

# THE FRIDAY FLYER

Home » November 27, 2015 Edition » Arbitrator upholds Board's position on Main Gate Project



Learn at next week's POA Board meeting if and when the Main Gate Project is set to begin. Photo by Donna Kupke.

## Arbitrator upholds Board's position on Main Gate Project

BY

This may be the last Christmas season the Main Gate entrance to the community looks the way it does with its festively decorated fountain, median flowers and guard shack. It's likely that the CLPOA Board of Directors will announce a decision at next Tuesday's Board meeting to move forward on plans for reconstruction of the Main Gate.

That's because the Association received the Arbitrator's opinion last week that the project in its entirety is a reserve project, not a capital improvement project. The Arbitrator further stated "In approving this project, the Board has acted well within its authority pursuant to California law and the Association Bylaws."

Earlier this year, the Board approved the Main Gate Project; however, a group of homeowners objected to the project without a vote of the homeowners. The Board maintained that a vote of the homeowners was not required, but made a decision to go through the Alternative Dispute Resolution (ADR) process.

In the evidentiary hearing held on November 10, the Board, represented by Corporate Counsel Scott Levine, and a committee of homeowners, represented by Lawrence Neigel offered documentary evidence for their positions.

The following witnesses testified: Dave Eilers (POA Treasurer), Robert Nordlund (Reserve Specialist), Christopher Mitchell (POA General Manager), Bruce Yarbrough (POA President), John Zaitz (homeowner/former POA Director) and Eric Spitzer (POA Director). At the conclusion of the testimony, the matter was argued and submitted for a decision.

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### Weather

CANYON LAKE WEATHER

54°F scattered clouds

Thu	Fri	Sat	Sun	Mon
54°F 50°F	63°F 46°F	73°F 46°F	75°F 54°F	72°F 50°F

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The F... · Mar 21, 2022  
Canyon Lake teen overcomes near-amputation and now severe diabetes to compete a TCHS athlete. Must-read stor about an incredible girl and her family.  
[fridayflyer.com/article/2022-\(...](http://fridayflyer.com/article/2022-(...)

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The parties agreed that the Arbitrator would issue a written decision that would be binding on the Board of Directors. It would not be binding on the opposition group, but would satisfy the pre-litigation ADR requirement set forth in Civil Code 5930.



The Arbitrator, Hon. J. Richard Haden (Ret.) provided a written decision that can be read in its entirety at [www.canyonlakepoa.com](http://www.canyonlakepoa.com).

The Board has discussed various proposals to modernize or modify the Main Gate for 19 years. Over the past three years, it has been a regular topic at Board meetings. It also was the topic of community project workshops on September 24, 2013; December 3, 2013; January 15, 2014; March 18, 2014; and September 17, 2014.

On August 4, 2015, the Board approved the Main Gate Project, announcing the following costs: Construction: \$555,420.04; Access Control: \$109,200.09; Cameras: \$31,900; for a total cost of \$696,520.13. Additional costs for related road construction are \$181,966.34.

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August 27, 2015

Silldorf & Levine, LLP  
c/o Ms. Theresa Filicia  
5060 Shoreham Place, #115  
San Diego, CA 92122

Subject: Canyon Lake Reserves – Entry Gate

Dear Theresa:

Thank you for your question about the anticipated Entry Gate modernization project. It sounds like a significant upgrade for the association. Because of the project's significance, you asked if it was enough of an upgrade to be classified as a Capital Improvement rather than a Reserve project. Note that in preparing my response, I reviewed and relied upon the following documents provided by your law firm: Award of Contract & Budget (63 pages), Main Gate Conceptual Images (one page), and [National Reserve Study Standards](#) (7 pages). In conclusion, I believe the answer is clearly that it should not be considered a Capital Improvement. I believe this project, even though significant, clearly fits the definition of a Reserve "Component" per National Reserve Study Standards.

There is a four-part test found in National Reserve Study Standards defining which assets at an association are appropriate for Reserve designation. If a project meets all elements of the four-part test, it is a Reserve Component, not a Capital Improvement.

The four-part test is as follows:

1. Is the asset the maintenance responsibility of the association?
2. Is the asset life-limited?
3. Does the asset have predictable Remaining Useful Life?
4. Is the project's projected cost above a minimum threshold of significance?

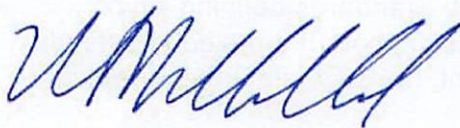
There exist a number of Main Gate assets and possible projects. Together, these assets and projects comprise the current Main Gate entry system. This is key, because a reconstructed and expanded Main Gate entry system is not a "new" asset to the association. If the association moves forward on this project, Reserve Funds will not be spent to create a new point of entry to the association, or create controlled access where there was none. The Main Gate entry system currently exists and continues to be the maintenance responsibility of the association (not management, developer, or access-control company), thus passing test #1. The assets comprising the Main Gate entry system are life limited (they physically deteriorate, or over time they are found to be less effective in serving their intended function), and as the association and its

Reserve Study professional have been able to follow the deterioration of these assets over the years and project a time when they will need to be replaced, the Main Gate entry system clearly passes tests #2 and #3. And finally, the cost estimates provided to me for this project clearly meet the "significance" test (the project is not a trivial cost more appropriately absorbed into the association's ongoing Operating Budget), thus passing test #4.

It is clear that the expense and scope of the upgraded entry system will exceed the estimates appearing in the current Reserve Study and that literally some new assets will be created that previously did not exist (additional asphalt, a bathroom building, etc.). But these "new assets" are still 100% Main Gate entry system assets. I have been advised that increased traffic and increased concern for properly validating guests through the years have caused increasing delays at the Main Gate. Thus it is unwise to replace Main Gate entry system assets with *exactly the same assets*. While arguably still functional, the current Main Gate entry system assets are no longer effectively serving the needs of the homeowners, their guests, and service-providers. Note that different Reserve Components fail differently: some fail due to physical deterioration, some fail to technological obsolescence, some due to aesthetically becoming outdated, some because their purpose/mission is no longer being effectively accomplished.

Thus it is appropriate at this time to consider an upgrade and expansion of the capabilities of the Main Gate entry system to effectively handle current traffic and security loads as a Reserve project, re-establishing a level of Main Gate entry system performance that was enjoyed years ago. Upgrading and expanding an existing asset to replace an outdated asset is a Reserve project, not a Capital Improvement.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Nordlund', written in a cursive style.

Robert M. Nordlund, PE, RS  
Founder/CEO

The Board of Directors of the Canyon Lake Property Owners Association met in **Regular Session** on Tuesday, February 9, 2021, via Zoom. President **Chris Poland** called the meeting to order at 6:06 p.m. **Directors** present were **Jim Barringham, Jeanne O'Dell, Joe Kamashian and Tom Nathan**. Five Board Members were present, quorum was met. Also present were; Assistant General Manager Lynn Jensen; Sr. Planning and Compliance Manager Cheryl Mitchell; ACC Chairperson John Stelzner; Sr. Manager of Member Services Cory Gorham; Controller Susan Dawood; Director of Operations Steve Schneider; and PIO / Clerk of the Board Harmony McNaughton.

1. **Welcome and Call to Order**

Verification of Quorum

Pledge of Allegiance was led by President Poland

*See 7.7 page 3*

2. **Approval of Minutes**

- January 12, 2021

MOTION/RESOLUTION: Director Kamashian moved to approve the January 12, 2021 Regular Session Meeting Minutes, as attached. Director Barringham seconded. Five votes in favor. MOTION CARRIED

3. **Public Official Comments**

EVMWD Director Darcy Burke reported on: strategic planning, citizen survey, branding study, water rates, water treatment plant updates, treatment initiatives, water sampling sites, capital improvement projects, community outreach for budgeting participation, rate study results, imported water rates, and water conservation reminder.

Mayor Castillo reported on: Interim Fire Chief, 2021 Goals for the City of Canyon Lake available on the website, last year's accomplishments, Citizens of the Month Sabrina Alt, citizen feedback, and the upcoming Special City Council Meeting.

4. **Presentations**

**General Manager Eric Kazakoff presented an update on the Lodge interior and outside patio dining and event space renovation.**

5. **Announcements**

President Poland announced the Board's Annual Budget Workshop on February 18, 2021 via Zoom with the Finance Committee.

6. **Consent Agenda (Items A-I)**

MOTION/RESOLUTION: Upon motion properly made by Director Nathan, seconded by Director O'Dell, and five votes in favor. Items A, B, C, D, E, F, G, H and I were APPROVED.

A. Jacob Bennett 30441 Big River Dr Approval for: Six (6') Foot Fence

MOTION/RESOLUTION: That the Board of Directors approve the six (6') foot fence with a recorded variance for the life of the improvement. APPROVED

B. Ronald Marcuse 30050 Windward Dr Approval for: Six (6') Foot Fence

MOTION/RESOLUTION: That the Board of Directors approve the six (6') foot fence with a recorded variance for the life of the improvement. APPROVED

C. Aden Robinson 23056 Canyon Lake Dr N Approval for: Six (6') Foot Fence

MOTION/RESOLUTION: That the Board of Directors approve the six (6') foot fence with a recorded variance for the life of the improvement. APPROVED

D. Scott Paul 29875 Redwood Dr Approval for: Six (6') Foot Fence

MOTION/RESOLUTION: That the Board of Directors approve the six (6') foot fence with a recorded variance for the life of the improvement. APPROVED

E. Eric Barajas 22840 Compass Dr Approval for: Six (6') Foot Fence

MOTION/RESOLUTION: That the Board of Directors approve the six (6') foot fence with a recorded variance for the life of the improvement. APPROVED

F. APPROVAL: Ratify Monthly Financial Statement Review (Susan Dawood)

MOTION/RESOLUTION: That the Board of Directors review and approve the monthly Financial Statements, and all additional required information per Code Sec. 5500 for the period of, December 31, 2020. APPROVED

G. Authorization of Liens

MOTION/RESOLUTION: That the Board of Directors authorize Corporate Counsel, the General Manager, or the appropriate personnel to record the liens against the attached Assessor Parcel Numbers. APPROVED

H. Report of Executive Session Actions

MOTION/RESOLUTION: That the Board of Directors review and approve the Executive Session Actions, as written. APPROVED

I. APPROVAL: Green Committee Appointment

MOTION/RESOLUTION: That the Board of Directors approve the appointment of Jeannette Williams to the Green Committee, contingent upon execution of a confidentiality agreement, effective immediately. APPROVED

## 7. Board Action Items

7.1 28 Day Reading – Revise Rule GR.5.5a No Recreational Vehicle, 5<sup>th</sup> Wheel, and Camping Trailer Parking / Storage on Streets for More than Twenty-Four (24) Hours

MOTION/RESOLUTION: Director Barringham moved that the Board of Directors approve the 28-day reading to revise rule GR.5.5a, as revised to adjust it to '48 hours with a 24-hour extension option', to add 'ok to have pop-out open for immediate loading/unloading only, with the member present, and a two-hour cap', and to add 'with parking in front of the house, or as near as possible'. Director Nathan seconded. Five votes in favor. MOTION CARRIED

7.2 28 Day Reading – Revise Rule GR.5.5c No Trailer Parking for More than Twenty-Four (24) Hours

MOTION/RESOLUTION: Director O'Dell moved that the Board of Directors approve the 28-day reading to revise rule GR.5.5c, as modified to add 'with parking in front of the house, or as near as possible'. Director Kamashian seconded. Five votes in favor. MOTION CARRIED

7.3 28 Day Reading – New Rule LM.9.28 No Wakesurfing in the Slalom Course Area

MOTION/RESOLUTION: Director Kamashian moved that the Board of Directors approve the 28-day reading to add rule LM.9.28, as attached. Further recommended that the staff develop and post user guidelines consistent with the discussion at the August 4, 2020 Board Meeting, including the topics attached. Director O'Dell seconded. Five votes in favor. MOTION CARRIED

7.4 APPROVAL: Sierra Park Shade Project

MOTION/RESOLUTION: Director O'Dell moved that the Board of Directors approve funding of \$120,186 plus a 5% contingency from the Capital Improvement fund, 05-670 for Sierra Park Shade Project. Director Kamashian seconded. Five votes in favor. MOTION CARRIED

7.5 APPROVAL: Indian Beach Shade Project

MOTION/RESOLUTION: Director O'Dell moved that the Board of Directors approve funding of \$124,816 plus a 5% contingency from the Capital Improvement fund, 05-670 for Indian Beach Shade Project. Director Kamashian seconded. Five votes in favor. MOTION CARRIED

7.6 APPROVAL: Mailbox Lighting Project

MOTION/RESOLUTION: Director O'Dell moved that the Board of Directors approve the complete project and funding of \$138,400 Plus a 5% contingency from the Capital Improvement fund, 05-670 or place the project on hold. Director Kamashian seconded. Five votes in favor. MOTION CARRIED

The Board recessed at 9:08 p.m. and resumed the meeting at 9:15 p.m.

7.7 APPROVAL: Golf Course Irrigation Project

MOTION/RESOLUTION: Director Kamashian moved that the Board of Directors approve funding for \$1.88 million plus an 8% contingency from the Repair and Reserve fund, 02-670 for the Golf Irrigation system described to be completed as one project. Director O'Dell seconded. Five votes in favor.

MOTION CARRIED

clearly using the ADR Decision to

7.8 APPROVAL: Preview of BAI Purchase Request on Software

MOTION/RESOLUTION: Director Nathan moved that the Board of Directors approve the software implementation expenditure cost of \$103,400 to be paid in two installment payments as replacement software costs from the Repair and Replacement Reserve Fund and \$52,800 for upgraded hardware to be paid from the Repair and Replacement Fund as part of ongoing computer related upgrades (already itemized for replacement in the Reserve Study for the fund). Director Barringham seconded. Two votes in favor, three against. MOTION FAILED

MOTION/RESOLUTION: Director O'Dell made a subsidiary motion that the Board of Directors approve the software implementation expenditure cost of \$103,400 to be paid in two installment payments as replacement software costs from the 2020-2021 Operating Budget and \$52,800 for upgraded hardware to be paid from the Repair and Replacement Fund as part of ongoing computer related upgrades (already itemized for replacement in the Reserve Study for the fund). Director Kamashian seconded. Five votes in favor. MOTION CARRIED

7.9 APPROVAL: 2021 Annual Meeting of the Members and Election of Director's Ballot Measures

MOTION/RESOLUTION: Director Kamashian moved that the Board of Directors approve the attached ballot measures to be included on the 2021 Annual Meeting of the Members and Election of Directors'

VACATION PARK  
BALLOT - 2.2 million  
(NOT replacing ANYTHING - ALL NEW

\$ 1.88 million  
ON ONE FACILITY  
Repair & Replacement

Ballot. Director Barringham seconded. Two votes in favor, three against. MOTION FAILED

MOTION/RESOLUTION: Director O'Dell made a subsidiary motion that the Board of Directors approve the attached ballot measures to be included on the 2021 Annual Meeting of the Members and Election of Directors' Ballot, as revised to amend the Family Park at Sierra Park North measure from \$1.8 Million to \$2 Million. Director Barringham seconded. Five votes in favor. MOTION CARRIED

7.10 APPROVAL: Revised ACC Variance Policy

MOTION/RESOLUTION: Director Barringham moved that the Board of Directors, with the enactment of this resolution, allows the ACC to grant, without additional Board approval, variances for 6-foot fences or improvements in the side and rear setback discovered during escrow inspections. All other recommendations for or against the granting of a variance must be considered and discussed by the Board at Open Session. Director Kamashian seconded. Five votes in favor. MOTION CARRIED

7.11 Discussion Item: Possible Rule Changes Related to Political Signs on Member's Property  
The Board held discussion.

**8. Member Comments on Non-Personnel Items**

The Board heard member comments.

**9. Association Reports**

- General Manager, Eric Kazakoff

Reported on: monthly round table meeting, Interim Fire Chief appointment by the City, Budget Workshop on February 18<sup>th</sup> at 6:00 p.m., new Community Patrol contract with G4S, multi-year road repair project, and staff reports.

- Staff Reports, as written
- Community Patrol, as written

**10. Board Comments**

- Director Kamashian commented on member comments and participation.
- Director O'Dell had no report.
- Director Barringham had no report.
- Director Nathan reported on committee meetings and election reminders.
- President Poland commented on member participation and year-end projects.

**11. Architectural Appeals**

- A. Ed Ryder – 30295 White Wake Drive  
Appealing ACC Denial of Over-Height Wall

MOTION/RESOLUTION: Director Barringham moved that the Board of table this item. Director Nathan seconded. Five votes in favor. MOTION CARRIED

**12. Next Meeting Date**

- Tuesday, March 9, 2021 at 2:00 p.m. – Executive Session
- Tuesday, March 9, 2021 at 6:00 p.m. – Regular Session



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9 **ARBITRATION**

10 **JAMS – SAN DIEGO**

JAMS REF. No. 124022134

11 IN RE CANYON LAKE PROPERTY OWNERS  
12 ASSOCIATION – MAIN GATE  
13 RECONSTRUCTION PROJECT

**CANYON LAKE PROPERTY OWNERS  
ASSOCIATION'S ARBITRATION BRIEF**

**Date: November 21, 2015**

**Time: 10:00 A.M.**

**Arbitrator: Honorable Richard Haden (Ret.)**

14  
15  
16  
17 This Brief is respectfully submitted in support of Canyon Lake Property Owners Association's  
18 Board of Director's August 4, 2015 decision to approve expenditure of \$746,580 on a new entry main  
19 gate. The procedure agreed upon by the Parties for this hearing is as follows:

- 20
- 21 a. The Arbitrator will issue a written decision.
  - 22 b. The Arbitrator's decision will be binding upon the Association's Board of Directors.
  - 23 c. The Arbitrator's decision will not be binding upon the Opposition Group but will satisfy the  
24 pre-litigation/ ADR requirement set forth in Civil Code Section 5930.

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## I. INTRODUCTION

Canyon Lake Property Owners' Association is a homeowners association governed by the Davis-Stirling Common Interest Development Act, Covenants, Conditions, and Restrictions; Articles of Incorporation; Bylaws and Rules. The Association has approximately 4800 members or properties. (See Exhibit "1" Overview of Canyon Lake Property Owners' Association). The Association is mostly gated with a Main Gate and two other entrance/exit gates. The community has a Lake which is leased from Elsinore Valley Municipal Water District, a golf course and country club, a lodge and pool area, an equestrian center and a private campground. All of these amenities were developed as part of the original master planned community that is known as Canyon Lake.

The question at issue is simple. *Does the Board of Directors' action on August 5, 2015 in approving an \$746,580.00 expenditure on the replacement of the existing Main Gate with an updated and redesigned Main Gate violate the law and/or the governing documents of Canyon Lake Property Owners' Association, which allow unlimited reserve-expenditures?* As summarized in this Brief, the answer to this question is no, and the Association should be permitted to go forward with this project.

To put this community and project into perspective, the numbers must be reviewed. The Association consists of 4800 members. When dividing the cost of the Main Gate project by the number of members, the total cost per member is \$155.54. This amount is not being assessed to the members. Rather, the Association is using money previously assessed and contributed to the Association's reserves account, which is intended for replacement of common area components, including the Main Gate. Another dollar amount to place this into perspective is the overall annual revenues of the Association. In Fiscal Year 2016 (May 2015 thru April 2016), it is projected to have revenues of \$16,123,503.00. The project that is objected to by the Opposition Group represents a mere 4.63% of a single year's gross revenues for the Association. (See 2015-16 Annual Budget attached hereto as Exhibit "2").

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1 The Opposition Group believes that the Board of Directors does not have authority to maintain the common  
2 area of the Association, arguing that the vote of the membership is required each time a project is proposed.

3 Because the Board of Directors is elected by the membership at an election held in accordance with the  
4 Association's governing documents and the Davis-Stirling Act, it is the Board of Directors' duty to make decisions  
5 for the community. Inevitably, a small group of members oppose everything the Board does or wants to do. The  
6 proper procedure for a member who is not satisfied with what the Board is doing is to run for the Board of  
7 Directors and change the direction that the Board is taking from within. Some of the Opposition Group's members  
8 have attempted to get elected onto the Board of Directors but failed.

9 The current board consists of members who ran for election on the premise that they would support the  
10 Main Gate re-design. Current members of the Board ran under that premise in May 2014 and May 2015. If the  
11 community was opposed to the Main Gate project, which was approved in August 2015, it could have voiced its  
12 disapproval in the recent Recall election that failed on October 17, 2015. The Opposition Group claims to be the  
13 voice of the membership when in truth, the Board is the only group that is elected to be the voice of the  
14 membership.  
15

## 16 II. WITNESSES

17 The Association will be relying on four witnesses: Dave Eilers, Bruce Yarbrough, Christopher Mitchell and  
18 Robert Nordlund.

19 Dave Eilers is a member of the Board of Directors and at the time that this project was approved, he was the  
20 Association's President. Currently, Mr. Eilers is the Treasurer. Mr. Eilers has been involved with the  
21 redevelopment and redesign of the Main Gate since the project's inception. He will testify about the project from  
22 inception/idea to its approval by the Board of Directors. In 2014, he ran on the platform that he would approve the  
23 Main Gate redesign. He was subject to Recall in October 2015 and the community supported him and he remains  
24 on the Board of Directors.  
25

26 Bruce Yarbrough is the current Board President. He was re-elected in May 2015 for a second term by the  
27 membership. He ran for re-election on the premise that he was going to approve the Main Gate redesign. He too  
28

1 was subject to Recall in October 2015 and like Mr. Eilers, the community supported him and he remains on the  
2 Board of Directors.

3 Christopher Mitchell is the Association's General Manager. Mr. Mitchell is a Certified Public Accountant  
4 and a Certified Community Association Manager. Before becoming the Association's permanent full-time General  
5 Manager, Mr. Mitchell served as the Association's Chief Financial Officer. Mr. Mitchell served as the interim  
6 General Manager twice before accepting the permanent position that he currently holds with the Association. Mr.  
7 Mitchell will testify about the procedure used by the Association to obtain bids and the preparation of materials for  
8 the bids that were obtained. He will also testify about the Association's documents and the Board meeting where  
9 the bids were approved by the Board of Directors.

10 Robert Nordlund is the Founder and CEO of Association Reserves. Association Reserves was established  
11 in 1986. Mr. Nordlund is a registered professional engineer and a Reserve Study pioneer. Mr. Nordlund was  
12 involved in the creation of the 1998 National Reserve Study Standards. Association Reserves and Mr. Nordlund  
13 prepared the Association's latest Reserve Study, which is attached hereto as Exhibit "3". Mr. Nordlund will testify,  
14 as an expert, about the standards used to determine if a project in an Association is considered a Capital  
15 Improvement or a Reserve Component as these terms are specifically and specially used in the homeowner  
16 association arena.  
17

18 The Opposition Group is made up of former members of the Board of Directors, some of whom decided not  
19 to run for re-election and others who were not re-elected when they ran. Three members of the Opposition Group  
20 have never run for or been elected to the Association's Board of Directors. Many of the members of the  
21 Opposition Group are vocal at Board Meetings and speak out against at least one item at each Board Meeting. Put  
22 another way, if the Board wants something, many of the Opposition Group does not want it.

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### III. PROCEDURE FOR APPROVAL

In 2012, the members of the Board of Directors approved the commission of a study to determine what could be done to better manage traffic flow into and out of the Community. Often during peak traffic periods, cars would stack up going into and exiting Canyon Lake. This caused backing up of other roads and created an overall frustration among the members of the Association and their invited guests. (See photos of the current Main Entry Gate from Google Earth attached hereto as Exhibit "4").

In 2012 when this study was commissioned, the Board of Directors consisted of Dawn Haggerty, Larry Neigel, Sean McDonald, George Middle and Dave Eilers. All five Board Members voted in favor of conducting the study. Today, three of these former Board Members are in Opposition to the Main Gate Project. George Middle served his second year of his 2-year term in 2013 and did not run for re-election. Sean McDonald did not seek re-election. Larry Neigel ran twice but was not elected to the Board of Directors after his first term expired. George Middle and Sean McDonald have supported candidates for election and their support has not garnered enough seats on the Board to support their agendas. In addition, the Opposition Group consists of the very members who spearheaded and were in support of the failed Recall in October 2015.

The 2012 Board wanted to be able to move more traffic through the Main Gate in less time and with less monitoring by private security guards. This led to the expenditure of over \$130,000 to study the Main Gate and to redesign it so that it could be presented to vendors for bidding before being approved by the Board of Directors. The Main Gate project will bring the original gate up to date with today's better and more current technology. (A goal of George Middle when he approved the initial study to approve the Main Gate redesign.)

At each step along the way, the Board let the membership know what it was doing in terms of planning and bidding for the Main Gate project. At each step of the way, some of the membership was supportive and some of the membership was not supportive. Some asked questions and made constructive comments that helped the Board improve the Main Gate project. There were at least 8 Project Update meetings where the Board was updated and the membership was invited to hear the same update. The membership was given the opportunity to ask questions about this project and other projects at these noticed meetings. The timeline of the project spanned at least 3 elections all of which elected enough Board Members to support the current project.

1 In August 2015, the Main Gate project bidding process was completed and the bids were in, summarized  
2 and organized into an agenda item for the Board to consider. (Pictures of the conceptual drawings of the Main  
3 Gate Project are attached hereto as Exhibit "5"). The Board of Directors has the ability to table any agenda item if  
4 it believes that more study is needed. Prior to August 2015, the Board tabled the decision on the Main Gate  
5 multiple times to allow additional investigation and further changes to the project and its design. This time, though,  
6 after several instances of the decision on the Main Gate project being tabled, it was discussed by the Board  
7 Members as well as members of the Association. Included in the discussion against the Main Gate, many of those  
8 in the Opposition Group voiced their opinions, comments and objections. Following the discussion, the Board  
9 voted on several individual aspects of the Main Gate project and approved them all. (See August 4, 2015 Board  
10 Meeting Minutes attached hereto as Exhibit "6"). Each of the Resolutions, as reflected in the Board's official  
11 Meeting Minutes was discussed separately. Each Resolution identified the account or accounts from which the  
12 funds were being drawn. (See pages from Board Book with Bids and Resolutions by the Board of Directors  
13 attached hereto as Exhibit "7") The Resolutions were divided up as follows:  
14

15 **1. Base Bid from Dalke & Sons in the amount of \$539,480.00.**

16 This bid included site work and civil work. This includes work on the roads in and around the entry gate.  
17 The bid was supported by a summary or spreadsheet that was included in the Board's Book and used by the Board  
18 to debate and eventually approve the project. (See summary spreadsheet attached hereto as Exhibit "8").  
19

20 **2. Main Gate Access Control System in the amount of \$109,200.00**

21 This bid covered the Association's desire to better control the access and ease of entrance for members at the  
22 Main Gate. The current Main Gate has no automation and members who access the community must wait in line  
23 to be validated by a person instead of using modern technology to authorize access with an automatic reader. (See  
24 summary spreadsheet attached hereto as Exhibit "8")

25 **3. Main Gate Cameras in the amount of \$31,900.00**

26 This bid was for additional cameras with better quality to allow the community to better monitor who is  
27 going in and out of the Main Gate. (See summary spreadsheet attached hereto as Exhibit "8")  
28

1 **4. Main Gate Construction Management contract for \$66,000.00**

2 This bid was to hire a manager for the project. Given the size and scope of this project, the Association's  
3 Board of Directors determined that a construction manager should oversee and supervise the vendors performing  
4 work for the Association. (See summary spreadsheet attached hereto as Exhibit "8")

5 From a procedural standpoint, once a bid is approved by the Association's Board of Directors, a contract is  
6 prepared. Often the vendor negotiates the contract and sometimes the vendor and the Association are unable to  
7 come to terms. When this happens, another vendor is selected by the Association's Board of Directors. This  
8 process alone makes it impossible to allow governance by the masses as the Opposition Group demands.

9 If a contract is approved and the parties enter into the contract, the Association becomes liable for  
10 performance under the contract. If the Association were to enter into contracts to have them potentially stopped by  
11 a homeowner group, it would subject the Association to severe financial harm due to delays and likely contract  
12 price increases. If vendors who bid projects knew that their bid was subject to the vote of the masses, and that it  
13 could take up to 6-months from the time the bid is submitted to the time the contract is awarded, it would surely  
14 increase the bid amounts to the Association.  
15

16 **IV. CALIFORNIA LAW REQUIRES THE BOARD OF DIRECTORS TO MAINTAIN AND**  
17 **REPAIR THE COMMON AREAS**

18  
19 Maintaining the Association's common area, including the Main Gate, is not only the Association's right  
20 and power. Maintaining the Association's common area is the most fundamental duty and obligation for which  
21 any homeowners association is created. The obligation to maintain, repair and replace the common area is the  
22 essence of every homeowners association's existence. The Canyon Lake Property Owners Association is no  
23 different.

24 The Davis-Stirling Act, California Courts and well-respected secondary sources all recognize that a  
25 "community association generally is formed and exists for the primary purpose of managing or operating the land  
26 and the improvements within a subdivision for the benefit of the association members."<sup>1</sup> This cornerstone of  
27

28  
<sup>1</sup> Expert Series California Common Interest Developments: Law and Practice, § 1:37. Role of Community Associations

1 community association law is codified in Civil Code Section 4775, which simply states that “the association is  
2 responsible for repairing, replacing, or maintaining the common areas...”

3 Under the well-known decision of *Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n*, the  
4 Association’s duty to maintain, repair and replace the common areas is subject to the Business Judgment Rule. In  
5 *Lamden*, the California Supreme Court found that courts should defer to a duly constituted community association  
6 board’s authority and presumed expertise where the board, upon reasonable investigation, in good faith and with  
7 regard for the best interests of the association and its members, exercises discretion within the scope of its authority  
8 to select among means for discharging an obligation to maintain and repair a development’s common areas.<sup>2</sup>

9 Therefore, if the Association conducts reasonable investigation and determines, in good faith and with  
10 regard for the best interests of the association and its members, the replacement of the Main Gate is necessary and  
11 recommended, it not only can replace the Main Gate; it must replace the Main Gate. In other words, the failure to  
12 maintain, repair or replace common area components, when the Association concludes the same are required in the  
13 best interests of the membership after conducting an investigation is a breach of the Board of Director’s most  
14 fundamental duty—the duty to preserve and maintain the common areas.

15 This idea is not merely conceptual—it is real. Every year, numerous associations are named as defendants  
16 to lawsuits by upset members seeking to compel their associations to maintain the common area. One example  
17 that has made its way to the Court of Appeal is *Affan v. Portofino Cove Homeowners Association*. In *Affan*, a  
18 group of homeowners brought action against the association alleging that it breached its duty to maintain and repair  
19 the common area plumbing, resulting in sewage blockage.<sup>3</sup> Not surprisingly, the homeowners prevailed.

20 Here, the Association conducted an investigation and determined that a new, upgraded main gate is  
21 necessary to alleviate serious traffic concerns at the entry and exist to and from the community. The Association  
22 determined that replacing the gate with an improved gate is in the best interests of the association and its members.  
23 In accordance with the Business Judgment Rule, it began the project. Of course, some members disagree with the  
24 decision. But, it is wholly within the Board’s authority and duty under the Business Judgment Rule and the  
25 *Lamden* decision. In effect, had the Board decided not to proceed with the main gate project after receiving the  
26  
27

28 <sup>2</sup> *Lamden v. La Jolla Shores Clubdominium Homeowners Ass’n* (1999) 21 Cal.4th 249, 260.

<sup>3</sup> See *Affan v. Portofino Cove Homeowners Association* (2010) 189 Cal. App. 4th 930.



1 results of its investigation, it would have accused of breaching its duty to maintain, repair and replace the common  
2 area—much like the association in the *Affan* decision. Surely, a group of homeowners would have complained  
3 about the Board’s failure to replace the main gate—perhaps even the same group of homeowners complaining  
4 about its replacement today.

5  
6 **V. THE GOVERNING DOCUMENTS REQUIRE THE BOARD OF DIRECTORS TO**  
7 **MAINTAIN AND REPAIR COMMON AREAS**

8 The CC&Rs of Canyon Lake Property Owners Association define the Association’s purpose in Article II;  
9 Section 1 (See Exhibit “9”):

10 “Purpose. The primary purpose of the Association shall be to further and promote  
11 the common interests and welfare of its members within the subdivided land . . .”

12 The CC&Rs discuss the responsibility of the Association for maintenance and repair in Article II; Section 5  
13 as follows:

14 The Association shall be responsible for the maintenance, repair, and upkeep of the  
15 private streets and parks, pedestrian easements, within the Subdivision, and the  
16 appurtenant drainage improvements and slope easements reserved by Declarant.  
17 Said maintenance, repair and upkeep shall be done in a continual and workmanlike  
18 manner and in no case shall such level of such maintenance, repair and upkeep be  
19 below the level of such care which would have been provided by the County of  
20 Riverside, had such streets, parks, pedestrian easements, drainage easements and  
21 slope easements been owned by said County. . . The Association shall also be  
22 responsible for the maintenance and operation of the recreational facilities to be  
23 acquired by the Association from the Declarant by means of a Trust Agreement,  
24 when 3500 single family residential lots have been sold by Declarant in said  
25 Subdivision, or on January 31, 1973, whichever occurs first.

26 Since the Association is a California Non-Profit Mutual Benefit Corporation, it acts through its elected  
27 Board of Directors. Each member is able to vote for the Board of Directors in an election that is annually. The  
28 terms of the Board Members are staggered such that three are elected one year and two are elected the following  
year.

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The Association's Bylaws (Exhibit "10") provide that

"all corporate powers of the Association shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board of Directors."

The only limitation that the Opposition Group can point to in the Bylaws that "restricts" the ability of the Board of Directors is found in Article IV; Section 1(g) which reads as follows:

The Board of Directors shall not make any capital improvements or additions to any one facility in which the total expense for such improvements exceeds \$800,000 within a two-year period (excluding any road repairs or improvements), without the approval of the owners, constituting a quorum, casting a majority of votes in the affirmative at a meeting or election of the Association conducted in accordance with California law, Corporate Codes and CLPOA governing documents.

The questions for this matter are thus properly framed as follows: (1) Is the Main Gate Project a Reserve Component or a Capital Improvement? And (2) Even assuming the Main Gate is a Capital Improvement, how much of it is road repairs or improvements?

**VI. THE MAIN GATE PROJECT IS A RESERVE COMPONENT, NOT A CAPITAL IMPROVEMENT**

Robert Nordlund, a Reserve Expert has provided the Association with an opinion that the Main Gate project is a Reserve Component, not a Capital Improvement. (See Exhibit "11") His opinion is based upon his review of the Main Gate Project Documents, including the Award of Contract, Budget; and Conceptual Photos of the Main Gate Project; His opinion is also based on the National Reserve Study Standards.

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1 According to Mr. Nordlund, a 4-part test is used to determine whether or not an expenditure is a Capital  
2 Improvement or a Reserve Component pursuant to the National Reserve Study Standards. Mr. Nordlund will  
3 testify that the 4-part test asks the following questions:

- 4 1. Is the asset the maintenance responsibility of the Association?
- 5
- 6 2. Is the asset life limited?
- 7
- 8 3. Does the asset have a predictable Remaining Useful Life?
- 9
- 10 4. Is the project's projected cost above a minimum threshold of significance?

11 While the Main Gate Project appears to involve multiple projects, for purposes of Mr. Nordlund's analysis it is a  
12 single "entry system."

13 **Question 1: Is the asset the maintenance responsibility of the Association?**

14 There should be no dispute that the Main Gate and all of the property surrounding it are part of the common  
15 area that is the responsibility of the Association to maintain, repair and replace. The components of the Main Gate  
16 are also all common area.  
17

18 **Question 2: Is the asset life limited?**

19 The answer to this question is also yes and it would be hard to imagine anyone arguing that the entry system  
20 does not have a limited life. Mr. Nordlund will testify that the entry system physically deteriorates over time and it  
21 is less effective or less efficient in serving its intended purpose as time passes. This is clear in the use of entry  
22 technology. There may be a question of how much life is left in the current entry system. That is not the question  
23 that needs to be answered, however.  
24

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1 **Question 3: Does the asset have a predictable Remaining Useful Life?**

2  
3 Because the entry system physically deteriorates and becomes less useful for its intended purpose, it has a  
4 predictable remaining useful life. Again, some could argue that its useful life has not yet run its course. That is not  
5 the question that needs to be answered, however. That is a decision for the elected leaders, not a few members of  
6 the Association.

7 **Question 4: Is the project's projected cost above a minimum threshold of significance?**

8  
9 Given the size of the project in terms of cost, it is above a minimum threshold of significance in the opinion  
10 of Mr. Nordlund. It is doubtful that the Opposition Group will argue that this project is insignificant.

11 Finally, the Opposition Group may argue that the additional lane that is part of the redesigned Main Gate is a  
12 Capital Improvement or makes the entire project a Capital Improvement. Mr. Nordlund will testify, however, that  
13 the question is whether an entry system that includes lanes for traffic already exist. If the answer is yes, the addition  
14 or subtraction of a lane does not make the project a Capital Improvement. It is still a main entry gate with traffic  
15 lanes that is being replaced with a main entry gate with traffic lanes. According to Mr. Nordlund, the analysis  
16 remains limited to answering the four questions outlined above.

17 The ultimate question is whether this is a Reserve Component or a Capital Improvement. In defining these  
18 two terms, we must look to the terms and definitions as used in the homeowners association industry. Mr.  
19 Nordlund has been involved as a Reserve Specialist in the homeowners association industry for almost 30 years.  
20 The Opposition Group is looking at this project from a general business standpoint. A homeowners association is  
21 not a standard business and the definitions and terms differ. In the homeowners association world this project is not  
22 a Capital Improvement, it is a Reserve Component.

23 //

24 //

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1 **VII. EVEN ASSUMING SOME PORTION OF THIS PROJECT IS A CAPITAL IMPROVEMENT,**  
2 **IT STILL DOES NOT TRIGGER THE BYLAWS' REQUIREMENT OF A MEMBERSHIP**  
3 **VOTE**

4  
5 Even assuming the Opposition Group is successful in classifying some part of the entry system or Main  
6 Gate Project as a Capital Improvement, the project still does not violate the Bylaws as they argue. For the  
7 Opposition Group to prevail, they must show that more than \$800,000.00 expended on the project is considered a  
8 Capital Improvement and not a Reserve Component. The bylaws limit expenditures on Capital Improvements to  
9 \$800,000.00. The bylaws do not state that if a project includes a Capital Improvement, the entire project cannot  
10 exceed \$800,000.00 over a two-year period of time. Therefore, if a project includes both a Reserve Component  
11 and a Capital Improvement, the Capital Improvement portion of the project must be tested against the \$800,000.00  
12 requirement separately.

13 Given that the total project cost, including the pre-bid work, is only \$878,486.38, the Opposition Group  
14 would need to prove that more than 96.76% of the project is a Capital Improvement and not a Reserve Component.  
15 They cannot because it is not.

16 In addition, if any of that 96.76% is for "road repairs or improvement" it too would be excluded and  
17 deducted from the \$800,000.00 Capital Improvement limitation. According to the Association's analysis, at least  
18 \$101,448.19 of the project is for road repairs and/or improvements. This reduces the cost of the rest of the project  
19 to \$777,038.19, well below the Bylaw limit argued by the Opposition Group.

20  
21 **VIII. CONCLUSION**

22 The Opposition Group is arguing that whenever a project is over \$800,000.00 the Board cannot act, the  
23 membership must act. The function of the Association is to manage and maintain the common areas. It is the  
24 obligation and duty of the Board of Directors to carry that function. The expenditures for the Main Gate Project  
25 will not cause a special assessment or an increase in regular dues. The Main Gate Project is being funded by  
26 money that the Association has been collecting for many years – in reserves – for exactly this purpose.

27  
28 The Board of Directors respectfully requests a determination that this project, like other common-area  
maintenance and replacement projects, is not a Capital Improvement subject to the vote of the membership, but

1 rather a Reserve Components that the Board, within its duty to maintain the common area, must replace with or  
2 without the members' vote.

3  
4 DATED: November 5, 2015

SILLDORF & LEVINE, LLP

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9 SCOTT D. LEVINE, ESQ  
10 Attorney for Canyon Lake Property Owners  
11 Association  
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**JAMS ARBITRATION CASE REFERENCE NO. 1240022134**

IN RE CANYON LAKE PROPERTY  
OWNERS ASSOCIATION --  
**MAIN GATE RECONSTRUCTION PROJECT**

---

**DECISION**

Parties and Counsel. The parties and counsel in this hearing are:

Scott Levine, Esq.  
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*Committee of Owners*  
*Objecting to the Project*

Arbitrator:

**Hon. J. Richard Haden (Ret.)**  
JAMS  
401 "B" Street, Suite 2100  
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(Tel): 619-236-1848; 619-236-9032 (fax)

Case Manager:

Jenny Truex  
JAMS  
401 "B" Street, Suite 2100  
San Diego, CA 92101  
(Tel): 619-237-0805; 619-236-9032 (fax)

PLACE OF ARBITRATION: San Diego, California

## **I. INTRODUCTION AND PROCEDURAL STATEMENT**

The Board of Directors of Canyon Lake Property Owners Association has approved a Main Gate Project. A committee of owners objects to approval of this project without a vote of the homeowners. The Board of Directors maintains a vote of the homeowners is not required by the Bylaws.

The parties have agreed the Arbitrator will issue a written decision which will be binding on the Association's Board of Directors. This decision will not be binding on the opposition group, but will satisfy the pre-litigation ADR requirement set forth in Civil Code §5930.

The evidentiary hearing took place November 10, 2015, in the JAMS offices, 401 B Street, Suite 2100, San Diego, California. Each side offered documentary evidence. The following witnesses testified: Dave Eilers, Robert Nordlund, Christopher Mitchell, Bruce Yarbrough, John Zaitz, and Eric Spitzer.

At the conclusion of the testimony, the matter was argued and submitted for a decision.

## **II. FACTS**

Dave Eilers was first elected to the Board of Directors in 2012 and was reelected in 2014. He served as President from May 2013 – August 2015, and is the current Treasurer. He explained all Board meetings are televised. **The Board has discussed various proposals to modernize or modify the Main Gate for nineteen years.** Over the past three years the Main Gate has been a regular topic of Board meetings.

The Board of Directors devoted nearly an hour to a discussion of the Main Gate Project at its June 4, 2013, televised meeting. Issues addressed included: traffic congestion; security automation and technology; closing Golden Gate; potential savings realized from RFID versus staffed booths; and modernization. All homeowners present with input were invited to speak. Several attendees complimented the Board on this process. The meeting closed with an invitation



to all interested homeowners to attend a follow-up meeting on the gate. (See video in evidence.) Further, Main Gate modification has been a topic of community project workshops on September 24, 2013 (Exh. 37-38), October 29, 2013 (Exh. 40-42), December 3, 2013, January 15, 2014 (Exh. 43, 48-49), March 18, 2014 (Exh. 56), and September 17, 2014 (Exh. 67). Community input at these meetings has resulted in various modifications to the initial proposal. Originally, the plan contemplated closure of Golden Gate, a street located at the gate. Based on community input, Golden Gate will remain open as a right turn in/right turn out restricted street. A proposal for an arch or portico at the gate was considered based on input from the Quality Assurance Committee, but later rejected because of cost.

On August 4, 2015, the Board approved a proposal to modernize the Main Gate (Exh. 5, 6). This project costs the following amount:

Construction	\$555,420.04
Access Control	109,200.09
Cameras	<u>31,900.00</u>
Total:	\$696,520.13

Additional costs for related road construction are \$181,966.34.

It is Mr. Eilers' view that the community supports this project because both he and current Board President Bruce Yarbrough were elected as supporters of this proposal and a recent recall election attempt to remove them and another project supporter failed.

Christopher Mitchell, Canyon Lake General Manager, testified the Board listened to community ideas and made changes to the gate proposal based on that input. The final proposal reflects input from the entire community as well as consideration of a traffic study. Traffic continues to escalate on Rail Road Canyon. (Exh. 32.) The cost allocated to roadwork for the project was determined by Webb and Associates, an independent expert, not the HOA staff or Board. (Exh. 88.) The August 4, 2015, vote to approve the Main Gate proposal and

award bids was during a televised public meeting. (Exh. 6.) In his view, the project enhances an existing common area facility by upgrading technology, traffic flow, and buildings.

Bruce Yarbrough, President of the Board since August 2015, favors the gate proposal. He ran for election against a candidate who opposed the gate proposal and won. The October 2015 recall election failed because the community overwhelmingly supported the existing Board.

Robert Nordlund, CEO of Association Reserves, advises HOAs throughout the country on appropriate reserves. He conducts 4,000 reserve studies per year to assist HOA Boards in preparing budgets which anticipate and prepare for major expenses. Generally, Boards are required to protect, maintain, and enhance HOA corporate assets.

National Reserve Study Standards prepared by the Community Association Institute set out the following four-point test for determining whether a project is a reserve project or capital improvement:

1. Is the Asset the Maintenance Responsibility of the Association?
2. Is the Asset Life Limited?
3. Does the Asset have a Predictable Remaining Useful Life?
4. Is the Project's Projected Cost above a minimum threshold of significance?

In Mr. Nordlund's opinion, the entire Main Gate Project is a reserve project, not a capital improvement, because the gate is a common area maintenance responsibility with a limited and predictable remaining useful life and the projected project cost is above a minimum threshold of significance. The project is an inseparable part of an existing system. It will "harness modern technology" to update that system. Given traffic flow, it would be imprudent for the Board not to do it because during rush hour periods, traffic backs up on a busy street creating a safety issue. Mr. Nordlund explained the current gate is outmoded physically, technologically, and aesthetically. In his view, the Board's approval

of the gate project represents an act in the best interest of the HOA well within the Business Judgment Rule. (Exh. 11.)

John Zaitz is a homeowner opposed to the Main Gate Project because, in his view, it represents an unauthorized expenditure of over \$800,000 by the Board without a community vote.

Eric Spitzer is a current Board member elected in 2013. He is opposed to the current gate project because in his view it is unworkable and a better plan could be developed.

### III.

#### ANALYSIS

The Canyon Lake Property Association generally acts through its elected Board of Directors which is responsible for "...repairing, replacing, or maintaining the common areas...." Civil Code §4775.

The CC&Rs of Canyon Lake Property Owners Association define its primary purpose as follows:

"The primary purpose of the Association shall be to further and promote the common interests and welfare of its members within the subdivided land..."

Article II, Section 1.

Article II, Section 5 makes the Association responsible for maintenance, repair and upkeep of common areas. (Exh. 9-10.)

The Bylaws further provide:

"All corporate powers of the Association shall be exercised by or under the authority of, and the business affairs of the Association shall be controlled by, the Board of Directors." (Exh. 10.)

Here, the Board conducted a thorough investigation and, after receiving extensive community input and reviewing a traffic study, determined the Main Gate required modification to alleviate serious traffic concerns at the entry and

exit to the community. The Board has determined this project is in the best interest of the Association and its members.

A committee of owners objecting to the Main Gate Project maintains the project must be subject to a vote of the community because it represents a capital improvement in excess of \$800,000. They rely on the Bylaws, Article IV, Section 1(g), which in pertinent part states:

“The Board of Directors shall not make any capital improvements or additions to any one facility in which the total expense for such improvements exceeds \$800,000 within a two-year period (excluding any road repairs or improvements), without the approval of the owners....”

Mr. Nordlund, an expert in HOA reserve studies, has explained the Main Gate Project is a reserve project not a capital improvement. Clearly, the Main Gate is an integral part of the common area which is the Board's responsibility to maintain, repair, or replace. The life of the Main Gate is limited because it lacks modern technology which would improve its function, it is dated in appearance, and its outmoded design does not recognize increased traffic on the adjoining highway. It has a predictable remaining useful life which is within the discretion of the Board and the project's cost is above a threshold of significance.

If the project is not a capital improvement it does not require a vote of the owners. Even if it were a capital improvement, the cost excluding road construction is under \$800,000. Thus, it does not meet the \$800,000 requirement for a community vote described in Article IV, Section 1(g).

#### IV.

#### CONCLUSION

Because the Main Gate Project is a reserve project and not a capital improvement, a community vote is not required for its approval. Even if it were a capital improvement, the cost excluding road construction is below the \$800,000 threshold described in Article IV, Section 1(g) which would require a

community vote. In approving this project, the Board has acted well within its authority pursuant to California law and the Association Bylaws. Therefore, the project may proceed based on Board approval without a community vote.

DATED: November 18, 2015.

  
HON. J. RICHARD HADEN (Ret.),  
Arbitrator

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

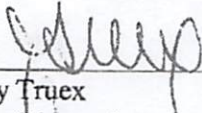
Re: Canyon Lake-Front Gate  
Reference No. 1240022134

I, Jenny Truex, not a party to the within action, hereby declare that on November 19, 2015, I served the attached DECISION on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Diego, CALIFORNIA, addressed as follows:

Scott D. Levine Esq.  
Silldorf & Levine  
5060 Shorham Place  
Suite 115  
San Diego, CA 92122  
Phone: 858-625-3900  
slevine@Silldorf-Levine.com  
Parties Represented:  
Canyon Lake HOA

Mr. Lawrence Neigel  
22037 Loch Lomond Dr  
Sun City, CA 92587  
Phone: 951-244-7072  
neigel\_la@msn.com  
Parties Represented:

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Diego, CALIFORNIA on November 19, 2015.

  
\_\_\_\_\_  
Jenny Truex  
jtruex@jamsadr.com

**JAMS ARBITRATION CASE REFERENCE NO. 1240022134**

IN RE CANYON LAKE PROPERTY  
OWNERS ASSOCIATION --  
MAIN GATE RECONSTRUCTION PROJECT

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**DECISION**

Parties and Counsel. The parties and counsel in this hearing are:

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Bruce Yarbrough, President of the Board since August 2015, favors the gate proposal. He ran for election against a candidate who opposed the gate proposal and won. The October 2015 recall election failed because the community overwhelmingly supported the existing Board.

Robert Nordlund, CEO of Association Reserves, advises HOAs throughout the country on appropriate reserves. He conducts 4,000 reserve studies per year to assist HOA Boards in preparing budgets which anticipate and prepare for major expenses. Generally, Boards are required to protect, maintain, and enhance HOA corporate assets.

National Reserve Study Standards prepared by the Community Association Institute set out the following four-point test for determining whether a project is a reserve project or capital improvement:

1. Is the Asset the Maintenance Responsibility of the Association?
2. Is the Asset Life Limited?
3. Does the Asset have a Predictable Remaining Useful Life?
4. Is the Project's Projected Cost above a minimum threshold of significance?

In Mr. Nordlund's opinion, the entire Main Gate Project is a reserve project, not a capital improvement, because the gate is a common area maintenance responsibility with a limited and predictable remaining useful life and the projected project cost is above a minimum threshold of significance. The project is an inseparable part of an existing system. It will "harness modern technology" to update that system. Given traffic flow, it would be imprudent for the Board not to do it because during rush hour periods, traffic backs up on a busy street creating a safety issue. Mr. Nordlund explained the current gate is outmoded physically, technologically, and aesthetically. In his view, the Board's approval

of the gate project represents an act in the best interest of the HOA well within the Business Judgment Rule. (Exh. 11.)

John Zaitz is a homeowner opposed to the Main Gate Project because, in his view, it represents an unauthorized expenditure of over \$800,000 by the Board without a community vote.

Eric Spitzer is a current Board member elected in 2013. He is opposed to the current gate project because in his view it is unworkable and a better plan could be developed.

### **III.**

#### **ANALYSIS**

The Canyon Lake Property Association generally acts through its elected Board of Directors which is responsible for "...repairing, replacing, or maintaining the common areas...." Civil Code §4775.

The CC&Rs of Canyon Lake Property Owners Association define its primary purpose as follows:

"The primary purpose of the Association shall be to further and promote the common interests and welfare of its members within the subdivided land...."

Article II, Section 1.

Article II, Section 5 makes the Association responsible for maintenance, repair and upkeep of common areas. (Exh. 9-10.)

The Bylaws further provide:

"All corporate powers of the Association shall be exercised by or under the authority of, and the business affairs of the Association shall be controlled by, the Board of Directors." (Exh. 10.)

Here, the Board conducted a thorough investigation and, after receiving extensive community input and reviewing a traffic study, determined the Main Gate required modification to alleviate serious traffic concerns at the entry and

exit to the community. The Board has determined this project is in the best interest of the Association and its members.

A committee of owners objecting to the Main Gate Project maintains the project must be subject to a vote of the community because it represents a capital improvement in excess of \$800,000. They rely on the Bylaws, Article IV, Section 1(g), which in pertinent part states:

“The Board of Directors shall not make any capital improvements or additions to any one facility in which the total expense for such improvements exceeds \$800,000 within a two-year period (excluding any road repairs or improvements), without the approval of the owners....”

Mr. Nordlund, an expert in HOA reserve studies, has explained the Main Gate Project is a reserve project not a capital improvement. Clearly, the Main Gate is an integral part of the common area which is the Board’s responsibility to maintain, repair, or replace. The life of the Main Gate is limited because it lacks modern technology which would improve its function, it is dated in appearance, and its outmoded design does not recognize increased traffic on the adjoining highway. It has a predictable remaining useful life which is within the discretion of the Board and the project’s cost is above a threshold of significance.

If the project is not a capital improvement it does not require a vote of the owners. Even if it were a capital improvement, the cost excluding road construction is under \$800,000. Thus, it does not meet the \$800,000 requirement for a community vote described in Article IV, Section 1(g).

#### IV.

#### CONCLUSION

Because the Main Gate Project is a reserve project and not a capital improvement, a community vote is not required for its approval. Even if it were a capital improvement, the cost excluding road construction is below the \$800,000 threshold described in Article IV, Section 1(g) which would require a

community vote. In approving this project, the Board has acted well within its authority pursuant to California law and the Association Bylaws. Therefore, the project may proceed based on Board approval without a community vote.

DATED: November 18, 2015.

  
HON. J. RICHARD HADEN (Ret.),  
Arbitrator

**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

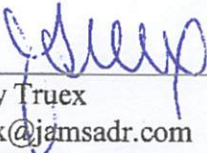
Re: Canyon Lake-Front Gate  
Reference No. 1240022134

I, Jenny Truex, not a party to the within action, hereby declare that on November 19, 2015, I served the attached DECISION on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Diego, CALIFORNIA, addressed as follows:

Scott D. Levine Esq.  
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Parties Represented:  
Canyon Lake HOA

Mr. Lawrence Neigel  
22037 Loch Lomond Dr  
Sun City, CA 92587  
Phone: 951-244-7072  
neigel\_la@msn.com  
Parties Represented:

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Diego, CALIFORNIA on November 19, 2015.

  
\_\_\_\_\_  
Jenny Truex  
jtruex@jamsadr.com