

24 Feb 2020

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Mr. Cane;

This letter is sent by certified mail, Certification #: 7019 2280 0001 4257 3894.

The letter is divided into the following sections:

- I. Definitions: Definition of terms.
- II. Davis-Stirling Act: Arguments
- III. Sundry Questions & Issues
- IV. Summary

## **I Definitions**

The following definitions apply throughout:

| <b>Name</b>     | <b>Definition</b>   |
|-----------------|---|
| <u>Article</u>  | Reference to an Article in the Park Paseo Association Bylaws  |
| Association     | Park Paseo Homeowners Association   |
| Board           | Board of Directors in the Association   |
| <u>CC&amp;R</u> | Reference to an CC&R Section  |
| Committee       | Architecture Committee  |
| Mandatory       | Statute required of all Associations which take precedence over any associations governing documents or Board decisions |
| Member          | A Homeowner subject to Association Governing Documents  |
| Non-Prohibitory | Inclusive statute silent on items not in the statute  |
| Prohibitory     | Inclusive statute prohibiting items not enumerated in the statute   |
| <u>§</u>        | Refers to a Davis-Stirling Act Section reference  |

These definitions are summary statements not fully qualified. They are meant to be understood within the context of the matter at hand.

## II Davis-Stirling Act

In discussing this matter all items in Appendix A are considered incorporated by reference.

The position of the Managing Agent (Lynn Wyatt) is that the Architecture Meeting minutes are unavailable to members. Cane, Walker & Harkins LLP have taken a position in agreement and stating that the relevant Davis-Stirling Act Sections are mandatory and prohibitory.

My position is that the relevant Davis-Stirling Act Sections are mandatory and non-prohibitory.

### 1. I argue that:

- a) [§5200\(a\)\(8\)](#) Specifies that records of Board established committees are Association Records.
  - By [§5210\(a\)\(2\)](#), committees with decision making authority must make their minutes available. The Architectural Committee has decision making authority.
    - This requirement is irrespective of the [§5200\(a\)\(8\)](#) requirement concerning California Corporate Code [§7212](#). All committees with decision making authority are subject to this Section.
  - The Board has ultimate control since the Board determines the boundaries of the Committee, CC&R [VI\(1\)](#) "... with such conditions as the committee may impose" and appeals of adverse decisions go to the Board, CC&R [VI\(5\)](#) and [§4765\(a\)\(5\)](#), establishing that the Board has superior authority.
  - The Non-Prohibitory nature of [§5200](#) is given by [§4045\(a\)\(2\)](#) specifying delivery of items not enumerated in [§5200](#) and [§5105\(a\)\(1\)](#) which makes mention of a "newsletter" which is a document not enumerated in [§5200](#).
- b) Article IX requires the Board to appoint an Architecture Control Committee, establishing the Committee's providence.
  - CC&R [I\(2\)](#) "Architectural Committee" shall mean and refer to the committee provided for in [Article VI](#) hereof entitled "Architectural Control."
  - CC&R [VI\(1\)](#) "... representatives appointed by the Board of Directors ..."
- a) Article X(1) requires that Committee meeting minutes be available for inspection and copying.
- b) As so far represented, the Committee is a construct of the Board. All information given to the Committee is available at the time member solicitation is made for the Home Improvement Application, and all information and Committee actions are available for any attendees at the Committee meeting. ([§4900](#)).

[§5210\(a\)\(2\)](#) is satisfied, the minutes requested need not be Association Records. The Committee is decision making ([§5210\(b\)\(5\)](#)) and all records are available for inspection ([§5210\(a\)\(2\)](#)) and copying ([§5205\(a\)](#)).

All information required for the Committee to make a decision was freely available prior to the Committee making a decision, and to all meeting attendees during the decision making

process. Hence, once available, always available. Once the horse has left the barn, closing the barn door is irrelevant.

- Board meetings are Open to the Public, §[4900](#) et alia and [Article IV\(4\)](#), and by extension Board appointed committees are open to the public.
  - This implies that any member of the public can receive any document at the meeting and is unconstrained in providing copies to any interested party (see §[4530\(b\)\(6\)](#) for a similar situation).
- Members wishing to make a change to the external appearance of their home must submit an [architectural application](#). This form is not available online. The formal name is the “Home Improvement Application”, copy available by request, please provide an email address.

In submitting the Home Improvement Application three (3) homeowners who are in visual range of the member home are asked to sign off on the proposed change. If the change is architectural modification, then it is customary to provide to each homeowner an architectural, or other, drawing showing the exterior structure or landscape changes proposed.

2. You argue that §[5200](#) enumerates all records available for member inspection and copying and that §[5200\(a\)\(8\)](#) excludes the Committee because it is not an established California Corporate Code [7212](#) committee.

If you disagree with my rather clumsy articulation of a position, then please send me a response showing me my errors.

### **III Sundry Questions & Issues**

These questions and issues come to mind:

1. Who authorized Cane, Walker & Harkins LLP to respond to my letter of 14 Feb 2020?
2. If there are charges for your effort, who authorized those charges?
3. If there are charges for your effort, please provide a copy of the invoice.
4. I am unable to verify your statement that “... Board of Directors resolved to allow you to review the documents”. In my presence there was no vote taken on this issue. I did not attend the January Board meeting and the Board minutes are no longer presented on the Park Paseo website for public viewing. I will request a copy of the January minutes now that you have told me that a vote was held.
5. Is the permission granting me the right to Inspect the Architecture Committee minutes in violation of the Davis-Stirling Act by your interpretation of the Act? In other words, what’s a secret if anyone can see it.

#### **IV Summary**

I look forward to your reply. I believe that your arguments are incorrect. In point, the Committee is appointed by the Board, and all Committees, without exception, with decision making ability are required to allow inspection and copying of any records dating after and including January 1, 2007. The Committee is just one example of this.

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**Appendix A**  
**Items Included by Reference**

| <u>Association CC&amp;Rs</u> |                   |   |
|------------------------------|-------------------|---|
| Section                      | Title             | Article Text  |
| I(2)                         | Definitions       | <u>Architectural Committee</u> ” shall mean and refer to the committee provided for in Article VI hereof entitled “Architectural Control. |
| VI(1)                        | Approval Required | ... with such conditions as the committee may impose  |
| VI(1)                        | Approval Required | ... representatives appointed by the Board of Directors ...   |
| VI(5)                        | Appeal            | ... parties making such submission may appeal to the Board ...  |

| <u>Association Bylaws</u> |                           |   |
|---------------------------|---------------------------|---|
| Article                   | Title                     | “Article Text”  |
| VI(4)                     | Right of Member to Attend | Regular and special meetings ... shall be open to all members of the Association.                         |
| VII(3)(1)                 | Duties                    | It shall be the duty of the Board or Directors to: Cause to be kept a complete record of all its acts ... |
| IX                        | Committees                | The Association shall appoint an Architecture Control Committee ...                                       |
| X(1)                      | Inspection and Copying    | The ... minutes of meetings ... of committees o... shall be made available for inspection and copying     |

| <u>Davis-Stirling Act References</u> |   |  |
|--------------------------------------|---|--|
| Ref                                  | Title   | “Statute Text”   |
| <a href="#"><u>4045(a)(2)</u></a>    | General Document Delivery                       | Inclusion in a ... newsletter, or other document ... .   |
| <a href="#"><u>4045(b)</u></a>       | General Document Delivery                       | if a member requests to receive general notices by individual delivery, all general notices to that member ... shall be delivered pursuant to Section 4040   |
| <a href="#"><u>4158(a)</u></a>       | “Managing Agent” – Defined                      | A “managing agent” is a person who, for compensation ,... exercises control over the assets of a common interest development.  |
| <a href="#"><u>4530(b)(6)</u></a>    | Disclosure Documents Provided by Association    | A seller shall provide to the prospective purchaser, at no cost, current copies of any documents specified by Section 4525 that are in the possession of the seller  |
| <a href="#"><u>4765(a)(5)</u></a>    | Architectural Review Procedures                 | ... the applicant is entitled to reconsideration by the board ...  |
| <a href="#"><u>4900</u></a>          | Open Meeting Act                                |  |
| <a href="#"><u>4910(a)</u></a>       | Board Meetings Required for Actions; Exceptions | The board shall not take action on any item of business outside of a board meeting.  |
| <a href="#"><u>4910(a)(2)</u></a>    | Board Meetings Required for Actions; Exceptions | ,... minutes of member and board meetings are subject to inspection permanently. If a committee has decision making authority, minutes of the meetings of that committee shall be , ... permanently subject to inspection. |
| <a href="#"><u>4920(a)</u></a>       | Board Meeting Notices and Agenda; Timing        | ,... the association shall give notice of the time and place of a board meeting,....   |
| <a href="#"><u>4920(b)(2)</u></a>    | Board Meeting Notices and Agenda; Timing        | ,... board meeting is held solely in executive session, the association shall give notice of the time and place of the meeting... .  |
| <a href="#"><u>4920(c)</u></a>       | Board Meeting Notices and Agenda; Timing        | Notice of a board meeting shall be given by general delivery ,...  |
| <a href="#"><u>4920(d)</u></a>       | Board Meeting Notices and Agenda; Timing        | Notice of a board meeting shall contain the agenda for the meeting.  |
| <a href="#"><u>4925(a)</u></a>       | Right to Attend and Speak                       | Any member may attend board meetings, ,... except in, executive session. ,..., a member of the association shall be entitled to attend a teleconference meeting ,...   |
| <a href="#"><u>4950(b)</u></a>       | Board Minutes                                   | The annual policy statement ...shall inform the members of their right to obtain copies of board meeting minutes and of how and where to do so   |

| <u><b>Davis-Stirling Act References</b></u> |  |   |
|---|--|---|
| <b>Ref</b>                                  | <b>Title</b>   | <b>“Statute Text”</b>   |
| <a href="#"><u>5105(a)(1)</u></a>           | <b>Election Rules Required</b>                                     | ... if any candidate or member advocating a point of view is provided access to association ... newsletters ...   |
| <a href="#"><u>5200(a)(8)</u></a>           | <b>Association Records</b>   | Agendas and minutes of meetings of the members, the board, and any committees appointed by the board ,... .   |
| <a href="#"><u>5205(a)</u></a>              | <b>Procedures Concerning Availability of Association Records</b>   | The association shall make available association records ... for inspection and copying by a member of the association... .   |
| <a href="#"><u>5210(a)(2)</u></a>           | <b>Time Periods Concerning Availability of Association Records</b> | If a committee has decision making authority, minutes of the meetings of that committee shall be made n permanently.  |
| <a href="#"><u>5210(b)(5)</u></a>           | <b>Time Periods Concerning Availability of Association Records</b> | Minutes of meetings of committees with decisionmaking authority ... .   |
| <a href="#"><u>5215(d)</u></a>              | <b>Withholding and Redacting Association Records</b>               | If requested by the requesting member, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records. |
| <a href="#"><u>5235(a)</u></a>              | <b>Enforcement Options Concerning Inspection Rights</b>            | A member may bring an action to enforce that member’s right to inspect and copy the association records.  |
| <a href="#"><u>5240(b)</u></a>              | <b>Applicability and Nonapplicability of Inspection Rights</b>     | ... members of the association shall have access to association records ... .   |