and Mr. Guerrero were **termed out** in 2024 because the board evaded its duty to hold an annual membership meeting (**“AGM”**) at which Mr. Hansen and Mr. Guerrero would have been termed out even if there was no quorum at the AGM.

Whether the violation is a deliberate act or not, a violator cannot benefit from the violation; this cannot be allowed to stand if an organization is governed by rules, because allowing this to occur abrogates the rules.

By 1/29/2029 there were only two legitimate board members: **(1)** Ms. Wright, who was assigned three terms of office, of which only two terms remain, and **(2)** Mr. Wilson who was assigned two terms, of which only one term remains.

**Board members cannot exchange terms of office in an illicit attempt to allow a member to remain in office without an election; the terms of office were created to prevent this.**

**Accordingly by 1/20/2025, there was them and is now, no quorum of officers to establish a legitimate board, and this had been the situation for the last two months.**

The illegitimate board had no authority to manage BVH's Planned Unit Development ("BVH") after they failed to hold a 2024 AGM.

(BVH did not have an **effective** board from 7/2020 to 7/2021.)

**At the 1:22:23 timestamp** in the board's 1/29/2025 meeting's transcript, it states this (emphasis added):

*Craig Hansen 1:22:23*

*the library know Michael and Rebecca Southridge had contacted us three, four weeks ago, and I did sit down with Michael, and they were starting to try and come up with ideas for their property. **Okay, everybody needs to realize this is their property. It's not our profit. All right, there's lots of things we can't do.** As an HOA, we can tell you what color to paint your fence. There's a lot of the things we can't do. So they they approached a geotech firm out of Tigard, and the company came down, they made some recommendations at moving their hillside and changing the slope. All right, our geologist, Robin Warren, okay, differs on what is being done, but it's their property, and so they have started trying to mitigate from their their perspective and that of Their geotech companies, SFA designs out of Tiger. So that's what's going on right at the moment, and that's something they're doing that is not anything the HOA*

*Joy Wright 1:23:58*

*and they understand that they are liable for any further damage.*

*Craig Hansen 1:24:03*

*So we've had an attorney involved for quite a while, **Paul, Laura and I have been working on this for months, trying to lay the ground.***

Mr. Hansen's comment:

*"Okay, everybody needs to realize this is their property. It's not our profit. All right, there's lots of things we can't do. As an HOA, we can tell you what color to paint your fence. There's a lot of the things we can't do"*

shows that he is **(1)** unaware that the principal duty of an HOA's board is to protect the association's common property, and **(2)** the Declaration gives BVHHOA's board extensive powers to stop a homeowner from committing acts that could endanger the common property.

Article II "Use And Maintenance Obligations" enjoin the ACC and the board to enforce compliance with many restrictions; In particular 2.26 Violation of Law, 2.28 Nuisances, 2.43 Safe Condition, 7.3 Improper Maintenance and Use of Lots, 7.4 Right of Entry, etc.

BVHHOA's board **(1)** failed to stop Southridge Builders from removing the Declarant's buttress that had provided protection to Lots 70, 72 and 73 for six years, and **(2)** failed to enforce Southridge Builders to cover their Lots with HDPE sheeting by November 1, 2024.

Mr. Hansen words are an attempt to let the irresponsible board, and Southridge Builders, get away with reckless negligence.

**3/12/2025** - The illegitimate board had another regular meeting consisting mostly of monologues by board members.

**4/9/2025** - The illegitimate board had another regular meeting that again was mostly monologues by board members, but there are some interesting comments in the **4/9/2025 meeting's transcript that is in CPM's website:**

1. **39:09 timestamp:** Craig Hansen “We are using those funds to pay for the legal fees right at the moment, to let everybody know we're probably approaching **\$25,000** in multiple items.”
  
2. **41:28 timestamp:** Mark Willson “I have not talked to an attorney, and I don't believe joy has Craig has been the as the president of the board is talking with the attorney”. **Not true!** The Board’s meeting minutes for 5/30/2024 state: “ *m. Dave Mathews wants to have updated about a committee that is overseeing repair of Carino Lane.*
  - i. Mark suggested that affected homeowners should be contacted.*
  - ii. Who is responsible, the Declarant.*
  - iii. Ask our attorney, **which Joy did.** He suggested that a geotechnical study needs to be done. Having the HOA do study doesn't imply we are at fault.:*
  
3. **52:30 timestamp:** Chris Rayburn “But you're looking at **three to \$4 million** to hold that land up the way that you're thinking about doing that, you have three lots that Southridge builders has bought. There's the small lot next to mine, which mine is nine lot 69 which is a small lot. The other two load up off of the top, where you build the big house with basically, say, three stories of you have a Taylor at basement, your top story, your other story were Mr. Matthews and everybody, it is the roads falling off of there, and they would come and load that way. So there's no way to do that without still **but be buying that land from South Ridge Builders and making that into a park area or something.**”

Lots 70, 72 and 73 were described in the Amrhien report as being unsuitable for house building. Nobody wanted them; they were the last three unsold lots in BVH. The Declarant sold them to Southridge Builders, and they are now Southridge’s problem, not BVH HOA’s.

BVH HOA already has **seven tracts of Common Property** that are shown on the BVH Plat in the CC&Rs at pages 59 to 72:

**Tract A.** East and West La Strada Circle. A **private street**.

**Tract B.** An **open space**, Canova Park, that is located at the west extremity of BVH.

**Tract C.** An **open space** that extends westwards from the west end of Palermo street.

**Tract D.** An **open space** that is to the west of Lot 9 on Palermo Street.

**Tract E.** Sorrento Lane northwards from Palermo Street. A **private street**.

**Tract F.** Carino Lane northwards from East Veneto Circle. A **private street**.

**Tract G.** Camina Drive eastwards from East Veneto Circle. A **private street**.

BVHHOA does not need any more “Common Property” tracts.

If BVHHOA Owned no tracts, and had no Common Property, there would be no need for an HOA, and no monthly dues, and no board of directors.

Southridge Builders was supposed to build homes on Lots 70, 72 and 73.

Southridge Builders should not have removed the Declarant’s buttress until they were ready to start building houses that would take the place of the Declarant’s buttress and, using retaining walls to give Carino Lane the essential lateral support that it needs, as was recommended in the AGE report of 12/2/2017: *“The designed homes will require retaining walls to retain the crushed rockfill.”*

A few months after the Declarant installed a crushed-rock “earthen buttress” and repaired the landslide in summer 2017, the AGE report of 12/2/2017 that Robert L. Warren prepared for Pahlisch Homes states in its “Conclusion and Recommendations” (emphasis added):

Based on our observation on the lots during construction of the remedial repairs, the lots are suitable for development with single-family homes. In our opinion, the failed soils have been removed from the three lots and replaced with structural fill. The crushed rock structural fill buttresses (provides lateral support to) the silt soils on the east (Uphill) side of the lots. **The crushed rock pads provide a stable area to build a new home.**

In our opinion, the likely cause of the slope failure was soil creep on the weak clay/ coal seam. The soil creep likely resulted in failure of the storm sewer along Carino Lane and/or the **water line** that crossed between lots 70 and 72. The resulting saturation of the slope by the source(s) of water cause the cut slope to fail. The construction of subsurface drainage and relatively well-drained crushed rock fill

significantly decreases the risk of saturation of the slope and the risk of future slope movement.

Because of the existing site grading, the design of the home should take into account existing slopes and fill materials. To minimize the risk of future movement, each lot should be developed with close coordination between the building contractor and geotechnical engineer. Each lot should be developed with a lot-specific home design.

**The designed homes will require retaining walls to retain the crushed rock fill.**

We anticipate that the homes will be supported with continuous spread footing foundations. The house foundations should be oriented where possible in an upslope/downslope direction to provide additional stability to the home.

The existing drains installed in the fill should be hard-piped to the storm drain independently of any other sewer/storm drains. Care should be taken to not damage or block the drainage from the drain pipes. The intent of the drains is to keep significant groundwater from saturating the fill. Saturated fill has an increased risk of excessive movement.

*[Note: The MWC disconnected the “water line” (i.e. “capped”) in 2012. From 2012 to 2017, Lots 70, 72 and 73 were unprotected (“disturbed soil”) before the February 2017 landslide in them.]*

**Why, in April 2024, did the board and the ACC permit Southridge to remove the “crushed rock pads”?**

Mr. Rayburn’s statement at the 4/9/2025 meeting 52:30 timestamp:

*(“you’re looking at three to \$4 million to hold that land up ..... but be buying that land from South Ridge Builders and making that into a park area or something.”)*

**is not in the interests of BVHHOA.**

Why should the BVH homeowners spend their money on these three lots that nobody wants despite what Robert Warren of AGE stated about them in the conclusion to his 12/2/2017 report that: **“the lots are suitable for development with single-family homes”.**

## **CONCLUSION**

None of the current illegitimate board, that was elected in a fake Turnover election, had ever attended a single one of the Declarant-appointed board's five board meetings between November 2022 and the AGM of December 2023.

Clearly, the Board, Southridge Builders, and perhaps Mr. Rayburn of Revolution Builders LLC., are, collectively, **not acting in the interests of BVHHOA.**

BVHHOA's Board has been illegitimate since December 2, 2024 when Mr. Hansen and Mr. Guerrero should have been termed out.

Actions and decisions the Board made after Mr. Dollard resigned leaving two legitimate board members are invalid and void.

But the Board continues to act and perform as if it were a legitimate board, but its actions, from the day that it was illegitimately created, have failed to protect the interests of BVHHOA.

Instead, the Board and its ineffectual committees and hangers-on, have shown a clear deference to Southridge Builders.

This deference continues to this day as proven by the ridiculous idea that BVHHOA **should buy three worthless privately-owned lots using the BVHHOA members' money**, and add them to BVHHOA's common area and increase the expense of maintaining an common area that is already a liability, and, worst of all, allow Southridge Builders walk away from a big problem that they principally caused.