

Hat Island Governance Committee Meeting Minutes

Remote Participation via Zoom Meeting

Tuesday, July 28, 2020

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

MEMBERS ABSENT: N/A

Chair Conner called the meeting to order at ~ 4:06 p.m.

Discussion Items:

Approval of Minutes for July 14, 2020 meeting – Turie Holte noted a typographical error.¹ Kevin Smith moved to approve the minutes as amended with the correction of the typographical error. Jo Levin seconded the motion, and the motion passed unanimously.

Review of Proposed By-Law changes – The Committee agreed to limit discussion of proposed By-Law changes to a 30 to 45 minute discussion. Scott Holte agreed to present an overview of the proposed changes.²

- **Overview** – Scott, Jeremy, and Jen were tasked with drafting proposed language for By-Law revisions in four areas: (1) revising the timeline for foreclosure on lots in delinquency of assessments; (2) addressing membership and user privileges for multi-owner lots; (3) proposing an alternative dispute resolution (“ADR”) process; (4) clarifying relationship between the Architectural Control Committee (“ACC”) and the Hat Island Community Association (“HICA”).³
- **Article II, Section 4 – Membership: Membership Privileges.** Proposed changes would eliminate extra assessments for multi-owner lots for up to three owners to enjoy the privileges of membership.

¹ On page 3 “ty” should be corrected to “tie” in Bill Townsend’s comment.

² See attached Exhibit A.

³ Scott noted that Jeremy flagged additional areas for possible future revisions (see Jeremy’s redlines and marginal notations on the working copy of the By-Laws). For example, Jeremy noted a possible change to the assessment structure. Scott commented that HICA currently operates under the old Washington State law governing homeowner association assessments, but that there is a new statute that was passed to cover such matters. When the new statute was passed, HICA had a choice about whether to stay under the old system or to go under the new statute. The language in our By-Laws does not comport with either statute, so Jeremy suggested bringing the By-Laws into alignment. Scott advised that this would be unlikely to pass a Community vote. Another example of a change proposed by Jeremy is a revision to the Article 10, Section 2 limitation of liability for Board Members. Jeremy suggested a change here because previous lawsuits have named board members personally. As a result of this and litigation generally, our insurance company cancelled the policy and the new company’s deductible has gone up from 35k to 50k. Scott agreed with this change, but felt that it too would fail at a Community vote.

- *Scott* reviewed the proposed changes.
- *Turie* suggested alternate language.⁴
- *Sharron* mentioned that in the past when there were multi-owner lots, the owners would alternate use of the property.
- *Scott* commented that under the By-Laws, HICA can't dictate alternating use for multi-owner lots.
- *Jo* noted that her property has three owners and one doesn't come often. The other two owners trade weekends but both pay full moorage and user fees.
- *Karen* commented that we need to make clear the difference between user fees and user privileges.
- *Scott* suggested considering "contract user fees" or "contract members."
- *Turie* referred to the proposed revised term "not less than the annual assessment" and asked whether that language might become problematic. *Jo* agreed. The *Committee* decided to make the language "equal to."
- *Bill* commented that the *Committee* should limit this language only to assessments (i.e. golf user fees, etc. should not be in this section of the By-Laws).
- *Karen* stated that we need to specify that payment of assessments does not cover user fees for golf course or marina.
- *Kevin* noted that revised Article II, Section 4 says that there is one lot fee for up to three owners, and beyond that it possible to buy two extra memberships at the cost of two full assessments. The *Committee* had a discussion of what that means (e.g. members of a corporation or some other ownership interest in the lot).
- *Karen* commented on the revision from "husband and wife" to "domestic partnership" and asked how we would define domestic relationship? Is it our intent to make that expansion? Also do all parties have to be on the deed? The *Committee* decided to add "domestic partnership" as defined under the laws of Washington State.
- **Article II Section 5 – Membership: User Privileges.** Proposed revisions would allow additional individuals to purchase user privileges.
 - *Sharron* asked for clarification that original three owners will share one assessment, but up to two additional owners could have user privileges if they pay additional assessments. This is confirmed.
 - *Karen* asked if there should be additional language that would apply in the event there are five owners and the 4th and 5th owner try to be "guests" rather than pay their assessments.
 - *Scott* used VRBOs as an example of why that situation can't be covered in the By-Laws. He noted that we can't make changes in the By-Laws that conflict with the CCRs, but we can try to recoup some of the losses through fees.
 - *Turie* asked if Article II, Section 5 changes are even necessary given the paucity of applicable properties.

⁴ Proposed alternate language: "SECTION 5. User Privileges. The Association may allow additional individuals to purchase user privileges ("Contract Users") limited to two such "Contract Users" per lot. The annual fee for each such "Contract User" shall be not less than the amount of the annual operating assessment per lot."

- *Karen* commented that this might become an issue even more in the future so we should address it now.
- *Jo* noted that sometimes multi-owners feel like they are mistreated (e.g. adult kids or people in LLCs). She agreed with *Karen* that it should be addressed in the By-Laws, but also felt that there should be trust and not micromanagement between HICA and multi-owners.
- *Kevin* commented that he has been a proponent of this change for simplicity and for fairness, but that he is glad there is a limit on the number of possible owners.
- **Article II, Section 7 – Membership: Suspension of Privileges.**
 - Proposed revisions change power to suspend privileges from the HICA Board President to the Board of Trustees. Committee agreed that this was a good change.
- **Article VI, Section 4 – Power and Duties of Board of Trustees: \$10,000 cap.**
 - *Scott* gave an overview of the proposed changes. He noted that *Jeremy* suggests eliminating the reference to the \$10,000 cap for approving amendments to the budget. For an example of a situation where this cap could be a problem, *Scott* mentioned the recent collapse of the seawall at Conwell Park. If we hadn't had the funds in capital reserve, the Board would have had to go to the Community to ask to amend the budget - which would have been a delay and might have even failed.
 - *Kevin* commented that in the past, issues like this \$10,000 cap language have caused a failure of proposed By-Law changes when put to a Community vote. *Kevin* suggested that the Committee start with a list of simple changes to the By-Laws to get the Community acclimated to the idea of making changes. He suggested that changing the \$10,000 cap language is a good example of something to put on a "wish list" that we could bring back to the Community at a later time.
 - *Scott* mentioned that in past years when the Community was in a less stable financial situation – without an adequate reserve account, capital reserve, or cash reserve – the \$10,000 cap has hamstrung prior Boards.
 - *Committee* agreed to create a "wish list" for future possible changes.
 - *Jo* asked if the proposed By-Law changes can be voted on separately by the Community rather than grouped together for an up or down vote. *Scott* confirmed that this is the case.
- **Article VI, Section 8 – Power and Duties of Board of Trustees: Architectural Control Committee.**
 - *Scott* mentioned that this section in the By-Laws is not currently consistent with HICA division Covenants ("CCRs"), but that these changes are in line with the goals of the Governance Committee. The proposed changes (1) add two Board members to the Architectural Control Committee ("ACC"); (2) clarify that the HICA Board of Trustees is the hearing body for disputes related to the ACC; and (3) add an ADR section.

- *Bill* expressed on behalf of the ACC that it does not want to ever become a political pawn of the Board of Trustees. The ACC wants to table the proposed language changes until the ACC can meet with the Board of Trustees to discuss.
- *Scott* said that it sounded fine to table proposed language changes related to the ACC until the ACC can meet with Board of Trustees and the Board can subsequently give the Governance Committee guidance on this matter.
- *Kevin* commented that the Article VI, Section 8 changes consist of two categories: (1) gives the ACC two Board members; and (2) makes the Board the hearing body for ACC related disputes. He says the first part should be a no brainer, but he's fine with holding off on the second part until the ACC and Board can meet to discuss.
- *Karen* asks if we should consider separating the two categories of changes to this section for purposes of the Community vote.
- *Scott* notes that the ACC is specifically mentioned in the ADR language proposed as new Article X1.
- *Karen* then asked if we could strike the ADR piece in Article VI, Section 8 so that it's a separate vote to put before the Community?
- *Jo* commented that Article VI, Section 8 does need to have information about what to do in the case of dispute.
- *Kevin* said that the key is to add the two Board members to protect the ACC from liability.
- *Bill* said that the CCRs trump the By-Laws and the CCRs say that the ACC is self-appointing.
- *Scott* responded that while the CCRs don't always trump the By-laws, that is true with regard to the ACC.
- *Bill* noted that the ACC doesn't believe that it is possible to make changes to the By-Laws that affect CCRs.
- **Article VIII, Section 3 – Assessments, Charges and Payments: Timing.**
 - *Scott* noted that there is a difference between lawsuits for collection of delinquent assessments and a foreclosure. The difference is evident here in the By-Laws which say that after 60 days an owner can be sued individually for delinquent amounts, but that foreclosure on the property can't happen for a year. The proposed changes affect foreclosure by shortening the time in delinquency to 90 days before HICA can commence an action for foreclosure. *Scott* also noted that the proposed changes don't say that foreclosure "shall be" commenced, but rather "can be" commenced.
 - *Kevin* suggested selling this change to the Community by reminding members that no business would be able to responsibly operate under the current rules regarding arrearages, but also soften it by saying that we want to work with owners to resolve delinquencies short of initiating foreclosure proceedings.
 - *Karen* asked if the language stating that delinquent amounts "shall bear interest from date it was originally due" conflicts with the grace period specified in the HICA Fines Policy?

- *Scott* noted that fines are different than assessments.
- *Karen* asked if delinquency is from date due not from the date of notice? *Scott* said that's true. *Karen* then suggested that the mailing language should be changed to "due date" because the ticket books go out in January.
- **Article XI – Alternative Dispute Resolution (New Article).**
 - *Scott* gave an overview and noted the new article includes disputes between HICA and the ACC, officers, committee members. He also mentioned that it is very important to give the arbitrator the scope to decide discovery etc. The arbitrator is to apply the law of Washington State and/or other equitable relief. Any award made by the arbitrator cannot be punitive or exemplary. In all three phases of the proposed process, participants have the right to have an attorney present.⁵
 - *Bill* asked if (from a sales standpoint) there is an RCW that requires this?
 - *Scott* said that there is no RCW that mandates a process like this.
 - *Jo* commented that the proposed ADR process looks great, but wondered if it might look like the Board is trying to take away the right to sue.
 - *Scott* agreed that this issue will come up. The ADR process does remove the right to sue and have a jury as trier of fact, however it's not an abuse of process like has been seen with credit card agreements etc.
 - *Sharron* commented that she thinks it's plausible that someone with a dispute would want to use this process to save money. The steps provided are likely to appeal to Community members who may want to resolve something short of litigation.
 - *Scott* also mentioned that if the Community is ever faced with a rogue Board, this provision would not prevent a recall effort under the Homeowners Statute.
 - *Gary* commented that this is a good point, but perhaps we should specify that the ADR process applies to HICA and members equally (to reassure the members that they are on equal footing with HICA in the event of a dispute). *Scott* said we could address this by adding some language to say that "where there's conflict with this section and an RCW, the RCW prevails."
 - *Kevin* said he would like to determine what each lot has spent additionally in the litigation costs in the last six years to help explain why the new ADR article is important.
 - *Jo* said the new article spells things out pretty well. She also asked *Scott* if in his experience (when people go all the way to arbitration) do they find resolution?
 - *Scott* replied that 90 percent of cases are resolved in mediation, but for those that make it to arbitration – it is binding.
 - *Turie* noted that there is no right to appeal the arbitration award, which is both good (eliminates further expense) and bad (no appeal).
 - *Jo* said that once the Governance Committee is ready to present the proposed changes we need to really build consensus. She asked if we can start to build

⁵ *Scott* also made special note that if the Community votes to accept the new ADR article, the ADR process will replace any existing lawsuits. Essentially, HICA will go to court and ask to have any prospective lawsuits removed and placed into arbitration.

consensus now by showing our neighbors what we are working on. She suggested meeting more intimately with subareas of the island to build consensus and transparency.

- *Kevin* said that at the next Board Meeting the Governance Committee should give a general overview, and not disclose all of the details until we have something concrete as well as a marketing plan.
- *Sharron* recalled that last time the Board tried to inform the Community before the vote, it didn't work. She said we need to be louder than the rumor mill.
- *Kevin* commented that the climate is so much better now for us to pass some easy low hanging fruit.
- *Scott* suggested that we can use Q&A sessions to raise hypothetical questions that people may be having and elicit Community comment in that way.
- *Jo* asked if (once we have the Community info sessions and received Community comment) there is a way to incorporate the input?
- *Karen* asked if the new ADR section covers disputes between members? *Kevin* answered yes. *Karen* then said that she's concerned that this might broaden the scope such that each and every neighbor dispute might be brought to and overwhelm the Board (due to the "but not limited to" language).
- *Scott* said that there is a limitation in that they are defined as disputes as stated in the governing documents.
- *Karen* asked how we are going to define scope when we bring this to the Community? Should we say it is limited only to governing docs? Maybe we can leave the language in but communicate scope?
- *Turie* suggested that maybe we should pull out member to member disputes?
- *Scott* mused that members may not want to be left open to lawsuits.
- *Committee* agrees to think about this issue and discuss further.
- *Kevin* wondered if there is a way to get ADR testimonials from attorneys or other homeowners associations? *Scott* said that *Jeremy* would be a good resource.
- *Karen* asked if the new ADR article passes, would that mean that the dispute resolution process in the HICA Fines Policy goes away? *Scott* agreed that this is a good question and said that if we don't want this change to replace the Fines Policy, we will need to add language for a carve out. *Sharron* said she thinks the Fines Policy is effective.
- *Karen* asked (with regard to Article XI, Section 2) what is meant by "exercising right to use"? *Scott* replied that this is *Jeremy*'s suggested language, and he would ask *Jeremy* what that means.
- *Karen* asked whether a Board meeting scheduled to discuss a dispute under the new ADR article would be an open meeting or whether it should be defined as a special closed meeting? *Scott* replied that we can call it a "special Board Meeting for dispute resolution." He agreed to work on that language.
- *Gary* asked whether quorum would be required for the Board to make a decision on a dispute? *Scott* replied that it wouldn't be a decision, it would be a proposed

resolution. If one party didn't like the resolution, the dispute would go to mediation.

- *Turie* asked whether we have considered how much extra work this could be for the Board? Kevin agreed that this will be an increased burden. Karen commented that the increased burden is one reason she brought up owner to owner disputes.
- *Scott* said that in his opinion the proposed ADR process would require less of the Board than litigation related activity.
- *Karen* suggested adding an advance notice requirement if someone is going to bring an attorney (the Fines Policy specifies 5 days). Scott agreed that this is a good idea.

Discuss plan for presentation to the Community – Kevin Smith provided a proposed framework for presenting proposed By-Law changes to the Community.⁶ Kevin would like to see a copy of the ballot, informational info and the rebuttal for the By-Law changes proposed in 2012. Jo reiterated the importance of community engagement.

Next Steps

- Scott and Jen will work on language related to ADR for member/member disputes versus HICA related disputes (“including but not limited to” language).
- Kevin will ask office for contextual information related to the last By-Law change efforts.
- Next Governance Committee meeting will be on August 11, 2020 at 4:30 p.m. with the goals of finalizing the proposed By-Law change language and preparing (1) a report for the open Board Session; (2) discussing the presentation for the Community; and (3) discussing the Q&A for the Community.
- Next Steps for Board engagement – On August 15, 2020 Scott and Kevin will give a high level overview and introduce the topics and timeline we are working on during the Board's Open Session. They will expand in greater depth during the Executive Session.

Meeting Adjourned at 6:18 p.m.

⁶ See attached Exhibit B.

Exhibit A

By-Laws of
Hat Island Community Association
As Adopted on _____

ARTICLE I **PURPOSES**

SECTION 1. This Association shall be conducted as a nonprofit Homeowner's Association for the purpose set forth in the Articles of Incorporation for a portion of the area situated in Snohomish County, Washington, known as Gedney (Hat) Island.

SECTION 2. The Association shall have the power to levy and collect assessments against its members for the purposes set forth in its Articles of Incorporation and By-Laws, and to sell or forfeit their interest in the Association for default with respect to any lawful provisions of said Articles of Incorporation and By-Laws and upon forfeiture of any such property as by law and in the By-Laws provided, may transfer the membership of such defaulting member.

SECTION 3. The purpose for which this Association was created may be altered, modified, enlarged or diminished by the vote of two-thirds of the members voting at a meeting duly called for such purpose, notice of which meeting shall be given in the manner provided by the By-Laws of giving notice for the election of Trustees.

SECTION 4. Where these By Laws conflict with the Revised Code of Washington the revised Code prevails.

ARTICLE II **MEMBERSHIP**

SECTION 1. Definition of Membership. The membership of the Association shall consist of and be limited to the owners of those lots on Gedney (Hat) Island originally included at the origin of Hat Island Community or which have been accepted into Hat Island Community Association by action of the Board of Trustees. The term "owner" shall include contract purchasers in possession of lots, but shall exclude contract sellers or other parties having an interest in a lot merely as a security for the performance of an obligation. For purposes of these By-Laws, a husband and wife and any other persons or entities jointly owning a lot or lots shall be considered collectively as being one owner. Proof of ownership shall be as recorded in the office of the Auditor of Snohomish County, Washington.

SECTION 2. Transferability of Membership. Membership shall be inseparably appurtenant to lots and shall be a mandatory part of lot ownership. No membership may be voluntarily withdrawn, abandoned or discontinued except upon transfer or sale of the real property to which the membership is appurtenant. The Association shall not charge any transfer fee. The transferee of a membership shall assume all rights, privileges and liabilities of the transferor with respect to said membership, including the obligation to pay any delinquent assessments which may be owed at the time of transfer. All membership rights and privileges of the transferor shall terminate on the date of transfer. In the event of the death of a member, the membership,

including all rights, privileges and liabilities of the deceased member, shall transfer to the personal representative, heirs or successors of the deceased member. No membership may be transferred, assigned or conveyed except as herein provided.

SECTION 3. Membership Voting Rights. If a person or entity such as a partnership, association or corporation owns more than one (1) lot, or owns a controlling interest in multiple entities collectively owning more than one (1) lot, the memberships for each of said lots shall be automatically merged into a single membership for purposes of determining voting rights. There shall be one (1) membership per owner, and one (1) vote per membership, regardless of the number of lots owned by any person or entity. The interest of each member shall be equal to that of any other member, and no member can acquire any interest which shall entitle it to any greater voice, vote or authority in the Association than any other member. If ownership of any lot or lots is shared by more than one person or entity, the owners shall from among themselves designate a single person who will be the nominal member and the person entitled to vote.

SECTION 4. Membership Privileges. The privileges of membership, including the right of access to, and use of, the Association's property and facilities, shall be extended to the lot owner/owners and their legal dependents ("Members"). Individuals in a domestic relationship shall be considered a single "Member." If ownership of a lot is shared by two or more "Members", as defined above, or is held in the name of an entity such as a partnership, trusts, association or corporation, then the owners shall designate up to three individual owners ("Designated Members"), who will be entitled to the privileges of membership for those lots and said designation shall be filed in writing with the Association. Designated Members shall be subject to change not more frequently than once every twelve months. At the time a change is requested, payment of an "owner designation fee" in an amount to be established by the Board of Trustees may be required.

SECTION 5. User Privileges. The Association may allow additional individuals to purchase user privileges "Contract Users," limited to two such "Contract Users" per lot. If such a contract allows user privileges, the annual fee for each such privilege shall be not less than the amount of the annual operating assessment per lot.

SECTION 6. Guest Privileges. The privileges and facilities of the association may be extended to guests of members under such Rules and Regulations as the Board of Trustees may prescribe.

SECTION 7. Suspension of Privileges. Voting rights shall be suspended for any member whose assessments for any lots owned by said members are delinquent. Privileges to use the facilities of the association shall be suspended for any member or owner, or his guests, whose assessments for any lots owned by him are delinquent. The Board of Trustees may suspend privileges to use the facilities of the association for any member or owner, or his guests, as a penalty for violation of the Articles of Incorporation or By-Laws of this Association, or the Rules and Regulations established by the Board of Trustees.

ARTICLE III
PROPERTY AND DISPOSITION

SECTION 1. It is provided that in order to mortgage, sell, lease, or dispose of HIC Association real property, except to sell real properties received as satisfaction of unpaid assessments, a notice of the proposition to be voted upon shall be mailed to all members of this Association thirty (30) days prior to the date of the regular or special meeting called and a majority of the members proxy ballots shall be necessary for such authorization.

SECTION 2. In the event of dissolution of the Association each lot owner who is then a member in good standing shall receive the pro rata proportion on a per lot basis of the assets after all of the debts have been paid.

ARTICLE IV **TRUSTEES AND OFFICERS**

SECTION 1. Corporate powers of the Association shall be vested in a Board of Trustees. The number of trustees who shall manage the affairs of the Association shall be not less than five or more than seven.

SECTION 2. Trustees shall be elected to serve for three years, or until their successors are elected and duly qualified. Said terms shall be staggered. (See Article IV Section 7)

SECTION 3. Each trustee shall be a member who shall not have lost his/her right to vote by reason of having disposed of land to which his membership is appurtenant, or have become in arrears in assessments.

SECTION 4. In the event a trustee ceases to be the owner of the land to which his/her membership is appurtenant, or of a contract for the purchase thereof, he/she shall thereby cease to be a trustee and his/her office shall become vacant upon written notification without action other than to enter such fact upon the minutes of the Board of Trustees. Trustees are expected to attend in person or electronically 75% of Board meetings and 75% of membership meetings. A Board member is considered present if he/she can participate in the discussion of the subject for which the meeting is called. In the event a trustee is unable to function in the aforesaid manner, the trustee will be subject to removal from the office by the majority vote of the remaining trustees and the vacancy may then be filled as set forth in Section 7 of this article.

SECTION 5. At the first meeting of the Board of Trustees after each annual meeting of the members, the Board of Trustees shall elect a president, vice president, secretary and treasurer, who shall be trustees. The Board may also at any time appoint an executive secretary and/or assistant secretary and/or assistant treasurer. Officers of the Association so elected shall hold office for the term of one year and until their successors are qualified. The president will have served at least one year on the Board of Trustees prior to his/her election to the post. Any officer may be suspended or removed by a majority vote of all the trustees. Trustees may not serve in any one consecutive period, more than six (6) years from the date of first election at an annual meeting of the membership.

SECTION 6. No trustee or officer, except the executive secretary and/or assistant secretary and/or the assistant treasurer shall receive any salary or compensation from the Association.

SECTION 7. Any vacancy occurring in the Board of Trustees, in accordance with Article IV, section 1, may be filled by appointment by a majority of the remaining trustees. The person so appointed shall hold office until the next annual meeting of the members of the Association when vacancies for the remainder of the original terms, if any, shall be filled by election by the members in the regular manner.

SECTION 8. There shall be Standing Committees established to function as recommending bodies to serve and inform the Board of Trustees as from time to time the president may charter.

ARTICLE V **MEETINGS**

SECTION 1. Annual meetings of the members of the Association shall be held at the principal place of business of the Association or at such other place as the Board of Trustees may elect. The annual meetings shall be held in September or at such time as the Board of Trustees elect. Notice thereof shall be given by the secretary by mailing notices to each member not less than fourteen days prior to the date of the meeting.

SECTION 2. Special meetings of the members may be called at any time by the President or a majority of the Board of Trustees or by members representing 15 percent of members in good standing. Notice of Special meeting stating the object thereof shall be given by the secretary by mailing such notice to each member not less than fourteen (14) nor more than 60 days prior to the date of which such meeting is to be held.

SECTION 3. At all annual and special meetings of the membership, 15% of all the members of the Association, in person or by valid ballot, shall constitute a quorum for the transaction of business. The Board of Trustees or President may convene monthly meetings of the trustees of the Association.

SECTION 4. Meetings of the Board of Trustees shall be called at any time by the secretary on order of the president or of a majority of the Board of Trustees. The secretary shall give each trustee notice, personally, verbally, by telephone, or electronically of all regular and special meetings at least three days previous thereto. Any member of the Board of Trustees not able to attend should be allowed to include his/her opinion and vote on that meeting by written proxy or verbally to the president or secretary and confirmed within ten (10) days by letter.

SECTION 5. A member may exercise his/her right to vote by proxy executed in writing by the member.

SECTION 6. Robert's Rules of Order, revised currently may govern all procedures of the Board of Trustees and of general community meetings, when not in conflict with these By-Laws.

ARTICLE VI **POWER AND DUTIES OF TRUSTEES**

SECTION 1. Subject to limitations in the Articles of Incorporation and the By-Laws and Laws of the State of Washington, all powers of the Association and the business and affairs of the Association shall be controlled by the Board of Trustees, without prejudice to such general powers, and subject to the same limitations, it is hereby expressly declared that the trustees powers shall include but not be limited to providing and maintaining roads, recreational facilities, transportation, and water, in a fiscally responsible manner, preserve the island's safety, security and environmental character, enhance owner's quality of life, and preserve and protect the real and intangible values of the island owner's personal and community properties.

SECTION 2. To select and remove all the other officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or the By-Laws, fix their compensation and require from them security for faithful service.

SECTION 3. To conduct, manage and control the affairs and business of the Association and to make such rules and regulations therefore not inconsistent with law, with the Articles of Incorporation or the By-Laws, as they may deem in the best interest of the public good.

SECTION 4. To charge and/or assess the several parcels of land and the owners thereof. ~~To approve such amendments to the budget as do not exceed \$10,000 by item.~~

SECTION 5. To cause to be kept a complete record of all minutes and acts and to present a full statement to the regular annual meeting of members showing in detail the condition of the affairs of the association.

SECTION 6. The Board of Trustees has the power to establish payment terms for assessments, and fees.

SECTION 7. To establish enforcement procedures for these By-Laws and the rules and regulations of Hat Island Community Association.

SECTION 8. To appoint members to the Architectural Control Committee ("ACC") which shall include not less than two (2) members of the Board of Trustees. The Board of Trustees shall hear and act on appeals from activities and/or actions of the ACC in accordance with the Alternative Dispute Resolution process as set forth in Article XI of these By-laws..

ARTICLE VII

DUTIES OF OFFICERS

SECTION 1. President. The president shall preside at all meetings of the trustees and members. He/she shall sign as President all contracts or other instruments in writing authorized by the Board of Trustees; he/she shall call special meetings of the trustees or the members whenever he/she deems it necessary; he/she shall have and exercise under the direction of the Board of Trustees the general supervision of the affairs of the association. The President shall be responsible for enforcing the Articles of Incorporation and By-Laws and any rules and

regulations established by the Board of Trustees and levying such penalties as he/she deems necessary as provided for in Article II, Section 7 of these By-Laws. The President shall appoint the Chairs of the Standing Committees and instruct them in their duties.

SECTION 2. Vice President. The Vice President shall preside at all meetings in the absence of the President, and in case of the absence or disability of the President shall perform all other duties of the President which are incidental to his/her office.

SECTION 3. Secretary. The secretary shall cause to be issued all notices and shall attend and cause to be kept the minutes of all meetings; he/she shall have charge of all corporate books, records and papers; he/she shall be custodian of the corporate seal, shall attest signature and impress with the corporate seal all written contracts of the Association and shall perform all other duties as are incidental to his/her office.

SECTION 4. Treasurer. The Treasurer shall keep safely all monies and securities of the Association and disburse the same under the direction of the Board of Trustees. He/she shall cause to be deposited all funds of the Association in a bank selected by the trustees; he/she shall issue and present a full statement showing in detail the condition of the affairs of the Association monthly and unless waived by vote to the Association members, an annual audit per RCW 64.38.045 or its successor.

SECTION 5. The executive and/or assistant secretary and/or assistant treasurer, if appointed by the Board of Trustees shall perform such duties as may be designated to them.

SECTION 6. Any two or more offices may be held by the same person concurrently if the Board of Trustees so directs except the President.

ARTICLE VIII **ASSESSMENTS, CHARGES AND PAYMENTS**

SECTION 1. The Board of Trustees shall annually determine the proposed amount of the annual operating assessment against each and every lot for the subsequent year. Such proposed annual operating assessment, if changed from the prior year assessment amount, will be presented to the community for approval during the annual meeting of the Association as provided in Article V, Section 3. Assessments will be established and levied upon all properties following the affirmative vote of a simple majority (50% plus 1) of all members in good standing. Assessments shall be collected and expended pursuant to the Articles of Incorporation, these By-Laws, and the annual Association budget as ratified by the membership. Members shall be liable for the payment of any and all assessments applicable to their respective lots as described in section 3 of this article.

User fees, as provided in Article II, Section 5 of these By-Laws, are distinct from assessments and are applicable only in cases of lots with multiple owners or users. Applicability of user fees will be determined by the Board of Trustees.

Special assessments may be levied upon the affirmative vote of a simple majority of members in good standing voting in person or by proxy at a meeting of members of the Association. Special

assessments do not need to be uniform, and may apply only to those lots specially benefited; provided, that in such cases the special assessments must be authorized by a vote of a majority of the members in good standing who own lots which will be subject to the special assessments.

SECTION 2. From time to time as and when any such assessments are levied, in a manner determined by the Board of Trustees, each member with respect to his/her lot or lots shall pay the amount. The assessments, together with such interest thereon and costs of collection thereof (including reasonable attorneys' fees) shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest and cost of collection thereof (including reasonable attorneys' fees), shall also be the personal obligation of the member who is the owner or contract purchaser of the lot at the time when the assessment fell due. Any such lien or assessment runs with the lot.

The Association may file or record a lien or take any other action deemed appropriate to effectuate collection of unpaid assessment. The bringing an action at law against the one personally obligated to pay the same and/or foreclose the lien against the property, interest, costs and reasonable attorney's fees of any such action shall be included in any judgment or decree entered in such suit.

SECTION 3. If any assessment, is not paid after it was first due and payable, the assessment shall bear interest from the date on which it was originally due, at a rate to be determined by the Board of Trustees, not to exceed the maximum allowed by law. No lawsuit for the collection of delinquent assessments, fines or fees may be commenced except upon the expiration of 60 days from and after the date of mailing said notice of assessment as described above. No action for collection of a debt or to foreclose a lien may be commenced until the account has been delinquent **90 days**. No owner or contract purchaser shall be relieved of liability for the assessments provided for herein by non-use of the areas maintained by the Association or abandonment of the Member's lot.

The lien of the assessments provided for herein is subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any lot will not affect the assessment lien. However, the sale or transfer of any pursuant to mortgage foreclosure or any proceedings in lieu thereof, will extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer will relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof, and all delinquent amounts must be made current at the time of sale or transfer.

SECTION 4. Annual Operating Assessments are due and payable by March 31st of each year or may be paid, without additional interest penalty in four equal payments on or before March 31st, June 31st, September 31st and December 31st. In any event an assessment will be in arrears and subject to interest payments if a minimum of one quarter of the total amount is not paid by the end of each calendar quarter. Failure to make payment within the prescribed time will cause interest to be charged at the highest rate allowed by law, and or collection action instituted in the manner prescribed in Sections 2 and 3 of this article.

Unless specified differently in the ballot measure, special assessments are due and payable by March 31st of each year or may be paid, without additional interest penalty in four equal payments on or before March 31st, June 31st, September 31st and December 31st. In any event an assessment will be in arrears and subject to interest payments if a minimum of one quarter of the total amount is not paid by the end of each calendar quarter. Failure to make payment within the prescribed time will cause interest to be charged at the highest rate allowed by law, and or collection action instituted in the manner prescribed in Sections 2 and 3 of this article.

Charges for services or materials rendered to members shall be paid within 15 days of the billing date, or by the last day of the month in which billed, whichever is later. Failure to make payment within the prescribed time will cause interest to be charged at the highest rate allowed by law, and or collection action instituted in the manner prescribed in Sections 2 and 3 of this article.

ARTICLE IX **AMENDMENTS**

These By-Laws may be amended at any time by a vote of two-thirds of the members in good standing voting at any meeting of the members of the Association in accordance with Article V Section 3.

ARTICLE X **LIMITATION OF LIABILITY OF ASSOCIATION BOARD MEMBERS, TRUSTEES,** **OFFICES, AND DESIGNATED AGENTS**

SECTION 1. Liability for Utility Failure etc. Except to the extent covered by insurance obtained by the Board neither the association nor the Board nor any managing agent exercising the powers of the Board, shall be liable for: Any failure of any utility or other service to be obtained and paid for by the Board; or any injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may lead or flow from outside or from any parts of the buildings, or from any of its pipe, drains, conduits, appliances or equipment, from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of common expense assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

SECTION 2. No Personal Liability. So long as Board member, Association committee member, or Association officer, or the Association managing agent exercising the powers of the Board, has acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person, then no such person shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided that this Section shall not apply where the consequences of such act, omission, error or negligence are covered by insurance obtained by the Board.

SECTION 3. Indemnification of Board Members. The Association shall indemnify any director or officer or former director or officer or other person in the manner and to the extent provided in

the Revised Code of Washington, as now existing or hereafter amended. Further, the Association shall indemnify or agree to indemnify a director made party to a proceeding or obligate itself to advance or reimburse expenses incurred in a proceeding without regard to the limitations of the Revised Code of Washington, provided that no such indemnity shall indemnify any director from or on account of:

A) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of the law;

B) Conduct of the director finally adjudged to be in violation of the Revised Code of Washington; or

C) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property or services to which the director was not legally entitled.

ARTICLE XI

ALTERNATIVE DISPUTE RESOLUTION New Article.

SECTION 1. Any and all complaints, controversies, claims, demands, and disputes by and/or between Members and/or HICA, including but not limited to those arising from or related to (i) the governing documents, (ii) the rights and obligations of community members, or (iii) the management or operation of HICA and/or the community, including but not limited to any claim based on breach of contract, negligence, breach of any duty under the Washington Homeowner Association Act (RCW 64.38); Nonprofit Corporations Act (RCW 24.03); and any other statute imposing a duty on HICA or its directors, breach of any alleged duty of good faith or fair dealings (“Claims”) shall be resolved exclusively by mediation or binding, non-appealable, arbitration as set forth herein. Notwithstanding the foregoing, the following matters shall not be “Claims” subject to this Article: (i) actions to collect unpaid assessments including foreclosure, (ii) the appointment of a receiver or (iii) actions to collect or enforce any order, decision, or award rendered by arbitration.

SECTION 2. For the purposes of this Article, “Members” shall include all owners of lots plus any other persons exercising a right to use of HICA property. For purposes of this Article “HICA” shall include the Hat Island Community Association, the Architectural Control Committee (ACC), and any persons acting on behalf of HICA including but not limited to its Board of Trustees, Officers, HICA committees and committee members, HICA employees or any other persons acting on behalf of HICA.

SECTION 3. All Claims shall be determined and resolved as follows:

First, the “Claimant(s)” shall provide notice of those against whom they are alleging a Claim (“Respondents”). If a claim is against HICA then notice of the dispute shall be presented to the Board of Trustees. If a Claim is against a Member then notice shall be sent Member’s

address on file with the HICA office. A Board meeting shall be scheduled by the Board of Trustees to discuss the Claim within 30 days of the notice and all Claimants and Respondents shall be invited to attend said meeting.

Second, if the Board meeting does not resolve the dispute, the matter shall be submitted to Mediation with a Mediator agreed to among the parties. The cost of the mediation shall be split equally between the parties. If the parties cannot agree on a Mediator, the Snohomish County Superior Court shall select the Mediator.

Third, if the dispute is not resolved by a Mediation, the matter shall be determined and resolved through Binding Arbitration, by an Arbitrator agreed to by the parties. The cost of the Arbitration shall be split equally between the parties. If the parties cannot agree on an Arbitrator, the Snohomish County Superior Court will select the Arbitrator.

SECTION 4. The Arbitrator shall determine the scope of arbitrable issues, determine the scope of discovery and the appropriate procedures and rules to be followed and render decisions on all Claims and any defenses thereto. The Arbitrator shall apply the substantive law of the State of Washington and have the authority to award damages and injunctions or other equitable relief including awards deemed necessary to enforce the award but shall not have authority to award punitive or exemplary damages.

SECTION 5. The parties in the ADR process shall have the right to have an attorney at law present the matter, and argue on their behalf at all three stages of the process.

SECTION 6. This ADR process is binding on all Members and HICA, and will be enforceable against and will replace any lawsuits brought in any court of law. The decision and award of the arbitrator shall be final and binding and may not be appealed to an arbitration panel or a court. The arbitrator's decision and award may be entered as a judgment in any state or federal court of competent jurisdiction, and a party may institute judicial proceedings to enforce the arbitration award.

ARTICLE XII **CORPORATE SEAL**

The seal of the Association shall be in a circular form and shall contain the words "HAT ISLAND COMMUNITY" and the words "Corporate Seal Washington 1967" in the form and style as affixed in these By-Laws by the impression of said corporate seal.

ARTICLE XIII **DATE OF ADOPTION**

These By-Laws are duly adopted by 2/3 vote of the Association on the ___ day of
2020.. These By-Laws replace all previous by-laws of the Association.

Exhibit B

Community Messaging

Introduction

No document is perfect, especially over time because things change! For instance, there have been changes to the United States Constitution since its creation in 1787...27 to be exact. The first 10 amendments are otherwise known as the "Bill of Rights" and they came quickly, having passed in 1791. Despite how superb the original document might have been, the amendments included things like freedom of religion/speech/press/assembly, the right to bear arms, prohibiting unreasonable searches and seizures, the right to due process, etc., and another 17 came later, including women's right to vote in 1920. Pretty important changes, don't you think!?! Given their importance, they require a 2/3 majority vote of Congress to be passed. The most recent amendment was in 1992, 205 years after the US Constitution was created. Ahhh, like fine wine, it gets better and better!

Similarly, our Hat Island governing documents (CC&R's and Bylaws) aren't perfect either. They have issues, things that can be improved upon! For instance, they currently reference the Hat Island Development Company instead of HICA and use terms like the "Club", "Air Strip", and "Holiday." Further, these documents carry considerable weight and, like the US Constitution, require a 2/3 majority vote to change them. That said, after considerable deliberation, the HICA Governance Committee would like to propose several changes to our Bylaws.

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).

We currently can't declare someone "delinquent" until they have failed to pay **assessments** for one year. Where else in society does that standard exist? How about your electric bill? Phone bill? Heat and electricity? Car and home loans? The list goes on and on. But with HICA, we're restricted from taking any action until a year has passed since the assessment bill was due!

So, this isn't the standard of practice in society, not at all, and we feel that it shouldn't be on Hat Island either. Granted, we **are** somewhat different on Hat Island, we all understand that, but one year is absurd! During the entire time that folks are not paying, the rest of the operation continues to run. That loss of assessment income is critical, and it means that the rest of us "paying customers" have to cover it.

This isn't to say that we need authoritarian rule or gestapo tactics to deal with things. It's just common sense and the issue can be dealt with simply by communication and perhaps a payment plan. It **doesn't** mean immediate foreclosure of our neighbors, or that their door will be bolted, or their car will be impounded. It's simply to **start** proceedings as appropriate. In the end, no business can operate well under these circumstances, and neither can Hat Island. We sorely need to consider changing this. It's about partnering with owners fairly, but also attempting to run this operation intelligently!

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).

Every single lot on Hat Island pays one assessment. Right? However, there is an exception. Those lots and the associated structures that are owned by more than one person pay an additional \$1200 assessment for **each** owner. So, if two siblings decide to buy a lot together, they BOTH have to pay the full assessment every year. Further, there are shared ownerships where an owner visits once a year, or some have not even been several years. Again, they all pay \$1200/year. While we have enjoyed the assessment income, it really doesn't seem fair.

Further, the Office and Board spend hours and hours every year sorting out which lots have multiple owners, how many owners there are, who they are, tracking them down, and trying to collect assessment income per our Bylaws. There is guaranteed contentious dialogue every single year on this subject with numerous emails, phone calls, discussions with attorneys, Board decisions, and so on related to a number of these situations. Perhaps we can stop this policy in the interest of decency and fairness over greed, to say nothing of the subsequent simplicity that would arise.

Alternative dispute resolution process (ADR)

In 2014, our legal expenses were \$X, our annual insurance was \$X, and our assessment per lot was \$X.

In 2019, our legal expenses were \$X, our annual insurance was \$X, and our assessment per lot was \$X.

(this could also be...in the 5 years from 2009-14, our totals were \$X and in the 5 years from 2014 to present, our totals were \$X)

How can that be???

In 2014, Hat Island incurred a lawsuit. An owner with a significant number of lots essentially opted not to pay his assessments. A number of reasons were cited, but the basic gist of it is just that...he didn't want to pay. Because of this, Hat Island has been forced to pay **considerable** \$'s to cover our defense of this lawsuit. Some fees are obvious...the deductible on our insurance, increased insurance rates, etc. But there's more, LOTS more, including X hours in the office preparing box after box of documents at a rate of \$X/hr for a total of \$X. There is also considerable delinquent assessment income related to this. Given that delinquency plus fines/fees totaling \$X to date, the rest of the Community who actually pay their assessments are forced to pay considerably more to cover the 270+ lots that are not paying. Give or take, a rough estimate of the total \$'s paid per lot to cover Hat Island operating expenses that have not been paid = \$X since 2014, and that number continues to grow while the lawsuit languishes in our judicial system.

Again, the REST of the Community has covered the legal expenses, the insurance increases, the negligent assessment collections, and more, because one property owner doesn't want to pay his assessments. And they do so to keep the Island they love and enjoy running at a level that they would like it to run, not sacrificing things

because of these issues. Still, we have most assuredly had to go without some things that we might have done otherwise to improve our Island, assuming that assessments were fully paid on every property.

As if that's not enough, Hat Island has a incurred X more lawsuits...H division road, car fees, J Division assessment, and others (**help me here, Scott!**). It almost seems as though it's appealing to sue ourselves when we are unhappy with something! And each one of these lawsuits have incurred MORE costs, contributed to our increased insurance rates, and subsequently resulted in assessment increases that paying owners have similarly had to cover.

And finally, there is the emotional toll on all of us. Tis impossible to quantify, but its significant and real! When we sue ourselves there is a financial burden to be sure. BUT, there is also the emotional one that detracts from our ability to get along with each other, to enjoy our neighbors, to volunteer and help out, and to be enthusiastic about our little slice of paradise. But, with the exception of a very small number of owners, we're all in this together!

In the end, perhaps there is a better way. Perhaps there's a way to diminish or even remove these issues from our existence!

Summary

These Bylaw changes will be sent with considerable advance notice to allow each and every owner the chance to read and completely understand things. Further, there will FAQ's and presentations to the community to address questions and concerns as openly, clearly, and thoughtfully as possible. In the end, we want to do this as inclusively as possible in order move forward in a better way. We are truly all in this together and everyone's opinion matters!