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**Nov 29, 2019**

VIA FIRST CLASS MAIL  
AND VIA EMAIL TO [gmorgan@mjcpa.com](mailto:gmorgan@mjcpa.com)

Greg Morgan  
Mauldin & Jenkins  
200 Galleria Parkway, Suite 1700  
Atlanta, GA 30339

cc: Big Canoe POA Board, Big Canoe General Manager

**BIG CANOE VOTER COMPLAINT & NOTICE**

Dear Mr. Morgan,

I am writing to you to alert you to improper process in the Votes currently underway in Big Canoe. This is in regards to both the POA Board Election vote, and the Covenant Change vote. Substantial numbers of property owners are being improperly denied their voting rights. I am further notifying you of potential litigation if this process is not corrected. At this point, since the Vote has already gone out, the only acceptable, and I believe legal, solution would be to Stop the Votes, reassess the correct legal process, properly update the community in this regard, and then restart the voting process with proper legal procedures being followed.

It has come to my attention that a substantial number of Properties (*estimated by one source to be 323*) have been denied eligibility status in the upcoming election. The process for determining eligibility, as communicated recently on multiple occasions by the POA Board and/or General Manager, is not in keeping with the legal process outlined within the Big Canoe Declarations & Covenants ("D&C") , and the By-Laws.

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As I begin, please note that full downloadable copies of all referenced **Exhibits may be found at the following web page:** <http://bigcanoe.themountainvoice.com/bc-vote-2019/>. Links within the PDF Version of this document "may" redirect also.

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I was alerted to this situation when I received letters from Nora Chisano / Lot 2564 ([Exhibit "K"](#); [Exhibit "L"](#); and [Exhibit "M"](#)). Other property owners that have been vocal on Facebook groups, and appear to also have been denied voting eligibility include Cynthia Hendry, Susan Best, Cathi Richardson and Debi Griffin Dugger.

**The gist of the Complaints being made by the property owners is that they are being improperly being denied ballots in the upcoming POA Board Election**, due to the fact that the Board /GM had

improperly interpreted the eligibility status of properties on the October 31, 2019 "Record Date"\*, said "Record Date"\* for the vote established per Georgia Code ([Exhibit "C"](#)).

**NOTE:** *No Objections are being made regarding the choice of "Record Date", the choice of October 31, 2019 appearing to be a completely satisfactory choice of dates. The issue is in the process used to establish "eligibility" on said date.*

I followed up with a Records Request ([Exhibit "D"](#)) to the General Manager, Jill Philmon requesting the documents they were relying upon in determining the ineligibility of the aforementioned property owners, and all of the other unknown property owners similarly affected.

GM Jill Philmon responded almost immediately via Email ([Exhibit "E"](#)) to my Record Request. I responded to Ms Philmon's Email, copying the entire Board, with an email of my own ([Exhibit "F"](#)) and demanded that *"the Election be immediately stopped, correct and legally understandable guidance be issued to property owners, and then the election recommenced using legal methods, ensuring that all property owners are legally aware of their responsibilities, and that no property owners are illegally excluded from voting privileges."*

Ms Chisano also made similar written demands of the entire Board, and the GM, and in two of the emails ("L" & "M") included Mauldin & Jenkins in the notices. ([Exhibit "K"](#); [Exhibit "L"](#); and [Exhibit "M"](#)). I am told others have as well.

This letter further serves to notify all parties - the Big Canoe Board of Directors, the Big Canoe POA General Manager Jill Philmon, and Mauldin and Jenkins Partner Greg Morgan - of Violation Of Voting Process in the 2019 POA Board Election, and Covenant Change Vote, both currently underway. Further, this notification is intended to notify you of potential litigation if the situation is not satisfactorily and legally resolved. Resolution in this matter is currently defined by me as:

**The Election be immediately stopped, correct and legally understandable guidance be issued to property owners, and then the election recommenced using legal methods, ensuring that all property owners are legally aware of their responsibilities, and that no property owners are illegally excluded from voting privileges.**

**With all of the above said, let me now provide, in detail, the reasons for my belief that these Votes are in Violation of Legal Voting Process for the Community of Big Canoe.**

Big Canoe Property Owners are governed by the Big Canoe Property Owner's Association ("BCPOA"), a non-profit that operates under the legal framework of a system of Declarations and Covenants ("D&C"), By-Laws, Policies & Procedures, Rules, etc.

General Manager Jill Philmon has in her Email Response ([Exhibit "E"](#)) to Hopkins Record Request, stated that the following Governing Document References are applicable to providing legal framework for decisions regarding voter eligibility in our BCPOA votes, a quote from Exhibit "E" being as follows:

**Establishes due date:**

Governing documents; 1988 Covenants; Article 6, Section 7 ([Exhibit "A"](#))

**Suspension of rights:**

Governing documents; Bylaws; Restated 2006, 2.7 ([Exhibit "B"](#))

The POA Board also sent a *childish* "Memo" to Property Owners on November 27 ([Exhibit "R"](#)), which also identified the above 2 documents, and subsections, as being our legal guide in the matter, excerpting as follows:

The section of the Covenants dated March 26, 1988: Article VI, Section 7: Date of Commencement and Proration of Annual Assessments Due Date. ([Exhibit "A"](#))

In addition, the 2006 By-Laws state in Section 2. 7 Suspension of Rights ([Exhibit "B"](#))

Myself personally, and other property owners, have also reviewed the issue of what exactly governs the eligibility of voting rights, and we concur with the General Manager and the Board of Directors in their respective statements above, that the Legal Language which governs this situation is indeed found in the referenced sections, which I now reference more fully below for your convenience:

**From the 1988 Declarations and Covenants:**

**Section 7. Date of Commencement and Proration of Annual Assessments.**  
**Due Date.** The annual assessments shall be fixed on a calendar year basis and shall be due and payable monthly in advance commencing January first of each year. Owner shall commence payment of the assessment on the first day of the month following the date of closing. Payment of the assessment shall be past due thirty (30) days after the date of billing. ([Exhibit "A-1"](#) - exact snippet)

**From the 2006 Amended By-Laws (Section 2.7):**

**2.7. Suspension of Rights.** If a property is shown on the POA's books and records to be more than thirty (30) days past due in any assessment or charge, if any Member or Occupant of the property is in violation of the POA's Legal Instruments, or if the voting rights for such property have been suspended, neither the Member nor the Member's spouse shall be eligible to: (i) vote, either in person or by proxy; (ii) act as proxy for any other Member; (iii) be issued a written ballot or proxy; (iv) be elected to the Board of Directors; (v) vote as a Director (if serving on the Board of Directors); or (vi) use the Common Properties. In establishing the total number of eligible votes for a quorum, a majority, or any other purposes, such property shall not be counted as an eligible vote.. ([Exhibit "B-1"](#) - exact snippet)

**Let me put this in plain English:**

The Board improperly turned a lot of Eligible Voters into In-Eligible Voters. They chose Oct 1 as their "date of billing" according to the D&C, and they chose October 31 as there "Record Date" according to OCGA 14-3-707.

In regards to Oct 1 Bills, the payments became "due" on the 30th, became "past due" on the 31st (per D&C); and became 30 days "past due" on November 29, and became "more than 30 days past due" on November 30. (per By-Laws). NOBODY that hadn't paid their October bill by October 31st was legally ineligible.

IF they had wished to properly determine ineligibility using October 31 as the Record Date, then they should have used September 1st 2019 as the "date of billing" they based calculations off of.

**It is clear that the language being misinterpreted by the Board and GM is as follows:**

"The annual assessments shall be fixed on a calendar year basis and shall be **due and payable monthly in advance** commencing January first of each year..."

The interpretive error the Board is making is that they are taking that language out-of-context to other language and realities, those being as follows:

1. The plain language of the sentences that directly follow the above language, which states in further clarification SPECIFICALLY to the "past due" time frames, stating as follows: "Owner shall commence payment of the assessment on the first day of the month following the date of closing. Payment of the assessment shall be past due thirty (30) days after the date of billing." The initial reference to "due and payable" is being erroneously interpreted to indicate a FINAL DUE date, but the rest of the language of the paragraph indicates otherwise, indicating that this is simply a "commencement" of the payment. The language goes on to clearly define the date at which the payment officially becomes "past due", and that is clearly stated as "thirty (30) days after the date of billing." And the "date of billing" is clearly the "first day of the month".
2. Further legally confusing the situation are actions by the POA Staff, which could be construed as "Fraudulent" misrepresentations. On the actual Bills that are sent out by the POA, at the top of each Bill, it is clearly marked, **IN BOLD**, the following notice - "**Balance Due by the 25th of the Month**". You can see evidence of this in my own Bill ([Exhibit "O"](#)). This potentially fraudulent misrepresentation gives Property Owners the clear impression that the 25th is the **Due Date**, and NOT the 1st ("due and payable in advance"), and NOT "thirty (30) days after the date of billing".
3. Further precedence exists in a similar 2008 Vote ([Exhibit "G"](#)), in which ineligibility to vote was determined by the following language:

### **3. Who votes?**

Property owners in good standing can vote.

### **4. What does good standing mean?**

No dues, fees, or assessments chargeable by the POA are delinquent for more than **61 days** or more.

It is important to note that the above vote was 2 years after the 2006 By-Laws were implemented, so the above vote was supposedly being conducted under the exact same guidelines that are still currently in place.

4. Another discrepancy exists in the plain language of the 2006 By-Laws, which makes it clear that the POA Board & General Manager are "Selectively" choosing what interpretations to follow, and which to ignore. The Board / GM have "Suspended" property owner voting rights, but they have NOT declared them ineligible to use the "Common Properties", as is **MANDATED** in the same 2006 By-Laws Section 2.7, when it states with crystal clear clarity:

**...if the voting rights for such property have been suspended, neither the Member nor the Member's spouse shall be eligible to:..... (vi) use the Common Properties.**

And yet, there is no evidence that of the 323 Properties that have been declared ineligible to vote in the POA Election, that any of them have had their use of the Common Properties suspended. The language in the By-Laws does not indicate this is an "Optional" choice. This is another indication of how serious denying the right to a vote is, that it automatically triggers other restrictions, and yet these other mandatory restrictions are NOT being imposed.

5. Monthly Assessment Billing goes out on the 1st of the month, however Bills are often not received in the mail until after the first. It is a Prima Facie FACT that it is not rational, reasonable, practical, nor even possible that a property owner could PAY a bill before even receiving it. Even if they received it on the 1st day of the month, they could not possibly expect to have it mailed and received on the same said day. U.S. Postal system simply isn't that good. Furthermore, the Big Canoe Bills contain the following statement:

**Interest of 18% per annum will be charged on all delinquent accounts.  
Delinquency policy can be found on our website: [www.biqcanoepoa.org](http://www.biqcanoepoa.org)**

Yet the fact is, that the POA does not charge the "delinquency" "interest" on payments that come in between the dates of the 2nd to the 25th of the month - even though they are now arguing in this Voter Ineligibility situation, that ALL payments made during those periods of time during a month would be "past due" and "delinquent". This is another substantial discrepancy in how the POA treats payments.

6. Lastly, the POA allows people to set themselves up for automatic, or recurring, billing. ([Exhibit "H"](#)). The website portal allows people to "Schedule" their payments for a date of their choice, using the following exact language:

**Monthly Payment on set day of the month**  
Choose a date for the payment to start. Payments will be processed monthly on the same date afterward.

This "Optional Payment Date" is hardly in keeping with the POA's sudden "Voter Ineligibility Position" that a person is DUE in a hard and fast manner on the 1st of the month.

The interpretations of the POA Board, the GM, and various other Committee Members pontificating on Facebook, all from "non-licensed-attorneys", fall short of the facts - as seen in the plain language of the 1988 Covenants ([Article VI: Section 7](#)) and the 2006 By-Laws ([Section 2.7](#)) - these very documents and sections being admittedly the sole sources of legal reliance for the recent decisions regarding property owner voter ineligibility in what is believed to involve a very substantial 323 Properties! A number which could, and most likely would, sway the outcome of the upcoming elections.

Furthermore, the surrounding and situational facts as outlined in points 1 - 6 above, destroy the argument the Board makes, that Payments have a "Drop Dead Due Date" on the 1st of the month, and that 30 days later they are already 30 days "Past Due".

**I HEREBY REPEAT MY DEMAND, THAT:**

**The Election be immediately stopped, correct and legally understandable guidance be issued to property owners, and then the election recommenced using legal methods, ensuring that all property owners are legally aware of their responsibilities, and that no property owners are illegally excluded from voting privileges.**

**I further hereby give Notice, that failure to comply may result in litigation against the BCPOA Board, General Manager, and Mauldin & Jenkins.**

Please note that full, downloadable copies of all Referenced Exhibits may be found at the following web page: <http://bigcanoe.themountainsvoice.com/bc-vote-2019/>

Sincerely,

- david hopkins

Big Canoe Lot Owner: Lot 4002

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