



HSVPOA & BOD refused information release

Description

By Frank Leeming, January 21, 2020

POA board, CEO refused to release information, despite court ruling

Last week I said several items in *What's Happening in Hot Springs Village* were not updated. You should know why.

The tale begins with a prologue. It came in the form of a letter from the POA's CEO saying I'd included "errant and misleading information" in an earlier *What's Happening* package.

"We ask that you more seriously consider the implications of your future communications, refrain from publishing private Association records concerning POA employees, and avoid inaccurately citing the POA as your data source," she wrote. [Click here](#) to see the letter.

In all the material I've sent out over the years, only once has the POA called an error to my attention. In a meeting with golf director Rick Ross, he said a chart showing the total number of rounds played in 2008 was too high because it included free rounds given to course marshals. The error was immediately corrected.

As the POA knows, virtually all the data about POA doings cited in *What's Happening* comes directly from the POA. Where else would I get it?

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Now on to the rest of the story.

On Jan. 5, I filled out a POA form asking for four routine items. Three days later, I received this email from the CEO:

Good evening Frank,

We are unable to fulfill your records inspection request due to improper purpose and/or records not in existence. You are welcome to appeal this decision to the Board of Directors by contacting Chair Cindi Erickson at cerickson@hsvpoa.org

Kind regards,
Lesley

So I sent this email to Chair Erickson:

Cindi:

Per Lesley Nalley's suggestion, I would like to appeal her decision to deny me access to these four items requested earlier this week on an official request form:

- Most recent traffic counts for West Gate, East Gate, and Balboa Gate.
- Total water production for 2019 in millions of gallons.
- Total golf rounds played at each course in 2019.
- Names and length of streets crack-sealed in fourth quarter of 2019.

As you can see, there is nothing controversial about any of these subjects and all fall clearly within the guidelines established last July by Judge Robert Herzfeld in *Cooper Communities, Inc. v. Hot Springs Village Property Owners' Association, Inc.*

To suggest the information does not exist is ludicrous.

Ms. Nalley said my request is for an "improper purpose." That is a direct contradiction of Judge Herzfeld's ruling, which rejected the POA's "proper purpose" defense by writing:

"What does 'any proper purpose' mean? 'Any' is **expansive** while 'proper' is limiting. Therefore, the phrase means **any purpose that is not improper**.

"'Proper' and its synonyms 'suitable,' 'fit,' 'reasonable,' and 'appropriate' are used throughout the statutes and the common law because they are related to categories too broad to define but easily understood by reasonable people."

For the above reasons, I ask the POA Board of Directors to instruct Ms. Nalley to comply with my request for information.

Thank you.

Within 24 hours, Chair Erickson called. She read (and later emailed) this to me:

Frank, the board upholds Lesley's denial of access to POA records, as reflected in your January 5 request, for these reasons:

- Despite indicating that you do not intend to make the records available to those who are not members of HSVPOA, there is evidence that your email distribution list, which has been used to supply acquired records to others, includes some who are not HSVPOA members.
- Distributing records to those without regard to membership standing extends well beyond your stated purpose "to learn more about the operations of the POA." (Note: In a phone conversation with you that just concluded, you ascertained that you intend to distribute the information to your email distribution list.)
- Despite indicating that you do not intend to use the information to the detriment of the Association or others, the board feels that you have in fact done so in at least one prior records access request. As a result, this board has chosen to avoid this risk by denying your January 5 request as submitted.
- Please contact Lesley directly if you would like to know which of the documents you request do not exist.

Cindi Erickson, Board Chair

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That's why some of the charts in ***What's Happening*** were not updated.

Alone, these bits of information are not going to change the world. The POA's denial, however, is much more serious.

The POA lost a very important lawsuit last summer on this very question. Judge Herzfeld emphasized this when he wrote in his opinion:

"Is the statute in question – 'All books and records of a corporation may be inspected by any member for any proper purpose at any reasonable time' – unconstitutionally vague? In a word: No.

"An average person should reasonably understand and predict that these words mean that members should have reasonable access to *all* of the recorded information *held by their organization* so long as they have some kind of minimal, non-malicious purpose for wanting the information."

Judge Herzfeld emphasized:

"Viewing the facts in the light most favorable to the Defendants (the POA), even if giving the information to the Plaintiff (Cooper) raised the risk of identity theft of its members, negatively affected the security of the Hot Springs Village Community and 'hinder(ed)' the Association's flexibility and negotiation strength in securing and retaining other employees of the Association, they would still be required to provide COOPER access to inspect the information.

"There is no limiting language in the statute addressing the possible negative consequences or otherwise prohibiting the use of the information once a proper purpose has been

demonstrated.”

The bold-face type and other emphasis were Judge Herzfeld's, not mine.

Finally, the court noted the POA wanted an evidentiary hearing to “get under the hood’ and examine evidence to look at COOPER’S motivations and the possible ramifications.”

The request was denied.

“In sunshine law, the evaluation should be from the perspective of encouraging broader releases of information rather than restricting them ... In this case, **statutes enacted for the members’ benefit should be interpreted most favorable to the members.**”

And perhaps most important to this story, Judge Herzfeld wrote:

“Corporations (and courts) should not be in the business of speculating as to *possible* motives of members.”

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There has never been anything malicious in my requests for or publication of information about Hot Springs Village. Joyce and I live here. We love the Village. We believe it can best be managed if property owners, renters, users, vendors, and others know what’s going on.

Do folks who aren’t property owners see what I send out? I’m sure they do. After all, property owners often forward the material to those they think would be interested, including some who are merely interested in the Village.

Are there folks on my mailing list who aren’t property owners? I have no idea, and I don’t care. When someone signs up to receive my reporting, I assume they’re interested in Hot Springs Village, and that’s good enough for me. It should be good enough for the POA, too. (If you’d like to read Judge Herzfeld’s ruling against the POA, [click here.](#))

I’ll continue to try to get information from the POA. Hopefully, the board will reconsider its decision and tell the CEO to follow the court’s ruling and stop denying applications for information from the POA.

By [Frank Leeming](#), January 21, 2020

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