



HSVPOA Special Board Meeting February 23, 2022

Description

Review and Determination, Revocation of HSVPOA Membership Privileges – Member Peter Kirk Denger

The Hot Springs Village Property Owners Association Board of Directors met for a Special Board Meeting at 9:00 AM on February 23, 2022. The purpose of the meeting was the Review and Determination, Revocation of HSVPOA Membership Privileges of Member Peter Kirk Denger. Mr. Denger is currently a candidate in the upcoming Board election and was involved in two incidents at the Village West Gate on January 24 and January 26, 2022.

Board Members Sitting at the Table: Joanie Corry, Chair; Tucker Omohundro, Vice-chair; Chris Jones; Gary Belair; Bob McLeod; and Pam Avila.

Staff Sitting at the Table: Kelly Hale, General Manager, and Corporate Secretary; Coreena Fetterhoff, Controller, and Corporate Treasurer; Katrina Heap, Administrative Assistant to the General Manager; and Charles Brown, Community Development Manager.

Witnesses for Denger: Lucy Denger and minor female Denger.

Chief Ricky Middleton and one other officer were present at the meeting.

Lewis Delavan of the Hot Springs Village Voice was present.

Backstory

In a [previous article](#) I stated:

“We recently published documents about an incident occurring at the Hot Springs Village West Gate on January 26, 2022, regarding Property Owner and HSVPOA Board Candidate, Kirk Denger. [Click here](#) to read those documents. [Click here](#) to read Mr. Denger’s statement regarding this issue. Mr. Denger stated that he was denied ingress to his property when he did not show his POA Identification card for

scanning to Securitas Security gate personnel or have a window sticker on his vehicle. During the course of this event, traffic was backed up in the left entrance lane and the HSV Police were called to the scene. Mr. Denger was verified as a Property Owner by the police officer and allowed to enter the gates.”

“Due to this incident, Hot Springs Village Community Development Manager, Charles Brown, subsequently recommended to the General Manager, Kelly Hale, that Mr. Denger lose his privileges for a period of one month.” [There were actually two separate incidents, but the main incident occurred on January 26.]

The Meeting Begins

Note from Cheryl: I have transcribed this meeting accurately to the best of my ability and it should be close, if not exact to what transpired. This was a difficult transcription to do, as there were many instances when two or more people were talking at once, so some of it was indecipherable.

Omohundro verified the quorum and Corry called the meeting to order.

Corry and Avila recused themselves from the meeting due to a conflict of interest due to both of them being Board Candidates in the current election. They both left the table. Corry turned the meeting over to Vice-chair Omohundro.

Omohundro: Okay, since now I am taking care of the meeting. I guess we'll hear from Kirk Denger to start with.

Denger: I'd like to get one of those microphones so I can sit here, if you don't mind. I'd rather sit.

Denger: This could take a while.

Jones: At 10:00 o'clock, I am leaving.

Denger: I don't know what I am supposed to say. Here it says, 'that you are hereby notified of the suspension of your privileges to all Hot Springs Village Property Owner Association operated amenities, including deactivation of gate cards. This action is based upon the following:

Denger: 'Refusing to comply with HSVPOA Policy and Procedures.'

Denger: What's that?

Omohundro: Well, your privileges have been revoked. You have an option to appeal that decision and that is what you are here to do, if you feel like that decision is unjust.

Denger: Oh, I do. The problem is there's no – there's no detail of what I am supposedly in violation of. Am I to talk with you, Tucker [Omohundro]? Or is this gonna be, I mean, is there a point person here?

Belair: You are addressing the Board.

Denger: Everybody jump in at any time they want?

Omohundro: Yes sir. You'll probably be talking to Kelly [Hale] and Charlie more than anybody...

Denger: Okay.

Omohundro: ...because they are the ones – they are the ones involved.

Denger: Yeah, because Kelly's name is at the bottom here, so.

Jones: We're just here to listen. It's you guys talking to us.

Denger: Pardon me?

Jones: You and the POA are talking to us. We're just here to listen. [inaudible]

Denger: Okay, good. Good.

Denger: So

Omohundro: Would you prefer Charlie and or Kelly to speak to this first? We're trying to give you...

Denger: It's not that. It's just that I have no idea what the charges are, so. I suppose somebody would have to clue me in on them, one at a time, possibly.

Hale: This is going to reference back to the article that you had in the Village Voice that I am pretty sure that you made all the comments – to be pretty easy for you to understand why you're here today. Okay. Charlie, [do] you want to go ahead and read through the incident so we can refresh Mr. Denger's memory on this and then we'll stick to the letter of record.

Brown: I will. In summary, I submitted a Member's Violation Report to the General Manager at the time on January 27, concerning a violation of gate operations by a POA Member. That report gave the narrative of action that violated several policies in our Board-approved Policy Guide, on two occasions, January 26th and January 24th.

Brown: That was in violation of not complying to POA policy in identifying yourself to gain entry into Hot Springs Village Property Owner Association.

Denger: May I ask which exact policy that is, please?

Brown: If I may/could finish my statement...

Denger: Oh, okay.

Brown: ...and then you are welcome to ask questions.

Denger: Okay.

Brown: So, the report states that Policy Guide, Chapter 1, Article 5, Section 1, Section 3, and Section 6 was in violation.

Brown: Those policies talk about identification cards for Members, guests, visitors and others will be issued to facilitate entry into Hot Springs Village by those authorized to do so.

Brown: The non-compliance of an individual in displaying identification, therefore, violates that policy in the sense that we have no idea if that person is a resident of Hot Springs Village and should be allowed entry.

Brown: And, Chapter 3 goes ahead and defines the decal passes and electronic gate cards. Chapter 3, Article 1, Ingress and Egress Policy, Section 2g states, 'Decals, passes, member ID, and electronic gate cards are devices for controlled ingress into Hot Springs Village.

Brown: So, the word, 'controlled' there obviously to any reasonable person means that we have to make a determination at the gate whether someone is authorized to come in, therefore allowed into a secure area. Hence, the reason why we operate the security gates.

Brown: The area and policy also referred to in my report is Conduct, and that is in Chapter 1, Article 16 states this, 'All members, members guests and visitors are expected and required to conduct themselves in a reasonable, lawful, and courteous manner at all times. Conduct contrary to this requirement will be subject to the persons, to punishment by a suspension of privileges in accordance with Article 8, Section 3c of the Declarations and Protective Covenants and Article 3 of the Association Bylaws.

Brown: Membership cards and cards issued for the operation of electric entrance gates are for use of persons who the card is issued. Misuse of any membership card, gate cards in violation of Article 8, Section c and f of the Declaration.

Brown: Violators are subject to possible suspension for a period not to exceed 30 days, under Article 3 of the Bylaws.

Brown: So, General Manager, this report was submitted to you, to the administration, in the sense that on the occasions on January 24th and 26th, Mr. Denger approached the gate unwilling and noncompliant to show valid identification to get into Hot Springs Village Property Owners Association, violating these cards.

Brown: He at the same time was not ~~complaint~~ compliant with instructions by our security company, which is a contract, so therefore representative of Hot Springs Village Property Owners Association. Non-complaint in the sense to move out of traffic, therefore creating a public safety issue, which is violating a very common procedure that we have to move individuals that cannot be validated out of live traffic and then therefore, we can validate them without creating a public safety issue.

Brown: I also believe that evidence shows that this was an orchestrated event as evidenced by the very video that was posted by Mr. Denger, himself, showing video footage prior to entering the gate area.

Hale: Thanks, Charlie.

Denger: Yes. I'll have you know that there is no 'i' in my name. It's DEN GER. D E N, not D I N.

Hale: We appreciate you clarifying that.

Denger: Uh hun.

Hale: Okay.

Hale: Do you have anything else, Charlie?

Brown: No sir.

Hale: Okay. So, the actions that you took on that day and previous day, you created unsafe conditions for not only our residents, but our vendors that are coming in. Your behavior is... You've been living here for a long time. You should know the rules. You should know how to comply. Whether your agreement is that stickers should be on the vehicles or not, is irrelevant. You know how to get in and out of this place, just as well as anyone else. You're a former Board Member, which you identified yourself, which was false, according to the records that we have. But you should also know the rules better than anyone else, sir.

Hale: So, with that being the case, this boils down to very simply, the same rules that apply to everyone else within this community, apply to you as well, sir. And you should be very easily able to obtain those and comply with them. But you chose not to. You created chaos. You created unsafe conditions for something that was very simple. And that's where we are at.

Denger: Okay, are you both finished? I mean, for now? Can I ask questions or speak?

Hale: You help yourself, sir.

Denger: Okay.

Denger: This is like a certificate of appreciation for being on the Board. I have cards that say my name on them, Board Member. It doesn't matter whether I am on the Board or not. I was a Board Member. There should be some respect for previous Board Members.

Hale: Do you have anything... Excuse me for interrupting you, sir. You're speaking as if there's a Declaration within the Board that says that you are entitled to certain rights as a past Board Member. Is that what you are implying?

Denger: Yes. Absolutely.

Hale: Do you have anything in writing that says that or is that just your opinion?

Denger: That says what?

Denger: That's my opinion.

Hale: Okay, then you are entitled to that, sir...

Denger: Thank you.

Hale: ...but it doesn't apply to the community that you live in. There is more people here than just you. There's all of us, sir.

Denger: You're entitled to your opinion.

Hale: Okay. I am done.

Denger: Let me just say this. I am not your adversary. I am not in competition with you.

Omohundro: Kirk, if you would. Please state your case to your appeal. This is not to debate anything and whether you ought to be recognized or anything else. It's about the rules that your broke. So please...

Denger: Okay.

Omohundro: ...please address that.

Denger: Absolutely. A minute ago I tried to do that and he said to wait 'til the end. So, now if I may ask a question. Which policy is it that you say that I am in violation of? One at a time. Let's analyze it.

Hale: Sir, we're going to go through this one more time...

Denger: No, no, no.

Hale: ...for courtesy – review them with you. So he's going to go through these one more time with you, sir. They've been in writing as well.

Denger: Where are they?

Hale: ...communicated...

Denger: Where are they? I don't see them.

Hale: I am going to ask you to listen to Mr. Brown, please, as he goes through these again, what policies. He specifically named them and read them to the entire group here. He's going to do it one more time, for your courtesy please.

Denger: No, no, no, no.

Hale: Okay?

Denger: I am talking about one at a time. I want to go over each one of them, one at a time.

Hale: We're going to allow Charlie to go through that. Okay.

Denger: With me able to ask questions? I mean what kind of courtroom is this?

Jones: It's not a courtroom, sir.

Denger: The Defendant cannot ask a question?

Hale: You seem unprepared for this event, sir, to be able to actually state your case. You're not gathering facts until you came here. This is not how this works.

Denger: I've got my case. I've got questions to ask.

Hale: That's fine, but you're expected to be prepared, sir.

Denger: And then I have points of contention.

Hale: You were expected to be prepared, sir when you came here.

Denger: I am as prepared as I'll ever get.

Hale: So, Charlie, go ahead and we'll do it one more time.

Denger: I want to check what your preparation is.

Brown: If I may, real quick...I will. Yes, sir.

Omohundro: If you would, just read each one and let him speak to each policy that he broke or whatever you want to call it and then let him say what he is going to say and then go to the next one, please.

Brown: I will. And let me remind the group and the Board that these are not policies that I just pulled out of the air. These are policies that a former Board of Director would have been involved with because these are Board-approved policies – longstanding Board-approved policies. So, easy to get to. They are public information out there on our website that anybody preparing for this hearing certainly could have went and garnered that information if they chose to do so.

Brown: And I will again say that my report and the violation report is not based on opinion, at all. It is very evidentiary, as can be determined by that report and video footage that we currently have.

Brown: So we first of all talked about property rights, is Declaration Article 8 – talks about the suspension of privileges. The Board has the authority to do so.

Denger: Okay.

Brown: Bylaws, Article 3.

Denger: Wait a minute. Wait a minute. Wait a minute. That's one, right. Okay, let's just focus on one at a time. I don't need a paper train. That's not going to work. Okay. So what was that policy you just mentioned?

Brown: That's the Declaration, Article 8.

Denger: Article 8. Okay. Now, what was in Article 8, sir?

Brown: Do you want me to recite each one of these policies?

Denger: No, no. I just want you to recite ONE of them.

Brown: So, this policy, in summary is the authority to suspend privileges.

Denger: Article 8 of the Declarations is a policy?

Brown: I told you it is a Declaration. The Declaration of Article 8 is just that. It's the Declaration language.

Denger: Okay. I got that memorized. Okay.

Brown: And it cites the authority of the Board to suspend privileges for...

Denger: Which section?

Brown: Section 3c.

Denger: 3c? Okay, can you read section 3c, please? Or do you want me to?

Omohundro: Go ahead, Charlie.

Brown: Do you want me to read all of these?

Denger: No, 3c is very short. It is one little paragraph.

Brown: The right of the Association to suspend the enjoyment rights of any Member or Associate Member for any period during which any assessment service or use charge remains unpaid and for a period not to exceed 30 days for any infraction of its published rules and regulations.

Denger: Is that c? Or Article 8?

Brown: 3c, Article 8, Section 3c.

Denger: Okay, that's the c. Could you read the Article 8, Section 3, please from the very top?

Brown: And all the subsections that we...?

Denger: No, no, not all the subsections. Just the very top, please.

Brown: Section 3 – Extent of members and associate members easements. The rights and easements of enjoyment created here by the exception of the rights and easements created in Section 6 of this Article, [indecipherable due to two people talking at once]

Denger: Oh, oh. Right there. Right there. With the exception of Article, Section 6, Article 8, Section 6. Now can you please read, now, in other words, 3c has an exception to it and the exception is Section 6 of Article 8. Could you please read Section 6 of Article 8?

Brown: You would like for me to read that whole section?

Denger: THIS is the exception to your rule.

Brown: Owner shall have right of ingress and egress passages over all private ways of access for [indecipherable due to overtalk]

Denger: There it is. Thank you. Thank you very much. That's it.

Omohundro: Nobody taking your right to egress away, so what is your point?

Brown: Let me...

Denger: He's talking about a policy that has the EXCEPTION of my right to ingress and egress.

Omohundro: And we're not taking that away from you. They're not taking that away from you.

Denger: You're penalizing me for it. I have an absolute inalienable right to ingress and egress. Article 8, Section 6.

Omohundro: And we're not taking...And that has not been taken away from you.

Hale: It's not been taken away from you. I don't understand your point, sir.

Brown: Let me qualify that...

Denger: You cannot stop me from entering the Village. It is THAT simple. You cannot ask me for any of your policies. Your policies are all built on the Declaration. If you read the Declaration, I have an inalienable right to access my property. [Indecipherable due to overtalk] That is it.

Omohundro: Yes sir, you do and you have that right.

Denger: Unimpaired. Unimpaired without questions from the guard gates.

Omohundro: So you are saying we need to take the gates down and they are useless?

Denger: I don't want to get off the subject.

Omohundro: No, you are getting off the subject.

Denger: No, I'm not.

Omohundro: You're totally off the subject because you've been allowed to come in the Village.

Denger: You are. You are the one...

Omohundro: Nobody is telling you that you can't come.

Denger: No. There are penalizing me for accessing my own home here.

Omohundro: No, they are not.

Denger: You are saying that I had bad conduct?

Omohundro: Well, sure.

Denger: When I...I was detained. That is not unimpaired access. I was detained by your guards at the gate.

Omohundro: Okay, moving along. It's like talking to a tree. Go ahead, next item.

Denger: Wait a minute. Wait a minute. Now, do we not agree on this first item?

Omohundro: No we don't.

Hale: No one took his right away to be able to come in.

Omohundro: No, we don't agree.

Hale: You need to identify yourself as a Property Owner.

Denger: Number 1. I cannot get into the right lane. That is denied of me.

Hale: That is your choice because you are given the right to purchase a bypass sticker.

Denger: No, it's because you're charging.

Hale: That is your choice, sir. It's like everyone else.

Denger: You're charging. You are not allowed to charge.

Omohundro: You want the right to get into your property in any lane you choose?

Denger: That is exactly right.

Omohundro: Well, it's happening.

Denger: Well, that's what the Declarations say. So if you're going to follow the Declarations...

Omohundro: It doesn't say anything about lanes in the Declarations.

Denger: It sure does. Why don't you try reading it.

Omohundro: [indecipherable due to overtalk]...right lane or left lane, Kirk.

Denger: Yes. Either lane. Either lane. Any lane. Any gate. At any time.

Omohundro: Okay.

Denger: And that is what you're misunderstanding here. If you read the Declarations, you'll...

Omohundro: I think I understand it clearly, but go ahead.

Denger: ...you'll see it.

Denger: And if we cannot agree on one point, you can continue on with your next item.

Brown: So, let me offer the – this thought in the sense that the interpretation of that Declaration, I think has been very well supported throughout the course of Hot Springs Village Property Owners Association and Article 1 of Chapter 3 qualifies that in accordance with the Declaration would be my contention, which says, in regards to unimpaired access. It goes on to make the statement, 'Hot Springs Village Property Owners Association has the unimpaired right to ingress and egress to Property Owners by him or her, Section g or devices with controlled ingress. Key word, 'controlled ingress.' So that therefore would be that we are not impairing anyone's right to their property.

Hale: Correct.

Denger: Is it my turn? The keyword there is 'unimpaired.' Unimpaired access, which comes directly from Section 6 of the Declarations. Y'all need to get a lawyer.

Omohundro: No, maybe you need to get a lawyer. We don't. We have one.

Denger: Yeah. You need to get one here, at this meeting.

Omohundro: No, we don't.

Denger: You sure do because you don't have any idea what y'all talking about here.

Omohundro: Next item, Charlie.

Brown: Again, Article 3 of the Bylaws gives the authority for the Directors to suspend privileges. And we move on to Policy, Chapter 1, Article 15.

Denger: Bylaw. Wait a minute. What was that? Bylaw what?

Brown: Section 3.

Denger: Which Bylaw?

Brown: The Association Bylaws. Section 3.

Denger: Section 3 of which Article?

Brown: I am sorry. Article 3.

Denger: Article 3...

Brown: Section 4.

Denger: Section 4. What does that say?

Brown: If the Directors have adopted and published rules and regulations governing the use of common properties and facilities as provided, Article 9, Section 1, hereof, the personal conduct of any person thereof is on violation of these rules and regulations, the Directors may in their discretion suspend the rights of any such person for a period not to exceed 30 days.

Denger: Okay, so and at the bottom of that Bylaw, does it reference anything in the Declarations? At the bottom of that Article? That that's based on?

Brown: It does not.

Brown: The last sentence of that Section is the applicability of this Section 4 shall also run to any membership and association membership that may have been delegated.

Denger: Let me see if I can find that. Bylaws Article 3, Section 1?

Brown: Section 4.

Denger: Section 4.

Brown: Let me add to the Board also that in the letter that Mr. Denger received, states very clearly the Policies that we referred to as the violations. So, to not know those already, would not be the case because they were very well documented in the letter than he received.

Denger: Yeah, but they are very general. I mean, you put the entire Article there with no specific...Every time I have ever gotten anything from this Department, from the Building Inspector, they'll give me a piece of paper and underline the exact violation rule. This is in no way like that. This is like a paper storm. There is no specific rule written on this citation that tells me exactly which Policy I violated.

Brown: So, I am going to respond to that by saying that with the Governing Documents, the three Governing Documents used in this Violation Report is very broad. So, there is much contained and much in it that has to be compared to other Articles in Policy, Declaration, and Bylaws...

Denger: Agreed.

Brown: ...therefore, the letter is written as is.

Denger: With absolutely zero specification as to which policy I broke.

Omohundro: I think it is very clear. But you don't and that is fine. Next item, Charlie.

Denger: What did that last one even say? I mean, okay, you say that the Board of Directors has the ability to punish somebody. To take away their suspension. Isn't that what it said?

Brown: So, Mr. Chairman, may I go through the Articles and then get a response back after I talk about

the violations?

Hale: Please Charlie.

Brown: Chapter 1, Article 15, Obtaining Compliance and we refer to, actually, repeated violations shall be reported in writing to the GM [indecipherable] violations shall be sufficient cause for referral to the Board of Director's recommendations for suspension of violations referred to the Board of Directors shall be considered for suspension in membership privileges, denial access. This paragraph in that section talks about the process we went through to get here today. Notice of the presentation to the Board shall be issued to the violation in writing by certified mail, returned receipt requested, 10 days prior to the scheduled Board Meeting, penalty action procedures except suspension of membership privileges may be designated to management at the discretion of the Board.

Brown: Chapter 1, Article 6, Conduct, all members, members guests and visitors are expected and required to conduct themselves in a reasonable, lawful, and courteous manner at all times. Conduct contrary to this requirement will be subject to the person, punishment by suspension of privileges, and in accordance with Article 8, Section 3c of the Declaration and Protective Covenants in Article 3 of the Association Bylaws.

Brown: Chapter 3, Article 1. Ingress and Egress. Any Hot Springs Village Property Owner who is current in the payment of all assessment, services, and use charges, no more than 60 days delinquent and not under any suspension of privileges. There we're defining what is a member in good standing and what is not.

Brown: Section 3. The General Manager and staff are responsible for the development of a standard operating procedure to ensure the most effective and efficient implementation of the Policy.

Denger: Wait a minute. You just...

Denger: No, no. I'm not allowed to question any...?

Hale: Sir, you are the one [who] said allow him to give it and then you could answer when he is done.

Denger: No, I said, one by one. He's going on and on right now.

Hale: He's still on one. Allow him to finish please and quit interrupting.

Denger: I would like to be able to say something. I object.

Omohundro: Make it clear, there's everything underlined, not underlined, but in red...

Denger: That you redlined? You mean?

Omohundro: It's in red.

Denger: Oh, this is what you got. Thanks Tucker.

Brown: And again, I'll restate these words.

Denger: This is a little better. Why wasn't I provided this?

Omohundro: You're the one that called [I think he meant caused] this, not us.

Denger: No, I did not call this. I am responding to your summons here.

Omohundro: This is an opportunity to appeal to us.

Denger: I...That's what I intend to do. In fact, I'd like to have a witness take the stand, please.

Jones: This is not a courtroom. We only have one hour. There are 33 minutes left. We're not gonna let you sit here and fillibuster us and pretend this is a courtroom.

Denger: If I got 33 minutes – thank you very much. Appreciate that, Chris.

Jones: We'll go with 31 minutes because we have to make our determination at the end.

Denger: Okay fine. Thanks a lot. I'd like to call a witness. We talk about conduct. Let's talk about the conduct of your guards.

Omohundro: Our guards are not on – not appealing here.

Denger: We're talking about anybody's conduct in this whole Association. Everybody is a civilian here and some of us are members. And some of us have been verbally...

Omohundro: Kirk, speak to the problem. Speak to what happened. What...

Denger: This is what happened.

Omohundro: Try to convince the Board that what you did was okay and proper to do.

Denger: This is on the report. It's on the report. We have been verbally assaulted by YOUR contractor. If I may, please if it is okay with everyone in the courtroom, I would like to hear what it's like to be riding in a vehicle with your contractor at the gate. Lucy, could you please speak to the audience? [Kirk's daughter, Lucy Denger spoke.]

Lucy: Hello everybody. On January 24th we were on our way through the gate. But we were stopped because we could not enter because the security wouldn't let us through. And my dad did hold up a card. Our POA card and showed the man. He didn't accept it. And we have all the right to come into our house. We have all the right to come through the gate. But that was not allowed and he got really mad and the whole time we were sitting in the car, me and my sister, we were on the way home from a basketball thing and he started verbally assaulting us. He said multiple slur words like the F word or the mother F word. He said those multiple times. And we were harassed by that.

Denger: Could you please spell that word?

Disclaimer: Vulgar language is spelled out in the following paragraph, but I omitted 2 letters.

Lucy: He said Mother – M O T H E R F U * * I N G

Denger: Thank you.

Omohundro: Let me ask you a question. You put yourself out there. What card did he show them at that time and they said that wouldn't work? Was it the POA Board Member card or what?

Lucy: Yes.

Omohundro: Oh, okay.

Denger: No.

Omohundro: That is what I thought.

Lucy: It was also the POA card.

Denger: Exactly.

Omohundro: Oh, okay. So the first one didn't work so he showed the next one? Is that the way it worked? Or how was it? They didn't let him on – they didn't let him in because of the piece of paper so he finally showed the other card or what?

Lucy: The man – we showed him the card.

Omohundro: Which card?

Lucy: The POA card.

Omohundro: Well, you said you showed – he showed the POA – the POA Board of Director card, at first.

Lucy: He showed both.

Omohundro: Why did he show the other one first?

No answer.

Omohundro: Yeah, we have the same confusion.

Denger: That's what I have been doing for two years.

Omohundro: It's worked for two years?

Denger: Yeah.

Omohundro: Well, okay. All right. Thank you.

Denger: That's the first one that's in my wallet when I pull it out. If I got to dig deeper then it is just more impairment for my access to my own home.

Omohundro: Okay, moving right along.

Denger: Not every member has the same right to access their home. You can stop people that don't live in here. That's fine. But you can't stop residents who live here. We have an inalienable right...

Jones: I don't think you understand the meaning of that word.

Omohundro: Yeah.

Denger: It's like your inalienable rights in the constitution. It cannot be taken away from you. It cannot be impaired. I have a right. Article 8 of the Declarations, Section 6. If you haven't read it, try reading it. We [indecipherable] every other Declaration has that exception in it. Every time you talk about penalties and conduct, that little exception, you will find in a footnote in each one of your policies, that are built all upon the Declaration. It is that simple.

Omohundro: It's simple as – the simple thing is that you think we are impairing your egress[ingress] and we do not think we are. If we are, we're doing it to everybody and we have for 50 years. But – is that your case?

Denger: Can we call another witness? I'll tell you my case as soon as...

Omohundro: I wish you would tell us your case.

Denger: As soon as Chris lets me know that I've got five minutes left...

Jones: You have five minutes left.

Denger: It went from thirty-one to five minutes?

Jones: I mean, you're not really addressing the situation here. This meeting is specific for a purpose. You are calling up witnesses, calling it a courtroom. That's not what this is.

Denger: This is a hearing. Isn't it?

Jones: Not...

Denger: This is an appeal. It's an appeal.

Denger: [Kirk asks his young daughter to talk.] If you would just talk. Just for three seconds. Just stand up here and say hello. [Daughter refuses to talk.]

Denger: This little girl heard the same abusive assaulting verbal assault from your contractor at the front gate on January the 24th.

Omohundro: Kirk, that's fine. But you need to address that in another way. This is not the...we're not here to address that. We're here to address what you did. If you have a problem with what they did,

you need to turn that into the General Manager.

Denger: No. That's on the report of this hearing. Okay. It is one of the papers in case you haven't read them. There's a lot of hearsay in this Village. A lot of people haven't read anything. But yet they've already made their judgment and I can feel that's exactly what you're doing.

Hale: I don't show that – the incident of vulgarity anywhere in any of the documents that we sent to this gentleman.

Denger: There is a police report, by the way, in case you haven't gotten it. There is a police report on that incident.

Hale: Which was filed when?

Denger: Last week.

Hale: Last week?

Denger: That's right.

Hale: Okay. It was so outrageous, sir,

Denger: I think the...

Hale: Hang on. Hang on one second please.

Denger: Mr. [I think he said Bratton] can attest to that.

Hale: Fine. But it was so outrageous and you were so appalled that it took you three weeks to file that?

Denger: No, it took me...

Hale: Wait a minute, you are saying it was from January 24?

Denger: Are you speaking to me or is this a one-way conversation.

Hale: No, I'm speaking to you, sir...

Denger: Am I allowed to speak back to you?

Hale: As soon as I get done letting the words out of my mouth stop. I'll be more than happy to allow you to do that, sir. Okay. You said it was outrageous. You put your young daughter in front of these people, alright. Which is trauma enough in my mind. But that's you. That's your deal. But you waited three weeks because it was so outrageous and this is the reason that you allowed this incident on the 26th to happen because of that. But you never filed a police report until just last week. That is what you just said. Did I not hear that correctly? So it must not have been that big of a deal. Or it never happened to begin with. And the fact that it wasn't even revealed that that occurred until it came out in the Village Voice was the first time that it was ever communicated to anyone that that occurred. Is that correct, Charlie?

Someone said no.

Brown: To my knowledge.

Hale: To our knowledge, that is [indecipherable].

Denger: It was all over the internet.

Hale: So sir, you use the internet to file complaints with the POA?

Denger: I can't talk...

Omohundro: Let's, Kirk...

Hale: {indecipherable due to overtalk}...a waste of time.

Omohundro: Simple. You're here to speak your case. And we will make a decision. This is not going to be a debate. You just say what your piece is. The Board will listen.

Denger: There's no debating here?

Omohundro: No. The facts are what they are. You're saying, your argument is egress [ingress] to your property.

Denger: Your argument without a debate, Tucker?

Omohundro: Your argument is egress [ingress] to your property. We understand that. That's the only argument you have.

Denger: No, this man just accused me of something and he said I can't talk until he is finished. Yet he never did stop talking.

Omohundro: That's the polite thing to do. I am telling your right now. You can speak and please do and tell us what your – state your case. If your case is egress [ingress] according to the Declarations, then you are done with your case and you've stated it.

Denger: This is a point-by-point discussion.

Omohundro: No it's not. It's what you do all the time. You change the subject to something...

Denger: If he wants to know why I filed a report...

Omohundro: ...change the subject to something else. The subject at hand is what we're here to talk about. Don't go away from it anymore. Discuss the subject at hand and then we'll be done.

Denger: This is all the subject at hand.

Omohundro: No it's not. It's about a police report you're talking about a police report you filed a week ago. That's not what we are here about.

Denger: That's the same subject.

Omohundro: No it's not.

Denger: Same subject. It had to do with your guard's behavior at the front gate. Now if I may speak to your reasoning, it came out in the newspaper and it said that there was no proof of that as no police report had been filed. When I read that, I said in that case, I'll go down and file a report. And that's exactly what I did. So, if you want to know what the reasoning is. That is the reasoning.

Omohundro: Okay, now we're past that. Get to the case at hand. The subject that we're here to talk about is the actions that you took at the gate the other day.

Denger: I can tell that you all do not want to discuss this.

Omohundro: No, that's exactly what we want to discuss. We don't want to discuss everything else you are bringing up.

Denger: You want to discuss everything except for what I want to talk about. Right?

Omohundro: Well, I guess you could call it that. That's what we're here – we're here to discuss this situation, so...

Jones: The agenda for this meeting was that the POA had determined that they believed you created a safety concern which would violate certain policies that you agreed to, to live here. And they brought that to our attention and said, hey, 'we're going to revoke privileges.' We're going through the right steps. You are here to counterpoint those same policies. They have read out the policies that they believe you have violated. Please rebuttal them now.

Denger: I would like to do that. One by one.

Jones: You have 20 minutes.

Denger: Okay. Now since I don't have a recorded memory, I would like to do them one by one.

Jones: Go ahead. you have them right in front of you. He's not going to read them to you again.

Denger: What do you mean? I have what right in front of me? Oh these. Oh okay, Declaration, Article, Proeprty Rights to Common Properties, Section 3. The Right of the Association to suspend [indecipherable] la la la period during any assessment...Okay, so he only put c here. He did not put the beginning where it said 'Everything in c has the exception of Section 6.'

Jones: That's great. We heard that part...

Omohundro: We're not [indecipherable due to overtalk]

Denger: In other words, none of this matters. Okay. None of Section c matters because it has an

exception it.

Jones: Okay. We appreciate that. Please move on to the next...

Denger: OKay, thank you. We can cross this one off the list. It has an exception. Bylaws, Article 3, Membership.

Denger: With the exception of the membership held by the Developer, the membership... This looks to be a definition of a Member. If the Directors have adopted published rules and regulations governing the use of common properties, facilities, provided in Article 9, Section 1, hereof, personal conduct of any person thereon is in violation of those rules. If you'll look, you'll see that this is based on the same Article 8, Section c, which has the exception in it of Section 6.

Omohundro: Duly noted. Go ahead. Next item.

Denger: Thank you. Chapter 1, Article 15, Policy, Rules Violation. Now, this is an interesting one because I remember when we made that rule. I voted for it and it's not just about people verbally abusing POA people. It includes everyone. And I made a specific point to put that in there. This is not a one-way community. The POA also can not verbally abuse members or anyone. I believe that is exactly the language that was used there. Penalty – Violations of the Board of Directors shall be considered suspension membership. Same thing. This thing all has the exception, Article 8, Section 6. That I have a right to access my property unimpaired. That means we don't have the right to even ask me a question when I come through. you don't even have a right to have me roll my window down. You don't have a right to ask me for ID. I have a right and you do not have a right to detain me and that's what you did. You want to talk about why the traffic was up there. Look at the time stamp. The time stamp on that traffic backed up was while she was there detaining me on her cell phone. Calling either Charlie or Larry or whoever she was talking to. That's when the backup occurred. After that, you got all those popsicle sticks there. Nobody can change lanes there. It's not my problem. It's your problem. Your own making, exactly what happened. Detaining me unlawfully. Detaining my entire family, unlawfully. Okay.

Denger: Penalties: Chapter 1, Article 16. Conduct. Same thing.

Denger: Article 3. Ingress and Egress. Definition Member in good standing has nothing to do with it. you cannot revoke my guard gate access. You can't remove my – deactivate my card. I have the right to come through any gate in this Village. Read it. Article 8, Section 6. It supersedes any Policy or Bylaw that were ever developed, including Section 3. Ask Rose [lawfirm].

Denger: Chapter 3. ingress and Egress Authority. I'm done. I'm gonna read my statement, if you don't mind.

[Kirk read his statement, but there were some ad libs. His statement without the ad libs is below in pdf form.

Denger: The Hot Springs Village Property Owners Association (POA) is similar to a municipality but it has no authority to make law and ordinances. I am not your adversary. I am on your side. I am on your side, Tucker. I am on your side Chris. I am on your side, Robert. I am glad to see that other two have recused themselves. Charlie's pretty good, but he doesn't understand that he is way out of his league

on overreaching what the Declaration actually tells us.

Denger: The authority the POA has to make and enforce policies is derived from The Declaration of Hot Springs Village Covenants and Restrictions (which is the Declaration). The Declaration is a legally binding contract between Hot Springs Village Property Owners Association and its members. That is the contract right there. That's it. The rights and obligations of the POA and the members are delineated in this document.

Denger: The authority of the POA is limited to the authority granted to it in the Declaration and any policy or operating procedure that conflicts with the provisions of the Declaration is unenforceable. A member's rights, except for the member's rights to ingress or egress over all private ways of access, are limited by the rights granted to the Association in Article VIII of the Declaration.

Denger: The Declaration gives no authority to the Association to limit the member's right of ingress or egress over all private ways of access by suspending the member's rights of enjoyment in Article III, Section 3(c) or charging service or use charges, admissions or other fees in Article VIII, Section 3(c).

Denger: The POA has no authority to suspend a member's ingress or egress over all private ways of access whether by a security guard at a manned gate or a deactivated gate card at an unmanned gate. This is a right granted to the member by the Declaration not subject to limitations by the POA.

Denger: While POA management may say the vehicle decals are "voluntary", the decal fees amount to a charge or a fee to enable members to use the right lane for access while denying unimpaired access to the right lane to members without the sticker. The POA website and POA printed materials do not clearly state that the decals are voluntary. The Declaration prohibits use charges or fees related to a member's ingress over all private ways of access for vehicles for himself and members of his household.

Denger: It's that simple, Tucker.

Denger: Article III, Section 3 states "The rights and easements of enjoyment created hereby with the exception of the rights and easements created in Section 6 of this Article shall be subject to the following: With the exception, everything that follows has the exception of the right to ingress and egress. (c) the right of the Association to suspend the enjoyment rights (this is what's following – which has an exception to it) to suspend the enjoyment rights of any member or associate member... for any period not to exceed thirty (30) days for any infraction of its published rules and regulations has an exception and the exception is my right to come to my home. That suspension doesn't count. It's clearly stated. I hope while you are deliberating, you analyze it to come up with a fair judgment. (d) The right of the Association to charge reasonable service or use charges – again, has the exception of Section 6 – for the use, service, and enjoyment of the Common Properties.

Denger: The Declaration gives the POA no authority to limit a member's ingress and egress to their property. The Declaration does allow for the Association to impose limitations on members and guests, however. [I think he meant members' guests.] That you have the authority to do. Members' guests but not residents.

Denger: Article VIII, Section 6 – Private Ways of Access for Vehicles states "Each owner shall have a right of ingress and egress and passage over all private ways of access for vehicles for himself,

members of his household, his guests and invitees, subject to such limitations as the Association may impose from time to time as to guests and invitees. That's all it says. Not to the owner.

Denger: The Ingress and Egress policy in Hot Springs Village, Arkansas Property Owners Association Policy Guide Chapter 3, Article 1, Section 1, conform to the provisions of the Declaration as it states: The Association maintains gated entrances to Hot Springs Village to assist members, guests, visitors, and others. The number of gates, the type of gate, and the location of each gate will be determined by operating procedures.

Denger: Then it says, Hot Springs Village property owners have the unimpaired right to ingress and egress to property owned by him/her. Remember, this is not the Declarations. This is the Bylaws. No, this is the Policy. Sorry. All Guests of members and Visitors (but anyhow, that section – that part there about the unimpaired right is in your policies and its derived from Article 8, Section 6. All Guests of members (now it is just talking about Guests again) Guests and Visitors to businesses and other POA-approved entities (which has nothing to do with me) will be issued an appropriate vehicle identification pass.

Denger: The enforcement provision in Chapter 3, Article 1, Section 1 only applies to guests of members and visitors because the POA has no authority to deactivate gate cards of a member under the provisions of the Declaration.

Omohundro: Kirk, your point keeps going back to one thing. You've said it. No, it has.

Denger: I am reading. If you'd like to ask me questions, wait 'til I am finished.

Omohundro: No, I feel like we're done. Your only point, correct me if I am wrong. Your point is egress.

Denger: No, that is not my point.

Omohundro: What is your point then? What else are you talking about?

Denger: My point – I am reading it to you. You don't even want to hear what I have to say?

Omohundro: You are reading a book.

Denger: Wait a minute. I've got...

Jones: You have three more minutes. Continue your statement.

Denger: Wait a minute. How many?

Jones: Three minutes. Continue your statement.

Denger: Okay. The enforcement provision of Chapter 3 only applies to guests of members and visitors because the POA has no authority to [indecipherable] each owner shall have the right policy. Any misuse, abuse, of privileges of decals may result in confiscation has to do with exception.

Denger: Since the security guards at the front gate are not Arkansas law enforcement officers, it is clear they, like any other citizen, have no legal authority to stop or detain members and require them to

show ID or instruct them to pull to the side. The Village Police cannot stop and detain anyone unless they have probable cause to believe the person has committed a crime. The Declaration is the contract between the POA and its members. The POA's ingress and egress policy does not grant the POA the authority to stop members and demand identification. The security guards at Little Rock may have this authority but the Securitas private security guards at the West Gate do not.

Denger: I attempted to exercise my unimpaired right of ingress to my residence identifying myself as a property owner and was denied access. The POA contracted personnel denied access to the right lane because I did not purchase a vehicle sticker that is not required. The security guard at the West Gate detained me, and after her conversation on the phone, asked for my "card" and I told her "I don't have it". Then she instructed me to turn around, you can't come in. I told the security guard that I live here. I was then further detained and instructed to pull to the side. The guard said I will call the cops and I replied call them now. The Guard had seized my person and prevented my right of ingress, along with four of my household. I felt my rights being violated was a crime and did not feel it appropriate to leave the scene of the crime. After being unlawfully detained for 13 minutes, the police arrived and correctly told me to proceed to my residence.

Denger: Policy, Chapter 1., Article 15, section 3. ...aggression directed at members and all others is prohibited. I have charged the POA with disorderly conduct, assault, unlawful detainment, causing emotional distress to four children, falsifying reports, releasing personal documentation in excess of contact information without notification according to Policy, Chapter 1, section 3, A., resulting in defamation of character and attempting to rig the election of Directors of a Non-Profit Corporation of the State of Arkansas, by unlawfully suspending my privileges.

Denger: Thank you.

Omohundro: Okay. We'd like to go into Executive Session and discuss this, but you each need to waive the three-day notice for Executive Session if you would, please.

All of the Directors waived their three-day notice.

Omohundro: Please everyone, clear the room if you would, so we will – I guess we will announce a decision after the Executive Session.

[Click here](#) to read the decision.

PDF of Kirk Denger Statement at February 23, 2022 Board Meeting

[HSVPOA-Special-Board-Meeting-February-23-2022-kirk-suspension-appeal-statement](#)

This meeting was live-streamed to the Official HSVPOA YouTube channel and also recorded. [Click here](#) to visit the POA on YouTube.

Agenda for Special Board Meeting – February 23, 2022

ORDER-OF-BUSINESS

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