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MATTHEW TRESAUGE'S 'EXPOSE' IS AN AFFRONT TO GOOD JOURNALISM

The July 1, 2016 article¹ in *Houston Chronicle* uses misleading innuendos, implications and omissions about a subdivision in Montgomery County where a property owner has tried to fix problems for his own property and his neighbors, and as a result faces a lawsuit and bad media reporting

By Kurt Johnson, Sr.²

No good deed goes unpunished.

If ever that timeless adage applied anywhere, it applies to the situation in a subdivision in Montgomery County, Texas, where the efforts of an individual and his company to elevate the plight and living conditions and infrastructure of residents has been villified by media and even attacked in a lawsuit instigated by pot-stirring advocates who are doing much more harm than good.

The tragic and biased report about the King's Colony subdivision at New Caney, Texas (north of Houston) initially appeared in the July 1, 2016 (online) edition of *The Houston Chronicle*.

Consider this illustration which applies to that article:

There's exists a striking story about a man in a small town who persisted in spreading embarrassing but false rumors about dozens of people in the town. Finally the victims could stand it no more. They prevailed on the local pastor to confront the man, and the pastor took the perp to the belltower of the church along with a feather pillow. The pastor ripped open the pillow and scattered the feathers to the wind, and they flew everywhere. He then told the perp to go pick up the feathers, because each one represented a lie that he had told.

1 "Residents lament neighborhood conditions in 'new colonias'", *Houston Chronicle*, 7-4-16 – <http://tinyurl.com/zv9vow2>

2 Disclosure: Kurt Johnson, Sr. (Johnson Consulting) is a media and research consultant for John Harris, et al.

“That's impossible,” the perp said “They've scattered too far.”

Similarly, the feathers of errors spread by the vast circulation of *The Houston Chronicle's* print and Internet circulation can't all be picked up. But an effort must be made to do so by those who know better. A big step in that direction would be for Matthew Tresaugue and his editors to run a follow-up story with the important corrections, and this *Johnson Consulting Newsletter* will do its part as well. The misrepresentations in Matthew's article can be unjustifiably damaging to a person's reputation, relationships, business interests, and standing in the community. The perp has a responsibility to pick up as many feathers as possible and make it right, and I will help him do just that. Matthew's article has speculation, innuendoes, diatribes, conjured emotions, hyped drama, and mischaracterizations. This response has the facts.



Matthew Tresaugue, Houston Chronicle reporter
(Photo from general circulation on the Internet, fair-use provision)

A KEY POINT:

THE PROPERTY OWNER TRYING TO HELP IS NOT THE DEVELOPER

One of the most important points to keep in mind throughout this analysis of the King's Colony issues is that John Harris, the primary target of the article, **is not the developer of the subdivision and does not bear the responsibility of a developer.** He began his relationship with the subdivision by starting to purchase lots in it as investments more than 20 years after the subdivision was created in the 1980s . Whether the companies that first developed the subdivision promised lot purchasers that the subdivision would have paved streets and other amenities (utilities) is not known, though it is possible that Montgomery County may have required paved streets at that time, but if that were the case, those now-defunct companies didn't comply.

Many communities and subdivisions in Texas and elsewhere organize property owner associations (POAs) to provide services to property owners. In the case of King's Colony, the developer's failure to provide paved streets and other amenities when he initially developed the subdivision caused property owners (and members of the then-POA) to turn to the POA for help. John Harris, a property owner himself, obviously had

an interest in getting improvements done and became involved. What he discovered (through legal action) was that the POA at the time was seriously corrupt, and the culmination of that reform effort (led by Harris) ended up with (among other things) discovering that a woman named Ira Crain in charge of the POA (which succeeded the original POA) was being investigated for fraud on an unrelated matter involving one of her CPA customers. When her malfeasance in that POA also came to light (she had absconded with hundreds of thousands of dollars from the POA), those facts (provided by Colony Ridge's Trey Harris in sentencing testimony) added time to her eventual prison sentence. In order for that the full story to be available to residents, media and the public, John Harris saw to the deployment of a website explaining what happened and provided the substantiating documents, and the website is still online.³

Here are the specific details related to that POA transition:

The companies that developed the subdivision in the 1980s (now defunct) were in control of the POA and placed a lien on common areas in the subdivision so that the POA had to buy those areas from the developer.

In 2001, subdivision residents, unhappy with the situation, went to the Texas attorney general and were able to create a new POA, inasmuch as the first POA was bankrupt.

The new POA board was able to become financially solvent, but it accomplished very little work on the roads. In the early 2000s, the subdivision was predominately vacant.

In about 2005, Ira Crain and her associates gained control of that POA's board and absconded with POA funds, including a significant amount of money paid to the POA by Colony Ridge (John Harris) in dues for lots.

A lawsuit filed by Colony Ridge (John Harris) resulted in the POA officials resigning, and there were new appointments to board positions. In this transition (in 2007), John Harris was appointed to the POA.

Elections to the POA board were held following those emergency appointments, and by the 2008 time period, additional property owners had been added to the POA board.

In 2011, Ira Crain was convicted on charges unrelated to the POA issues, but she received a seven-year sentence, in part because of the testimony about the POA provided by Colony Ridge's Trey Harris at her sentencing hearing.

Under John Harris' leadership, the "New Kings Colony POA" set up a full-fledged, professional operation, with a continuously-updated website,⁴ a professional accounting system, full transparency, and notification regarding all the POA issues pertaining to residents, along with regular meetings.

Despite the reform consequences of the new POA's operation, there wasn't enough revenue through POA dues paid by residents to perform all the necessary repairs and upgrades which had been a state of dire neglect because of the inaction and non-performance of the original developer. Mr. Harris, while knowing that the needed

³ <http://www.kingscolonyowners.com>

⁴ <http://tinyurl.com/z2n2pfu>

improvements would be long in coming and would require a lot of patience and work, saw the work as necessary in the interest of all property owners. And because of his knowledge and experience from his unrelated developments in Liberty County, Mr. Harris worked for improvements in King's Colony.

The New King's Colony POA reached an agreement with Montgomery County to pave the roads and clean the bar ditches. Through efficient management of the POA, the POA was able to provide \$350,000 to Montgomery County to help fund the improvements—at least to get them going—even though it would require expenditures in excess of \$10 million to take care of all of those infrastructure needs. And, in an unselfish act, Mr. Harris tapped his company, Colony Ridge Land, LLC, to provide an interest-free loan to the POA to be credited against POA dues owed by Colony Ridge for its lots. Mr. Harris also stated:

*Colony Ridge, LLC has also agreed to match the amount of any special assessment charged to assist the County in paving the roads. That means that if we set a \$100 special assessment per lot, we will pay that amount for each of our lots, and then we will match the total paid by all lot owners (including Colony Ridge's lots), which means we are paying double for Colony Ridge's lots in addition to matching the special-assessment payments (to the county) by all lot owners. Those **additional** contributions by Colony Ridge will simply be contributions and not loans.*

With over 1,900 lots in the subdivision, that's a pretty sizable, no-strings-attached gift that Mr. Harris is providing for the subdivision residents' benefit. And yet, despite all of that largesse in trying to help out his fellow property owners, despite the substantial transparency involving all of the POA's affairs, Mr. Harris and the POA were hit with a lawsuit alleging that he (or someone) had absconded with POA funds for personal benefit.

It was this lawsuit which Matthew Tresaugue used as his launch point for producing his article. Matthew called John Harris as he waded into the issue, and then Mr. Harris called me, his media consultant, and then I called Matthew.

THE LAWSUIT

Despite the substantial monetary and leadership contributions Mr. Harris had made to the property owners' benefit, much of it at the expense of his development company (Colony Ridge Land, LLC), nine of the property owners in King's Colony saw fit to file a lawsuit against Mr. Harris and the POA alleging, in essence, that they had derived no benefit from their POA dues, had seen no progress on subdivision infrastructure, and could only conclude that the POA and Mr. Harris had diverted money from the POA. The lawsuit offered no documentation, evidence, sworn statements, or anything else that would be believable, except for the claim that “observations” concluded that work was not being done.⁵ In fact, work was being done, but with starkly limited resources to apply to problems which would require more than \$10 million to fix, the appearance of progress was akin to bailing water from the ocean with

⁵ You can read the lawsuit and see its far-fetched speculation with no evidence at <http://www.gismedia.com/blawsuit.pdf>

a thimble. Nonetheless, progress was occurring. In addition to the agreement with Montgomery County, immediate, situational problems were addressed by filling potholes and making temporary patches in streets. “Unfortunately,” Mr. Harris says, “the rains impede some of that progress and wash some of it away, but we were trying to do as much as we could as quickly as we could for as many people as possible.”

Even though these nine plaintiffs had full access to the POA's books, none had come in to look at those books and ask questions prior to filing the lawsuit filed by residents through Chris Bell, their attorney. After the lawsuit was filed, one of the property owners came into the POA office without an appointment to ask questions. During the first week in July, one or two other property owners came into the POA office to ask questions. Their inquiries were not accusative, according to POA staff. They were given financial and other information which they requested regarding the POA.

So, despite Mr. Harris' largesse, despite the transparency of the POA, despite the professional operation of the POA, despite the ongoing improvements to the subdivision's infrastructure, why did these nine plaintiffs, out of the blue, file this lawsuit? And how did these residents with limited connections and modest financial means find a top-of-the-line, high-profile, politically-connected lawyer to take their case?

I gave Matthew Tresaugue plenty of information to follow up on those questions and find the answer, but he didn't do that. He was more interested in putting gratuitous photos and heart-tugging narrative into his article.

The plaintiffs' lawyer, Chris Bell, is a high-profile, politically-connected attorney who practices out of Houston. He was a U.S. Representative from 2003 to 2005. He ran for Texas governor in 2006 and lost to Rick Perry. He ran for the Texas Senate in 2008 and lost to Joan Huffman. And he ran for the mayor of Houston in 2015, the election won by Sylvester Turner, and received seven percent of the vote.

So, how did Mr. Bell become involved with the King's Colony subdivision residents who became the plaintiffs in the case? There's a deeper story underneath that remotely coincidental circumstance, and the answer can be found in a broader issue which allows the dots to be reasonably connected.

During the seven years that I have been a consultant to land developers who use the owner-financing model to sell lots—for the benefit of people who want to become property owners but don't have the credit worthiness to get a traditional bank or mortgage-company loan—I have dealt with reporters and other media representatives who have an agenda of “uncovering” business practices which are *alleged* to take advantage of consumers through predatory interest rates, not delivering promised amenities, using a contract-of-sale rather than transfer-of-deed in the property transaction. My clients, including John Harris, are immune from all of those charges because they don't do business that way, especially in light of the passage of Chapter

232 of the *Texas Local Government Code*, which has mandated criteria for such transactions going back to 1989, and with revisions in the following years. Nonetheless, media calls to my clients (including Mr. Harris) picked up in intensity beginning about a year ago. After a factually-erroneous article by Lauren Etter in *Bloomberg News* about one of Mr. Harris' developments in Liberty County, NBC Investigative Reports called. I became involved and spent three days with the NBC crew and the Colony Ridge representatives in Liberty County. After exhaustive investigation, after going over much documentation voluntarily provided by Colony Ridge, NBC left and then never ran a story—either on TV or in print—about their investigation. Apparently, they found nothing to expose.

After that, KTRK-TV in Houston was tipped off about the King's Colony lawsuit and did a brief TV piece on it. The KTRK reporter told me that the information about the lawsuit had been brought to them by someone “advocating” for the residents, whom he wouldn't name. Then came the call from Matthew Tresaugue at the *Chronicle*, who was asking about the lawsuit against Mr. Harris and the POA. After the call was forwarded to me by John Harris for a response, I became more than convinced that the dots had been connected, especially after the publication of Matthew's article.

After the lawsuit was filed, an inquiry was made to some King's Colony residents regarding the inspiration for the lawsuit. The response was that someone “advocating” for the residents had arranged for a lawyer (Chris Bell) at no cost to file the lawsuit for residents who “wanted” to sue.

The common thread in these media initiatives is a man named John Henneberger, a subsidized-housing advocate who has worked against developers using the owner-financing business model at the legislature as well as through media releases and in writing on his on website⁶, also promoted on his Twitter account.⁷



John Henneberger

(Photo from circulation on the Internet, fair-use provision)

6 <https://TexasHousers.net>

7 @TexasHousers

Henneberger was involved with the reporters in some of the media pieces mentioned above and was even quoted as a source in many of them. Though it never aired a story or published any articles about Colony Ridge subdivisions or Mr. Harris (nothing negative was found), NBC Investigations acknowledged that Mr. Henneberger had been used by NBC Investigates to critique and evaluate Colony Ridge (John Harris).

Instead of seeing the owner-financing model (used by many developers) as a model for addressing the crisis in property and home ownership, Mr. Henneberger has fought in the Texas legislature against making it viable for people of modest means to achieve property ownership and establish affordable residences for their families through the private-market, owner-financing model. He appears to prefer his own efforts to provide government-subsidized and public-subsidized shelter (as opposed to actual property and home ownership). While the tax-supported programs Mr. Henneberger advocates can help relieve the shelter crisis for Texans with marginal incomes, it is curious as to why he so strongly opposes the private sector making property and home ownership opportunities available to those who might not otherwise be able to do so—except for the owner-financing model. Instead of working against the owner-financing model, it would seem more prudent to work together and provide as many shelter and housing opportunities as possible and, coincidentally, providing as much relief as possible for taxpayers who are called upon to provide subsidized housing for others.

KING'S COLONY – FALLING THROUGH THE CRACKS OF HISTORY

Prior to 1989, when the Texas legislature passed the initial version of the *Model Subdivision Rules* (Chapter 232 of the *Texas Local Government Code*), property development in Texas subdivisions was like the free-wheeling wild west and resulted in the creation of subdivisions with substandard infrastructure (roads and utilities). Chapter 232 changed much of that, especially in counties designated as Subchapter B (border counties) and Subchapter C (other counties opting in). Being a county in either category (after 1989) meant that developments in either category had access to Texas' Economically Distressed Areas Program (EDAP), which could get grants for vital infrastructure. So, in these two classes of counties, help was available. A task force created by the legislature stated in its 2010 report: “The Texas Legislature's decisions to remediate *colonias* and economically distressed areas built in the past by using at least a billion dollars of taxpayer money to install basic infrastructure has created improved conditions in many existing substandard subdivisions.”⁸ That report also states that passage of the *Model Subdivision Rules* by the Texas Legislature in 1989 has resulted in “almost no new developments with substandard infrastructure.”⁹

8 “Report of the Task force on Uniform County Subdivision Regulation, pursuant to HB 2275 passed by the 81st Legislature (November 30, 2010), p. 5.

9 *Ibid.*

Unfortunately, King's Colony in Montgomery County was created by the now-defunct companies prior to 1989, avoiding more stringent regulatory requirements. And because Montgomery County, under the Texas Local Government Code 232 provisions, is a Subchapter A county, it is not eligible for the important EDAP funds which could correct many of the problems. That fact essentially left King's Colony on its own—relying on its own resources and the private sector.

So in stepped John Harris, a purchaser of lots in the subdivision and NOT the developer, who generously took a leadership role and even donated his own money to help address the problem with a **market solution** and not a **government subsidy** solution, especially since no government subsidies were available. It was Mr. Harris' efforts (as one of the property owners) to solve this problem that brought the lawsuit and the spotlight on the neighborhood, resulting in blame being hurled at Mr. Harris and those who are trying to fix the problem instead of blaming those who caused the problem in the first place, and those who are perpetuating it by filing a lawsuit which has no basis. These kinds of reporting omissions (as found in Matthew Tresaue's article) simply represent unprofessional journalism taken out of context.

The result is that Mr. Harris and the POA were the objects of a lawsuit—apparently stimulated by those who don't like the owner-financing model of subdivision development. In the case of King's Colony, the owner-financing model is not the problem. The problem is that lax regulations prior to 1989 allowed the original (now defunct) companies to avoid providing the necessary infrastructure which John Harris, through his own efforts, is working to remedy.

No one really knows for sure whether the original purchasers of lots in King's Colony were told by the now-defunct companies that they would have to drill their own wells and install their own septic tanks. But after that developer was gone, lot purchasers knew that water and waste water utilities would have to be self-provided and self-funded.¹⁰ The 1980s records of the POA and the original developer are incomplete, and it is possible that the county may have required paved streets when King's Colony was initially platted and cleared for interior roads, but even if there were such a requirement, that original developer obviously didn't comply. Even now, the New King's Colony POA provides whatever administrative assistance it can to those who need to get electric service from the area's electric service provider—as documented by a long string of e-mails in the POAs files.

HARRIS RESPONDS

Colony Ridge Land, LLC and co-owners John and Trey Harris are successful developers in Liberty County using the owner-financing model and make property ownership available to economically-challenged families who might not be able to get conventional bank or mortgage company loans. But all applicable *Model Subdivision Rules* are followed. “Colonias” (using the official definitions of the State of Texas) are

¹⁰ People who purchase lots re-sold by Colony Ridge Land in King's Colony must sign a disclosure statement which makes crystal-clear the purchaser's obligations and responsibilities involving utilities, taxes and other important details. That disclosure agreement is available at: <http://www.gismedia.com/kingscolonydisclosure.pdf> .

no longer being built by developers who follow the Model Subdivision Rules in Chapter 232 of the *Texas Government Code*, and I will not consult for developers who don't follow it.

That's a stark contrast to a section of Tresauge's article, which states:

“

Backers say the communities offer an opportunity for people with little money and bad credit to have a house of their own. But the decision is fraught, experts say. That's because developers don't always keep their promises, and the gaps in infrastructure can prevent landowners from building equity and using it to move to a place that's better, cleaner and safer.

"This is being marketed as affordable housing, but they're going to pay a big price," said John Henneberger, an expert in low-income housing issues at Texas Housers, an Austin-based nonprofit that tracks the state's colonias.

“

Harris says that such quotes “incorrectly frame these (Liberty County) developments (and not King's Colony, which is an exception for which John Harris is not the developer) as if the rules hadn't changed over the last 100 years. Selling lots without a legal plat doesn't happen, Colony Ridge guarantees roads will be built and makes good on that guarantee, as documented by Colony Ridge's on-the-ground subdivisions in Liberty County. And Colony Ridge coordinates the availability of electric, water and wastewater service through the third-party providers.

But the King's Colony subdivision, which Harris and his company did not develop, is starkly different in both its origin and challenges from any of Colony Ridge's developments in Liberty County. As a relic of the past because of its origin, King's Colony faces challenges in the present, which John Harris and the New King's Colony POA are working to fix, with some of that expense being borne by the charity of Harris and his company, even though there is no obligation to do so.

Lawsuits like this one, and in my opinion, likely instigated by the stirring of “advocates” who don't like the owner-financing development model, are doing a serious disservice against those they ostensibly want to help—economically-challenged people who seek a path to home ownership. Instead of seeking useful solutions through cooperation, this legal contentiousness absorbs resources of those who are trying to help solve the problem at the same time they are unjustifiably blamed for it. Running to media with “expose” tips to harm law-abiding developers encourages improperly-researched journalism, because media these days are prone to highlight drama rather than the real history and the real facts underlying complex circumstances. In this case, Matthew Tresauge took the bait and wrote the story while he fell into the trap.

The information in this response to Matthew Tresaugue's article was readily available to him. Much was provided in the initial response to his phone call, and the rest of it was transparently available if he simply would have asked the reasonable and honest questions a professional journalist should have asked. He had every opportunity to call or e-mail me to verify the contents of his article, and he failed to do that. In the NBC case, the researcher went the second mile with the fact-checking, and as a result, they determined accurately that they had no “expose” to report.

A GROWING INFLUX OF POPULATION

Texas continues to grow in population, and much of that population is Hispanic. Obviously, there are housing challenges. **But it is strange and even mysterious that the “advocates” of subsidized and public housing for those with economic challenges work against the market forces (especially the owner-financing model) that can help provide property ownership for those who need it and want to avail themselves of the opportunity.** Instead, they fight against the free market, owner-financing model in the state legislature, and they contact media with claims that there is an “expose” story to be published or put on TV. Are those objections and actions perhaps based on a theory (or a fear) that if the free market can solve at least some of the problem, those needing affordable housing will have to rely less on government subsidies?

The fact of the matter is that instead of inspiring lawsuits and lobbying against the owner-financing model, “advocates” should consider working in cooperation with everyone—even private developers—who can help address the problem of affordable housing in moving forward toward effective solutions.

WHAT'S NEXT

The *Johnson Consulting Newsletter* will continue to work to keep media and their reporters true to the facts when disseminating news on this subject. And subsequent developments on this article by Matthew Tresauge as well as the lawsuit will be duly reported. Mr. Tresauge now has an opportunity to correct the record for his readers.