



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NANCY GREEN, :
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 :
 Plaintiff, :
 :
 v. : C.A. No. 2020-0989-SG
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 :
 CARL M. FREEMAN :
 COMMUNITIES L.L.C., :
 :
 :
 Defendant. :

DECLARATION OF JOSHUA MASTRANGELO

I, Joshua Mastrangelo, Developer appointed Member of the Board of Directors of the Bayside Community Association, Inc. (the “Association” aka “HOA”), submit this Declaration with Exhibits, in place of an Affidavit, as permitted by Supreme Court Administrative Directive Number 3, Sections 9 and 10, as extended by Administrative Order Number 16, in opposition to the Motion for a Status Quo Order and in direct opposition to the Affidavit of Plaintiff Nancy Green filed in this case (the “Green Affidavit”), and in support of such opposition, state as follows:

1. I reside at 35442 Peregrine Road in Lewes, Delaware. I am employed by the Carl M. Freeman Communities, L.L.C. and have been since June 1, 2018.

2. I am a member of the Board of Directors of the Association and have been since 2018 and base this Declaration on my personal knowledge as well as in consultation with others. The following numbered paragraphs correspond with and reply to the allegations contained in the same numbered paragraphs of the Green Affidavit:

3. As of March 1, 2005, Bayside's Charter and 2004 Record Plan reserved over 700 acres for the creation of 1700 residential units in Sussex County, Delaware. Currently there are 1848 total units approved for Bayside, which is both a master planned community as stated in its Charter as well as a Residential Planned Community ("RPC") under the Sussex County Code and related Ordinances and is sometimes referred to as the Bayside RPC. Sixty (60) of these units exist outside of the Association (being Arrington Woods) which leaves a total of 1788 units approved and that "may be created". As of February 5, 2021, only 1209 units have been transferred to 3rd party unit owners, being 67.6% of the approved units that may be created. CMF Bayside, LLC has continued to acquire and entitle properties in order to achieve the entire approved density. Most recently the 116 units in Harbor's Edge had been added into the Bayside RPC with Final Site Plan Approval by Sussex County on January 23, 2020.

The approved Bayside RPC also included 170,000 square feet ("SF") of non-residential uses of which only 114,295SF have been built. The 55,805 SF of non-

residential SF is intended to be constructed within the boundaries of the Bayside RPC.

The current master plan (“Master Plan #13”) also includes the approval for the Freeman Arts Pavilion which is a 4000 seat 50,000-80,000 SF amphitheater. This project is owned by The Joshua M. Freeman Foundation (“JMFF”), a 501(c)3 nonprofit organization, which was established in 2007 to honor Josh Freeman, the former Chair of the Carl M. Freeman Companies, after his untimely death in December of 2006. The Foundation seeks to honor Josh’s passion and commitment to excellence by creating programs he would have been proud of. These programs include the existing Freeman Arts Pavilion, an outdoor performance venue convenient to Fenwick Island, which presents over 60 performances a year, and an Arts Access Initiative, which provides K-12 students and underserved families of Delmarva year-round access to high-quality, diverse arts experiences at no cost. Annually, more than 80,000 residents and visitors are impacted through the Foundation’s mission of creating opportunities that elevate the human spirit.

To limit the Developer’s right to complete the residential and non-residential portions of the Bayside RPC, which has been in planning and construction for the last 23 years, would result in significant monetary damages to the Developer/Defendant in this case. The cost of delay or lost opportunity costs will be real and significant. EXHIBITS 1A, 1B and 1C.

4. Pursuant to my understanding of State law and the recorded community charter provided to each owner by its respective builder, the Founder has maintained its permitted appointees on the Board of Directors.

5. The developer has maintained its appointed board members per the Community Charter and DUCIOA. However, “domination” of Board and Association business and decisions has not occurred during the Founders control period and there has been one homeowner member (“Homeowner Board Member”) on the Board of Directors since 2008 and two Homeowner Board Members since 2016. A finance committee, comprised fully of homeowners, has been in place since 2008 and has reviewed and established budgets for the association. A full slate of committees, made up 100% of homeowners, exists and includes Website & Communications, Grounds & Operations, Finance & Covenants. At least one Homeowner Board Member serves on each committee as well.

Most recently in 2019 a Budget impact statement process was established where all proposed expenditures of the Association are reviewed by the applicable committee as well as the finance committee and are recommended for approval or disapproval by the Board of Directors. EXHIBITS 2, 3, 4, 5 and 6.

6. The Board, regardless of Developer control, has voted unanimously on approximately 95% of all issues brought before it and continues to follow the Budget

Impact process where 100% Homeowner led committees make recommendations for Board actions that are confirmed by the Board. In only a few instances has a committee recommendation not been enacted by the Board and in those cases the decisions were primarily based upon Homeowner Board Member input that was contrary to the committee recommendation or due to legal advice by Association Counsel. EXHIBITS 7, 8 and 9.

7. The Board has and continues to implement the recommendations of the homeowners as presented by the Homeowner Board Members and Committees. Each annual budget is recommended by the Finance committee directly and approved by the Board unless changes are requested by a Homeowner Board member. The Board also follows the recommendations of the committees for daily expenditures through the budget impact statement process. Each year end financial statements is fully audited by a 3rd party accounting firm under the direction and with the participation of the Finance Committee. EXHIBITS 10, 11 and 12.

8. The Developer has relied on DUCIOA, the Community Charter and legal opinions on maintaining its appointed Board members.

9. The discussions that occurred over the summer of 2020 were directly with the Plaintiff's husband, Gordon Green, one of the two Homeowner Board Members and shared unknowingly outside of Board meetings while internal

discussions were on-going. The discussions and representations in these communications relied on DUCIOA, the Community Charter and legal opinions on turnover requirements. EXHIBIT 13.

10. Based upon on-going discussions and legal advice a response to a demand letter sent from the two elected Homeowner Board Members was drafted and presented. Also, advice from the Association attorney on the lack of clarity in DUCIOA on pre-existing communities and board turnover was obtained. EXHIBITS 14 and 15.

11. A conversation or request to meet was never made by the Plaintiff. The only discussions on this issue were held with the Plaintiff's husband, Homeowner Board Member Gordon Green, and the 2nd Homeowner elected Board Member. I had no direct knowledge that any discussions were occurring with non-Board Members such as the Plaintiff.

12. The letter received from Mr. Valihura in September did not identify who he represented. Earlier in the year Gordon Green as Chair of the Temporary Transition Planning Committee had made a request to the Board for funding for Mr. Valihura on Transition related matters. The question was raised at a Board meeting as to how the Association Board could retain two different attorneys as the "Temporary Transition Committee" did not have the authority to secure independent

counsel on behalf of the Association. Based upon this series of events and the November lawsuit filed by Plaintiff Green, a review of the minutes of the “Temporary Transition Planning Committee” dated October 14, 2020, seem to indicate that Homeowner Board Member Green was referring to the present lawsuit and activities of the Plaintiff:

“Outside Activities of Committee Chair

Gordon Green acknowledged his involvement in some transition-related activities he’s chosen to keep outside the scope of formal Committee activities. He acknowledged these outside activities have poisoned his relationship with Freeman-appointed Board members which has had and will continue to have adverse impacts on the Committee and its activities.

Gordon offered to step down as Committee Chair in order to re-establish a more-collegial relationship between the Committee and the Board/Developer. Although the comments offered by a few of the Committee members were supportive, his offer is still open and he will accept, in confidence, private correspondence from other Committee members who may have a different view.”

It was only when the current Chancery Court litigation was filed in November did we become aware that Plaintiff was represented by Mr. Valihura, who had been offered by Homeowner Board Member Green to advise the Temporary Transition Planning Committee. EXHIBIT 16, 17, 18 and 19.

13. The statements made and responses provided were based upon my personal understanding of DUCIOA and the Community Charter as well as confidential legal advice concerning the applicability of DUCIOA to “pre-existing” master planned communities and the complexity of that Statute.

14. The letter from Michelle Freeman on October 5, 2020 was based upon confidential legal advice regarding the turnover requirements for pre-existing planned communities as well as the “vested” property rights secured by the Americana Bayside RPC Master Plan as updated and approved by Sussex County. The turnover date was a projection at that time based upon the best estimate of continuing home sale efforts by 3rd party builders in the Community.

15. The Developer through legal counsel agreed to meet with the Plaintiff to discuss Transition matters but would not agree to hold a meeting to solely discuss DUCIOA turnover requirements of “pre-existing communities.”

16. As stated previously, the Developer has worked in concert with the Homeowner’s in the Community that have served on the Board of Directors since 2008 and homeowner populated Committees on both the long-term vision of Bayside as well as the day to day operation. The financial decision making of the HOA has been directly guided by the homeowners for many years with the management of community finances handled by both the resident led Finance Committee and professional HOA management.

The daily operation of the community has been in the hands of the established Grounds and Operations Committee, again fully staffed with homeowner members, and led for several years by Plaintiff Green’s husband Gordon. Recommendations

from this committee directly relate to the appearance and maintenance of the community. The Board has continued to support their efforts through approval of the committee's recommendations.

ALLEGATIONS OF THE IRREPARABLE HARM FACING THE COMMUNITY ARE UNFOUNDED AND MERE SPECULATION

17. The turnover of the majority of the Board of Directors is not required at this time and the current structure of decision making of the HOA favors the Homeowners. The developer representatives routinely act in concert with the Homeowner Board Members. For example, most recently the 2021 budget has been reviewed, presented and approved by unanimous vote of the Board with the recommendation of the Finance Committee. Therefore, all major financial commitments of the HOA have been made and approved already for 2021.

Opting to turn over control of the HOA board earlier than prescribed in DUCIOA and the Charter would put the Developer and its interests at risk after investment of over 20 years and \$100,000,000 in Bayside, its master plan and its amenities. This investment of time and money can only be recaptured with the full completion of the Bayside RPC's approved residential and non-residential components, in accordance with its master plan. The developer has continuously acquired properties to advance these efforts and has in the last five years recaptured over 275 units of approved density. Most recently the Developer completed the

construction of a \$13M clubhouse facility, a significant long-term investment. The Developer fears that the intention of Plaintiff Green's efforts in this litigation and through social media are to improperly interfere with its vested rights as Developer/Declarant and to prevent it from recapturing its investment in this master planned project, to the financial detriment of the Developer and to the detriment of the Bayside community as a whole. EXHIBIT 20.

18. The Developer works very closely with the HOA on turnover of Community common areas and originally implemented an inspection and turn over process with direct HOA Homeowner Board and Committee Member involvement. Most recently, suggested revisions to the process by the Grounds and Operation Committee were voted on and approved unanimously by the Board including the Homeowner Board Members on September 9, 2020. Recent common area turnovers were completed by Homeowner Board Member Gordon Green, which presumably is known by the Plaintiff.

Since there is direct community participation and inspections of common areas prior to turnover, there is no genuine or even potential risk of imminent irreparable harm inherent in such property transfers. The Board has no intention of changing its thoughtful and appropriate common area turnover process.

The Declarant fears that the efforts of Plaintiff Green are aimed at delaying or even permanently preventing the orderly turnover of common areas to the HOA as provided for in the Charter and as permitted by rights reserved to the Developer under the Charter and protected by DUCIOA, which with good reason protects the Developer/Declarants right to convey common areas to the Association without homeowner consent. The Developer believes requiring unanimous Board Consent will result in a deadlock, not grounded in actual concerns about the property, as an effort to stymie the Developers orderly completion of this master planned community. EXHIBITS 21, 22, 23 and 24

19. Performing arts have been a longstanding component of the Bayside community. The Freeman Arts Pavilion and the area where it will be located is owned by a separate public Charity The Joshua M. Freeman Foundation. This area is neither part of the residential HOA nor is it subject to its requirements. This project has been before Sussex County on numerous occasions and approved with no appeals filed. These actions were of course subject to required public notice.

The Executive Director of The Joshua M. Freeman Foundation has on numerous occasions presented the plans for the expansion of this facility directly to the HOA at regularly noticed meetings of the Association dating back to 2016 and most recently in 2019.

It is clear from this Paragraph 19 of Plaintiff's Affidavit that Plaintiff Green's litigation motivations go beyond HOA Board control and are also focused on preventing or impeding the completion of the community, including the Freeman Arts Pavilion, and effort that will damage not only the developer, its partners but separate 3rd parties like the Foundation. It is clear Plaintiff Green intends to obtain control of the HOA to oppose a rightful land use project, which is commonly referred to as a "Not In My Backyard" NIMBY effort.

If Plaintiff Green's NIMBY efforts continue, with the full force of HOA Board Control used, along with her ongoing Public relations campaign against the Defendant and affiliates of the Defendant, the Developer will be damaged with the potential loss of it rights to complete this master planned project or the diminished ability to complete the project due to reluctance of potential business partners to invest in the project. EXHIBITS 20, 25 and 26.

20. The developer board representatives in concert with Transition Best practices published by the Community Association Institute (CAI) and acting on advice of the Associations Attorney and along with the other Homeowner Board Members have worked towards empowering a new committee to exercise certain decision-making authority and assist with transition of the Association from Founder control to Owner control. The exact goal of these efforts is to eliminate the Developer's majority control over matters relating to the full transition of the HOA

to the owners. Homeowner Board Member Green has worked to derail these efforts directly with his actions including intentionally breaking the privilege of Executive Session of the Board of Directors. Plaintiff Green's derogatory social-media campaign using confidential Board information obviously provided by Homeowner Board Member Green is clearly a coordinated effort to undermine the CAI process, to tarnish the reputation of the Developer and to prevent the full completion of the community.

The proposed Status Quo Order will actually delay or totally prevent the Homeowner Board Members from assuming decision-making authority and entering into the first phase of a comprehensive transition process as guided by CAI in its Best Practices publication. By preventing this orderly transition process to begin, the Status Quo Order sought by the Plaintiff will injure and harm the Association, since it prevents the commencement of engineering, accounting and other studies intended to lay the groundwork for an orderly and informed transition. This order delays what the Plaintiff is claiming to seek in this case, which is the control of the HOA Board of Directors by the homeowners. EXHIBITS 20, 27 and 28.

21. If a true and comprehensive transition process is prohibited by not allowing the Developer to delegate its majority control of the Board to the homeowners to negotiate such transition, the entire community will be harmed and any potential early but orderly surrender of Board control will be prevented from

occurring. By following the CAI Best Practices, the Developer has shown its intentions are indeed altruistic and by opposing the CAI process, the Plaintiff shows its intentions are not.

22. As stated previously, the developer board representatives in concert with Transition Best practices published by the Community Association Institute and acting on advice of the Associations Attorney and along with the other Homeowner Board members have worked towards empowering a new committee to exercise certain decision-making authority and assist with transition of the Association from Founder control to Owner control. The exact goal of these efforts is to eliminate the Developer's majority control over matters relating to the full transition of the HOA to the owners. Plaintiff Green and Homeowner Board Member Green are both actively delaying the implementation of the CAI guided transition to the homeowners. Stopping the CAI transition process would cause more harm to the Developer and the homeowners than any harm that might befall Plaintiff Green by permitting the Board to act on and adopt the CAI transition process by majority vote.

23. The negotiation of the management agreement with current property management company occurred directly with Plaintiff Green's husband, Gordon Green and the other Homeowner Board Member's participation. Mr. Green participated in each meeting and in fact was the lead in discussing contract

provisions and terms. Plaintiff Green actively provided draft documents to her husband, who in many respects acted as her proxy on the Board, although at one point Plaintiff Green demanded to participate directly in these confidential contract negotiation meetings. The Developer Board Member advised Mr. Green that it was not appropriate for a non-board member – Plaintiff Green - to be included in such a meeting. Finally, while the final agreement did not contain 100% of the desired changes drafted by Plaintiff Green, the contract was reviewed by the Association’s attorney and discussed at length with all board members and approved for execution. There was no role for Plaintiff Green in this process; she is not the Board’s legal counsel or a member of the Board. Certainly, the rejection of many of her contract suggestions and the Boards reliance on Delaware legal counsel cannot be a showing of harm of any kind, let alone ‘imminent irreparable harm.’

As evidenced by the collaborative process used to negotiate a final agreement and Board vote in support there was no harm and the exists no potential for harm to the community. EXHIBITS 29, 30, 31, 32 and 33.

24. Plaintiff Green’s accusation is completely speculative. The facts bear out that historically the Developer controlled Board has affirmed the recommendations of homeowner led committees and voted almost exclusively with both Homeowner Board Members. Continued Developer control of this Board will

ensure a continuation of a positive status quo and will be disrupted by the entry of the Status Quo Order to the detriment of the HOA.

25. The proposed Status Quo order will adversely impact the day-to-day operations of the HOA. To a large extent, the various claimed harms listed in the Plaintiff's Affidavit are "sour grapes" rooted in her failure to be elected by the homeowners to the Board in 2017. Her conduct, and her complaints in this litigation, bear this out. Simply because Plaintiff Green thinks she can do a better job running the Board, does not mean continued Board control will cause imminent irreparable harm. The Status Quo Order goes well beyond Board Control issues, impedes the Developer's separate rights and as worded will to stop the rightful, appropriate and legal comprehensive Transition of the HOA from Developer to the Owners. See EXHIBIT #34

26. Since the HOA day to day operations are in peril if the Status Quo Order is enacted, the Plaintiff should have consulted the HOA directly about its entry and impact. If the Status Quo Order is entered, the individual developer Board members fear they would not be able to meet their fiduciary responsibility to the homeowners, placing them in jeopardy. The entry of the Status Quo Order will lead to a deadlocked Board on all matters, simply as a protest to the issue of Board transition and bring the normal, regular work of the Board to a halt, which will be harmful, not helpful, to the Association.

27. Instead of preserving the status quo, the Status Quo Order will itself disrupt the status quo and replace it with a non-functioning board. The Developer is prepared to amend the Charter to selectively adopt the master planned community exception under *25 Del.C. §223(g)* with the draft amendment shown in Exhibit 35.

28. The developer representatives have continuously demonstrated that they are in fact allied with the community in their support of the recommendations of homeowner led committee actions and by voting in concert with the two homeowner elected Board members almost exclusively, this is proven.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

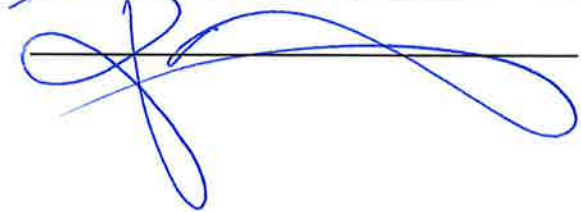


JOSHUA MASTRANGELO

I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct.

Executed on the 9th day of February 2021.

Joshua Mastrangelo (Printed Name)



(Signature)

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EXHIBITS TO MASTRANGELO DECLARATION

Exhibit Number	Description
1A.....	2004 Bayside Record Plan
1B.....	2005 Bayside Original Charter
1C.....	2020 Bayside Updated Master Plan
2.....	Budget Impact Statement 2021
3.....	Homeowner Bd. Member Inclusion
4.....	Bd./Homeowner Committee Involvement
5.....	Bd. Minutes 2014-2012 Joint Decisions
6.....	Bd. Emails of Inclusion
7.....	HOA Committees of Inclusion
8.....	Bd. Meeting Minutes of Joint Action
9.....	Bd. Proposals Joint Action
10.....	Homeowner Finance Committee Charter
11.....	Board and Homeowner Committees
12.....	Bd. Mtg. Minutes Homeowner Finance Committee
13.....	Master Plan Outside Discussion
14.....	Homeowner to Bd. Demand Letter
15.....	Bd. Response Letter
16.....	Valihura Letter of Concerned Group

17..... Temp Transition Hiring Counsel

18..... Valihura Aug. Fee Schedule

19..... TTP Committee Minutes Green Issue

20..... Social Media Nancy Green/Gordon Green

21..... Grounds Charter Process

22..... Lands Inspection

23..... Land Turnover Signed Gordon Green

24..... Land Turnover Signed Gordon Green

25..... Arts Pavilion Public Discussion 2016

26..... Arts Pavilion Public Discussion 2019

27..... CAI Transition Draft Charter Decision

28..... CAI Best Practices Guide

29..... Email on Nancy Green Contract Editing

30..... Nancy Green contract Editing Issue

31..... Nancy Green contract Editing Issue

32..... Nancy Green contract Editing Issue

33..... Nancy Green contract Editing Issue

34..... Nancy Green 2017 Election Notice

35..... Draft Charter Amendment