

STATE OF NEW HAMPSHIRE

CARROLL, SS

SUPERIOR COURT

VIRGINIA M. MOONEY

V.

PROPERTY OWNERS ASSOCIATION AT SUISSEVALE, INC.

Docket No:212-2020-CV-00004

AMENDED PETITION FOR DECLARATORY JUDGEMENT

1. Virginia M. Mooney (Mooney) requests a judgement regarding election practices of the Property Owners Association at Suissevale, Inc. (“Suissevale”).
2. Suissevale is a private community of approximately 600 parcels of land and approximately 500 owners situated in Moultonborough, N.H.
3. Plaintiff is a property owner in and member of Suissevale.
4. Suissevale has refused to provide a completed voter checklist to members.
5. Without access to the completed voter checklist it is impossible to certify the Election of Board members against error or fraud.

PARTIES

6. Mooney owns property in Suissevale at 48 Cannes Street, Moultonborough, NH 03254.
7. Suissevale is a domestic nonprofit corporation organized under RSA 292 with its principal office address at 17 Langdorf Street, Moultonborough, NH 03254.

JURISDICTION AND VENUE

8. The Court has jurisdiction pursuant to RSA 491:7
9. Venue is proper in Carroll County pursuant to RSA 507:9.

FACTS

10. Suissevale is a voluntary corporation organized under Chapter 292 of the New Hampshire Revised Statutes.
11. Suissevale is governed by its Covenants, Articles of Agreement and By-Laws.
13. In accordance with said Article of Agreement and By-Laws, Suissevale's Board of Directors manage its affairs on behalf of all its property owners, who are members of the non-profit corporation.
14. Suissevale held an election for Board members in the Spring of 2019, ending with a vote count on July 5th.
15. Although both Mooney and other members had been assured that the completed voter checklist would be made available after the election, in accordance with common practice and New Hampshire law RSA 33-A:3-a, that assurance was later reversed.
16. The marked voter checklist is readily available as a matter of public record in New Hampshire (New Hampshire Election Procedure Manual: 2018-2019) Section IV: Post Election Day Ph 2: Preservation of the Checklist and Quoted from Page 144: After every election, a marked copy of the checklist must be preserved by the town or city clerk as a public record, for a period of at least 7 years. RSA 33-A:3-a.
17. Suissevale, as a RSA. 292 nonprofit corporation, is specifically prohibited from taking any action not in compliance with NH law: "The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement, including provisions for issuance and reacquisition of membership certificates." RSA 292:6).
18. RSA 295:5 specifically states that "Such corporations may adopt bylaws, not repugnant to the laws of this state, to provide for the election, removal and retiring of members.

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20. Suissevale's By-laws do not address the issue of the marked voter checklist. The bylaws were revised in their entirety by the Board in 2018. At that time membership requested a review by a NH lawyer. The Board selected Attorney Jeremy Eggleton of Orr and Reno to conduct the review and the review was paid for using corporate funds. Atty. Eggleton reviewed the bylaws but cited Lawyer's work product as reason the review could not be made available to the membership. Attorney Eggleton's decision not to allow member access to his review was reported to the membership by Board member Michael McManus at a regularly scheduled meeting of the Board. (See Attachment A: Minutes - September 2018 Board meeting page 6).

21. New Hampshire does not currently have a law specific to Home Owner Associations. However, the State's Condominium Law, RSA 356-B. RSA 356-B:39- Voting provides that:

The board of directors shall retain all proxies delivered to the board of directors and all independent written confirmation of any such proxies for inspection by the unit owners for a period of not less than 3 years from the date of the unit owners' association meeting.
RSA 356-B:39:IV(B)

The voter checklist would be the independent written confirmation of the proxies.

22. The Federal Government recognizes the close association between Condominium and Home Owner Associations as the IRS has both entities use the same tax form, 1120-H. Plaintiff was able to view Suissevale's 1120-H form to confirm, but was not allowed to make a

copy of the one page document in order to append it to this filing. (See Attachment B: document viewing form).

CAUSES OF ACTION

COUNT I – PRODUCTION OF VOTER CHECKLIST

23. The value of the completed vote checklist cannot be understated. Without the marked checklist, the number of votes counted cannot be attested to by any election official or voter. Without such attestation, actions by those elected can be contested. The state of New Hampshire recognizes the crucial role of this election document in RSA 654: Voters and Checklists and specifically in Section 31, Availability of Checklist and Voter Information. The information and instructions required under RSA 654 are expanded upon in the aforementioned Election Manual see 16 above.

24. If the current practice of not allowing voters access to the marked checklist is allowed to stand, three problems arise. First, a valuable source of verifiable reconciliation is being dismissed. Secondly, trust in the Board erodes as some are currently unhappy that this information is being withheld. Thirdly, future elections could be undermined with impunity as this type of fraud would be undetectable by the membership.

COUNT II – PERMIT PETITIONER AS MEMBER IN GOOD STANDING TO RUN FOR BOARD SEAT

25. Plaintiff, who was duly elected by the membership, was expelled from the Board of Directors on January 18th during a closed session. By-laws of the Association state that:
Section 10 – Removal:

Any director may be removed only for good cause at any time by the affirmative vote of members holding of record in the aggregate at least a majority of the votes of the Corporation at a special meeting of the members called for that purpose, and may be removed for good cause by action of the Board.

26. A letter dated January 24,2020 was circulated both via email and postal service to over 400 members stating that plaintiff “suffered from a lack of Judgement” and was causing the

Association to needlessly incur expenses. The letter states that plaintiff's removal was necessary to "protect the integrity of the Board." See Exhibit A appended..

27. Plaintiff has taken out nomination papers to run for a position on the Board in the upcoming election. Plaintiff obtained the necessary signatures and is a member in good standing of the Association. Plaintiff received a registered letter (dated January 28, 2020) informing plaintiff that:

"Please be on notice that as long as the good cause related to your removal remains in effect, the Board has unanimously decided that your name will not be placed on the ballot for our upcoming election." See Exhibit B appended..

Plaintiff is a member in good standing of the Association and will not abandon the Petition in order to be allowed to run for the Board. Additionally, Plaintiff points out the decision to exclude plaintiff from candidacy was not made during a regular meeting. As with the removal from the Board, no notice to or input from the membership was allowed.

RELIEF REQUESTED

A. Plaintiff requests that the Court require that Suissevale's Board of Directors allow member access to all voter records, including the completed voter checklist, that would be accessible under New Hampshire Law. This right has been denied without good cause. This right is reasonable as Suissevale is formed under RSA 292 which requires that the Association do nothing 'repugnant to the laws of this State (RSA 292:5).

B. Should the Court wish to utilize the relationship between Condominium and Home Owner Associations as laid out by the Internal Revenue Service instead of the relationship to Voluntary Associations established under RSA 292, plaintiff would request that the Court rule using RSA 356-B:39 assuring also that all voter records including the completed Checklist be available for review. This right has been denied without good cause.

C. Plaintiff requests that she be reinstated to her position on the Board of Directors.

D. Plaintiff requests that the Court direct the Board of Directors to allow Plaintiff's candidacy in the upcoming Board of Directors Election.

E. Grant such other relief as the Court deems just and appropriate.

Respectfully Submitted

/s/ Virginia M. Mooney

Virginia M. Mooney
48 Cannes Street
Moultonborough, NH 03251
(781) 454-7720
ginnymooneydavis@gmail.com