

President's Report

January 4, 2024

On December 21st, the District Board voted to file a civil complaint against HGA for breach of the management agreement and seeking its immediate termination.

The purpose of this action is to wipe the slate clean and start anew. If the management agreement is terminated, HGA must negotiate with the District on a level playing field as equal partners.

Hiring an attorney who specializes, conserves legal fees. Six months is a reasonable time to invest in negotiations without any settlement offers. Litigation to terminate the management agreement is the most expeditious way to reach the end result of putting both parties on equal footing, and motivated to reaching a fair agreement. Our action will save attorney fees and costs in the end.

What HGMD wants is simple. We want the same control over District properties as HGA has over the residential properties. On Sept. 1st, HGA suggested that to accomplish that goal, HGMD directly hire the employees who serve the District. HGMD accepted this proposal and invested considerable time in preparing for its implementation.

We now believe that it is, in fact, the only way HGMD can adequately oversee management of its properties and comply with its legal oversight responsibilities.

During 6 months of negotiations, HGA failed to acknowledge the District's authority in any area. We cannot fulfill our campaign promises to minimize costs or improve efficiency, if HGA is allowed to pick and choose what policies it chooses to follow, what directives it chooses to comply with, and what financial accounting it chooses to provide.

- HGA has refused to separate District money and HOA money into separate bank accounts, as required by statute, hampering the District's review of expenditures.
- HGA has refused to account for the 1.2 million dollars it charged HGMD for wages and benefits in 2023. The headcount numbers just don't add up, and don't match the organizational chart.
- HGA has refused to give the District a list of job titles of employees serving the District.
- HGA has refused to respond to performance complaints. For example, a proposal to purchase a freezer didn't include its installation or removal of the old freezer.

- HGA has signed contracts beyond their authority, and scheduled work without any contract at all.
- HGA has failed to inventory District assets since 2019. The capital expenditure plan for 2024 had only 12 items on it, rendering our capital reserve plan obsolete.
- HGA refused to maintain the District's public records on its website.
- HGA converted the Clubhouse Manager's position to part-time without approval.

The District trades the use of certain spaces to HGA in exchange for the administrative duties it performs for the District.

This space includes all of the clubhouse office spaces on the first and second floors, the boardroom, all of the clubhouse basement area, and the entire maintenance building complex, which includes more offices, storage areas, work bays, and its fenced parking lot.

Consider the rental value of all that space. In exchange, HGA collects the dues you pay to the District, and pays the District's bills. HGA performs accounting services, but since it refuses to disclose the details, I'm not sure we can attribute much value to that service.

HGMD was forced to create and pay for our own website to assure that all public documents are maintained and available to the public. All Zoom meetings are uploaded as soon as received, and they will remain on the website, indefinitely, as well as our meeting notices and other information.

HGA refused to share the Pitera email list, so you can now sign up for email notifications from the District on our website. Go to www.HGmetroDist.org. Click on the Home tab, then under Contact Us, click on Subscribe to Email Notifications. Your email address will be added to the list.

I've attached a brief list below of some of the administrative services HGA stopped performing for the District, and the statutes requiring the separation of public and private money.

Attachment to President's Report

Administrative services HGA stopped providing after our election in May 2023:

- HGA stopped preparing all meeting minutes after May 18th. After negotiation, they agreed to prepare our regular meeting minutes only.
- HGA refused to publish our Pitera messages unless approved by our attorney, and required that they added a disclaimer.
- We do not have access to, nor the use of the management office as the prior board had.
- We have to request our mail during business hours, since the mailboxes are in the locked area of the management office.
- We asked that the Zoom host be present in the boardroom to eliminate some of the problems with the Zoom meetings. HGA refused, saying the staff was too busy. Prior to Covid, all board meetings were in person in the boardroom. The board assistant took notes for the minutes. So, despite claims that we have increased the staff's workload, we are not asking for time in addition to that agreed upon in 2018, when the management agreement was signed.
- HGA refused to include the District, after several requests, when meeting with Comcast to discuss the installation of fiberoptic cable on the District's property. Dec. 9th, HGA President Jill Bacon acknowledged that they had planned to limit access to the clubhouse, without District approval, and in violation of the management agreement and of the stated purpose when the District sold bonds to fund the clubhouse construction.
- When the Board Assistant was hired in 2019, the justification was that the assistant would serve both boards. Since that time, the assistant now has an assistant, but they're still too busy to perform these administrative tasks.
- HGA no longer performs any secretarial work, like preparing Procedure Memoranda, compiling board packages and other District documents.
- Despite the lack of memory HGA directors exhibited at their last board meeting, I spent a great deal of time trying to get our Zoom meetings posted on the HGA website. "We don't do that" and "We don't have enough space" were the most common responses. Eventually, HGA agreed to put a link on their website for 7 days, not a copy of the recording that you could save, but a link so you could watch the Zoom meetings that were stored on the cloud. There is no server space issue when the recordings are stored on the cloud. Many residents complained about the lack of availability of Zoom recordings.

- HGA began removing HGMD documents from the HGA website. These documents were current, public records that must be available to the public, and even though I complained, they weren't restored to the website.

The Colorado State Controller referred me to the following statutes when I asked about comingling public money and private money in the same operating account:

Colorado Revised Statutes 38-33.3-306(3)(a)(II) governs homeowners' associations and states that a managing agent shall maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the managing agent.

Colorado Revised Statutes 32-1-1101(5) states that "Whenever a special district ...has moneys on hand which are not then needed...the special district's moneys may be pooled for investment with the moneys of ***other local government entities.***" Emphasis added.

HGA President Jill Bacon stated at HGA's last board meeting, that the HGMD attorney disagreed with the case law that I have previously cited supporting the District's right to detailed wage and benefit reporting from HGA. I have verified with her that she knows of no conflicting case law. The HGMD board only discussed researching for conflicting cases in an executive session with the District's counsel which should be confidential.

On December 28th, the Colorado Court of Appeals ruled in favor of a resident seeking bank statements which HGA refused to disclose. In that opinion, the Court of Appeals cited and relied on the very case that I had previously cited, Leonard v. Interquest N. Bus. Improvement Dist., 2022 COA 78, 519 P.3d 387 (Colo.App. 2022). I will put the recent opinion and the Leonard case on our website.

HGMD Treasurer's Report

From: Rita Effler, Treasurer HGMD

October 31, 2023

Highlights of District Operations:

Month of October 2023

	Actual	Budget
Clubhouse Profit (Loss)	(\$63,074)	(\$56,109)
Clubhouse Revenue	(\$14,707)	(\$15,259)
Golf Profit (Loss)	(\$21,528)	(\$29,507)
Golf Revenue	\$46,271	\$44,432
Restaurant Profit (Loss)	(\$16,235)	(\$ 9,538)
Restaurant Revenue	\$55,477	\$54,359

Year to Date through July 2023

	Actual	Budget
Clubhouse Profit (Loss)	(\$500,005)	(\$564,032)
Golf Profit (Loss)	(\$108,266)	(\$193,554)
Restaurant Profit (Loss)	(\$ 85,010)	(\$ 83,633)

Clubhouse: Staff is looking at more events and activities. Most of the rooms are used most of the time, but do not produce revenue. Resident clubs use them free of charge. There are 55 or more clubs. Many of our residents are getting benefit from that part of their recreation fee used to subsidize the clubhouse. Residents are encouraged to participate in these clubs. Get what you pay for! Enjoy the pool and sauna. Take classes. Create. Have fun at your clubhouse.

Golf: The Golf staff continues to perform above budget. Their expenses are down. We do have some big expenses coming up in 2024. Our course is probably the best 9-hole executive course in the city.

Restaurant: The Restaurant committee is doing amazing things. The Rendezvous will become "the place to go." Cormac is going to have the tools available, soon, to generate top rate food. He will have the

staff to prepare and serve a meal without apology. The subsidy for the restaurant is the smallest part of your Recreation Fee. Many old, outdated, purchased used 10 years ago, appliances will be replaced. The freezer is beyond repair. Ice maker has died. Staff are researching food delivery. Stay tuned.

Enterprise Fund: This is our operating fund, \$140,803. What accumulates over operation expenses will pay for capital projects. It has been untouched since Jerry Counts left except for sales receipts. No expenses have been paid using the fund, so we have a hefty balance. However, we owe HGA over \$137,000 for invoices that have been paid in excess of the Recreation Fees collected. HGA has hired a new controller who is authorized to access HGMD's operating funds and transfer them to HGA's operating account.

Conservation Trust Funds: These funds come from the State lottery profit and have accumulated over many years. A report must be made annually on their use. Restrictions are minimal for the use of the funds. We are using them primarily for recreational enhancements, which is what they are supposed to be used for.

Debt Service Fund: We still owe about \$7.7 million to bond holders. Principle is paid from property tax revenue, as is interest.

Foundation Fund: The October 31st cash balance is \$33,930 with \$147,774 invested. The Foundation Committee members are passionate about this money. Foundation money funded much of Sandberg Auditorium's theater production equipment as well as the Veterans' memorial in front of the clubhouse. The benches you enjoy as you walk the grounds were funded with foundation funds. The Foundation began in the early 90's. Its main purpose is to use the funds donated by those who love our community in a way that honors them and our community.

Please note that this is the October 2023 report.

Please do not hesitate to contact me with questions regarding HGMD's funds. 303-619-3515: ritaeffler@HGMetrodist.org.

Rita Effler, Treasurer

Heather Gardens Metropolitan District

To: Heather Gardens Metropolitan District

Board of Directors

From: Rita Effler, Chair Audit/Finance Committee

Report from Audit/Finance Committee

November 13, 2023

The meeting was called to order by Chair Rita Effler at 1:00 P.M. on November 13, 2023

All members of the committee were present: Craig Baldwin, Forrest McClure, Lee Keene, Carol Anne Mayne, Nancy Reid and Debbie Parker.

The ascending balance in HGMD's Key Bank operating account was discussed and acknowledged that there had been no withdrawals except for credit card charges since the 1st of October, 2023.

Craig Baldwin provided a current capital project spreadsheet which we will use to track progress to the end of the year.

A motion was made by Carol Anne Mayne, seconded by Forrest McClure to recommend to the Board that the proposal from Crady, Puca & Associates to perform the 2023 Fiscal year audit be accepted and a contract executed. The motion carried unanimously.

Copies of existing Clubhouse PM documents relevant to room rental fees, class fees and other user fees was distributed so that the committee would be familiar with said fees.

A motion was made by Forrest McClure, upon recommendation of the RV committee, and seconded by Carol Anne Mayne asking for reimbursement for \$22.95 for a motion detector light installed in the RV lot. Motion passed unanimously.

A motion was made by Forrest McClure, upon recommendation of the RV committee, and seconded by Lee Keene asking for reimbursement for \$150.72 for a solar powered street light for the RV lot. The motion passed unanimously.

A motion was made by Forrest McClure, upon recommendation of the RV committee, and seconded by Carol Anne Mayne to recommend to the Board that they accept a proposal, and execute contract, with Sensera for a Camera Kit and one year Site Cloud Service for a cost to not exceed \$9,963. The motion passed unanimously.

A motion was made by Forrest McClure, upon recommendation of the RV Committee, and seconded by Carol Anne Mayne to recommend to the Board that they accept the proposal, and enter into a contract, with AJI Fencing for a total of \$110,000 to construct a new Ameristar Montage Plus Invincible Fence around the perimeter of the RV lot. The motion passed unanimously.

Copies of quotes for stage flooring and audio enhancements were handed to the committee members. Clubhouse committee will be reviewing these quotes.

The meeting was adjourned at 3:00 P.M.

The next regular meeting of the Audit/Finance Committee is 1:00 P.M. Monday, December 18, 2023

To: Heather Gardens Metropolitan District

Board of Directors

Committee Members

Report from Rita Effler, Chair Audit/Finance Committee

December 18, 2023 Audit/Finance Committee 1:00 P.M. Board room and on Zoom.

The meeting was called to order at 1:00 P.M. by chair Rita Effler.

Members present were: Craig Baldwin, Debbie Parker, Forrest McClure, Nancy Reid (Zoom), and Lee Keene. Carol Anne Mayne was excused.

Carrie Toennis, the new HGA controller, was present and was introduced.

Questions regarding the transfer of \$179,000 and \$42,000 from HGMD's operating account were presented to Carrie, said transfers being made on December 6 while she was working with the temporary engaged by HGA. A follow up email to Terry Hostetler, on the recommendation of Bill Archambault, has been sent, with a reply that Carrie is checking it out.

There was a question whether the restaurant could justify a Veteran's discount. That idea will be passed on to Robin O'Meara, Chair of the Restaurant committee.

A long discussion session with Carrie about the capabilities of the accounting system to handle transferring the rec fee collected directly to HGMD's operating account and issuing checks from that account for HGMD, without impacting the work load of the employees, but providing more control of disbursements and costs for HGMD followed. It was just a discussion. Carrie will need to be more familiar with the system to maximize its capabilities.

The committee discussed Crady Puca, auditors recommended on November 13, 2023 to be approved by the Board. Audit is scheduled for July 1st, 2024. This is outside the required date for filing the Audit per statute, but falls within exceptions, which we will apply for, due to the turnover in CFO/Controller and the selection of a new audit firm.

Nancy asked that the insurance reimbursement for the burned gazebo and the invoices/payments for the burned gazebo be reconciled and provided to the committee. Chair will request President Daniel to request Holly to request Carrie to provide an explanation for the transfers made on December 6th and for a reconciliation of the insurance settlement for the gazebo.

The meeting was adjourned about 2:45 P.M.

The Next HGMD Audit/Finance meeting will be held Monday, January 15, 2024 at 1:00 P.M.

President's End of Year Report

January 4, 2024

Date	Action	Cost
May 18	Proposed restoration of HGMD committees	\$0
June 15	Approved revised Bylaws restoring committees	\$0
	Approved the installation of bat houses without requiring licenses	\$0
	Approved installation of pickleball camera	\$0
June 30	Approved RV Lot Gate	\$38,025
	Approved freezer purchase for restaurant	\$34,959
July 15	Approved committee chairs to select committee members	\$0
	Approved directive to change locker room/woodshop codes	\$0
July 20	Rescind freezer purchase- no installation or existing freezer removal	-\$34,959
	Approved Garden Plot Area Bulletin Board	\$0
	Approved RV Lot Procedure Memorandum	\$0
	Approved purchase of 4 Tennis/Pickle Ball Nets	\$1,556
Aug 3	Approved RV Lot Gate Chain Protection	\$3,150
	Approved Board Administration Procedure Memorandum	\$0
	Approved Pitera Notice of House Bill 23-1105	\$0
Aug 17	Approved Clubhouse Committee Procedure Memorandum	\$0
	Approved Directive to HG Management to Assess Handicap Accessibility to HGMD properties	\$0
	Approved Directive to HG Management to change keypad codes quarterly	\$0
	Approved installation of 50th Anniversary Time Capsule	\$0
Sep 7	Approved RV Lot Camera Padlocks Purchase	\$86
	Approved Exterior Freezer Purchase	\$59,995
Sep 21	Approved RV Lot Procedure Memorandum Attachments	\$0
	Approval of HGMD Expenditure Policy	\$0
	Approved Audit/Finance Committee Procedure Memorandum	\$0
	Approved Acceptance of HGA Mediation Request & Appointment of Mediator	\$0
	Approved Clubhouse PM Attachment 5	\$0
	Approved Directive to HG Management for:	\$0
	Substantiation of wages/benefits requested for 2024 budget	\$0
	Return of handicap parking spaces taken for security	\$0
	Restrict employee parking from clubhouse	\$0
	Move outdoor vendors to PS1 slab	\$0
	Replace 4 x 4 bollards on Linvale PI	\$0
	Resume tree/bush trimming	\$0
	Obtain proposals for additional parking signage	\$0
	Repair pool table felt, chair rail & paint wall	\$0
	Provide list of fees for activities/dances/events and costs	\$0

Oct 12	Adopted 2024 Budget	\$0
Oct 19	Approved Adoption of HGMD Official Website	\$3,488
	Prohibited Modification of Maintenance Building Parking Lot	\$0
	Prohibited Parking of Equipment on the Golf Course	\$0
	Approved Golf Course Committee Procedure Memorandum	\$0
	Approved Formalized Requests to HGA/HGA Management for:	\$0
	Repair crack in Clubhouse women's shower stall	\$0
	Repair toilet in Clubhouse men's bathroom	\$0
	Clean carpet in Clubhouse meeting rooms	\$0
	Remove dead moths from hanging style light fixtures	\$0
	Monitor temperature of indoor pool water routinely	\$0
	Approved motion to terminate management agreement pending negotiation by November 1st	\$0
Nov 2	Approved appointment of mediator and mediation expenses	\$4,000
Nov 17	Approved Golf Simulator Monitor Purchase - Lottery Funds	\$10,000
	Approved End of Year Audit Contract @ \$10,000 savings	\$23,000
	Approved termination of RV Lot Lease for Space 358	\$0
	Approved purchase of Kitchen Design Contract	\$10,000
	Approved the disposal of old kitchen equipment and replacement with new kitchen equipment	\$119,000
	Approved removal of existing and purchase of new RV Lot Fencing	\$110,000
	Approved purchase of Sitewatch Camera and Streetlight reimbursement	\$9,231
Dec 7	Approved reallocation of Capital Funds appropriated for 2022/2023 projects	-\$339,131
	Approved immediate Hiring of two part-time servers for restaurant and 1 full-time chef	\$10,000
	Approved extension of family swim hours for winter holiday	\$0
	Approved Removal of RV Lot from Comcast Fiber optic Installation contract	\$0
	Approved Directive to HGA Management to provide Detailed Accounting for all 2023 Expenditures on or before January 31, 2024	\$0
	Approved Motion to hire Peter Forbes, litigation attorney	\$485 per hr
	Approved Motion to Adopt Resolution to Terminate Management Agreement	\$0
Total Expenditures for Approved for 2023		\$208,536
Total Expenditures Approved for Payment in 2024		\$192,995
Prior Year Funds Credited to 2024		\$339,131
Total Credit to 2024 Budget		\$146,136