THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Strafford Superior Court
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NOTICE OF DECISION

File Copy

Case Name: **Lancelot Shores Improvement Association, Inc. aka Lancelot Shores Improvement Association v Anthony Nista, et al**
Case Number: **219-2017-CV-00090**

Enclosed please find a copy of the court's order of March 28, 2019 relative to:

Final Order & Appendix A - Money Judgment as to Certain Defendants

March 29, 2019

Kimberly T. Myers
Clerk of Court

(277)

C: Brian R. Barrington, ESQ; Anthony Nista; Antoinette Nista; Joseph W Mansour; Kathy Felton; Bruce Larrabee; Richard Muollo; Prudence Muollo; Timothy Chase; Robert Lucht; Karen Lucht; Verne Fisher; Glen Varney; James Melchionda; Gordon Mooney; Terri Mooney; Kevin Joyce; Christine Curley; Mary Curley; Robert Larson; Deanna Larson; John Thomas; Nicole Thomas; John Page; Deborah Page; Robert Page; David Michael Trant; Michael Boute; Joseph Renzullo; Carole Renzullo; Joseph R. Renzullo Living Tst; Jeffrey Warren; David Forslind; Frances Forslind; Edward Gontarz; Tracy Gontarz; Linda Micale; Aimee Aguiar; Ronald Gill; Sue Gill; Matthew Mercier; Melissa Mercier; Jason Muth; Robert Hilliard; Donald Bacon; Beverly Bacon; Carolyn Stewart; Brian Murphy; Tina Murphy; William Leduc; Cheryl Leduc; John Morganti; Maria Morganti; Christine Germain; Jay Michitson; William Grigoreas; Diana Grigoreas; James Baker; Cheryl Baker; Chevelle Buzzell; Dorothy Montague; Matthew Montague; Jonathan Newman; Roberta Hambach; Donna Wynot; Melissa Tuttle; Frank Raasumaa; Katrina Raasumaa; Antonio Mastroianni; Eliza Mastroianni; Thomas Blair; Deborah Blair; Roger Chouinard; Tara Noyes; Andres Zarella; K&P Realty Trust; Robert Bogardus; Donna Bogardus; Alan Johnson; Susan Johnson; Patrick Conroy; Rene Turgeon; Turgeon Family Trust; Jesse Macisaac; Jennifer Macisaac; Andrew Clement; Joseph Caruso; Marie Caruso; Laura Zaia; James Tarallo; Dorothy Tarallo; James Erricolo; Priscilla Erricolo; Mary Mirabella; Mark Robbins; Linda Summers; John Renzullo; Barbara Renzullo; Galahad Realty Trust; Pocket Aces LLC; Arthur Cavanagh; James Dreselly; Michelle Fabbrini; Frankie Dineen; Martin Dineen; Pamela Caswell; Stephen Fasolino; Catherine Fasolino; James Wydareny; Daniel Vermette; Steven Mullins; Lisa Mullins; Charles Croteau; Paula Croteau; Elisabeth McCartin; Ashley Jordan; Tara Jordan; James Reilly; Kathryn Reilly; Richard Beaupre; Judith Beaupre; Roger McCarthy; Suzanne McCarthy; Markus Josephson; Pam Josephson; Diana Lampros; Stephen Feingold; Arlene Feingold; Margaret Hurvitz; Richard Ramponi; Michael Hodge; Irene Hodge; Karen Gosciminski; Bob Lee, JR; Gerald Goodberry; Joyce Goodberry; Joe Shafer; Jennifer Shafer; James Aube; Robert Powers; Marjorie Powers; Hazel C Currier Living Trust; Leo Tanguay; Maryann Tanguay; Rodney Martel; Kimberly Lampros; Nancy Surina; Elm Grove East LLC; Alan Siamo; Felipe Dominguez; Gerald Picariello; Michael Picariello; Joseph Karagenzian; Steve Briggs; Mary Briggs; Brian Bennett; Laurie Ann Bennett; Norman Morse; Kelly Morse; Holly Harris; Jacob Swain; Donnell Howard; Jacqueline Howard; Ionel Postolache; Valentine Postolache; Stacey Almeida; Trisha Mills; Walter Pigeon; Doreene Fogg; Lorraine Tessier; Robert Seale; Doreene Seale; Mark & Avis Bennett Living Revocable Trust; Raymond Cardello; Stephen Markarian; Ramon Mansour; Brodie Bazo; Stephen Michael Cunha as Trustee of the Fortress Living Trust, utd 3/11/2009; Kathryn Howard; Camrin Morgan; Grant D Myhre; Michael Orr; Melissa Orr; Albert C Everett; Kelsey M Everett; Mark and Marie Lovski, LLC

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY SUPERIOR COURT

Docket No. 219-2017-CR-090

Lancelot Shores Improvement Association, Inc.
a/k/a Lancelot Shores Improvement Association
v.
Anthony Nista, *et al*

FINAL ORDER

The plaintiff Lancelot Shores Improvement Association (the "Association"), a voluntary corporation, *see* RSA ch. 292, brings this action to address issues concerning the corporate structure and authority of the Association, concerning the rights and obligations of owners of lots in the development regarding maintenance of roads, mail house and community beaches, and concerning unpaid maintenance assessments by some of the lot owners.

The defendants have been served and, as reflected in the record of this case, the vast majority have filed neither appearance nor answer, and are thus in default. Of those who have appeared and answered, all but the owners of two lots have subsequently reached agreement with the Association and have filed stipulations or docket markings resolving the case as to them.[1]

The final hearing was held on February 11, 2019. At the final hearing, the owners of one of those remaining two lots, the Lovskis, appeared in order to place on the record that they do not object to the relief being requested by the Association. The February 11, 2019 final hearing proceeded with testimony from the remaining objecting lot owner, James Aube, and the current President of the Association, James Melchionda, and with entry of exhibits into evidence.

The resolution of issues as to those defendants who have reached settlement agreements with the Association is governed by those agreements. This order resolves the issues raised by

[1] To the extent the agreements or stipulations of settling parties contain provisions that diverge from the findings and rulings set out in this order, those agreements and stipulations control as between those settling parties, except, of course, to the extent that there may exist a provision of law to the contrary.

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the Association's complaint as to the non-settling defendants. The court determines and orders as follows.[2]

The Association asserts that it is the owner of the roadways, mail house and three community beaches in the Lancelot Shores Subdivision in Farmington, New Hampshire. The Association is a voluntary association. None of the lot deeds in the subdivision mandate membership in the Association. Some, but not all, lot owners have volunteered to become members of the Association. All of the lot deeds provide a deeded right to pass and repass over the roadways owned by the Association, and to use the beaches owned by the Association. None of the lot deeds include a provision requiring lot owners to share in the cost of maintaining or improving the roadways or beaches.[3]

The Association brings this action to address a concern that its status as a going concern and its actions as a corporate body may be subject to legal challenge. The concern arises primarily from confusion about its status after its corporate charter lapsed and was revived and from concern about the meaning and intent of a quorum provision in the Association's Bylaws. That provision calls for a meeting quorum of two-thirds (or after 1991, 25%) of the "members." The Association is concerned that confusion about who is a "member" under the Articles of Agreement and Bylaws and about whether the required quorum of such "members" has been present at meetings may result in challenges to the Association's actions, including electing directors, imposing assessments and making expenditures. Given the ambiguities and contradictions in its Articles of Agreement and its Bylaws, the Association's concern is understandable, even though, as discussed below, ultimately inapt.

The Association brings eight counts. Count 1 asserts that there is a question as to the validity and authority of the original Bylaws and of the 1991 Amendment to Bylaws. This Count requests that the court decree that the quorum requirement of the Association be eliminated. Count 2 requests that the court decree that the revival of the Association as recorded with the Secretary of State on February 18, 2015 is valid, that Lancelot Shores Improvement Association, Inc. and Lancelot Shores Improvement Association are the same entity to the present day, and

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[2] The determinations in this order concerning corporate governance and the rights and obligations of voluntary associations are fact-specific and apply only to this Association, its Articles of Agreement, and its Bylaws.

[3] Except for the deeds for the three lots in the "Woodbridge Subdivision," which include a maintenance and snowplowing provision.

that the Association has title to all roads and beaches deeded by the original grantor in 1970. Count 3 requests that the court decree that Board of Directors is authorized to carry out the duties of the officers set out in the Associations' Articles of Agreement and By-Laws. Count 4 requests that the court decree that the Woodbridge Farm lot owners are bound by the actions and assessments of the Association and are accordingly obligated to share in the same proportionate share of expenses of roads, mail house, and beaches as other lot owners. Count 5 requests that the court decree that the administrative expenses and all road and maintenance allocation expenses are fully recoverable from all lot owners regardless of membership in the Association. Count 6 requests that the court decree that all lot owners without exception are deemed members of the Association and subject to its Bylaws and conditions. Count 7 requests that the court order a special meeting with no quorum requirement to adopt amended Bylaws and elect officers and set a budget for road and beach maintenance and for administrative and legal expenses, order that all lot owners have a right to vote, and order that a majority vote prevails. And Count 8 requests that the court order damages against those lot owners who have failed or refused to pay an apportioned share of the common roadway, mail house and community beach maintenance costs for the three years prior to suit being filed.

Resolution of these issues requires interpretation of statutory provisions, particularly those found at RSA ch. 292, which governs voluntary corporations such as this, and of the provisions of the Association's Articles of Agreement and Bylaws. Construction of such provisions is a matter of law for the court. *See e.g. Dunn & Sons, Inc. v. Paragon Homes of New Eng., Inc.*, 110 N.H. 215, 217 (1970); *State v. Brooks*, 164 N.H. 272, 291 (2012).

Interpretation of provisions intended to have legal effect, whether statutes, ordinances, contracts, or corporate governance documents, is subject to standard principles.[4] Those principles involve first examining the language of the legal document itself and, where possible, ascribing the plain and ordinary meaning to the words used therein. *See e.g. State v. Moussa*, 164 N.H. 108, 128 (2012). Legal documents are to be interpreted in light of their purpose and policy. *See e.g. Southwestern New Hampshire Transp. Co. v. Durham,* 102 N.H. 169, 173 (1959); *Appeal of Coastal Materials Corp.*, 130 N.H. 98, 103 (1987). In the event of any

[4] These principles are primarily derived from statutory interpretation, but apply broadly to the interpretation of such legal documents as ordinances, contracts, and corporate governance documents.

ambiguity, the court looks to the document's overall objective, *see e.g. Appeal of Ashland Elec. Dept.*, 141 N.H. 336, 340 (1996), and with a presumption of validity, *see e.g. Opinion of Justices*, 103 N.H. 402, 412 (1961); *Baines v. N.H. Senate President*, 152 N.H. 124, 141 (2005).

The court takes up each of the Association's Counts in turn, as follows.

Count 1

Count 1 asks two questions: first, whether the original Bylaws and the 1991 Amendment to Bylaws are valid and authorized; and second, whether the court will decree that the quorum requirement of the Association set out in the Bylaws be eliminated. Because, as discussed below, the Board of Directors has the statutory authority to amend the Bylaws, *see* RSA 292:6, the court declines to take up or consider these questions.

The Association was formed in 1968 as the "Lancelot Shores Improvement Association." The Association incorporators adopted Articles of Agreement, consisting of five Articles, on August 30, 1968. At or around the same time, the incorporators adopted Bylaws for the Association. Those Bylaws were later amended on May 25, 1991. As discussed below in connection with Count 2, the Association allowed its corporate status to lapse, but took the steps necessary to be revived in 2015, and it remains an active nonprofit voluntary corporation.

On September 30, 1970, the subdivision developer, Great Northern Land Corporation, conveyed all of its interest in the subdivision's roadways, community beaches, and community wells to the Association. As authorized by Article Two of the Articles of Agreement, the Association accepted that conveyance.

The Articles provide that the purpose of the Association is to lease, own and maintain "recreational properties and facilities, including access roads thereto," for the benefit of Association members and guests.

In Count 1, the Association raises a concern about the validity of actions it has taken since it was incorporated. More specifically, the Association is concerned about the potential effect of not meeting the member quorum requirement for voting when, for example, the Bylaws were amended in 1991. There was testimony to the effect that there may never have been a quorum as specified in the original Bylaws – two-thirds of the "members" – present for an

annual or special meeting.[5] The solution the Association proposes is a court order under RSA 292:9, I that the quorum requirement set out in the Bylaws be eliminated. However, because the Board of Directors has the statutory authority to amend the Bylaws, thereby addressing the quorum issue, there is no need for the court to take up or decide whether it should order the quorum requirement eliminated.

Voluntary corporations such as the Association are governed by a set of statutes, found at RSA ch. 292, which are separate and distinct in many respects from the statutes governing business corporations.

RSA 292:6 concerns how bylaws are adopted, and how they can be amended, and list some of the kinds of topics voluntary corporation bylaws may address. That statute provides in full as follows:

> The initial bylaws of a corporation shall be adopted by a ⅔ majority action of the signers of the articles of agreement. The power to alter, amend or repeal the bylaws or to adopt new bylaws, subject to repeal or change by a ⅔ majority action of the shareholders or holders of membership certificates, shall be vested in the board of directors unless reserved to the shareholders or holders of membership certificates by the articles of agreement. 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. Understanding the first two sentences of this statute is essential to understanding why there is no need for the court to exercise any authority under RSA 292:9, I to force a modification of the Bylaws' quorum requirement.

The first sentence of RSA 292:6 requires that the initial bylaws of a voluntary corporation be adopted by two-thirds of the original signers, sometimes called subscribers or incorporators, of the voluntary corporation. Although there is no direct evidence in this case that at least two-

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[5] Whether there has been a quorum at any annual or special meeting is impossible for the court to determine. The confusion starts with whether under the Bylaws in order to participate and vote "members" must hold "shares" of "capital stock" in the voluntary corporation. There is no reliable record of who holds "capital stock," and determining who is a "member" for quorum purposes is now impossible to determine. Any assumption that all lot owners are members is incorrect. Prior to the 1991 Amendment to the Bylaws, members had to be voted in, at first by the original incorporators and afterward by the previously voted-in members. Bylaws, Article II, Paragraph 1. The testimony was that no reliable records exist of who was voted in. After the 1991 Amendment to the Bylaws, Article II, Paragraph 1 reads that all lot owners are members, but because this is a voluntary corporation (as discussed below in connection with Count 6), membership cannot be mandated. From the Complaint and from those defendants who filed Answers disclaiming membership, we know that not all lot owners have agreed to be members. Without knowing how many lot owners are "members," calculating a quorum is not possible.

thirds (at least four of the five) original subscribers organizing the Association voted to adopt the original Bylaws, there is strong circumstantial evidence from, for example, the "purpose and intent" clause in the Preamble to the Bylaws, that such is the case, and the court so finds.

The second sentence of RSA 292:6 concerns how the bylaws of voluntary corporations, once initially adopted, are amended. It provides that the authority "to alter, amend or repeal the bylaws or to adopt new bylaws" "shall be vested in the board of directors unless reserved to the shareholders or holders of membership certificates by the articles of agreement." RSA 292:6 (emphasis added). It further provides that any such alteration, amendment, repeal or adoption of the bylaws made by the board of directors is subject to repeal or change by a "⅔ majority action of the shareholders or holders of membership certificates." *Id.*

Key here is that, under RSA 292:6, unless the articles of agreement provide otherwise, it is the board of directors which has the power to amend, alter, change or repeal the voluntary corporation's bylaws. In the present case, the Association's Articles of Agreement are completely silent on the issue of adoption or amendment of bylaws. Not only do these Articles of Agreement not provide that amendment is reserved to the shareholders or members of the voluntary corporation, they say nothing whatsoever about the authority to amend the bylaws. These Articles of Agreement thus leave that issue to applicable law. That law is, as set out above, found at RSA 292:6, and that statute provides in essence that when the articles of agreement are silent, it is the board of directors which has the authority to amend the bylaws.[6] Such is the case here – it is the Board of Directors, not the membership, which has the authority to amend the Bylaws.

In the present case, there is an existing Bylaw, Article V, which provides that the Bylaws may be altered, amended or repealed by a vote of two-thirds of the shares then outstanding. However, no such provision is set out in the Articles of Agreement. If such a provision were in the Articles of Agreement, then as a matter of law the authority to power to "alter, amend or repeal the bylaws or to adopt new bylaws" would, according to RSA 292:6, be reserved to the shareholders or holders of membership certificates. *But see* RSA 292:7 (concerning amendment of articles of agreement by a majority vote of the voluntary corporation's board of directors or

[6] Subject, as the statute says, to a two-thirds majority of shareholders or certificate holders repealing or changing the Board's amendments. RSA 292:6.

trustees when certain specified requirements are met). Thus, the court confirms that, notwithstanding Article V of the Bylaws, the Board of Directors has the authority under RSA 292:6 to amend the Bylaws. Where, as here, the articles of agreement are silent on who has the power to amend bylaws, that power rests with the directors, subject only to repeal or change of the directors' decision by two-thirds of the membership. RSA 292:6.

Given that the court confirms that the Board of Directors has the authority to amend the Bylaws, there is no need for the court to take up or rule on the Association's alternative requests for orders under Count 1.

Count 2

Count 2 asks three questions: first, whether the revival of the Association as recorded with the Secretary of State on February 18, 2015 is valid; second, whether Lancelot Shores Improvement Association, Inc. and Lancelot Shores Improvement Association are the same entity to the present day; and third, whether the Association has title to all roads and beaches deeded by the original grantor in 1970. The answer to all three questions is yes.

The Association allowed its corporate status to lapse. While lapsed, the articles of agreement of a voluntary corporation are not in effect, but may be revived in accordance with RSA 292:30. That was done here, with the Association's revival with the New Hampshire Secretary of State effective in 2015.

When a lapsed voluntary corporation is revived, then the articles of agreement are "revived with the same force and effect as if its charter had not been forfeited." RSA 292:30, III. When revived, the corporation's actions, including all contracts, matters, "and things made, done and performed within the scope of its charter by the corporation, its officers and agents during the time when its charter was forfeited" are validated "with the same force and effect and to all intents and purposes as if the charter had at all times remained in full force and effect." *Id.* "All real and personal property, rights and credits, which belonged to the corporation at the time its charter became forfeited" and not thereafter disposed of are "vested in the corporation after its revival as fully and amply as they were held by the corporation at and before the time its charter became forfeited." *Id.* In sum, after its revival, pursuant to RSA 292:30, III the Association continued "as if its charter had at all times remained in full force and effect."

Any concern that the addition of "Inc." to "Lancelot Shores Improvement Association" somehow renders invalid actions under the name of either "Lancelot Shores Improvement Association" or "Lancelot Shores Improvement Association, Inc." is misplaced. Such an addition does no more than signify that the Association has corporate status. It not only does not, but cannot, divest or modify the rights and obligations of the corporation.

As a matter of law, *see* RSA 292:30, III, a revived voluntary corporation retains all real property it had prior to the lapse of its corporate charter, except such property as it conveyed away or otherwise disposed of during the period of lapse. The Association disposed of none of its real property during the period of lapse, and so now, after revival, retains all the roads, beaches and any other real property it held prior to the lapse of its Articles of Agreement.

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Count 3

Count 3 asks whether the Board of Directors is authorized to carry out the duties of the officers set out in the Associations' Articles of Agreement and By-Laws. The answer is yes.

At several points in this litigation, concerns have been expressed or implied about whether the Directors themselves have been validly elected. Such concerns are misplaced. The concerns apparently arise from the provision of Article II, Paragraph 8 of the Bylaws requiring the presence, in person or by proxy, of two-thirds of the shares to constitute a quorum (or, after the 1991 Amendments to Bylaws, requiring the presence, in person or by proxy, of 25% of the shares to constitute a quorum) "for all purposes." The election of Directors is, however, governed by Article III, Paragraph 1 of the Bylaws, which provides that Directors are elected by a "plurality" vote of the shareholders at the annual meeting of the shareholders. Reading those provisions together, it is unclear whether the Article II quorum requirement was intended to apply to the Article III election of Directors. The Bylaws can be read either way, as applying Article II to Article III and requiring a quorum for any action, including the election of Directors, and as reading Article III as a standalone provision requiring a plurality of shareholders at the annual meeting to elect Directors.

Such ambiguities are resolved by standard principles of construction. Here, the principles of interpreting legal documents in light of their purpose and policy, *see Coastal Materials Corp.*, 130 N.H. at 103, of looking to the document's overall objective, *see Ashland Elec. Dept.*, 141

N.H. at 340, of the presumption of validity, *see Baines*, 152 N.H. at 141, and of avoiding an absurd result, *see e.g. State v. Etienne*, 163 N.H. 57, 77 (2011), all apply. To interpret the Bylaws as requiring a quorum – assuming what constitutes a quorum could be determined – for election of Directors, could produce an absurd result contrary to the purpose of the corporation, in which a quorum is not attained so no Directors can be elected. Such a reading would eventually – even with the successor provisions set out at Bylaws Article III, Paragraph 3 – lead to a corporation lacking directors capable of implementing its purpose and policy, thus undermining the voluntary corporation's objectives.[7] Under the present Bylaws, a plurality vote of the shareholders at the annual meeting of the shareholders elects the Directors, and there is no evidence before the court that this requirement has not been met. The Directors are authorized and, as officers of the voluntary corporation, obligated to carry out the duties of directors set out in the Association's Articles of Agreement, its Bylaws, and in RSA ch. 292.

Count 4

Count 4 asks two questions: first, whether the court can and will decree that the Woodbridge Farm lot owners are bound by the actions and assessments of the Association; and second, whether those owners are accordingly obligated to share in the same proportionate share of expenses as other lot owners. The answer to the first question is no: As with lot owners in the original subdivision, the Woodbridge Farm lot owners cannot be compelled to become members of a voluntary corporation. The answer to the second question is yes to the following extent: As with lot owners in the original subdivision, whether voluntary members or not, the Woodbridge Farm lot owners are obligated to share in the expenses of the common amenities.

As discussed below in connection with Count 6, no one can be ordered to become a member of a voluntary corporation. That discussion, which applies to the three Woodbridge Farm lots as well as to the original Lancelot Shores subdivision lots, is incorporated herein by reference.

As discussed below in connection with Count 5, owners of lots in a subdivision who benefit from the improvements owned by an association formed to maintain those improvements may be required to share in the cost of maintaining and upgrading those improvements, whether

[7] It is, of course, just such a concern which is one of the primary reasons the Association brought this case.

voluntary members of the Association or not. That discussion, which applies to the three Woodbridge Farm lots as well as to the original Lancelot Shores subdivision lots, *see e.g.* Exhibit 1, page 22, is incorporated herein by reference.

Count 5

Count 5 asks whether administrative expenses and all road and maintenance allocation expenses are fully recoverable from all lot owners regardless of membership in the Association and that the court so order. The answer is yes, whether a lot owner volunteers to be a member of the Association or not, all lot owners are responsible for the maintenance and improvement of shared amenities.

The lead case in New Hampshire on this issue is *Village Green Condo. Ass'n v. Hodges*, 167 N.H. 497, 501-504 (2015). The *Village Green v. Hodges* case resolved longstanding questions under New Hampshire law about the obligations of those benefited by easements where no easement provision or other agreement for maintenance exists regarding undertaking or sharing in the cost of maintaining those easements.

In the present case, the lot owners have a right to use the roadways, mail house, and beaches owned by the Association. That right exists whether a lot owner does or does not volunteer to become a member of the Association. The law refers to those with a right to use property of another, as with the lot owners in the present case, as "dominant tenants" or "benefited parties." Those whose property is subject to the rights of others to use it, as with the Association in this case, are referred to at law as "servient tenants" or "burdened parties."

Village Green v. Hodges is important because it states and ratifies, as applicable under New Hampshire law, common law principles concerning the rights and obligations of dominant and servient estate holders regarding repair and maintenance.

> Generally, the dominant tenant of an easement has a right and the duty to maintain an easement so that it can be used for the purpose for which it was granted, so that no unnecessary damage will result to the servient estate from its use, unless otherwise required by the easement or other agreement ... to the contrary, or unless the easement is jointly utilized, for the same purposes, by the property owner with the benefited parties. It has been said that the extent of the dominant tenement's duty to repair the property subject to the easement is determined by the conveyance.

> In the event the conveyance creating an easement is silent or indefinite as to the duty to repair, the inference to be drawn is that such duty as exists is upon the owner of the easement.

Vill. Green Condo. Ass'n v. Hodges, 167 N.H. at 501 (quoting 28A C.J.S. *Easements* § 226, at 444 (2008)).

Thus, under these principles, unless there is an easement provision or an agreement that states otherwise, the dominant tenants – here, the lot owners – have not only a right but the duty to maintain the easement property so that it can be used for its intended purpose. *See id.* Critical to the present case is that where, as here, there is nothing in the deeds or any other agreement allocating the duty to repair, "the inference to be drawn is that such duty as exists is upon the owner of the easement." *Id.* In the present case, the Association owns the underlying title to the roadways, mail house, and beaches; the lot owners are the owners of the easement to use those amenities, and thus bear the duty to repair those amenities. *See id.; see also* RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.13.

To the extent that there was ambiguity in New Hampshire law concerning the obligations of easement holders to share in maintenance costs extended beyond access roadways, *see e.g. Tentindo v. Locke Lake Colony Ass'n*, 120 N.H. 593 (1980), the *Village Green v. Hodges* case resolves that issue as well. Although the facts in *Village Green v. Hodges*, 167 N.H. at 498-499, involved an access easement, the Supreme Court's endorsement of common law principles concerning the obligation of dominant estate holders to maintain the property of servient estate holders for its intended purpose is in no way limited to access easements only. *See id.*, 167 N.H. at 501-504. Instead, the Court endorsed general principles of law which are broadly applicable to situations in which one party, the dominant tenant, has the right to use the property of another party, the servient tenant. Unless those parties have defined their obligations by deed or other agreement, and none exists here, the law provides that the obligation to repair and maintain the property for the purpose for which it was granted is borne by the dominant estate holder. *See id.*[8]

The court concludes that because the lots of all lot owners are benefitted by and have the right to use the access roadways, mail house, and community beaches, all lot owners share in the obligation to repair and maintain that property. Further, whether a lot owner volunteers to

[8] *Village Green v. Hodges*, 167 N.H. at 501-504, also addresses allocation of responsibility where there is joint use of property by the easement holder and the underlying owner, but such is not the situation in the present case.

become a member of the Association has no bearing on the common law obligation to share in repair and maintenance expenses.[9]

Count 6

Count 6 asks whether all lot owners may be deemed members of the Association and subject to its Bylaws and conditions. The answer to that question is no.

The Association is a voluntary corporation. As such, those lot owners whose deeds require membership, if any, and those who are not so required but who have voluntarily joined, are members of the Association and thus subject to its Bylaws. *See Sargent Lake Ass'n v. Dane*, 116 N.H. 19, 21-22 (1976). Those whose deeds do not require membership and who do not voluntarily become members may not be compelled to do so. *See id.*

Count 7

Count 7 asks that the court order a special meeting with no quorum requirement to adopt amended Bylaws and elect officers and set a budget for road and beach maintenance and for administrative and legal expenses, order that all lot owners have a right to vote, and order that a majority vote prevails. Because, as discussed above in connection with Counts 1 and 3, the Board of Directors already has the authority it needs if it wishes to amend the Bylaws, the court declines to so order.

As discussed above in connection with Count 3, the Board of Directors have the authority to act on behalf of the Association as set out in the Articles of Agreement and the Bylaws as amended. That discussion is incorporated herein by reference.

As discussed above in connection with Count 1, under RSA 292:6 as a matter of law the Board of Directors has the authority to amend the Bylaws (or to alter or repeal the bylaws or to adopt new bylaws). That discussion is incorporated herein by reference. Because the Board of Directors has the authority to amend the Bylaws to address issues such as whether to have quorum requirement or what that requirement should be, whether to change the process by which

[9] To the extent the Association intended to ask whether repair and maintenance expenses may include administrative costs directly related to those expenses, the answer is yes. However, if the Association has expenses not directly related to repair and maintenance, such expenses unrelated to repair and maintenance of the Associations' amenities may be assessed only on voluntary members of the Association.

officers are elected, whether expenditures should be put to a vote of the members, and who has a right to vote under what circumstances, judicial action on these issues is neither required nor warranted.

Count 8

Count 8 asks first whether lot owners who have failed to pay an apportioned share of the common maintenance costs for the last three years can be required to do so, and asks second whether the court will so order. The answer to both of these questions is yes.

As discussed above in connection with Count 5, all lot owners, whether members of the voluntary corporation or not, are responsible for the costs of repair and maintenance of the shared amenities. That includes the costs of maintaining the roadways, the mail house, and the community beaches, along with administrative expenses directly related to those costs. That Count 5 discussion is incorporated herein by reference.

The Association seeks orders for payment of the apportioned amounts only for the three years prior to suit, thereby acknowledging, correctly, that the statute of limitations, RSA 508:4, effectively limits recovery to a three-year lookback period.

After the Association's corporate status was revived in 2015, the Association established an expense apportionment schedule that allocated costs of $350 to each developed lot and nothing to each undeveloped lot. That apportionment schedule stayed in effect through 2017. After the 2017 annual meeting, effective for 2018 and beyond, the Association established a schedule that apportioned common expenses of $400 to each developed lot and $200 to each undeveloped lot, with lots having improvements exceeding $1,000 in value defined as developed and lots having improvements of less than $1,000 defined as undeveloped.

One of the defendant lot owners, James Aube, appeared and testified at the final hearing. He is an original lot purchaser and shareholder and, until recently, has been active as a member of the Association. He believes that the apportionments, particularly as modified for 2018 and beyond, are not equitable. He asserts that there are more efficient ways to fairly allocate common repair and maintenance expenses, such as by reference to Town of Farmington assessed values, and that there should be a mechanism by which a lot owner can challenge the apportionment. Although there are, as Mr. Aube points out, other ways in which, for example,

common expenses could be apportioned between lot owners, the court declines to take up or order any such changes. As set out in the statutes concerning voluntary corporations such as the Association, RSA ch. 292, such matters are fundamentally matters of corporate governance which are, absent unusual circumstances not present on this record, left to the corporate body.

Those lot owners who have failed or refused to pay their apportioned share of Association expenses for repair and maintenance of roadways, mail house and beaches are listed, along with the amounts each is in arrears, in Appendix A to this order. Judgment is entered for the Association and against each of those listed lot owners in the amount listed in Appendix A.

Conclusion

For the foregoing reasons, the requests of the Association set out in each of the Counts of its Complaint are resolved as set out above.

So ordered.

March 28, 2019

Steven M. Houran
Presiding Justice

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY SUPERIOR COURT

Docket No. 219-2017-CR-090

Lancelot Shores Improvement Association, Inc.
a/k/a Lancelot Shores Improvement Association
v.
Anthony Nista, *et al*

APPENDIX A

MONEY JUDGMENT AS TO CERTAIN DEFENDANTS

Count 8 of the Association's Complaint asks for judgment to enter as to defendant lot owners who have not paid an apportioned share of the common maintenance costs directly related to the roadways, mail house and community beaches for all or part of the three years prior to suit being filed.

By the order dated March 28, 2019 to which this is Appendix A, the court found for the Association, and accordingly enters judgment for the plaintiff and against the following defendants in the following amounts:

Ross McNamara	$1,050
Robert Lee, Jr.	$1050
Brian Murphy	$1,850
Michael Buote	$750
Anthony Nista	$1,850
Montgomery A. Ramon and Joseph W. Mansour, jointly and severally	$1,050
Mary Mirabella	$1,450

So ordered.

March 28, 2019

Steven M. Houran
Presiding Justice

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