



December 14, 2014

This is the first in a series of "Community Memos," designed to inform and generate discussion about issues of interest to South Lake County communities, including Hidden Valley Lake.

The "Précis" summarizes the 3000-word memo following. A [PDF](#) version is available [here](#).

Précis

Hidden Valley Lake has a long history of contentious Association Director elections.

An analysis of ballot tallies over the past 15 years suggests that voting irregularities date back to (at least) 2007.

In that year, the vote tallies were particularly askew despite the election being an uncontested one. Many of the elections held since are associated with "unusual" vote tallies relative to the historical norm. In some instances, vote tallies don't correctly add up. In others, there are "special" categories (i.e., not connected with the main candidates) with large numbers of votes.

The vote tallies associated with the 2013 and 2014 elections also show some unusual patterns.

The Hartmann Event Center project is the current focus of political debate in our Community. Because of its projected cost (\$5.5 million - \$7.5 million) and the Association's inability to pay for it through any means other than a large loan, the Hartmann has elicited strong passions on both sides of the debate.

Over the past two regular Director elections, FOUR of the FIVE successful Director candidates have expressed strong opposition to an expensive rebuilding of the Hartmann, suggesting that a majority of the Association membership shares these sentiments.

Despite these election results, the Board is still controlled by those favoring the most expensive option. All but one was either appointed or ran unopposed (before the Hartmann became a campaign issue). These four Directors appear determined to commit the Association to the most expensive version of the Hartmann despite broad-ranging opposition in the Community. Moreover, the Board continues to deny the Association membership the right to vote on this important capital improvement project.

In light of Community opposition and the electoral irregularities discussed below, the Board should consider a thorough revamping of the Association's election procedures. Without such reform, many in the Community will question the Board's legitimacy, as it does not appear to truly reflect the sentiments of those who pay the bulk of Hidden Valley Lake's costs (through annual assessments).

The remainder of this memo examines these issues in detail.

The Role of the Primary Inspector of Elections

Robertson and Associates (Robertson, Cahill and Associates for a brief period) has served as the HMLA's primary inspector of elections since at least 1999 (and has served as the Association's financial auditor since 2008). During this time, it has overseen numerous regular (i.e., Director) and two recall elections.

The Primary Inspector is Supposed to Ensure a Fair and Accurate Election

Up until 2007, the election results appear to have been in reasonable order (with one caveat - see below). During the period prior to 2007, the contest election results were clear-cut - there were clear winners and clear losers (by wide margins). The caveat is that quorum-only and write-in votes were not recorded in the Association's publication of record, the Compass in the early years. The first year in which it is certain that quorum and write-in votes were published is 2006. There were seven candidates running for two open seats (Tom Miller and Judy Mirbegian won). The total votes cast (1393) accords with the individual tallies for candidates, write-ins, and quorum-only votes. In this highly contested election only 745 ballots were cast (exceeding the 20% quorum by ca. 200 ballots). The election tallies, as published in the HMLA "Views" and "Compass," are shown below in Appendix A.

The 2007 election was a different matter. Although it was uncontested - three candidates stood for three open seats - the vote tallies don't add up. The tallies are as follows:

Cheri Johnson - 510, Diana Marshall - 468, Rick Monroe - 453, Write-ins - 3, Quorum-only - 26; Total Votes - 1489; Total Ballots Received (as reported by Robertson) - 726; Total Votes (as Recorded by Robertson) - 1758.

There is a 269-vote disparity between the total votes as reported by Robertson and the sum of the tallies associated with the candidates, write-ins and quorum-only categories.

Where did these 269 votes come from? And why were they there?

Quorum for HMLA elections has generally ranged between 540 and 570 ballots (20% of the members in good standing) during this time frame. Could it be that the total number of ballots received were shy of the quorum threshold? If so, why wasn't this fact officially noted and measures taken to correct the deficiency?

Because these three Board Directors may not have been legitimately elected (due to the quorum issues already mentioned), it raises the prospect that Board decisions and contracts undertaken during their time on the Board could be subject to question. Among the projects and decisions made during this Board's tenure were: (1) construction of the HMLA administration building, and (2) hiring Bill Chapman as General Manager.

The votes associated with the following year's election (2008) appear to be order except for one thing. In the previous highly contested election (2006) the number of ballots cast was 745. Two years later, the number was 1014, a total that would only later be exceeded in 2013 and 2014.

Where did those extra ballots come from?

Nothing about the 2009 election results appears unusual. The vote tallies add up, the number of quorum-only votes is 17, and the number of write-ins (13) relatively modest and in keeping with historical trends. Despite the highly contested nature of the election (four candidates campaigned for two seats), the total number of ballots equaled only 820, nearly 200 less than the previous year.

Why the sudden drop in ballots cast?

2010 was an interesting year for the Director election. Not in terms of the contest - three candidates campaigned for three open seats, but rather on

account of the number of quorum-only votes - a recording breaking 190, five times (or more) greater than the usual number.

Where did these extra quorum votes come from?

Without those quorum-only ballots, the vote tally may not have met the quorum threshold. Although the number of votes cast for the candidates exceeded that for the same candidates in 2007 (two of whom had run that earlier year), it was not by much. Up until 2010, no quorum-only tally had exceeded 40 (in most years, the quorum-only ballots numbered 20 or less).

Why were the quorum-only ballots so numerous?

2011 was a moderately contested election, with three candidates running for two open seats. 929 ballots were cast, but only 38 quorum only votes were entered. Write-ins were 4 votes, but there were 42 votes for "other" (unexplained - perhaps invalid ballots?).

2012 was also an interesting year with respect to quorum-only ballots. 114 of these were received, only the second time when so many were sent in. There's also 132 votes cast for "other," again without explanation (perhaps accounting for the 128-vote discrepancy between Robertson's tally and the published vote count). Despite "Quorum" and "Other" being so popular that year, the (uncontested) election was "won" by Bill Waite and Juergen Haller. 715 ballots were received. Without the quorum-only and "other" ballots, the quorum threshold might not have been reached.

From whence did so many "other" and "quorum-only" votes come?

2013's Election is an interesting one, not only for the results, but also because of the exceedingly high number of ballots cast - 1055 (an all-time record up until that time). The vote tallies do add up, but it should be noted that there were only 14 quorum-only and 9 write-in votes (there were 18 "invalidated" ballots).

Comparison of these past elections with this year's, suggest there has been an ever-increasing number of ballots cast. During the recall election, despite a minimum of information and publicity 1080 ballots were received. The regular election had 1232 ballots received, which is nearly double the number received in 2006, 2007, 2012 and appreciably more than those in 2009, and 2010. It is not clear why the ballot numbers for 2008 (when Bill Surber won), 2011 (when Bill Surber won again), 2013 (when Susan Cameron, Herb Fish and I won), and 2014 (when Inge Rankin and Kay Lopez beat Bob Cummesky and Bruce Brashares; and Bill Waite narrowly won, and I narrowly lost) were so high. Certainly, they are a departure from the historical norm (even when the elections are highly contested).

The 2014 Recall Election in Historical Perspective

To properly understand the significance of the recent recall election it needs to be examined in historical context. It's but one element in a decade-long battle over the fate of the Hartmann Project (which comprises the Greenview Restaurant, Mulligan's Bar and Golf Pro Shop).

Over the past two regular Director elections, FOUR of the FIVE successful candidates have expressed opposition to an expensive rebuilding of the Hartmann (the fifth campaigned as a centrist sympathetic to both perspectives, pro and con, but has since shifted to supporting the most expensive rebuilding option).

These recent (regular) director election results are a valid reflection of Community sentiment, which overwhelmingly opposes an expensive construction project. Unfortunately, the Association's Board has consistently denied requests for a membership vote on the issue, perhaps because it knows what the likely outcome would be were one to be held.

The Hartmann project was always in the background of the recall election. It was widely perceived that the balance of power on the Board was at stake, and that the future direction of the Association and Community could be determined by its outcome.

In light of the recall election's consequences, it is crucial that its conduct be held to the highest legal and ethical standards. It is not just a matter of whether a particular Director retains his seat on the Board or not. Rather, the recall was essentially about whether the Association would continue to be governed by a small group who has long wielded power in Hidden Valley Lake, or whether a broader spectrum of members, more representative of our diverse Community, would be allowed to have a significant voice in how the Association is managed and its money spent.

The Recall Election Process was Seriously Flawed

There were many flaws in the conduct of the recall election, starting with the process by which petition signatures were allowed to be collected.

Those petitioning for my recall (including the Board President's wife) were allowed to actively solicit within the Community while those collecting signatures for Bill Waite's removal were barred from doing so (and had to collect signatures "outside the gates").

The verification process was also seriously flawed. The primary inspector, Robertson and Associates, used the telephone to verify rather than visual-signature verification. There were numerous instances where a petition signer was asked whether he/she signed a petition for the recall of BOTH candidates rather than for a one or other. It was extremely confusing to many, and the representative of the auditing firm didn't appear to know what was going on or understand the verification process. When questioned, one of the verifiers told several HMLA members that the firm was merely following directions and a script given to them by the Association! On top of all this, the signature validation process was never officially completed, and members requesting access to the petitions were denied access (after originally being publicly informed otherwise).

The Association is supposed to play no role in the conduct of an election except for providing pro-forma, apolitical logistical support. Only the Election Committee and Primary Inspector are supposed to be involved (other than helping to mount election events, such as Candidates Forum and the like).

Unfortunately, the Election Committee was, for all intents and purposes, locked out of virtually the entire process, being informed (incorrectly) that Recall Elections are not subject to the same rules and procedures of regular elections. However, the Association's bylaws and CCRs do not distinguish between recall elections and other elections.

In effect, the Association violated their own election rules and procedures in conducting the election without an established alternative. This decision, in and of itself, could invalidate the election in the eyes of the State.

It also casts considerable doubt upon the validity of any contracts and major decisions made in the future that might have been done differently were the recall election never held or the results different from those recorded on September 19th.

There were Many Other Problems with the Recall Election.

One of the key problems during the recall election was control of the ballots. The Association is never supposed to be in possession of member ballots so as to preclude any possibility of vote tampering. This is why ballots are supposed to be sent from the printer directly to each member. And this is also why completed ballots are supposed to be sent only to the Primary Inspector of Elections, who is supposed to be completely independent of the Association.

These rules were frequently violated during both the recall election and more recent regular director election. This became evident when certain members reported not receiving a ballot. Many of those enquiring about their missing ballot observed an HMLA employee sifting through a stack of ballots to find theirs. These individuals were informed that their ballot had neglected to be mailed out to them. But why was the Association in charge of mailing ballots, and why were some (and how many) withheld?

A member who called the Robertson firm towards the end of this year's regular director election asked what to do about not receiving her ballot. She was informed that HMLA was the place to enquire. When this person asked why this was so, given ballots were supposed to be sent from the printer directly to each member, the Robertson representative replied, "I don't know anything about this," and hung up.

Another serious flaw in the Association's election process is the complete absence of signature verification, either for the Recall or Regular Director election. This is particularly concerning given the absence of postmarks on the ballot envelopes (postage being prepaid) making it difficult to verify location and date of mailing.

A separate problem concerned the eligibility criteria used for members in good standing. The Association's election rules state "August 31st" as the date for its determination. However, many members were ruled ineligible to vote in the recall election because they were not fully current with fees and dues as of August 6th. Several were behind by only a few dollars and were unaware of this, no letter having been sent to inform them of a problem. In mid-August several members contacted the HMLA office to enquire about their missing ballot, only to be informed they were not in "good standing."

A date of August 6th had been retroactively imposed without prior notice. These members paid up their outstanding fees/dues immediately, but were still ruled ineligible to vote. In 2013, there was only one member ruled ineligible to vote because of a late payment of the August dues (he was on vacation). This year, there may have been dozens who were denied a recall election ballot for this reason.

Association Staff and a Board Director Were Directly Involved in the Recall Election

As stated earlier, Association employees are not supposed to engage in actions that would affect the outcome of an Association election. They are to remain independent and non-political. The Association's General Manager violated this precept in at least three instances:

- (1) Taking charge of the recall election and shunting the election committee to the sidelines,
- (2) Actively conspiring with a Board Director and two Association members to remove me from the Board through the recall, and
- (3) Authorizing this same Board Director to send out a letter to many members of the Association advocating my removal (it is unclear who paid for this letter's mailing, which probably cost ca. \$1,000). This letter used the Director's official standing as the Association Treasurer on the letterhead and return address, giving the impression the Association officially endorsed my removal. Neither the Director nor General Manager was reprimanded in any way, giving the impression that the Association believed nothing improper had been done.

Directors Removed in a Recall Election are Supposed to be Replaced Through Another Election

Generally, when a Board Director is removed in a recall election, the replacement is done through another election. The Board refused to honor this component of California corporation code, citing an ambiguity in the Association's bylaws (which have not been systematically revised since the State's election rules were changed in 2006). If the recall election were not conducted properly, the Board's action could be perceived as tantamount to improper removal of an Association Director.

Advance Notice of the Election Results?

Some of those advocating for my recall were observed in a celebratory mode **several hours before** the vote results were announced. One of these celebrants was appointed to replace me within minutes of the vote tabulation announcement. Why were these individuals so confident of the election outcome before the votes were even tabulated?

Adding to this suspicion is the record-breaking turnout despite the Association's efforts to keep the turnout low. There was virtually no publicity about the recall election from the Association, nor was any background information provided with the ballot. Despite this, more ballots were received (1080) than in any previous election, including the one last year, which was highly publicized for several months (1055).

Where did all these ballots come from?

The Case for Election Reform

Because there is no signature verification of the ballots and no postmark on the ballot envelopes, it's exceedingly difficult to perform a true forensic audit of the election results. Compounding the problem is the Association's demographics. It comprises approximately 3300 properties, ca. 900 of which are empty lots. Few of these vacant properties are likely to be developed in the near or intermediate future due to the high cost of building on rocky terrain in a rural area. Most of these empty lot owners live distant from the Community and rarely participate in Association activities. These non-resident members own ca. 1800 of the 3300 properties, each of which comes with a vote (though not all are in "good standing" [i.e., entitled to vote]). This absentee member population further complicates the analysis of voting patterns in Hidden Valley Lake.

Because member ballots are not sent directly to members, but rather appear to go through the Association, there is the potential for abuse. Many members reported not receiving their ballots this year for either the recall or regular election. Why did the Association have these ballots in their possession, and why weren't they sent to these members originally? Why did one member have to come back three times towards to collect her ballot? Had something been done with the original?

As long as such questions are raised, HMLA elections run the risk of being perceived as less than transparent or fair. When major decisions, such as the Hartmann project, hang in the balance of these elections, it raises the prospect that such decisions will be viewed as illegitimate and subject to challenge.

Because of the many questions raised about this year's elections and the historical pattern of irregularities in past years, the Board should seriously consider revamping the way in which elections are run in the future. In April of 2014, I made a number of suggestions to the Association's Election Committee (Appendix below), and discussed these with them in early May. Very few of the suggestions were adopted (In hindsight, I would alter some of the suggestions made in view of this year's election irregularities).

If anything, the Association took an even more active role in this year's election than in 2013. During that earlier election, Herb Fish and I filed a complaint with the Election Committee concerning a number of irregularities, some of which concerned Association interference (in our view designed to influence the outcome in favor of certain candidates). I also submitted a formal complaint to the California Secretary of State's Office about those early irregularities.

Since that time, the number and seriousness of the infractions have only grown.

Appendix A
(Data from HVLA Views and Compass publications)

Candidate	HVLA Election Results between 2006 and 2014									
	2006	2007	2008	2009	2010	2011	2012	2013	2014r	2014
1	318	510	539	260	556	631	551	599	541	571
2	236	468	448	513	533	539	485	558	506	532
3	203	453	362	441	525	447		527	501	601
4	202		320	316				434	559	668
5	194		150			42	132	385		
6	108		98					241		
7	88									
Quorum-only	17	26	20	17	190	38	114	14		
Write-in	27	32	6	13	81	4	14	9		
								18		
Total	1393	1489	1943	1560	1885	1701	1296	2785	2107	2372
Robertson	1393	1758	1943	1560	1885	1684	1168	2785		2403
Difference	0	269	0	0	0	-17	128	0		31
Total Ballots	745	726	1014	820	855	929	715	1055	1080	1232

2014r = Recall Election

Appendix B

HVLA Election Committee Suggestions (submitted to the Election Committee, April 2014)

"The more one sweats in peace, the less one bleeds in war" Sun Tzu

[Note - I met with the Election Committee (Kathy Joseph and Joy Birum) at their request on May 1st to discuss the suggestions below]

Directors serve an extremely important function for our Association. They set policy and direction for the Community, recruit and choose a new General Manager, approve, reject or modify Association vendor contracts, and ensure that Association members' best interests are looked after.

Accordingly, it falls within the Board's fiduciary responsibility to ensure that the elections for Director positions be conducted as fairly and as equitably as possible. In view of the election travails experienced by several candidates during the Fall, 2013 election, I offer the following suggestions as a means to lower the likelihood of such difficulties recurring, and thereby reducing the strain placed on the overburdened and hard-working Election Committee. Others may wish to offer suggestions of their own and should be encouraged to do so.

1. Solicit experiences from recent candidates (as well as the new member of the Election Committee and the newly arrived General Manager) along with suggestions about how to improve procedures going forward. Give a firm deadline for these contributions so that they can be incorporated into this year's Election Procedures.
2. HVLA staff should not be involved in the conduct of the election except to provide basic information (or refer to those who have the information).
3. Instead of postcards and/or letters to members, candidates would provide (up to) ONE single- or double-sided sheet with information beyond their candidate statement. The costs would be shared equally among the candidates who choose this option.
4. On the ballot and candidate statement, the candidates should be listed in random rather than alphabetical order (conforming to electoral practices in the US and abroad).
5. HVLA Directors should not campaign in favor of or against any candidate.
6. The spending limit (exclusive of HVLA mailing costs) for any candidate should be defined in advance and reasonable (where reasonable would be ca. \$500).
7. The format for the candidate forum(s) should be based on

member input. Among suggestions the Election Committee might wish to consider: (a) provide an opportunity for a candidate to respond to another candidate's assertions and responses, (b) unused questions should be placed on an HVLA website and candidates invited to respond in writing.

8. A prospective candidate's contact information should be verified in advance of being placed on the ballot, and each prospective candidate required to sign a statement indicating that their candidacy is sincere and non-frivolous. If a candidate withdraws, it needs to be done prior to the ballots being sent to the printer. If the withdrawal occurs after the ballots are printed, the entire membership must be informed by mail (and the withdrawn candidate asked to pay the cost).

9. The Election Committee should investigate all complaints from candidates and members about the conduct of the Election and provide a written response to each complaint in an extremely timely manner

10. The Election Committee should promptly inform a candidate if it believes an infraction of the rules and procedures has occurred, and provide a reasonable opportunity for the candidate to rectify the problem. If the candidate declines to rectify the problem, the Committee should publicize this breach to the membership and consider disqualification of this individual.

11. A receipt should be provided with each ballot (as is provided for government elections in the US)

12. A STARTING date (in addition to the defined ending date) for campaign signs should be stated and enforced. A spending cap would limit the number of signs to a more reasonable (and manageable) level.

The suggestions above, if adopted, would warrant a different role for the primary inspector than hitherto performed, one that would likely spare the Election Committee much of the pain and frustration experienced in last year's election. For this reason, it would be worthwhile exploring a greatly expanded role performed by Robertson & Associates (the primary inspector in previous elections) or designating a different primary inspector capable of assuming these additional responsibilities.

Have a Merry Holiday Season!

Hartmann Event Center Project - Petition

If you would like to sign the petition, please click on this [link](#).

eNewsletter Archive

An archive of many of the eNewsletters sent over the past year is now online. It can be accessed via the link below:

[HVLaRising eNewsletter Archive](#)

[HVLaRising Website](#)

The HVLaRising website has been revised to take into account current circumstances in our Community. It can be accessed [here](#).

Sincerely,

Steve Greenberg

HVLaRising | steven@hvlaris.org | <http://www.hvlaris.org>

Hidden Valley Lake, CA 95467

