

Unedited Emails to and from Lawyer James Chavez

(Email 1)

From: Gillian Fryer <gryer@bluefeather.biz>
Subject: Re: Engagement letter
Date: March 18, 2019 at 12:15:15 PM MDT
To: Kira Thomas <kira@vancechavez.com>

Hi,

I'm sorry to have taken so long to get back to you. Our Board went through lengthy discussions regarding how much we were willing to pay for legal services. We have finally decided to go ahead and engage your services, if you are still accepting new clients. If so, could you please send an updated contract, with your current fees, and the following named signees: Gillian Fryer and Amy Duke.

Thank you

/Gillian Fryer

On Dec 6, 2018, at 4:48 PM, Kira Thomas <kira@vancechavez.com> wrote:
Good afternoon, Ms. Fryer,

Thank you for your prompt response.

Attached please find our firm's engagement letter. Once you have reviewed it, please sign and return to us at your earliest convenience.

If you have any questions, please contact our office.

Thank you,

Kira Thomas
Legal Assistant

James A. Chavez, P.C.
Vance, Chavez & Associates, LLC
500 4th Street NW, Suite 405
Albuquerque, NM 87102
505-842-6626
FAX 505-247-1536

CONFIDENTIALITY NOTICE: This message may contain privileged or confidential information and is intended for the sole use of the intended recipient. Any unauthorized use or disclosure is prohibited. If you have received this message in error, please notify the sender immediately and delete it from your system.

(Email 2)

From: "Kira Thomas" <kira@vancechavez.com>
Subject: **GWLUA**
Date: March 18, 2019 at 3:44:52 PM MDT
To: "'Gillian Fryer'" <gfryer@bluefeather.biz>
Cc: "'James A. Chavez'" <jim@vancechavez.com>, "'Deborah Chavez'" <dchavez@vancechavez.com>

Dear Ms. Fryer,

As per our conversation this afternoon, attached please find this firm's engagement letter for GWLUA.

Please sign the letter where indicated along with Ms. Duke and return it at your earliest convenience.

We look forward to working with you.

Sincerely,

Deborah A. Chavez
Legal Assistant

From the email of Kira Thomas

James A. Chavez, P.C.
Vance, Chavez & Associates, LLC
500 4th Street NW Suite 405
Albuquerque, NM 87102
Phone (505) 842.6626
Fax (505) 247.1536

(Email 3)

From: Gillian Fryer <gfryer@bluefeather.biz>

Subject: Re: GWLUA

Date: March 20, 2019 at 12:44:20 PM MDT

To: Kira Thomas <kira@vancechavez.com>

Cc: "James A. Chavez" <jim@vancechavez.com>, Deborah Chavez <dchavez@vancechavez.com>

Enclosed, please find our signed letter of engagement. I will mail the original to you so that you have it in your records.

Thank you,

/Gillian Fryer

VANCE, CHAVEZ & ASSOCIATES, LLC

AN ASSOCIATION OF LEGAL PROFESSIONAL ORGANIZATIONS

James A. Chavez
(James A. Chavez, P.C.)
Claud Eugene Vance
(The Vance Law Firm, P.A.)

500 4th Street NW, Suite 405
Albuquerque, NM 87102

Tel. (505) 842-6626
Fax (505) 247-1536
jim@vancechavez.com

March 18, 2019

Greater World Land User's Association (GWLUA)
c/o Gillian Fryer, Treasurer
PO Box 1041
Taos, NM 87571
via email only to: gryer@bluefeather.biz

Re: Greater World Land User's Association HOA Matters

Dear Ms. Fryer:

We are pleased that you have chosen to retain Vance, Chavez & Associates, LLC (James A. Chavez, P.C.) as counsel in the matter mentioned above.

It is our policy to write to clients regarding our billing policy before commencing representation. This letter describes the basis on which our firm will provide legal services to you and how we will be compensated for our services.

While we cannot guarantee the success of any given matter, we will strive to represent your interests professionally and efficiently. I will have primary responsibility for your representation; however, I may utilize other attorneys and legal assistants in the office. If, at any time, you have questions, concerns, or criticisms, please contact me at once.

We take into account many factors in billing for services rendered, and I will review all statements before they are issued to insure that the amount charged is appropriate. The principal factor is usually our schedule of hourly rates, and thus most statements for services are simply the product of the hours worked multiplied by the hourly rates for the attorneys, associates of the firm and legal assistants who did the work.

Our schedule of hourly rates for attorneys and other members of the professional staff is based on years of experience, emphasis in training and practice, and level of professional attainment. My present regular hourly rate is \$265.00 and to the extent that legal assistants are involved, their present regular hourly rate is \$75.00. Some aspects of this matter will certainly require a higher expertise than other aspects. It is our policy to assign and delegate responsibilities based upon the degree of experience and expertise required. All legal work performed will be monitored and approved by one of the attorneys of the firm.

We encourage you to contact us whenever you have any questions concerning our representation of you. However, a principal factor in setting our fees to you is time expended on your matter so

Gillian Fryer
December 6, 2018

please understand that we must bill you for each telephone call or conference we have with you.

Our statements generally will be prepared the month following the month in which services are rendered and costs advanced. We expect payment within a few days after the statement date. Interest accrues on the balance at the rate of 18% per year after 30 days.

If you have any questions on any statement, please call Deborah in this office immediately upon receipt of that statement so that adjustments, if any are required, can be made promptly.

Gross Receipts Taxes: In New Mexico, gross receipts taxes are imposed upon fees for services, including some costs. These taxes will be identified on your bill.

Please carefully review this letter. If you have any questions or do not agree with any aspect of this agreement, please contact me. Unless we hear from you otherwise, we will assume that you have agreed to the terms of this letter.

I am pleased that you have selected our firm. I look forward to working with you and I hope that you will feel satisfied with our efforts on your behalf.

Very truly yours,

/s/ James A. Chavez
James A. Chavez

Please sign and return:

Gillian Fryer 3/19/19
Gillian Fryer, Treasurer Date
Greater World Land User's Association

Amy Duke 3/19/19
Amy Duke, Board Member Date
Greater World Land User's Association

(Email 4)

Begin forwarded message:

From: Gillian Fryer <gfryer@bluefeather.biz>

Subject: GWLUA issues

Date: March 20, 2019 at 1:43:10 PM MDT

To: "James A. Chavez" <jim@vancechavez.com>

Cc: dchavez@vancechavez.com

The GWLUA is an HOA for a sustainable Earthship Subdivision located just west of Taos NM. It was the vision of architect Michael Reynolds, along with two other developments: Reach and STAR. Initially, Reynolds tried to sell memberships to the community, but the county successfully sued on the basis that this was really an illegal subdivision. After several years, Reynolds managed to get the subdivision laws changed and variances granted, so that he could sell lots without installing the usual infrastructure common to subdivisions, such as power, water or sewer. He also obtained variances allowing him to install the roads as needed and to survey the lots as they were sold.

There is currently a lawsuit pending between Reynolds and some unhappy owners: Case no D-820-CV-2015-00328: Rhines, Romano and Balassone v. Reynolds, Sustainable Solutions Worldwide, Earthship Biotecture, and Does 1-10, inclusive. The Board has not been named as parties. One of the charges in the lawsuit is that Reynolds maintains improper control over the Board and that, even after 20 years of development, common lands have not been turned over to the community. Reynolds retains a permanent, unelected position on the Board.

(Attachment: rhines Complaint.10.5.15 Final) sent as separate document because of file size)

The following are the issues that are of major concern to the Board of the GWLUA.

1. Common Land Roll-out:

The common lands consist of approximately 234 acres, currently titled under the name of Michael Reynolds. The Court has mandated that the lands be turned over as soon as possible. The community has been paying for the property taxes and the insurance on this property for years.

Our concerns are:

SPECIAL WARRANTY DEED

MICHAEL REYNOLDS, a married person, as his sole and separate property, for consideration paid, grants to **THE GREATER WORLD HOMEOWNER'S ASSOCIATION**, whose address is P.O. Box 1041, Taos, NM 87571, the following described real estate in Taos County, New Mexico:

The Greater World Subdivision Common Lands, a tract of land, the perimeter legal description of which is attached hereto as Exhibit 1 and is incorporated herein by reference.

LESS AND EXCEPT:

24 lots in Phase I

1. The following lots previously sold in Phase I, the Plat of which is filed in Taos County Records Cabinet F, Page 6-A, dated 8 March 1999 amended July 26, 1999, 3 November 1999, 6 April 2001, 6 November 2001, 7 July 2006, 27 February 2007, 13 January 2009 and 5 July 2012:
Lots 1-8, 10-19 and 24;
2. The remaining unsold lots in Phase I, which were conveyed by Michael Reynolds to Michael Reynolds, recorded individually in Taos County in Book 968, Pages 891-902 and 906-907:
Lots 9 and 20-23

56 lots in Phase II

3. The following lots previously sold in Phase II, the Plats of which are filed in Taos County Records Cabinet E Page 22B, dated 14 February 2002, Cabinet E Page 85B, dated 8 October 2001 amended 4 December 2002, 18 December 2003, 27 January 2005, 11 April 2005 and 22 February 2006, Cabinet E Page 154B, dated 28 July 2008, Cabinet E Page 105B, dated 22 June 2006, Cabinet E Page 165A, dated 30 April 2009, Cabinet E Page 143B, dated 4 February 2008, Cabinet F Page 10B, dated 22 June 2006, and Cabinet F Page 87A, dated 28 August 2018:
Lots 1-7, 8, 8A, 9-10, 11-32, 35-44 and 49;

1. what is the best legal entity in which to title the property? (Trust?)

2. Reynolds wants to temporarily retain 3 acres of the common land, which includes the only well on the property. He says he wants to maintain the well and build a promised community center on this land before turning it over to the community. Several Board members are not happy with this proposal and think that all the common lands should be turned over. (item 13 in the proposed warranty deed.)

3. Reynolds also lists certain roads as being completed and has stated that the county has 'signed off' on these roads as being compliant. The Board is concerned that the community not be liable for these roads, if

those roads are later deemed non-compliant. The community pays for all road maintenance. (listed under the section “inclusive of...”)

2. Effect of the NM HOA Act of 2013:

Reynolds has claimed that the Act §47-7E-8-B (1). enables him to maintain control over the Board until 75% conveyance, however, subsection B (3) states that "two years after a development right to add new lots was last exercised..." the period of declarant control shall terminate. The final Plat was filed on May 17th, 2004. What does this mean with respect to Reynolds' position on the board?

3. The GWLUA was established as a business entity under **NM 53-10, the NM Unincorporated Associations Act**, in 1993. New documents were filed in 2003, again referring to NM 53-10. The Act contains an automatic termination clause after 20 years, which mandates that all assets be distributed to the current membership. Is the GWLUA currently a viable legal entity? Can we/should we re-establish ourselves as an LLC, or similar entity? If we are not a legal entity, how do we deal with issues 1 and 2 above?

Enclosed are various editions of the Articles of Association, Bylaws and Land User's Code for the GWLUA.

(Attachment: Old and new LUC and BY-Laws)

I am available to discuss any questions you might have during regular business hours at 575-770-2806.

Thank you so much for taking us on as clients.

/Gillian Fryer

(Email 5)

Begin forwarded message:

From: "James A. Chavez" <jim@vancechavez.com>

Subject: RE: GWLUA issues

Date: March 20, 2019 at 3:07:29 PM MDT

To: "'Gillian Fryer'" <gfryer@bluefeather.biz>

Cc: <dchavez@vancechavez.com>

Ms. Fryer,

I have briefly reviewed the case file and in particular the opinion filed on January 17, 2019.

I have searched the Sec of State website and find no NM entity named Greater World, Great World, or GWLUA. I believe the HOA was not named in the suit because it is not a legal entity.

I am unsure of what you are asking of this office. Do you wish us to incorporate the HOA and ensure it complies with the HOA Act?

Thank you for your attention to this matter. Please give me a call so we can discuss this more fully.

James A. Chavez
Vance, Chavez & Associates, LLC
An association of professional corporations
500 4th St. NW, Suite 405
Albuquerque, NM 87102
(505) 842-6626
Fax (505) 247-1536

CONFIDENTIAL. This communication may contain privileged attorney/client or attorney work product information. No privilege is waived by inadvertent transmission. If you receive this email in

error, please remove it and any attachment from your computer and/or contact the sender.

(Email 6)

In response to the previous email, I called Mr, Chavez and talked to him from 3:07 to 3:15.

These are my notes from that conversation:

We are not a legal entity:

1. Uninc expired after 20 years in 2014 >> no longer a legal entity
 2. all case law and interpretation of HOA Act requires inc. >> we are not a viable legal entity.
- cannot own land
cannot sue or be sued
cannot assert authority
to be an HOA, accept property, must be a corporation . (LLC not sufficient.)

How to Inc: call meeting of all members to agree > initial temp organizational group > create new articles and bylaws > file > first meeting >vote for final board & officers

Will forward Opinion letter: Wilcox, Henry & Winston

Lands: good thing we never got them as they could be force partitioned.

Addendum to my notes from telephone conversation.

Reynolds is no longer entitled to retain a position on the board because of the HOA Act §8.B(3). The final plat was filed in 2004, however the HOA Act became effective in 2014. Reynold's right to a position on the board has expired.

- **SECTION 8. DECLARANT CONTROL OF BOARD.--**
- A. Subject to the provisions of this section, the declaration shall provide for a period of declarant control of the association, during which period a declarant, or persons

- designated by the declarant, may appoint and remove the
- officers and members of the board.
-
- B. Regardless of the period provided in the
- declaration, the period of declarant control shall terminate no
- later than the earlier of:
-
- (1) sixty days after conveyance of seventy-
- five percent of the lots that are part of the development and
- any additional lots that may be added to the development to lot
- owners other than a declarant;
- (2) two years after all declarants have ceased
- to offer lots for sale in the ordinary course of business;
-
- **(3) two years after a development right to add**
- **new lots was last exercised;**

Begin forwarded message:

From: "James A. Chavez" <jim@vancechavez.com>

Subject: RE: GWLUA issues

Date: March 20, 2019 at 3:43:51 PM MDT

To: "Gillian Fryer" <gfryer@bluefeather.biz>

Cc: <dchavez@vancechavez.com>

Ms. Fryer,

It was a pleasure talking to you.

In an effort to save resources, I have attached the Opinion Letter filed in *Rhines et.al. v. Reynolds, et.al.* D-820-CV-2015-00328. I believe it addresses your concern.

The portions of the letter that are of interest to the HOA are:

Page 10, Paragraph B, history of the HOA;

Page 14, Paragraph C.

Page 16, IV, Paragraphs A & B.

Page 24, Paragraph B.1 (I did not know HOA was recorded as an unincorporated entity when we spoke on the phone. However, the 20-year limit for such an entity has expired. I still do not have sufficient information to determine if it was negligent to establish the HOA as an unincorporated association in 1994.)

I do not express an opinion of the issues of breach of fiduciary duty and damages as I have not spent the time required to review the record. However, I do agree that the proper course for the HOA at this point as contained at paragraphs 1, 2, 3, 4 and 5 of page 31.

James A. Chavez
Vance, Chavez & Associates, LLC
An association of professional corporations
500 4th St. NW, Suite 405
Albuquerque, NM 87102
(505) 842-6626
Fax (505) 247-1536

CONFIDENTIAL. This communication may contain privileged attorney/client or attorney work product information. No privilege is waived by inadvertent transmission. If you receive this email in error, please remove it and any attachment from your computer and/or contact the sender.

Attachment: (Memo opinion, sent separately due to size of file.)

(Email 7)

From: Gillian Fryer <gfryer@bluefeather.biz>
Subject: Re: GWLUA issues
Date: March 23, 2019 at 12:16:43 PM MDT
To: "James A. Chavez" <jim@vancechavez.com>
Cc: dchavez@vancechavez.com

Dear Mr. Chavez,

Thank you for your incredibly quick response: I had not expected that we would get such pertinent advice in such quick order. I feel confident that, with your help, we will be able to resolve our current predicament and build a better organization in the process.

I am certain that forwarding the WHW opinion letter to the entire board will not be sufficient to convince them that we need to make some massive changes as soon as possible. I have been expressing my mounting concern about our situation for at least the past 8 months, as I have investigated the lawsuit more closely. Michael Reynolds, in particular, considers me to be an alarmist, and he will most certainly minimize any legal assessment coming directly from me. In order to be taken seriously, the issues we discussed must come directly from you, an independent third party. Your sending the information directly, creates the added benefit of insulating me from being the messenger.

If you would, please send a letter summarizing what we have discussed in both emails and on the telephone. In layman's terms, please cover the following points and anything else you deem necessary:

with respect to the business structure of the GWLUA

1. our current legal situation and why
2. the impact of this on our activity from 2014 to present
3. why this must be addressed before we can take possession of the lands
4. the requirements of the HOA act and what we need to do in order to be compliant with the act
5. the repercussions of doing nothing
6. possible alternatives to reforming our HOA — ie. no HOA at all

Also, please briefly address the developer's position on the board per the HOA Act.

The Board members have directed me to ask that you send this summary letter directly to the Board email address at members@greaterworldboard.com

(That is a mail forwarder only, so no email will originate from that address, other than an acknowledgment of receipt.)

I understand you have already presented me with most of this information and that re-crafting it in this manner, will cost additional time and money, but this is what the Board wants.

Thank you again for your time.

/Gillian Fryer

(Email 8)

On Mar 25, 2019, at 1:56 PM, James A. Chavez <jim@vancechavez.com> wrote:

Ms. Fryer,

I understand the letter was written by an advocate. That is why I did not comment on the various findings of fact, but only the uncontroverted facts and the legal consequences flowing therefrom.

The fact I focused on was that HOA was established as an unincorporated association more than 14 years ago. Because such an association cannot survive more than 14 years, the HOA's existence has lapsed.

Given there is no valid legal HOA entity, I next focused on what steps need to be taken to establish a permanent HOA that can own and maintain the common area, assess dues and enforce the CCRs and bylaws.

The steps are to review and CCRs to ensure the HOA is established consistent with those covenants, incorporate the HOA, conduct a first meeting of the members and appoint a board of directors.

I hope this answers your questions.

Jim

(Email 9)

From Gillian Fryer, Dated April 5
To James A, Chavez and Deborah Chavez

We had a Board meeting this past Wednesday 4/3/19. I did my best to present your summary and advice as you have outlined in the past few emails.

Michael Reynolds, the developer, self-appointed permanent board member and defendant in the Rhines et al lawsuit, said that he did not accept your opinion that the GWLUA has any problems as a business entity because of either 53-10 or the HOA Act. He said that the GWLUA documents were entirely refiled in 2003 because the community was deemed to be a subdivision and that doing so restarted the 20 year existence clock outlined in 53-10. He also said that any lawyer's opinion is worthless and that only the judge's ruling was determinative of our situation. He suggested that the Board postpone making any changes until the outcome of the the lawsuit (which so far has run 3 years) has been revealed.

He also said that, while he had no objection to our incorporating ourselves, there wasn't any need or any urgency.

The Board tabled the issue. The Board also tabled the issue of the common land roll-over, without any discussion regarding the inability of the GWLUA to own land. The Board is unwilling to acknowledge that we are no longer a viable legal entity and they think that they can continue as if nothing is amiss. Several of the community members in attendance were aghast.

The minutes will be available in about a week, should you wish to review them.

Since I seem to be unable to convey the urgency of this situation, it is imperative that you explain these issues to the Board and spell out the repercussions of our inaction. I believe the following items need to be covered, but please add to this as you see fit:

1. our current legal situation and why
2. the impact of this on our activity from 2014 to present
3. why this must be addressed before we can take possession of the lands
4. the requirements of the HOA act and what we need to do in order to be compliant with the act
5. the repercussions of doing nothing
6. possible alternatives to reforming our HOA

Community members are largely in the dark about all of this and they don't understand that there is anything wrong, let alone the gravity of the problem. The Board needs to be informed and they need to then inform the community. They clearly don't want to listen to me.

The direct Board email is: members@greaterworldboard.com

Thank you,

/Gillian Frye