

Board of Directors 2021 Candidacy Statement

Biographic Information

Software developer (ret.) with experience doing oversight of the Park Paseo Association Board of Directors actions (see [Reports](#)). An updated version of this report, including oversight of Reserve Data Analysis (RDA), Financial Reports, and Board interaction with the retained independent RDA company, is after mid-November, 2021. I have created a [web site](#) dedicated to Park Paseo Homeowner concerns, containing all available information concerning the Board, finances, Governing documents and related matters.

Candidate Statement

Incumbent Board members have no place in the oversight and running of the Park Paseo Homeowners Association. They have made serious and deliberate errors in their care of our resources, management of our finances, oversight of our contractors, and have decreased the value and worth of our investment in this community. Consider replacing them.

Comments concerning this document, or solicitation of my opinion on Association matters are welcome. Please contact me through email at forum@slipbits.com.

Board Actions

The Board is responsible for all of the following items. That responsibility is not affected by the Board appointing agents to perform its duties. The Board agents are subordinate to the Board and the Board can not absolve itself from its responsibility to ensure its agents perform in a manner suitable to the upkeep and care of this Association, its assets, landscaping and other matters of which the Association, through the Board, requires attention. In this the Board has failed. Board activities, deferred to agents or directly executed, are done poorly.

These are the areas of concern:

1. Financial Mismanagement.
2. Violated our Governing Documents.
3. Does not preserve RDA independence.
4. Does not perform oversight of our reserve fund liabilities.
5. Does not perform oversight of the RDA firm.
6. Purchased assets beyond our means.
7. Does not perform Landscaping Oversight
8. Turned the community newspaper into a Board-only document.
9. Promotes lack of Communication.
- 10.Reduction in Association Amenities.
- 11.Does not curate our website.

Financial Mismanagement.

Mismanaged Our Financial Assets

Statements taken from the [March 21, 2021 Auddited Financial Report](#) delivered to Park Paseo Homeowners dated July 9, 2021.

"Basis for Qualified Opinion

Records or supporting documents confirming the amount of the refundable deposits were not made available to us. As such, we were unable to determine if the amount recorded in the financial statements is accurate."

"Qualified Opinion

In our opinion, except for the possible effects of the matter described in the Basis for Qualified Opinion paragraph, the financial statements referred to above present fairly,..."

What the auditors are saying is that if the Association receives \$1,000 but deposits \$100, then the deposit was found, but that the auditors have no way of determining that \$1,000 was received. The auditors are not saying that the deposit was the correct amount.

The lack of suitable documentation to determine what monies have been received is mismanagement. The Board is responsible for accounting for each dollar received, deposited or spent. The Board has not done this.

If the funds were embezzled then this is a public crime and the Association members should be made aware of it by the Board. If there is any other reason that received monies were not recorded in a suitable document, then the Board should be obligated to present to the Association members the reason that the designated monies are unidentifiable. This is our money, and we need an appropriate accounting of it.

This is not a personnel matter or a legal matter which can be kept private. This is a matter which concerns our money. Where is this revenue, and particularly pointed, why hasn't the Board informed the members of the background and resolution of this issue. Where is the Board?

Misrepresented Our Financial Health

On Page 2 of the 12 Nov 2020 Annual Policy Statement in the section titled "FROM – THE BOARD OF DIRECTORS" the following statement was made:

"According to the reserve analyst, the Association is currently 80.57% funded to the ideal funding amount. As of the most recent financial statement for the current fiscal year, the Association has \$1,079,778.71 in reserve funds and anticipates that the amount will increase to \$1,126,722.70 at the end of this fiscal year. **If the Association was required to replace all major components at once the cost to do so would be \$1,564,018.30 and the Association is 72% funded toward that total cost.** California Civil Code requires this amount to be disclosed to you in boldface type with this budget"

The figure given "**\$1,564,018.30**" for the total cost of our assets is incorrect, it is **\$2,281,463.21**. In similar fashion, our financial health is not 72% of total costs but 53.23%, or \$1,021,316.21 short. The Board has misled the Association members in overstating our financial health. As a single incident this would not be an issue, but it is difficult to see how this could be a mistake. The Board in its negligence has violated California Civil Codes in incorrectly stating all figures dealing with total cost calculations.

Violating Governing Document

Our [Governing Documents](#), the Park Paseo Homeowner Association [Bylaws](#) and [CC&Rs](#) were recorded in 1978. They are designed not to provide guidance, but to establish legally enforceable mandates to the appropriate behavior of the Board and the Association members. The mandates in our [Governing Documents](#) are in a California State legal framework in the [Davis-Stirling Act](#).

The Board has placed itself in a position where it will not abide by our Governing Document ([issue 1](#), [issue](#)

[2, issue 4](#)), and challenges to their disregard can only be resolved in court or by arbitration. In order to bring suit against the Board the [Davis-Stirling Act](#) requires that certain steps be undertaken. These steps are in each annual Policy Statement, with the Statements from 2020 conforming to current law. My [issues](#) articulates this policy.

There is a flaw in these procedures. They consume time and money of the litigant until the issue is resolved, and if resolved in the litigant's favor, the Association members, that is you, are required to pay the litigant and Association court costs and attorney fees. These costs can be substantial. The litigant is then faced with an impossible choice; given that the Board has failed in its obligation and must be taken to court, if the litigant prevails then he, as well as other members of the Association (you) will pay for it, and he will be blamed for winning by other Association members.

Based on the understanding that bringing action against the Board, and winning, causes a litigant to become an Association cost, the Board has hired an attorney to give opinions contrary to our [Governing Documents](#) as well as the [Davis-Stirling Act](#), but favorable to the Board's position, and that a court case is a win for the Board if it is lost. The Board has shown itself able and willing to hire legal counsel to support any position it takes, and to pay this attorney out of Association funds, a cost of \$12,500 last year.

The Board is under no compelling injunction to tell the Association members what has happened, or will happen, with regard to any litigation for any reason. This is the law. And so, our Board has run rampant in spending money to disregard their legal commitments. In order to provide oversight, we have to bring them to court.

They have taken positions at variance with members' needs as described in [issue 1](#), [issue 2](#), and [issue 4](#). The latest violation was the release of our [March 21, 2021 Audited Financial Report](#) 4½ months after arrival and 2 months after the 10 May 2021 Board approval. Our Bylaws state that delivery must be 30 days after approval. There is no exception. This is a small issue but shows the Board's casual disregard of their responsibilities.

[Issue 4](#) shows a violation of our Bylaws which causes us an almost \$200,000 overrun of our budget. The impact of this is that we are some \$32/mo. short in our Homeowner Association dues to cover our Reserve Data liabilities. An estimate shows that it will take about 6 years to cover this deficit, and we will be paying \$157.33/mo. at that time.

Does not preserve RDA independence

The Board has retained the services of a Reserve Data Analysis (RDA) company to independently determine the funding needs of the Association in repairing, maintaining, and/or replacing property assets. This independence is maintained when the RDA company determines the expected lifetime of the asset, the Fully Funded value required to replace or repair the asset when required, and the remaining life of the asset. The Board is responsible for providing the asset purchase price, a cost inflation rate, and for assigning Association funds to satisfy the Fully Funded value requirements. The RDA company is responsible for inflating each asset cost by the Board determined inflation rate each year the asset is in service, and calculating Association reserve funding for the asset. The Board has interfered with this process making the cost estimates unreliable.

The function of the independent RDA company is to provide an independent analysis of our property assets. If either the Board or a tradesman working for the Association dictates the useful lifetime or remaining life of an asset then the RDA company becomes a typist, responsible for documenting what other people say, not for doing independent analyses. In this case, the RDA company might just as well be a high school student who

can type.

The damage to the Association members is that any alteration of the independent analysis done by the company the Board retained, alters the reserve funding requirement. This alteration makes it difficult or impossible to determine the Association liability since the alteration changes the amount of funds needed in our reserve budget to repair, replace, or maintain our property assets.

The RDA company began itemizing each asset in 2013 and recording interaction with third parties. In 2013 asset inclusion, cost and lifetimes were provided to the RDA company by the Board and/or its contractors. Every year since 2014 one or more items which should be under the RDA company exclusive control has been altered by a third party. Taking the responsibility of determining the lifetime away from the company is counterproductive. If the company is unable to determine lifetimes of assets then a new company needs to be retained. If the company is capable of determining the lifetime of an asset then this is interference.

Table 1 shows the effect of year-to-year alteration of items which should be under independent control. Association liabilities are determined by the Fully Funded value in the RDA report. When the Assigned Value is less than the Fully Funded value, then this is an issue and it represents under funding Association liabilities. This under funding is made up in future years by increasing the Homeowners Association Dues.

Effect of Changing Asset Properties			
Item	Change	Normal	Financial Effect
Remaining Life	Increased	Not Normal	Reduces required funding
Remaining Life	Decreased	Normal	Increases required funding
Remaining Life	Unchanged	Not Normal	Required funding unchanged
Useful Life	Increased	Not Normal	Reduces required funding
Useful Life	Decreased	Not Normal	Increases required funding
Useful Life	Unchanged	Normal	Required funding unchanged
Cost	Increased	Normal	Increased by the rate of inflation
Cost	Decreased	Not Normal	Costs should only be changed after maintenance
Cost	Unchanged	Not Normal	Costs should only be changed after maintenance
Fully Funded	Increased	Normal	There is an RDA formula which guides this increase
Fully Funded	Decreased	Not Normal	Changes Association funding requirements Should only be done after maintenance
Fully Funded	Unchanged	Not Normal	Changes Association funding requirements Should only be done after maintenance

Table 1

A forensic analysis was done on the annual Reserve Data Analysis report. The results of this analysis are in the documents presented below:

- [Detailed Forensic Analysis](#), a year-by-year analysis of the RDA documents showing all exceptions found.
- [Summary Forensic Analysis](#), a year-by-year summary of the results of the analysis.

Does not perform oversight of our reserve fund liabilities

Our revenues come from a variety of sources, mostly from Homeowner Association dues, and our expenditures can be divided into Operating Budget expenses, Planned Maintenance, and funding our Reserve Fund. A major part of our expenses are in Planned Maintenance, with funding for Planned Maintenance coming from our Reserve Fund. Hence, it is critical that our Reserve Fund be accurate and consistent with

Association needs.

The accuracy of our Reserve Fund needs are based on the accuracy of the RDA company representation of remaining life, useful Lifetime, Cost and Fully Funded value, with the Fully Funded value specifying the Reserve Fund needs in order to be able to fund current and future Planned Maintenance. If the Fully Funded values are inaccurate, the Association is liable for expenses that it is not prepared to pay. Leading to a (potential) need to have a special assessment.

The previous section shows that by deliberate intent the Board, or vendors retained to maintain our assets, have caused the lifetime or remaining life of an asset to be changed.

Does not perform oversight of the RDA firm

The RDA company retained to perform independent analysis of our Reserve Data requirements has shown itself to lack independence. More corrosive is the firm's errors in using the computation rules identified in each of the annual Reserve Data Analysis, distributed to each homeowner from 2013 to the present. All errors are listed in the [Detailed Forensic Analysis](#) on my website. This failure to follow the specified and obligatory formulas defining our Costs and Fully Funded values means that we do not have a reliable measure of our liability.

How long have our true reserve costs been in question? I have analyzed 22 years of Reserve Data Analysis reports. There is not a single year in which there were no errors, many of which are substantial in the aggregate if not in the particular.

In 2019 there were 137 issues spread amongst 127 assets, or 1.1 issue/asset. In the 2020 report there were 68 issues spread amongst 125 assets, or .54 issue/asset.

The Board does not do oversight to see that these errors are corrected by the RDA company we have retained. This puts in jeopardy our understanding of our true liabilities. This can be a substantial amount. This year the total cost of all our assets are \$2,281,463.21. To keep current with our current and future asset maintenance needs we need total funding in our reserves of \$1,223,443.81 and we are currently under funded by \$239,877.27. We don't know if these numbers are accurate.

Purchased assets beyond our means

The Board has big eyes and we have a small tummy. Since 2009 the Board has overspent our ability to maintain our assets. Much of this spending goes to the purchase of 'new' items, either as an upgrade to existing assets (repair/replacement) or as a new acquisition to be put into our inventory. These purchases have exceeded our revenues and reserves, forcing the Board to use subterfuge and member apathy to hide expenditures, and causing a large increase in our Association dues. This has affected needed maintenance.

Purchasing an item whose cost exceeds the published cost (in the annual Reserve Data Analysis) has consequences. This increased cost becomes a baseline for all future evaluation of the asset, and requires that the Fully Funded value, and hence the Assigned value, be increased. This increase in reserve requirements impacts homeowners directly. It causes the Association dues paid by each homeowner to increase, and this increase increases in time because of inflation and calculations done to produce a Fully Funded value, and it is permanent. Once the asset is purchased the homeowners have a perpetual increase in their fees.

When the Board does not fund an Assigned Value for an asset the requirement for funding does not disappear. The asset will still need maintenance, repair, or replacement. Not funding the reserve budget (Assigned value) causes the unfunded value to become an Unfunded Liability which must be made up in

future years. And this impacts the Association dues. If you can't fund an asset this year, then in the future you must increase Association dues until the Assigned Value and the Fully Funded value is the same. Failure to do this means that when required maintenance must be done, there won't be enough funds in our reserve budget.

This overspending can most clearly be seen by looking at the current Unfunded Liability, that is, the total value of assets in which the assigned funding is less than the required Fully Funded value. By year this is:

Unfunded Liability			
Liability	Year	Dues	% Increase
\$235,362.29	2009	\$76.00	2.70%
\$330,397.67	2010	\$81.00	6.58%
\$180,674.77	2011	\$83.00	2.47%
\$197,680.53	2012	\$85.00	2.41%
\$142,497.46	2013	\$85.00	0.00%
\$87,948.20	2014	\$89.00	4.71%
\$39,538.73	2015	\$95.00	6.74%
\$319,508.42	2016	\$104.00	9.47%
\$344,000.30	2017	\$106.00	1.92%
\$49,936.54	2018	\$111.00	4.72%
\$159,001.56	2019	\$115.00	3.60%
\$239,877.27	2020	\$118.00	2.61%
	2021	\$122.00	3.39%

Table 2

I would make note of a few points.

1. The Board has elected to tell us (in the Annual Reserve Dagma Analysis) the percentage increase in our annual statements in only 2 of the 14 years in the table. This omission gives the false impression that our funding is stable and adequate.
2. In all cases where the percentage increase is greater than 5% the Board has violated [CC&R](#) Section V(3)(a).
3. The largest percentage increases roughly correspond to the times when the Unfunded Liabilities are largest.

How is this overspending to be paid? Clearly the Association is not bankrupt, so what is the Board Strategy? Us. What the Board builds into these purchases are increases to our monthly Homeowner Association dues. One way of looking at this is to think of the Association dues as building up our reserves. When the Association dues are less then our reserves, then the dues are increased until they match our reserve needs. Making up this deficit can take years.

Let's look at our current Unfunded Liability, \$239,877.27. There are 625 homeowners and this deficit works out to about \$32/month. Our current dues are \$122/month. By [CC&R](#) Section V(3)(a) we can only increase our dues a maximum of 5%/year, or \$6.10 next year, and the Board approved inflation figure (this year) is 2.5%. So how can we increase the dues to the appropriate level? Well, let's look:

Expected Association Due Increases

Deficit

Year	\$32/mo	Dues	Dues	Arrears
2021	\$32.00	\$122.00		
2022	\$32.80	\$128.10	\$26.70	\$26.70
2023	\$33.62	\$134.51	\$21.12	\$47.82
2024	\$34.46	\$141.23	\$15.23	\$63.05
2025	\$35.32	\$148.29	\$9.03	\$72.08
2026	\$36.21	\$155.71	\$2.50	\$74.57
2027	\$37.11	\$163.49	-\$4.38	\$70.19
2028	\$38.04	\$171.67	-\$11.63	\$58.56
2029	\$38.99	\$180.25	\$19.26	\$39.30
2030	\$39.96	\$189.26	-\$27.30	\$12.01
2031	\$40.96	\$198.73	-\$35.76	-\$23.76

Legend:

Year	Year of dues change
\$32/mo	Initial required dues inflated by 2.5% / year
Dues	Monthly Homeowner Dues inflated each year by 5%
Deficit Dues	Deficit of dues compared to Dues
Deficit Arrears	Accumulated deficit of Dues over expected increases.

At the end of 6 years the dues requirement to satisfy the original dues deficit is satisfied, but the accumulated deficit (Deficit Arrears) has not been satisfied, and additional dues increases are needed to make up our arrears. It wont be until 3031 (10 years) until out dues will be sufficient to cover the initial dues deficit plus the accumulated year over year deficits. Our dues will be about \$199 at this time.

The Unfunded Liability is based on an advertised cost, but the Board can take steps to hide the true cost. The Board can use any of the previously discussed steps to decrease the Fully Funded amount, hence our liability, and can do one more thing specific to cost overruns. The Association is required by the [Davis-Stirling Act](#) to tell Association members of scheduled maintenance done on it's behalf and the reasons behind maintenance scheduled but not done. Scheduled maintenance is known to be imminent when the remaining life is zero. At this point, the reporting conditions are required. Suppose we are short of funds, and beyond the initial telling, are quite embarrassed to report it as deferred maintenance. Well, when the remaining life for an asset is 1 year just increase the remaining life or leave it unchanged. And if you can anticipate a pending issue several years away, take appropriate action now. Changing the remaining life has been de rigueur for various Boards, including this one.

In 2020 the Board deferred maintenance on 8.8% of our total assets and our reserve analysis company miscalculated the Fully Funded value on the low side for 12% of our assets, and the Board did not fund any asset whose remaining life was greater than 6 years. In 2019 the Board increased the remaining life on 20% of all our assets. This increase decreased the required Fully Funded amount needed in our reserves, freeing up money. And the Board did one other extraordinary thing. It commissioned an annual Reserve Data Analysis study in August 2020 and mailed it to the Association members in September. This is the earliest annual study of any in the 21st Century. All previous studies, but two, where received by members in November. The two outliers were received in late October. This early study precluded final identification of costs for our pool upgrades, and gives the false impression on costs. And that's how it's done.

Does not perform Landscaping Oversight

[Issue 3](#) contains emails and presentations made to the Board with regard to the lack of care our landscapers have shown to the upkeep of our community property. The landscaping company receives about \$200,000 / year for landscaping, and an additional \$30,000 to \$40,000 for tree trimming. In 2020 I began a walk-through of parts of our community and noticed that there were weeds growing, lack of hedge and foliage trimming, and a general lack of care for our landscaping. This was brought to the Boards attention by my presence at Board meetings and by emails to them. I have not done walk-throughs this year but have noticed that when you enter Glorieta and walk the sidewalk at the point that Glorieta tees to Glorieta East and West, there are 9" - 12" weeds growing on the sidewalk. It takes some time for weeds to grow that big. NOTE: This document was made available to the Board on 13 Aug 2021. Between 13 Aug 2021 and 10 Sep 2021 the weeds were removed. The Board acts under duress to achieve Association goals.

From my standpoint as a homeowner, it makes scant difference who bears the responsibility for weed clearing and general upkeep of common property or city owned property. The requirement is that suitable care is given, and in this Association, that responsibility is the Boards. The Board can appoint agents to care, coordinate and/or inspect. But the responsibility that our 'home' is attractive is the Board's not the agents.

Until May of 2021, this year, the responsibility for inspection of landscaping was held by the then managing agent, an agent of the Board. With what fidelity this responsibility was held is a matter for the Board to discuss. But from where I stand there appears to be a lack of diligence in seeing that appropriate care in landscaping was done. It is unknown whether this lack of care was instituted by the Board or whether the managing agent adopted it as a cause, but it is the Board's responsibility that landscaping is done and that our community is attractive to us and others.

As of May, 2021 it appears that the managing agent is no longer responsible for direct inspection. In lieu of inspection, the managing agent has requested that the homeowners report landscaping issues. This does not reduce the Board's responsibility. The Board members were elected to care for the Association, and landscaping is part of it.

The Board has been negligent in this matter.

Turned the community newspaper into a Board-only document

The Association Newspaper no longer accepts homeowner ads, vendor ads, and homeowner articles, nor is a summary of the monthly Board meeting or Architecture committee meeting present. The newspaper has become a vehicle of the Board and not the Association members. It is time to change this. This is our community, and the Newspaper should be reflective of our needs. We need to have a space for baby-sitters to advertise their availability, for homeowners to sell or buy items, and for vendors supporting this community to advertise.

The Board is negligent in not allowing the community a vehicle to support itself.

Promotes lack of Communication

Important things are done in our community by the Board and the Board does not inform us. The Board acts in silence under the guise of promoting our collective interest, but appears to promote Board interests instead.

Recently we changed managing companies. There were, I believe, 6 meetings (3 in February and 3 in March) to discuss what appears in retrospect, to be debate on our managing company. As of this writing no information has come out of the Board as to why this change was done or what criteria was used to select a

new management company.

Meetings held for, what I assume to be, replacing the management company were all held in secret, under the rubric of being an Executive Session. Unless the meetings discussed legal matters or discussed personnel matters or discussed the formation of a new contract, an [Executive Session](#) is unwarranted and not [legal](#). If these meetings culminated in the decision to get a new management company then the Association members need some explanation. Meeting in secret to discuss the "formation of a new contract" is not the same as a meeting in secret to terminate an existing contract. Although the latter may be a prelude to the former, the latter rationale should be distributed to the members. In particular, once a contract is consummated, the reasons for termination of an old contract and reasons for selecting a new vendor are no longer a matter of privilege. In any context where such privilege is asserted, it can be assumed that the judgement made in selection or termination is self privilege and offers no benefit to the Association members.

The Board can not have Star Chamber proceedings according to [State Law](#).

Reduction in Association Amenities

The Board has periodically reduced amenities and has not given a rationale for the changes. When the Board alters a long standing practice without informing the members, the members' feeling is that the Board is acting in an authoritative and peremptory manner to satisfy its own interests. It is the members' expectation that changes made to things that alter our expectations or common practice require information and not only notification.

Two items which occur to me are our lifeguard and availability of our clubhouse. The Board changed our lifeguard to a monitor and then eliminated the position entirely, and the Board has changed clubhouse 9 - 5 availability from 5 days a week to 3 days a week. No information has been presented to the members as to the rationale for these decisions.

As part of this general trend I think, but am not sure, that the responsibilities of the managing agent have been changed for the new management company from the old management company. If this is accurate, some accounting is due the homeowners.

Does not curate our website

The current website is much, much better than the previous website. In addressing the previous website several [suggestions](#) were made in an attempt to improve it. None were accepted and at the end there was no consistency in naming or sorting of any of the, then, available items (Newspaper, agenda's, minutes, and etc.). The result was that it was very difficult to find anything. But, the Board made no effort to see to it that the website was improved.

With respect to the current website the major flaw is that in order to see any document a homeowner must log in. All material, except homeowner specific information, is public knowledge. There is no basis for not allowing homeowners direct access to such items as the Newspaper, agendas, minutes, governing documents, site maps and the like without logging into the company website. In similar fashion annual policy statements, Reserve Data Analysis and Audited and Unaudited budgets should be online and downloadable.

It seems that the Board has claimed no oversight responsibility for making our website desirable or accessible, or the Board has deliberately chosen to make our website undesirable and inaccessible. For an alternative view see [here](#).

Conclusion

Elect Board members willing to support the needs of the Association and its members.

Useful Documents and web pages

Park Paseo Association Homeowner Information

Web Page Link	Description
Governing Documents	Park Paseo Homeowner Governance Rules, Bylaws, CC&R
Annual Financial Data	Audited/Unaudited reports and Reserve Data Analysis
Issues	Issues presented to the Board and Board handling of those issues
Monthly Data	Newsletters, Agendas and Minutes
Resources	Homeowner resources not otherwise available
Homeowner Architecture Requirements	Documents required to modify, repair, and/or improve property
The Davis-Stirling Act	The State statutes which govern all Homeowner Association activities

Table 4

There are three more items of interest:

Reserve Data Forensic Analysis

Link	Description
Detailed Forensic Analysis	Year-by-year forensic analysis of the Reserve Data Assets by asset
Summary Forensic Analysis	Year-by-year forensic analysis of the Reserve Data Assets showing only summary data
Candidate Statement	

Table 5

The forensic analysis contains intra-year and inter-year evaluation. The intra-year data validates the use of Reserve Data Analysis formulas and other things, in the [Annual Reserve Data Analysis report](#) mailed to each homeowner. The inter-year evaluation compares assets in successive years, such as 2019 - 2020, to validate the correctness of remaining life and useful lifetime and other things. All monetary calculations within $\pm 5\%$ of their nominal values are considered correct, for example, if an asset has an expected inflated cost of \$100,000 then if the actual cost is between \$95,000 and \$110,000 it is considered valid.