

2/21/19
Submitted by Fredrick Baker

**STATEMENT BY NEAHTAWANTA RESORT ASSOCIATION
IN SUPPORT OF H.B. 4048 AND H.B. 4049**

To: House Commerce and Tourism Committee, Rep. Steve Marino, Chair
From: Neahtawanta Resort Association
Date: February 19, 2019
Re: Why HB 4048 and HB 4049 are needed

EXECUTIVE SUMMARY

The Neahtawanta Resort Association ("Neahtawanta") is organized under the Summer Resort and Park Association Act of 1897, MCL 455.1, *et seq.* ("SRPA").

Together, House Bills 4048 and 4049 will enable an organization incorporated under the SRPA to use the Nonprofit Corporation Act of 1982, MCL 450.1746 ("NCA"), to convert to a nonprofit corporation.

These bills (as HB 5508 and 5509) were introduced in the last session by Rep. Inman. They passed in the House and had advanced to the third reading in the Senate before Treasury (through State Tax Commission Executive Director, Heather Frick) requested time for additional review to ensure that the bills had no revenue or property tax implications.

Unfortunately, by the time Treasury completed its review and released its hold request, too little time remained to complete the enactment process, so Rep. Inman has reintroduced the bills in the current session.

Several of the SRPA's 121-year-old provisions are inconsistent with the way modern corporate organizations are managed and operated and have become burdensome for Neahtawanta. Among them are the following:

- The SRA limits the value of personal property an SRA can hold to \$200,000. Neahtawanta's "rainy day fund," which is used for maintenance and repair of streets and common areas and to enable it to implement long term planning, is fast approaching this limit. By contrast, the NCA places no limit on the value of the personal property a non-profit corporation may hold.
- Under the SRPA only shareholders may be Board members, MCL 455.9, which makes it difficult for a small association like Neahtawanta, which has only 60 members, to compose a board slate, because, after several generations, many membership shares are held by trusts and LLCs, rather than by a single individual. In contrast, the NCA allows a fiduciary to hold shares, MCL 450.2445, and a director need not be a shareholder. MCL 450.2501.
- The SRPA forbids the board to expend more than \$1,000 without a vote of the shareholders. MCL 455.10. As a result of inflation, this limitation has become absurdly small, in effect requiring that shareholders approve even the most routine expenditures. This requirement is especially cumbersome, because, even in summer, a quorum of members is seldom available without significant advance notice. Typically, shareholders meet only once annually.

- The SRPA's cap on the number of shares foreseeably may pose a problem for Neahtawanta as members bequeath their single share through the generations, or as lots held by the association are acquired and developed by new members.

Under LARA's interpretation, an association formed under the SRPA may not convert to non-profit form because the SRPA itself does not specifically authorize conversion. This is unsurprising, because there was no non-profit corporation act 121 years ago, when the SRPA was enacted.

HB 4048 and HB 4049 are designed simply to allow an association formed under the SRPA whose members wish to convert to a non-profit form of corporate organization to do so. These bills do not make conversion mandatory; an association formed under the SRPA may choose to remain organized under it. The bills would simply allow an association formed under the SRPA to convert to a modern non-profit corporation if its members wish to do so, and they include a provision protecting the rights of minority shareholders by requiring a super-majority of all shares to approve the conversion.

Approximately 45 Michigan SRAs continue to be organized under the SRPA.¹ Neahtawanta has written to all of them describing this proposed legislation. None have opposed the Bills, and five sent letters of support for them to Representative Inman.

As noted above, after its review, Treasury was satisfied that the Bills have no tax or revenue impacts on other associations, or on the state or local taxing authorities.

Following this summary, for those on the Committee who may wish to review more detailed information, we have included an appendix containing a more detailed background account of why Neahtawanta has been obliged to seek legislative assistance to attain the modest goals of this legislation outlined above.

We thank you for this chance to be heard and are happy to answer any questions the committee may have.

Submitted respectfully,

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Neahtawanta Summer Resort Association
and
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¹ A list of all associations formed under the SRPA, obtained from LARA, is attached in spreadsheet form. The associations shaded on the second page of the list (which is a continuation of the spreadsheet on the first page) changed their form of organization on the dates indicated. At least one of them, the Cascade Hills Country Club, was allowed to convert by merger into a nonprofit corporation in 1980, apparently before LARA adopted its current interpretation of the SRPA.

APPENDIX

HISTORICAL BACKGROUND TO THE PROPOSED AMENDMENTS

To understand why Neahtawanta has come to the legislature for a solution to its problem, some recent history is required.

Neahtawanta began the process of addressing the problems described in the "Executive Summary" above by first exploring whether conversion to a modern corporate form was permitted under existing law.

Neahtawanta looked first to the conversion provisions of the Business Corporation Act ("BCA"), because, although Neahtawanta has always operated as a non-profit entity, the BCA, MCL 450.1123 says that it "applies" to summer resort associations, but that they "shall not be incorporated under this act":

Unless otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, brine pipeline companies, telegraph companies, telephone companies, safety and collateral deposit companies, canal, river, and harbor improvement companies, cemetery, burial, and cremation associations, railroad, bridge, and tunnel companies, and agricultural and horticultural fair societies. The entities specified in this subsection shall not be incorporated under this act.

Neahtawanta inquired of LARA whether, because the BCA provides that it "applies" to SRAs, Neahtawanta could use the BCA's conversion provisions to convert to a non-profit corporation. LARA's answer was no: LARA's position is that because the SRPA itself contains no provision expressly authorizing an association formed under it to convert to another form of corporation, Section 1123's exception to the application of the BCA to an association when it is "otherwise provided in, or inconsistent with" the SRPA was controlling. Thus, since the SRPA itself does not expressly authorize conversion, LARA will not allow conversion unless the SRPA itself is amended to permit it. In other words, LARA deems the SRPA's silence on the question of whether conversion is allowed as the equivalent of being "otherwise provided," even though the BCA seems to say that it "applies" to summer resort associations.

ALTERNATIVES TO CONVERSION ENTAIL GREAT RISK

Neatawanta also asked LARA whether it would recognize a merger of Neatahwanta's (SRPA) corporation with a newly-created non-profit corporation. LARA told us that it wasn't sure this could be permitted, again because a merger is not expressly permitted by the SRPA.

LARA told us that if we wanted to test whether a merger was possible, Neahtawanta would have to (1) prepare and submit to LARA a certificate of merger, new by-laws, and the documents necessary to dissolve Neatawanta's existing (SRPA) corporation, and (2) have Neahtawanta's shareholders approve all of these (all with the understanding that LARA might ultimately not approve the merger). Only then would LARA review the merger to determine whether it was permissible under existing law.

Neahtawanta also asked LARA if we could prepare the merger document package and submit them to LARA for review and approval, along with an outline of how we would proceed if LARA approved them, without actually conducting the shareholder vote that would be required to implement the merger.

LARA said no, we had to go through the whole process, including securing shareholder approval of a dissolution of the existing SRPA corporation, before it would even review a merger plan. LARA did not suggest what Neahtawanta should do if LARA concluded that a merger was not permissible and Neahtawanta's shareholders had already voted to dissolve the corporation formed under the SRPA.

The problem with the approach LARA suggested is that the provisions authorizing a merger are all found in the BCA and the NCA. Since LARA has already determined that, even though section 1123 provided that the BCA "applies to summer resort associations," Neahtawanta may not make use of the BCA's conversion procedure, we saw no reason to be optimistic that we could expect a different outcome if we tried to use the BCA's merger provisions.

Neahtawanta concluded that this alternative was too risky (for reasons explained within), because LARA could give no assurance that it would, or even might, reach a different result if a merger alternative was used.

LARA's position was daunting for two reasons: First, even if LARA ultimately decided to allow a merger, the dissolution of the (SRPA) corporation that had to precede it presented a great risk. Second, if the merger was not approved, or if Neahtawanta simply dissolved itself and formed a new nonprofit corporation without attempting a merger, the same risk was present.

This risk stems from what we believe is a provision unique to 1897 PA 230. It is found at MCL 455.21, which prescribes the consequences of dissolving a corporation formed under the SRPA:

In case such corporation should for any reason be dissolved [sic – dissolved; it is misspelled in the code] or wound up by any court of competent jurisdiction, by reason of the termination of its charter or otherwise, each stockholder to whom a lot or lots have been assigned, allotted or confirmed, shall be entitled to receive the same in fee² upon complying with such terms and conditions as may be imposed by the court having jurisdiction of the winding up of such corporation **and all parks, roads or walks** shown upon the plat of the property of such corporation recorded as aforesaid, **shall be and become dedicated to the public use as parks, roads and walks** in the same manner and to the same extent as parks, roads and drives are or may be so dedicated within the limits of cities, towns or villages in this state. (Emphasis added).

In short, if Neahtawanta were to dissolve and attempt to merge with, or simply form, a new, non-profit corporation, it would be exposed to a very real risk of losing ownership of all association-

² Unlike many associations formed under the SRPA, which own all of the land in common, but not the members' cottages constructed on the lot assigned to each member, Neahtawanta's members already own both the land and their cottages.

owned common areas.³ Indeed, because Neahtawanta's plat actually predates its incorporation under the SRPA,⁴ a number of "platted" but non-existent roads that criss-cross what is in fact a large, undeveloped forest subject to a conservation easement, would arguably be at risk of forfeiture. In addition, structures located on commonly owned association land, such as the clubhouse, tennis courts, beach house, and, of course, the platted roads that are in fact in use in the occupied portion of the association, would also arguably be at risk.

As a result of an apparent change in the interpretation of the SRPA, Neahtawanta finds itself in a situation not of its own making that creates a problem that Neahtawanta cannot solve by itself. Neahtawanta submits that the law should be clear, and that anyone should be able to tell what the consequences of acting will be.

CONCLUSION

No simple solution is now available to Neahtawanta. Neahtawanta seeks the amendments contained in HB 4048 and HB 4049 solely to make the law clear in a situation in which it is now both unclear and fraught with potential hazards.

It appears that the legislature tried to make the conversion procedures available under the BCA available to associations formed under the SRPA by providing that it "applies" to them unless "otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed." LARA's apparent change in its former interpretation of this law now requires that the SRPA itself must affirmatively provide that a particular BCA provision applies, however, before an association formed under the SRPA may invoke it. Otherwise the SRPA will be deemed to "provide otherwise" or be "inconsistent" with BCA §1123, leaving it to summer resort associations to guess what part of the BCA "applies" to them.

Neahtawanta seeks only the correction or clarification of the SRPA that LARA's current strict interpretation of the BCA requires. It is a clarification consistent with both §1123's language (providing that it "applies" to "summer resort associations") and with the apparent past practice of

³ Certainly, Neahtawanta has arguments for why a dissolution that is not part of a "winding up of such corporation," but merely part of a reorganization of the corporation in a different form, should not cause "the plat of the property of such corporation recorded as aforesaid, [to] be and become dedicated to the public use as parks, roads and walks," as MCL 455.21 provides. But Neahtawanta's directors, acting as fiduciaries, prudently concluded that they could not take that risk.

Neahtawanta submits that it, and the other associations formed under the SRPA that have indicated their support for the amendments, should not be obliged to risk litigation and an uncertain outcome, or, alternatively, the loss of all of their common areas, as the price of simply trying to modernize their corporate governance.

⁴ Neahtawanta's founders acquired the already-platted property after a predecessor association formed under a different resort association act was liquidated in insolvency proceedings.

permitting at least one association organized under the SRPA to convert by merger to the non-profit form of corporate organization.

Treasury has thoroughly vetted these proposed amendments and found them unobjectionable. By enacting these amendments, the legislature will merely be permitting SRAs to become what Neahtawanta wishes to be: a modern, conveniently governable, non-profit corporation.

Most of Neahtawanta's common area land is subject to conservation easements. We have tried to preserve the quiet, rural character of these common lands for the benefit of all area residents (both members and non-members) and the environment. Under the current state of the law, however, Neahtawanta risks forfeiting all association-held common lands by using the only alternative available to it under LARA's interpretation, because it would first have to dissolve, potentially triggering their forfeiture under MCL 455.21.

Neahtawanta, and other associations that may be in the same position now or in the future should not have to guess about the consequences of trying to remedy the practical governance problems posed by operating under the SRPA. Under the current state of the law, no one, not LARA, not the half-dozen lawyers who have examined this problem, and not even this Committee, can tell Neahtawanta how to proceed without risking the destruction of an association of families and friends who have shared their little community for over a century.

Neahtawanta asks only that the legislature provide all associations organized under the SRPA a clear, reliable way to proceed in a manner that complies with LARA's current interpretation of the SRPA.

OUT_WHY	ID #	NAME	ACT
CD	155913	PORTAGE LAKE LAND COMPANY	230-1897
CD	747059	GAME BIRDS, INC.	230-1897
CD	837039	CRESCENT ISLES RESORT CO.	230-1897
ME	867331	CASCADE HILLS COUNTRY CLUB	230-1897
AD	104760	THE CRESCENT BEACH RESORT ASSOCIATION	230-1897
AD	710504	GOLDEN SANDS ASSOCIATION	230-1897
CD	878321	AVALON ASSOCIATION	230-1897
AD	709436	SKY REEF ASSOCIATION	230-1897
AD	807110	INDIAN VILLAGE RESORT ASSOCIATION, INCORPORATED	230-1897
AD	376453	HIT AND MISS, INC.	230-1897
AD	716471	WEDGEWOOD ASSOCIATION	230-1897
AD	825006	PYNAWOBI ASSOCIATION	230-1897
AD	810351	SHADY SHORES PARK LOT OWNERS ASSOCIATION, INC.	230-1897
AD	285348	ISLAND VIEW WILDERNESS RESORT ASSOCIATION, INC.	230-1897
AD	38645	KINGS POINT SHORES RESORT ASSOCIATION, INC.	230-1897
AD	830141	BALADUNE ASSOCIATION	230-1897
AD	809023	THE SOUTH SHORE SPORTSMANS ASSOCIATION	230-1897
AD	772175	BRUSH CREEK BUCKS, INC.	230-1897
AD	346213	HARMONY 3, INC.	230-1897
AD	846221	THE SCHAEFER CLUB	230-1897
AD	720058	DUNEWOOD ASSOCIATION	230-1897
AD	769410	WA-WEN RESORT ASSOCIATION, INC.	230-1897
TE	870172	MAPLE ISLAND RESORT ASSOCIATION	230-1897
	39847	LONG ESTATE SUMMER RESORT ASSOCIATION	230-1897
	44161	LAKE GEORGE RESORT, INC.	230-1897
	53723	SOUTH HAVEN PROPERTIES, INC.	230-1897
	117913	POINTE AUX BARQUES, INC.	230-1897
	132302	SISTER LAKES RESORT ASSOCIATION, LTD.	230-1897
	136993	OCEANA BEACH ASSOCIATION	230-1897
	182818	COREY COVE SHORES RESORT ASSOCIATION, INC.	230-1897
	361775	DUTCH VILLAGE RESORT ASSOCIATION, INC.	230-1897
	365828	ARROWHEAD SHORES RESORT ASSOCIATION, INC.	230-1897
	705238	WHITE LODGE OWNERS, INC.	230-1897
	708017	HICKORY ISLAND COMPANY	230-1897
	709221	SAN JUAN ASSOCIATION	230-1897
	714546	HILLTOP HOMES ASSOCIATION	230-1897
	720040	OMENA WOODS ASSOCIATION, INC.	230-1897
	728005	CHIPPEWA COVE WOODS ASSOCIATION	230-1897
	743072	POINT NIPIGON ON THE STRAITS RESORT CLUB	230-1897
	744108	TRAVERSE CITY GOLF AND COUNTRY CLUB	230-1897
	748498	SUMMER ISLAND ASSOCIATION, INC.	230-1897
	749411	DAYTON BEAR LAKE OUTING CLUB	230-1897
	750075	THE NE-AH-TA-WAN-TA RESORT ASSOCIATION	230-1897
	751102	LONE PINE ASSOCIATION	230-1897
	752060	OSCEOLA INDIAN CLUB, INC.	230-1897
	752720	CAPTAIN'S COVE RESORT ASSOCIATION, INC.	230-1897
	754258	WINTONY WOODS	230-1897

INC_DATE	OUT_DATE	RMMS Survey
12/1/02	10/8/73	
8/7/59	4/6/78	
10/20/61	4/18/79	
7/25/19	12/15/80	
8/21/14	5/15/84	
9/12/80	10/1/86	
7/21/80	5/7/87	
10/10/80	10/1/87	
7/1/77	10/1/88	
3/24/87	5/15/90	
11/4/86	10/1/90	
7/25/77	10/1/90	
7/5/51	10/1/92	
8/22/91	7/15/94	
10/27/93	7/15/96	
4/3/74	10/1/96	
8/3/76	10/1/00	
6/25/01	10/1/04	
11/22/83	7/15/05	
12/7/09	10/1/07	
3/21/73	10/1/11	
11/1/00	10/1/11	
12/13/1895	12/13/15	
6/6/39		YES
7/14/80		
5/9/75		
3/22/10		
6/28/77		YES
8/23/22		
11/7/94		YES
1/11/96		YES
1/26/96		YES
11/23/36		
12/16/04		
5/4/37		
5/11/82		
12/3/76		
5/3/16		
8/10/14		
5/3/20		
10/30/85		
6/9/33		
1/15/13		YES
12/23/53		
9/16/49		
7/23/98		YES
4/17/72		

	759351	SEQUANOTA CLUB	230-1897
	760620	SUNSET SHORE RESORT ASSOCIATION, INC.	230-1897
	760637	SUNSET RESORT ASSOCIATION, INC.	230-1897
	761883	THE POINTE RESORT ASSOCIATION, INC.	230-1897
	762036	RICE'S RUSTIC RESORT ASSOCIATION	230-1897
	765654	SHUPAC SHORES RESORT ASSOCIATION, INC.	230-1897
	771039	THE COVERT RESORT ASSOCIATION	230-1897
	787522	MISTY HARBOR COMMONS ASSOCIATION, INC.	230-1897
	792082	PORT SHELDON BEACH ASSOCIATION	230-1897
	794008	DETROIT GOLF CLUB	230-1897
	801219	SOUTH MANISTIQUE SHORES RESORT ASSOCIATION	
	805054	THE MIDDLE ISLAND POINT CAMPER'S ASSOCIATION	
	813003	SLAGLE TROUT CLUB	
	815361	SHOREWOOD ASSOCIATION	
	816141	BAD AXE LAKESIDE CLUB	
	820398	MICHIGAN SHORES COUNTRY CLUB PROPERTY OWNERS ASSOCIATION	
	825084	MORRISON LAKE RESORT ASSOCIATION	
	826348	YIN YANG ASSOCIATION	
	840032	PINE OAKS RESORT ASSOCIATION, INC.	
	874032	PINEWOODS ASSOCIATION	
	891298	BREEZY POINT CLUB, INC.	

8/26/36		
2/14/00		YES
12/18/98		YES
7/20/98		YES
11/25/59		YES
8/27/01		YES
3/13/02		YES
5/20/04		
5/28/06		
12/06/1899		
10/24/89		
6/18/18		
3/30/04		
6/4/02		
3/3/32		
2/23/68		
3/6/26		YES
7/2/76		
8/27/63		YES
1/17/20		
9/14/82		