



**NOWACKHOWARD**  
COMMUNITY ASSOCIATION ATTORNEYS

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August 27, 2018

**VIA EMAIL: [themtnsvoice@aol.com](mailto:themtnsvoice@aol.com)**

David Hopkins  
Big Canoe

RE: Big Canoe Property Owners Association, Inc.

Dear Mr. Hopkins:

I am writing to respond to your seven-page PDF Request to Review and Copy Records that you submitted to Jill Philmon on August 15, 2018. For the reasons I will discuss, the Association cannot comply with your requests to provide you with records which are defined in the Big Canoe Policies and Procedures as "Confidential" and which records you agree are not those which a member has the right to see and copy pursuant to the Georgia Nonprofit Corporation Code, O.C.G.A. §14 - 3 – 1601 and 1602 within 5 days of a request.

Premitting the necessity for the provision allowing inspection of confidential information under special circumstances, it is an inherent power of a Board of Directors to permit access to more records than required by the Code. You are also requesting a waiver of the attorney- client privilege, inter-corporate communication privilege and details of negotiations that are subject to standard nondisclosure commitments. While vested with the authority to permit access to more records than required by the Code and to waive privileges, with the consequences of that decision directly affecting the members, doing so must be in conformance with the standards of conduct of directors and officers found in Code Sections §14-3-830 and 842. The information and waivers must also not breach the fiduciary duty of confidentiality of corporate information. I have advised my client that it is my opinion that providing the requested records and waiving privileges would be a breach of those duties.

While expecting that the board's decision will be characterized as proof that there is evidence of wrong doing, it was unexpected that such a characterization would be made even before this response. In an email dated the evening of August 20th, a member acted on your behalf in requesting that all the information you requested be furnished to you by the appropriate deadline. He posits, "if the Board and all third-party vendors acted appropriately the disclosure of the required [sic] documents would end any speculation of unethical or illegal behavior by anyone." Rather than trying this matter in the court of public opinion, it is a matter that can be resolved by the superior court by seeking a declaratory judgment on the correctness of the Boards decision not to violate the standards of conduct and not breach a fiduciary duty. If ordered by a court to do so, it exonerates the Board from claims for breach of duty were it to voluntarily act as you have requested. I will accept service of process and otherwise expedite the case.

I do not believe that any of the records you have requested are on the lists of documents under the Code. If you disagree, please identify the documents that you believe the Code requires be provided.

Sincerely,

George E. Nowack, Jr.

GEN/cb

*The Counsel Every Community Needs*