



LAW OFFICE OF
RICHARD B. SHATTUCK
4102 NW ANDERSON HILL RD.
SILVERDALE, WA 98383

TELEPHONE: (360) 698-5560
FAX: (360) 698-5569

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HAND DELIVERED

Port Ludlow Village Council
c/o Thomas E. McCay
40 Mariner Place
Port Ludlow, Washington 98365

Re: **Qualifications for Service as a Director of the Port Ludlow Village Council**

Dear Mr. McCay:

You asked me to provide a legal opinion regarding qualifications for membership on the Board of Directors for the Port Ludlow Village Council. My analysis follows:

ISSUE PRESENTED

Whether a person who does not hold fee simple title to a parcel of real property within the Port Ludlow Master Planned Resort area may serve on the Port Ludlow Village Council as a member of the Board of Directors?

SHORT ANSWER

Yes. Neither the Governing Documents for the Port Ludlow Village Council, nor the statutes controlling the actions of the Council, place a "fee simple" ownership qualification on service as a Director.

FACTUAL BACKGROUND

The Port Ludlow Village Council is a nonprofit corporation organized under Washington's Nonprofit Corporation Act, RCW 24.03. The corporation was formed to serve as a unifying force and a basis on which to build consensus among the residents, merchants, property owners and others "having an interest" in the Port Ludlow community. Articles of Incorporation, Article 3, Section 1. The corporation

was formed in 1999, and received its certificate approving its Articles of Incorporation on September 20, 1999. The Articles of Incorporation provided for 12 directors, four of which were to be elected by those "owning property" in the South Bay Community, and six of which were to be elected from those "owning property" in the North Bay Community. Articles of Incorporation, Article IX, Section 2.

LEGAL ANALYSIS

The Council must conduct its business under the provisions of its Governing Documents and applicable state law. The "Governing Documents" for the Council include the corporate Articles of Incorporation and Bylaws. The key statutory provisions are the Nonprofit Corporation Statute, RCW 24.03, and the Homeowners Association Statute, RCW 64.38. These sources of authority need to be considered in determining the issues associated with the Council's Directors.

As a general proposition, there is a "hierarchy" of regulation for the Council. First and foremost, the Council must not violate Washington's nonprofit corporation and homeowner association laws. Second, the Council's acts must also be consistent with the Articles of Incorporation and Bylaws.

SUMMARY OF RELEVANT STATUTES

The statutes under which the Port Ludlow Village Council must operate specifically allow "outside" Directors. RCW 24.03.095 (Washington's Nonprofit Corporation Statute) provides as follows:

The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. (Emphasis added).

RCW 24.03 specifically allows for "outside" Directors for the Council, unless the Council's Governing Documents provide otherwise.

The Articles of Incorporation provide that the Council may "levy assessments" on its membership. Articles of Incorporation, Article VII, Section 2. Given this power, the Council also meets the definition of a "Homeowners Association" subject to the provisions of the Homeowners Association Statute, RCW Chapter 64.38. See RCW 64.38.010(1). This statute prohibits the Board of Directors from setting the qualifications for Directors, but provides no limits on the parties who are qualified to

serve in this position. RCW 64.38.025(2). Any such qualifications are to be part of the Bylaws of the Council. RCW 64.38.030(1).

SUMMARY OF RELEVANT TERMS OF GOVERNING DOCUMENTS

The Governing Documents provide the following guidance with regard to the issue of membership on the Board of Directors. First, the Articles of Incorporation define the parties that are "Voting Members" of the Corporation. All "persons who own real property" within the Port Ludlow Master Planned Resort area are to be Voting Members. This definition includes condominium owners and "owners" of land which has not been built upon. Articles of Incorporation, Article V, Section 1.

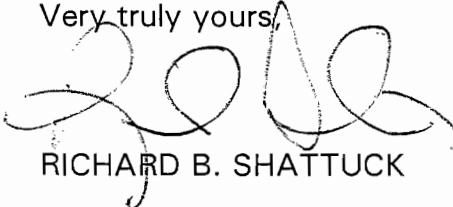
While the term "persons" is not defined, Article VI, Section 1, clarifies that "persons" who are Voting Members includes "husband and wife, partnership, joint tenants, and others owing property in some form of common ownership". (Emphasis added). Each of these entities has a voting membership in the Port Ludlow Community Council.

The Bylaws of the Port Ludlow Community Council supplement the provisions of the Articles of Incorporation. The Bylaws refer to the Articles of Incorporation in defining the "Membership" of the Council. Bylaws, Article I, Section 1. Consistent with the Articles of Incorporation, the Bylaws provide that Directors will be elected by the "Voting Members". Bylaws, Article II, Section 8. No specific "ownership" qualifications for serving as a Director are set forth within the Articles of Incorporation or Bylaws.

SUMMARY

Neither the controlling statutes, nor the Governing Documents for the Port Ludlow Village Council, place a "fee simple title" ownership qualification on serving as a Director of the Council. Without an amendment to the Bylaws placing such a qualification on Directors, the Council may include Directors who are not fee simple owners of real property within the Port Ludlow Master Planned Resort area.

Very truly yours,



RICHARD B. SHATTUCK