

WESTFALL

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To: Members of the Yellow Cliff, Hope & Carton Hill Property Owners Association

From: WESTFALL LAW PLLC | Ethan M. Peterson, Esq.

Date: June 14th, 2022

Re: Legitimacy of Board of Directors & Manner of Calling Meeting(s) of Members

Given the ongoing management issues at the Yellow Cliff, Hope & Carton Hill Property Owners Association (the “YCHCHPOA”), the Board of Directors has requested that WESTFALL LAW PLLC draft and disseminate a memo detailing the manner by which the current Board of Directors was elected or appointed, the manner by which a Meeting of the Association’s Members can be called, and to detail the current activities of the Board of Directors. If you have any questions or concerns related to the information contained herein, please do not hesitate to contact Ethan M. Peterson, Esq. at EPeterson@WestfallLaw.com or (340) 227-0017, or to contact your Board Members directly.

Legitimacy of the Board of Directors

On January 20, 2022, the YCHCHPOA held its Annual Member’s Meeting. At the meeting of the members, the following Board Members were elected:

President:	Dave Campbell
Vice President:	Tony Peel
Treasurer / Secretary:	Barbara Peel
Director:	Barbara Hamilton
Director:	Doug Nicoll

On or about, January 28, 2022, President Dave Campbell, VP Tony Peel, Treasurer/Secretary Barbara Peel, and Director Barbara Hamilton resigned from the Board of Directors by disseminating letters to the remaining board member Doug Nicoll and to the membership at large.

The resignations of these four board members were accepted by the Board of Directors at the February 22, 2022 meeting of the Board. The Meeting Minutes from the February 22, 2022 meeting of the Board of Directors, as well as the four resignation letters can be found at <https://ychchpoa.com/meeting-minutes>. The resignation of the four elected board members left one remaining member of the Board of Directors: Doug Nicoll.

Pursuant to the Association's By-Laws, "the affairs of this Association shall be managed by a Board of five (5) directors, including three (3) officers and two elected members" (§5.1), further, the "Directors shall serve one (1) year term and shall be elected at the annual meeting" (§5.2).

The By-Laws are silent as to how vacancies on the Board of Directors are to be filled.

In the absence of controlling language in the By-Laws, the association's activities are governed by the Virgin Islands Code ("V.I.C."). Specifically, Title 13 of the V.I.C. addresses Corporations and Associations. Chapter 1 of Title 13 of the V.I.C. is the General Corporation Law, which applies to all VI corporations, including non-profit corporations; Chapter 3 of Title 13 of the V.I.C. is the Nonprofit Corporations Law, which applies to all VI nonprofit corporations.

Pursuant to 13 V.I.C. § 70 –

Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise shall be filled in the manner provided for in the bylaws. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

Pursuant to 13 V.I.C. § 64 –

Whenever any vacancies shall happen among the directors by death, resignation or otherwise, except by removal and the election of a successor, they shall be filled by appointment by a majority of the remaining members of the board of directors, though less than a quorum, for the unexpired terms of such vacancies.

Pursuant to 13 V.I.C. §§ 64 & 70, Doug Nicoll, the only remaining member of the Board of Directors (though less than a quorum) was responsible for appointing individuals to fill the vacancies on the Board of Directors.

On February 23, 2022, under the authority provided by Title 13 of the Virgin Islands Code, the YCHCHPOA Board of Directors appointed the following individuals to fill vacancies on the Board for the unexpired term of such vacancies:

Vice President:	Nancy Barber
Treasurer / Secretary:	Ethleene Johnson
Director:	Brett Shurr

On March 14, 2022, the Board of Directors held a Meeting to appoint the 5th member of the Board. At this meeting, Director Brett Shurr made a motion to promote current Vice President Nancy Barber to the role of President; the Motion was unanimously approved. Thereafter, Director Doug Nicoll made a motion to promote current Director Brett Shurr to the role of Vice President; this motion was unanimously approved. Director Nicoll then made a motion to appoint Jon Barber to fill the remaining vacant Director position; this motion was unanimously approved. Therefore, the current Board of Directors for the Yellow Cliff, Hope and Carton Hill Property Owners Association is as follows:

President:	Nancy Barber
Vice President:	Brett Shurr
Treasurer / Secretary:	Ethleene Johnson
Director:	Jon Barber
Director:	Doug Nicoll

As such, the YCHCHPOA Board was either elected or appointed pursuant to both the Association's By-Laws and the Virgin Islands Code. Their appointments/election is valid and binding upon the association; they shall serve until elections are held at the January 2023 Annual Meeting.

Copies of the Board Meeting Minutes, the former Board's resignation letters, and/or the letters appointing the new members of the Board are available upon request.

Meeting(s) of the Association's Members

Pursuant to the Association's By-Laws, there are two occasions by which a Meeting of the Members may be held: (1) the Annual Meeting, and (2) a Special Meeting.

An Annual Meeting of the Members of the YCHCHPOA Membership shall be held on the 4th Thursday of every January (§4.1). The Directors and Officers are elected at the Annual Meeting and shall serve a one-year term (§5.2 and §6.2).

Special Meeting

A Special Meeting of the Members of the YCHCHPOA Membership may be called at any time by either the President or the Board of Directors (§4.2).

These are the only two circumstances under which a meeting of the association's members may occur. The By-Laws do not allow for a Special Meeting of the Members to be called by the Members of the Association, or for former board members to call a Special Meeting of the Members. The Association could amend the By-Laws to create a mechanism by which the Board is required to hold a Special Meeting of the Members, under certain specified circumstances, but doing so would require the affirmative vote of 2/3 of the members present at the next Annual Meeting.

Former Board Members' attempt to rescind resignations & hold Meeting

On April 28, 2022, the former board members of the association disseminated letters in which they: (a) claim that “neither the Board nor the purported replacement members of the Board, have formally acknowledged or accepted [their] resignation[s] at a members’ meeting;” (b) attempt to “rescind [their] resignation[s] and reassert [their] membership of the board;” and (c) attempt to call “a Special Meeting of the Association to be held on June 7, 2022, at 6:00pm at Castaways” pursuant to Section 4.2 of the Association’s By-Laws.

A. Formal Acceptance of Resignation

First and foremost, nowhere in the Association’s By-Laws or in the Virgin Islands Code does it require that the Association or its Board formally accept the resignation, let alone that the acceptance of that resignation take place at a members’ meeting. Nonetheless, Dave Campbell, Tony Peel, Barbara Peel, and Barbara Hamilton’s letters of resignation were formally accepted by the Board of Directors at the February 22, 2022 meeting of the Board. Minutes from this Board Meeting are available upon request.

B. Attempt to Rescind Resignations

There is no provision in the Association’s By-Laws or in the Virgin Islands Code that would permit a former member of the Board of Directors, whose position has since been filed, to rescind their resignation and reassert their position on the Board of Directors.

Dave Campbell, Tony Peel, Barbara Peel, and Barbara Hamilton’s attempts to rescind their resignation and reassert their membership on the Board are not supported by the By-Laws nor Virgin Islands Law and are not binding upon the association. These individuals are Members of the Association and nothing more. They do not have any of the powers reserved for the Officers of the Association or the Board of Directors.

C. Attempt to Call a Special Meeting

Section 4.2 of the Association’s By-Laws allow the President or the Board of Directors to call a special meeting of the members at any time. Given that Dave Campbell, Tony Peel, Barbara Peel, and Barbara Hamilton resigned from the Board of Directors in late January 2022, and that those resignations were accepted at the February 22, 2022 meeting of the Board, they have no ability to exercise the powers of the President nor the Board of Directors, or to otherwise call a Special Meeting of the Members.

If a meeting had been held on June 7th, it WAS NOT a formal Meeting of the Members of the Association. Any actions taken thereat would not have been binding upon the Association or its Board of Directors.

Current Activities of the Board of Directors

The YCHCHPOA Board of Directors has been busy attempting to resolve and move on from a number of outstanding issues left by the former board. Included therein are: (a) recovery of Association information and documentation, including the Association's QuickBooks account, the Association's digitized files, access to the email account used to facilitate the dissemination of information and documentation from the board of directors to the association's members (YCHCHPOA.Treas@gmail.com); (b) complete audit of all members' status based on payment of dues and assessment; (c) complete audit of all association expenditures in recent years; (d) review of all liens filed by the Association for unpaid dues; (e) resolution of road erosion issues caused by runoff from the recently installed concrete road slabs; and (f) pursuit of reimbursement for misappropriated association funds, which may include civil and/or criminal legal claims.

Conclusion

In summary, the current Board of Directors, consisting of President Nancy Barber, Vice President Brett Shurr, Treasurer/Secretary Ethleene Johnson, Director Jon Barber, and Director Doug Nicoll was validly appointed pursuant to the Yellow Cliff, Hope and Carton Hill Property Owners Association By-Laws and pursuant to the Virgin Islands Code.

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