



May 6, 2019

Mr. Jack Morris, Pres.
Sunrise Bay at Galloway Homeowners Ass'n
Edgewood Properties
1260 Stelton Road
Piscataway, New Jersey 08854

Re: Request for Board Accountability and Transparency

Dear Mr. Morris and all Sunrise Bay at Galloway Board members:

I am writing to you on behalf of Sunrise Homeowners United, an unincorporated group of Sunrise Bay homeowners that has a significant number of members. The group was recently formed to support initiatives directed at achieving improved governance of their homeowner association, with an emphasis on securing board meetings open to owner attendance, full disclosure of financial records, and fairer board elections that would permit greater participation of resident owners.

New Jersey Appleseed Public Interest Law Center is a nonprofit 501(c)(3) organization, which has a Common Interest Association Democracy Project under which we have decided to represent the members of Sunrise Homeowners United. This project was operated jointly with Professor Frank Askin of the Rutgers Constitutional Law Clinic prior to his retirement and thus has focused and continues to focus on assisting common interest association owners in their various efforts to ensure transparency, owner participation in governance, and open and fair board elections pursuant to the New Jersey Constitution and the Property Real Estate Development and Full Disclosure Act ("PREDFDA").

Toward that end, we are hereby requesting that the Board amend its By-laws to ensure open board meetings and a fairer

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representation of owners who actually reside in their units on the board, and enforce its current By-laws with respect to corporate documents and financial records, including the annual audit, all in accord with PREDFDA, N.J.S.A. 45:22A-44 et seq., as amended in 2017.

As you know, Sunrise Bay at Galloway Homeowners Association is a middle-sized homeowner community that consists of townhouses, single-family homes, condominiums, common areas, and community facilities (new clubhouse and outdoor pool). Currently, the Sunrise Bay at Galloway Homeowners Association consists of 40 townhouses (resident owners on E. Colman Place), 57 single-family homes (resident owners on S. Concord Terrace), 139 strictly rental units in three freestanding buildings (Thoreau Terrace, Hermit Place, E. Beanfield Place), and 192 strictly rental unit condominiums on Solitude Place, Flint Pond Place, White Pond Court, and Fair Haven Hill Court. Also 20 owner resident units scattered within Solitude Place, Flint Pond Place, and Fair Haven Hill Court. A total of 331 units are strictly rental, all owned by Edgewood Properties. At this time, four of the five board members are representatives of that corporate entity.

To date, members of Sunrise Homeowners United have made inquiries regarding any possible amendments to the original By-laws. A request to Association attorney John F. Kwasnik, dated March 26, 2019, has simply been ignored. Messages to at-large Board member Kimberly Peschi by resident owner Mark Handler have similarly been ignored. Inspection of county records indicates that the only By-laws on record related to the relevant property were filed in December 1981; at that time, the association was called The Pinnacle Homeowners Association. In accord with Article XXII (Amendments) of those By-laws and N.J.S.A. 45:22A-46(d)(1), no amendment to the by-laws "shall be effective until recorded in the Office of the Clerk of Atlantic County, New Jersey." Accordingly, our analysis of the "rules" seemingly governing Sunrise Bay rests on the 1981 version of the By-laws, then known as Pinnacle Homeowners Association.

Furthermore, I am aware of a letter sent to Mr. John Verlaque, an attorney for the Association, by Edward R. Hannaman of the Department of Community Affairs ("DCA"), dated January 22, 2019. This letter, in response to an individual owner's complaint, informed the Association of its legal obligations to provide its owners with a "fair and efficient" alternative dispute resolution procedure under N.J.S.A. 45:22A-44(c), open board meetings pursuant to N.J.S.A. 45:22A-46(a), access to

financial records under N.J.S.A. 46:8B-14(g), and open and fair elections. N.J.S.A. 45:22A-45.2 *et seq.* In that letter, Mr. Hannaman advised the Association that DCA is "obligated and empowered to enforce the obligation through orders and penalties if necessary, to achieve compliance." Sunrise Homeowners United is requesting to work with the Board to achieve full compliance with PREDFDA to avoid the State's imposition of any penalties, and to obviate the need for DCA to issue any orders or for Sunrise Owners United itself to seek an order from the Chancery Division of the Superior Court compelling the Association to amend its by-laws to be consistent with state law and/or to enforce its own by-laws, where applicable.

We would like to focus on the following By-law reforms and changes to current practice, which we assert are essential to improve governance of Sunrise Bay at Galloway Homeowners Association, would encourage owner participation in the affairs of the community, and would keep up the value of the development. The Association governing documents are for the benefit, use, and enjoyment of all owner residents.

1. Open Board meetings on a quarterly basis. Sunrise Homeowners United request amendment of its By-laws to explicitly require that all Board meetings, except working sessions, be open to all members, that proper notice be given all owners, and that minutes of such meetings (including financial reports and binding resolutions) be distributed to owners, upon request. N.J.S.A. 45:22A-46(a)(open meetings, notice and minutes) and N.J.A.C. 5:20-1.1(notice).

Pursuant to Article XI, Section 1 of the Pinnacle Homeowners Association By-laws, regular meetings of the Board of Trustees "shall be held during the first week of the first fourth, seventh, and tenth month of each calendar year." Notice of such meetings shall be posted in "an Association meeting place within THE PINNACLE at least ten days in advance of such quarterly meeting . . ." Section 2 authorizes special meetings of the Board without any public notice. Nothing in these provisions require the Board meeting to be held within the homeowner community, nor make clear whether owners are permitted to attend, or receive minutes of such meetings. Requiring a posting to occur in only one place does not consider the reality that many owners do not regularly visit the clubhouse and thus would not be aware of whether a regularly scheduled board meeting was scheduled to occur. **It is thus clear that this article is deficient under state law and must be amended.** Such amendment may be effected by the Board without subjecting it to

a 10% veto of the Association's members. N.J.S.A. 45:22A-46(d) (5) (a).

In addition, members of Sunrise Owners United would like the opportunity to participate in a comment period at all board meetings and the opportunity to speak prior to a binding vote on a matter that directly concerns the management and operation of the Association. Such right is not required by PREDFDA, but similar to the right of citizens to comment and speak at municipal council meetings, such opportunity is necessary to promote the social welfare of the community. N.J.S.A. 45:22A-44; Comm. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344, 369-370 (2007). There is simply no justification for the Board's failure to properly notice its board meetings, to conduct such meetings in a location within the community, and to provide minutes of such minutes to all owners who request copies thereof.

2. Financial Transparency and Access to Corporate Books and Records.

Pursuant to Article XX (Books and Records):

All books, records, papers and files of the Association shall at all times during reasonable business hours, upon request, be open to the inspection of any Member or Members of the Association, as well as to any duly licensed attorney or certified public accountant representing any Member or group of Members of the Association.

In addition, Article X (Fiscal Management) reads:

Section 12. Annual Audit - The Board shall submit the books, records, and memoranda to an annual audit by an independent certified public accountant who shall audit the same and render a certified or uncertified report therein writing to the Board and in summary form to the Unit Owners and such other persons, firms or corporations as may be entitled to same.

(emphasis added)

Section 13 Examination of Books- Association members shall be permitted to examine the books of account of the Board at a reasonable time on business days; provided, however, that the Treasurer has been given

at least ten (10) days prior written notice of the member's desire to make such examination.

See also Article XIII, Section 7 (Audit Committee):

The Audit Committee shall supervise the annual audit of the Association's books and approve the annual budget and balance and balance sheet statement to be presented the membership at its regular annual meeting.

It is clear that if these various provisions were properly enforced, the Association would be compliant with its legal obligations pursuant to N.J. Condominium Act, N.J.S.A. 46:8B-14(g), as applied to all homeowners' associations. See Moore et al. v. Radburn Homeowners Ass'n, 202 N.J. 345 (2010). However, the Board has not conducted itself in accord with these By-laws. Sunrise Owners therefore request immediate compliance; they would like the opportunity to inspect the financial records of the Association and all corporate documents (including the By-laws, insurance documents, fidelity bonds etc.) and would like summaries of the previous three audit reports.

3. Fair Representation on the Board by Resident Owners.

Sunrise Owners United would like the opportunity to participate in the governance of their Association in a positive and constructive manner. Although the By-laws set forth a host of Standing Committees that ostensibly contemplate owner involvement (see generally Article XIII of the By-Laws), no member of our group is aware of whether such committees are functioning. In at least the past fifteen or so years, no member of the Board has ever solicited community interest in serving on any of such standing committees.

Furthermore, given the majority control of the one owner of 331 rental condominium units, Sunrise Owners United requests that the Board consider changes to the way the Board of Trustees is elected. First, we would like the Board to consider a residency requirement. Many homeowner associations throughout the State require that all board members live in the units they own. Second, pursuant to N.J.S.A. 45:22A-45.2(f)(1), we would ask the Board to consider permitting owners of different housing types to "nominate and vote for some members of the executive board." Id. That is, townhouse, single-family home and resident condominium owners should be permitted to nominate and elect a certain number of board trustees, because they live in the

community and know the issues prevailing therein first-hand. If such change is not effected, Sunrise Bay homeowners will never have a genuine opportunity "to be elected to the executive board" of this Association as required by N.J.S.A. 45:22A-45.1(f). This is the case, because under the current regime, no homeowner may be elected without the endorsement and support of Edgewood Properties.

We hope that the Board of Trustees is responsive and open to our requests for amendment to the By-laws regarding board meetings and elections and changes to its policies regarding access to financial records.

Members of Sunrise Owners United are looking forward to a vibrant and open discussion with the Board of Trustees and other owners in the community about these proposals. However, if this letter, like the requests of certain individual owners, is ignored, we will be forced to file a complaint in the Chancery Division of the NJ Superior Court to enforce the relevant provisions of PREDFDA, Sunrise Bay Association By-Laws, and other applicable law.

Please respond by May 20, 2019. Thank you for your anticipated consideration of our request. I can be reached at 973-735-0523 for further discussion.

Sincerely,



Renée Steinhagen, Esq.

Cc: Sunrise Homeowners United
John W. Verlaque, Esq.
John F. Kwasnik, Esq.