Memo

To: Hot Springs Village Board of Directors
From: Governance Committee
Date: November 15, 2018
Re: Proposed Revision to Bylaws Article VII, Section 3

During the Governance Committee’s recent governance document review, a prior year election error and bylaw misinterpretation was discovered that altered the staggered term intent of the Articles of Incorporation and Bylaws. The following recommendations are made to correct the unintended consequences that occur from altering Board terms and to clarify the Bylaw language that likely led to confusion in this matter.

Background: The original Articles of Incorporation contained a 2-2-1 vacancy staggering, meaning for two years, two board seats would be up for election and in the third year one would. Subsequently, the Articles of Incorporation were amended to add 2 additional board members and a 3-2-2 vacancy staggering methodology was adopted, by virtue of the resulting decisions from then-seated board actions. Throughout the course of HSVPOA’s history, various mid-term board vacancies have occurred and the remaining board members interpreted an appropriate path forward. At a minimum, we believe a 2015 vacancy unintentionally, but erroneously, created the unintended consequences referenced below.

In March 2014, Mary Neilson was elected to a three-year term, which should have put her term expiring in 2017. In the below press release from December 17, 2015, Mary’s term expiration was erroneously stated as “2016”. The then-seated board chose not to fill Mary’s vacancy (see Article VII, Section 7) citing the short time (as erroneously understood) between her resignation and the next election. Subsequently the 2016 election occurred with the errant understanding by all candidates and voting members that their terms would be three-year terms (see December 17, 2015 press release and Articles of Incorporation and Bylaws Article VII, Section 3). In reviewing the reasons for the 3-2-2 vacancy periods no longer being present, the error in citing Neilson’s term was uncovered.

In short, a provision should have been made during the April 2016 election for “the pendency of the vacant term”, meaning one candidate should have been elected to fill a shorter term, thus keeping the staggered terms intact. Because the bylaws do not offer any specific guidance on handling such an occurrence, our recommendation is to address both the overlooked shorter term and adopt a bylaw clarification prior to the 2018 election.

Recommendation: The Committee recommends the following two motions be considered and voted upon at the December 20, 2018 Board meeting:

1. A motion to declare any board member’s April 2018 election certification to fill a two-year term (expiring April 2020) by who so volunteers.
If no board member volunteers, the board member receiving the lowest number of votes shall serve the shorter term.

If there is no election in 2018 (i.e., three Candidates fill three open seats uncontested and therefore no votes to be counted) the three board members shall participate in a manual “chance” process of blind selection term assignments such as the drawing of “the short straw” or drawing “from a hat”, etc.

2. A motion to update Article VII, Section 3 of the Bylaws to read:

   The term of office of a Director shall be a period of three (3) years or until his or her successor has been duly elected and qualified, as described in Article VII, Section 7.

   In the event a vacancy interferes with a 3-2-2 staggering, a candidate shall serve a shortened term thereby restoring the intended board turn over methodology. Once elected, that Director shall be declared:

   First, by volunteering; if not then,

   Second, by lowest number of votes in election; if not then,

   Third, by all Directors in that election participating in a manual “chance” process of blind selection term assignments such as the drawing of “the short straw” or drawing “from a hat”, etc.

**Future Consequences of No Action:** If left uncorrected, three board members will rotate off every year for two consecutive years, with one rotating off the third year.

We believe the failure to correct would defeat the spirit of HSVPOA’s original governance documents and best practices surrounding governance and operational continuity. While we cannot correct the impact on the 2016 and 2017 elections, we can correct future practices. We appreciate the Board encouraging our committee to openly bring forth improvements that ensure the Board’s overall effectiveness in serving our stakeholders.
ARTICLE VII

Board of Directors

Section 1. Qualifications. A Director must be a member in good standing of the Association having membership privileges, cannot be a paid employee of the Association or an independent contractor of the Association while serving on the Board of Directors, and must have been duly elected as provided in the Declaration, Articles of Incorporation and these Bylaws. Directors are elected volunteers and are not to receive a salary or remuneration for their service.

Section 2. Number. The Board of Directors of the Association shall be composed of seven (7) members. A change in the number of directors shall be made only by amendment to the Articles of Incorporation.

Section 3. Term of Office. The term of office of a Director shall be a period of three (3) years or until his or her successor has been duly elected and qualified, as described in Article VII, Section 7. In the event a vacancy interferes with a 3-2-2 staggering, a candidate shall serve a shortened term thereby restoring the intended board turn over methodology. Once elected, that Director shall be declared: First, by volunteering; if not then, Second, by lowest number of votes in election; if not then, Third, by all Directors in that election participating in a manual “chance” process of blind selection term assignments such as the drawing of “the short straw” or drawing “from a hat”, etc. A Director may serve two (2) consecutive, elected three-year terms. No Director serving two (2) consecutive, three-year elected terms shall be eligible for nomination or election until the passing of three (3) consecutive years from the last service.