

Hat Island Governance Committee Meeting Minutes

Remote Participation via Zoom Meeting

Tuesday, October 13, 2020

MEMBERS PRESENT: Karen Conner (Committee Chair); Scott Holte; Turie Holte; Sharron Meadows; Jennifer Davis; Jo Levin

MEMBERS ABSENT: Aimee Chambers; Kevin Smith

Chair Conner called the meeting to order at ~ 4:35 p.m.

Discussion Items:

New Committee Members – We have open positions for new members. Any interested parties should reach out to Karen (cc'ing Aimee Chambers) about joining.

Timeline

- Karen presented a proposed timeline. See Exhibit A.

Power Point

- Karen presented a proposed power point presentation. See Exhibit B.
- Foreclosure - Scott commented that according to counsel for HICA, if everything goes well in a foreclosure it takes a minimum of 2 months, and if it doesn't go well the process takes a minimum of 5 months.
- ADR - Sharron commented that it might be good to reference the ability of all parties to be represented by attorneys at every step of the ADR process if they so choose. Scott commented that the lawsuits caused HICA to be dropped by insurance carriers.

Q&A

- Karen presented the proposed Q&A. See Exhibit C.
- Sharron will contact the Office to get the current data on the number of members in good standing in order to provide an example of what amounts to a quorum.
- Sharron will contact office to confirm the number of lots that are in arrear/payment plan.
- Scott will talk to counsel for HICA regarding possible Q&A's related to ADR.

Ballot Materials Text

- Karen shared the proposed ballot material text.
- Karen also shared the 2015 By-Law change document that was sent to the Community prior to the vote.
- Committee discussed (1) including a redline version of the entire By-Laws document **or** (2) just including the sections that will be changed. Committee decided it would be better to include only the sections proposed to be changed (in redline form).

Next Steps

- Karen will circulate (a) revised Timeline; (b) revised Power Point; (c) revised Q&A;

and (d) revised Ballot Materials Text.

- Sharron will contact the Office to get the current data on the number of members in good standing in order to provide an example of what amounts to a quorum.
- Sharron will contact office to confirm the number of lots that are in arrear/payment plan.
- Scott will talk to counsel for HICA regarding possible Q&A's related to ADR.
- Next Meeting is October 17, 2020.

Meeting Adjourned at ~ 6:28 p.m.

Exhibit A

Oct 17 Board Meeting

- Budget presented to Board
- Governance presentation to Community – power point and review of Q & A word doc

Oct 18 - 24

- Update presentation and Q&A based on comments during Board Meeting
- Complete all proposed inputs to the ballot
 - By-Law portion of voting/returned portion of ballot
 - Back up info to include with ballot mailing - Intro from Committee and Board, high level description of changes, and “From – To” summary

Oct 25

- Submit proposed inputs for ballot to Board and Office for approval, ballot printing, ballot mailing

Nov 21 Board Meeting

- 2021 Budget presented to the Community
- No Governance Committee discussion planned due to focus/time needed for Budget

Office email to Community – [Nov 2](#)

- Date/time for Community Zoom Session for proposed By-Law changes
- Updated Committee presentation, updated Q&A, backup info from ballot materials (high level description of changes and “From – To” summary)
- Request for questions to be sent to office by [Nov 6](#)

Wed Nov 11, 6:30 PM Dedicated Governance Committee Zoom Session for Community

Nov 12 – 16

- Update presentation and Q&A as needed

Nov 17 – Second Office email to Community

- Updated Committee presentation, updated Q&A, backup info from ballot materials (high level description of changes and “From – To” summary)

Exhibit B

HICA Governance Committee

The Governance Committee members are:

- Aimee Chambers (Board Chair)
- Karen Conner (Community Chair)
- Jennifer Davis (Secretary)
- Scott Holte (Community member)
- Turie Holte (Community member)
- Jo Levin (Community member)
- Sharron Meadows (Community member)
- Kevin Smith (Community member)

HICA Governance Committee

Process

- 1: Committee Proposes By-Law Changes:
- 2: Board Votes to Advance By-Law Changes to Community for Vote
- 3: *Community Votes on Proposed By-Law Changes

*"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", Ref By-Laws Article IX

HICA Governance Committee

Proposed By-Law Changes (two proposals voted on separately)

1. Reduce the time HICA must wait before proceeding with the option of foreclose for failure to pay assessments
 - Reduce the time from one year to 120 days (4 months) after notice has been sent
 - No requirement to foreclosure, HICA may or may not choose to foreclose
 - With any delinquency, the preferred option will always to be to establish a payment plan with the owner
 - After the 120 days (4 months) has elapsed, it takes an additional minimum of **4-5 months to complete the foreclosure process**, during which time the owner can pay the assessments and stop the foreclosure process

HICA Governance Committee

Proposed By-Law Changes (two proposals voted on separately)

2. Establish an Alternative Dispute Resolution Process Instead of Lawsuits

- A process to resolve disputes between the HICA and Owners, not including foreclosures
- Level playing field for HICA and Owners –regardless of which party initiates the process
- Alternate process to lengthy and expensive lawsuits in the courts
 - Closed Board meeting with Owner, if not resolved proceed to ->>>
 - Mediation with mutually agreed mediator, if not resolved proceed to ->>>
 - Binding arbitration with mutually agreed arbitrator
- Cost of process equally shared between HICA and Owner
- Resolution is final/binding

HICA Governance Committee

Impact of Lawsuits on Owners

In the last 5 years

- HICA Owners spent \$135,000.00 (Insurance Deductibles) on Attorney Fees and Costs. (Scott will confirm amount spent)
- HICA Owners spent thousands of \$ in increased Insurance Premiums. (Turie will confirm the \$ amount of increase)
- HICA Owners spent thousands of hours of staff time producing over 300,000 pages of documents for major lawsuit.
- HICA Board spent a minimum of 1000 hrs of Trustee's time on litigation.

HICA Governance Committee

Next Steps

The Office will email this presentation as well as the Questions and Answers to the Community. Any questions on these materials can be sent to the Office to be answered by the Governance Committee.

The Governance Committee will hold another information session via Zoom on Wed, Nov 11. Any questions submitted to the Office are planned to be answered in this session.

These proposed By-Law changes and the 2021 Annual Budget will be on the ballot mailed to the Community after the November 21 Board meeting.

Results of the vote on the proposed By-Law changes and the 2021 Annual Budget will be announced in the **Dec 19 Board Meeting**.

Exhibit C

Q: Where are the current By-Laws?

The By-Laws are in the “Document Library” under “Community Info” on the Hat Island website.

The direct link to the By-Laws is: https://www.hatisland.org/wp-content/uploads/library/community/2010_by_laws.pdf

Q: Can the Board change the By-Laws?

NO - the Board does not have the ability to change the By-Laws. The Board can only vote to approve that changes be submitted to the Community for **Community vote**.

Q: When and how will I be able to vote?

The proposed By-Law changes as well as the 2021 HICA Budget will be on the ballot mailed to the Community **following the** November Board Meeting. The ballot will outline options for voting by mail, fax, or by proxy.

The voting results for both the proposed By-Law changes and the 2021 Budget will be announced at the Community Meeting in December, details to be announced by HICA Office.

Q: What if I like one of the changes but not the other?

The Community will vote on each change separately, so you can vote yes on one and no on the other. The Community vote could approve both of the changes, only one of the changes, or none of the changes.

Q: Have the By-Laws ever been changed before?

Yes, the By-Laws were last changed by Community vote in September of 2010 (noted in the header or title of the first page of the By-Laws).

Q: How many favorable votes are required to pass one of these proposed changes?

The number of Community votes needed to pass a By-Law change is higher than for an assessment change or budget approval.

A budget or assessment approval requires a favorable vote by a simple majority of the members in good standing that are voting.

A By-Law change requires (1) a quorum and (2) a favorable vote by **2/3** of the members in good standing who cast a vote (Reference Article IX of the By-Laws).

A quorum is 15% of the members in good standing (Reference Article V Section 3 of the By-Laws).

A member in good standing is an owner who does not have any past due or delinquent assessments.

Example of the favorable votes needed to pass a By-Law change in a given election:

Total number of votes to constitute a quorum: 83 (15% of 550 total members)

Total number of votes cast: 200

Number of votes from members in good standing: 198 (2 members had past due assessments)

Number of votes required to “pass” By-Law change: 132 votes in favor (2/3 of 198 votes)

Q: Why is it proposed to shorten the time from 1 year to 120 days after notice of delinquency before a foreclosure process can be started?

With a one year wait period, it takes between 14 months and 17 months to complete the foreclosure process, which means the Community is without those funds, or the collateral for those funds during that time.

Q: Would the foreclosure process start automatically after 120 days?

No – neither the proposed By-Law change, nor the current By-Laws, require that a foreclosure process be started at the conclusion of the minimum wait period or at any time after that.

The operative word in the By-Laws is “**may foreclose**”, not must foreclose.

The proposed By-Law change, and the current By-Laws, give HICA the option of proceeding to foreclosure after the minimum wait period IF other attempts at payment arrangements have been unsuccessful.

It is recognized that a payment can be overlooked with busy daily schedules, vacations, unforeseen family issues, and other demands. 120 days (4 months) allows adequate time for the HICA Office to send notice of the overdue assessments to the owner and for payment arrangements to be made.

Q: Is foreclosure the best option?

No, foreclosure is the least desirable option. The preferred option is to establish a payment plan to bring the account into good standing.

The proposed By-Law change gives HICA the option of initiating the foreclosure process after four months, rather than a waiting a year and further compounding the assessment delinquency and impact to budgeted funds. Again, the preferred option is to establish a payment plan but if this is not successful – the merit of foreclosure is considered on a case by case basis.

Q: How long does the foreclosure process take and what if the owner starts to pay?

The foreclosure process is a costly and time consuming process. During this time, the owner can pay the assessment obligation to stop the foreclosure process. The overall process takes a minimum of 2-5 months *once initiated* following the minimum wait period defined by the By-Laws. The only foreclosure available to the Association is a judicial foreclosure, with the following minimum requirements:

1. Contact legal counsel to obtain litigation title report;
2. Attorney prepares, files and serves, foreclosure lawsuit;
3. Debtor Member appears and files answer to lawsuit;

4. Summary Judgment from the court;
5. Sheriff's sale of foreclosed lot;

Total: Minimum 2-5 months once started

Q: How many lots are currently delinquent or behind on assessments and what is happening with those lots?

Major property owner has been delinquent on 273 lots far in excess of one year

25 lots are being pursued for a payment plan

12 lots are on payment plans

16 lots are in collection

3 lots are being foreclosed on by the county

WE HAVE COLLECTED \$ 9,000 IN PAST DUE ASSESSMENTS IN LAST MONTH

Q: Do the By-Laws allow a lot be foreclosed for any overdue bill – like moorage or water?

No – the By-Laws only allow foreclosure as a means to secure delinquent assessments but not other user fees like water, moorage, etc. The proposed By-Law change would not alter this.

Potential ADR Q&A

Q: Does this process apply to disputes between owners?

Q: is an attorney required to use the ADR process

Q: who pays the expense of the process?

Q: Does this replace the process use to collect unpaid assessments?

Q: Would HICA insurance support this process?

How much could HICA save in insurance costs?

If an owner gets an award as part of the ADR, how is it collected and could the owner pursue the award in the court if needed?

How much faster is the ADR process than pursuing claims in the courts?

Q: There are current and past Board members who are attorneys. Can the Board require that these attorneys act as the mediator/arbitrator? (No – conflict of interest even if they aren't currently on the Board and mutually agreed between both parties)