

**Minutes of the Regular Meeting of  
The Board of Directors of the  
Peninsula at Mystic Shores Property Owners Association  
October 3, 2012**

The regular meeting of the Board of Directors of the Peninsula at Mystic Shores Property Owners Association, a Texas nonprofit corporation (the "Association"), was held at the North Shore United Methodist Church, 23880 North Cranes Mill Road, Canyon Lake, Texas 78133, pursuant to call by the President of the Association.

**Directors Present:** Marty Rolleg, Greg Petsch, and Ann Gibson.

**Also Present:** Steve Brown of Association Management Services, and several concerned owners.

**Call to Order:** The meeting was called to order at 1:37 p.m., with the President being in the chair and the Recording Secretary present. The President determined that there was a quorum present.

**Introduction and Opening Remarks:** Mr. Rolleg welcomed all of those present and expressed thanks to the church for the use of the facility.

**NEW BUSINESS:**

**Covenant Violation Discussion:** It was recently brought to the attention of the Board that home within the community was being used for commercial purposes; i.e. the home was being leased out for short term vacation rentals. The residents were sent a letter by the Association and a hearing was subsequently requested by the owners. The Board then listened to the evidence presented as follows:

**Fulkerson Presentation:** It was the hope of the owners that everyone could speak as friends and try to reach amicable conclusion to the issue at hand. It is the contention of the owners that the covenants do allow leasing of property; however the duration and type are not expressly addressed. The master declaration from the POA also allows for rentals. It was suggested that any owner could have more than one residence, and could rent out one property.

The owners expressed that they have lived in many communities and have never had any problems. An offer was recently made to the Association in good faith to try and compromise. The property is no longer being leased through a broker, but rather by word of mouth only. A compromise now will give a guideline for the future. Over the past year the home has been leased more than at any previous time. They try to be good neighbors. The property is not always leased, and is given out to sisters from the church, young leaders, as well as family and friends.

**Concerned Owner Presentations:**

**Betsy Kasch:** Mrs. Kasch provided that she lives at 150 Spiritual Pass. Article 10, Section 10.3 states "All Lots may be used only for residential purposes of a single family, and for ancillary business or home office uses. A business or home office shall be considered ancillary so long as:

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(a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the lot; (b) the activity limits the number of employees on the premises to not more than (2) at any given time; provided, further, that there is reasonable parking to accommodate such employees; (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other invitees or door to door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.” Mrs. Kasch went on to state that the property has been rented many times with up to sixteen guests, and anywhere from three to twelve cars present. The cars are often times parked along the roadway for extended periods of time, and she has almost been hit while walking with her grandchildren. While the property is rented, guests are apparent, they are not singular clients, traffic is increased, and it threatens the safety of the owners living in the community. Mrs. Kasch objects to the current use of the home, and would like the Board to address this issue in a timely manner. Activity such as this lowers the property values of existing home in the Peninsula.

**Tom Prosch, presenting for John Quaattlebaum and Famia Magana:** A copy of the written statement is attached to these minutes as “Exhibit A”.

**Nancy Evans Hanley:** A copy of the written statement is attached to these minutes as “Exhibit B”.

**Mike Hanley:** A copy of the written statement is attached to these minutes as “Exhibit C”.

**Peter Helferich:** A copy of the written statement is attached to these minutes as “Exhibit D”.

**Adjourn to Executive Session:** Upon completion of the presentations above, the Board adjourned to executive session at 2:35 p.m.

**Reconvene from Executive Session:** The reconvened the meeting from executive session at 3:06 p.m.

**Summary of Executive Session:** Mr. Rolleg presented that the Board had reviewed the statements of the parties on both sides of the issue, and it is the Board’s ruling that the home is being utilized as a business operation, and further that the business should cease. The Board has authorized management to notify the owners of this ruling in writing, and also to take further action if the operation does not cease, up to and including legal action if needed.

**Street Sweeping Bid:** A bid was solicited by the Maintenance Committee for sweeping of the streets on a quarterly basis, not to exceed \$400.00 per occurrence. A local builder made a donation for the first service which has been scheduled. Mr. Kasch stated that this is good preventative maintenance to keep dirt from collecting on the streets, and also helps to prevent

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weed growth in the street surfaces. Upon discussion it was moved, seconded and unanimously approved to proceed with the contract for quarterly service; motion carried.

**Adjournment:** There being no further business, the meeting adjourned at 3:12 p.m.



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Steven H. Brown, Recording Secretary

**"Exhibit A"**

**QUATTLEBAUM/MAGAÑA STATEMENT TO**  
The Peninsula at Mystic Shores (MS) Board of Directors,  
3 Oct 12 Meeting  
Read by Designated Proxy

**ISSUE:** Covenant Violation Discussion Meeting Agenda Item

The undersigned are John R. Quattlebaum and Famia J. Magaña. We request the Board consider this statement on the issue and enter a copy into the 3 Oct 12 meeting record as we are unable to attend the meeting due to a prior obligation in Virginia.

**BACKGROUND.** We are property owners who reside at 164 Spiritual Pass (lot 603), Unit One of the Peninsula at MS (hereafter called "Unit One"). We have a **material interest** in the outcome of the Board's "Covenant Violation Discussion-purported business run from a residence" because: **(1)** the residence in question, 286 Saga, is located two lots east of our home; **(2)** we have direct knowledge and evidence of a pattern of violations of the Unit One Declaration of Covenants, Conditions, and Restrictions (DCCRs) occurring at 286 Saga; and **(3)** we have suffered direct harm from the DCCR violations. I am a subject matter expert (SME) on the numerous DCCRs that govern the Mystic Shores development, to include Unit One of the Peninsula. My qualifications as SME are established via my role on the MS Architectural Control Committee (ACC) for the past 15 months. I maintain SME knowledge of said DCCRs and assist the MS Board of Directors and ACC to interpret said DCCRs.

**FACTS.** We do not know the owners of 286 Saga nor do we have any type of relationship with them. We occupied our home at 164 Spiritual Pass in December 2009. During 2010 and 2011, we heard noise and saw a high volume of vehicles and trailers parked in and around 286 Saga; but had no basis to question activity at the address.

The number of vehicles at 286 Saga greatly increased in 2012. We've seen cars, vans, a bus, trucks, empty trailers, and/or personal watercraft and boats on trailers parked and overflowing on to Saga St. Instances of loud noise increased (i.e. revving of engines and human voices) and trash from 286 Saga has blown into our Spiritual Pass yard. Further, we were subject to a safety hazard one dark night when driving home we had to swerve to avoid hitting a boat on trailer parked in the street in front of 286 Saga.

It is evident based on our observations that 286 Saga is used as a commercial, short-term rental property NOT a single family residential property as envisioned in the DCCRs. Web research confirmed this is a fact. Exhibit 1 shows screenshots of the web page that advertises 286 Saga as "Ventanas on the Lake" at the price of \$895 per night for 10 guests; minimum 2 nights; \$25 additional charge per guest up to 14. Below is an example of the kind of volume we have observed this year:

- 1 Aug - 9 vehicles
- 2 Aug - 8 vehicles; 1 boat on trailer
- 3 Aug - 5 vehicles; 1 boat on trailer; 1 empty boat trailer
- 4 Aug - 6 vehicles; 1 boat on trailer; 1 empty trailer on street

7 Aug – 2 vehicles; 1 9-passenger van; 1 20-passenger bus  
 11 Aug – 8 vehicles  
 22 Aug - 1 vehicle with personal water craft on trailer  
 23 Aug – 3 vehicles  
 1 Sep – 5 vehicles; 1 motorcycle  
 2 Sep – 5 vehicles  
 29/30 Sep – 6 vehicles; 1 truck w/RV and 1 SUV w/boat parked on Spiritual Pass

**CONCLUSION:** (1) A violation of The Peninsula, Unit One DCCRs is occurring. A commercial entity in the form of a vacation/short term (per night) rental—exists at 286 Saga St. Dwellings in Unit One are “**to be used for residential purposes**” per *Article III, Use Restrictions, Section 3.01 Single Family Residential Construction*. Also *Section 3.06 Prohibition of Offensive Activities* states “**...no activity shall be conducted on any Tract which is not related to single family residential purposes,...**” These DCCRs sections are straightforward and unambiguous. By any standard, a property such as 286 Saga, that is rented by the night, is akin to a hotel/bed and breakfast commercial entity and does not meet the plain meaning description of “single family residence” as envisioned in the DCCRs. (2) Public Safety within The Peninsula, Unit One is jeopardized. Residents on Spiritual Pass and Saga have been exposed to and experienced first-hand the loud, boisterous behavior and reckless activity emanating from those renting 286 Saga who disturb the serenity of a gated, private, residential neighborhood. Vehicles parked squarely in the street create unsafe conditions to exist for nearby Unit One residents who navigate Saga St. to get to their homes. (3) Security of the entire gated community is being compromised. The pay-by-the-night renters of 286 Saga enter the Peninsula with a code. Once inside the gate, these persons have unfettered access to the Peninsula placing the security of all residents at risk. This renders the gate useless as a first level means to deter malicious activity.

**ACTION REQUESTED:** We request the Board to enforce the applicable Unit One DCCRs. Like other owners, we purchased our property in the Peninsula with the knowledge that it is a residential community governed by DCCRs subject to enforcement. Our understanding and expectation is the DCCRs will be enforced to “**[enhance] and [protect] the highest and best use, value, desirability and attractiveness of said property**” covered. The case before the Board requires strict enforcement. A fair reading of the applicable DCCRs (Sections 3.01 and 3.06) shows they do not allow use of a property tract akin to the kind of rental activity (hotel/bed and breakfast/by-the-night rental) presented at 286 Saga. A “variance” to the DCCRs is unwarranted, ill-advised, and would set a dangerous a precedent that would denigrate the quality of life and property values in The Peninsula at Mystic Shores.

Respectfully submitted,

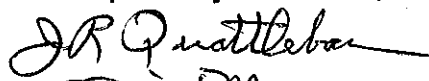

  
  
 JOHN R. QUATTLEBAUM  
 FAMILIA J. MAGAÑA

EXHIBIT 1: SCREEN SHOTS of Web Advertising for 286 Saga, aka "Ventanas on the Lake" Page 1 of 4.

Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley, Windows Internet Explorer

11:16 AM HillCountryPremier.com

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info@hillcountrypremier.com **Hill Country Premier Lodging** 512-847-746

HOME OUR PROPERTIES GUEST INFORMATION ABOUT WIMBERLEY NEWS

CONTACT STAFF

**Ventanas on the Lake** Image Gallery OPEN SEARCH

Properties with a View
  Short Term Rentals
  Waterfront Properties

Nestled on the banks of lovely Canyon Lake, Ventanas on the Lake is a breathtakingly beautiful home with stunning views pouring out of every window. Enter a world of serenity and majesty as the road leads you down to the massive 6 bedroom, 6 bath home complete with every luxury amenity you could ask for. The most notable attribute of the home is revealed in its name: Ventanas, or Windows, features dozens of windows with every room looking

Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley, Windows Internet Explorer

11:16 AM HillCountryPremier.com

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could ask for. The most notable attribute of the home is revealed in its name: Ventanas, or Windows, features dozens of windows with every room looking out onto a sweeping view of the sparkling lake or the rolling hills of hill country.

Centrally located on a peninsula of exclusive Canyon Lake and just a 20 minute drive from downtown Wimberley, this house is a secluded retreat perfect for your next family reunion or great location for friends to gather. Upon arriving, huge wooden doors open onto an expansive covered breezeway and patio that appears as if suspended over the rippling lake below. Complete with dining area and several rocking chairs, this outdoor entertainment area is the quintessential spot for watching a Texas Hill Country sunset while sipping a refreshing cocktail.

With amazing decks and covered patios, it's hard to imagine anything inside competing with the awesome outdoor amenities. However, open the door from the patio into the home and discover a jaw-dropping Great Room unlike any other. With soaring 25ft ceilings and a grand fireplace stretching up to the top, the sheer size and magnitude of this splendid space will amaze you. A completely open layout allows every room from the kitchen to the dining room to the living room to feel extremely open and spacious. Hardwood floors

Location

Map | Satellite

Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley, Windows Internet Explorer

Map of the area showing the Peninsula of Mystic Shores, Upper River, and Potter Creek Park.

A completely open layout allows every room from the kitchen to the dining room to the living room to feel extremely open and spacious. Hardwood floors throughout, rustic exposed wood beams, an updated kitchen, huge wooden dining room table, and comfy overstuffed furniture all come together to exude the ambience of a five star mountainside lodge. The second floor wraps around the great room in an open balcony -- making it a space for everyone to feel connected even from different floors.

The master suite, located on the first floor, is graciously appointed with a 4 poster bed, large rock wood-burning fireplace and a wall of windows looking out onto the lake. The master bath provides both a soaking tub and a large shower and the private patio just off the master suite comes complete with an oversized hammock for two. Four of the six bedrooms reside upstairs, each with their own private bath. The 6th bedroom is a private guest house just outside the main entrance of the home. A beautiful space with lovely windows and a private bath as well, perfect for the person who prefers to turn in early while the others stay up late in the main house.

The options are endless as far as activities go. A gameroom located on the bottom level comes complete with your private pool table. The house itself provides hours of entertainment; the den will entertain the kids with a game

### Reservations Information

This is a property that is exclusively offered through Hill Country Premier Lodging. For a complete list of exclusive properties, [check here](#)

**>> Book Online - Check Availability** for reserving Ventanas on the Lake with Hill Country Premier Lodging

Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley, Windows Internet Explorer

bottom level comes complete with your private pool table. The house itself provides hours of entertainment; the den will entertain the kids with a game table, flat screen T.V. and lush, overstuffed leather sofas; the adults can cook and mingle over a glass of wine in the large and well-appointed kitchen with bar and barstools; and those seeking some R & R can lounge on the patio sipping a glass of lemonade as the sun sets over the lake. If outdoor fun and recreation is more your style, you can rent some jet skis, a ski boat, or even a sailboat at the nearby rental dock and spend a fun-filled day exploring Canyon Lake.

For a truly unique Hill Country experience, look no further than La Ventanas on Canyon Lake; a truly remarkable vacation home.

Please call us at (512) 847-7400 with any questions or for more information.

**Reserve Property Online**

### Amenities

### Reservations Information

This is a property that is exclusively offered through Hill Country Premier Lodging. For a complete list of exclusive properties, [check here](#)

**>> Book Online - Check Availability** for reserving Ventanas on the Lake with Hill Country Premier Lodging

**>> Check here** for information on Reservations with Hill Country Sunset Premier Lodging as well as Check-In and our Policies on Deposits and Cancellations.

Not sure if Ventanas on the Lake will best fit your specific needs? Please call us at (512) 847-7400 with any questions or for more

Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley, Windows Internet Explorer

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Address: http://www.hillcountrypremier.com/...

Ventanas on the Lake | Hill Country Premier Lodging | ...

## Pricing Information

**Amenities**

- 6 Bedrooms/ 2 King Bed/ 3 Queen Beds/ 4 twin beds
- 6 Full Baths/ 1 Half Bath- 3 baths with tub and showers/ 3 baths with showers only
- Master with wood burning fireplace
- Oversized Great Room
- Family Room
- Game Room downstairs with a pool table
- 4 bar stools in the kitchen
- Large Dining table
- Sub-zero refrigerator
- 2 ovens
- 6-burner propane gas stove
- Microwave
- Ice Maker
- Kitchen fully stocked with dishes, pots and pans and utensils

**Pricing Information**

\$895.00 per night for 10 Guest  
\$25.00 per additional guest up to 14 guests

Minimum two nights  
3 night minimum stay for all holidays including Spring Break

\$150.00 Cleaning Fee  
\*No day guests please

Please call us at (512) 847-7460 with any questions or for more information.

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Address: http://www.hillcountrypremier.com/...

Ventanas on the Lake | Hill Country Premier Lodging | ...

- Ice Maker
- Kitchen fully stocked with dishes, pots and pans and utensils
- Trash Compactor
- Ample supply of Towels and Linens
- Den with wood burning fireplaces
- 1 42" flat screen television
- DVD/Den
- CD Player/Den
- Iron & Ironing board
- Hair Dryers
- Washer & Dryer
- Telephone
- High Speed Internet Access
- Propane Gas Grill

\*Please bring your beach towels for the lake and you may also want to bring your floats.

Please call us at (512) 847-7460 with any questions or for more information.

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Ventanas on the Lake | Hill Country Premier Lodging | Vacation Homes and Lodging in Wimberley | Windows Internet Explorer

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Ventanas on the Lake | Hill Country Premier Lodging |

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**Location**

Map | Satellite

Map data ©2012 Google - Terms of Use Report a map error

**Reservations Information**

This is a property that is exclusively offered through Hill Country

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Page 4 of 4, Exhibit 1

## **"Exhibit B"**

My name is Nancy Evans Hanley, and I live at 242 Saga Street.

You've heard the facts...about the trash and the noise and blatant disrespect. You haven't heard about people blocking my north driveway and how they look at us like Martians when we ask them to move their vehicles/boats/trailers multiple times before responding. We actually had one tenant get rude with us about it. You haven't heard about having to look at a garbage can standing or laying at the street for days on end in the earlier years when the business first started because no one was there to take it back to the house. We would get so tired of looking at it, we'd either take it down ourselves or call the rental agent to deal with it.

But it moves to a whole new level when a stranger is standing only a few feet from your back door or just outside your master window walking up your property toward the street. You have to understand MY background--having been accosted by a stranger in the garage of my former residence while unloading groceries--to know why that upsets me on so many levels. Picture your first morning coffee or tea and you look up and there's a person just a few feet from your window staring into your home! I have experienced this frightening, uncomfortable situation more than once. People staying next-door wander around our property all the time, and when they get to my back door, it is quite frightening. Why am I forced to be reminded of such an awful experience every time one of their paying guests decides to take a joy stroll outside my window?

The innkeepers recently took steps which I'm sure they believe cured the problem of their guests standing outside my window. They had a surveyor put up orange flags every 10 or so feet along our mutual property line. And while the flags are an obnoxious intrusion on the magnificent view, we nonetheless

hoped we would no longer have to deal with people standing outside our back window or wandering around on our property. Our piece of mind was short lived as only one week after the installation of the shiny orange flags, I encountered one of their guests wandering completely on our property nowhere near the Inn.

The point is, shiny orange flags are not going to stop transient visitors from wandering aimlessly if they so desire.

I think it pertinent to point out the neighbors you've heard from today are not complainers...they are responsible, valuable contributors to this community. Mr. Quattlebaum is an active member of the ACC outside the gate. Ms. Magana-Quattlebaum is the Communications Committee Chairperson for The Peninsula. Mr. Kasch is the Maintenance Committee Chairperson and an active member of the ACC in The Peninsula. My husband, Mike Hanley, is the President of the Mystic Shores Board of Directors (outside the gate). I am the Editor of The View (your community newsletter), an active member of the Communications Committee (outside the gate), an active member of the Social Committee (outside the gate), and the Welcome Committee Chairperson (outside the gate). We ALL clearly contribute to the betterment of this community. That's why we're here today: To say that this motel business has to stop. It is important to and for our community!

Thank you.

## "Exhibit C"

I am Mike Hanley and my wife Nancy and I have extensive experience with the business operation next door to our home and we've been dealing with the issues for three years. And it has been most unpleasant.

Before I share our experience with you, I think we all need to focus for a minute on the difference between a dispute between neighbors and the situation at hand here today. Quite frankly, the Fulkersons are not our neighbors; nor are they yours. Yes they own property here in The Peninsula. And I mean no disrespect to them as human beings, but they do not live there and they seldom visit the property. They are NOT neighbors –pure and simple, they are motel operators running a *commercial motel business* next door to our personal residence.

And this distinction is important and should make the difficult work of the board much simpler. Because this isn't about a dispute between neighbors. It's about a business enterprise in a residential community.

The only question at hand today is: Should the neighborhood, and each of us individually be subjected to all that comes with having a motel in our community. And worse than that, a motel run by absentee owners. Motel operators who don't know what's going on in their absence. Motel operators who have repeatedly and categorically pretended that there aren't any issues with their rowdy, loud, vacationing occupants.

I'd like to give you a brief look at life at the motel next door to our home.

### **Large crowds**

When someone pays \$895 per night with a two night minimum - \$1,800 - there are very few people financially capable of and willing to pay that tab. So what happens? They call all their

friends to join in and split the tab. It makes perfect economic sense and naturally the motel operators lend support to that thinking by advertising that it sleeps 16. We have experienced numerous weekends where the crowd far exceeds 16.

### **Noise**

And does it surprise you to learn that the large crowds of friends partying in a vacation mode make a lot of noise? Of course not - it's inevitable

We've tried repeatedly to deal with this issue directly with the Fulkersons. But the responses we get have left me dumbfounded.

Ask the Fulkersons about the noise and you'll likely get an interesting response like we did. They suggested to us, in writing, that the noise is partly our fault. Yes, in writing....our fault .....for placing our home too close to theirs. Incidentally, our house is almost on the set back line away from their house. Their house is 40 feet from our shared property line while ours is twice as far away. In other words their assertion is dead wrong!!! And even if their assertion was correct, the location of our home on our property is no one's business but ours and it is certainly not a license for loud parties. But this is part of how they address our concern about late night noise.

Let me reference from another memo from the motel operators. '...many of the people you have complained about are our friends whom we have also known or done business with for years and trust a great deal.' In other words, the Hanley's don't have credibility with them.

I think they believe we're complainers and that no one else is impacted. It turns out we're not the only ones and you're hearing from them today.

Lets address cars\_next. One afternoon earlier this year there were 16 cars on the property at 3 PM on a Saturday. When we returned home late that evening there were more cars than we could count. Both driveways were filled; cars were in the street; and cars were parked off their driveway 80 feet from the street and one was right in the middle of my landscaping – parked in our Oleander bush. I have a picture of that and have sent it to the Board. ....Oh and the Fulkersons response to us about this particular weekend binge party was to tell us they believe their occupants and not us. Tthey denied existence of the problem. They didn't know at the time that we took photographs. ....And yes, we do have to document what transpires at the motel because they repeatedly express disbelief at what we say. And it turns out Nancy and I aren't the only ones documenting activity at the motel. That is a sad set of circumstances.

I mentioned the cars, but there are also boats, and jet ski's, and the trailers; and buses....yes buses. And then there are the motorcycles.

One weekend the motel was rented to motorcyclists who repeatedly chose to rev their engines as if in competition with each other to see whose was the loudest or meanest sounding or what ever. They did this on multiple occasions that weekend including Sunday morning before 8 AM.

### **About the people they rent to**

Many of them are fine folks who respect our rights and conduct themselves accordingly. But unfortunately drunks are also not an uncommon occurrence. On one occasion the behavior was so out of control that someone fell off of a pool table .....don't ask me what they're doing standing on a pool table to begin with.....but they hurt themselves so badly that they were taken away by ambulance. This incidentally is the only incident the Fulkersons

admit to up front in dealing with Nancy and me; they've discounted or minimized the existence of any issues in all our other expressions of concern. But they don't deny this one; it's a matter of public record.

They want you to believe that things will change for the better. We contacted the Fulkersons one time when there were 20ish cars and a loud party. They essentially told us we must be mistaken. QUOTE: "we were aware of only 3 - 4...in total." They think 3 or 4. We observe 20 cars and who knows how many people.

The point here is: no matter what they say they'll do, or what measures they propose to implement, they are not there to oversee and control it. Instead we have to live with it all night, or all weekend, and then try to prove to the motel operators that we aren't making it up. Prove that we're not just dreaming. It is a very unpleasant thing to experience and I strongly encourage the board not to consider any form of compromise as no one is on site full time to control it.

It is progress that they're finally owning up to TWO situations. But it's still only two and I believe it's driven by their desire to continue their commercial, profit driven operation; not driven by any genuine concern for the neighborhood. If they had genuine concern they'd have stepped up and addressed some of the issues we raised once they learned them to be factually correct. But they didn't.

And why am I telling you about how they have addressed things in the past? Because history has a habit of repeating itself. And also because there are no systems in place to monitor the future behaviors of the rowdy crowds and their obnoxious, loud behaviors.

You've heard them say they're taking steps to address the issues. But they didn't in the past until we pushed back firmly. So what happens when something new comes up? Do we start over? Their head in the sand like in the past? Refusing to admit what really happens there?

Why in the world would any of us want to subject ourselves, our neighbors, our community, and our property values to accommodate an absentee motel keeper?

### **About the law**

They claim they have the right to continue to operate as in the past.

I have spoken twice recently with our POA attorney about this matter. Our attorney is very familiar with short term rental issues and he is aware of the business being operated here. He recently tried a short term rental case near here and won a clear victory. In that case the court ruled that short term rental QUOTE: "violates the single family residential use restriction and awarded an injunction and legal fees to the association: END QUOTE. Your association attorney is of the opinion that operation of the motel is a violation of our DCCR's.

If we have to go to court, there's no guarantee we'll get our costs awarded to us. The ONLY guarantee we have is that if we don't take action we'll have opened pandora's box and it will be very difficult to reverse course.

Lets be clear here. The commercial nature of the operation is not in dispute. Their September 14 letter to the board president identifies rentals in 2012 exceeding 35 separate weeks or weekends of rental. PLUS numerous charitable rentals.



Now they're proposing only ,....ONLY.....20 rentals per year PLUS the charitable uses PLUS the offer to rent it for your family reunions. All of this means that Nancy and I and our neighbors will be subjected to all the issues we've faced to date. ....maybe 30 or more weekends a year!!

And what about the \$50/night compensation they're offering to the POA for every night the motel is rented. What is that about? And offering discounted rental rates to locals?

These are business propositions; not neighbors attempting to work out an issue. I don't know about you but I find the offer of \$50/night disgusting and insulting. Do they really believe we can be had for \$50?

It is exactly this type thinking that has us here today. They are completely out of touch with the residential character of our neighborhood and we should not, cannot allow it to continue.

I trust you will exercise your responsibilities accordingly and I thank you in advance for all that you do for our community to preserve and maintain our wonderful residential environment.

Thank you"

## **"Exhibit D"**

PETER HELFERICH STATEMENT FOR THE POA BOARD MEETING ON 10-3-2012.  
I REQUEST THAT THIS STATEMENT BE INCLUDED IN THE MINUTES FOR THE MEETING.  
COPIES ARE HEREBY PROVIDED TO EACH BOARD MEMBER.

I CURRENTLY OWN TWO HOUSES, ONE ON PADRE ISLAND AND ANOTHER A FEW MILES FROM MYSTIC SHORES. I ALSO OWN THREE LOTS IN MYSTIC SHORES. I LIVE AT MY CANYON LAKE HOUSE ABOUT TWO WEEKS EACH MONTH ON AVERAGE. THEREFORE I AM AN ABSENTEE MYSTIC SHORES OWNER AS ARE THE FULKERSONS WHO LIVE IN WIMBERLY.

MY PENINSULA LOT 597 IS IMMEDIATELY NEXT TO THE PROPERTY IN QUESTION, FULKERSONS LOT 596, WITH THE TACKABERRYS WHO JUST BUILT THEIR NEW HOME ON MY LEFT AND FULKERSONS PROPERTY ON MY RIGHT.

SO I GUESS I HAVE TO PUT ON TWO HATS HERE.

THE FIRST HAT IS AS AN ABSENTEE PROPERTY OWNER OF MY UNDEVELOPED LOT.

I HAVE HAD TWO OR THREE TELEPHONE CONVERSATIONS WITH THE FULKERSONS SEVERAL YEARS AGO AND CONSIDER THEM NICE PLEASANT PEOPLE. I KNOW THEY ARE BOTH INTELLENT, EXTREMELY SUCCESSFUL, AND HIGHLY SKILLED TRIAL ATTORNEYS WHO WOULD BE FORMIDABLE OPPONENTS IN A COURT ROOM.

THEY SEEM TO HAVE FOUND A LEGAL LOOPHOLE IN THE DCCR'S THAT ALLOWS THEM TO CIRCUMNAVIGATE THE RESIDENTIAL NEIGHBORHOOD ETHIC AND TO HAVE GIVEN BIRTH TO THE OPPORTUNITY TO TURN A PENINSULA PROPERTY INTO A CASH COW TO MAKE MONEY.

AS THE OWNER OF AN UNDEVELOPED LOT, THE DIRECTION THE POA TAKES ON THIS MATTER HAS A GREAT BEARING ON HOW I WILL TREAT THE DEVELOPMENT OF LOT 597.

IF THE POA DECLARES THAT BUSINESSES SUCH AS THE FULKERSONS MOTEL ARE ALLOWED IN THE PENINSULA THEN I SHALL RETHINK THE POSSIBILITIES AVAILABLE. I HAD INITIALLY INTENDED TO BUILD A MINIMAL LOW PROFILE UNIMPOSING SINGLE STORY RESIDENCE FOR RETIREMENT. HOWEVER, IF BUSINESSES CAN BE LOCATED IN THE PENINSULA, I WOULD BE REMISS TO NOT CONSIDER A MONEY MAKING OPPORTUNITY IN THE PENINSULA. IN WHICH CASE I WOULD WANT TO BUILD A LARGE IMPOSING 3 STORY MOTEL STRUCTURE AS CLOSE TO THE LAKE AS POSSIBLE WITH AS MANY BEDROOMS AS POSSIBLE IN ORDER TO COMPETE WITH THE BUSINESS THAT ALREADY EXISTS NEXT DOOR. I WOULD THEN CREATE A LARGE PAVED PARKING AREA FOR ALL THE VEHICLES, BOATS AND TRAILERS, MOTORHOMES AND BUSES.

IN ADDITION, IF BUSINESSES ARE ALLOWED IN THE PENINSULA THERE ARE MANY ABSENTEE PROPERTY OWNERS THAT COULD SEIZE THE OPPORTUNITY TO CREATE A BUSINESS IN THE PENINSULA. THEREFORE I WOULD REQUEST THAT THE BOARD CONVENE A PUBLIC MEETING TO CREATE A SET OF RULES GOVERNING WHAT KIND OF BUSINESSES ARE ALLOWED, MOTELS, RESTAURANTS, RETAIL SHOPS, ETC. AND ANY OTHER REGULATIONS GOVERNING BUSINESS ACTIVITY SUCH AS TYPE OF SIGNAGE, LIGHTING, PARKING, AND SO FORTH.

THE BOARD SHOULD ALSO ESTABLISH GUIDELINES WITH THE ARCHITECTURAL CONTROL COMMITTEE ABOUT HOW BUSINESSES CAN BE BUILT AND DEFINE STANDARD BUSINESS FEE BUILDING SCHEDULES FAIR TO ALL FUTURE BUSINESSES.

SINCE THE FULKERSONS ARE PROPOSING TO PAY THE POA A VERY SMALL FEE FOR EACH RENTAL I ASSUME THAT THIS IS TO DEFRAY POA COSTS INVOLVED TO PROTECT THE CONTINUATION OF THE MOTEL BUSINESS. THIS IS A BUSINESS TRANSACTION THE SAME AS THE BUSINESS TRANSACTIONS BETWEEN THE FULKERSONS AND THEIR RENTAL MANAGEMENT COMPANY AND THEIR CLEANING SERVICE AFTER EACH RENTAL. THIS WOULD MEAN THAT THE POA IS DOING BUSINESS WITH THE FULKERSONS. I WOULD WANT THE BOARD TO HANDLE IT IN SUCH A MANNER THAT IT IS NOT A CONFLICT OF INTEREST BETWEEN THE POA AND THE WISHES OF ITS MEMBERS.

IF I WERE TO EMULATE THE FULKERSONS BUSINESS WITH A MOTEL ON MY PROPERTY I WOULD PRUDENTLY WANT THAT FEE TO BE AS LOW AS POSSIBLE.

ADDITIONALLY, SINCE THE POA WOULD BE DOING BUSINESS WITH VARIOUS ENTERPRISES, SOMEONE, PERHAPS THE POA BOARD MEMBERS, MAY HAVE BE ON CALL 24 HOURS A DAY TO INSTANTLY HANDLE DISPUTES, ROWDYNESS, DRUNKS, EXCESSIVE NOISE, AND OTHER INSTANCES WHICH IF NOT HANDLED AS THEY OCCUR COULD BE DENIED WHEN INVESTIGATED AT A LATER TIME.

NOW I AM SWITCHING HATS TO BE A RESIDENTIAL POA MEMBER.

IF THE BOARD ALLOWS BUSINESSES IN THE PENINSULA THEN I BELIEVE THIS COULD BE A DIRECT CONFLICT OF INTEREST BETWEEN THE BOARD AND THE WISHES OF ITS MEMBERS. A MEETING SHOULD BE SCHEDULED TO DETERMINE THE MEMBERS WISHES. IF THE BUSINESS FEE IS IMPLEMENTED, IT SHOULD BE MUCH HIGHER THAN THE PROPOSED \$50. SOMEWHERE AROUND A MINIMUM OF \$200 OR \$300 PER RENTAL TO HELP DEFRAY THE COURT COSTS INVOLVED IF THERE ARE ANY HOMEOWNERS WHO SUE BECAUSE THEY PURCHASED THEIR PROPERTIES BASED ON THE FACT IT WAS A GATED RESIDENTIAL COMMUNITY. THEY AND THE REALTORS WHO SOLD THEM THE PROPERTIES MAY HAVE BELIEVED THE PENINSULA WAS TO BE FOR RESIDENCES ONLY.

IN ADDITION I WOULD BE EXTREMELY CONCERNED WITH THE DILUTION OF SECURITY WHICH WOULD LEAD TO VANDALISM, THEFT, ROBBERIES, AND HOME INVASIONS.

IF THE BOARD VOTES TO NOT ALLOW MOTELS OR ANY OTHER BUSINESSES IN THE PENINSULA, I EXPECT THAT SINCE THE FULKERSONS ARE VERY ACCOMPLISHED ATTORNEYS, IT WILL COST THEM NOTHING TO TAKE THE ISSUE TO COURT TO CONTINUE THEIR PROFITS, AND THE POA SHOULD PREPARE FOR ONGOING LEGAL EXPENSES.

SO WHICHEVER WAY THE BOARD VOTES DETERMINES WHETHER I BUILD A RESIDENCE OR A LAKEFRONT MOTEL.