**History of Pointe Mold Conflict**

1. We objected to the 2011/12 reconstruction project scoped by an unqualified, unlicensed inspector. We only requested a second opinion. Council then billed us for legal fees related to responding to our second opinion request and other miscellaneous correspondence.
2. Our request was only for the additional opinion. We agreed that some of the reconstruction scope was necessary and properly planned, and we paid our full assessment on time - without issue.
3. Council refused further discussion. When their inspector’s role expanded to areas he was obviously unqualified to cover, we filed complaint with Attorney General.
4. Our complaint and concerns proved to be correct when the inspector’s louver specification shutdown numerous AC systems at the Pointe on a Memorial Day weekend.
5. During the reconstruction project mold was found outside many units, including ours. The amount of mold found outside our unit was significantly less than some other units.
6. Council insisted mold testing inside our unit. After testing Council insisted on remediation. This recommendation was counter to protocol established by Delaware Department of Natural Resources, US Environmental Protection Agency, Center for Disease Control and the World Health Organization. We also submitted a 42 page report by an internationally recognized expert Industrial Hygienist confirming that Council’s test methodology, results, and procedure provided no basis for concluding remediation was necessary. Our expert also called into question the qualifications of Council’s inspector. (Note Council’s expert has since changed her website overview to read “Do not let anyone talk you into sampling the indoor environment. Always request a thorough inspection of the indoor environment to determine the need for sampling first.”)
7. In trying to cooperate with the Council’s request for testing, we were provided 4 different schedule days. Council then attempted illegal break-in of the unit on a day not scheduled for testing.
8. Council’s expert provided a recommended aggressive remediation procedure consistent with a major fire of flood restoration. The expert’s report also suggested that mold was found in the HVAC, when no inspections or tests of the HVAC had been done. The expert also claimed the mold was in the HVAC inlet plenum when the unit does not have an inlet plenum. Council’s attorney noted that HVAC remediation (estimated at $7,000) would be at our expense.
9. Council’s expert based her remediation conclusion on a set of criteria not supported by any government or public health organization or by the associations representing Industrial Hygienist. Council’s expert used different assessment criteria in previous evaluations for clients who wished to show no mold problems.
10. No other units (excluding those adjacent to ours) were subject to mold inspection, testing or remediation. Many other units had outside mold similar or worse than ours. Also many other units throughout the community had a history of internal water leaks, a situation not found in our unit – and no inspection, testing and remediation was conducted there. In May 2013 mold was found outside Building 33 (the HOA President’s unit) but was ignored – no tests were conducted. The moldy insulation was left in place and covered with new siding. In 2006 this same HOA President reported mold findings at the Pointe owners’ meeting and instead of any inspection or action, suggested that owners keep the findings and information silent.
11. Council demanded remediation but would not provide justification. Council never requested access for only remediation assessment prior to filing a suit.
12. With no further discussion, Council filed suit requesting access for remediation.
13. We hired an attorney denying allegations in the complaint and requesting denial of Judgment for access for to unnecessary and unwarranted mold remediation repairs.
14. After discussions between our attorney and Council’s attorney an agreement was reached to provide access for a contractor to evaluate wall cavities and determine need for and possible scope of remediation in those areas. We moved a tenant out and accommodated the “evaluation”. Instead of evaluation the Council sent in a remediation contractor to take measurements and prepare for their predetermined remediation project. The inspection report provided no assessment of remediation need, but rather a cost estimate for remediation.
15. We provided a letter to all homeowners with an explanation of the facts and a noted desire for resolution. We then reached out to Council’s attorney and Council offering a resolution which included an offering of full access to the unit. Neither Council’s attorney nor Council responded. Ann Bryan was angered by our letter to homeowners and refused any further communication. The lack of communication led to 3 ½ more years of litigation
16. Council’s attorney sent a draft demand for full remediation project access without justification and for $8,600 in legal fees. We replied again with offer of access, but with elimination of legal fees. Neither Council’s attorney nor Council responded.
17. With no further discussion, Council’s attorney and Council filed for summary Judgment again requesting full remediation.
18. Council submitted an Affidavit to the Court calling us terrorists and including lies regarding details of the case. Council also used the Association website and email for further defamation.
19. The Master in Chancery issued Draft Report (March 13, 2013) denying summary judgment and sanctions. The Master noted that there were issues with Council’s conclusion that remediation was necessary and that our evidence raised legitimate questions about the need for remediation.
20. Council’s attorney submitted an exception to the Master’s Draft Report. In a follow up call with the Master, Council’s attorney requested a retest for mold and agreed thatif the retest shows no mold, Council would drop the mold litigation.
21. We allowed access for the test, but the results were withheld by Council’s attorney and Council. They refused to disclose results despite our Discovery request and our request as a homeowner, through HOA management.
22. We had our own test conducted which showed unusually low mold results.
23. Plaintiff’s tests were eventually disclosed more than a year later (see later discussion) and revealed that the mold levels were extremely low – below their expert’s reported level of concern for indoor mold**.** Mold levels versus Council’s expert criteria for “clean building” are shown below along with the results from our expert’s test:

Test Location Result (spores/m3) Standard (max spores/m3)

Living Room Wall 199 2000

MBR Exterior Wall 1867 2000

Living Room 1533 2000

MBR 893 2000

Outdoors 16115 -

 **Higgins Expert’s Test**

Living Room 507 2000

1. Based on the promise to the Master, Council’s attorney and Council had an obligation to accept the finding of no mold issues. The litigation could have/should have ended at this point (May 2013). Instead Council’s attorney and Council choose to withhold the data and pursue further appeals.
2. The Master’s Final report denied summary judgment.
3. Plaintiff filed appeal.
4. The Vice Chancellor denied summary judgment in February 2014, but stated that if proper test established that there is mold that requires remediation, Plaintiff is entitled to summary judgment). This was in part based on the fact that mold test data available to the Court was dated. Had Council’s attorney and Council not withheld the May 2013 data, more current information would have been available and would likely have been sufficient to again end the litigation in February 2014.
5. Plaintiff retested and results came out higher than past. Plaintiff submitted to court, now including previously withheld May 2013 data. **Plaintiff used previously withheld low data to compare with current data and conclude mold is growing. Plaintiff misrepresented the Court with data previously withheld.**
6. The Vice chancellor issued final order stating that if Council established that mold existed requiring remediation, Plaintiff entitled to perform remediation assessment and if necessary remediation.
7. Council had their expert and contractor perform an aggressive, destructive inspection with large holes cut into walls of three units. No mold issues were found. Our expert provided an inspection/assessment report. Council’s inspector on site and HOA management representative verbally confirmed no mold issues. Neither Council’s attorney nor Council would provide a report.
8. Not satisfied with these results, Council demanded second inspection. Again holes were cut into walls and no mold issues were found. Our expert provided a report confirming no issues. Council’s inspector and HOA manager verbally confirmed no mold issues or need for remediation. Neither Council’s attorney nor Council would not provide a report and to date have not provided a report.
9. Council engaged in 4 years of litigation and associated costs only to find that there were no mold issues as we demonstrated all along through numerous government/health organization recommendations and expert inspection and testing.
10. Council attorney and Council perpetuated the litigation by initially refusing to conduct the assessment they agreed to do and were permitted access by us for in August 2012, refusing to respond to our outreach for resolution in October 2012, and refusing to respond to our attorney’s two separate outreach attempts for resolution in 2013.
11. Council attorney and Council extended the litigation by withholding the May 2013 data which clearly showed no mold issues. Council’s attorney and Council continued the process until 2015 when the “hole-cutting” exercise confirmed the May 2013 findings – there are and never were any mold issues!