

No. 69619-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ISLAND LANDMARKS,

Appellant,

v.

MARY MATTHEWS, et al.,

Respondents.

RESPONDENTS' BRIEF

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I. INTRODUCTION

Ellen Kritzman wanted to create a “parallel universe” to Island Landmarks, and take control without bothering with the corporation’s bylaws, officers and directors. She solicited checks from her followers, deposited them in the Island Landmarks bank account without authority and without notice to the corporate treasurer, picked a date, place and time for a special meeting of her followers to “vote out” the legally constituted Island Landmarks board; wrote her own anonymous and undated “notice” of a “special meeting” of her followers without consulting the secretary, board or officers of Island Landmarks, and then had her followers “vote out” the board; she even voted proxies where necessary to insure that all of her followers voted as she demanded, even though she did not provide the proxies to the corporate secretary as required by the bylaws. When the real Island Landmarks board refused to go along with her strong arm tactics, she initiated this law suit, claiming to be Island Landmarks.

The Superior Court properly decided that under the undisputed facts, and the law embodied in the Island Landmarks bylaws, no proper notice of the “special meeting” was given and the purported election of a new board was void. Therefore, this court should affirm the trial court’s judgment granting Respondent’s Motion For Summary Judgment.

II. STATEMENT OF THE CASE

Island Landmarks is a Washington non-profit corporation that owns the Mukai Farm and Garden in Vashon, Washington. Mary J. Matthews, J. Nelson Happy, Owen Ryan, Ken DeFrang and Ellen DeFrang were elected directors of the corporation on September 16, 2010. (Dec. of Mary J. Matthews at pg. 1, CP 520). At all times material hereto Mary J. Matthews was President and Treasurer and J. Nelson Happy was Vice President and Ken DeFrang was Secretary.

Over the last 11 years, Mary J. Matthews and J. Nelson Happy have personally advanced more than \$300,000 to pay the operating expenses of Island Landmarks, including real property taxes, utilities, insurance and labor to maintain the house and garden (Dec. of Mary J. Matthews at pg. 1, line 24, CP 520). Ellen Kritzman, whose total financial commitment to the organization in 11 years has been \$25.00, (Dec. Ellen Kritzman, pg. 5, line 17, CP 304), leader of the Kritzman Group, once served on the board of Island Landmarks, but resigned when the organization's fundraising efforts failed in 2000. (In fact, the bylaws of Island Landmarks in effect on June 4, 2012 were approved by Ellen Kritzman when she was a member of the board on December 11, 1995). (Dec. Ellen Kritzman, pg. 2, lines 3-9, CP 301.)

Sometime in 2012, Ellen Kritzman, Glenda Pearson and Lynn Greiner developed a tightly orchestrated and quietly executed secret scheme to take control of the board of Island Landmarks. (Dec. Mary J. Matthews at pg. 2, line 5, CP 521). Ms. Kritzman, in possession of corporate records obtained (without legal authority) from the corporation's former Treasurer, Stu Highet in 2009, knew the organization's bank and bank account number, enabling her to clandestinely deposit 51 checks gathered from her followers into the corporate bank account (Dec. Ellen Kritzman, pg. 6, lines 21-22, CP 305) without the knowledge of the corporation's treasurer, Mary J. Matthews, or the knowledge of any other officer or director of the organization. Ms. Kritzman personally endorsed at least 15 of the checks, even though she had no authority to do so.

The intent of the Kritzman Group was to secretly create "members" of Island Landmarks loyal to them for the purpose of calling a "special meeting" of these hand selected "members" to vote the Kritzman Group in as officers and directors, and the incumbent officers and directors out. As part of the scheme, Ellen Kritzman mailed an undated and anonymous "Notice of Special Meeting" only to her hand selected "members" (without reference to the organization's official membership list) and to the incumbent board. (Dec. of Mary J. Matthews pg. 2, lines 12-18, CP 521). The Kritzman Group did not ask Island Landmarks

Secretary, Ken De Frang, to send a notice of a special meeting to the members of record, nor did Mr. De Frang “refuse or neglect” to do so. (Dec. of Ken De Frang pg. 1, lines 19-24, CP 551). (As discussed below, this procedure was mandated by Island Landmarks bylaw 2.7.)

In her declaration, Ms. Kritzman states that “... [O]n May 24, 2012 I mailed a Notice of the Special Meeting, which I had drafted ...”, and “[o]n May 26, I telephoned Ken DeFrang to ask if he received notice of the special meeting and ... I asked him if he wanted originals of the membership forms so, as he admitted to me, he wasn’t obligated to report this to Matthews.” (Dec. Ellen Kritzman, pg. 7, lines 3-9, CP 306) As shown below, Ms. Kritzman’s statement is an admission of facts that are dispositive of this case, including the fact that she did not contact secretary De Frang until after she sent out her notice without asking the secretary to do so, as required by the bylaw.

The “special meeting” was held at a place, (Land Trust Building on Vashon Island), time (7 p.m.), and day (Monday, June 4, 2012), selected by Ellen Kritzman, not the secretary. None of the incumbent board members attended the meeting. (Dec. of Mary J. Matthews at pg. 2, lines 18-20, CP 521). The purportedly “new members” voted in person and by proxy. (Dec. Ellen Kritzman, pg. 7, line 17 CP 306). Because the meeting was kept secret, no proxies were filed with the Secretary of the

corporation before or at the time of the meeting. (Dec. of Ken De Frang at pg. 1, line 21-24, CP 551.)

The Kritzman Group filed its Complaint on June 18, 2012, seeking a judicial declaration that it was the lawful board of Island Landmarks, followed by its First Amended Complaint filed on July 12, 2012; Respondents filed their Motion for Summary Judgment on July 27, 2012, based solely on the First Amended Complaint. The Kritzman Group then filed its Motion To Amend Complaint on September 14, 2012 and its Motion for Partial Summary Judgment based solely on its Second Amended Complaint the same day. (The trial court had not granted leave for the Kritzman Group to file its Second Amended Complaint.)

On October 12, 2012 the Kritzman Group filed its Response to Respondent's Motion for Summary Judgment and a hearing was held by the Superior Court on November 1, 2012. At the hearing, the Kritzman Group did not ask the court to rule on its Motion to Amend Complaint, nor did it seek an adjournment to allow the court time to rule on the motion to amend and to give Respondent time to respond to the Second Amended Complaint. Instead, the Kritzman Group proceeded with the hearing without the Second Amended Complaint being before the court. On November 4, 2012 the court entered its orders granting Respondent's

Motion For Summary Judgment and denying Plaintiff's Motion For Partial Summary Judgment. Judgment was issued on November 15, 2012.

In its Judgment, the trial court granted Respondent's motion for summary judgment dismissing the First Amended Complaint because, based on the uncontroverted facts, the purported election of the Kritzman Group as directors was invalid as a matter of law, finding that the Kritzman Group did not give proper written notice of the proposed special meeting through the corporate secretary as required by the bylaws of Island Landmarks. Therefore, the filing of this suit was not authorized by a majority of the legally elected board of Island Landmarks, (Respondents) and was therefore *ultra vires* and was properly dismissed as a matter of law.

III. AUTHORITIES AND ARGUMENT

A. There are no genuine issues of material fact relevant to Respondent's Motion for Summary Judgment.

The Kritzman Group does not dispute any of the facts set out in the Respondents' Statement of the Case, but merely make allegations in their brief which are either not supported by any citation to the record or are contained in declarations obtained to support their Motion For Partial Summary Judgment based on their Second Amended Complaint which was never before the trial court.

In the Superior Court, Respondents moved to strike these declarations because they are legally insufficient and not admissible in evidence; therefore they should be disregarded by this court because they were not before the trial court and are also irrelevant to the issues raised in this appeal. (CP 411-414). The Kritzman Group's statement of the case does not comply with RAP 10.3(a)(5) which requires a "fair statement of the facts ... without argument."

Also, the Kritzman Group, who in their brief failed to assign error to the Superior Court's finding that the case involved no genuine issue of material fact, now attempt to argue that there is a genuine issue of material fact that precludes summary judgment. In her declaration, Ellen Kritzman admits that: "[O]n May 24, 2012 I mailed a Notice of the Special Meeting, which I had drafted..." and [o]n May 26, I telephoned Ken DeFrang to ask if he received notice of the special meeting and ... I asked him if he wanted originals of the membership forms for his records; which he declined, stating he 'would let it go' with regard to receiving membership forms so, as he admitted to me, he wasn't obligated to report this to Matthews." (Dec. Ellen Kritzman, pg. 7, lines 3-9, CP 306).

The Kritzman Group asserts that the purported factual dispute is: "... did Mr. DeFrang decline to cooperate with the members about the special meeting?" (App. Br. 30). Although the trial court did express

consternation over the logic of the Kritzman Group's argument at the summary judgment hearing, this Court reviews the record *de novo*, (*Washington Images Services, LLC v. Washington State Dept. of Revenue*, 171 Wn 2d 548, 555; 252 P.3rd 885 (2011)) and the trial court's justifiable confusion about the meaning of this argument is irrelevant to the determination of the issues on appeal by this court. What is relevant is the admission that Ms. Kritzman did not offer to provide the corporate secretary with the membership roster of her followers until days **after** she had sent the meeting notice; her admission that she allegedly belatedly offered to provide him with the names and addresses of her followers which proves that she acknowledged that under the organization's bylaws the secretary must be provided with this information, and her further admission that she never gave the secretary the names and addresses of her followers.

Besides being an irrelevant issue, because the Kritzman Group's brief failed to assign error to the Superior Court's finding that the case involved no genuine issue of material fact as required by RAP 10.3(a)(4), they have waived this issue and it should not be considered. *Greater Harbor 2000 v. City of Seattle*, 132 Wa.2d 267; 937 P2d 1082 (*en banc*, 1997).

Furthermore, as an adjunct to their assertion that there is a factual issue, the Kritzman Group also argues that Respondents cannot assert that “the new members were not ‘members of record’ when the board secretary refused to cooperate”, citing *East Lake Water Association v. Rogers*, 52 Wash App. 425, 426; 761 P2d 627 (Div. 3 1988). In that case, the court held that the secretary/treasurer of a nonprofit corporation, who was responsible for mailing out notices of membership and directors meetings, was equitably estopped from challenging capital assessments approved at a membership meeting based on his own alleged failure to mail out proper notices of the meeting.

In this case, however, the corporate secretary, Ken DeFrang, did not refuse to cooperate with Ms. Kritzman; she had already sent out the anonymous and undated meeting notice to her followers before she contacted him and she never requested Mr. DeFrang to send out the notice as required by bylaw 2.7. Therefore, *East Lake Water Association* has no relevance to this case and the trial court properly found that there were no controverted facts which would preclude summary judgment in favor of Respondents.

- B. The Superior Court correctly found that the Kritzman Group did not properly notice a special meeting of members pursuant to Island Landmarks' bylaws.

The Island Landmarks bylaws were not complied with by the Kritzman Group and therefore the purported election of directors and officers was invalid.

The law governing a nonprofit corporation's bylaws is set out in the Washington Nonprofit Corporation Act, which is based on the Revised Model Nonprofit Corporation Act.¹ The starting point in this case is RCW 24.03.070, Bylaws: "...The bylaws may contain any provision for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation."² Therefore, bylaws are the internal law of a corporation; they have the effect of a statute. (*State ex.rel. Lee v. Goldsmith Dredging Co.*, 150 Wash. 366, 368 (1928)). In

¹ The *Model Nonprofit Corporation Act* ("Revised Model Act") is a comprehensive set of statutes that can be adopted by states to regulate the establishment and operation of nonprofit corporations within their jurisdictions. The *Revised Model Nonprofit Corporation Act* was adopted in 1987 by the Subcommittee on the Model Nonprofit Corporation Law, of the Business Law Section of the American Bar Association. The model act describes both the requirements for registration with the state, and what must be included in an acceptable set of Articles of Incorporation and Bylaws. The Revised Model Act has been adopted, in whole or in part, in Arkansas, Indiana, Mississippi, Montana, North Carolina, South Carolina, Tennessee, Washington and Wyoming. Nearly half the states, while not formally adopting the Act, follow the Act in general terms.

² RCW 23B.02.060 provides: "(4) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other

Washington, bylaws also have the force and effect of a contract. *Child v. Idaho Hewer Mines, Inc.*, 155 Wash. 280 (1930).

When an association is incorporated, it adopts bylaws, sometimes referred to as private laws, “Bylaws are the rules and regulations or private laws enacted by the corporation to regulate, govern and control its own actions, affairs and concerns and its shareholders or members and its directors and officers with relation to each other and among themselves in their relation to the corporation.” (8 Fletcher *Cyc. Corp.* § 4166). And, as the court ruled in *East Lake Water Assn. v. Rogers, supra*: “Where a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void. *State Bank v. Wilbur Mission Church*, 44 Wash.2d 80, 91-93, 265 P.2d 821 (1954).”

Here, Island Landmarks’ bylaws 2.5, 2.6, 2.7 and 3.18 (approved by Ellen Kritzman when she was a member of the board of Island Landmarks) control. These bylaws (copies of which are attached hereto as “Exhibit A”) are:

2.5 Special Meetings. The President, any two (2) members of the Board, or not less than ten percent (10%) of the members entitled to vote at such meeting, may call special meetings of the members for any purpose.

2.6 Place of Meetings. All meetings of members shall be held at the principal office of the corporation or at such other place within or without the State of Washington designed by the President, the Board, by the

law, the articles of incorporation, or a shareholders’ agreement authorized by RCW 23B.07.320.”

members entitled to call a meeting of members, or by a waiver of notice signed by all members entitled to vote at the meeting.

2.7 Notice of meetings. Written notice of any annual or any special meeting of the members stating the place, day, and hour of the meeting – and in case of a special meeting, the purpose or purposes for which the meeting is called **shall be given by the secretary or persons authorized to call the meeting to each member of record entitled to vote at the meeting.** Such notice shall be given not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. At any time, upon the written request of not more than ten percent (10%) of the members entitled to vote at the meeting, **it shall be the duty of the Secretary to give notice of a special meeting of members to be held at such date, time and place as the secretary may fix,** not less than ten nor more than thirty-five days after receipt of such written request, **and if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, time [stet] and place for such meeting.** If such notice is mailed, it shall be deemed delivered when deposited in the official government mail properly addressed to the member at his or her **address as it appears on the records of the corporation** with postage thereon paid. (Emphasis added.)

3.18 Removal. At a meeting of members called expressly for that purpose, one or more Directors (including the entire Board) may be removed from office, with or without cause, by two-thirds of the votes cast by members then entitled to vote on the election of Directors represented in person or by proxy at a meeting of members at which a quorum is present.

The Kritzman Group argues that the Superior Court’s decision should be reversed, based on the following arguments:

1. *Bylaw 2.7 authorizes either the secretary or the members to provide notice of a special meeting to the other members because it states that “persons authorized to call the meeting” can give*

notice. Bylaw 2.5 authorizes at least 10% of the members to call a special meeting. (App. Br. 13).

Response: Bylaw 2.7 does not authorize the Kritzman Group to give notice of a special meeting because:

a. They are not members.

Bylaw 2.2 provides that membership “is open to all persons who have an interest in promoting historic preservation or architecture, landscape and heritage of Vashon and Maury Islands situated in King County, Washington.” Although Ellen Kritzman deposited \$25 for each of her followers in the Island Landmarks bank account, no membership applications were completed and provided to the corporation, and therefore there is no evidence in the record that Ms. Kritzman’s followers had an interest in the specified purposes of Island Landmarks or that their names were used with their consent,³ therefore, they are not qualified as eligible to be members.

b. They are not “persons authorized to call the meeting.”

³ The *Revised Model Act*, Sec. 6.01. Admission (a) The articles or bylaws may establish criteria or procedures for admission of members. (b) No person shall be admitted as a member without his or her consent.

The Kritzman Group are not “persons authorized to call the meeting” under bylaw 2.7 because pursuant to bylaw 2.5, the only “persons” authorized to call a special meeting are the President and any two members of the board. Therefore, only Mary Matthews, or two board members including Ken De Frang, Owen Ryan, Ellen De Frang, and J. Nelson Happy had the right to call a special membership meeting as “persons.”⁴

c. Even if they are members, they are not “members entitled to vote.”

The Island Landmarks bylaws do not specifically define what is necessary for a member to be entitled to vote.⁵ However, several bylaws set out corporate regulations that are relevant.

⁴ RCW 23B.01.400 provides: “(23) ‘Person’ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.”

⁵ The *Revised Model Act*, Sec. 7.07. Record Date – Determining Members Entitled to Notice and Vote. (a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members’ meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting. (b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the **members entitled to vote** at a members’ meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting. (Emphasis added.)

Bylaw 4.9, *Treasurer*, provides,

The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipt for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation, in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws; and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board.

Ellen Kritzman deposited her followers' checks in Island Landmarks' bank account without authority and without the treasurer's knowledge or consent, thus no proper receipts were issued to prospective members, nor could the treasurer give the names and addresses to the secretary to add to the membership list.

Furthermore, Ellen Kritzman admits that she did not provide her followers' names and post office addresses to the secretary, but kept this information secret from him until days after her notice was mailed. Under bylaw 4.8, only the secretary "shall ... keep record of the post office address ... of each member" and bylaw 2.7 requires that notice of a special meeting must be "properly addressed to the member at his or her address as it appears on the records of the corporation."

Therefore, because the prospective members' names and addresses were not added to the corporation's membership list, it

was impossible for the secretary to give any notices to them and he could not perform his legal obligation under this bylaw to “see that all notices are duly given in accordance with the provisions of these bylaws or as required by law.”⁶ The requirements of the bylaws track the record date to determine a shareholder list for a special meeting provided for in RCW 23B.07.020.⁷

Because the Kritzman Group’s names and addresses were not on the organization’s membership list, they were not members of record and therefore not “members entitled to vote” and had no standing to call a special meeting of members pursuant to bylaw 2.5. Thus, they could not give notice of a special meeting under bylaw 2.7.

2. *The plain language of the second part of bylaw 2.7 in speaking of “requesting” notice provides an optional alternative to the first part – it allows members to delegate the notification duty to the*

⁶ Without access to the official membership list there is no way to determine under bylaw 2.5 if ten percent of the members entitled to vote have called a special membership meeting.

⁷ RCW 23B.07.020 provides: (1) A corporation shall hold a special meeting of shareholders: (a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or (b) Except as set forth in subsections (2) and (3) of this section, if the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting deliver to the corporation’s secretary one or more demands set forth in an executed and dated record for the meeting describing the purpose or purposes for which it is to be held, which demands shall be set forth either (i) in an executed record ... (4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the date of delivery of the first shareholder demand in compliance with subsection (1) of this section.

secretary should they so desire. The assistance of the secretary is optional but not mandatory. (App. Br. 24).

Response: Only the second part of bylaw 2.7 specifically applies to notices to be sent by “ten percent of the members entitled to vote at the meeting” and these requirements were not met.⁸

- a. The Kritzman Group did not give the secretary a written request to give notice of a special meeting to each member of record entitled to vote at the meeting.⁹
- b. The secretary did not neglect or refuse to issues such notice.
- c. The secretary did not send a notice “properly addressed to the member at his or her address as it appears on the records of the corporation.”

⁸ Ellen Kritzman admits in her declaration that she did not send her undated and anonymous notice to “each member of record” as she did not use the organization’s membership list but only sent notices to her followers and the incumbent board.

⁹ The *Revised Model Act*, Sec. 7.02. Special Meeting. (a) A corporation with members shall hold a special meeting of members: (1) on call of its board or the person or persons authorized to do so by the articles or bylaws; or (2) except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held. (b) The close of business on the thirtieth day before delivery of the demand or demands of a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection (a) has been met. (c) If a notice for a special meeting demanded under subsection (a)(2) is not given pursuant to section 7.05 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 7.05.

The bylaw's requirement that the "ten percent" must give notice through the secretary makes sense; otherwise 11 members could designate 11 places, times and dates of their own choosing, resulting in confusion and the inability of the members to establish a quorum. Under a correct interpretation of the bylaw, the secretary decides these matters so that an orderly meeting can be held.

Finally, there is no optionality about the requirements of bylaw 2.7, which provides in part: "... it **shall** be the duty of the Secretary to give notice of a special meeting of members to be held at such date, time and place as the secretary may fix." (Emphasis added.) "Shall" must be construed as a mandatory command, see *American Heritage Dictionary* 1598 (4th Ed. 2000) (defining "shall" as (1) a. "Something that will take place or exist in the future ... b. Something, such as an order, promise, requirement, or obligation: *You shall leave now. He shall answer for his misdeeds. The penalty shall not exceed two years in prison.*"). Or, in the words of our Supreme Court, "... the general rule [is] that "shall" is presumptively mandatory." *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (*en banc* 1994).

Simply stated, as the Superior Court ruled, the role of the secretary in giving notice of a special meeting of members is mandatory, not optional, under bylaw 2.7.

3. *The second part of the bylaw cannot mean that only the secretary can “fix the date, time and place for the meeting” because this interpretation would conflict with Bylaw 2.6 which covers place of meeting. (App. Br. 24-25).*

Response: There is no conflict between bylaws 2.6 and 2.7. According to bylaw 2.6, the place of the meeting may be designated by the President, the board, and by the “members entitled to call a meeting” (not the “persons” entitled to call the meeting). “... [A] bylaw will be interpreted to avoid conflicts among its provisions.” 8 Fletcher *Cyc. Corp.* § 4195. Therefore, construing bylaw 2.6 in conjunction with bylaw 2.7, the members entitled to call the meeting (and vote) can specify the meeting place in their written request to the secretary, (if they all agree) but not the date or time of the meeting, which is left to the secretary. If the members do not designate a place in their written request, the secretary must make the designation.

4. *The independent right of members to give notice of a special meeting is also preserved in RCW 24.03.080(1) that does not allow modification by bylaws. (App. Br. 14).*

Response: The Kritzman Group argues that RCW 24.03.080(1) “is not subject to restriction in a nonprofit corporation’s Bylaws.” (App. Br. 23).

No such language appears in the statute, and this argument conflicts with the legislature's directives in RCW 24.03.070, "...The bylaws may contain any provision for the regulation and management of the affairs of a corporation not inconsistent with laws or the articles of incorporation" and also in RCW 24.03.065(1) "...If the corporation has one or more classes of members, the designation of the class or classes, the manner of election or appointment and the **qualifications and rights of the members** of each class **must be set forth in the articles of incorporation or the bylaws.**" (Emphasis added.)

More particularly, RCW 24.03.075 provides: *Meetings of members and committees of members.* "Meetings of members and committees of members may be held at such place, either within or without this state, **as stated in or fixed in accordance with the bylaws ...** Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by other officers or persons or number or proportion of members as provided in the articles of incorporation **or the bylaws.**" (Emphasis added.)

The broad policy of RCW 24.03.080(1) is effectuated through the more specific contractual regulatory provisions of bylaw 2.7. When the first Island Landmarks board adopted this bylaw, (with the approval of

then board member Ellen Kritzman) a contract was created that bound all future members of the organization.

The Superior Court did not “ignore the plain language of Bylaw section 2.7 and RCW 24.03.080(1), all of the Bylaws of Article 2 read as a whole and operative case law.” (App. Br. 26). Rather, the Superior Court followed well established Washington legal precedent reviewed in *Save Columbia CU Committee v. Columbia Community Credit Union*, 134 Wash. App. 175, 180, 139 P3d 386, 389 (Div. 2, 2006) where the court explained: “In interpreting an organization’s bylaws, we apply contract law. *Davenport v. Elliott Bay Plywood Machs. Co.*, 30 Wash. App. 152, 154, 632 P.2d 76 (1981) (citations omitted). Our purpose in interpreting a contract is to ascertain the parties’ intent. *Berg v. Hudesman*, 115 Wash. 2d 657, 663, 801 P.2d 222 (1990). In doing so, we give the bylaws’ language a fair, reasonable, and sensible construction. *Davenport*, 30 Wash. App. at 154, 632 P.2d 76.”

Bylaw 2.7 specifically provides that “if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, time [stet] and place for such meeting.” Therefore, applying the maxim of statutory construction “*expression unius est exclusion alterius*” (the mention of one thing implies the exclusion of another thing, *State ex rel. Port of Seattle v. Department of Pub. Serv.*, 1

Wn 2d 102, 112, 95 P.2d 1007 (1939)), Ellen Kritzman could not legally give notice of the special meeting because secretary Ken De Frang had not neglected or refused to send it. As the court ruled in *Lyzanchuk v. Yakima Ranches Owners Ass'n Phase II*, 73 Wash. App. 1, 7, 866 P.2d 695 (Div. 3, 1994): “This conclusion is reinforced by the maxim of statutory construction ‘expressio unius est exclusion alterius’ – a specific provision for removal inferentially implies exclusion of alternate methods of removal. See *Washington Natural Gas Co. v. Public Util. Dist. 1*, 77 Wash. 2d 94, 98, 459 P.2d 633 (1969). It likewise appears to be the majority rule in this country. 2 W. Fletcher at 202.”

Therefore, RCW 24.03.080 bestows rights which are regulated by bylaw 2.7; it does not create the power for the Kritzman Group to ignore the requirements of bylaw 2.7 and attempt to give a special meeting notice on their own where, as here, the secretary had not neglected or refused to issue such notice.

C. The Kritzman Group improperly utilized proxy voting at the meeting without complying with the provisions of Bylaw 2.11, thereby voiding the purported election's results.

This bylaw states: “Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting.” Ms. Kritzman did not file the proxies with the secretary, but voted for her absent followers herself. Therefore, even if the meeting had been properly called and

noticed, its outcome was invalid. The Kritzman Group admits that they permitted proxy voting and that the proxies were not given to the secretary. Although the secretary did not attend the meeting, their non-compliance with the bylaw is not excused because they could have complied with it by depositing the proxies with Mr. De Frang at any time before the meeting convened.

Ms. Kritzman also admits in her declaration that: “On Sunday, June 3, 2012 I called Ken DeFrang per his request. He told me that he probably would not attend the meeting because neither Ms. Matthews nor Mr. Happy wanted him to go.” (Dec. of Ellen Kritzman, p. 7, lines 12-14, CP 306). Therefore, Ellen Kritzman knew that the secretary would not attend the meeting but nonetheless failed to deliver the proxies to him before the meeting and therefore her use of these proxies intentionally violated the bylaw and voided the purported election’s results.

D. This Court should affirm the Superior Court’s judgment denying the Kritzman Group’s Motion for Partial Summary Judgment because the motion was both moot and premature.

The Kritzman Group’s Assignment of Error argues: “2. The Superior Court erred in denying the appellant’s motion for partial summary judgment on governance as the members scrupulously followed the letter and intent of the corporate Bylaws in providing notice of the

meeting and removing the respondent board members from their positions.”

However, the Superior Court’s judgment denying the Kritzman Group’s Motion for Partial Summary Judgment should be affirmed because after the court had granted the Respondents’ Motion for Summary Judgment, the Motion for Partial Summary Judgment was moot; the case was over. Also, at the time the motion was filed the court had not granted the Kritzman Group leave to file its Second Amended Complaint, and therefore its motion for partial summary judgment was premature in addition to being moot.

CR 56(a) provides: “A party seeking ... to obtain a declaratory judgment may, ... after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.” CR 56(c) provides in part: “The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing.”

Therefore, because Respondents filed their Motion for Summary Judgment based solely on the First Amended Complaint, the Kritzman Group could not properly file a motion for partial summary judgment on its Second Amended Complaint until after the Superior Court had granted

it leave to file it and after the expiration of the period within which the Respondents were allowed to respond. Thus, Plaintiff's Motion for Partial Summary Judgment was premature and was properly not considered by the trial court.

Furthermore, at the November 1, 2012 summary judgment hearing, the Kritzman Group did not raise the trial court's alleged error in not ruling on the motion. It is too late now to raise this issue for the first time on appeal. In a recent decision, this court held as follows:

We will not discuss this argument or consider the authorities Otten cites in support of it. Otten did not make this argument below. A failure to preserve a claim of error by presenting it first to the trial court generally means the issue is waived. *See Bellevue Sch. Dist. No. 405 v. Lee*, 70 Wash.2d 947, 950, 425 P.2d 902 (1967); RAP 2.5(a). While an appellate court retains the discretion to consider an issue raised for the first time on appeal, such discretion is rarely exercised. *Smith v. Shannon*, 2d 26, 38, 666 P.2d 351 (1983). *Karlberg v. Otten*, 167 Wash. App. 522, 531; 280 P.3d 1123 (Div. 1, 2012).

Therefore, this Court should affirm the trial court's judgment denying the Kritzman Group's Motion for Partial Summary Judgment because the motion was moot after the Superior Court granted Respondents' Motion for Summary Judgment; premature because it was based on the allegations in its Second Amended Complaint which was not before the court at the time of the hearing; and because this issue is improperly raised for the first time on appeal.

- E. This court should affirm the Superior Court’s judgment dismissing the case even though it had not ruled on the Kritzman Group’s Motion to Amend the Complaint when it entered its judgment.

The Kritzman Group’s Assignment of Error also argues: “3. The Superior Court improperly failed to consider appellant’s motion to amend the complaint to add a claim that the respondents be judicially removed in accord with RCW 24.03.1031.”

The Superior Court’s judgment should be affirmed because the motion to amend the Complaint by adding this new cause of action was futile because the Kritzman Group lacked standing to invoke RCW 24.03.1031. These purported “members” were not before the court in their individual capacity and therefore lacked standing to seek the removal of Island Landmarks’ board. As this court held in *Lundberg v. Coleman*, 115 Wash. App. 172, 180, 60 P.3d 595 (Div. 1, 2002):

Finally, contrary to her argument on appeal, the pleadings before us raise only claims on behalf of the nonprofit corporation. No claims were ever raised in Lundberg’s name. Pleadings are intended to give notice to the court and to the opponent the general nature of the claims asserted. “A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along.” Argument that claims were made in Lundberg’s name is not substantiated in any of the pleadings before the trial court. Lundberg cannot raise them for the first time on appeal.

Also, the proposed addition of Count IV in the Second Amended Complaint could not have been allowed because it would have been futile;

only the attorney general has standing to make a claim under RCW 24.03.1031. As the court explained in *Lundberg v. Coleman, supra, l.c.* 178, 60 P.3d *l.c.* 599: “In cases like this, the Legislature has determined that a proper remedy for mismanagement of nonprofit corporations is an injunction, an order of dissolution, or appropriate relief in a proceeding brought by the attorney general.” Thus, the Kritzman Group lacked standing to invoke RCW 24.03.1031 and its attempted amendment was futile and could not have been granted by the Superior Court.

Finally, at the November 1, 2012 hearing, the Kritzman Group did not ask the trial court to rule on the motion to amend but instead improperly attempts to raise this issue for the first time on appeal. *Karlberg v. Otten, supra.* Therefore, this court should affirm the Superior Court’s judgment dismissing the case even though the Superior Court had not ruled on the motion to amend.

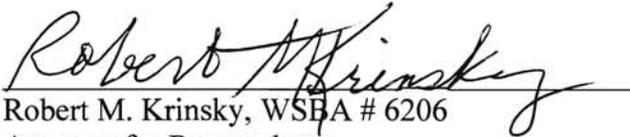
IV. CONCLUSION

The Superior Court properly decided that under the undisputed facts, and the law embodied in the Island Landmarks bylaws, no proper notice of the “special meeting” was given and the purported election of a new board was void. By following the bylaws, the Kritzman Group could have achieved their intended result; but by taking short cuts their effort failed. As the court held in *East Lake Water Assn. v. Rogers, supra:*

“Where a meeting of a nonprofit corporation is not in accordance with its bylaws, its proceedings are void. *State Bank v. Wilbur Mission Church*, 44 Wash. 2d 80, 91-93, 265 P.2d 821 (1954).” Therefore, this court should affirm the trial court’s judgment granting Respondents’ Motion for Summary Judgment.

Signed and dated this 27TH day of June, 2013, at Vashon, King County, Washington.

Respectfully submitted,



Robert M. Krinsky, WSBA # 6206

Attorney for Respondents

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Burton, WA 98013

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington, that on the date set forth below I caused to be served a copy of the foregoing:

RESPONDENTS' BRIEF

on the following counsel of record in this matter:

Court of Appeals Division 1 One Union Square 600 University Street Seattle, WA 98101-1176	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Email <input type="checkbox"/> Facsimile
Rex B. Stratton, Esq., WSBA # 1913 Stratton Law & Mediation, P.S. P. O. Box 636 Vashon, WA 98070 Email: Stratton@rbs-law.com Attorney for Appellant	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile
Lynn Greiner, Esq., WSBA # 13341 801 Second Ave., Suite 1150 Seattle, WA 98104 Email: lgreiner@seanet.com Co-counsel for Appellant	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile

DATED this 27th day of June, 2013.



Ava J. Schroen, R.P., Paralegal

EXHIBIT A

BYLAWS
OF
ISLAND LANDMARKS

Article 1
Registered Office and Registered Agent

The registered office of the corporation shall be located in the State of Washington at such place as may be fixed from time to time by the Board of Directors ("Board") upon filing of such notices as may be required by law, and the registered agent shall have a business office identical with such registered office. Any change in the registered agent or registered office shall be effective upon filing such change with the office of the Secretary of State of the State of Washington.

Article 2
Membership

- 2.1 **Classes of Members.** The corporation shall initially have one class of members. Additional classes of members, the manner of election or appointment of each class of members, and the qualifications and rights of each class of members may be established by amendment to these Bylaws.
- 2.2 **Qualification of Members.** Membership shall be open and unlimited to all persons who have an interest in promoting historic preservation of architecture, landscape, and heritage of Vashon and Maury Islands situated in King County, Washington. In order to qualify for membership, a member shall pay annual membership dues which shall initially be \$ 25.00. Annual dues may be established and changed from time to time by a majority vote of the membership of the Board. Members may have such other qualifications as the Board may prescribe by amendment to these Bylaws.
- 2.3 **Voting Rights.**
- 2.3.1 Each member entitled to vote with respect to the subject matter of an issue submitted to the membership shall be entitled to one vote upon each such issue.
- 2.3.2 Each member entitled to vote at an election of directors may cast one vote for as many persons as there are directors to be elected and for whose selection such member has a right to vote.

- 2.4 Annual Meeting. The annual meeting of the members shall be held the 20th day of April in each year at 6:30 pm. for the purpose of electing Directors and transacting such other business as may properly come before the meeting. If the day fixed for the annual meeting is a legal holiday at the place of the meeting, the meeting shall be held on the next succeeding business day. If the annual meeting is not held on the date designated therefor, the Board shall cause the meeting to be held as soon thereafter as may be convenient.
- 2.5 Special Meetings. The President, any two (2) members of the Board, or not less than ten percent (10%) of the members entitled to vote at such meeting, may call special meetings of the members for any purpose.
- 2.6 Place of Meetings. All meetings of members shall be held at the principal office of the corporation or at such other place within or without the State of Washington designated by the President, the Board, by the members entitled to call a meeting of members, or by a waiver of notice signed by all members entitled to vote at the meeting.
- 2.7 Notices of Meetings. Written notice of any annual or any special meeting of the members stating the place, day, and hour of the meeting -- and in case of a special meeting, the purpose or purposes for which the meeting is called -- shall be given by the secretary or persons authorized to call the meeting to each member of record entitled to vote at the meeting. Such notice shall be given not less than ten (10) nor more than fifty (50) days prior to the date of the meeting. At any time, upon the written request of not more than ten percent (10%) of the members entitled to vote at the meeting, it shall be the duty of the Secretary to give notice of a special meeting of members to be held at such date, time and place as the secretary may fix, not less than ten nor more than thirty-five days after receipt of such written request, and if the Secretary shall neglect or refuse to issue such notice, the person or persons making the request may do so and may fix the date, time and place for such meeting. If such notice is mailed, it shall be deemed delivered when deposited in the official government mail properly addressed to the member at his or her address as it appears on the records of the corporation with postage thereon prepaid.
- 2.8 Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of these Bylaws, the Articles of Incorporation or applicable Washington law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.
- 2.9 Quorum. Thirty Percent (30%) of the members of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the members. If less than a quorum of the members entitled to vote is represented at a meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice.

2.10 **Manner of Acting.** The vote of a majority of the votes entitled to be cast by the members represented in person or by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater portion is required by applicable Washington law, the Articles of Incorporation or these Bylaws.

2.11 **Proxies.** A member may vote by proxy executed in writing by the member or by his or her attorney-in-fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. A proxy shall become invalid eleven (11) months after the date of its execution unless otherwise provided in the proxy. A proxy with respect to a specific meeting shall entitle the holder thereof to vote at any reconvened meeting following adjournment of such meeting but shall not be valid after the final adjournment thereof.

2.12 **Action by Members Without a Meeting.** Any action which could be taken at a meeting of the members may be taken without a meeting if a written consent setting forth the action so taken is signed by all members entitled to vote with respect to the subject matter thereof. Such written consents may be signed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Any such written consent shall be inserted in the minute book as if it were the minutes of a meeting of the members.

2.13 **Meetings by Telephone.** Members of the corporation may participate in a meeting of members by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Article 3.
Board of Directors

3.1 **General Powers.** The affairs of the corporation shall be managed by a Board of Directors.

3.2 **Number.** The Board shall consist of not less than five (5) nor more than eleven (11) Directors, the specific number to be set by resolution of the Board. The number of Directors may be changed from time to time by amendment to these Bylaws, provided that no decrease in the number shall have the effect of shortening the term of any incumbent Director.

3.3 **Qualifications.** Directors shall be members of the corporation. Directors may have such other qualifications as the Board may prescribe by amendment to these Bylaws.

- 3.4 Election of Directors.
- 3.4.1 Initial Directors. The initial Directors named in the Articles of Incorporation shall serve until the first annual meeting of members.
- 3.4.2 Successor Directors. Successor Directors shall be elected each year at the annual meeting of members. (The election of Directors may be conducted by mail in such manner as the Board of Directors shall determine).
- 3.5 Term of Office. Unless a Director dies, resigns or is removed, he or she shall hold office until the next annual meeting of the Board or until his or her successor is elected, whichever is later.
- 3.6 Annual Meeting. The annual meeting of the Board shall be held without notice immediately following and at the same place as the annual meeting of members for the purposes of electing officers and transacting such business as may properly come before the meeting.
- 3.7 Regular Meetings. By resolution, the Board may specify the date, time and place for the holding of regular meetings without other notice than such resolution.
- 3.8 Special Meetings. Special meetings of the Board or any committee designated and appointed by the Board may be called by or at the written request of the President or any two (2) Directors, or, in the case of a committee meeting, by the chairman of the committee. The person or persons authorized to call special meetings may fix any place either within or without the State of Washington as the place for holding any special Board or committee meeting called by them.
- 3.9 Meetings by Telephone. Members of the Board or any committee designated by the Board may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.
- 3.10 Place of Meetings. All meetings shall be held at the principal office of the corporation or at such other place within or without the State of Washington designated by the Board, by any persons entitled to call a meeting or by a waiver of notice signed by all Directors.
- 3.11 Notice of Special Meetings. Notice of special Board or committee meetings shall be given to a Director in writing or by personal communication with the Director not less than ten (10) days before the meeting. Notices in writing may be delivered or mailed to the Director at his or her address shown on the records of the corporation. Neither the business to be transacted at, nor the purpose of any special meeting need be specified in the notice of such meeting. If notice

is delivered by mail, the notice shall be deemed effective when deposited in the official government mail properly addressed with postage thereon prepaid.

3.12 Waiver of Notice

3.12.1 **In Writing.** Whenever any notice is required to be given to any Director under the provisions of these Bylaws, the Articles of Incorporation or applicable Washington law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the waiver of notice of such meeting.

3.12.2 **By Attendance.** The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

3.13 **Quorum.** Sixty percent (60%) of the number of Directors fixed by or in the manner provided by these Bylaws shall constitute a quorum for the transaction of business at any Board meeting. If a quorum is not present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

3.14 **Manner of Acting.** The act of the majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board, unless the vote of a greater number is required by these Bylaws, the Articles of Incorporation or applicable Washington law.

3.15 **Presumption of Assent.** A Director of the corporation present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting, or unless such Director files a written dissent or abstention to such action with the person acting as secretary of the meeting before the adjournment thereof, or forwards such dissent or abstention by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

3.16 **Action by Board Without a Meeting.** Any action which could be taken at a meeting of the Board may be taken without a meeting if a written consent setting forth the action so taken is signed by each of the Directors. Such written consents may be signed in two (2) or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Any such written consent shall be inserted in the minute book as if it were the minutes of a Board meeting.

3.17 Resignation. Any Director may resign at any time by delivering written notice to the President or the Secretary at the registered office of the corporation, or by giving oral or written notice at any meeting of the Directors. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.18 Removal. At a meeting of members called expressly for that purpose, one or more Directors (including the entire Board) may be removed from office, with our without cause, by two-thirds (2/3) of the votes cast by members then entitled to vote on the election of Directors represented in person or by proxy at a meeting of members at which a quorum is present.

3.19 Vacancies. A vacancy in the position of Director may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board. A Director who fills a vacancy shall serve for the unexpired term of his or her predecessor in office.

3.20 Board Committees

3.20.1 Standing or Temporary Committees. The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more standing or temporary committees, each of which shall consist of two or more Directors. Such committees shall have and exercise the authority of the Directors in the management of the corporation, subject to such limitations as may be prescribed by the Board, except that no committee shall have the authority to: (a) amend, alter or repeal these Bylaws; (b) elect, appoint or remove any member of any other committee or any Director or officer of the corporation; (c) amend the Articles of Incorporation; (d) adopt a plan of merger or consolidation with another corporation; (e) substitute the sale, lease or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; (f) authorize the voluntary dissolution of the corporation or revoke proceedings therefor; (g) adopt a plan for the distribution of the assets of the corporation; or (h) amend, alter or repeal any resolution of the Board which by its terms provides that it shall not be amended, altered or repealed by a committee. The authority shall not operate to relieve the Board or any individual Director of any responsibility imposed upon it, her or her by law.

3.20.2 Quorum; Manner of Acting. A majority of the number of Directors composing any committee shall constitute a quorum, and the act of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

3.20.3 Resignation. Any member of any committee may resign at any time by delivering written notice to the President, the Secretary, or the chairperson of such committee by giving oral or written notice at any meeting of the committee. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.20.4 Removal of a Committee Member. The Board, by resolution adopted by a majority of the Directors in office, may remove from office any member of any committee elected or appointed by it.

3.21 Compensation. The Directors shall receive no compensation for their service as Directors but may receive reimbursement for expenditures incurred on behalf of the corporation.

Article 4 Officers

4.1 Number and Qualifications. The officers of the corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer, each of whom shall be elected by the Board. Other officers and assistant officers may be elected or appointed by the Board, such officers and assistant officers to hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as may be provided by resolution of the Board. Any officer may be assigned by the Board any additional title that the Board deems appropriate. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The officers of the corporation shall be elected each year by the Board at the annual meeting of the Board. Unless an officer dies, resigns, or is removed from office, he or she shall hold office until the next annual meeting of the Board or until his or her successor is elected.

4.3 Resignation. Any officer may resign at any time by delivering written notice to the President, a Vice President, the Secretary or the Board, or by giving oral or written notice at any meeting of the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery thereof and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.4 Removal. Any officer or agent elected or appointed by the Board may be removed from office by the Board whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

- 4.5 **Vacancies.** A vacancy in any office created by the death, resignation, removal, disqualification, creation of a new office or any other cause may be filled by the Board for the unexpired portion of the term or for a new term established by the Board.
- 4.6 **President.** The President shall be the chief executive officer of the corporation, and, subject to the Board's control, shall supervise and control all of the assets, business and affairs of the corporation. The President shall preside over meetings of the members and the Board. The President may sign deeds, mortgages, bonds, contracts, or other instruments, except when the signing and execution thereof have been expressly delegated by the Board or by these Bylaws to some other officer or agent of the corporation or are required by law to be otherwise signed or executed by some other officer or in some other manner. In general, the President shall perform all duties incident to the office of President and such other duties as are assigned to him or her by the Board from time to time.
- 4.7 **Vice Presidents.** In the event of the death of the President or his or her inability to act, the Vice President (or if there is more than one Vice President, the Vice President who was designated by the Board as the successor to the President, or if no Vice President is so designated, the Vice President whose name first appears in the Board resolution electing officers) shall perform the duties of the President, except as may be limited by resolution of the Board, with all the powers of and subject to all the restrictions upon the President. Vice Presidents shall have, to the extent authorized by the President or the Board, the same powers as the President to sign deeds, mortgages, bonds, contracts or other instruments. Vice Presidents shall perform such other duties as from time to time may be assigned by the President or the Board.
- 4.8 **Secretary.** The Secretary shall: (a) keep the minutes of meetings of the members and the Board, and minutes which may be maintained by committees of the Board; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records of the corporation; (d) keep records of the post office address and class, if applicable, of each member and Director and the name and post office address of each officer; (e) sign with the President, or other officer authorized by the President or the Board, deeds, mortgages, bonds, contracts, or other instruments; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the Board.
- 4.9 **Treasurer.** If requested by the Board, the Treasurer shall give a bond for the faithful discharge of his or her duties in such amount and with such surety or sureties as the Board may determine. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the

corporation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws; and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board.

- 4.10 **Salaries.** The salaries of the officers and agents shall be as fixed from time to time by the Board or by any person or persons to whom the Board has delegated such authority. No officer shall be prevented from receiving a salary by reason of the fact that he or she is a Director of the Corporation.

Article 5
Administrative Provisions

- 5.1 **Books and Records.** The Corporation shall keep at its principal or registered office copies of its current Articles of Incorporation and Bylaws; correct and adequate records of accounts and finances; minutes of the proceedings of its members and Board, and any minutes which may be maintained by committees of the Board; records of the name and address and class, if applicable, of each member and Director, and of the name and post office address of each officer; and such other records as may be necessary or advisable. All books and records of the corporation shall be open at any reasonable time to inspection by any member of three months standing or to a representative of more than five percent of the membership.
- 5.2 **Accounting Year.** The accounting year of the corporation shall be the twelve months ending December 31st of each year.
- 5.3 **Rules of Procedure.** The rules of procedure at meetings of the Board and committees of the Board shall be rules contained in Roberts' Rules of Order on Parliamentary Procedure, newly revised, so far as applicable and when not inconsistent with these Bylaws, the Articles of Incorporation or any resolution of the Board.

Article 5
Administrative Provisions

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member of three months standing or to a representative of more than five percent of the membership.

- 5.2 **Accounting Year.** The accounting year of the corporation shall be the twelve months ending December 31st of each year.
- 5.3 **Rules of Procedure.** The rules of procedure at meetings of the Board and committees of the Board shall be rules contained in Roberts' Rules of Order on Parliamentary Procedure, newly revised, so far as applicable and when not inconsistent with these Bylaws, the Articles of Incorporation or any resolution of the Board.

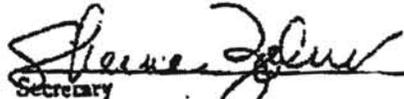
Article 6 Board of Advisors

- 6.1 **Number and Qualifications.** The Directors, by the vote of a majority of the number of Directors, may create and appoint Advisors to the corporation for any purpose, for example to give guidance on the affairs, fundraising, and direction of the Corporation, from persons who otherwise do not desire to be corporate officers. The number of Advisors shall be unlimited. There shall be no qualifications required for persons serving as Advisors other than possession of an interest in the Corporation and its purposes.
- 6.2 **Authority.** While the Advisors may address any issue of relevance to Corporation, especially issues requested for consideration by the Directors or the President of the Corporation, the Advisors' determinations shall not be binding and official. The Advisors shall not act in an official corporate capacity.

Article 7 Amendments

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the vote of a majority of the number of Directors fixed by or in the manner provided by these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors on this
11th day of Dec, 1995


Secretary