



April 28, 2021

Via electronic and regular mail

Board President Diane Svelling
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**Re: Demand to Reschedule Board Election until 14 days after
Written Notice Is Sent Out, Additional Candidates are
Permitted to Run, and All Homeowners are Given Until
Five Days Before the Election to Pay Outstanding
Assessments or Request ADR to Dispute Amounts Owed**

Dear Chair and Members of the Tuckerton Meadows Board:

I am writing to you on behalf of Tuckerton Meadows United for Change, an unincorporated group of townhouse owners who are concerned about the validity of the upcoming Board election now scheduled for May 25, 2021, originally set for March 23, 2021. Several owners recently contacted New Jersey Appleseed Public Interest Law Center because they are very concerned that homeowners were not properly notified about the March election, some persons interested in nominating themselves were denied access to the ballot, many homeowners have not been properly notified of the rescheduled election, and most importantly, all homeowners have not been given the opportunity to cast their ballots in accordance with state law and regulation.

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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 Tuckerton Meadows United for Change. This project was operated jointly with the Rutgers Constitutional Law Clinic prior to Professor Frank Askin's retirement and thus has focused, and continues to focus, on assisting common interest association owners in their efforts to ensure open and fair board elections as well as advocating for the reasonable and nondiscriminatory application of association rules and regulations, pursuant to the New Jersey Constitution and the Property Real Estate Development and Full Disclosure Act, or "PREDFDA". We have represented numerous groups of residents over the years, including owners residing in Radburn, who were denied voting rights until the 2017 PREDFDA election amendments were enacted; and just last week, we secured proper notice for a rescheduled election on behalf of two candidates in Alexandria at Hillsborough Condominium Association, who were convinced that not all homeowners knew that the association's board election was in fact rescheduled. That matter posed notice, voter eligibility and ballot issues similar to those now facing Tuckerton Meadows owners.

As you all know, this year's Board election was scheduled to be held on March 23, 2021. All five seats were up for election (the number of seats was reduced from seven pursuant to the amended 2020 By-Laws), though only four names appeared on the ballot.¹ Several members of Tuckerton Meadows United for Change did not receive timely notice of the request for

¹ Based on information provided to New Jersey Appleseed by members of Tuckerton Meadows United for Change, who include at least two owners who previously served on the Board, the last valid election was held in 2017, at which time seven Board members were elected, four of them for a two-year period, and three for a one-year term. In 2018, quorum was not met, and two Board members resigned because their term was over. Again in 2019, no quorum was met and there was no attempt to reschedule the election. At that time, one Board member whose term expired in 2019 was told that he could no longer serve on the board, and another moved from the community; the Board chair appointed the latter member's replacement and continued to serve on the Board herself, even though her term had also expired. No election was held in 2020; so, at this time, there are only four board members, all of whose seats are open for election. Since the By-Laws now require five board members, all five seats are available to be filled at the 2021 election.

nominations, while others did not get timely notice of the election itself. Based on their discussions with several neighbors, no one received notice of the reasons that they were not in good standing nor were such persons informed that they had up until five days before the election to pay (or agree to a payment plan regarding) any arrearages or dispute such debt by requesting ADR. Moreover, on the day of the election, the Association's recently hired property manager, Vincent Accardi, sent out an electronic notice to some owners that there would not be an election that evening if he did not receive additional ballots. He noted that one should bring one's ballot to the meeting, but since the meeting was virtual, perhaps he meant that people should send their ballot to him electronically.

Notwithstanding the confusion among those who did receive that electronic message and concerns about the lack of anonymity entailed by the electronic ballot method set up by management (which cannot be considered a neutral third party), Mr. Accardi announced at that annual meeting, which was held via WebEx due to the pandemic, that the election would not be held because of lack of quorum. There was no announcement at that meeting that the election would be rescheduled.

In an electronic message dated April 21, 2021 (which again was received by only some homeowners), notice of the upcoming board meeting was sent with a warning that no election matters would be discussed at such board meeting. The message also included a statement that the annual election would now be held on May 25, 2021. There was no indication that management intended to do anything more than hope for additional ballots to be submitted to meet quorum.

The lack of quorum presents an opportunity for the Board of Tuckerton Meadows Townhouse Association to finally hold a valid annual election after four consecutive failed board elections. A review of the Amended By-Laws indicates that the By-Laws are consistent with PREFDA, as amended, N.J.S.A. 45:22A-45.2, as well as the regulations applicable to executive board elections. N.J.A.C. 5:26-8.9. In this way, deficiencies in process that have plagued the 2021 board election to date not only violate state law and regulation, but also the Association's By-Laws.

It is the position of all the members of Tuckerton Meadows United for Change that blatant deficiencies in the procedures deployed by the Association leading up to the March 23, 2021 election require it to start the process over and this time do it correctly. Primarily, the Association must make sure that

all owners get notice of their right to nominate themselves for office, get notice of their right to request ADR to dispute arrearages so that they are deemed to be in good standing, receive notice of the upcoming election and receive a ballot that, when counted, guarantees their anonymity. It is clear that the Association's reliance on electronic notice and electronic ballots for those owners who have consented to receive notice in such manner requires an independent neutral third party to properly supervise the election and, at minimum, receive the ballots, open them for the first time on election night, and count them publicly.

New nominations. Article 3 (not E), §3.9(a) of Tuckerton Meadows By-Laws follows almost word-for-word the requirement in PREDFDA, N.J.S.A. 45.2 (c)(3), regarding nominations, which reads:

An association shall provide written notice to all association members no later than 30 days prior to the date for the mailing of the notice of the [election meeting] that informs association members of the right to nominate themselves or other association members in good standing for candidacy to serve on the executive board.

As we noted above, members of Tuckerton Meadows United for Change know of at least one resident who was denied access to the ballot since she allegedly submitted her name too late, and another who was told that she was not in good standing though she had specifically requested ADR to dispute such claim.

Since last February, several residents have expressed an interest in serving on the board if the election is held in a fair and open manner. Accordingly, because we are aware of several instances where people did not actually receive notice of the solicitation for candidates and another instance where an owner was denied the right to appear on the ballot even though she had requested ADR, it behooves the Association to start the 2021 election over. This time, if done properly, there will be more candidates running for the five seats, the election will be more inclusive, and there will in all likelihood be a quorum.

New ballots. Article 2 of the Tuckerton Meadows By-Laws governs membership and voting rights of owners. Section 2.1 notes that an owner is in "good standing" if he/she is in compliance with a settlement agreement or has a pending unresolved dispute, which has been initiated through a valid

alternative to litigation or a court proceeding. Section 2.7 calls for proxy and absentee ballots, and Section 3.9(f) of Article 3 permits the Association to deploy electronic ballots.

Again, as we noted above, all owners did not receive a ballot either in the mail or electronically. And, the ballots of owners who returned them to Mr. Accardi have been definitely compromised due to their lack of anonymity. Accordingly, even if the Association were not to solicit additional candidates (which we assert that it must do in order to ensure a valid election), new ballots must be sent out. Preferably, owners would receive paper ballots in addition to an electronic ballot.

Satisfying the "Good Standing" Requirement.

Furthermore, consistent with the information provided to New Jersey Applesseed by members of Tuckerton Meadows United for Change, it is clear that the Board has not complied with PREDFDA, with respect to homeowners who are not in good standing. Pursuant to N.J.A.C. 5:26-8.9 (1)(1)(v), the Association must notify residents who are not in good standing at least 30 days prior to an election of the reason why the resident is not in good standing. The notice

shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date.

Id.

Given the fact that the quorum was not reached at the first scheduled election, Tuckerton Meadows United for Change believes that it is very important that homeowners be given the opportunity to cast a ballot if they rectify their good standing status at least five days before the election date. This is yet another reason to restart the election, so all owners, including those the Board deems not to be in good standing, are given proper notice and opportunity to participate, either as a candidate or a voter.

Notice of the Election. Pursuant to PREDFDA, the Board must send out written notice (or electronic notice, if permitted by By-Laws and consented to by the owner) 14 days before the election. N.J.S.A. 45:22A-45.2(c)(5); N.J.A.C. 5:26-8.9(1)(1)(iii). Again, based on information provided to New

Jersey Appleseed, several owners never received timely written and/or electronic notice of the March 23, 2021, meeting. Lack of quorum weighs heavily in supporting such conclusion. Notice is not just a technical formality; it is essential to ensure participation in the board elections.

The failure over the last four years to reach a quorum and to hold a valid board election indicates that the Board has failed to provide timely notice of those annual elections. Tuckerton Meadows Townhouse Association consists of 130 townhouses. There is no excuse not to meet quorum. The Board must make a concerted effort to ensure that sufficient candidates are running and all owners are fully informed of the logistics of the election so that full participation is attained.

Neutral Third Party and Public Counting.

In addition to expressing their demand to reschedule the election until additional candidates are solicited, new ballots are sent to all homeowners, and all owners can rectify their good standing status, Tuckerton Meadows United for Change wants to make sure that the Board is aware of applicable regulations concerning the storing of ballots received by management and the counting of such ballots on the night of election. The regulations issued under PREDFDA require:

The association shall verify the eligibility of the voters and count the ballots in a non-fraudulent and verifiable way.

1. Any depository for physical ballots shall be secured.
2. All ballot tallying shall occur publicly, and the ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election.
3. All ballots shall be cast in an anonymous manner.
4. If the bylaws permit, and the association member consents, **a ballot may be cast electronically if it is administered by a neutral third party and anonymity is maintained.**

N.J.A.C. 5:26-8.9(h) (emphasis added). In order to ensure that the ballots are counted in a "non-fraudulent and verifiable way", Tuckerton Meadows United for Change is requesting that a third-party be appointed to supervise and oversee the election. Neither Management nor the Association's current law firm are

neutral third parties. Therefore, Tuckerton Meadows United for Change requests that the Ocean County League of Women's Voters or the Common Interest Homeowners Coalition be asked to supervise its 2021 board elections. Not only must owners be ensured anonymity if they decide to use an electronic ballot, but absentee or proxy ballots cannot be opened before election night. Rather, the supervisor of the election must bring the returned ballots in both envelopes to the meeting on the night of the election, with the outside envelope still sealed. The inside envelope (containing the ballot) should only be removed when the unit owner's name is checked off a list, so that at the end of the evening, there is a master list of which homeowners actually voted, and one can affirm their eligibility to vote and that they themselves actually cast their ballot. All inside envelopes should then be mixed randomly and only at that time, should the inside envelopes be opened and the ballots counted in front of all people participating in the meeting. If the supervisor follows this procedure, all can be assured of the privacy and accuracy of the election.

In addition, because more and more people are getting vaccinated, and the Governor has permitted out-door gatherings to occur, Tuckerton Meadows United for Change requests that the election meeting (which we believe should be moved to the end of June) be held on Association property; preferably on either the basketball/tennis court or near the swing sets.

Tuckerton Meadows United for Change wants to underscore the importance of implementing the 2021 annual election correctly given that there has been no valid Board election now for at least four years. This fact, together with the importance of Board elections generally, requires strict adherence to the law, even though the pandemic does pose difficulties with respect to holding the election in a closed space, and allowing most homeowners to cast their ballots on the night of the election. Nevertheless, Tuckerton Meadows United for Change is looking forward to an election held in a "fair and open manner"² in accordance with PREDFDA, N.J.S.A. 45:22A-45.2 and its election regulations, N.J.A.C. 5:26-8.9, where everyone in the community has the opportunity to cast their ballot, and be assured that such ballot is accurately counted.

In addition, members of Tuckerton Meadows United for Change believe that a "fair and open" election also includes the opportunity for candidates to undertake traditional campaign

²N.J.S.A. 45:22A-45.1(d)

activities, such as going door-to door, distributing flyers, and placing signage inside the windows of their homes. New Jersey Appleseed has in possession a letter dated December 11, 2019, addressed to all owners and sent by Diversified Property Management, Inc. on behalf of the Association Board. In this letter, the Board notes that "There is a strict 'no solicitation' rule in the community, which prohibits people from knocking on our community doors asking for something, even if it is only time." Homeowners were directed to call the police; they were not directed to inform the Association so it could fine any individual breaking the so-called "no solicitation" rule.

New Jersey Appleseed has not received a complete copy of Tuckerton Meadows Townhouse Association's Rules and Regulations. Among the pages that have been provided, we cannot locate such "no solicitation" rule. Section 5.7 prohibits the display of any items, including signs, on the outside of the windows or placed on the outside surfaces, but we have not found any other regulation that could be applied to infringe on owner's political rights of expression, including the right to campaign for a seat on the board.

Nonetheless, even if there are existing regulations prohibiting any and all solicitation on Association property, New Jersey Appleseed is hereby requesting that the Board permit members of Tuckerton Meadows United for Change to engage in certain campaign activities, specified below and refrain from enforcing those rules and regulations, if they exist, to reasonably accommodate owners' New Jersey constitutional rights of political speech and association, pursuant to Art. I, par. 18.

Prohibiting owners from approaching their neighbors or knocking on their doors as part of a campaign to serve as a board member constitutes a significant burden on owners' expressional rights; that is, enforcement of such restrictions leave members of Tuckerton Meadows United for Change and all other owners without adequate (i.e., convenient, feasible) alternatives to get their political campaign message out to all association voters. In accordance with the New Jersey Constitution, as interpreted in a line of Supreme Court cases starting with Comm. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344 (2007) ("Twin Rivers"), through Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482 (2012) ("Mazdabrook"), and ending with Dublirer v. 2000 Linwood Avenue Owners, Inc., 220 N.J. 71 (2014) ("Dublirer"), Tuckerton Meadows United for Change requests permission to engage in the

following activities, and urges the Board not to enforce any relevant rules and regulations that we would assert are unconstitutionally overbroad and thus invalid.

1. Door-to-door campaigning. Tuckerton Meadows United for Change requests permission to go door to door in order to talk with all residents about their reasons for running for the Board of Trustees, engage in conversation about governance and other community issues, and urge such persons to participate in the election. This "campaigning" activity" directly violates the sentiment expressed in the 2019 letter. In none of the cases cited above were owners prohibited from campaigning door to door and talking to residents and directly handing them campaign literature. In fact, the N.J. Supreme Court noted in Mazdabrook, a case where the owner was challenging a total ban on signage, that Mr. Kahn "could walk door-to-door, distribute pamphlets, prepare mass mailings, stop and speak to neighbors on the street, speak to them before or after Association meetings, and telephone them." Mazdabrook, 210 N.J. at 502. See also Twin Rivers, 192 N.J. 368 (owners "can walk through the neighborhood, ring the doorbells of their neighbors and advance their views"). It is thus clear that any rule that prohibits owners from knocking on their neighbor's door to solicit support is overbroad as it relates to political speech, presents an unreasonable burden on owners' expressional rights and cannot in good conscience be applied.

2. Distribution of flyers and placement of such under doors. If people are not at home, members of Tuckerton Meadows United would like to place flyers under residents' front door or between a screen door and inner door. Such request is identical to placing a flyer under the door in a co-op apartment complex, as the N.J. Supreme Court discussed in Dublirer. In that case, Mr. Dublirer "sought to be elected to the Board of Directors of the co-op, and his message related to the governance of the residential community in which he lived." He "sought to communicate with fellow co-op members in the most direct and least expensive way possible--by placing written campaign materials under the door of each apartment." Dublirer, 220 N.J. at 87. The Court held that the Board's complete restriction of such activity was unreasonable despite the fact that "Dublirer c[ould] post materials on a bulletin board in the rear lobby of the building and c[ould] distribute information at two annual board meetings. He c[ould] also use the postal system to send mailings at a cost of more than \$200 per mailing." Id. The Court noted that a board could adopt reasonable time, place and manner restrictions to serve the community's interest, but that a ban,

such as existed in that case, on the distribution of all written materials anywhere on the premises without written authorization of the board deprived Mr. Dublirer of a "convenient, feasible and alternative means" to engage in substantially the same expressional electoral activity that putting flyers under doors provided. Id. Therefore, refusal to permit members of Tuckerton Meadows United for Change to distribute campaign material under their neighbor's doors would be clearly invalid under New Jersey's Constitution.

3. Talking to residents at the common recreational site and when navigating throughout the community on common property. Tuckerton Meadows United for Change would like to support its candidates for the Board of Trustees by talking and engaging in electoral activity in and on the common recreational site and when walking through the community. Again, a complete ban on campaigning in or on common property is unreasonable, especially since owners do not have the opportunity to post anything on a community board or in a clubhouse (neither of which exist in this community) of a political nature. Tuckerton Meadows United for Change would accept time limitations on their campaign activity but a complete prohibition is unreasonable in the context of such a spread-out community, with few, if any, common meeting places. Such time-and-place restrictions, however, would have to promote residents' quiet enjoyment of their homes without unreasonably interfering with owners' free speech rights.

4. Displaying one sign on inside of house window facing street and signage inside car window. The opportunity to talk to neighbors and distribute flyers in support of candidates for the Board of Trustees are both important to Tuckerton Meadows United for Change campaign. But as the N.J. Supreme Court stated in Mazdabrook,

Those options, though, are not substitutes for a more enduring message, identified with the speaker in the form of a political sign in the window of the speaker's home. The available alternatives cannot replace the venerable, unique, and important role that inexpensive, convenient residential signs play-- particularly in connection with a political campaign.

Id., 210 N.J. at 502-503 (citation omitted). Accordingly, the group requests the ability to place one sign in the inside of the windows of their respective homes that face the street and the ability to place a campaign sign inside their automobile.

The Court's decision in Mazdabrook specifically supports such request. Cf. Twin Rivers, 192 N.J. 368 (where court upheld association restriction that permitted homeowners to place "a single sign in each window and signs could be placed in the flower beds adjacent to the homes").

In Dublirer, supra, 220 N.J. at 74, the N.J. Supreme Court made clear that when evaluating restrictions on an owner's expressional rights in a common-interest community like Tuckerton Meadows, courts should focus on the purpose of the expressional activity in relation to the property's use and should conduct a balancing test of those rights and private property rights of the association. Under such approach, it is clear that a complete ban on campaigning for board elections door to door, distributing flyers under an owner's door, and putting signage inside one's windows or in one's car cannot be justified. We hope that the Board of Trustees agrees with our analysis.

On the other hand, if the Board decides to threaten fines, cause to arrest and generally interfere with owners' political speech and campaigning activity, please let me know. Though we do hope to come to some agreement on what owners may or may not do with respect to campaigning, if we cannot so agree, Tuckerton Meadows United for Change would seek a temporary restraining order as soon as possible. As you know, if we were to prevail, we would be entitled to legal fees and costs under New Jersey's Civil Rights statute, N.J.S.A.10:6-1 to -2.

Request for a Re-do of the 2021 Board Election.

Accordingly, New Jersey Appleseed, on behalf of Tuckerton Meadows United for Change requests that the Board reschedule the election, send out a timely 30-day request for nominations and a 14-day written notice of the election, permit candidates to engage in political campaigning, as outlined above, provide homeowners who are not in good standing the opportunity to rectify that status and participate in the election, and most importantly, retain a neutral third party, such as the League of Women Voters or the Common Interest Homeowners Coalition, to supervise and administer the election.

Thank you for your anticipated consideration of our requests. We look forward to hearing from the Board, management or the Association's counsel sometime in the next two weeks to discuss the logistics of restarting the 2021 board election

process from requesting nominations to holding an election meeting outdoors on Association common property sometime during the last week of June.

Sincerely,

/s/Renée Steinhagen
Renée Steinhagen, Esq.
Ex. Dir. NJA

Cc: Ed Hannaman, DCA