

## HICA Board Meeting August 21, 2021

In attendance: Paula Bafaro President, Dan Jensen Vice President, Kurt Kassahn Treasurer, Aimee Chambers Secretary, Trustees Erik Smith, Jonathan Thurman, Don Stark

Paula called meeting to order at 10:35

Dan Jensen motioned to approve minutes of last 3 meetings, Kurt seconded. All in favor.

Dear Hat Island Board Members,

I'm writing to express concern about the current rule that homeowners have to be on the island to enable guests to ride the ferry. One of the great joys of being a homeowner on Hat is sharing our properties with guests.

I currently have friends that are in the process of purchasing a home here. They will be coming out this weekend while I'm off the island to stay at my place, help care for my dog in my absence and explore the island. Since I won't be on the island, I'll need to find a private boater to help them to get to and from the island. This can be challenging to schedule and though there are no rates or fees it is reasonable to expect that the boater is gifted enough cash to cover gas and their personal time, which adds up fast.

While I completely support any changes the boards make to ferry regulations due to Covid concerns, I am opposed to the restriction that denies homeowners of their legal rights. In this case specifically, "The Right of Enjoyment" as well as, "The Right of Control" of their property. Denying the use of the ferry for guests if a homeowner is not on the island is denying both of these legal rights to homeowners.

Please consider the legal implications of denying homeowners the right to book the ferry for guests if they are not on the island and lift this restriction.

Thank you,

Shanna Nelson

B35

<https://www.hoamanagement.com/homeowners-rights-against-hoa/>

Scott Holte G-26 I'll provide a copy of my remarks to the Board Secretary and request that they be included in the minutes of this meeting. I'm glad the Board has resumed publishing the draft minutes of open Board meetings to the Community, but I am saddened by what I've read in those minutes, particularly the minutes of the Special Board Meeting on July 28th. The July 28th Special Board meeting addressed the unresolved conflict with the ACC, and included a presentation of "redlines" by Trustees Jonathan Thurman and Erik Smith to a proposed Board Resolution as follows: "Jonathan began explaining the redlines to the document. Paula: Jonathan, I had made some edits to the documents, and they were visible, but now I don't see them. Jonathan: Yes, I changed the document so you cannot make edits. You may still add comments. Paula: So the only edits are those from you and Erik? Jonathan: yes. Paula: Jonathan will you please move the document up? I had some comments at the beginning of the document, and we are starting in the middle. In the section "Whereas, in 2010 the Hat Island Community Association members voted to amend the corporation's Bylaws to include Article VI Section 8 granting HICA's Board of Trustees authority to appoint Board members to the Architectural Control Committee and hear their decisions." We need to take out the word Board. That is not how the Bylaws

Article VI Section 8 is written. Jonathan: we can leave that in. Paula: No. You can't quote a bylaw, and then add a word that completely changes the meaning. It has to come out. Kurt: We were just trying to clarify. Paula: You cannot quote a bylaw and then add a word that is not in the bylaw. After some discussion Jonathan agrees to take the word out." There has been a lot of talk by the Board about "transparency" and "process," but the words and actions of these Trustees show a lack of transparency and fair process. The root word in "Trustee" is "trust." HICA Trustees are entrusted with the management of the Association on behalf of the Members. The requirements for Trustees include acting in good faith in all instances on behalf of the Association. Those aren't my words, they are spelled out in our governing documents, including the Non-profit Corporation Act (RCW Chapter 24.03) and the Homeowner's Association Statute (RCW Chapter 64.38). RCW 64.38.025, entitled "Board of directors - Standard of care ... (1)" states: "...the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the ... members of the board ... shall exercise the degree of care and loyalty required ...." RCW 24.03.127, entitled " Duties of a director: A director shall perform the duties of a director ... in good faith ..." The words and actions of these Trustees clearly violate the Standard of Care required to act in good faith and with loyalty to the Association's members, and that is very very sad. Thank you.

Dear Board, ACC and Community members

In the July Board meeting, I asked several questions to be answered by the ACC; I am listing these questions again, because until today I have not received an answer (except #1. by Dan Jensen).

Can you please give us a historical run down of ACC members after the resignation of the 3 (THREE) members in 1990. (Board member Dan Jensen provided me with a list on 8/9/2021)

Are you willing to put an effort into establishing new CC&R's?

Please provide a syllabus for the training and the documentation of the training for current ACC members.

I would like to know, how much money has been spent for this dispute between the Board and the ACC?

Is the ACC willing to accept the resolution as written by the island attorney?

this **POWER STRUGGLE** by the ACC members; I asked **WHY** for many month; still no answer or explanation!

For many month I asked, how one person can be on the ACC and the Board; the ACC only talks about separation of power, but does not do it! No reaction. In the zoom discussion / workshop on 28.July Eric Smith again insisted to be on the Board and the ACC; he refused to step down!

How much longer is the community willing to accept this attitude? I for sure do not.

Until today I have not received answers to the above questions.

Thanks for your attention

Respectfully

Udo Gerz M 015

Kevin Smith: I want to take some time to thank the board and the possible incoming board members. I appreciate your time and dedication and you are all volunteers. You have some

amazing members that are on the committees as well, please respect and appreciate their time and contributions. Everyone is a volunteer and please respect all they do.

### **Presidents Report:**

Good Morning. I'll keep this brief, as we do have a lot to cover today.

We have the votes in for the Resolution for Deferred Income ballot, and it passed with a large approval rating, 130 yes to 12 no. Thank you for your votes and thank you to our counters and observers, Sandy Bettencourt, Dan Jensen, Sharron Meadows, Ginger Harmon, Lori Gray, John Gray, Shirley Allen, Les Allen and Bill Townsend.

Next, I would like to thank the esteemed and qualified candidates who have stepped up to volunteer their time, expertise, and hard work for the betterment of our island. The job can be challenging, but if we remain thoughtful, actively listen to owners, and work hard, we can achieve our vision statement from the recent long range planning retreat- a pristine, sustainable and safe community. Please stay tuned for the Meet the Candidates segment at noon today. It's important to learn about those that we will elect to serve for the next one to three years on our board.

We have received unofficial word that the Tulalip Tribes have rejected PUDs final easement offer. PUD has been told to expect a letter this week and other than that the Tulalip Tribes don't seem to be willing to engage in further conversation with PUD. PUD engineers have been working on other options. We are aware of the urgency in getting the cable in and operational and will work with expediency to make it happen.

### **NO LEGAL REPORT**

Dan:

Introduction to motion • In 1990 under advice from then Island Attorney James Allendoerfer, o Original ACC members returned to active member ship ♣ Turned responsibility for the appointment of future members over to the board ♣ Resigned • The board then passed a resolution, again under the advice of the Island Attorney, to form a committee, whose members are to be appointed by the board, to act as the ACC Committee o Three-person committee o Three-year terms, staggered • I was confused as to what happened to this resolution. Why was it not being followed? o Nobody seemed to have a definitive answer other that it was not operable or maybe it was just never followed. No clear explanation. Nothing in writing. o So I looked at the monthly board meeting minutes beginning in January 1990 for some explanation as to what happened to this resolution. o I discovered that in fact, this resolution had been followed once it was passed. o The board named replacements as vacancies occurred, for at least the next 18 years • However, sometime after the fall of 2008, the board appointments ceased, and selfappointments apparently resumed o ACC began functioning as an independent, self-appointed committee , claiming authorization to do so under the force of the 1962 original Hat Island CC&Rs o They apparently have been functioning this way until the present time. • No document, legal mandate or board decision appears to exist suspending the 1990 resolution. • The CC&R statements regarding the establishment of the ACC are narrow and specific o Original members are appointed by name. Direction is then given that as vacancies occur, the remaining members will appoint someone to fill the vacancy. o The CC&Rs are silent as to what happens if all positions are vacant. They provide no direction or

authority to restart the committee once all members are gone. Therefore, it would seem that there can be no claim by appointees today to authorization via the CC&Rs o The CC&R instructions for continuity of membership do not apply, as the string of board appoints lasted for at least 18 years. The connection for vacancy appointments by current members was broken for this entire time. • In the absence of specific direction by the CC&Rs, the bylaws prevail. o It would seem that the 1990 resolution, though not followed for the last 10 years or so, is still intact o It appears that the board retains the authority to appoint the ACC members • It is troublesome that this apparently unauthorized transition has never been explained or justified to the Hat Island community for the last 12 years or so. • IT is VERY troubling that this undocumented transition occurred at exactly the same time that the board and a special committee were: o Soliciting direction from the community via a 2009 survey was sent out asking what the wording of a new bylaw, regarding ACC membership selection should be. The result was about 85% approval for wording that was subsequently included in the set of bylaw additions and changes to be presented to the community the next year (2010) for a vote by the community. o Approval of this bylaw, currently in effect (Article VI, Section 8), that was passed with 78% approval in 2010 ♣ This section - “To appoint members to the Architectural Control Committee and to hear and act on appeals to their activities” – was added to the duties of the trustees, reinforcing the resolution of 1990. o How could it be that on the one hand the community was led to believe its explicit direction for managing ACC membership was being set into place, while at exactly the same time the ACC membership begins acting in the exact opposite direction. • So what to do about this discovery? o This issue I am bring up for board action is very narrowly focused at this time. ♣ It does not address the substance of any proposed new resolutions ♣ It does not address the building covenants described in the CC&Rs ♣ It does not specifically address either the validity of the 1990 resolution, the 2010 bylaw addition or the self-appointment section in the CC&Rs concerning continuity of ACC membership. Those issues need to be addressed only after the negotiating individuals claiming ACC representation ,have established their authority to be the exclusive participants at the table. o It does address the verification of the authority the individuals currently sitting on the ACC committee claim for establishing their appointments to this committee. ♣ What is it ♣ Who granted it. ♣ How the grantee(s) claim their authority to pass on appointments ♣ Addresses the need for each individual to establish his or her claim. o I have requested a response to all of the above with no direct satisfactory response

Dan made motion

Motion:

I move that the four (4) individuals currently claiming authority to represent the ACC, provide to this board no later than the Community meeting to be held on September 16<sup>th</sup> 2021, written, documented evidence that verifies the authorization of each of their appointments to the ACC. This includes reference to the individual who appointed her/ him along with that appointing individual’s claims of authority to make the specific appointment.

Authority in this case being legal reference to a prevailing RCW, bylaw or CC&R document granting this authority. If a reference is claimed by virtue of the early 1960s CC&Rs, justification must be provided as to how the self-appointment chain, broken in 1990, was reestablished.

If such evidence is not provided by this date, the individual position on the ACC will be declared vacant.

Aimee Seconded

Kurt does not agree,

Jonathan does not agree

Dan: In the discussions of the ACC the negotiations things have been changed and I am not in agreement.

Paula: I do not believe we are anywhere close to a resolution and I believe we have a conflict of interest with both Eric and Kurt voting. Erik because he is on the ACC and Kurt because his wife is the community chair.

Kurt: Jeremy requested originally 10 year terms and not 6 year terms

Dan: the Membership needs to be more open to the community. That should be for resolution of the committee.

Resolution: The motion presented by Dan did not pass. Aimee, Dan and Paula voted Yes. Jon, Kurt, Don and Erik voted no.

ACC resolution: Kurt: We were very close to the resolution at hand, with the only remaining issue that Jeremy did not want to move forward with was the ACC members also being on the board. The ACC, who has been working diligently for the last 13 years, we would like to have more discussion about that.

Don: I suggest that we get the redline completed. I would like to make a motion that we approve the redline from July 28<sup>th</sup>. Jonathan seconds.

Paula: I don't think we have a final.

Dan: we do not.

Aimee: I gave feedback, and we did not get final redline based on feedback.

Don: I would like to see this resolved now and before the next meeting.

Dan: None of the key issues have been addressed.

Paula: We cannot vote on a fluid document that has not been finalized. We don't have the document in front of us. It is unclear which document we are discussing.

Don: Adopt the resolution of the ACC as modified by the board on July 28<sup>th</sup> to be voted on.

Paula: I would like to amend the current motion to vote on the resolution as it stands after we have input from the island attorney.

Don: what does that look like if we have approved a motion, and then we are taking this to the attorney?

Paula: I am concerned that I have not seen the final document.

Kurt: All the key language, term limits, nomination process is there. What if Jeremy disagrees?

Don: The amendment is with the resolution itself, and that we have not passed a valid resolution.

Jon: screamed that he has the floor.

Dan: This whole argument is exactly what my concern was. We come up with an agreement and give to the attorney.

Jon: Paula's intent is that the lawyer reviews the document.

Kurt: We do have a motion on the floor and I think that needs votes.

Paula: Run the latest version of July 28th redline to the attorney and then we vote on it.

Jon: You would have to amend the main motion.

Don inputs original motion in the chat: I move that the board adopt the resolution regarding the ACC as modified by the board and ACC on July 29<sup>th</sup>, 2021.

Don: The resolution should be reviewed by the island attorney.

Don New Motion: I move that the board adopt the resolution regarding the ACC as modified by the board and ACC on July 28 and that the island attorney shall review the resolution and provide comments which will be considered by the board. Jon seconded

Paula: We have nine minutes until we have to open to meet the candidates. We are still discussing and we don't have enough time. I would like to table this and come back to it.

Jonathan: you aren't allowed to table it.

Kurt and Erik voted yes to the motion. Aimee, Paula and Dan voted no.

Aimee makes motion to adjourn the meeting at 11:57 and Erik seconds. All in favor and we moved do Meet the Candidates.

**BELOW IS THE RESOLUTION REFERRED TO ABOVE THAT WAS NOT SHOWN IN THE MEETING AND ONLY A LINK WAS SHOWN DURING THE ACTUAL WORKING SESSION.**

**RESOLUTION OF HAT ISLAND COMMUNITY**  
**ASSOCIATION BOARD OF TRUSTEES REGARDING**  
**THE ARCHITECTURAL CONTROL COMMITTEE**

WHEREAS, the Declaration of Restrictive Covenants for each division of Hat Island, most of which were recorded in the 1960s, established an Architectural Control Committee (“ACC”);

WHEREAS, the Declaration of Restrictive Covenants declare, “No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality or workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot unless approved by said committee”;

WHEREAS, the Declaration of Restrictive Covenants declare, “The Architectural Control Committee shall have the absolute right to restrict or prohibit the construction of any building even though such a building is not otherwise restricted or prohibited herein, if in their sole discretion such building would be detrimental to the development of the plat”;

WHEREAS, the Declaration of Restrictive Covenants declare, “The Architectural Control Committee shall have discretion to allow exceptions to any provision of this document”;

WHEREAS, the HICA Board of Trustees (“Board”) desires to confirm that the ACC is an HICA committee consistent with the provisions set forth below;

WHEREAS, in 2010 the Hat Island Community Association members voted to amend the corporation’s Bylaws to include Article VI Section 8 granting HICA’s Board of Trustees authority to appoint members to the Architectural Control Committee and hear appeals to their decisions. ;

WHEREAS, the current ACC members and Board recognize that the ACC consists of Sandra Bettencourt, William Townsend, Tom O’Day, and Erik Smith, all in good standing; and

WHEREAS, the current ACC members desire to affirm and document their agreement that the ACC is a HICA committee consistent with the provisions set forth below. All current members of the ACC will continue serving as a decision-making Committee for the HICA, subject to their agreement to this Resolution and signature affirming the same.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF HICA AS FOLLOWS:**

1. The Board shall appoint two (2) Trustees to serve as voting members of the ACC. The two Board members appointed to serve as ACC members shall serve terms equal to their Board terms. The ACC shall include not less than five (5) or more than seven (7) total voting members who are in good standing. ACC nominated members shall serve six (6) year terms with staggered term expirations. The six (6) year term shall be calculated as starting from the date the previous term expired (September 30 of the applicable year), regardless of the date the appointment is made. Not less than 30 days prior to expiration of a member's term, the then existing members of the ACC shall nominate one or more HICA members in good standing for the Board's consideration in filling a vacancy. If the Board declines to appoint the persons nominated by the ACC, then the Board shall notify the ACC that additional nominations are required. The ACC shall then have not less than 30 days to nominate one or more alternative HICA Members to fill the vacant position(s). This nomination process shall be repeated until the Board approves a nominated person. If the ACC fails to provide a nomination, then the Board may proceed with filling the vacancy without a nomination or may request that the ACC provide a nomination within such time as the Board determines. Appointments to fill vacancies shall be made within the fourth quarter of the calendar year in which the vacancy occurs unless the nomination process extends beyond that time period.
2. As of the Board's approval of this Resolution, the Board acknowledges that there are four ACC members (Sandra Bettencourt, William Townsend, Tom O'Day, and Erik Smith). These individuals will exercise their option to serve as one of the ACC Members, by agreeing to and signing the attached confirmations. The initial member terms shall be staggered as follows:

ACC MEMBER

TERM EXPIRATION



Sept	30,	2026
Sept	30,	2025
Sept	30,	2024
Sept 30, 2023		

3. Removal of any member of the ACC requires a majority vote of the ACC membership, including the two board members. In the event a member is unable to complete their term for any reason, the remaining members shall nominate one or more replacement candidates for the Board's consideration. If the ACC has not provided nominations within 30 days of the vacancy, then the Board shall notify the ACC that a nomination is needed and provide not less than 30 days for the ACC to make said nomination. The individual appointed to fill a vacancy shall complete the remainder of the vacated term.

4. ACC decisions to approve or disapprove proposed improvements shall be in writing.

5. All decisions rendered by the ACC are subject to appeal per Article VI, Section 8 of the Bylaws. Any HICA member may appeal a decision rendered by the ACC. The appealing member may be the member who sought ACC review of a proposal or any member who claims to be affected by the ACC's decision. Notice of appeal must be submitted in writing to the HICA Office within twenty (20) days after receipt of the written decision of the ACC. The Board, in their discretion, may consider appeals submitted outside of the deadline but must also consider any prejudice caused to an owner as a result of the delay. A decision by the ACC that is not appealed within twenty (20) days or accepted by the Board for appeal as a matter of discretion shall be final. Within thirty (30) days after receiving a notice of an appeal the Board of Trustees shall hold a hearing on the same and shall consider all evidence presented by the aggrieved property owner, the ACC, and any other affected persons. The thirty-day deadline for a hearing on appeal may be extended by the Board for good reason. The Board of Trustees may affirm, modify or overturn the ruling of the ACC. The decision of the Board of Trustees shall be final. It shall be reduced to writing and shall be communicated to all parties.

6. This Resolution does not limit or change HICA's authority to levy reasonable fines, pursue alternative dispute resolution or other legal and equitable remedies.

7. The ACC shall maintain written policies and procedures consistent with this Resolution and the established CC&Rs, documents and business records including all ACC decisions will be kept on file as part of HICA's business records and made available for review by HICA members.

8. The Board of Trustees shall cover all ACC members under the immunities set forth in Article X of the HICA Bylaws and indemnify and provide insurance to ACC members to the same extent it indemnifies and insures Trustees. The authority of the Board of Trustees and ACC as discussed herein applies equally to lots on Hat Island which were not included as part of the Hat Island Community Association but which have become members of HICA by contract, application, or assignment.

PASSED by the Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_ **2021.**  
HAT ISLAND COMMUNITY ASSOCIATION

*It's President*

*Attest:*  
***Hat Island Community Association Secretary***