

December 9, 2023, Open Forum  
President's Report

This meeting is to discuss specifics concerning HGA's performance under the management agreement, the negotiations we entered into with HGA, and the mediation process we participated in.

We will address each issue raised in the flyer that HGA posted around the community.

I understand that many of you have strong feelings regarding the dispute we're having with HGA. You have heard one side of the story for 6 months. I posted the unedited version of the President's Corner article for December's Heather 'n Yon on the District website at HGmetroDist.org. I will post more information as time allows and as soon as I can.

Four of us were elected in May as the Candidates for Change. We campaigned vigorously throughout the community and we are carrying out exactly what we said we would do.

1. We said that the District has the right to know how the 1.2 million dollars is spent that HGA charges the District for employee wages and benefits.
2. We said we would improve the restaurant's service to the community.
3. And, we said we would improve the management of the District's properties and enterprises.

We have serious issues here that can't be minimized or discounted as internal squabbling or bickering between the boards or telling us to just get along. I don't think that's best for the community or what the community wants. Just getting along can be very expensive. We have to reduce the costly mistakes.

Our first request for capital expenditure that came from management was for the replacement of the restaurant's outdoor freezer. I will post this package. We accepted the contents of the request prepared by management and approved the purchase.

But, then we were told by the contracts dept that the proposal didn't include tearing down and hauling off the old freezer, but not to worry, that cost would probably be covered by the 10% contingency amount in the appropriation.

Then, we were told that the proposal didn't include installation. I guess we approved the purchase of a do-it-yourself kit. Then, when trying to fix these problems, contracts said the vendor wouldn't return phone calls.

This became such a fiasco that we were forced to withdraw the purchase approval, and research the replacement ourselves. When Robin spoke with other vendors trying to order the freezer model in the original proposal, we learned that it wasn't a freezer at all. It was a cooler.

We researched what was needed and prepared the proposal. We were ready to approve the purchase, but had not received the updated proposal from the concrete contractor requested from the contracts dept. When this issue was raised at the board meeting, contracts said we didn't need an updated proposal, the contractor didn't care what dimensions were on the proposal for the concrete slab, just the approximate square footage for pricing.

I was shocked. I confirmed with our attorney that the vendor's proposal is incorporated into our contract by reference. It controls what the vendor is required to do. Our attorney said it was the "meat of the contract."

If we had moved forward as recommended by HGA, we would have had an unenforceable contract for a cooler sitting on the wrong size concrete slab next to the existing freezer that wouldn't have been removed.

This problem with contracts hasn't changed. Rita found a payment for over \$23,000 for a "50% deposit" for the replacement of the golf course gazebo that burnt down. I requested the insurance estimate, proposals and contract for the job in October.

Today, I received the proposals, an unsigned HGMD contract form, I gave Contracts to use as our standard contract prepared with legal counsel, and the vendor's proposal signed by the Contracts Dept and designating them as the single point of contact for the job.

This proposal, signed on September 22<sup>nd</sup>, is now a contract for \$46,650. HGA's spending authority was \$20,000 at its highest level. This project is almost complete. HGA had no authority to sign this contract on behalf of HGMD.

Last week Craig requested a copy of the contract for resurfacing the auditorium floor after hearing that it was scheduled for December 15<sup>th</sup> so he could oversee the job. I requested the contract from management.

We learned that the project was in fact starting December 15<sup>th</sup>, there were no competitive bids received, and there was no contract. So, no deadline date for completion, and no penalty for not completing the job. Management only said that this contractor has done work for the HG in the past.

Management has not learned from its mistakes. HGA has a history of unenforceable contracts. The HVAC system in this clubhouse was failing after less than 5 years with manufacturers and installers pointing the finger at each other. You paid to correct these problems.

We are replacing roofs on the multi-story buildings that also failed after 5 years. We are paying for that. The roofing company went out of business and management just couldn't find the time to pursue the product manufacturer even after it being requested multiple times. These roof replacements started at \$500,000 per roof and have gone up to I think \$750,000 per roof for this coming year.

We put HGA on notice in June that HGMD would not allow nor would it pay for fiberoptic installation by Comcast on the District properties without being involved in the project. They kept moving forward with the project, even after I notified them that there were legal issues with their plan.

Our attorney notified them. I notified the two directors with negotiated with. I asked for a copy of the Comcast proposal and HGA would not provide it. They sent the PowerPoint Comcast showed at the open forum. I requested the pricing proposal. HGA would not provide it. They don't want you to know the cost.

I had to sign documents to get the District out of the Comcast contract for installing fiberoptic to the RV lot, even though management never had the authority to sign the contract in the first place. I assume they thought they could sign it without District approval because it was just under the \$20,000 spending authority that David Funk and the last board gave management.

But that's not the only concern. The District cannot enter into multi-year contracts like this. There is case law directly on point with the exact same situation involving a contract for broadband cable installation.

It took considerable time to finally determine the cost of the Comcast proposal HGA is pursuing, and we didn't get it from HGA. Comcast wants over \$57,000 to install fiberoptic to the clubhouse, and that's only for the installation. That doesn't include internet service.

These are the questions we were asking. These are significant questions involving the expenditure of public money or the legality of actions. We requested a joint meeting with HGA under the management agreement. It took a month to get a date acceptable to HGA.

When the Mountain View room was scheduled, I said we needed the auditorium. HGA then insisted on secret meetings. HGMD was clear that we wanted to meet with the full boards in public meetings. They refused. We only met three times with two HGA directors before they said the issues were too complicated and requested that HGMD propose a redlined version of the management agreement. We did. They did not accept our proposed management agreement, nor did they propose changes.

We negotiated by email from Sept. 1<sup>st</sup> through the HGA attorney to directly hire the employees serving the District, at their suggestion. Then, on Sept. 18<sup>th</sup> while we were still negotiating, HGA said it was too complicated, and requested mediation. We complied.

We presented HGA with a two option proposal. One involving HGMD directly hiring employees and one with the current structure, but converting the clubhouse manager position to a District manager who would take direction from the District board.

HGA rejected both options. HGA could not articulate what authority or oversight they agreed that HGMD had over its properties. They offered to provide general job

descriptions and pay range information, but nothing further. Their only solution to the dispute was that I should attend the weekly leadership meetings, that they thought these problems could be worked out there.

I had requested action at a leadership meeting. I had requested other actions directly to Jon Rea or through HGA's attorney. The response was and still is "Is this a direction from me or a formal board action." That is why we've been passing all of these ridiculous motions to replace the bollards on Linvale Place or clean the carpets in the clubhouse or to extend the family swim hours, because HGA has refused to honor my requests as president of HGMD in conformance with the management agreement.

They have required formal board action. So, tell me how making a request at a weekly meeting will accomplish more than making a request during our negotiation meetings or making a request during meditation.

HGA says in its flyer that it still wants to negotiate with the District. We could have done that for free in June. But in June they HGA involved their attorney who said I couldn't communicate with Jill Bacon anymore. I could only communicate with Jon Rea.

We could have done that while we were each paying lawyers to meet two on two. HGA rejected our requests. We could have negotiated while we were paying a professional mediator \$475 an hour, and each of us were paying our own attorney's.

We did not end the negotiations. HGA did. We did not end the mediation. HGA refused all of our proposals. They made no concessions and no counter proposals. HGA can still accept our proposals. They can still make whatever proposals they wish. But, in the meantime, we will continue to move forward. Negotiate if you want to HGA. Go ahead. But do it in writing, because so far every offer that we have accepted has been withdrawn.

And I don't find sending out misleading flyers telling everyone to fill our email boxes and call our cell phones acting in good faith. It's no different than the prior flyers distributed.

I've been sitting with Carol Anne at the hospital and taking care of her since her surgery and subsequent pneumonia from November 28<sup>th</sup>. But I took the time to be here today because these issues are important. But please show some respect with my cell phone until I get Carol Anne home from the hospital.

HGMD wants the same control over the operation of its properties that HGA has over the HOA.