

Hat Island Governance Committee Meeting Minutes

Remote Participation via Zoom Meeting

Tuesday, July 14, 2020

MEMBERS PRESENT: Scott Holte (Board Chair - G26); Karen Conner (Committee Chair – G50); Turie Holte (G26); Jo Levin (H32); Sharron Meadows (A24); Bill Townsend (A24); Kevin Smith (Board Member – N9); Jennifer Davis (G64)

MEMBERS ABSENT: Gary Chittim

COUNSEL PRESENT: Jeremy Stilwell (HICA attorney)

Chair Conner called the meeting to order at ~ 4:20 p.m. and introductions were made.

Discussion Items:

Committee Secretary – Jennifer Davis volunteered to act as Committee Secretary.

Attorney Client Privilege – HICA attorney Jeremy Stilwell gave a brief explanation of attorney/client privilege as it applies to the Governance Committee (the “Committee”). In short, because the Committee has been granted its authority by the HICA Board of Trustees (the “Board”), the attorney/client privilege that exists between Mr. Stilwell and the Board extends to his communications with the Committee as a group. No individual member of the Committee has the authority to waive the attorney/client privilege – only the group in its entirety may do so. Therefore, if any individual member of the Committee wishes to disclose a piece of information covered by the attorney/client privilege to an individual who is not a member of the Committee or Board, permission must first be sought (and granted by the Committee) to waive the attorney/client privilege. Scott Holte also mentioned that in the future Mr. Stilwell is likely to assist the Committee with the drafting or review of proposed revisions to HICA foundational documents, and that resulting communications and documents would constitute “attorney work product” and consequently be covered by the attorney/client privilege.

Priorities – The Committee began a discussion of various action items proposed by Committee members prior to the meeting via email.

Scott Holte commented that revising the Hat Island By-Laws (the “By-Laws”) to allow for any necessary increases in annual assessments has been an issue over the years – including an unsuccessful effort put to community wide vote in 2012.

Jeremy Stilwell said that from his perspective as HICA legal counsel, priorities for Committee work might include (1) reviewing and addressing inconsistencies between the Covenants (the “CCRs”) and the By-Laws; (2) strengthening rule making authority and enforcement powers of

the Board; and (3) clarifying the relationship between the Architectural Control Committee (the “ACC”) and the Association with respect to the Board’s authority over the ACC.

Kevin Smith mentioned that as the Committee deliberates on its work plan and priorities, it should consider the importance of messaging to the community at large. He suggested that the most effective way to proceed is for the Committee to propose changes to the Board and to present possible changes to the community. This would also provide a degree of separation between the proposed changes and the Board in the mind of community members and therefore reduce any appearance of political motivations. This approach might increase the likelihood of any proposed changes passing in a community wide vote.

Scott Holte commented that he would like to work on a unified set of CCRs for the whole community (every division).

Jeremy Stilwell said that in his opinion this is unlikely to succeed because such a change would require approval by the majority of each division - an unlikely outcome. Therefore, the only practical way to amend the CCRs is to revise them individually by division.

Karen Conner asked if voting under the By-Laws is “one vote per owner” whereas voting under the CCRs is “one vote per lot.” She also asked if it matters whether an owner is in good standing with respect to voting rights.

Jeremy Stilwell confirmed that this description of vote allocation for amending the CC&Rs is correct. He also confirmed that whether an owner is in good standing is not relevant to amending CC&Rs voting rights

Bill Townsend (also a member of the ACC) conveyed that the ACC would like to prioritize the clarification of the relationship between the ACC and the Association. The ACC would like guidance from the Committee on this matter, as well as enforcement issues. The ACC views itself as operating under the authority of the Association and would like that relationship (as well as a dispute resolution process that leads to an appeal to the Board) further articulated.

Jeremy Stilwell said that by amending the By-Laws, the community can (1) better define the relationship between the ACC and the Association, (2) formalize an appeal process for future disputes involving the ACC, and (3) formalize a dispute resolution process for the community generally. He noted that many homeowners’ associations are adding mandatory arbitration clauses to foundational documents.

Scott Holte commented that we should also consider adding mediation to any potential alternative dispute resolution process we propose. He also noted that the community may be more open to the idea of alternative dispute resolution given the substantial litigation expenses incurred in recent years.

Jeremy Stilwell raised a concern about the current structure of the ACC. In order for the ACC to make a legally binding decision¹, the ACC must have at least two members who are also members of the Board. That is not currently the case, and therefore one of two things is true: either (1) the ACC is operating under the authority of the Association but its decisions are not legally binding, or (2) the ACC is not operating under the authority of the Association, and consequently the ACC (and its members individually) are not indemnified by the Association and are at risk of liability.²

Bill Townsend referred the Committee to Section 17 of the CC&Rs, which he thought means that appeals to ACC decisions are determined at the Board level. *Jeremy* said that actually Section 17 provides for resolution “at law or in equity” which means a lawsuit determined by a judge and/or jury. He further suggested that a possible amendment to the By-Laws could tie Section 17 enforcement actions to an owner’s membership in HICA – carrying this over from the CCRs to the By-Laws.

Bill Townsend mentioned that while the original documents specify three individuals (by name) as members of the ACC, the ACC is allowed to self-appoint members. He says the current ACC would be open to expanding to 5 members including two Board members. He also reiterated the importance of clarifying the relationship between the ACC and the Association, as the current situation places ACC members at risk of liability. Failure to resolve this may result in resignation of some or all, of the ACC membership.

Jeremy Stilwell mentioned the rubbish issue as an area that may be fruitful for By-Law revision. He also notes that there seems to be an idea in the community at large that the Board’s authority begins and ends with road maintenance, water etc., but that the Board is within its rights to assert authority more broadly through By-Law revision.

Scott Holte commented that revision of By-Laws regarding rubbish and lot upkeep may not be necessary as staff and Board enforcement efforts in this area have been largely successful.

Karen Conner screen shared a document summarizing possible priorities for Committee work.³ A discussion of these priorities ensued. The final version of this document is attached to these minutes as Exhibit A. Ultimately there was Committee consensus that the first priority should be a By-Law change regarding the process for addressing assessment delinquencies. The Committee

¹ Under RCW 24.03 - Washington Non-Profit Corporation Act

² Please note that Mr. Stilwell’s legal analysis of liability is covered by the attorney/client privilege. While he stated that it is appropriate for members of the ACC to discuss their own risks of liability amongst themselves, it is first necessary for the Committee to agree to waive the attorney/client privilege with regard to Mr. Stilwell’s liability analysis before this analysis can be shared with members of the ACC.

³ This list of possible priorities was provided for discussion by various Committee members prior to the July 14, 2020 Committee meeting. All Committee members were able to submit ideas as desired.

also agreed to work on proposed new language for multi-owner lots, as well as a proposal for a formal alternative dispute resolution process.

Scott Holte offered to work with Jeremy Stilwell to produce a first draft of proposed language for these By-Law revisions. He also offered to update the Board regarding the outcome of the July 14, 2020 Committee meeting.

Jo Levin commented that open communication with community members regarding proposed changes to the By-Laws might be a good way to get ideas about what people would like to see happen, as well as a being a good way to increase a sense of transparency in the community.

Jeremy Stilwell cautioned that in his experience the best way to promote the successful passage of By-Law changes is to wait to share ideas with the community until the Committee has formalized the proposals and has specific language to present. He also reiterated that his ACC liability analysis is attorney/client privileged and cannot be shared within the community without the Committee's waiver of the privilege.

Kevin Smith drew the Committee's attention to the timeline for its work. After a short discussion, the Committee decided on a tentative timeline which includes (1) a presentation to the community of proposed By-Law changes at the HICA annual meeting on September 19, 2020, (2) possible additional virtual presentations, and (3) a vote on proposed By-Law changes included with the HICA Budget vote in November. Kevin agreed to start brainstorming some presentation ideas to help explain Committee proposals to the community.

Chair Conner closed the meeting by summarizing the following:

- Next Meeting: July 28, 2020
- Draft Language to Committee: July 24,2020

Meeting Adjourned

EXHIBIT A

Governance Committee Priorities

Discuss more inclusion on committees, board representation (perhaps by division) etc – keep this in mind in terms of how to get more involvement in the process of education and communication

By-Laws – immediate focus areas are 1, 2A, and 2B

- **1:** By-Laws Article VII, Section 3 change regarding shortening time period to determine a member's delinquent for non-payment of assessments and foreclosure (1, 2, 3, 4).
- **2A:** By-Law change regarding assessment structure for use of facilities by multiple family, corporate, and estate owned lots (1,2) and definition of membership definition (spouses vs husband/wife)
- **2B:** Alternative dispute resolution process (ADR),
- **3:** ACC and Board relationship and process: 1,2
- By-Laws – review assessment structure for lots compared to houses (1) - may need to wait
 - consider developed vs undeveloped
 - as well as how specific expenses are allocated some lots vs all
- By-Laws Article II, Section 7: Suspension of Privileges – in particular use of facility and enforcement (1,) – think the wording could be improved to not be solely reliant on the President's discretion and what access is being barred (marina, roads?, golf course, water, etc).

Opportunity to better define the ACC-to-Board relationship and process for resolving disagreements

- Covenants – amend to provide that all disputes, claims, complaints, etc between Members and the Association shall be determined by an Alternative Dispute Resolution process (instead of lawsuits) including conferring with the HICA Board of Trustees, Mediation, and Binding Arbitration
- Covenants #13: addressing the current lots that have rubbish and debris (1,) – could update By-Laws to have more enforcement for appearance and upkeep of lots
- Covenants #8: Could this be expanded upon? Maintenance guidelines for any developed lots, lots with structures (1,)
- Covenants – consistent and updated for all divisions (1,2)
- Covenants – amend to require the Association to give priority to the preservation of the unique ecosystem of Hat Island, including “green spaces” wetlands, trees and other flora, shorelines and intertidal zones, etc (1)
- Architectural Control Committee Charter: for #5 for property line set back, does the “except” sentence alter the 5 foot set back? If yes, then how handle interior lots with a 2.5 ft utility easement? Suggest void sentence. (1,)
- CCR: Replace Hat Island Development Company with HICA (1,)
- CCR: Clean up/clarify 21 where reference: “Club”, Air Strip”, “Holiday” (1,)
- Architectural Control Committee: should the committee remain independent? (1,2)
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