



WHERE HAS OUR VILLAGE GONE?

Description

By Teri Jackson, November 12, 2019

Incorporation Does Not Mean Corporation

It is not the intent of this article to impugn anyone's character or make claims of illegal actions. It is an attempt to establish where we are as a community, how we got there, and an acceptable path going forward.

HSV is an incorporated nonprofit, made so when John Cooper filed the necessary paperwork with the state pursuant to the provisions of the Arkansas Nonprofit Act of 1963 in 1970. And while we are incorporated (as most municipalities in states are), we are not a corporation and our governing structure should not resemble one.

Since 1963, the Arkansas legislature has passed a new nonprofit act, the Arkansas Nonprofit Corporation Act of 1993. As part of the Declaration vote in 2018, the last item on the ballot was to change the act under which the HSVPOA operates from the 1963 Act to the 1993 Act. That ballot initiative was resoundingly defeated by the property owners. Despite that defeat, the last two POA Board of Directors have changed Bylaws and implemented policies that are based on and reflective of the 1993 Act, resulting in the POA governing structure being set up as a corporation. I contend this is without legal standing and is flat out wrong.

For 45 years, the HSVPOA has not needed a [Governance Committee](#) to dictate how a Board member should conduct themselves. And even if we thought we needed one, in what universe would the person responsible, i.e. the POA CEO, for executing policies set by the governing body, i.e. the POA Board of Directors, be allowed to be a voting member of a committee on governance, which is defined in Webster's Dictionary as "the political function of policy making as distinguished from the administration of policy decisions"?

There was not a need for an entire section in the Bylaws on Board accountability because Board members were elected by the property owners (as they continue to be today) and they knew they were

accountable to them for their actions. There was no need for Duty of Obedience which includes “supporting, and not opposing directly or indirectly or taking any other stance against the policies and positions duly adopted by HSVPOA’s Board of Directors. Board members are allowed to communicate their views while still upholding their adopted policies. As representatives of HSVPOA, officers and directors are obligated to maintain this Duty of Obedience in all manner of activities during their terms of office.”

The Bylaws go on to state this is not intended to stifle or discourage debate: “informed debate is encouraged and is part of the individual’s responsibility in the deliberation process”, thus limiting a Board member’s right to step back after a vote is taken (whether on the prevailing side or not) and say, “I think we made a mistake and maybe this needs to be revisited and possibly even be brought back for another vote”. Roberts Rules of Order definitely allows this as long as the motion comes from someone on the prevailing side. But under the Duty of Obedience, that type of request/action can be construed as a violation of that section of the Bylaws. This is not good government – no governing body has ever gotten everything right the first time. There is a reason for an avenue to right wrongs.

Transparency and Openness Non-Existent

Also for 45 years, the HSVPOA Board has adhered to principles of the aforementioned Roberts Rules of Order. While the POA Board and staff claim to continue that practice, they have added Chapter 8, Article 3, C, (1), **viii** to the Board of Directors Policies as to what can be discussed privately. The first seven allowable topics are standard, straight out of Roberts Rules. But the eighth one, “Discussions of other confidential matters as reasonably expected to protect the organization and its interests” is so vague, the issues that could fall into that category are extremely subjective and certainly vast in nature. It pretty much opens the door to discussing anything they wish behind closed doors under the guise of how they ‘perceive’ the topic to be discussed.

Roberts Rules of Order also states that items scheduled to appear on a future agenda for action by the Board (excluding items that fall in categories one through seven) should not be discussed behind closed doors where a quorum of the Board is in attendance. Categorizing these sessions that the Board and staff readily agree happen on a regular basis as ‘briefings’ is in conflict with Roberts Rules; because there does not appear to be any debate in the formal meetings, one can only surmise that debate has taken place during these ‘briefings’, possibly resulting in how the vote will go down in the formal meeting. This is doubly troubling because the agenda does not allow input from the audience at the meeting prior to a vote. The only public input has to occur in three-minute intervals at the end of a meeting at least one month prior to it becoming an action item. One can only imagine what transpires behind the scenes in a full month between Board meetings; and by then, it’s too late to affect the outcome.

It is not enough for a Board member to take the microphone and state their support or non- support for an issue. Villagers want to know why they feel the way they do and what led them to that position – that’s how representative government is supposed to work. And while villagers in attendance at a Board meeting may or may not be allowed to speak (evidently for a variety of reasons), there is no response given to the questions they have. The vote has already been taken, the decision has already been made, it’s a done deal. And villagers are again left in the dark and frustration grows. Past Boards have allowed comments prior to the Action Agenda and then later at the end of the meeting. Why can’t that practice be reinstated? Why can’t or won’t the Board recognize this fundamental communication

and transparency problem?

From my experience, I recognize occasionally there are issues in a preliminary stage that are best “explored” out of the public eye, so in keeping with Roberts Rules, the process can be circumvented by briefing Board members in groups of two or three. Those sessions amount to a pure briefing by staff with the opportunity for Board members to ask questions – no deliberations take place, no debate takes place, and no decisions are made. And those types of issues may or may not ever make it to the agenda as either New Business and/or Action Items so exploration in private can often prevent controversy from ever happening. And that’s good government too.

Whoever advised the POA the current practice of allowing a quorum to meet for briefings in private is either ignorant of Roberts Rules of Order or has purposely turned a blind eye to these activities. It’s just not right and despite numerous pleas from property owners to discontinue this practice and allow these briefings to occur in a public meeting, those pleas have fallen on deaf ears. As a result, the lack of transparency continues to be a major issue with villagers.

POA Boardmembers Hamstrung By Their Own Policies?

There are currently-seated Board members that shared many of the same views as stated above when they were campaigning to be a Board member. When questioned “what went wrong with your views pre- and post-election”, the response is something along the lines of “once you get on the Board, you learn what you can and cannot do”. That response not only baffles me immensely, it insults me as a property owner. The tongue-in-cheek saying in the village is once they are elected, they “drink the cool-aid” and their whole perspective and demeanor change. Board members are elected by property owners and should be the body developing and adopting policies for staff to execute and there shouldn’t be anything they can’t do in that regard. If there is a policy they feel is wrong or restricts their ability to govern, it should be explored and changed if necessary, without threat of “being in violation” of some Bylaw they are also at liberty to change should they feel the need. With 20 years of elected official status in my back pocket, I clearly know the difference between setting policy and daily execution under the direction of the staff. I’m not so sure that is currently the environment at the POA.

These are the types of issues that draw villagers to the perception that areas of authority are all out of whack at the POA.

What the POA Board Fails to Understand

- We don’t want to be a corporation; we don’t want to be governed like a corporation;
- We want policies and Bylaws revised or eliminated that aligned us with the provisions of the 1993 Articles of Incorporation Act that we rejected at the ballot box;
- We want to exist in a representative governance atmosphere;
- We want monthly workshops restored where briefings, debate, and questions can be pursued in a public setting;

- We want not only to be heard, but to be listened to — those are two very different things;
- We want our questions answered; Roberts Rules of Order allow questions to be directed to the Chair and the Chair can respond or pass that question to someone else for response. Should that become practice, under no circumstances should the ‘passed’ question always go to staff; property owners elected the Board and they want to hear from the Board. Only technical questions should be passed off to staff;
- No one likes to be criticized and criticisms should not be directed at any single person (Board or staff), but we want to be able to express our opinions, whether complimentary or derogatory, about actions of the Board as a whole, without the threat of removal from the podium or the room; it’s okay to disagree as long as civility remains a part of the equation;
- We want to be treated with respect when addressing the Board – at Board meetings, Let’s Talk Dialogues, Town Halls, and Forward Together meetings. I’ve, on occasion, been treated with less than respect when speaking before the Board and I’m a former Board member. Not that that gives me special privilege, but I’ve sat in those same chairs and understand what comes with being a Board member. You don’t have to like what we have to say, but disrespect for our views and rights as property owners should not be an option. Sometimes you need to shed that defensive posture, bite your tongue, and prove you are not above reproach;
- We, as property owners don’t have to join hands and chant kumbaya, but we would like to live in a more harmonious environment and be recognized for the role we play in our governing process. We elected the Board to act on our behalf but that does not mean we no longer have a say or that we should be totally shut out.

Bullet-Proof CEO

I don’t even want to address the issues some villagers have with the salary and benefit package of the CEO. But a great many of us would like Board members to explain what prompted them to make the CEO “bullet-proof” by requiring, not a super-majority (five of seven) vote, but six out of seven votes to terminate the contract. That is unheard of – no one does that, not even Congress surpasses a super-majority scenario and they are a body totally out of control. An explanation would not violate executive session privilege and villagers have a right to know why such a clause was added and the timing of such action, although anyone with any sense fully understands the timing issue.

Righting the Ship

There is no doubt some villagers have surpassed a level of decency and civility acceptable to the governing process. The threats the Board and staff have received are appalling and the person or persons responsible should be prosecuted to the full extent of the law. But there is much the Board could do to alleviate some of the frustration, some of the anger, and a lot of the confusion enabling the Board to restore true transparency which will lead to a more trusting electorate.

People close to me have made the comment recently, “if people don’t like it here or the way it’s being run, they can leave – no one is forcing them to stay.” And my response to that is that I love living in the

village, I'm not going to move, and I truly like the people on the Board and staff that I've discussed in this article. But that doesn't mean I think the status quo is the best path forward for this village. I've only touched on a few, but many changes need to be made. We find ourselves in contentious times, but I firmly believe the ship can be righted. If it doesn't start now, I shudder to think of the possible wreckage of the ship come April and May of next year. Property owners sent a pretty serious message to the Board and staff last March. I think some villagers are now sending even clearer messages, and for the Board to disregard them would be a big mistake and a travesty for our beloved village.

We need qualified, knowledgeable people to run for the Board. Ones that recognize what must be done to right the ship and who are willing to take those steps. Are you that person?

By [Teri Jackson](#), Former HSVPOA Board Director, November 12, 2019

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