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Reply brief

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RONALD W. YARBROUGH, Plaintiff, v. LAKE CENTERTON PARK HOMEOWNERS ASSOCIATION, INC.; CLIFFORD C. WHEATON, individually; MICHAEL M. ROSSI III, individually; MICHELE MEHAFFEY; and DOUGLAS K. MEHAFFEY, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - GENERAL EQUITY PART SALEM COUNTY DOCKET NO. SLM-C-000017-26 Civil Action PLAINTIFF'S REPLY BRIEF IN FURTHER SUPPORT OF THE ORDER TO SHOW CAUSE (Return Date November 2, 2026)

PRELIMINARY STATEMENT

The opposition changes the case in one respect. Defendants now say what they will do next. Green Acres "required a Resolution to Sell before it would prepare a contract" (Wheaton Cert. 45). Defendants ask for "a short period to conduct a confirmatory vote" (Wheaton Cert. 77). They ask the Court to let them continue "engineering, design, permitting, funding ... and other reversible regulatory work" toward removing the dam (Def. Br. 14, item 5). The next step is a vote, and it is weeks away, not years.

Seven households and a Board they control can take that next step without anyone else. Article VII, Section 2 of the Declaration and Article ELEVENTH of the Certificate permit amendment with the approval of the Board of Directors and two-thirds of the outstanding votes. Ex. A; Ex. B. Mr. Wheaton and Mr. Rossi sit on the Board. Seven of ten is two-thirds, as defendants say themselves (Wheaton Cert. 57). The same seven can therefore resolve to sell and can amend the recorded dam covenant.

What the members have never been shown is the file. Plaintiff has not been given, and the opposition does not show that any member was given, the Green Acres offer, either appraisal, the State loan file, any bid solicitation or bid, or the record of the "2017" member decision on which the whole history turns (Wheaton Cert. 10). Defendants "recognize that Plaintiff may be entitled to appropriate nonprivileged corporate records" (Def. Br. 14) and offer, without admitting entitlement to every category, to produce them "on a reasonable schedule" (Wheaton Cert. 69). Plaintiff asks the Court to fix that schedule, to send the records to every member, and to hold every vote until the

members have read them. That is the narrow order plaintiff seeks on November 2. The remaining counts may proceed on a plenary track with a discovery schedule, as defendants request.

POINT I

THE SEPTEMBER 8 MEETING IS NOT THE MEMBER ACTION THE CERTIFICATE AND TITLE 15A REQUIRE

Defendants' answer to the absence of any member vote is the meeting of September 8, 2026. Def. Br. 3, 7-8, 11. The count is not the problem. Seven of ten would satisfy Article SEVENTH's two-thirds. The problem is everything else Article SEVENTH and N.J.S.A. 15A:10-11 require, none of which the opposition shows.

1. **Notice of the purpose to every member.** Article SEVENTH permits a transfer of Common Area only with the approval of the Board and either "(i) the affirmative vote of two-thirds of the outstanding votes of Class A and B members ... at a meeting of members called upon due notice of the purpose of such meeting or (ii) the written consent of Class A and B members representing two-thirds of the votes thereof." Ex. A; VC 22. Defendants rely on a meeting, not written consents. N.J.S.A. 15A:10-11(a)(2)(b) requires written notice to each member of record "not less than 20 nor more than 60 days before the meeting," with "a statement summarizing the principal terms of the proposed transaction." The Wheaton Certification says the Association "scheduled" the meeting (para. 47). It does not say that notice was sent to anyone, when, or with what terms, and no notice is attached. Plaintiff received none. Supp. Cert. (Oct. 21, 2026) para. 6.

2. **A Board recommendation.** N.J.S.A. 15A:10-11(a)(2)(a) requires that "[t]he board shall recommend such sale ... and direct that it be submitted to a vote at a meeting of members." No Board resolution is attached. The motion was made from the floor by Mr. Rossi (Wheaton Cert. 50).

3. **The first offer of dedication.** Article SEVENTH forbids any transfer "without first offering to dedicate such property to the municipality in which it is located, or to any other appropriate government agency which may be suggested by the Planning Board of such municipality." Ex. A; VC 22. The opposition shows no such offer. It discloses a 2010 application to the Salem County Open Space program supported by Township Resolution No. 2010-72 (Wheaton Cert. 27-30; Def. Exs. Q-S), which sought County funding to repair or replace the dam before any transfer. It was not an offer to dedicate the property to Pittsgrove Township, and it was overtaken when, by defendants' account, the members abandoned repair. The opposition also discloses a "previous proposal to donate Lake Centerton Park" to Salem County, undated, which the County declined on or about October 15, 2026 (Wheaton Cert. 55; Def. Ex. T). So far as plaintiff knows, that County proposal was never put to the members.

4. **Place.** The meeting was held at Mr. Wheaton's residence. Supp. Cert. para. 6; Ex. LLL. A meeting at which a binding vote is taken must be open and held at a suitable location. N.J.S.A. 45:22A-46(a); N.J.A.C. 5:26-8.2(d), 8.12.

5. **Timing.** The meeting was held twelve days after this action was filed. Its own minutes say Green Acres "stepped back" because of the action and that the vote is "pending the litigation issues that need to be resolved." Ex. LLL, paras. 5-6.

The "good standing" exclusion has no source. Defendants excluded plaintiff and the [redacted] household under item 1 of a "Book of Regulations" (Wheaton Cert. 19, 53; Def. Ex. F). Defendants' own authority defeats it. As defendants describe it, N.J.S.A. 15A:5-10 permits voting rights to be limited "as specified in an association's certificate or bylaws." Def. Br. 10. The Book of Regulations is neither. The Certificate gives one vote per lot (Art. FIFTH) and contains no delinquency provision; neither version of the By-Laws contains one. Ex. A; Ex. E. The Book of Regulations is the June 2004 document the Board prepared and distributed to members (VC 37; Yarbrough Cert. para. 8). On its own terms, item 8, a majority (6) of the owners "must approve any change or adoption" of it. No record of any such approval is offered. Def. Ex. F is plaintiff's own Exhibit E, re-filed; it still bears this Court's August 28, 2026 filing stamp from plaintiff's submission (Trans ID CHC2026274987, Pg 79 of 150).

The exclusion also has no principled denominator. The Association itself "stopped paying" the Township taxes on the lake parcel "with the taxes due 8/1/24," and the parcel was sold at tax sale twice. Ex. MMM; Ex. OO; Ex. HHH. The balance the Association now claims from plaintiff includes a $1,633.58 tax-redemption charge "[b]ased on 8 homeowners paying" that no meeting of members adopted. [Redacted: plaintiff's personal financial information] Supp. Cert. para. 12. And the same Book of Regulations requires a majority (6) of owners to approve any expenditure over $500 (item 5), a rule the opposition does not claim was followed for any expenditure in this record.

Ratification is a meeting, not a label. Defendants say any irregularity "can be ratified at any time." Def. Br. 3 n.2, 13 (citing Port Liberte II Condo. Ass'n v. New Liberty Residential Urban Renewal Co., 435 N.J. Super. 51 (App. Div. 2014)). Ratifying a transfer of Common Area requires the same act Article SEVENTH and N.J.S.A. 15A:10-11 require for the transfer itself: a Board recommendation, a first offer of dedication, and a meeting on written notice of the purpose and terms to every member, or the written consent of two-thirds. That is the meeting defendants now offer to hold (Wheaton Cert. 58-59). It is not a reason to deny relief. It is the reason the Court should fix the order in which it happens: the file first, then the vote.

POINT II

THE HARM IS A VOTE TAKEN BEFORE THE MEMBERS HAVE THE FILE, AND IT IS IMMINENT

Defendants argue there is no irreparable harm because no contract, deed or closing date exists. Def. Br. 9-10. Plaintiff agrees no closing is imminent. The lis pendens holds title. Instr. No. 2026007578. The harm defendants do not address is the vote.

1. **The vote is the next step.** Green Acres requires "a Resolution to Sell before it would prepare a contract" (Wheaton Cert. 45). Defendants ask leave to conduct a confirmatory vote within "a short period" (Wheaton Cert. 77).

2. **A vote by seven can change the covenant itself.** Article VII, Section 5(a) of the recorded Declaration makes the Association "responsible for the maintenance and operation of the dam." Ex. B. That covenant may be amended with the approval of the Board of Directors and two-thirds of the outstanding votes, effective on recording. Ex. B, Art. VII, sec. 2; VC 28. The Board and seven votes can therefore remove the very obligation plaintiff sues to enforce, before the Court decides whether it was breached. Once amended and recorded, the covenant is gone for every owner. Money does not restore it.

3. **Dam removal cannot be undone.** Defendants ask to continue design, permitting, funding, contractor solicitation and "other reversible regulatory work" (Def. Br. 12, 14). A dam once removed cannot be put back, and the covenant to maintain it is the subject of this action. Plaintiff does not ask the Court to stop safety maintenance, inspection, spillway clearing, or any measure NJDEP requires in writing. Plaintiff asks that, pending final judgment, no removal, breach or [redacted] work be performed, and that no contract for removal be signed until the members have the file and have voted at a lawful meeting.

4. **The members are deciding blind.** One of the ten households, the [redacted] household, declined to support the offer without answers to its questions about water level, property values, future expenses and public access (Wheaton Cert. 52; Ex. LLL). No answer is in this record. The October 1, 2021 "statement" defendants rely on (Wheaton Cert. 25; Def. Ex. I) is not a vote, not a written consent under N.J.S.A. 15A:5-6 to any transfer, and not a recorded amendment of anything.

POINT III

DEFENDANTS OFFER THE RECORDS. THE ORDER SHOULD SEND THEM TO EVERY MEMBER AND REQUIRE A SWORN STATEMENT FOR WHAT DOES NOT EXIST

Defendants "recognize that Plaintiff may be entitled to appropriate nonprivileged corporate records" (Def. Br. 14) and offer, "[w]ithout admitting Plaintiff's entitlement to every requested category," to produce them "on a reasonable schedule" (Wheaton Cert. 69). They acknowledge that in June 2026 the members decided "no response was warranted" to plaintiff's May 2026 demand (Wheaton Cert. 68). Their stated objections are "scope, privilege, confidentiality, possession, redaction," the ten-day period, and production "to every member," and they ask that production proceed through ordinary discovery. Def. Br. 14.

1. **The records belong to the members.** Every member has the right to inspect the Association's books and records, and the Court may compel production. N.J.S.A. 15A:5-24; VC 48. A record of the Association is not confidential as against the people who own the Association. The decision before every member is whether to give up the lake. Ordinary discovery delivers the file to plaintiff alone; only the Court's order puts the same file in front of all ten households before they vote.

2. **The scope is the scope of the decision.** Plaintiff asks for production within 30 days, to plaintiff and to every member, of: the Green Acres offer and every Green Acres communication; both appraisals; the State dam-rehabilitation loan file, including every draw and what it purchased; every request for proposals, scope of work, bid solicitation and bid received for the work under Permit No. 1494, including the 2015 Castle and Marine Maintenance figures; every record of the "2017" member decision to stop loan draws (Wheaton Cert. 10); the minutes, notices, votes, written consents and record of members from January 1, 2018; the October 2021 statement and its circulation (Def. Ex. I); the Salem County donation proposal and the County's response (Def. Ex. T); the Association's insurance policies in force since January 1, 2024; and the authorization, closing statement and disposition of proceeds of the 2022 conveyance. Each category is one the opposition puts in issue. It is narrower than paragraph D of the Order to Show Cause.

3. **A certification of absence.** For any category not produced, the Association's custodian should certify under oath that no such document exists and state the search made. Mr. Wheaton certifies that "[c]onstruction estimates later materially exceeded the available financing" (Wheaton Cert. 9). The only figures for the work under Permit No. 1494 in this record are the two bid amounts a member reported to NJDEP in October 2015 and a cost-savings contractor's estimate in 2016. Exs. M, O; VC 72. The record also refers to 2012 bid specifications and a 2012 Castle proposal for an earlier design (Def. Ex. J; Def. Ex. P). The opposition attaches none of those documents, and no request for proposals, solicitation, bid tabulation or record of the 2017 decision. Whether any exists is the central fact of the dam question, and only a sworn answer settles it.

4. **Project management is a duty, and the record of it should exist.** Trustees must act "in good faith and with that degree of diligence, care and skill which ordinary, prudent persons would exercise under similar circumstances in like positions." N.J.S.A. 15A:6-14. With a permit in hand and $1.2 million of State financing activated, the Association drew $68,879 and stopped (Wheaton Cert. 7-10). A prudent owner of a regulated dam solicits proposals, negotiates, phases the work, prices alternates, and pursues funding before abandoning a permitted rehabilitation. Plaintiff does not ask the Court to decide engineering. Plaintiff asks that, before any vote to sell the lake or amend the dam covenant, the Board document the project management it performed and distribute it to every member.

POINT IV

ARTICLE VII, SECTION 3 IS SATISFIED

Defendants argue that plaintiff sued nine days after his August 18, 2026 notice. Def. Br. 11. The sixty days ran on October 17, 2026, without any response from the Board. Supp. Cert. paras. 2-4. The Verified Complaint asked that any affected Count be held, not dismissed, until the sixty-first day (VC 130), and plaintiff supplemented the record as promised. Defendants have suffered no prejudice. On their own account no transaction was imminent when suit was filed (Wheaton Cert. 46). The proviso, moreover, reaches only proceedings to enforce the Declaration; the Article SEVENTH, Title 15A, open-meeting and records claims rest on the Certificate and the statutes. Pl. Br. Point IV.

POINT V

THE GOVERNANCE CLAIMS DO NOT BELONG IN ADR. THE DUES DISPUTE DOES.

Defendants ask the Court to "[d]ismiss without prejudice suitable internal governance, records, assessment, lien, election, and meeting disputes for ADR." Def. Br. 14, item 4. Plaintiff agrees that the dispute over the balance the Association claims from him [Redacted: plaintiff's personal financial information] should go to ADR before an independent neutral, as he demanded in May 2026 and as the Association now offers (Wheaton Cert. 69). Whether the Association may sell its Common Area, amend its recorded covenant, or hold binding votes in a private residence on no notice is a question of corporate authority under the Certificate and Title 15A. It affects every member and should remain with this Court.

POINT VI

THE TAX CERTIFICATES WERE REDEEMED AFTER SUIT; THE ORDER SHOULD KEEP THE TAXES CURRENT

Defendants report that both certificates were redeemed on September 28, 2026 (Wheaton Cert. 75). Plaintiff accepts that representation. It was done after this action was filed and after paragraph F of the Order to Show Cause was served. The Association stopped paying the taxes on purpose in 2024 (Ex. X, para. 5(c); Ex. MMM). Paragraph F should be resolved by an order that the Association keep the Township taxes on Block 1503, Lot 73 current pending final judgment.

POINT VII

THE MEHAFFEY DEFENDANTS

Plaintiff does not oppose the Mehaffey Defendants' request that interim relief on November 2 not be directed to their parcel and that the claims concerning the 2022 conveyance proceed on the plenary track. Plaintiff notes that the Mehaffey Defendants "would welcome production of the Association's authorizations and its records of the members' response to the April 2021 letter" (Mehaffey Br. 18). The records order plaintiff seeks includes them.

CONCLUSION

Plaintiff respectfully asks the Court to enter the proposed form of order submitted herewith, which:

1. Orders the Association, within 30 days, to produce to plaintiff and mail to every member the records listed in Point III, and to serve and mail a custodian's certification under oath identifying each listed category for which no document exists and the search made;

2. Restrains defendants, pending final judgment or further order, from holding any vote of members or adopting any resolution to sell, transfer, dedicate or donate Block 1503, Lot 73, from adopting or recording any amendment of the Declaration or the Certificate, and from executing any agreement of sale, contract or deed for the property or any contract for removal of the dam, until 30 days after that production has been mailed to every member, and then only at a meeting noticed and held in compliance with Article SEVENTH of the Certificate, Article VII, Section 2 of the Declaration, N.J.S.A. 15A:10-11 and N.J.S.A. 45:22A-46(a);

3. Requires the Board, before any such vote, to mail to every member a written report of the project management it performed on the permitted rehabilitation of the dam, with the documents that support it;

4. Pending final judgment, bars removal, breach or [redacted] work on the dam, and permits inspection, monitoring, routine maintenance, the clearing of spillway channels and obstructions, and any measure NJDEP requires in writing for public safety;

5. Orders the Association to keep the Township taxes on Block 1503, Lot 73 current pending final judgment;

6. Refers the dispute over the balance the Association claims from plaintiff to ADR before an independent neutral agreed by those parties or, failing agreement within 20 days, designated by the Court, and denies dismissal of the remaining claims to ADR;

7. Excludes the 12.97 acres conveyed to the Mehaffey Defendants from the restraints, sends the claims concerning that conveyance to the plenary track, and grants no relief against the Mehaffey Defendants on November 2;

8. Places the remaining claims on a plenary track with a case management conference to fix a discovery schedule;

9. Requires no security, R. 4:52-3, and directs plaintiff to serve the order on all counsel within seven days; and

10. Retains jurisdiction.

Respectfully submitted,

/s/ Ronald W. Yarbrough
Ronald W. Yarbrough
Plaintiff, Pro Se

Dated: October 27, 2026