

**Jay E. Ginnow**  
**460 Palos Verdes Blvd.**  
**Redondo Beach, CA 90277**  
**310-465-1033**

October 13, 2008

TO: Village Palos Verdes Board of Directors

RE: Renovation Project

Dear BOD,

As a homeowner and attendee at the recent annual meeting, I would like to state that the timing of this planned renovation is not acceptable to me or many other residents of our community. It is the intention of many to present the Board with a petition to defer the collection of monies and the start of construction until such a time in which owners can finance their share of the project in a more conducive and practical manner. The "yes" vote is now the voice of the majority and in no way do I or others not appreciate the efforts of the Board in regards to this important project. However, that stated, the Board *must* continue their fiduciary responsibility to us as homeowners and defer the project.

The Board can carry the "yes" vote forward and into the future by resolution. Certain financial conditions should be established which would then "trigger" the project as a "go" at some point in the future. Minimal financial conditions to move forward should consider the following;

- The Dow Jones maintains a value and level of 10,000 or better for a six month period
- The S & P must maintain a 550 level or better for a continuous six month period
- Local real estate values must rise and stabilize by at least 5% over a six month period.

These caveats are prudent financial conditions which would allow for our project to proceed in a positive manner. The current financial conditions are global in reach and affecting each of us in different ways. However, the stress of bankrupting, foreclosing, and placing liens on members of our community will only further diminish our values and cause chaotic financial issues for those involved. Certainly logic tells us that many construction projects take much time to develop, finance and proceed. At a cost of \$13,500,000, a delay is necessary and prudent.

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Many homeowners are prepared to act through the legal system should the project attempt to collect the assessment and proceed. Many are seeking private counsel and will use all means possible to stop this project now. The legal community will see the plight of a few homeowners as serious enough to draw the attention of the media, other HOA's and the real estate market brokers, appraisers and lenders. To think that the Board is so naïve to believe that the financing bank involved has a deadline to sign docs of 10/17/08, or else. . . is ludicrous. In fact, the bank involved may not even exist in the weeks to come.

I implore you to please do the right thing and not further divide our community with such illogical actions. If you are truly committed to protecting all homeowners of our community, then there is obviously only one decision to make on this subject. Deferring the construction and financing is not disposing or ignoring the tremendous efforts of the Board to get this done, it is simply saving our HOA from adverse financial complications in an unstable financial world. Timing is everything and we must think of the entire community and not just those capable of going forward today when so many have no means to accomplish the financial obligations of this project.

I respectfully submit this request to you and look forward to your response before Oct. 17<sup>th</sup>.

Regards,

Jay E. Ginnow

**SPIERER, WOODWARD, CORBALIS & GOLDBERG**

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A PROFESSIONAL CORPORATION

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October 16, 2008

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ORIGINAL VIA FIRST-CLASS MAIL  
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TO FAX NO.: (310) 556-9659  
RECIPIENT'S TELEPHONE NO.: (310) 556-9658  
TRANSMITTING 3 PAGES

Laura J. Snoke, Esq.  
Law Offices of Laura J. Snoke  
1801 Century Park East, Suite 2400  
Los Angeles, California 90067

Re: Village Palos Verdes HOA Renovation Project

Dear Laura:

I have been asked by a group of residents of the Village Palos Verdes Homeowners Association (who I understand have recently forwarded a petition to Horizon Management) to assist them in raising some issues that they have regarding the pending renovation project at the Association.

While the group does not dispute the need for much of the contemplated work, the group is extremely concerned about issues relating to the cost of the work, and how it will be paid for. It is my understanding that a construction manager has been retained, and that the construction manager solicited bids from general contractors, asking what percent of profit and overhead would be charged for this job, without any attempt to determine the total amount that would be charged. The contractor who submitted the lowest percentage of profit and overhead was selected to do the job. Obviously, in the absence of bids or a contract price or any other information, this general contractor had absolutely no motivation to keep the total cost of the

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project down. To the contrary, he is incentivized to maximize the cost of the project, as he will be hired in advance of submitting the bids for the total cost of the work. While this may in fact work for this particular construction manager, it is probably not a prudent way for an association to spend its members' money. It is my understanding that several of the residents have discussed this project with other contractors who believe the project could be done for several million dollars less than the \$14,000,000.00 currently proposed. If this is true, it would be the height of irresponsibility for the Board to proceed without attempting to either confirm or refute this possibility. Although I am not sure I have been shown every piece of paper that has been generated regarding this project, I have not seen anything that indicates to me that a competitive bidding process has been undertaken with respect to the work itself. I cannot imagine what the downside would be to putting a project of this magnitude out to bid to make sure that the Association gets the best possible price for the work.

Of further significant concern is the very real possibility that a significant number of residents will be unable to make the \$75,000.00 payment. It is extremely likely that there are already many residents who owe more than their units are worth. Adding an additional \$75,000.00 burden to these homeowners will increase the possibility that these people will walk away and let their homes go into foreclosure, or attempt to negotiate short sales. As you can imagine, not a single day goes by where I do not counsel one client or another regarding short sale, foreclosure, or other related issues. Since the special assessment lien will be junior to the loan(s) that the homeowners have on their properties, and as the homeowners who let their units go in foreclosure are probably not going to be viable to collect the \$75,000.00, the Association may very well end up unable to collect the \$75,000.00 assessment from a number of units. I am not aware of any provision that the Association has made for this likely event. A default rate as low as 5% could cost anywhere from \$600,000.00 to \$700,000.00. This would be a huge loss for the Association to withstand.

Finally, while this is not an issue that was raised by the residents themselves, I have some questions regarding the propriety of the vote, and whether the process met the requirements of the CC&Rs. While I believe the group of residents I represent is more interested in delaying the project to allow for further investigation regarding the cost, and to allow the economy to heal so that the Association is more likely to be able to recover the total assessment, failure of the Association (if I am correct) to strictly follow the requirements of the CC&Rs would invalidate the vote entirely, and require the Association to go back to the beginning.

While I am sure the Board of Directors feel that this topic has generated far too much discussion already, it would seem to me to be in all residents' best interests to have the Board of Directors sit down with some of the leaders of the group I represent and attempt to work through some of these issues to everyone's mutual satisfaction. In the event that the Board is unwilling to engage in this dialogue, they will force my clients to consider resorting to litigation, a path I consider to be in nobody's best interest.

Laura J. Snoke, Esq.  
Re: Village Palos Verdes HOA Renovation Project  
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I will look forward to hearing from you, and hope that we will be able to work out a solution in which everyone will be happy.

Sincerely,

**SPIERER, WOODWARD, CORBALIS & GOLDBERG**  
Attorneys at Law  
A Professional Corporation

**Dictated but not read, as to avoid delay**

Stephen B. Goldberg

SBG:tk

cc: Clients

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October 21, 2008

VIA FACSIMILE AND FIRST-CLASS MAIL

Stephen B. Goldberg, Esq.  
Spierer, Woodward, Corbalis & Goldberg  
707 Torrance Boulevard, Suite 200  
Redondo Beach, California 90277

Re: Village Palos Verdes Homeowners Association  
Our File No.: 16563-1

Dear Mr. Goldberg:

This letter responds to your October 16, 2008 letter and reiterates some of the matters discussed during our telephone conversation of October 17, 2008.

As we discussed, and as is also discussed in my letter to the homeowners dated February 1, 2008, a copy of which you indicated you had, the board of directors of a common interest community has a fiduciary duty to maintain and protect the property; in fact, this is the board's highest and most important obligation. The Board of Directors of Village Palos Verdes Homeowners Association (Association) has exercised this obligation with the utmost of due diligence and financial prudence.

Approximately 3 years ago, the Board undertook to investigate the construction deficiencies and determine the cost of repair. That deficiencies exist which have caused substantial property damage cannot be doubted. The report of the architect retained by the Association, H.H. Fremer Architects, Inc. contains 23 pages outlining in detail the deficiencies which exist and corresponding photographs showing examples of the conditions which require repairs.

Initially, the Board retained Brussell Consulting & Construction Management, Inc. as the construction manager. For various reasons, the Board elected not to proceed with Brussell and retained Design Build Associates, Inc.

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(DBA) after obtaining and evaluating bids from 4 other construction management firms.

DBA then obtained bids from 6 potential general contractors. First, DBA pre-qualified the bidders, ensuring that they had the appropriate qualifications, experience, insurance, etc. The bids of the 6 general contractors were then put into a spreadsheet, identified only as "A" through "F." Contrary to your position, the spreadsheet set forth various factors, among which were the overall cost, including the overhead and profit rates, the amount of onsite staffing recommended, the financial position, the amount and types of insurance, and the experience with similar projects for common interest developments. Professional Services Construction, Inc. (PSC) was ultimately selected through a "blind" selection process. DBA has also previously worked successfully with PSC on 8-10 projects.

None of the Board members knew the names of any of the general contractors who presented bids before the selection. None of the members of the Board knows or has previously worked with PSC. Although this should not be necessary to state, none of the members of the Board, management, or Association employees has or will obtain any monetary or other benefits from the renovation project.

PSC then obtained estimates from potential subcontractors, prepared estimates of work it will do itself, and obtained and locked in the costs of the materials selected. Based upon these bids and material costs, the construction budget was prepared. Thus, your statement that PSC has not obtained bids is not entirely accurate.

In response to your contention that PSC has a disincentive to maximize the costs, this potential exists in all cost-plus contracts, which is typically the only contract available for this type of project. DBA's loyalty is to the Association. DBA must approve all payments to PSC and is required to make sure the project is brought within the budget and on time. Under the contract, PSC is required to obtain 3 time and material bids from all subcontractors, the selection of which must be approved by DBA. Both DBA and PSC are members of Community Associations Institute, have worked with local homeowners associations, and have excellent reputations.

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Your statement that several of the residents have discussed the renovation project with contractors and believe it could be done for less money is without foundation and irrelevant. While one member has expressed this belief, none has provided the Board with any evidence substantiating it. Moreover, none of these contractors, if they exist, has had the opportunity to review the documents and findings necessary for preparation of a qualified bid. As you know, some contractors are notorious for submitting low-ball bids initially and inflate the cost through numerous change orders. Finally, the selection of contractors is within the sole discretion of the Board of Directors, who of course are also paying the same assessment as the other homeowners. *Lamden v. La Jolla Shores Clubdominium Ass'n* (1999) 21 Cal.4th 249.

The state of the economy and the loss of value of the units are unfortunate occurrences. However, the Board's fiduciary obligations are unchanged. Indeed, the state of the economy and housing market have one significant benefit – the cost of construction is lower now than it was a few years ago and likely lower than it will be in a few years. The Association has locked in significant savings as a result.

I have reviewed the CC&Rs and California law concerning your contention that the assessment was required to be voted on at a meeting. It was not and, in any event, members were entitled to and did vote at the meeting at which the ballots were counted.

Article VI, Section 3 of the CC&Rs does not require the members to personally attend a meeting to vote to approve a special assessment. It requires a special assessment to be approved by a majority of members (which requirement is superceded by Civil Code Section 1364(b)) entitled to vote at a duly noticed meeting called for such purpose. It does not prevent presence at the meeting through written ballots.

Written ballots count toward a quorum at the meeting. A community association's right to use written ballots to solicit members' approval is guaranteed unless it is specifically prohibited by the governing documents. Corporations Code Section 7513; Sproul & Rosenberry, Advising California Communities (CEB March 2008 update), Chapter 2, Sections 2.80, 2.81.

Furthermore, members were entitled to and did vote at the meeting held to count the ballots. Ballots were available at the meeting for this purpose.

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Your letter requests that the Board meet with the leaders of the "group" you represent. The Board has met and held numerous community meetings with the members for the 3-year duration of this project. The Board sees no benefit to the Association by meeting with your clients separately from other owners. The renovation project was approved by the members and therefore there are no issues to be negotiated.

Finally, as we also discussed, the Board has been given a mandate by the membership to go forward with the renovation project and the Board has no authority to act contrary to the vote of the membership. The special assessment passed by a significant amount. Members who have already secured financing are expressing outrage at any attempt to delay the project. The Board has signed contracts which it is obligated to perform. Any litigation attempting to stop the renovation project will be without merit and defended accordingly.

Very truly yours,

LAW OFFICES OF LAURA J. SNOKE



Laura J. Snoke

LJS:rb

cc: Board of Directors