

To: The Townhome Owners in Haile Village Center

From: The Haile Village Center Board of Directors

Date: December 19, 2024

Re: Townhome Governance

As an owner of one of the thirty-two townhomes in Haile Village Center you occupy a unique property position because of how the original developer conceived things. Your home is neither a detached single-family unit, nor is it a condominium; but you have elements of both. They could be called row houses or in the upscale vernacular, townhomes. Being neither fish nor fowl, the townhomes occupy a legal netherworld in the HVC documents. Those documents prescribe and proscribe the powers and duties of the HVC Board of Directors. The Townhomes are not mentioned, defined or identified as being “legally unique.” The HVC Board is required to act in the best interests of every member of the HVC. Because the developer failed to either identify or designate the townhomes as anything deserving or required to be treated in any extraordinary manner, here we are.

### **Overview**

Like a condominium you have shared structural elements such as roofs, garages and walls. While power, water and sewer are metered separately, structurally, what affects one unit directly may affect the adjoining ones. In-slab sewage pipes and venting may be shared by adjoining units. Like a single-family home, you are responsible for your yard and personal property, all interior maintenance, glass, and any other improvements.

But, unlike condominium residences, the townhomes are not part of a formal sub-association and therefore are not self-governing. The Condominiums of Haile Village, Southbrooke Condominium Association and Haile Village Condominium are each separate and distinct entities that have formal documentation, by-laws and the legal ability to manage their own affairs. Each can decide when, how and what their members want or need and can act without the Haile Village Center board’s approval.

The original developer did not adopt any independent governance entity for the townhomes. In fact, the townhomes are not mentioned anywhere in the Declaration of the Haile Village Center. The townhomes have been treated as an informal grouping by Haile Village Center boards for years.

In 2011 the HVC board created a “Townhome Governance” document which purported to outline what can charitably be described as an informal agreement that appears to make the townhomes a formal quasi-independent area of the Haile Village Center. The current board of HVC has informally referred to the townhomes as “American Samoa.” The townhomes are part of the village, but they are not autonomous; rather they are a dependency. They are wholly dependent on the Haile Village Center board to do anything. Nothing in any documents held by any townhome owner, nor in the hands of HVC, required (or even allowed) this to happen.

## **Why This Matters**

The problems this presents are many and involve legal, ethical, and philosophical elements. The Haile Village Center has discussed the issue with attorneys, insurers and others and have been told that what has been done in the past is at best, legally questionable, and at worse creates a tremendous liability for all the other Haile Village Center owners.

Legally it is questionable if the Haile Village Center had any right to create the “Governance” document. Because there is no mention of the townhomes in any master documents, the present arrangement is likely not enforceable as written. The Haile Village Center Townhome Association adopted a duty to perform all maintenance, repair and painting of the townhome exteriors at their own expense. Where that obligation came from is nowhere to be found. This means that collecting or encumbering money from any Townhome owner is not enforceable. Without any legal authority to exist, it also means that all Haile Village Center property owners are ultimately liable for the cost of repairs if the townhome owners cannot or will not fund the work.

Under the current scheme, there exists a Townhome Advisory Committee which is charged with “managing” the “affairs” of the townhomes. The committee is charged with “signing checks” and preparing a “budget” for the townhomes but there is no authority to perform these acts. There are no guardrails, no checks and no balances. None of these legal failings are excused by any documents or laws, prior performance or operation. You cannot “make” something legally binding simply by doing something over and over. While an advisory committee can be created for any purpose, collecting and disbursing funds from owners blurs the line, and makes the Haile Village Center management and board ultimately liable for any untoward event.

Taken a step further, it is not hard to imagine a casualty event that could consume one or more townhome property. The insurance professionals have explained that a fire, caused by lightning, a short circuit, or some battery-operated car or bicycle (to name very common things) or hurricane could impact multiple units because of the joined roofs and garages. There is no insurance carried by any association that would cover that event. But because the Haile Village Center Townhome Association voluntarily agreed to perform exterior “maintenance and repairs” the bill would land on that ad hoc committee, and then the whole of the village membership. No doubt an objection would be raised by members of the HVC who do not reside in the townhomes if they were asked or forced to pay for a townhome casualty.

Your individual insurance may shield your personal property from an immediate loss but may not cover claims made by neighbors against you. Your insurance definitely would stop at your property edge for any group casualty not caused by you. Even then it may not help with the connecting roofs and walls.

Presently there is no requirement for any townhome owner to carry any insurance, and under the current governing documents no method of forcing anyone to carry any insurance much less a proper one. Imagine the utter chaos multiple casualty claims would present. Even if every single townhome owner had insurance (HO-3, HO-6, renter’s or some umbrella rider) you would see multiple insurance companies and adjustors producing competing settlements or denials which

solves nothing. Florida's insurance industry is broken, and the current financial model appears to be to find ways not to fully pay claims.

Finally, neither the Haile Village Center, nor the ad hoc townhome committee can "create" an *insurable interest* to purchase any policy covering the townhomes without some documented legal power; simply producing the "Townhome Governance" document and self-proclaiming an insurable interest is not recognized by any carrier because the master documents do not grant such power. It would be as if the HVC Board passed a resolution saying we would repair your car in the event of an accident – but we have no interest in your car other than the fact we said we would do so. Even if an insurer overlooked that in underwriting, the claims side would not.

Ethically the townhome owners probably reasonably assume that someone, somewhere, is guarding them against some hazards. Even though there is nothing in your purchase documents saying you have some right to repairs or replacement by anyone, each of you likely assumed you were simply by how sellers, brokers, and lenders acted. By the same token, the other members of the village reasonably assume that the townhome owners are ultimately financially responsible for their property interests just like condominium owners. Neither is completely true under the current scheme.

While there has been a course of performance in the past, or a course of dealing with the townhome owners, there is no legally cognizable basis in any documents that fully supports either view. At best a court would have to decide something and that is an expensive gamble. The best legal position is that if claims are made under the present scheme the past boards of directors may not have exercised sound business judgment and the present one (once informed) was irresponsible to allow the issue to continue. How a court would rule cannot be reasonably determined by any lawyer.

From a fiduciary standpoint the Haile Village Center Board and perhaps the members of any "advisory committee" have a duty to their membership to perform tasks reasonably and responsibly using good business judgment. They are not required to be "right" but when an issue such as this is discovered, they must at least acknowledge, examine and "try" to address it. That is what we are doing. Because no one has found any clear documentation stating that how the townhomes are treated is on anything resembling a solid legal footing, it is reasonable to assume it is not. The absence of proof is not proof.

Philosophically, the issue is why would townhome residents want to have all decisions made for them rather than determine what is in their own best interests? Once made aware of the problems presented and the risks involved concerning probably someone's most valuable asset, a reasonable person looks for a solution that is in their best interest. The status quo is limited self-determination to this point. Townhome residents have decided what they need, they have created their own budget and managed their own affairs, with the Haile Village Center performing limited oversight. In rare cases where disagreements have arisen, they are worked out.

If the townhome residents wish to continue in that manner, they need to formalize their existence and the relationship with HVC to meet legal requirements. If they don't, the Haile Village Center will have to assume full control of the townhome governance. But the Haile Village Center must act in a manner that favors all the membership, not just the townhomes.

**If the Haile Village Center takes control:**

The 2011 Governance statement will be struck because there was no existing legal authority for the HVC to assume the liabilities for the townhomes by the Haile Village Center membership. There is also no legal right to delegate that duty to an ad hoc committee. This means that the “Townhome Association” will no longer exist and the HVC will no longer backstop the maintenance of the exteriors of the townhomes; the document would simply go away. The only way HVC could unilaterally resume that obligation would be via a formal vote of all HVC members where a majority of the entire HVC membership or perhaps 100%, voted to amend their master declaration. That is not a likely possibility.

There would be no separate assessment for the townhomes.

There would be no reserves collected to pay for future repairs.

General maintenance such as painting, or power washing would be the responsibility of each owner – just like a detached single-family home. If structural repairs became necessary, which affected multiple units, the owners would have to work out the issues themselves.

Each unit owner would be responsible for their own insurance coverage. If a tree falls on two units, or a fire or hurricane damages multiple units, each townhome would be on their own. There would be no ability for anyone (the HVC or the townhome unit owners) to obtain a general casualty policy for joint assets like roofs or garages because with no formal townhome association, there would be no “insurable interest” held by anyone.

In short, each townhome would be treated as any other single-family home; but one which is joined at the hip (physically) with their neighbors.

**If the Townhome Create their own Association:**

You would be free to operate as you wish. Your own budget, your own money, your own bank account, your own authority - your own decisions. You elect your own leadership, divide whatever maintenance, insurance and repair expenses across the group and provide insurance that covers all joint property in the event of any casualty. And you would develop reserves for future repairs.

At this point in time all roofs and exteriors are in excellent shape, and you should not need to make any extraordinary assessment for reserves because the 20-25 year lifespan of the structures and roofs are basically at year zero.

You could also decide that only roofs and garages need to be common elements that need coverage. Or you could decide to include fences, exteriors, roofs and other items – the choice would be yours. You could schedule upkeep and repairs as you see fit, on your schedule, on your budget.

**What's Next?**

The HVC Board of Directors have investigated the issues presented. They have obtained legal opinions and been advised what is legally possible and what is not. They have discussed insurance issues with different agents. This letter is to inform all the townhome owners that the status quo (operating under the Townhome Governance document of June 8, 2011) is no longer an option.

We have investigated and sought advice from realtors, brokers, board certified condominium lawyers and insurance professionals trying to find a clever loophole or workaround to maintain the status quo. None of them have a solution that they would be willing to put forward in writing. If anyone tells you that they have a cunning plan that we have overlooked, simply ask them to provide an official, written, signed plan endorsed by a lawyer conversant in this issue.

The HVC board will schedule a special meeting to discuss the issues above. Afterwards a poll will be released to the townhome owners. Each townhome owner can vote if they wish to form their own association or have the HVC assume full control. This will not be a formal vote, only a poll to see what the consensus of the townhome ownership is. If the necessary number of owners of townhomes want their own association, and are willing to put forth the necessary effort, HVC will work to help achieve that end. If not, then no further effort will be expended and HVC will revoke the Townhome Governance document.

### **Finally**

At this point in time, the expense for the significant structural repairs and exterior painting to all the townhome is approximately \$80,000 more than townhome reserves. That cost will be paid by HVC but will be recouped via a special assessment from the townhome owners.

That could be via a one-time special assessment of the townhome owners, an increase in the regular monthly assessment of townhome owners over time, or via some other funding source.

This overage was not the reason for this review – HVC always understood that the townhome budget might not fully cover all repairs, and made the decision that it is best to fully and completely prosecute the repairs. Leaving repairs for later simply makes the work more expensive in the long run and runs the risk that more damage would occur.

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On Behalf of the Board.

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Email can be sent via the Owner Portal at:

<https://engage.goenumerate.com/s/hailevillagecenter/communityfeed.php?PostID=4082001>

