

President's Corner – December 2023 - Unedited Version
Just the Facts

Many residents have asked what issues HGMD has with management. Due to the dispute resolution protocol required by the management agreement, we were prohibited from making public statements concerning the issues. We have honored that requirement, and now that mediation has completed, we are free to explain the many frustrations we have faced.

Four of the five member HGMD board directors were elected on May 2, 2023, as the Candidates 4 Change. The new board's first meeting was May 18, 2023. We presented a PowerPoint presentation of our proposed committee structure, and proposed the required changes to the Bylaws to restore the committees. We gave the files to management to upload on the Heather Gardens website and send out via Pitera.

I spent the following week fielding questions from residents trying to download the proposed Bylaws. Management uploaded the PowerPoint and Bylaws to one location and uploaded only the PowerPoint to another location on the website. Once I discovered where the Bylaws were on the website, I began answering emails on how to find them. However, shortly thereafter, the Bylaws were moved to another location. Residents trying to find the proposed Bylaws were frustrated with us, and we as a board were frustrated with management because we had no control over this situation.

But this type of situation became the standard. It seemed that every notice management sent out on behalf of the District had an error, from typos to conflicting dates and times in the same message. When I asked management to correct the errors, the responses were always defensive and excuses made.

From the time we took office, management discounted our concerns and refused numerous benign requests and questions. The elected Candidates 4 Change were continually told that everything had run fine for 50 years and nothing needed to be changed.

To our surprise, management started refusing to perform duties for the District board that had been in place for years. Some were just annoying and rude like making us stand and wait each time we needed a copy, while they asked permission to do so. Or when a resident was told that they don't make copies of committee applications for HGMD anymore. The resident went downstairs and paid for copies so there would be committee applications available in the management office.

Most of these situations seemed to be just annoying and purposefully degrading, so we put up with them. But the little things soon became significant when they stopped, without notice, preparing our meeting minutes following our first board meeting. HGMD is required by law to produce and maintain minutes of all meetings. HGMD Secretary Robin O'Meara and I spent countless hours recreating the minutes from her notes, because although HGA records the board meetings to assist in the preparation of

minutes, HGA wouldn't give us copies of the Zoom recordings until months later. Due to the backlog of unprepared minutes, HGMD had to pay to have minutes prepared. After months of negotiation, HGA agreed to produce minutes for our regular board meetings. However, we must prepare the minutes for all other meetings.

Management initially refused to mute participants on our Zoom meetings. This allowed certain HGA directors to interrupt our meetings at will, and because the sound in the boardroom comes over the large tv monitor, it gave them the ability to yell over the top of board members. This escalated until by August 3rd, our board meeting turned into a free for all. Finally, after that meeting, HGA agreed to mute participants just as they have always done for HGA board meetings.

HGA has continually refused to honor the District's authority to set policy and oversee the operation of the District's businesses and properties. This did not change through mediation, even though when asked, they could not articulate what oversight authority they would concede that HGMD had.

Although the management agreement provides that the HGA general manager takes direction from the HGMD president or the HGMD board, HGA has required formal board actions for even the most menial of requests. Almost all our requests end up going through our attorney, and theirs which is expensive. That also hasn't changed after mediation.

HGA demanded that HGMD not speak with staff, and sent a letter to employees prohibiting them from interacting with HGMD directors. The management agreement states that HGMD must not *direct* staff, other than through the HGA general manager. I believe that prohibiting any speech violates the employees' rights, as well as those of our directors, and is against public policy. We have heard from employees that this directive is what has caused any tension in the workplace.

Constant allegations that HGMD has violated this demand through HGA's attorney, as well as their communication policies, have cost the District between \$14,000 to \$16,000 per month in attorney fees. Since our attorney must communicate with their attorney, I assume their attorney fees are similar.

HGA has stated that we have increased the staff's workload. I will agree that we have increased the workload required by the prior District board, but not beyond that which was considered in 2018, when the management agreement was signed. HGA's requirement of formal board actions has required us to meet at least twice a month and has significantly increased our workload as well.

HGA used to prepare all motions, procedure memoranda, and meeting packets for HGMD. We haven't requested that HGA do that. We have requested that they only post the documents on the HG website and send Pitera notices.

More significant, though, is that HGA refuses to provide documentation required by the management agreement. They are required to maintain detailed receipts of all expenditures made on behalf of the District. HGMD has continually requested that HGA substantiate the amount it charges HGMD for wages and benefits.

At first, we wanted the number of employees by job title and their pay rate for budget purposes. But during the budget workshop, neither CFO Jerry Counts nor CEO Jon Rea could name the five full-time job positions in the golf department. They worked on it overnight, but the explanation the following morning didn't provide any clarity. It seemed that at least two employees were being counted in two different departments.

This is important. We are not being picky. Wages and benefits comprise from 61% to 78% of the cost center budgets. Based on these meetings, I truly believe that HGMD is being overcharged for employee wages and benefits.

When we complained to HGA concerning managements refusal to provide services, HGA suggested that we renegotiate the management agreement. We met three times to negotiate with HGA since July. Each time we believed we had an agreement on an issue, we would be told at the next meeting that the HGA board didn't agree. Those meetings and all the time and effort expended on behalf of the District, only produced three concrete responses from HGA:

- 1) HGA would post our agendas and meeting packets within 24 hours of receipt;
- 2) HGA would not allow the Zoom host to be present in the boardroom to mute and unmute participants; and
- 3) HGA would only publish a Pitera message for HGMD, if it had been approved by our attorney and had a disclaimer at the bottom that HGA wasn't responsible for the content. At that point, HGA said the negotiations were too complicated and they requested a redlined version of the management agreement.

After significant work, we provided the redlined version the middle of August, and asked HGA to respond by Sept. 5th and suggested a schedule to proceed with amending the management agreement. The response times from HGA were unreasonably long.

On Sept 1st, HGA's counsel asked, ***“whether HGMD will agree to pursue the concept of hiring and overseeing the staff that provide direct services at the HGMD properties while HGA maintains oversight of its own employees for HGA matters.” And that “HGA’s Board of Directors needs to know whether HGMD will work toward separately employing its own personnel before committing to a specific timeline on the management agreement.”***

We asked which employees HGA had in mind, and we received an answer on Sept. 6th from HGA's attorney. HGA was proposing that HGMD directly hire the cost center managers and their staff. We asked for an organization chart to help with the division of employees, and one was provided. This is the same organization chart that during the

budget workshop's headcount discussion, Jerry Counts and Jon Rea said was wrong, and that they had no part in its creation.

We worked diligently on this. It was essential to the District that hiring the employees directly could be done without them becoming government employees. Maintaining employees' current benefits and retirement plans was imperative to the District. This took considerable time, but our research found that we could employ staff without them becoming government employees, and we found a few public employee organizations (PEO) companies to apply to, including the current PEO used by HGA, which is ADP.

After several emails and HGA's attorney saying she was meeting with HGA, on Sept. 13th, we received an email from HGA's attorney stating, ***"Thank you for responding to HGA's request for HGMD's position on the concept of separate staffing for the two organizations. HGA's Board appreciates knowing HGMD's position. Given the circumstances, including the complexity that you have noted, HGA has determined that mediation is needed, and HGA requests that the parties move to mediation per the management agreement. Until a transition of staffing occurs, HGA obviously remains the employer of staff. HGMD board communications to HGA staff remain of concern to HGA due to confusing directives to HGA staff. HGA will continue to inform staff that direct communication with HGMD board members should not occur..."***

HGMD and HGA entered into mediation on November 16th. HGMD prepared a proposal to facilitate directly hiring employees, and to determine shared responsibilities. HGA stated that the proposal to separate the employees hadn't been approved by the board, even though their attorney said she was speaking with them between communications, and that it did not want to terminate the management agreement. So, HGA was starting back at the beginning, where we were in June.

During mediation, HGMD accepted HGA's original proposal to directly hire employees providing services to HGMD. HGA refused this proposal. After 9 hours of mediation with no concession by HGA for even the control reserved to HGMD in the management agreement, HGMD presented a proposal for the employees to remain HGA employees, but allow the District board to direct the operation and management of the cost centers. HGA rejected the proposal.

At this point we have reached an impasse. HGA has refused to allow the District the oversight and policy control it is entitled to by the management agreement and state law. The District will hold a special board meeting on December 7, 2023, at 1:00 p.m. in the clubhouse boardroom to determine the next steps. I know that there are many more questions that have been raised about specific issues or allegations, and you deserve those answers. I will post as much information as I can on the District website: <https://www.HGmetroDist.org>. The management agreement is on our website. You can also submit questions at: Questions@HGmetroDist.org.