



# The Regenesis Report



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**Regenesis** believes that the goal of every homeowner association board should be to promote harmony by effective planning, communication and compassion.

**The Regenesis Report** provides resources and management tools for just that purpose. Every month, articles of common interest to homeowner associations nationwide are offered along with innovative strategies for addressing common problems.

Managing an HOA can be a lonely and frustrating task. Take heart. Help is on the way.



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## Against The Grain

Years of inaction, failure to enforce violations, deferred maintenance and too little money to get the job done all take their toll on an HOA. A sense of "muddle by" permeates the board and meetings are more gossip than work sessions, if held at all. There you sit, the new kid on the board, knowing that something's gotta give. This place is going down the toilet and you don't want to get flushed with it. What to do?

Change comes hard to an HOA in trouble. Members are conditioned to expect little and the board feels helpless to do anything about it. Failure becomes habit and the vision dims. Camelot is just a dream. Let's just keep our heads down and maybe no one will know the difference.

But they do know. Silent but angry, frustrated and disgusted, members watch as their property values slide toward the abyss. A few harangue and harass the board but most shake their heads knowing it's useless to complain to the deaf.

Hope is looking past what is to what could be. Every new day has a dawn and another chance for change. If your HOA is floundering, here are some strategies for regaining the high ground:

**Meeting of the Minds.** Before change can take place, the board must be of one mind (or at least of majority mind) that change is needed. This is the starting or sticking point. If a majority are agreed that things have got to change, good. Skip to the next step. If not, some road blocking directors must first be replaced. This will take a bit longer to encourage new candidates to step forward and to rally support. But nothing worth doing is ever easy. Keep focused down the road, not the potholes in front of you.

**Define the Issues.** Once the board is of one mind, it's time to identify areas of change. They come in all shapes and sizes and from "can wait" to urgent. First, compile the list. Second, prioritize the list according to urgency and funding requirements.

Research the cost and implications of implementation. For example, deciding to bring all architectural violations into compliance this year could be an enormous and volatile task.

**Devise a Plan of Action.** With your priorities lined out, lay out a 3-5 year plan of action. Keep in mind that volunteers will be needed to get some of it done so don't drown them before the swim meet starts. Pace, pace, pace. Overly ambitious and expensive changes will be met with proportionate resistance. Most of these problems compounded over years. Unraveling them takes time. Start slow to build credibility with success.

**Cast Your Bread Upon the Waters.** Hold a special meeting to roll out the proposed one-to-five-year plan to the membership and ask for feedback. Expect challenge and thank them for it because it shows they're paying attention. Promise to take the feedback to heart and find a way to make it part of the plan. That way, the membership is invested in the outcome.

**Recall the King.** Long entrenched presidents rarely have the ability to make radical changes. While maybe well meaning and steadfast, they are the roadblock and not the bridge to change. Since the president serves at the pleasure of the board, the board can make a change for the good of the order. It should be done with diplomacy and sensitivity but done it should be unless you have that rare exception to the rule.

Worthwhile change is going to be met with some resistance and going against the grain will gather splinters. But keep the long view. If change is going to come, it's up to you. In the immortal words of Garth Brooks:

If you're gonna make a difference,  
If you're gonna leave your mark.  
You can't follow like a bunch of sheep  
You gotta listen to your heart.  
Go bustin' in like old John Wayne.

Sometimes you got to go against the grain.

Nothin' ventured, nothin' gained.

Sometimes you got to go against the grain. 🌱

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### **Ask the HOA Expert**

**Q** We have a vacation rental manager at our ocean front condominium for those owners that want to rent their units use. Can the board require that proper proof be provided for guests who bring service animals? Guests are bringing dogs which they claim are needed for a disability.

**A** The service animal issue is very difficult to deal with. State and federal regulators can be aggressive with those that deny those claiming to have a service animal. There are large financial penalties for violations. In the past, the service animal issue was straightforward. If you were blind, you had a seeing eye dog; if you were deaf, a hearing dog. Now, they can be virtually any kind of animal including a snake, horse, pig and what-have-you.

The need for a "service animal" now includes "comfort" animals for people that suffer psychological issues. If the disability is obvious (blind, deaf, wheel-chair bound), no verification from a doctor is needed. If the disability is not obvious (psychological), a letter from a qualified physician can be requested and required.

So, the HOA board can establish a policy that only "qualified" service animals are allowed which applies to both long term residents and vacation rentals. When the nature of the disability is not obvious, a verification letter from a qualified physician can be required. You should run any such policy passed your attorney.

**Q** Our governing documents restrict units to "Single Family" occupancy. Our board interprets this to mean "related" individuals. According to this interpretation, a live-in girlfriend, boyfriend or care giver would all be in violation.

**A** What gets written into governing documents often sounds reasonable but is unworkable for practical reasons. The board is simply not positioned to research or enforce this kind of standard and shouldn't because it assumes that related persons are superior to non-related persons. "Related" generally means by blood or marriage. So, for the board to enforce this rule, all occupants must show convincing records (like birth or marriage certificates) that prove the relationship. Good luck. Asking isn't getting. And just try to evict an owner.

Just because the governing documents say something doesn't make it reasonable or enforceable. The board has the right to make a judgment on this and choose how it's interpreted. Rather than some arbitrary standard like "single family" the board should focus on *behavior*. If either owners, renters, married or singles are violating HOA rules, they should all be treated the same. It is the *behavior* that is at issue, not family status.

**Q** A homeowner who recently broke her arm wants the HOA to install and pay for a second handrail on the staircase to her unit. She has an equilibrium problem. Is the HOA responsible to install special equipment for residents who are physically challenged? Several of the owners in our complex are seniors and have physical challenges.

**A** The HOA is not responsible for or required to install special equipment but the board should make "reasonable accommodations" by allowing those that request it to do so at their own cost. The installation should be professional and in keeping with the building design and material.

That said, if a majority of members are in favor of installing ramps, handrails and the like, there is nothing wrong with installing them. HOAs can have

anything the majority of the members are willing to pay for.

**Q** There is a couple who lives in our HOA and only one of them is listed on the property title. Does the other one qualify to serve on the board or a committee?

**A** Unless the governing documents allow otherwise (rare), only property owners are allowed to serve on the board. The board may appoint anyone to a committee including renters since they aren't elected positions and subject to oversight by the board.

**Q** Our HOA fees have not been raised in seven years. The board has proposed a budget that is calling for a \$40 increase per month along with an additional \$500 special assessment. I understand the importance of maintaining the buildings and providing adequate reserves for future capital projects but at what point do increased fees have a negative impact on the market values?

**A** Prior boards have failed to keep pace with known cost increases and inflation. The lesson here is clear: The board should *at minimum* increase fees each year the amount of prevailing area inflation. That way, the buying power of the dollars remains competitive.

Even better, each year the board should analyze the most recent 12 month's expenses, consider increased costs of contract services (management, landscaping, etc.) and utilities plus review and revise the reserve study to determine the proper fee level. This is how successful HOAs are run. Yours has been running on empty for years and you finally have a board with enough gumption to face up to it.

An HOA with proper budgeting and funding is much more attractive to buyers than one whose fiscal head is in the sand. Buyers are willing to pay more for this kind of property because the HOA has the funds to do proper and timely maintenance and the property shows it. When the property shows it, it will sell for more money and faster than those that don't. There is no free lunch. If you starve the HOA budget, you starve your own property value. 🌱

## Tree Assets

Sure, they look pretty and they help clean the air that we breathe, but how many of us ever stop to think of the trees within our condominiums and homeowner associations as assets? They don't wear out or break down...or do they? They don't ever need replacing...or do they? They aren't an item included in many reserve studies. How can it be that trees are assets?

There is little doubt that well-maintained trees enhance property value within HOAs. In fact, many home buyers are heavily affected by curb appeal when purchasing a home or condo. There is little argument that trees enhance curb appeal. In fact, trees are an integral part of most plans by homeowner association developers who realize that nice looking buildings are only part of the appeal of a new development. Trees, shrubs, flowers and attractive landscaping can do as much to attract buyers as do marble counter tops and hardwood floors.

Trees are ever changing and require a good deal of maintenance to thrive for years. If you visit an older HOA where trees have not been properly maintained, you will notice all sorts of problems, including broken limbs, diseased bark, even death. As living organisms, trees require food and water as well as health monitoring and maintenance. For this reason, it is well advised to work with a tree care professional to manage the trees.

There are occasions when tree replacement may be in order. While many trees will reach a certain size and desirable look, some will just get too big or unmanageable over time. Some trees that looked great in their first decade may grow to become hazards in their second decade and beyond. Working with a certified arborist can give a homeowner association great insight as to when it is time to replace certain trees that have become unmanageable.

Taking inventory of your trees and adding it to your reserve study makes perfect sense. In larger HOAs there may be hundreds or thousands of trees. If 5 to 10 percent of them needed to be replaced in one year, it would be a major expense. However, not properly maintaining these assets could create an eyesore and even a liability. Treat your

trees like the assets they are and they will bring a healthy return year after year. 🌳

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## Keeping It Current

The reserve study is one of an HOA board's most powerful planning tools. It lays out a 30 year major renovation schedule to follow and a funding plan to collect the money needed to pay for those events. Planning ahead! What a concept! It makes this volunteer job so much easier. The reserve study funding has a *profound* impact on the annual budget. A typical common wall HOA like a condominium needs to put around one third of the monthly assessments into reserves to meet future costs.

The reserve study has many moving parts and needs to be updated annually so that the projections and assumptions remain accurate. Aspects of the study that will need to be adjusted annually include:

**1. Starting Balance.** The amount of money held in reserves at the beginning of the fiscal year. It changes every year and is the basis upon which the Funding Plan is built.

**2. Inflation Rate.** Inflation has a huge affect on future dollar needs, While the 2016 inflation rate is relatively small at about 2.5%, that rate *triples* the dollars needed over the 30 year projection period to maintain current buying power. The inflation rate changes every year so the reserve study needs to reflect that change too. Historical inflation rates are available at [www.inflationdata.com](http://www.inflationdata.com). Since inflation rates can be volatile from year to year, it makes sense to use the past 15-30 year average.

**3. Investment Return.** Many HOAs let reserve funds languish in money market or savings accounts which produce, currently, close to 0%. However,

investing reserves strategically can yield impressive revenue over 30 years, revenue which offsets member contributions. Using the reserve study event schedule as a guide, decisions can be made on how much reserve money can be invested in Certificate of Deposits (CDs) and for how long. In many cases, most reserves can be invested for 3-5 years at higher yielding CD rates. Using a technique known as "laddering", CDs are purchased in varying terms like 1, 3, 5 and 10 years. Those terms should be lined up in amounts and years where liquid cash is needed for renovation costs. Laddering can produce an average yield in the 1-2% range in 2016. While this doesn't sound like much, over the 30 year projection period, it can yield tens, even hundreds of thousands of dollars depending on the reserve fund size. Since interest earnings offset member contributions, this is very good news indeed.

**4. Component Cost Changes.** The reserve study predicts future costs based on current actual expenses or area average costs. These costs can vary from year to year. Roofing, for example, took a dramatic increase in 2015. If the reserve study was not adjusted to reflect this increase, the fund would fall short on one the study's most expensive components.

**5. Component Life Changes.** The useful life of a component assumes quality material, proper installation plus regular and adequate maintenance. For example, if a roof is not kept clean and repaired regularly, the predicted useful life of, say, 25 years, might need to be reduced to 20 years or less. Periodic site inspections recommended every three years will reveal if components are aging as predicted. If they are not, useful lives are shortened which means reserves will need to be accumulated faster to meet the new schedule. In some cases, a component life can be extended but it usually not advisable when it comes to high priority components like roofs, paint, siding and decks.

**6. Adding or Removing Components.** Sometimes, it makes sense to add or subtract a component. For example,



since insurance deductibles are now \$10,000 and up, it makes sense to build an Insurance Deductible reserve. Since hot tubs are maintenance and utility intensive (expensive), it might make sense to shut it down permanently and remove all related components from the reserve study.

Reserve studies are living documents with many moving parts. Preparing and updating one takes specialized skills. Third party expertise provides the board with the expert and objective analysis it needs to make informed decisions. *Regenesi s Reserves is a member of Association of Professional Reserve Analysts, the reserve study industry's trade association. Michael Stewart and Rich Thompson both carry the Professional Reserve Analyst (PRA) credential. For more, see [www.Regenesi sReserves.com](http://www.Regenesi sReserves.com)* 🏠

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### Living in Peace

While conflict is inevitable in homeowner associations, we do have choices about how we are going to deal with it. When handled in a constructive manner conflict can be a catalyst for new awareness, new understanding, creative solutions, and enhanced relationships.

However, when conflict occurs we don't always deal with it in the most constructive way or we sometimes don't deal with it at all. Conflicts rarely get better with time. Here are some suggestions for how to deal with conflict the next time it arises.

**Speak Directly.** Talk directly with the person with whom you have the problem unless there is a threat of violence. Meet face to face, or talk over the phone, to explain your concern in a positive, respectful manner. Conversation is much more effective than sending an anonymous letter, banging on the wall, or complaining to your friends and neighbors.

**Plan What You Will Say.** Think about what you want to say in advance. You will want to talk about the problem as you see it and how it affects you. You want to help the other person understand that a problem exists and invite them to help you find a solution that you can both live with.

**Choose a Good Time.** Choose to talk with your neighbor when there will be enough time for a thorough discussion. Consider a time when you think the other person will be most receptive. A quiet place where you won't be easily disturbed can make it easier to talk and listen.

**Speak Openly and Honestly.** Have a positive attitude about working together to find solutions. Using unfriendly language or blaming the other person for everything makes it harder for him or her to hear you and understand your concerns. Remain open to hear a different perspective than your own, seeking to understand before being understood.

When you talk:

**Focus on Giving Information.** Discuss your concern with a focus on your feelings regarding the situation and how it affects you, not delivering a message.

**Listen.** Give the other person a chance to explain their view, describe their own concerns, and share their own feelings. Relax and try to understand how the person feels about the situation. Summarize what you hear and ask questions to clarify your understanding of their view of the problem. Understanding the other person's perspective does not mean that you are agreeing with them. However, in order to find a solution you must have a complete picture of the problem.

**Talk It Through.** Once you start, get all the issues and feelings out in the open. Don't ignore the part that seems too "difficult" or "minor". Your resolution will be durable if everyone's issues and needs are considered and addressed.

**Consider Possible Options.** Brainstorm some solutions that might

remedy the problem. Be creative in thinking up solutions but don't critique them until you have run out of ideas. Discuss the solutions that you both think might work. Two or more people cooperating to find a creative solution are much more effective than one person demanding that the other make a change.

**Be Clear and Specific About a Solution.** Play it SMART (Specific, Measurable, Achievable, Realistic and Timely). For example, "Beginning tomorrow, I will bring my dog in at 9:30. If I forget, please call me to remind me."

**Follow Through.** Agree on when and how you will check in with each other to make sure that your agreement is working, and then do it. Communicate immediately about any changes, or if your solutions are not having the desired result. Congratulate yourselves on working together to resolve the problem. 🏠

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### Conflicting Interests

When people are elected to positions of power, there is always the possibility that a conflict of interest will develop. It is almost impossible to avoid them but how they are handled is critical. For example, when it comes time for painting your homeowner association and there isn't enough money to do the whole job at once, which units get done first?

Rather than be exposed to well earned criticism, why not ask a third party consultant to make the call? This technique can be used in many situations where limited resources cause some owners to benefit over others. Avoid the perception of self dealing. Get someone else to make the call.

Another technique for avoiding conflict of interest is for a director to abstain

from voting when the outcome is self-benefitting. Make sure the secretary records in the meeting minutes that (fill in the blank) abstained due to a conflict of interest” so that the written record will show no intent to sway the vote.

Disclosure is another way of avoiding conflict of interest. The idea behind disclosure is that possible conflicts are brought to the board’s attention. But beware. Technically, if you advise the board that your brother in law, the HOA’s landscape contractor, is giving you kick backs to influence the contract, you’ve provided disclosure. No foul, right? Hardly. Disclosure can smooth over minor conflicts of interest but if there are significant implications, the disclosure should be made to all members. And this may raise more questions than answers.

One of the best ways for the board to avoid self dealing is to deal openly. With a few exceptions, board meetings should be open to all owners and minutes should be complete and easily available. Periodic newsletters should advise of upcoming meetings well in advance. If the board knows someone is looking over its shoulders, it’s less likely to engage in self serving activity.

Some HOA developers spur sales by setting the HOA fees artificially low. This strategy starves the HOA of funds it desperately needs to properly take care of the assets. Savvy developers seek outside counsel to help shape the homeowner association framework. Attorneys specializing in HOA law write usable governing documents while HOA consultants can assist with proper budgeting and maintenance scheduling. This makes the whole process “arm’s length” and more credible to potential buyers. In a word, the developer should offer every possible resource to help ensure board success.

We’re all capable of feathering our own nest even when we don’t think we’re doing it. The best policy is to avoid any perception of wrong doing. Ask yourself if what you’re doing could be misconstrued by outsiders. Trust is a fragile thing. Take precautions to avoid conflicting interests that can conflict your HOA.🌿

**The Regensis Report**

## Neighbor Nuisances

When people live in close proximity, lifestyle clashes are likely. Noise is the most common complaint followed closely by odors, health and sanitation issues, cigarette smoke and curb appeal. The board is challenged from time to time to sort out various nuisances that interfere with a member’s enjoyment of their property. To intervene or not to intervene? That is the question.

Some nuisances are clear violations of law and should be handled by law enforcement. Among these are domestic disputes, out of control parties, abuse of alcohol and use of illegal drugs should all be directed to law enforcement. These are not situations that neighbors or boards are prepared to deal with and there is a chance attempts to do so could escalate to physical altercations. The complainer should be directed to call the police immediately.

Other nuisances, like a neighbor’s choice or volume of music, house cleaning acumen, hard stepping ways, or Marlboros can cause ongoing nuisance that are more appropriate for board intervention.

But these issues may come in several flavors: *people driven* or *building design* or a combination of both. People driven issues are more easily dealt with (STOP doing that!!!), but the board’s approach to building design nuisances is more problematic.

New construction generally provides for adequate sound barriers, but older properties often don’t. Sound transmission is a very common problem in condo conversions using apartment buildings. In older buildings where common walls, floors and ceilings are wood frame construction, there will often be ongoing noise issues to deal with.

Correcting these soundproofing deficiencies is possible but very expensive. Carpet and sound deadening drywall will help but not totally kill the noise. Installation of hardwood and tile floors in upper units will virtually guarantee an ongoing upstairs/downstairs war. The best the board can do is enact bans on hard surface flooring and encourage greater noise sensitivity between neighbors.

For people generated nuisances not better handled by John Law, the board’s involvement is certainly called for. In this, the board is challenged to “balance competing interests” such as the upstairs neighbor’s need to have a trampoline and the downstairs neighbor’s need to sleep. In balancing these interests, the board needs to have an actual chance of reconciling the problem. As one judge put it, “The test of nuisance is not what effects it has on persons of delicate or dainty habits or living, or of fanciful or fastidious tastes, or on persons who are invalids, afflicted with disease, bodily ills, or abnormal physical conditions, or on person who are of nervous temperament, or peculiarly sensitive to annoyance or of disturbance of the character complained”.

In plain English, this means that just because someone is bothered doesn’t automatically make something a nuisance. People living in close quarters are called on for a higher degree of tolerance. But some just can’t adjust. Some folks simply need more space, a wider buffer zone. No degree of board intervention will ever satisfy them short of vacating all adjoining units.

Most long lasting solutions for nuisances are compromises. For example, instead of banning Mr. Trampoline from his passion, maybe he will agree to bounce from 9 am to 7 pm instead of at 3 blankety blank am. When settling the nuisance dust between neighbors, creativity and a lot of humor is called for (a LOT of humor). The board should deflect those which can be to the combatants or the law, and for those that can’t, ply the waters of compromise.🌿

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## Point is Smoot

Most folks look for a way to make their mark in the world. Some do it with fame, some with fortune, some with notoriety and some with service to others. There are many ways to get

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noticed in the world. Consider the case of Oliver Smoot.

Oliver attended Massachusetts Institute of Technology (MIT) in the 1950s. Like many young men, he pledged a fraternity. As one of his pledge duties, he was required to measure the Harvard Bridge which connects Boston to Cambridge. For many college kids, the trek across the Harvard Bridge in winter was a cold and windy ordeal. So, the thinking went, knowing how much farther it was to go would be useful information. The twist on this task was that Smoot was to measure the bridge with his body. Smoot was chosen because, at 5' 7", he was the shortest man in the pledge class and the job would be hardest for him.

So, Oliver and several pledge brothers set about the task. He would lie down, a chalk mark was made and then he'd get up, move forward and repeat the process. Every ten body lengths, a painted mark was made. Since the bridge is over 2000 feet long, the exercise soon grew tiring so part way into it, his pledge brothers began carrying him from one position to the next.

When all was said and done, the tally was 364.4 body lengths. One of the fraternity brothers named the measurement the "smoot" in Oliver's honor and because the term sounded scientific. While this prank seemed senseless and immature, something about it struck a cord with the locals. It had two components of a classic MIT prank: a hint of science and a low level of vandalism.

But keeping the smoot alive took the cooperation of strange bedfellows. As part of an annual ritual, the fraternity brothers repaint the smoot marks. And during a 1990s bridge renovation, the government contractor agreed to score the sidewalk every 5' 7" in honor of Smoot instead of the traditional six feet. The legend has been passed on now for over 60 years.

But it doesn't end there. Oliver was a dedicated student and eventually earned a Bachelor of Science (BS) degree followed by a law degree. His long and distinguished career included serving as Chairman of the American National Standards Institute (ANSI)

and President of the International Organization for Standardization (ISO). Both organizations deal with, in part, establishing standards in measurement.

So what does this all mean? What started as a prank captured the imagination of many. God has designed each of us with special talents. Discovering those talents and using them for others is what we were made for.

For the too serious, the smoot reminds that the world really is a random place no matter how we like to categorize, define and contain it. The foot, the yard, the mile and the smoot are all arbitrary measurements. There is comfort in knowing that randomness is still honored.

There is little in life we truly control. Those that think they do lead tense and frustrated lives. Those that are happy knowing they don't maintain a sense of humor and humility. Letting loose of the reins will help you sleep better.

We can and should rely on others for help. Smoot's pledge brothers carried him in an effort that made him a legend. Instead of spectating, they got involved and lent a helping hand.

No matter what greatness we achieve, we need others to help do it and make it meaningful. It's not how you measure your life but how you finish. Piling up trophies, money and goods is self serving. Use the talent and treasures you're given for others. That is how to truly finish well.

Seemingly meaningless events can produce profound and lasting impacts. Smoot inspired a legend, incorporated it into his career and Google memorialized it for all of us. What is the measure of your life? For some, the measure is pointless. For others, the point is Smoot. 🌲

## **A Christmas Story**

Joe stood helplessly next to a huge flatbed rental truck. He had just moved to a new city and had come to collect his household goods from the moving company warehouse. Everything he and his family owned was in two plywood boxes measuring 4' x 8' x 8' but weighing a hefty two tons.

The forklift operator did his job quickly and set them on the truck. It was Quittin' Time on a Friday night and the operator soon vanished leaving Joe in a vacant parking lot to finish the job. Before he could leave, he needed to secure the cargo.

Joe wasn't in the best frame of mind. His family life was a mess, he was unemployed and in a strange place. It was cold, he felt abandoned and alone. He looked at the small nylon rope he brought and it soon became clear it was a two man job and the rope was woefully inadequate for the job. Dusk became twilight as he struggled in a fruitless effort. Finally, his frustration turned to despair. NOTHING was working in his life, and this was just one more example.

"That rope ain't gonna work", a voice spoke from darkness. Joe turned around and a man walked up with a couple of heavy duty tie down straps. "Why don't you try these?"

The man's look radiated friendliness and compassion, something Joe hadn't seen in a good long while. "Here, I'll give you hand" he said. Within five minutes, they, really "he", had secured the load. The man turned to leave and Joe called after him, "Hey, what's your name? Where do you live? Where should I return the straps?"

"Name's Carl and I gotta get back to my rig and get pointed south. Got to make Grants Pass by midnight. Don't worry about the straps. I got plenty. Give'em to someone that needs them." With that, he turned and walked away.

An incredible sense of relief and well being swept over Joe. He had come to expect the worst from life. So Carl took him totally by surprise. He apparently wasn't aware of Joe's expectations and bulled right past them.

There are moments like these in life, inexplicable blessings that present themselves out of the blue. They are no more random than the very beginnings of the universe. Selfless acts are the glue that binds us and make us different from all other species. Carl understood this and put it into practice. You can do the same. Where ever you are Carl, thanks for pointing the way. 🌲