

June 6, 2024

PRESIDENT'S REPORT

BINDING ARBITRATION WITHOUT ATTORNEYS

1. **May 4th Voices of Residents meeting.** As most of you are aware, on May 4th a majority of directors from both boards attended a Voices of Residents' meeting in the auditorium at which Directors Taylor, O'Meara, Effler, Gold, Hileman, Recob, and Baxter agreed to enter into binding arbitration without attorneys.
2. **May 8th Arbitration Agreement.** On May 8th, I sent the HGA board a binding arbitration agreement which was simple, neutral to each party, and would have resolved the dispute between the boards within two months.
3. **May 31st Request for Response.** After no response from HGA concerning the proposed agreement, on May 31st I sent a follow-up email stating that the District remained ready to resolve the dispute with binding arbitration without attorneys.
4. **June 1st HGA Response.** On June 1st, I received an email from HGA President Larry Davila which stated the following:
 - a. "the Association's legal counsel subsequently informed the Board that, *per statute*, the Association cannot enter into Binding Arbitration without legal representation being present."
 - i. I asked that HGA counsel cite the statute because it is simply not true.

NEGOTIATION WITH HGA

1. **HGA June 1st Offer to Negotiate.** In HGA's rejection of the binding arbitration agreement on June 1st, HGA President Larry Davila wrote, "we are eager to negotiate without legal counsel being present regarding... *early termination* of the current Management Agreement *with a target date of September 1st.*"
2. **Terms.** The terms of the HGA proposed negotiation were as follows:
 - a. "The next monthly Leadership Work Session is *already* scheduled at 3:00 p.m. on Thursday, June 13th..."

- b. “the Association Board suggests as agenda topics for our negotiations in this order:
 - i. Space allocations...leasing costs.
 - ii. services the District needs and the Association would be willing to provide... i.e. Security, Maintenance, Landscaping, etc.
 - iii. Temporary storage, staging, and processing space for debris and project needs
 - iv. The Association potentially buying some of the District’s properties.
 - v. Parking for Association and District staff, patrons, and guests.”
3. **June 3rd Acceptance with Additional Terms:** On June 3rd, I responded to the above invitation to negotiate an early termination of the Management Agreement and requested the following conditions:
 - a. The District accepted the proposed date and time of June 13th at 3:00 pm
 - b. The District accepted the early termination target date of Sept. 1, 2024.
 - c. The District requested a true negotiation. That all directors will agree in advance that if they disagree with a term being discussed, they will object and state the reason which will be discussed, so that both boards may have a reasonable expectation that an agreement reached through this negotiation will be adopted by both boards.
 - d. There will be no moderator or mediator.
 - e. Written proposals from each board shall be due by Monday, June 12th, so that topics of common agreement may be determined.
 - f. HGMD agrees to no public comment during negotiation meetings.
 - g. The HGMD proposal will address the HGA agenda items concerning space allocation, lease payment, services, and parking.
 - h. HGMD requested that the HGA proposal should address:
 - (a) the date by which HGA will provide the financial documentation requested by HGMD,

- (b) that it will instruct its staff to take direction from the HGMD president concerning management and operation of the HGMD properties, and
- (c) the number of budgeted positions it feels HGMD needs to assume, and for which HGA is willing to cede to HGMD, for maintenance and landscaping of its properties, as well as space in the maintenance building for the HGMD mechanic and equipment.

4. **June 4th HGA Rejection to Negotiate without Attorneys.** On June 4th the following email was sent by HGA President Larry Davila:

Thank you for your proposal. However, the Association must decline at this time. You are proposing a negotiation that already has a foregone conclusion: early termination of the Management Agreement. Therefore, this is not, as you claim, a “true negotiation.” Furthermore, your desire to broadcast these negotiations and negotiate without a neutral 3rd party mediator suggests you are more concerned with trying to garner support from other Heather Gardens residents than truly trying to resolve the dispute between the Association and the District.

The Association is happy to expedite mediation through the pending civil suit. Please have the District’s counsel contact the Association’s counsel in that regard as soon as possible. Thank you for your time and attention to this matter.

I’m reporting this exchange because it is typical of the difficulties the District has incurred during the last year. This offer to negotiate an early termination of the management agreement was made after the Association had 21 days to consider the binding arbitration agreement and had the benefit of an executive session meeting. Yet, the HGA board clearly cannot agree on a course of action.

Directors Mike Pula, Sue McBeth, and David Kennedy did not attend the May 4th meeting, and Director Ray Nash did not indicate agreement with the other four directors proposing binding arbitration without attorneys.

Director Sue McBeth sent an email to both boards in response asking, “How can Daniel say that the District will agree to the meeting with a set of detailed stipulations without a public meeting of the District taking place? I don’t recall seeing any notice of a meeting.”

First, HGA chose the date and time of the negotiation, and after just short of a year of trying to negotiate with HGA, I think I know what the issues are.

Second, I'm tired of doing all the work to resolve the dispute.

5. **Minutes**. HGA stopped preparing our meeting minutes without notice that it would do so. Staff said they were just behind. We spent hours negotiating with HGA during the fall with the result that HGA agreed to prepare our regular meeting minutes. They agreed to complete a few of the backlogged minutes, but HGMD bore the cost of completing the bulk of the missing minutes.

After that agreement, we received minutes for two meetings. We have received no meeting minutes since November of 2023.

6. **Management Agreement**. Last June when HGMD complained about HGA's performance of its duties under the management agreement, HGA proposed that we renegotiate the terms of the agreement. HGMD accepted and participated in negotiations with HGA with two directors from each board. Informal agreements reached were:

- a. HGA would publish meeting agendas within 24 hours of receipt. This agreement has been substantially complied with.
- b. HGA would prepare the District's regular meeting minutes. Discussed in #5 above.
- c. HGMD could request the use of the security manager's office for District use, "just ask." Most of the community heard about the fiasco that ensued when the chair and members of the SEC filled the boardroom and literally yelled at the District directors for the request.
- d. At the final two-on-two meeting with HGA directors, HGA requested that HGMD provide them with a redlined version of the management agreement because the issues were too complicated. This took a week of work and HGMD provided the redlined agreement. No response or negotiation was ever received. When pressed for a response, HGA proposed that HGMD directly hire employees.

7. **Directly Hiring Staff**. On Sept. 1st last year, HGA through their attorney proposed that HGMD directly hire the employees currently serving the District. The District accepted the proposal and began taking steps to implement that plan. Several questions were asked through HGA counsel concerning the details, when HGA responded that it was too complicated and requested mediation.

- a. HGMD tried to determine the issues for mediation. HGMD requested directly hiring the staff which it pays for under the annual budget. This included four roads and grounds or now golf and landscape employees. That is when the mediation request came. Did HGA agree to everything until that point?
- b. HGMD went to mediation with two proposals:
 - i. One proposal was that all employees remain HGA employees, but that the general manager would take his direction concerning the maintenance and operation of the District properties and businesses from the District board through its president.
 - ii. The second proposal was a split of employees. All employees currently serving the District would be directly hired by HGMD. HGMD and HGA would determine which services that it shared would be performed by HGA or would be performed by the District, for example, accounting and security.
- c. At mediation in November of 2023, HGA rejected either plan. HGA said that the full board never agreed to HGMD directly hiring or managing the employees. HGA did not want to terminate the management agreement, and did not agree that HGMD had any authority over the operation and management of its properties and businesses.
- d. At the end of a full day of mediation, with no agreements, HGMD made a last proposal at 5:00 pm, requesting a response by the following day at noon. That proposal was also rejected. You've heard members of the recall committee describing this as a demand made by the District. A take it or leave it demand with no negotiation. It was I suppose, because it was a last ditch effort to reach an agreement. Every agreement we reached with HGA, every small step gained, has been reneged on by HGA, from preparing minutes, to the tv monitor by the front door with the day's events, or the preparation of accurate and timely financial reports.

HGA now wants to negotiate through its attorney in the lawsuit, increasing costs, and providing them deniability. We negotiated through their attorney who stated HGA proposed directly hiring employees. HGA later said that their attorney wasn't authorized to propose that and when we said that wasn't plausible, then HGA said it was just a discussion.

The benefit of negotiation is that both sides have control. They can choose their compromises as well as reduce costs. Both sides have leverage before the case is decided due to the unknown. But, presenting the matter to the court for a decision, the parties risk a winner take all result. HGA's rationale for its withdrawal of its offer for

binding arbitration without attorneys is not supported by the law. They have not and cannot cite a statute which supports that assertion. Their withdrawal of their subsequent offer to negotiate without attorneys is illogical and is not in the best interests of the community.

To: Heather Gardens Metropolitan District

Board of Directors

Audit/Finance Committee

From: Rita Effler, Treasurer

Report: For Meeting 20 May 2024

May 17, 2024 Revised 1:11PM May 18, 2024

We will be scrutinizing the January, February, and March 2024 Financial Reports received mid-May, 2024.

The reports furnished by HGA controller, Carrie Toennis, contain some minor changes and details that further help us make decisions.

On Page 1, Carrie has separated Revenue received into Total HGA Subsidy (Rec Fee)-- estimated \$144,498 per month and Revenue Generated by Enterprises. Prior to this the amount was just "Revenue". I like this better. It reminds us how we can do better.

This subsidy, had the District been formed differently, would be a TAX, collected by Arapahoe County, payable as part of real property taxes, and collected in two installments. Currently, this fee equates to about \$790 a year per unit or \$395 payable with other property taxes, in two installments. Currently, the assessed Rec Fee is based primarily on square footage. If the fee was collected by the county, it would be based on assessed value. We may be the only Special District reliant on an HOA to collect the funds to provide the benefits expected from the District.

It was C4C's promise that this subsidy would not increase. Exemplary management of District enterprises and consistent application of appropriate user fees and collection of user fees is necessary to reduce the burden on those who do not make extended use of the amenities. That is still my goal.

There are large legal fees incurred so far this year. The Recall committee reports \$100,000 in fees spread between the firm appointed to conduct a recall election, the attorney hired to litigate our suit for non-performance and our regular legal fees (reduced as far as we can). Most legal fees do not appear on the first 3 months of reports. That cost is not yet apparent, having not been paid during the first quarter of 2024. April and May will, likely, have very large payments to get to the \$100,000 cited by the Recall committee.

Zion Bank: Acct....013 2017 Bond Balance April 30, 2024 \$121.67

*Acct....015 2017 Bond Custody Balance April 30,2024 \$327,653.76

*This is the fund into which county collected property tax for bond payments are made. A small portion of vehicle registration is also remitted.

Key Bank:5397 Operating Account	Ending Balance 4-30-24	\$ 352,082.93
Key Bank:.....00186 Capital Project	Ending Balance 4-30-24	\$ 2,512.22
(No reason known why this account is maintained.)		
Key Bank.....65405 Foundation	Ending Balance 4-30-24	\$ 48,718,84
Key Bank.....65439 Lottery	Ending Balance 4-30-24	\$ 157,609.03
Key Bank.....03305 Capital Mkt**	Ending Balance 4-30-24	\$2,765,459.58

**This is the Investment account into which both restricted funds (foundation, lottery) and reserve funds are deposited in Special District approved investments.

In April there was a \$109,968.62 withdrawal that I am unaware of. I will ask Carrie and perhaps have an answer for Monday's meeting.

UPDATE;

Figured this out. It was not a "Cash Withdrawal" in April, but accumulated transactions which need studied. Holdings remain basically the same, so I don't think the "money" was withdrawn. Will have it tracked by Monday. 😊

IMPORTANT: New Business

Currently, Recreation Fees are collected by HGA as part of the monthly HOA dues. Those funds, averaging \$144,498 per month, are kept in HGA's operating account, used to pay HGMD liabilities, invoices approved for payment by an HGMD officer. In the past, HGA transferred funds from revenue generated and accumulated in another HGMD account, by the Enterprises, restaurant, golf course and clubhouse, to cover the expenditures exceeding the subsidy collected through the Recreation Fee. We see no invoices for Wages and Benefits billed to us by HGA.

Recently, access to transfer funds from HGMD operating account to HGA operating account was withdrawn for HGA management, following the advice of our litigation attorney. Consequently, we owe HGA \$216,219, March 31, 2024. The GM has advised me that HGA will submit an invoice with documentation for the amount owed, at which time the transfer of funds will be authorized.

For Budget Preparation: Under New Business: A/F May 20, 2024

When HGA uses the facilities and an invoice is produced, usually Restaurant, does this get entered as a Receivable by HGMD and then paid by HGA—how? How does selling at cost affect percentage of profit?

Data to assemble:

Charge out hourly rates being applied for Maintenance, Golf/ Landscape, and Custodial.

Clubhouse: Revenue and expenses incurred for each class/activity

Events: Revenue/Expense

Frolics: Contract Revenue/Expense

Churches: Contracts Revenue/Expenses

Mtn Man, Bayer etc contracts/agreements

* Charge Clubhouse committee to determine fees for use of facilities.

Class fees

Golf: Data available will determine budget for 2025.

* Charge Golf committee to recommend golf user fees, comparable, equitable and fair to the community.

Restaurant: Data available will be used to prepare the budget for 2025.

Audit/Finance:

* Prepare for Transition to self-management.

1. Accounting: SDA assistance, recommendation for accounting system;
RFP for Financial reports/statutory requirements/reporting

2. PEO—RFP for service

3. Appraisal FMV of Maintenance Facilities, 10 enclosed garages, Office Space including Security, Custodial, Basement Storage. \$2500 professional estimate



**HEATHER GARDENS METROPOLITAN DISTRICT
BOARD ACTION**

DATE: JUNE 6, 2024

MOTION NUMBER: 2024-6-6-1

MOTION: OUTDOOR POOL GATE

Rendezvous restaurant is now prepared to serve food and drinks at the outdoor pool area as well as in the patio area, therefore I move that the Heather Gardens Metropolitan District Board of Directors direct management to see that the gate to the outdoor pool is unlocked during the restaurant hours. In the past this was accomplished by the restaurant manager locking and unlocking the gate as required.

ECONOMIC COST TO THE DISTRICT: \$0

APPROPRIATED BY:

Motion by: Daniel Taylor

Second by: _____

Rationale: Residents have requested food & drink service at the outdoor pool area. The practice was successful when it was done for a short time last summer. There is no additional cost for serving the pool area. To go cups will be used for drinks and the restaurant has plastic baskets which will be used for food. The restaurant may institute a limited menu for pool service at the discretion of the restaurant manager.

Debate: _____

Secondary Motion to : _____

Secondary Motion by: _____ Second by: _____

VOTE:

	Yes	No		Yes	No
Craig Baldwin					
Rita Effler					
Eloise Laubach					
Robin O'Meara					
Daniel Taylor					
Total					

The secondary motion does/does not have a majority and passes/fails.
The main motion does/does not have a majority and passes/fails.

Daniel J. Taylor, President
HGMD Board of Directors

Robin O'Meara, Secretary
HGMD Board of Directors