



Hillsmere Shores Improvement Association

P.O. Box 3485
Annapolis, MD 21403
410-263-4456

September 1, 2017

Herbert Berkow, Mediator
Office of the Attorney General
Consumer Protection Division
200 Saint Paul Place
Baltimore, MD 21202-2021

Re: Case No.: MU-283954
Complaint of:
Nick Kyriacou
128 Great Lake Drive
Annapolis, MD 21403

Dear Mr. Berkow:

The Board of Directors ("Board") of the Hillsmere Shores Improvement Association ("HSIA"), by action taken at its regularly scheduled monthly Board meeting on August 31, 2017, hereby submits the attached Response to the referenced Complaint of Nick Kyriacou, as transmitted by your letters of August 1, 2017 and August 8, 2017.

The Board generally denies the allegations contained in the Complaint, as further detailed in the attached Response. The Board has further delegated Board Member Steven Vanderbosch to act as its representative in this matter should you have further questions or wish to meet to discuss the Complaint and/or Response. Mr. Vanderbosch may be contacted by phone at 410-267-2978 or by email at stevan2@aol.com.

Sincerely,

A handwritten signature in blue ink, appearing to be 'M Penn', with a long horizontal flourish extending to the right.

Michael Penn
HSIA President

cc: (w/o Response Exhibits)
HSIA Board Members
HSIA Administrator
Hon. Chris Trumbauer
Mr. Pat Daly
Mr. Nick Kyriacou

RESPONSE TO COMPLAINT

A. The HSIA Board has provided proper notice to the Hillsmere community of Board and General meetings regarding a potential Community Center, and has acted transparently.

(1) The Board is frankly surprised by the allegation of inadequate notice of meetings. In the first paragraph of the Complaint, Mr. Kyriacou admits: “There has been numerous community meeting with the Board addressing what the building will cost every property owner on their annual property tax.” And in the second paragraph he also admits: “The notice of these impending meetings were put on the community web site and board at the entrance to the community.” HSIA agrees.

(2) The possibility of constructing a new community center has been under discussion for nearly two years, and has been the subject of extensive communications within the HSIA community. HSIA has an extensive web site (Hillsmereshores.org), publishes (both in print and electronically) a monthly newsletter called the Sea Breeze, has a community message board, conducts periodic mailings to all property owners (e.g., two community center surveys), and sends periodic email messages to those who have signed up for them. In compliance with Article X of the HSIA Bylaws (Exhibit 3), Notices of Board meetings and General meetings are published at least 10 days in advance, and typically a month or more in advance in the Sea Breeze and on the HSIA web site, and posted on the community message board.

(3) A screenshot of the HSIA webpage home screen printed in mid-August is attached (Exhibit 4). Note the center box regarding the HSIA Community Center Survey, and a link to the HCCC (Hillsmere Community Center Committee) page. On the right hand column are links to:

Proposed Community Center Q&A available (Exhibit 4.1)

May Meeting Minutes Available (Exhibit 4.2)

July/August 2017 Sea Breeze Available (Exhibit 4.3)

HSIA Survey Reminder-Deadline Approaching.

There is also a notice of an upcoming Board meeting, and a link to “View All Events,” with a calendar listing all Board and General meetings for the year.

(4) Turning to the HCCC page, also printed in mid-August (Exhibit 5), note the description of the Community Center Committee, and a link to the 2016 HSIA Survey Results on a possible community center (Exhibit 5.1). This is followed by Frequently Asked Questions, and links to:

Proposed Community Center Q&A (Exhibit 4.1)

HSIA CCC Preliminary Concept Presentation (March 9, 2017) (Exhibit 5.2)

2017 HSIA Community Center Survey (Exhibit 5.3)

(5) In the right-hand column on the HCCC page are links to Past Communications regarding the proposed community center, including Board Meeting and General Meeting

minutes, and Sea Breeze publications, copies of which are attached as Exhibits 6.1 through 6.27, dating back to October 2015.

(6) HSIA disputes Mr. Kyriacou's assertion in the first paragraph of the complaint that the Board hired an engineering firm for \$10,000 without knowledge of property owners. In fact, at its October 2016, after extended discussion at an open meeting, the Board approved the expenditure of \$15,000 to hire two firms to develop a preliminary conceptual site plan and a preliminary architectural design (Exhibit 6.10 – October Board minutes). The results of this preliminary planning and design work (Exhibit 5.2) was presented to the community at a General Meeting on March 9, 2017 (Exhibit 6.1).

(7) HSIA also disputes Mr. Kyriacou's assertion in the third paragraph of the complaint that he has "no vision of what this will cost every property owner on their yearly property tax assessment." In fact, the preliminary estimate distributed on March 9, 2017 was under \$40 per property (Exhibit 5.2), and in the 2017 community center survey, mailed to every property owner on June 7, 2017, published in the Sea Breeze, and distributed electronically, the Board has clearly stated that the increase in special tax would not exceed \$50 per property (Exhibit 5.3 -- 2017 Survey, Question 2).

(8) HSIA believes the heart of the matter is found in the second paragraph of the complaint where Mr. Kyriacou states: "The big trouble is the property owners around the proposed community center do not want the community center and are protesting it." This complaint is a classic example of "Not In My Back Yard." Mr. Kyriacou lives on the same street where the proposed community center might, theoretically, be built, about a half block away from the site under consideration. There is no substance to Mr. Kyriacou's complaint regarding adequacy of notice of Board meetings regarding the proposed community center.

B. The HSIA Board properly uses email to facilitate communications, but does not meet, vote, or act by electronic means.

(1) The complaint alleges that the Board is "...now secretly communicating by E-mail of their plans to build the center." The Board identifies two potential issues here, the first which may be of concern to the Office of the Attorney General Consumer Protection Division:

(a) that the Board may be meeting and/or making decisions by email, and not in an open meeting, as required by law and by the HSIA Bylaws; and/or

(b) that Mr. Kyriacou believes all Board email communications should be shared with the entire community.

(2) The Maryland Homeowners Association Act, Real Property Article, Title 11B, of the Annotated Code of Maryland, at Section 11B-111 requires that all meetings of the homeowners association, including meetings of the board of directors, shall be open to all members of the homeowners association or their agents, and that all members of the homeowners association shall be given reasonable notice of all regularly scheduled open

meetings of the homeowners association. Section 11B-111 also permits closed meetings, but only for certain enumerated matters, and requires certain statements be included in subsequent minutes of the meeting.

(3) The Board understands that the Attorney General has opined that the Maryland Open Meetings Act (with similar requirements for open meetings as the Maryland Homeowners Association Act) does not apply to email communications among members of a public body unless a quorum of the public body is engaged in the simultaneous exchange of email on a matter of public business. 81 Op. Att’y Gen. 140 (1996). The Board is also aware that the Open Meetings Compliance Board (“OMCB”) has subsequently issued opinions addressing email communications, most notably 9 OMCB 259 (2015), where, in finding that an email survey of Town Council members did not constitute a meeting, the OMCB offered suggestions for avoiding the suspicion that public business was being conducted secretly by email. The suggestions included: forbearing from conducting business electronically, and being aware of the potential for forming a quorum, particularly by using the “reply all” and “forward” functions.

(4) The Board conducts its business in open Board meetings, as required under the HSIA Bylaws (Exhibit 3, Sections 5, 6 and 7). The Board does not have authority to, nor does it conduct business by: conference calls, phone polls, written correspondence or electronic correspondence (emails or texts). One may scour the HSIA Bylaws (which were probably written before the advent of computers and email) and not find any authority for convening meetings other than in person or conducting business other than in open meetings.

(5) The Board does indeed use email to facilitate communications. For example, the August 1 and August 8, 2017 letters from the Consumer Protection Division, along with the enclosed complaint from Mr. Kyriacou, were scanned and emailed to Board members. The draft of this Response was emailed to Board members in advance of the August 31, 2017, Board meeting, so they could review it and be prepared to discuss it. The HSIA President sends an email to Board members to solicit agenda items for upcoming meetings. Board members and Committee Chairs email proposed agenda items to other Board members in advance of meetings for their information (e.g., proposed expenditure of funds at the Hillsmere Beach or at the Hillsmere Pool, or a desire to add discussion of rain garden expenditures to the agenda).

(6) In order to simplify sending emails to the Board, rather than typing in eleven separate email addresses, a group email address has been established called “Board-Only.” The use of Board-Only email also facilitates confidential communications to the Board for matters to be considered at upcoming meetings (e.g. drafts of letters, surveys, and budgets, etc.). The etiquette for use of this group email address was established by the Board Secretary, and was most recently published in the January 26, 2017, Board Meeting minutes (Exhibit 6.4):

HSIA Board-Only Email Etiquette:

In order to maintain a respectful, professional and civil relationship between board members in all matters of HSIA business, the following rules will be followed:

- All board emails, unless otherwise specified, will remain among the board members.
- There will be no arguing or disrespectful language in board emails.
- When sending an email to the board that includes a third party, (someone that is not listed in the board-only email distribution) please announce the third party in your email.
- Once a third party has been removed from an email thread, please do not re-add them back to the thread at a later time.
- The President has the authority to enforce the rules.

(7) As for Mr. Kyriacou's apparent belief that all Board emails should be shared with the community, the Board believes he is simply mistaken. As noted by the Attorney General: "...not all "public records" are necessarily open to public inspection. An e-mail message...may be subject to an exemption in the Public Information Act.... For example, an exchange of e-mail messages among the members of a public body prior to a decision might well contain the kind of deliberative material that is exempt from disclosure...." 81 Op. Att'y Gen. 140, at 145 (1996).

(8) With respect to Mr. Kyriacou's reference to a "friend" on the Board, he is referring to a Board member who chose to not observe the "Board-Only" etiquette described above and maintain the confidentiality of "Board-Only" emails, by sharing them with others such as Mr. Kyriacou. The HSIA President simply removed that board member from the "Board-Only" distribution list to avoid further leaks of communications intended to be for the Board only.

(9) Other than his bald assertion that the Board is "secretly communicating by E-mail of their plans to build the center," Mr. Kyriacou has offered no facts or evidence that the Board is acting other than in compliance with the law and the HSIA Bylaws. All actions taken by the Board with respect to the proposed community center have been fully transparent, in open Board meetings.

CONCLUSION

HSIA has denied the allegations that the Board has held meetings regarding a potential Community Center without providing adequate notice to the community, and has clearly demonstrated the opposite—that notice to the community regarding a proposed community center has been extensive and comprehensive, including two surveys mailed to all property owners of record, published, and distributed electronically.

HSIA has also denied allegations that the Board has been secretly communicating by email of their plans to build a Community Center. The Board properly uses email to

facilitate communications, but does not meet, vote, or act by electronic means. The Complainant has not provided any evidence to the contrary.

Therefore, the Complaint should be dismissed as unfounded.

A handwritten signature in blue ink, appearing to read 'M. Penn', written over a horizontal line.

Michael Penn
President