FORMAL FOLLOW-UP AND RESPONSE TO THE ASSOCIATION'S DISMISSAL OF DEMAND NOTICE

Re: Unauthorized Business Use of Class A Residential Property – Petit Crest Villas, Lot 636
Parcel No.: 046A 109 | 29 Wolfscratch Dr, Big Canoe, GA

Date: February 27, 2026
Delivered Via Email, AskThePOA, 1st Class Letter addressed to BCPOA as shown below

To:
Board of Directors
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Cc:
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I. PURPOSE OF THIS LETTER

On January 18, 2026, I submitted a Formal Demand for Explanation, Document Production, and Immediate Remedial Action to the Board, management, legal counsel, and the Election Committee regarding the unauthorized commercial use of Lot 636 within Petit Crest Villas, and the governance and election-integrity implications arising from that use.

That demand letter requested specific documents, explanations, and corrective action. It asked for a written response within seven calendar days.

The Association's response, delivered via AskThePOA Ticket #19905, characterized my concerns as "completely unfounded," asserted that the commercial use of Lot 636 is "Grandfathered" under Georgia law, and stated that the POA is "barred from taking any enforcement action."

No legal authority was cited. No covenant provision was referenced. No board resolution was produced. No recorded amendment was identified.

This letter responds to that dismissal, identifies what remains unanswered, and places the Board on formal notice of the legal and governance exposure created by its stated position.

II. THE "GRANDFATHERED" CLAIM DOES NOT SURVIVE SCRUTINY

The Association's entire defense rests on a single word: "Grandfathered." That word was offered without citation, without legal analysis, and without reference to any governing document. It is not a legal conclusion. It is a label applied to a situation the Association has chosen not to address.

Under Georgia property law, a lawful nonconforming use — what the Association loosely calls "grandfathered" — requires that the use was **lawful when it began**. A use that violated existing restrictions from its inception cannot be grandfathered, regardless of how long it has been tolerated.

The commercial-use prohibition in Big Canoe does not originate in 2008. It does not originate in the Rules & Regulations. It originates in the **1972 Class "A" Covenants**, recorded on October 9, 1972, in Deed Book 23, Pages 198–208 (Pickens County) and Deed Book 19, Pages 290–300 (Dawson County).

Article II, Section 2(a) of those original Covenants states:

> *"All Residential Lots shall be used for residential purposes exclusively."*

It continues:

> *"...provided further, that such building is not used for any activity normally conducted as a business."*

This restriction has existed since the founding of Big Canoe's covenant structure. It is not a regulation adopted later. It is not a rule that can be argued to have postdated the commercial use. It is the **original, foundational restriction** governing Class A residential property.

The 2008 Rules & Regulations (Rule A.13) did not create a new restriction. Rule A.13 clarified and operationalized a prohibition that had been in the governing documents since 1972. It defined what constitutes business activity, established objective criteria, and allowed only narrow, incidental home-based activities that are not apparent, generate no visitor traffic, and are consistent with residential use. It retained the bright-line prohibition:

"No residential unit may be used solely for business/commercial purposes."

A full-time staffed guest check-in and operations office — with permanent signage, daily visitor traffic, and dedicated parking — does not fall within those limited allowances. It did not fall within them in 2008. It did not fall within them in 1972.

For the "grandfathered" claim to hold, the Association must demonstrate that commercial office use of Lot 636 was lawful at its inception — that is, that it predated or was otherwise exempt from the 1972 residential-only covenant.

The Association has not demonstrated this. It has not attempted to demonstrate this. It has simply asserted it.

III. THE ANTI-WAIVER CLAUSE — PRESERVED IN BOTH 1972 AND 1988

The Association's response stated that it is "barred from taking any enforcement action." This is a remarkable claim, and it is directly contradicted by the Association's own governing instruments — not once, but twice.

The **1972 Class "A" Covenants, Article IV(b)**, provide:

> *"The failure to enforce any rights, reservations, restrictions, or condition contained in this Declaration; however long continued shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement."*

That language was drafted specifically to prevent the argument the Association is now making. The founders of this covenant scheme anticipated that enforcement might lapse and explicitly preserved the right to enforce at any time, regardless of duration.

Sixteen years later, the **1988 Amended and Restated General Declaration, Article IX, Section 4 (Enforcement)**, restated and preserved this identical protection:

> *"The failure to enforce any rights, reservation, restrictions, or condition contained in this Declaration, however long continued, shall not be deemed a waiver of this right so to do hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or effect its enforcement."*

This is not a stale provision buried in a superseded document. This clause was deliberately carried forward into the governing restatement that remains in effect today. It appears in both the supplemental Class "A" Covenants and the General Declaration.

The Association is not "barred." Its own covenants — in two separate recorded instruments spanning sixteen years — expressly state that failure to enforce, *however long continued*, shall not constitute a waiver and *shall not bar or affect enforcement.*

The question is not whether the Association *can* enforce. The Covenants expressly say it can. The question is why it won't — and who benefits from that decision.

IV. SELECTIVE NON-ENFORCEMENT CREATES LEGAL EXPOSURE

By publicly confirming that it is aware of a commercial use that violates the governing documents and simultaneously declaring it will not enforce, the Association has created a documented record of selective enforcement.

Georgia courts have consistently held that selective or inconsistent enforcement of restrictive covenants can undermine or defeat enforceability. Long-standing acquiescence in violations can result in waiver or abandonment of the restriction itself, and arbitrary enforcement can be invalidated as capricious. See *Davis v. Miller*, 212 Ga. 836 (1957); *Kirkland v. Morris*, 259 Ga. 482 (1989); *Southland Owners Assn., Inc. v. Myles*, 252 Ga. App. 522 (2001); *King v. Chism*, 632 S.E.2d 463 (Ga. Ct. App. 2006).

The Georgia Supreme Court made this principle explicit in *Davis v. Miller*:

> "Acquiescence in violations of a restrictive covenant may amount to an abandonment of the covenant."
> — *Davis v. Miller*, 212 Ga. 836, 840, 96 S.E.2d 498 (1957)

The anti-waiver clauses in the Declaration are powerful protections — but they are not a blank check. Courts evaluate the totality of circumstances, including whether enforcement has been so inconsistent that enforceability itself has been compromised. By publicly refusing to enforce against the largest voting bloc while maintaining enforcement authority over other owners, the Association creates documented selective enforcement that materially increases litigation risk to the enforceability of the covenant structure.

If a homeowner elsewhere in Big Canoe is cited for operating a business from a residential unit, that homeowner's counsel will ask a straightforward question: *Why did the Association enforce against my client but not against Lot 636?*

The Association's AskThePOA response — confirming knowledge, confirming inaction, and offering no legal basis — will be **Exhibit A**.

V. THE DEMAND NOTICE QUESTIONS REMAIN UNANSWERED

The January 18 Demand Notice requested specific documents and explanations. The Association's response addressed none of them. For the record, the following remain outstanding:

1. Written identification of the authority permitting business/commercial use of Lot 636 — including board resolutions, amendments, variances, legal opinions, or management agreements.

   Not provided.

2. Dates, votes, and participants involved in any decision to permit or tolerate this use.

   Not provided.

3. Confirmation whether any other Class A residential properties are allowed similar business use.

   Not provided.

4. Clarification whether Petit Crest Villas votes have been relied upon in recent election or quorum determinations.

   Not provided.

5. Records related to the decision-making process following the failed quorum election, including the role of the Election Committee.

   Not provided.

The Association's response did not deny the commercial use exists. It did not produce any written authorization. It did not address the election-integrity questions. It simply declared the matter closed.

Closing a ticket is not the same as answering the questions.

VI. FORMAL REQUESTS

In light of the Association's failure to substantively respond, I formally request the following:

1. Identification of the specific legal authority — statute, covenant provision, recorded amendment, or court order — under which the Association claims to be "barred from taking any enforcement action" regarding Lot 636. A conclusory assertion is not sufficient.
2. Identification of the date on which commercial use of Lot 636 commenced, and any documentation establishing that this use was lawful under the governing instruments in effect at that time.
3. Production of any board resolution, management agreement, legal opinion, or written communication authorizing or tolerating commercial use of Lot 636, from any period.
4. A statement of the Association's position on whether the anti-waiver clause — Article IV(b) of the 1972 Class "A" Covenants and Article IX, Section 4 of the 1988 Amended and

Restated General Declaration — remains in effect, and if so, how the Association reconciles that clause with its claim that it is "barred" from enforcement.

5. Confirmation whether any other Class A residential properties have been granted similar tolerance for commercial use, and if so, under what authority.

This request is made pursuant to **my rights as a Member under O.C.G.A. § 14-3-1602.**

I request a written, substantive response within **five (5) business days of receipt** of this letter.

Failure to respond will be interpreted as confirmation that no lawful authorization exists and that the Association's "grandfathered" characterization is without documentary support.

VI-A. STATUTORY DEMAND FOR INSPECTION AND COPYING OF RECORDS

Pursuant to O.C.G.A. § 14-3-1602(b) and (c), and in addition to the questions and requests set forth above, I hereby make a formal statutory demand to inspect and copy the corporate records identified below.

This demand is made in good faith and for a proper purpose directly related to my interests as a Member of the Association, including evaluation of covenant enforcement consistency, Board governance actions, quorum determinations, and election integrity.

Pursuant to O.C.G.A. § 14-3-1602(c), I request that copies of the records described below be produced in electronic format (PDF) via email. If the Association elects to provide physical copies, I will reimburse reasonable copying costs as permitted by statute.

The records requested are as follows:

1. All minutes, excerpts of minutes, written consents, resolutions, or recorded votes of the Board of Directors in which the commercial use of Lot 636 (Petit Crest Villas) was discussed, authorized, ratified, reviewed, or otherwise addressed.
2. Any written legal opinions, memoranda, or correspondence from Association counsel relied upon in determining that commercial use of Lot 636 is "grandfathered" or that the Association is "barred from taking any enforcement action."
3. All documents reflecting enforcement actions taken, declined, or resolved concerning commercial use of any Class A residential property within the past fifteen (15) years.
4. Final certified vote tabulations for the 2026 Primary and General Board Elections, including:
    - Total ballots issued
    - Total ballots received
    - Quorum calculations
    - Vote totals for each candidate

5. Records reflecting the number of Class A Improved Lot votes attributed to Petit Crest Villas for the 2026 Primary and General Elections, and documentation reflecting how those votes were aggregated, certified, or counted for quorum purposes.
6. Minutes, resolutions, written consents, or communications reflecting the decision to re-mail ballots following the failure to reach quorum, including documentation identifying the authority relied upon for that action.

If the Association contends that any requested document is privileged or otherwise exempt from inspection, it shall identify each withheld document with reasonable specificity and state the legal basis for withholding it.

This statutory demand is separate from, and in addition to, the substantive questions set forth in Section VI above.

VII. PRESERVATION OF RECORDS

The document-preservation directive contained in my January 18, 2026 Demand Notice remains in full effect. The Association is hereby directed to preserve all documents, communications, emails, texts, memoranda, agreements, and electronic records relating to Petit Crest Villas operations, covenant enforcement, voting procedures, quorum determinations, and election administration. This directive extends to records held by management, counsel, and any third parties acting on behalf of the Association. Routine destruction or alteration of such records after receipt of this notice may constitute spoliation.

VIII. RESERVATION OF RIGHTS

Nothing in this letter waives any rights or remedies available to me or other members under:

- The Declaration
- The 1972 Class "A" Covenants
- The 1988 Amended and Restated General Declaration
- The By-Laws and Rules & Regulations
- Georgia nonprofit corporate law (O.C.G.A. § 14-3-101 et seq.)
- Fiduciary duty principles
- Election and governance standards

All rights are expressly reserved.

IX. CONCLUSION

The Association was given a clear opportunity to produce documentation, explain its position, and address legitimate governance concerns. It chose instead to dismiss the inquiry without analysis, without authority, and without transparency.

That response now exists in writing and will remain part of the documented record of this matter.

The 1972 Covenants prohibited commercial use of residential property from the founding of this community. The 1988 Restated Declaration reinforced and preserved both the use restrictions and the anti-waiver enforcement protections. The 2008 Rules operationalized those prohibitions with specific, objective criteria. And the Association has now publicly confirmed that it knows about the violation and will not act.

If the Association has acted properly, producing the requested documentation should present no difficulty. If it has not, the membership is entitled to know — particularly during an election cycle that has already been marked by procedural failures and disputed process. To be clear, in both the Primary and the General Election, the margin separating winning and losing candidates was smaller than the voting power of Petit Crest Villas alone — meaning that bloc, by itself, held the numerical capacity to change the result.

I look forward to a substantive written response.

Respectfully,

2/27/2026

David Hopkins
Member, Big Canoe Property Owners Association
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10887 Big Canoe
Big Canoe, Georgia 30143
themtnsvoice@aol.com

EXHIBIT A

09-Feb 04:24pm - Scott Auer replied

Scott Auer

Mr. Hopkins,

The Big Canoe POA Board of Directors has reviewed the issues that you raised below regarding the alleged business use of Lot 636 and signage related to the check-in office at Petit Crest Villas. As you are probably aware, the check-in and office signs for Petit Crest Villas have been installed and in use for at least fifteen (15) years (likely longer). As such, any alleged non-conforming use and/or signage that may exist is deemed to be Grandfathered and, pursuant to Georgia law, the Big Canoe POA's Board of Directors is barred from taking any enforcement action against the Petit Crest Villas Owners Association, Inc. regarding same. Your allegations that Petit Crest has any "economic benefit" from using Lot 636 as a check-in office or that there could be any perceived or actual conflict of interest regarding such use and/or Petit Crest's voting rights are completely unfounded and there will be no action taken by the Big Canoe POA Board to "start the election process over" for the election of two Big Canoe POA Board Members currently in progress.

Scott Auer, General Manager