

NO. 69519-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MATT SUROWIECKI, JR. and INEZA KUCEBA,

Appellants,

v.

HAT ISLAND COMMUNITY ASSOCIATION, a Washington
nonprofit corporation and homeowners' association,

Respondent.

BRIEF OF APPELLANTS

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I. INTRODUCTION AND SUMMARY

This appeal raises a question of first impression in Washington regarding corporate governance of nonprofit corporations acting as homeowners' associations and, specifically, whether a board of directors of a nonprofit corporation acting as a homeowners' association may deny members the right to vote and thereby transact business at a lawfully called special meeting of the members as provided for in the governing bylaws. In this case, consistent with the requirements of the governing bylaws (the "Bylaws"), members of the Hat Island Community Association ("HICA") presented the board of directors of HICA with a call for a special meeting of the members to consider and take action with respect to two previously approved marina projects costing in excess of \$4.2 million (whether to proceed with either or both projects as planned or on a scaled back basis). While the Board gave notice of and held a meeting, it refused at that meeting to allow members to vote and take action with respect to the two marina projects. In refusing members the right to vote and take action at the meeting, the Board violated the members' rights under Bylaws which were adopted in accordance with Washington State's Nonprofit Corporation's Act and Homeowners' Association Act. Appellants thereafter sued to establish and enforce the rights of HICA members to call and vote at special meetings and to

require the Board to respect and honor those rights. The trial court below erred in dismissing Appellants' claim for that relief and in awarding HICA partial attorney's fees.

II. ASSIGNMENTS OF ERROR

Appellants make the following assignments of error:

1. The trial court erred when it dismissed Appellants' claim for declaratory relief pursuant to CR 12(b)(6).¹ CP 123-124.
2. The trial court erred when it awarded partial attorney's fees to Respondent. CP 54.

III. ISSUES PRESENTED

1. Did the trial court err as a matter of law when it dismissed with prejudice Appellants' claim for declaratory relief concerning the right of HICA members to call a meeting and vote and take action at such a meeting? CP 123-124.
2. Did the trial court err as a matter of law in awarding partial attorney's fees to Respondents? CP 32-33.

¹ Appellants have elected to comply with the requirements of RAP 10.4(c) by including a copy of the applicable statutes as Appendix A to this brief.

IV. STATEMENT OF THE CASE

A. Statement of the Facts.

Appellants are owners of lots located on Gedney (Hat) Island, located in Puget Sound, west of Everett, and are members in good standing of HICA. CP 328-335 (Complaint, ¶1). HICA is a Washington nonprofit corporation operating as a homeowners' association. HICA's authority to act is derived from and governed by HICA's Bylaws, which HICA adopted under the authority of Chapter 24.03 RCW and Chapter 64.38 RCW. CP 328-335 (Complaint, ¶¶ 2-3).

One amenity of Hat Island that is owned and managed by HICA is a boat marina. In July of 2006 and in February of 2007, when the economy was booming and the real estate market was on a continuing rise, HICA members voted in favor of two special assessments, in the amount of \$2,105,000 each (for a total of \$4,210,000), to improve and expand the boat marina. CP 328-335 (Complaint, ¶¶ 5-6). Six years later, circumstances were dramatically different. CP 328-335 (Complaint, ¶ 7). As a result, in May of 2012, Appellants, and 140 other HICA members, submitted a request, as specifically authorized by the Bylaws of HICA and Washington state law, to the Board of Trustees of HICA, to call a special meeting of the members of HICA, for the specific purposes of (a) receiving information from the Board and other interested parties who are

owners of Hat Island lots concerning the need, cost, and feasibility of the Marina Improvement and Marina Expansion projects previously approved by vote of the members at special meetings in 2006 and 2007, and (b) to decide by vote whether or not both projects should be put to another vote of the Members for purposes of either terminating, redefining, or continuing the projects. CP 328-335 (Complaint, ¶ 8).

Although the Board confirmed that the threshold for calling a special meeting had been met, and while the Board scheduled a special meeting of the members, the Board expressly refused to include, as a purpose and action item of the meeting, a “vote to undo or otherwise modify the marina projects or the special assessments related to those projects” CP 328-335 (Complaint, ¶ 10), and it refused to allow any discussion or vote on that subject at the special meeting held on July 22, 2012. CP 328-335 (Complaint, ¶ 10).

In refusing to place the issue of “deciding by vote whether or not both projects should be put to another vote of the Members for purposes of either terminating, redefining, or continuing the projects” on the agenda of the July 22, 2012 special meeting, and in stating its intent to proceed with construction notwithstanding the request by the owners to reconsider the projects before the Board spends their money, the Board violated its duties both to the Appellants and to all members of HICA under Article V,

Section 2 of the Bylaws, and under Washington state law. To remedy that deprivation of their rights under the Bylaws and Washington state law, Appellants filed the underlying lawsuit for declaratory and injunctive relief. CP 326-335.

B. Summary of Proceedings Below.

Appellants filed this lawsuit to vindicate their rights and the rights of 140 other owners of lots on Hat Island to have a vote to decide if any aspect of the marina improvement and expansion projects with respect to which construction had not yet commenced should be reexamined in light of the changed circumstances emerging from the 2008 recession and ongoing economic collapse and other pressing capital expenditure needs on the island. CP 177-184 (the Declaration of Matt Surowiecki, Sr ¶ 6) (the “Surowiecki Declaration”). The lawsuit raised an important issue of corporate governance – namely the rights of members of a nonprofit corporation operating as a homeowners’ association to call special meetings of the members and transact business at such special meetings – and to preserve the status quo pending a ruling on the governance issue.

While the underlying lawsuit and the special meeting called for by Appellants and 140 other members arose in the context of a vote on the future of two marina projects, the corporate governance issue raised in the lawsuit has much broader implications, as it involves the rights of HICA

members to call for and transact business at a special meeting on any subject affecting Hat Island and its members, including such things as the deficient water system, power lines, roads and road maintenance, the barge and ferry boat, and the like. CP 177-84 (Declaration of Matt Surowiecki, Sr ¶ 6).

To provide the trial court with the time needed to address the corporate governance issues raised in the complaint before any significant work on the marina projects was undertaken, Appellants moved for a preliminary injunction at the time they filed the underlying lawsuit. CP 322-325. As of the week the lawsuit and motion for preliminary injunction were prepared (the last week of August 2012), no work yet had commenced, and no word had issued from HICA that any contract for the work had been executed. CP 177-84 (Surowiecki Declaration, ¶ 10). The lawsuit was filed on Monday, August 27, 2012, CP 326-335, and the preliminary injunction hearing was set for the earliest possible date, September 4, 2012. CP 322-325; 167-68.

In response to the motion, HICA alleged that a construction contract had just been entered into by HICA with a general contractor, but no such contract was produced or put into the record. CP 232-239 (Declaration of Charles Motson III, ¶ 12) (the “Motson Declaration”). At the hearing on the preliminary injunction, HICA disclosed that a contract

had been signed on Friday, August 24, 2012 – the Friday preceding the filing of the lawsuit. Further, between the signing of the contract and the hearing on the preliminary injunction, HICA’s contractor had begun mobilizing and ordering materials. CP 232-239 (Motson Declaration, ¶ 12-13). This rush to action altered the status quo, and resulted in the court denying the motion for preliminary injunction at the hearing on September 4, 2012. CP 167-168.

On September 18, 2012, HICA filed a motion to dismiss Appellants’ complaint for failure to state a claim for relief (“Dismissal Motion”), based upon its interpretation of the Bylaws and underlying statutes. CP 158-166. HICA cited no case law and no secondary sources supporting its position, and based its argument solely on its interpretation of the Bylaws and underlying statutes. CP 158-166. Appellants responded in the form of an opposition memorandum in which they set forth a well-reasoned argument in support of their position that members have a right to call a special meeting and to transact business at such a meeting by way of a vote, with support from the Bylaws, the applicable statutes, and two reported out of state opinions. CP 136-157.

The Respondents filed no answer to Appellants’ Complaint, and instead moved to dismiss Appellants’ Complaint under CR 12(b)(6), CP 158-166, although because it relied on information outside the

complaint,² the motion more correctly constituted a motion for summary judgment. CR 12(c). In the Dismissal Motion, HICA sought some but not all of the relief it ultimately requested under provisions of the Washington Homeowners' Statute, Chapter 64.38 RCW. Specifically, HICA moved to dismiss based upon its interpretation of the Bylaws and the enabling legislation including RCW 64.38.010, .020 and .025 (concerning the authority of boards of directors of homeowners associations), CP 158-166, but it did not at that time seek relief under section .050 of that statute for attorney's fees.

At the hearing on the Dismissal Motion, the trial court granted HICA's motion and entered an order dismissing the claims for declaratory and injunctive relief. CP 123-124. Since Respondent had not included its claim for attorney's fees in the Dismissal Motion, that claim remained outstanding. Following entry of the Dismissal Order, HICA filed a motion for an award of attorney's fees and costs, CP 114-122, which the trial court granted in part by order entered on October 17, 2012. CP 32-33. Thereafter, on October 31, 2012, HICA filed a "Motion for Entry of Final

² The Respondent referred to and relied upon facts are set forth in Exhibit "B" to the Surowiecki Declaration, CP 177-184 (the HICA Bylaws, CP 189-197) filed in support of a motion for a preliminary injunction. Specifically, the Respondent quoted two entire sections from the Bylaws that are not referred to in the Complaint, and depended on those provisions for its corporate authority argument.

Judgment.” CP 21-22. On November 14, 2012, the trial court entered a final judgment. Appellants filed a notice of appeal, CP 23-31, and following entry of the final judgment, filed an amended notice of appeal on November 29, 2012.

V. ARGUMENT

A. Standard Of Review.

This Court reviews orders granting motions to dismiss a complaint for failure to state a claim under CR 12(b)(6) on a de novo basis. *Haberman v. WPPSS*, 109 Wn. 2d 107, 120-21, 744 P.2d 254 (1987). Likewise, this Court reviews orders granting motions for summary judgment on a de novo basis. *Hartley v. State*, 103 Wn. 2d 768, 774, 698 P.2d 77 (1985). Conclusions of law, and conclusions of law erroneously labeled as findings of fact, are reviewed *de novo*. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 79 P.3d 369 (2003). The amount of attorney’s fees to be awarded is reviewed on the substantial evidence test, and the standard of review is abuse of discretion. *Schmidt v. Cornerstone Investments*, 115 Wn. 2d 148, 169, 795 P.2d 1143 (1990).

B. The Trial Court's Order Dismissing Plaintiffs' Claim for Declaratory Relief Must Be Reversed.

1. The HICA Bylaws Confer on Members the Right to Call and Transact Business at Special Meetings of the Members.

The HICA Bylaws state that “Special meetings of the members may be called at any time by the President or a majority of the Board of Trustees or by members representing 15 percent of members in good standing.” Art. V, § 2. CP 177-205 (Surowicki Declaration, ¶ 10 and Exhibit B). Once the requisite number of members agree to call a meeting, “Notice of Special meeting stating the object thereof shall be given by the secretary” Art. V, § 2. Neither the giving of such notice, nor the content of the notice, is discretionary to the Secretary or Board. CP 177-205 (Surowicki Declaration, ¶ 10 and Exhibit B). HICA’s Bylaws expressly grant members the right to call a special meeting, and HICA’s secretary is under a mandate to give all members a notice “stating the object” of the meeting as designated by the members calling the meeting. Nowhere do the Bylaws give the Board the authority to refuse to schedule and give notice to the members of a special meeting for the purpose requested by members calling the meeting, or to otherwise modify the terms of the requested special meeting. Cf. Bylaws, Art. V; Art. VI (describing powers and duties of Trustees). CP 177-205 (Surowicki Declaration, ¶ 10 and Exhibit B).

This right to transact business at a special meeting is expressly provided for in Section 3, Article V of the Bylaws, which sets forth the voting rights and rights of the members to transact business at a special meeting as follows:³

At all annual and special meetings of the membership, 15% of all the members of the Association, in person or by valid ballot, shall constitute a quorum **for the transaction of business**. [Emphasis added] CP 177-205 (Surowicki Declaration, ¶ 10 and Exhibit B).

Members “transact business” at meetings by way of a vote; there is no other way for members to transact business than by voting. For Section 3, Article V to have any meaning, it must be construed to allow members to vote on the “transaction of business” at special meetings called by the members.

2. The Washington Nonprofit Corporation’s Act Authorizes Action by Members at Special Meetings if the Bylaws so Provide.

The Washington Nonprofit Corporation Act specifically empowers members of a nonprofit corporation to call special meetings if a call is so provided for in the bylaws:

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.*

³ Surowiecki Declaration, Exhibit B.

RCW 24.03.075. There is no statutory restraint on the subject matter or business that may be transacted at special meetings. *Cf.* RCW 24.03.075. Indeed, this right of members of nonprofit corporations to have the power to make decisions on behalf of the nonprofit entity, independent of the board, recognizes the special nature of the members of nonprofit corporations and that corporate expenditures and actions must be funded by the members via either general or special assessments.⁴

Indeed, the right on the part of members of nonprofit corporations to call special meetings, to specify the business to be transacted at a special meeting, and to vote at the special meeting on whether to transact that business, is all expressly authorized in the Nonprofit Corporation's Act, in three consecutive portions of the statute, as follows:

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.** In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting. [RCW 24.03.075] [Emphasis added]

⁴ This right on the part of members to call special meetings is merely the nonprofit corporation equivalent of the public initiative and referendum process, as discussed hereafter.

Notice, in the form of a record, in a tangible medium, or in an electronic transmission, stating the place, day, and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. [RCW 24.03.080]

The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. **Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.** [RCW 24.03.085] [Emphasis added]

Accordingly, if a special meeting is called by the members, under the Bylaws the secretary of HICA must give notice of the meeting as called by the members. Neither the secretary, nor the Board, has any legal authority to override or refuse to give notice of a requested special meeting (.075) or to change the purpose of the requested special meeting (.080) or to deny the members the right to vote and transact business at the special meeting (.085). To interpret the statute as HICA proposes (with members having no right to set the agenda for and no right to vote at a special meeting) renders it meaningless and a nullity, as what is the value of having the right to call a meeting if the requested agenda for that meeting – the very business to be transacted at the meeting and that was

the purpose for calling the meeting – may be rejected and dishonored by the Board or the association’s officers?

Indeed, it is a basic tenet of statutory construction in Washington that “statutes should be construed to effect their purpose, and strained, unlikely, or absurd consequences” are to be avoided. “[W]e will not construe a statute to reach an absurd result because we do not presume that the Legislature intended absurd results.” *In re the Personal Restraint of Andress*, 147 Wn.2d 602, 610, 56 P.3d 981 (2002). To interpret this express statutory right on the part of members of nonprofit corporations operating as homeowners’ associations to call special meetings to transact business by vote of the members, but then deny them the right to transact the very business that is the purpose for which the meeting was called, is, indeed, an absurd result.

HICA’s argument for denying members the right to take action by way of a vote at a special meeting is contrary to statute and is based upon the false premise that the board of a nonprofit corporation acting as a homeowners’ association, **and only the board**, is the sole body legally authorized to make business decisions affecting the association. As purported support for this false premise, HICA cited to sections of the Nonprofit Corporation’s Act (RCW 24.03.025(4)(b), and 24.03.070) and of the Homeowners’ Association Act (RCW 64.38.025(1)). CP 163.

However, none of these statutes provides that the board is the exclusive body empowered to make decisions regarding the business that is to be transacted by the association. RCW 24.03.025(4)(b) simply provides that an association's articles of incorporation may define, limit and regulate the powers of the corporation and its directors and members. Likewise, RCW 24.03.070 authorizes a corporation's bylaws to contain provisions "for the regulation and management of the affairs of a corporation." And, the section of the homeowner's association act cited by HICA (RCW 64.38.025(1)), CP 163, begins with the proviso "Except as provided in the association's governing documents," and nowhere does it say the board's role is exclusive. As HICA admitted in its moving papers, the Bylaws are one of the "governing documents" that set forth the rights and responsibilities of the members and the Board, CP 161-162, and under Section 3, Article V of the Bylaw, members absolutely and unqualifiedly have the right to call a special meeting for the purpose of transacting business.

Not only do none of these statutes make the board the "exclusive" body authorized to make decisions for the association on the business the association may transact, these statutes, and HICA's "governing document" (the Bylaws), specifically vest another body – the members and property owners – with a parallel right and power to make such

decisions, by granting them the right to call special meetings and make decisions at special meetings as to the business to be transacted. The responsibility to carry out (execute) the decisions of the members rests with the Board, but the right of the members to make decisions regarding the business of the association that is to be transacted is nowhere abridged by the Bylaws, and, to the contrary, is granted to the members by way of the special meeting process contained in the Bylaws.

Significantly, in its briefing to the trial court on the preliminary injunction motion, HICA noted that “homeowners associations are essentially mini-municipalities, governed by its elected officials – the board of directors.” CP 220 (page 15, lines 22-23). The analogy to municipalities is apropos, and provides further support for the rights of members to propose and vote on business decisions involving associations. Elected officials of municipalities and other governmental entities are not the only body vested with the authority to enact laws on behalf of a municipality any more than is the HICA Board the only entity with authority to make decisions for HICA’s members. Indeed, Article II, Section 1 of the Washington State Constitution expressly reserves and confers on the people of the state of Washington the right of the people to enact laws through the initiative process (Section 1(a)), and to modify or repeal laws enacted by the legislature through the referendum process

(Section 1(b)). Municipalities recognize the same right on the part of citizens residing within their jurisdictions. See, e.g., Chapter 8, Title 2 of the Seattle Municipal Code, which confers on residents of the city of Seattle the right to enact laws through the initiative process. Members of nonprofit corporations and homeowner's associations have the same rights, which are exercised through the special meeting process.

Notably, HICA offered no case law whatsoever to support the proposition for which it argued. HICA offered not a single reported decision, nor even any secondary authority, for the proposition that while members have a right to call a special meeting, they have no right to transact business at the special meeting. While there is no reported decision in Washington state on this issue, case law outside of Washington interpreting substantively similar statutes recognizes the clear right of members of nonprofit corporations acting as homeowner's associations to hold special meetings and transact business on the matters designated by the members who called the meeting.

Courts in Pennsylvania and Nevada both have affirmed the rights of association members to call a special meeting and have their requested agendas considered at a special meeting. Where the bylaws of a homeowners' association permit a substantial minority to call a special meeting, the board of directors does not have discretion to refuse to call or

modify the terms of the meeting. *Donohue v. Arrowhead Lake Community Assoc*, 718 A.2d 904 (Pa. Commw. Ct. 1998); *Eversole v. Sunrise Villas VIII Homeowners Assoc.*, 925 P.2d 505 (Nev. 1996). The power to call a special meeting “is a safety provision empowering a substantial minority to bring an issue before the Association **or take necessary action.**” [Emphasis added] *Eversole*, 925 P.2d at 508 (ordering board to call a special meeting after necessary number of members called the meeting).

In *Donohue*, the plaintiff obtained the necessary number of signatures, as provided in the bylaws, to call a special meeting. 718 A.2d at 905. The purpose of the meeting was to divest the Association’s board of the power to approve a sixteen million dollar upgrade to the sewer system. *Id.* Despite the demand, however, the board chose not to call the meeting. *Id.* The plaintiff sued to force the Association to hold the meeting, and prevailed at both trial and appellate levels. *Id.* To call a special meeting, the court said, the members only needed to satisfy the pertinent requirements in the bylaws. *Id.* The bylaws indicated a special meeting could be called “upon written petition of five-percent of the Members of the Association **who would have the right to vote at such special meetings.**” [Emphasis added] *Id.* The court further noted that the Pennsylvania Nonprofit Corporation Law also empowered members to

call a special meeting (as does the Washington statute). *Id.* Thus, the appeals court aptly quoted the trial court's order "requiring the Plaintiff to commence this proceeding in spite of a clear statutory mandate to convene a special meeting is frivolous, dilatory, obdurate and vexatious . . ." *Id.* at 906.

HICA's Board should not be allowed to avoid the rights conferred on the members to call and conduct Special Meetings by characterizing such meetings as informational only, CP 177-205 (Surowiecki Declaration, ¶ 7 and Exhibit F) without an inherent power to actually conduct business.

C. The Trial Court's Award of Attorney's Fees Should Be Reversed.

The trial court erred as a matter of law in awarding partial attorney's fees to Respondents for two reasons: (1) The claim for declaratory relief does not involve a statutory claim under the Washington Homeowners' Association Act, but rather is a claim to enforce Appellants' rights to call and vote at a special meeting under the Bylaws. The Bylaws contain no attorney's fee clause, and as such, it was error to award attorney's fees by reason of the Washington Homeowners' Association Act; and (2) even if the Washington Homeowners' Association Act applies, as a matter of law this was not an "appropriate case" for an

attorney's fee award under that statute. The lawsuit involved a bona fide dispute concerning a matter of first impression and this was not an appropriate case in which to award fees.

Here, the lawsuit was not an action under the Washington Homeowners' Association Act, but rather was an action to enforce Appellants' right to call and vote at a special meeting under the Bylaws. While the Washington Nonprofit Corporation's Act, and the Washington Homeowners' Association Act are the enabling acts which authorize HICA to operate and adopt Articles and Bylaws, and as such, these statutes necessarily must be considered as they set forth terms for member voting and action that a homeowners' association may incorporate into its documents, the voting rights issue is governed by the provisions in the Bylaws, and is not an action under the Homeowners' Association statute.

The decision by this court in *Roats v. Blakely Island Maintenance Commission, Inc.*, 169 Wn. App. 263, 279 P.3d 943 (2012) is on point. In *Roats*, this court carefully distinguished claims brought under the Washington Homeowners' Association Act, versus claims brought under the association's governing documents (Bylaws and Covenants) which lacked fee shifting provisions on the corporate governance issue that was the primary issue in the underlying lawsuit. *Id.* at 954-55 (distinguishing the statutory claim under RCW 64.38.050 for open meeting act violations

– a claim for which fees under the statute would apply – and the claim that the Board had exceeded its authority under its governing documents in creating a separate entity to operate and manage a marina, with respect to which there was no fee shifting provision). Here, the inclusion in the Bylaws of authority allowed by the two statutes does not make this an action under Chapter 64.38 RCW. Fundamentally, this was an action to compel compliance with the special meeting and voting rights under the Bylaws, and given the absence of a fee shifting provision in the Bylaws, awarding attorney’s fees was improper.

Moreover, even if the Washington Homeowners’ Association Act were deemed to apply here, under the terms of the fee clause in the statute attorneys’ fees may only be awarded in an “appropriate case.” *See* RCW 64.38.050. Specifically, RCW 64.38.050 provides:

The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

Given this statutory language, an award of fees under RCW 64.38.050 is discretionary. As such, the issue becomes one of determining the facts and circumstances that give rise to an “appropriate case” for awarding or denying an award of attorney’s fees to the prevailing party. On this issue, Washington case law exists, as the Washington’s

Condominium Act, RCW 64.34.455, contains language identical that in the Homeowners Association Statute (“[T]he court, **in an appropriate case**, may award reasonable attorney's fees to the prevailing party”).

In its decision in *Eagle Point Condominium Owners Ass'n v. Coy*, 102 Wn. App. 697, 9 P.3d 898 (2000), this Court discussed the circumstances which give rise to “an appropriate case,” and held that “[T]he purpose of the fee shifting provision in RCW 64.34.455 is to punish frivolous litigation and to encourage meritorious litigation.” Given that criteria, this is not an “appropriate case” in which to award fees to the defendant.

The underlying lawsuit here involved a good faith dispute on a novel issue of law that never has been addressed in any reported decision in Washington.⁵ Plaintiffs arguments were soundly based under HICA's Bylaws as authorized by both the Washington's Nonprofit Corporation's Act and the Homeowner's Association Act.⁶ Specifically, Appellants argued that homeowners have a right under both the Bylaws and the two applicable statutes to call special meetings and to vote and transact

⁵ As discussed above, Appellants located and cited two reported decisions by courts in Nevada and Pennsylvania that supported the rights of members of nonprofit corporations operating as homeowner's associates to call special meetings and to vote and transact business at special meetings. CP 136-157 (Plaintiff's Opposition Memorandum, pages 10-11).

business at special meetings.⁷ The trial court had to square these provisions and rights with the board of directors' authority to act on behalf of the homeowners' association in the context of the two marina assessments which formed the basis for the action. No State of Washington court precedent or legal authority was available to help resolve this issue and, significantly, HICA did not cite to even one decision from any jurisdiction to support its position. While the trial court ultimately ruled in favor of HICA as it related to the special meeting called by the members to address the two marina assessments, strong policy considerations supported the request for the meeting and right to vote made by plaintiffs and 140 other property owners and members.

Moreover, not only was this not a frivolous lawsuit, it was brought by Appellants on behalf of themselves and the other 140 property owners who called for the meeting in a legitimate, good faith effort to enforce what they believed to be their right under the Bylaws to call a special meeting and vote to transact business at such a meeting. To award attorney's fees against the Appellants gives rise to a chilling effect on

⁶ CP 136-157 (Plaintiff's Opposition Memorandum, pages 5-10).

⁷ *Id.*

property owners/members from undertaking any action in the future to protect their rights in court.

Appellants motion for a preliminary injunction was equally valid, and likewise was brought in good faith. Appellants wished to preserve the status quo and have the commencement of any construction deferred until a decision could be made on their request to have a special meeting held with voting rights in place. In the most recently published pronouncement of its intent with respect to the project at the time the lawsuit and motion was filed, the HICA Board had informed the members that construction would commence sometime in September. CP 39-61 (Surowiecki Declaration, ¶ 10). By commencing suit and requesting that the status quo, as it had been represented to Appellants and all other members, be preserved, by way of a hearing on September 4, 2012, plaintiffs acted to ensure that an effective remedy would be available by not having the Board spend the association's money unnecessarily. Plaintiffs did not know that on the last business day before the lawsuit and motion was filed that the Board secretly had signed a contract with a general contractor. CP 232-271 (the Motson Declaration, ¶ 12). The motion for preliminary injunction was a legitimate, necessary and bona fide action taken by Appellants to ensure the Hat Island property owners that work would not proceed until the required meeting and vote had taken place.

In support of its claim for attorney's fees, HICA sought to characterize the lawsuit as a vendetta by a non-party to the litigation, Matt Surowiecki, Sr., and by making factually baseless allegations. The lawsuit was no such thing, and in awarding partial attorney's fees, the trial court made no such finding.⁸

First and foremost, the Appellants, and the 140 other property owners and members who requested the special meeting and a right to vote at the meeting, are not Matt Surowiecki, Sr. They are owners who paid all their dues, were current in paying all special assessments,⁹ and were members in good standing who wanted to take a second look at whether the projects, and particularly the expansion project, should be modified and/or scaled back in light of other pressing and competing capital needs on Hat Island.

⁸ Indeed, to the contrary, the trial court found that Appellants' claims were not frivolous. CP 32-33.

⁹ However, Matt Surowiecki, Sr., himself, this year has paid in excess of \$100,000 in special assessments for the marina projects, and under his Settlement Agreement with the Associated, is deemed to be current in the payment of his assessments. CP 39-61 (Declaration of Matt Surowiecki, Sr. ¶ 3 and Exhibit A).

Second, Matt Surowiecki, Sr. does not own over half the lots on the island, as HICA alleged.¹⁰ The total number of lots on Hat Island exceeds 700.

Third, had he been a plaintiff in the lawsuit, Matt Surowiecki, Sr. would have violated no provision in his Settlement Agreement with HICA, as the issues settled in that agreement had nothing to do with the call for the special meeting that is the subject of this lawsuit.¹¹ Rather, the settlement previously entered into between Mr. Surowiecki and HICA addressed totally unrelated claims, including a claim that HICA's Bylaws violate the requirement in Hat Island plat covenants that owners be treated equitably by reason of their allowing an owner only one vote regardless of the number of lots owned by that person.¹² Further, that Settlement Agreement had been negotiated as of April 2012, long before the Board announced its decision to allow no vote at the special meeting called by the 140 plus members.

Lastly, HICA argued that if fees are not awarded, the cost of the litigation will be borne by owners who have followed the rules and paid

¹⁰ Although if he did, that means he, as a non-plaintiff, is paying half of HICA's legal fees without any award of fees against plaintiffs.

¹¹ CP 39-61 (Surowiecki Declaration Re: Fees, ¶ 3 and Exhibit A, Recital D).

¹² See Recital D to the Settlement Agreement (Exhibit A to the Declaration of Matt Surowiecki, Sr. submitted herewith).

their assessments. More accurately, the attorney's fees will be paid by the Association from dues paid by a significant majority of the lot owners on Hat Island who wanted the meeting and the right to vote – a total of 419 lot owners (the 140 other members who wanted the meeting, the three lots owned by plaintiffs, and the 276 lots owned by Matt Surowiecki, Sr). Nor is this “argument” the criteria by which “an appropriate” case is measured, as discussed above.

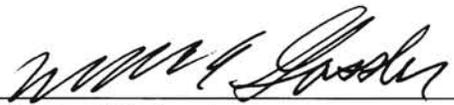
VI. CONCLUSION

The right under HICA's Bylaws of members of HICA to call meetings and transact business by way of a vote at such meetings is an important component of corporate governance for HICA, and this court should reverse the decision by the trial court dismissing Appellants' claim for declaratory relief on that issue and declare, as a matter of law, that HICA's Bylaws authorize HICA's members to call meetings and transact business at such meetings, and that in denying Appellants and the other 140 members who called the meeting the right to vote at the marina meeting, it violated their rights. Likewise, it was error for the trial court to award partial attorney's fees to Respondents, as Appellants' claims arise under the Bylaws, which contain no fee shifting clause, and this was not an appropriate case in which to award fees (indeed, if this Court agrees with Appellants and reverses the dismissal of the claim for declaratory

relief, the fee award likewise must be reversed as Respondent then would not be the substantially prevailing party).

RESPECTFULLY SUBMITTED this 14th day of January, 2013.

MONTGOMERY PURDUE
BLANKINSHIP & AUSTIN PLLC

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Attorneys for Appellants

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

On the date given below, I caused to be served by legal messenger a copy of this document on the following attorney as follows:

Jeremy L. Stilwell
Barker Martin, P.S.
719 – 2nd Avenue, Suite 1200
Seattle, WA 98104

DATED this 14th day of January, 2013, at Seattle, Washington.



Karen L. Baril

APPENDIX A

24.03.015 Purposes. Corporations may be organized under this chapter for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the banking or insurance laws of this state may not be organized under this chapter: PROVIDED, That any not for profit corporation heretofore organized under any act hereby repealed and existing for the purpose of providing health care services as defined in *RCW 48.44.010(1) or 48.46.020(1), as now or hereafter amended, shall continue to be organized under this chapter. [1986 c 240 § 2; 1983 c 106 § 22; 1967 c 235 § 4.]

***Reviser's note:** RCW 48.44.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (10). RCW 48.46.020 was also alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (1) to subsection (13).

Fish marketing act: Chapter 24.36 RCW.

Granges: Chapter 24.28 RCW.

Insurance: Title 48 RCW.

Labor unions: Chapter 49.36 RCW.

Additional notes found at www.leg.wa.gov

24.03.017 Corporation may elect to have chapter apply to it—Procedure. Any corporation organized under any act of the state of Washington for any one or more of the purposes for which a corporation may be organized under this chapter and for no purpose other than those permitted by this chapter, and to which this chapter does not otherwise apply, may elect to have this chapter and the provisions thereof apply to such corporation. Such corporation may so elect by having a resolution to do so adopted by the governing body of such corporation and by delivering to the secretary of state a statement of election in accordance with this section. Such statement of election shall be executed by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation;
- (2) The act which created the corporation or pursuant to which it was organized;
- (3) That the governing body of the corporation has elected to have this chapter and the provisions thereof apply to the corporation.

The statement of election shall be delivered to the secretary of state. If the secretary of state finds that the statement of election conforms to law, the secretary of state shall, when fees in the same amount as required by this chapter for filing articles of incorporation have been paid, endorse on the statement the word "filed" and the effective date of the filing thereof, shall file the statement, and shall issue a certificate of elective coverage to which an exact or conformed copy of the statement shall be affixed.

The certificate of elective coverage together with the exact or conformed copy of the statement affixed thereto by the secretary of state shall be returned to the corporation or its representative. Upon the filing of the statement of elective coverage, the provisions of this chapter shall apply to the cor-

poration which thereafter shall be subject to and shall have the benefits of this chapter and the provisions thereof as they exist on the date of filing such statement of election and as they may be amended from time to time thereafter, including, without limiting the generality of the foregoing, the power to amend its charter or articles of incorporation, whether or not created by special act of the legislature, delete provisions therefrom and add provisions thereto in any manner and to any extent it may choose to do from time to time so long as its amended articles shall not be inconsistent with the provisions of this chapter. [2004 c 265 § 5; 1982 c 35 § 73; 1971 ex.s. c 53 § 2.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.020 Incorporators. One or more persons of the age of eighteen years or more, or a domestic or foreign, profit or nonprofit, corporation, may act as incorporator or incorporators of a corporation by executing and delivering to the secretary of state articles of incorporation for such corporation. [2004 c 265 § 6; 1986 c 240 § 3; 1982 c 35 § 74; 1967 c 235 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.025 Articles of incorporation. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including provisions regarding:
 - (a) Distribution of assets on dissolution or final liquidation;
 - (b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the members, if any;
 - (c) Eliminating or limiting the personal liability of a director to the corporation or its members, if any, for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and
 - (d) Any provision which under this title is required or permitted to be set forth in the bylaws.
- (5) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.
- (6) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.
- (7) The name and address of each incorporator.

(8) The name of any person or corporations to whom net assets are to be distributed in the event the corporation is dissolved.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [1987 c 212 § 703; 1982 c 35 § 75; 1967 c 235 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Amending articles of incorporation: RCW 24.03.160 through 24.03.180.

Bylaws: RCW 24.03.070.

24.03.027 Filing false statements—Penalty. See RCW 43.07.210.

24.03.030 Limitations. A corporation subject to this chapter:

- (1) Shall not have or issue shares of stock;
- (2) Shall not make any disbursement of income to its members, directors or officers;
- (3) Shall not loan money or credit to its officers or directors;
- (4) May pay compensation in a reasonable amount to its members, directors or officers for services rendered;
- (5) May confer benefits upon its members in conformity with its purposes; and
- (6) Upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income. [1986 c 240 § 4; 1967 c 235 § 7.]

24.03.035 General powers. Each corporation shall have power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (2) To sue and be sued, complain and defend, in its corporate name.
- (3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (6) To lend money or credit to its employees other than its officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To indemnify any director or officer or former director or officer or other person in the manner and to the extent provided in RCW 23B.08.500 through 23B.08.600, as now existing or hereafter amended.

(15) To make guarantees respecting the contracts, securities, or obligations of any person (including, but not limited to, any member, any affiliated or unaffiliated individual, domestic or foreign, profit or not for profit, corporation, partnership, association, joint venture or trust) if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation.

(16) To pay pensions and establish pension plans, pension trusts, and other benefit plans for any or all of its directors, officers, and employees.

(17) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(18) To be a trustee of a charitable trust, to administer a charitable trust and to act as executor in relation to any charitable bequest or devise to the corporation. This subsection shall not be construed as conferring authority to engage in the general business of trusts nor in the business of trust banking.

(19) To cease its corporate activities and surrender its corporate franchise.

vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. The board may adopt emergency bylaws in the manner provided by RCW 23B.02.070. [1991 c 72 § 43; 1986 c 240 § 13; 1967 c 235 § 15.]

24.03.075 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. In the absence of any such provision, all meetings must be held at the registered office of the corporation in this state.

An annual meeting of the members must be held at the time stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time does not work a forfeiture or dissolution of the corporation.

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. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at the meeting.

Except as otherwise restricted by the articles of incorporation or the bylaws, members and any committee of members of the corporation may participate in a meeting by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting. [2004 c 98 § 2; 1986 c 240 § 14; 1967 c 235 § 16.]

24.03.080 Notice of members' meetings. (1) Notice, in the form of a record, in a tangible medium, or in an electronic transmission, stating the place, day, and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. Notice of regular meetings other than annual shall be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws.

(2) If notice is provided in a tangible medium, it may be transmitted by: Mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment that transmits a facsimile of the notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the corporation, with postage thereon prepaid. Other forms of notice in a tangible

medium described in this subsection are effective when received.

(3) If notice is provided in an electronic transmission, it must satisfy the requirements of RCW 24.03.009. [2004 c 265 § 10; 1969 ex.s. c 115 § 1; 1967 c 235 § 17.]

Waiver of notice: RCW 24.03.460.

24.03.085 Voting. (1) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(2) A member may vote in person or, if so authorized by the articles of incorporation or the bylaws, may vote by mail, by electronic transmission, or by proxy in the form of a record executed by the member or a duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

(3) If specifically permitted by the articles of incorporation or bylaws, whenever proposals or directors or officers are to be elected by members, the vote may be taken by mail or by electronic transmission if the name of each candidate and the text of each proposal to be voted upon are set forth in a record accompanying or contained in the notice of meeting. If the bylaws provide, an election may be conducted by electronic transmission if the corporation has designated an address, location, or system to which the ballot may be electronically transmitted and the ballot is electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record. Members voting by mail or electronic transmission are present for all purposes of quorum, count of votes, and percentages of total voting power present.

(4) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his [or her] vote and to give one candidate a number of votes equal to his [or her] vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [2004 c 265 § 11; 1969 ex.s. c 115 § 2; 1967 c 235 § 18.]

Greater voting requirements: RCW 24.03.455.

24.03.090 Quorum. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented 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 proportion is required by this chapter, the articles of incorporation or the bylaws. [1967 c 235 § 19.]

Greater voting requirements: RCW 24.03.455.

ber. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes. [1995 c 283 § 2.]

64.38.015 Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

64.38.020 Association powers. Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted

[Title 64 RCW—page 72]

by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

Speed enforcement: RCW 46.61.419.

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

64.38.028 Removal of discriminatory provisions in governing documents—Procedure. (1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

- (a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 § 1.]

64.38.034 Political yard signs—Governing documents. (1) The governing documents may not prohibit the outdoor display of political yard signs by an owner or resident on the owner's or resident's property before any primary or general election. The governing documents may include reasonable rules and regulations regarding the placement and manner of display of political yard signs.

(2) This section applies retroactively to any governing documents in effect on July 24, 2005. Any provision in a governing document in effect on July 24, 2005, that is inconsistent with this section is void and unenforceable. [2005 c 179 § 1.]

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall

not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

64.38.040 Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

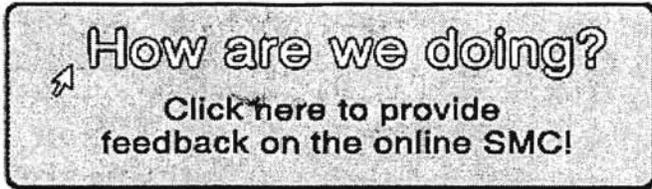
64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

64.38.050 Violation—Remedy—Attorneys' fees. Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]



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Seattle Municipal Code

Title 2 - ELECTIONS*
Chapter 2.08 - Initiative Petitions

SMC 2.08.010 Submission of petition.

A. If any registered voter, or organization of registered voters of the City desires to petition the City Council to enact a proposed initiative measure, he/she or they shall file with the City Clerk in the form prescribed by this chapter two (2) printed or typewritten copies, or an electronic copy prepared and submitted in accordance with standards which have been established by the City Clerk for electronically submitted documents, of the full text of the measure proposed, accompanied by the name and post office or mailing address of the petitioner. Upon receiving such petition, the City Clerk shall date such petition, assign a serial number thereto and forthwith transmit one (1) copy thereof bearing its serial number and date of filing to the City Attorney, and thereafter such proposed measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No."

B. Within five (5) business days after such filing, the City Clerk shall approve or reject such petition as to form and notify the petitioner and, in the event of approval, shall provide a copy of the approved petition form to the Executive Director of the Ethics and Elections Commission and shall also notify the petitioner by telephone and by certified mail of the exact language of the ballot title prepared pursuant to Section 2.08.020.

Legislative history/notes:

(Ord. 119170 Section 1, 1998; Ord. 116368 Section 26, 1992; Ord. 111198 Section 1, 1983; Ord. 108216 Section 1, 1979; Ord. 103892 Section 1, 1974.)

New legislation may amend this section!