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September 25, 2020

VIA FIRST CLASS MAIL

AND VIA EMAIL TO: sauer@bigcanoepoa.org, bcrouch@bigcanoepoa.org,
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General Manager: Scott Auer;
Board of Directors: Bob Crouch; Lou Stephenson; Wayne Crawford; Candace Robertson; Jay
Goldman; Regis Falinski; Phil Baldwin
Big Canoe Property Owners Association, Inc.
10586 Big Canoe
Jasper, Georgia 30143

Kimberly C. Gaddis, Esq.
GADDIS & LANIER, LLC
3330 Cumberland Blvd.
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Atlanta, Georgia 30339

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

BIG CANOE VOTER COMPLAINT & NOTICE

To whom it may concern,

I am writing to you to alert you to improper process in the Vote currently underway in Big Canoe. This is specifically in regards to the Creek 9 Initiative vote. To save time, I am addressing this notice to several groups of individuals as referenced above. I will begin with a general overview directed to all recipients of this communication, and will further down provide direct messages to specific subsets of the recipients.

[continued on following page]

GENERAL OVERVIEW:

The Creek 9 Initiative Voter Ballot contains language on page two as follows:

QUORUM REQUIREMENTS FOR ACTION TAKEN WITHOUT A MEETING:

Per Article II, Section 2.5(C) of the Bylaws:

Approval by written ballot shall be valid only when the vote cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the vote of approval equals or exceeds that which would be required to approve the matter at a meeting at which the total vote cast was the same as the vote cast by ballot.

Per Article II, Section 2.4 of the Bylaws:

- (1) Ballots representing thirty-five percent (35%) of the eligible votes (2,004) must be returned by September 30, 2020, in order to meet the required quorum to count the ballots.
However, if the number of required ballots are not returned by this date, the afore signed **Member hereby votes and agrees that the initial meeting shall** be deemed adjourned and reconvened on the same date with a new Quorum requirement as follows:
- (2) Ballots representing thirty percent (30%) of the eligible votes (1,718) must be returned by September 30, 2020, in order to meet the required quorum to count the ballots.
However, if the number of required ballots are not returned by this date, the afore signed Member hereby votes and agrees that the initial meeting shall be deemed adjourned and reconvened on the same date with a new Quorum requirement as follows:
- (3) Ballots representing twenty-five percent (25%) of the eligible votes (1432) must be returned by September 30, 2020, in order to meet the required quorum to count the ballots.

The ACTUAL Language Per Article II, Section 2.5 C. of the Bylaws reads as follows:

Action Taken Without A Meeting. In the Board's discretion, any action that **may** be taken by the Members at any annual or special membership meeting **may** be taken without a meeting by written ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the vote cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the vote of approval equals or exceeds that which would be required to approve the matter at a meeting at which the total vote cast was the same as the vote cast by ballot.

All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve 4 each matter, other than election of Directors; and (c) specify the time by which such ballot must be received by the Board of Directors in order to be counted. A ballot may not be revoked.

The ACTUAL Language Per Article II, Section 2.4 of the Bylaws is quite different from what was presented in the Ballot, and reads as follows:

- (I) Thirty-five percent (35%) of the eligible votes must be represented either in person or by proxy at the first call of a meeting;
- (II) If a quorum is not present to organize a meeting, persons representing a majority of the votes represented at the meeting **may** adjourn such meeting for up to forty-five (45) days to a designated date announced at the time of such adjournment and at the reconvening of said meeting the requirement shall be thirty percent (30%) of the eligible votes present either in person or by proxy to constitute a quorum at the reconvened meeting;
- (III) If a quorum is not present at the reconvened meeting, persons representing a majority of the votes represented at the reconvened meeting **may** adjourn such reconvened meeting for up to an additional forty-five (45) days and at the reconvening of said adjourned meeting, the requirement shall be twenty-five percent (25%) of the eligible votes present either in person or by proxy to constitute a quorum at the reconvened meeting.

SPECIFIC COMPLAINTS:

(A) If you look at the ACTUAL Language “Per Article II, Section 2.4 of the Bylaws” as referenced above, specifically at the highlighted section which include the word “**may**”, then a reasonable person with a basic grasp of law can see that that word “**may**” indicates the promise and right of a choice.

Indeed as defined in <https://legal-dictionary.thefreedictionary.com/May> the primary definition specifically describes the word in terms of a choice, as follows:

may ~ verb. a choice to act or not, or a promise of a possibility, as distinguished from "shall" which makes it imperative.

In regard to the above, the following Points of Complaint are made:

Point (A-1): The language of the By-Laws is that of Members having a choice, as indicated by the repeated use of the word “may”. The language of the Ballot removes that choice, and forces the Member to “vote and agree” to a single predefined outcome as an additional CONDITION to the act of casting their vote.

Point (A-2): A member (such as myself) that does NOT wish to agree to the additional conditions as presented, and does not wish to give up his promise of a choice, as defined in the language of the By-Laws, is therefore denied his/her right to vote.

(B) If you look at the ACTUAL Language Per Article II, Section 2.5 C. of the Bylaws as referenced above, specifically at the highlighted section which begins “All solicitations for votes by written ballot shall:”, it is clearly evident that the ballot shall “indicate the number of responses needed to meet the quorum requirements”.

In regards to the above, the following points are made:

Point (B-1): The language of the By-Laws is clear that Members must be provided with “*the number of responses needed to meet the quorum requirements*”, not number(s) plural, nor variable. Nowhere in the By-Laws does it state that Members must authorize changes to that number, nor the quorum process to change that number, as part of the ballot solicitation.

Point (B-2): When you compare the language presented on the Ballot as “Per Article II, Section 2.4 of the Bylaws” to the ACTUAL language of “Article II, Section 2.4 of the Bylaws” one becomes very concerned that the language could be seen as crafted to intentionally mislead unwary Members as to what exactly the By-Laws actually state. Specifically, the following language is presented as the actual language of the By-Laws, when in fact it is not:

However, if the number of required ballots are not returned by this date, the afore signed Member hereby votes and agrees that the initial meeting shall be deemed adjourned and reconvened on the same date with a new Quorum requirement...

It truly stretches the imagination to believe that the crafters of the Ballot Language were so grossly incompetent, that they failed to realize that prefacing such language with “Per Article II, Section 2.4 of the Bylaws” would not lead people to believe that such was actually already a part of the By-Laws. Indeed, not only does the wording seem to be intentionally crafted to

deceive.... **The language is also completely FALSE**, as there is nothing in that statement even remotely resembling language legally contained in the By-Laws "Per Article II, Section 2.4"

(C) A review of Big Canoe Social Media sites indicates that the language of this Ballot, has created enormous confusion within the community as to whether or not this change to the Quorum structure via "Ballot Condition" is even legal. There is open discussion regarding whether a Member should vote or not vote; vote but make notation on their ballot that they object to the conditional language additions; worries if a member makes such notation that their ballot may be invalidated; and concerns that if they vote but don't make notation that they will be giving up their future rights in regards to the conditional language. The confusion will undoubtedly affect the final voting numbers.

For myself, I have determined that while I believe the Creek 9 Initiative vote is incredibly important, I feel that not voting in order to avoid the establishment of a bad legal precedent is even more important, and with that in mind I have decided that **I have no choice but to NOT CAST A VOTE in this referendum given the conditional language presented, even though I strongly desire to vote, and that subsequently I feel that I have been discriminated against, and denied my right to vote on this important community matter.**

Complaint Section Summary: The Ballot Language as used in the Creek 9 Initiative Voter Referendum makes the Ballot Invalid. The added condition that Members mandatorily accept a Quorum scheme that is not defined in the Covenants nor By-Laws, as a requirement to participate in the voting process violates members rights, and is not in keeping with the legal process legally outlined within the Big Canoe Declarations & Covenants ("D&C") , and the By-Laws. If this Ballot proceeds, then I consider this Voting Process to be invalid, and that myself and possibly others have been defrauded of our legal rights.

SPECIFIC ACTIONS REQUESTED:

To the Big Canoe POA Board of Directors & General Manager:

I request that the Creek 9 Initiative Voter Referendum be immediately suspended. If the Big Canoe POA wishes to recast the Vote, then they should do so by preparing a Ballot that provides Members with a clear "FOR" or "AGAINST" vote, and remove the language that burdens Members with any additional Conditions that go against the legal process as legally outlined within the Big Canoe Declarations & Covenants ("D&C") , and the By-Laws. Please consider this letter to constitute legal notice of the existence of concerns that have been laid out in this communication.

To Mauldin & Jenkins:

As you are a legal participant in this Voting Process, I request that you review the process issues I have outlined and your involvement in this process, and if you determine that the Ballot is invalid or that your involvement may be contributing to an invalid and/or illegal process, that you notify the Big Canoe POA of such opinion, and that you excuse yourself from participation in the process. Please consider this letter to constitute legal notice of the existence of concerns that have been laid out in this communication.

To Kimberly C. Gaddis (Attorney for the Big Canoe POA):

Information has been presented to me that you had a major contributing part in the creation and review of the Ballot language presented to Members as a part of this Voting Process. With my previous comments in mind, I request that you review the issues I have outlined, and that if you determine that the Ballot language is indeed invalid based on this additional presentation of facts, that you notify the Big Canoe POA of such opinion. Please consider this letter to constitute legal notice of the existence of concerns that have been laid out in this communication. Furthermore, please be aware that I feel very strongly that my earlier points are not only correct and would hold up in a court of law, and that subsequently your prior legal opinion and review was not only legally incorrect, but that my points are easily evident to anyone with basic legal competence, especially as one would expect of a licensed attorney. I find it further disturbing that the language presented should have been easily ascertained as deceptive and misrepresentative of what language was in *(or in this case, was NOT in)* the By-Laws. As such I am considering the filing of a Complaint with the Georgia Bar regarding your representation in this matter to my community organization, the Big Canoe Property Owners Association for violations of GA Bar Rule 1.1 & 8.4 (Excerpt of the Rules and Penalties Below)

RULE 1.1 COMPETENCE A lawyer shall provide competent representation to a client. Competent representation as used in this rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. **The maximum penalty for a violation of this rule is disbarment.**

RULE 8.4 MISCONDUCT (a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to: (4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation; **The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.**

Thank you all in advance for your attention and consideration to this matter. Please be aware that myself and others I am aware of feel very strongly regarding this matter, and that in the event the Voter Referendum is allowed to continue as is, then I will personally begin exploring the funding and formation of a Property Owner Group with the intent to explore litigation to protect property owner interests and rights in this and future matters.

Sincerely,



- david hopkins

Big Canoe Lot Owner: Lot 4002

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