

## Comments / opinions from Kurt Carlson for 10/25/2023 VGC Board Meeting:

### 1. Documents - 64.90 - Strichartz 09/12/2012

At Mr. Coleman's request, a prepared statement was read and included with the minutes of the 10/1 special meeting. The document referenced regarding compliance was from a Seattle attorney dated 09/12/2012 to Board President Donald Coleman. That memo cites 15 inconsistencies in our documents which were never addressed, including the bylaws mis-statement "To amend these Articles of Incorporation" which complicated the attempt to establish board criteria. The inconsistencies cited caused major problems through the declarant exit and still. Areas of the documents which were consistent with RCW 64.38 remained declarant generous and not in the general interest of members or consistent with establishing an association fully capable of self-management and protecting owner interests with the expansions in RCW 64.90. In addition, a review in 2012 against a dated law, RCW 64.38, which the legislature found inadequate requiring a multi-year effort to rewrite with generous provisions for legacy associations to adopt is irrelevant today even had the board in 2012 bothered to correct the numerous inconsistencies

Multiple attorneys, including the attorney cited by Mr. Coleman, as well as our members, have commented on the major deficiencies of our existing documents. In 2019 a group of competent members representing most phases formed in the call for strategic planning. They first attempted to update our documents to excise the declarant and address other inconsistencies. The extent of changes from the 2012 memo and other weaknesses prompted adopting a better template (Pahlisch) and ultimately a 64.90 compliant template selected by our attorney. The vote this year to adopt the revised documents was 71% in favor, but failed to meet quorum. The newer law, RCW 64.90, is more specific in response to numerous state-wide legal disputes over the years and has better protections for home owners in the specificity in how association business must be conducted. My observations of our boards since 2019 is they have attempted to follow the better directions of the newer 64.90 law in spite of our documents. My recommendation is we should adopt 64.90 to ensure future boards do not use the vagueness of 64.38 and the weaknesses of our documents against the best interest of home owners.

### 2. Board Criteria

RCW 64.38.030 states board qualifications are supposed to be in the bylaws. They are not; whomever wrote the bylaws was deficient. RCW 64.38.025 specifically states qualifications "requires the vote or approval of the owners". The words "or approval" does not imply modification of the bylaws, but that is arguably the best way to do it. If we choose to do that, our bylaws (again deficient) state, "To amend these Articles of Incorporation". We have no documented means to amend the bylaws. I am unwilling to assume the intent was 67% of all unit owners as that is considerably above the norm for bylaws (not covenants) modification in other communities I researched. It appears to be just a sloppy cut-and-paste with no forethought. RCW 64.38 is silent on any default mechanism to amend bylaws. In absence of that, we can look to RCW 24.03A.125 (non-profit law, which we are also under) which might allow a Board to adopt any missing provisions, but since qualifications requires approval of members use 24.03A.440 (majority vote). Considering the ambiguity above, the chaos in the 10/1 meeting, and the quorum concerns, the criteria approved by members on 10/1 are advisory.

Nominees are encouraged to state their compliance and members may consider them as they deem appropriate in their voting.

### 3. Quorum

Quorum in our Bylaws is 75 votes. Quorum in RCW 64.38.040 is 34% (81 rounded), also states "Unless the governing documents specify a different percentage". Whomever wrote the bylaws ignored the law and specified an amount. I do not know what percentage 75 represented when the bylaws were approved. The law does not state whether 34% is a default or a minimum, a conservative view states 81 is the best target. However, 64.90.450 states 20% which is only 48 (well beneath 75), the lower percentage in the newer law seems to indicate a default, but I am unwilling to spend money for a legal opinion on that especially since two lawyers could disagree on this and we still end up in court. When the meeting started, I recall the registered number as 77 (over 75) and additional members walked into the room at that point holding additional proxies for over 81. This does not include the unregistered proxies held by one or more members who breached their fiduciary responsibility to the members which granted them the proxies by not registering them in a timely manner. If the bar is "good faith" quorum was clearly met in addition to the arguments above.

### 4. Special / Annual Meeting Floor Motions

Items requiring member vote must meet notice requirements and must be stated. Allowing modification of those items on the floor violates the rights of members not in attendance of the meeting who have not received notice of any changes. This has been confirmed in consultation with an attorney. Advisory votes can be proposed, modified, or approved by motion in a meeting to the extent time allows and consistent with the meeting agenda.

### 5. Future Management

Members of the strategic planning committee have recommended the board put forth a resolution for member advisory vote to establish an all-phase, ad hoc committee to research and advise the association of need and viability for professional management. I personally support this research as pursuing this course, if advisable, is at least a year long process and requires thoughtful involvement of the membership, especially for cost vs. benefit. Neither I, nor the board, are proposing professional management, but I concur we need to initiate the research involving our members.

I move the Villages of Garrison Creek conduct an advisory vote at the 2023 Annual Meeting to advise the future 2024 Board whether we should establish this research group as proposed.