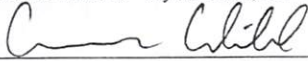


1 Under penalty of perjury I certify that on this day I emailed  
2 & deposited in the mails of the United States of America a  
3 properly stamped and addressed envelope directed  
4 to ROCHELLE Y. DOYEA, Attorney for Defendant,  
5 a copy of the document on which this certification appears.  
6 DATED THIS 18<sup>th</sup> day of March, 2024.

7 

8 CONNER CHILD, Legal Assistant to Carla J. Higginson of  
9 HIGGINSON BEYER, Attorney for Plaintiff

COUNTY CLERK OFFICE  
FILED COPY

MAR 18 2024

LISA A. HENDERSON  
SAN JUAN COUNTY, WASHINGTON

6 SUPERIOR COURT OF WASHINGTON FOR SAN JUAN COUNTY

7 FARM TO MARKET, LLC,  
8 Plaintiff,

9 vs.

10 EASTSOUND WATER USERS  
11 ASSOCIATION, a Washington non-profit  
12 corporation,  
13 Defendant.

NO. 23-2-05153-28

MOTION FOR SUMMARY JUDGMENT

13 COMES NOW PLAINTIFF ABOVE-NAMED, by and through its counsel of record Carla J.  
14 Higginson of HIGGINSON BEYER, P.S., and pursuant to CR 56(a) submits the following Motion  
15 for Summary Judgment.

16 INTRODUCTION

17 It has been said that the American people have a right to expect that the rule of law will guarantee  
18 that even if we don't like the policy, that it's done properly. Plaintiff as a member of EWUA expected  
19 that the bylaws would be followed and that he would be able to vote for the three directors whose seats  
20 were up for election. Instead, he only got to vote for two directors and the board denied him the right  
21 to elect the third director by keeping the seat off the ballot and then later appointing the third director.  
22 This was a breach of the contract between the members and the association, which gave the members the  
23 right to vote to elect the directors who govern the association, with a corresponding duty by the  
24 association to provide that opportunity fully and fairly. Whether the failure to conduct the election to  
25 elect the three open positions was intentional or negligent, it is still a breach that violated Plaintiff's  
26 rights as a member. Plaintiff is asking that the election be set aside and that a new election be conducted

27  
28 TOTAL # OF PAGES: 8

Motion for Summary Judgment - 1

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1 in accordance with the bylaws to elect the required three director positions. If a member wants to  
2 exercise its right to vote, the association is obligated to let them do so.

3  
4 STATEMENT OF FACTS

5 Eastsound Water Users Association ("Association") was incorporated in 1955 (see Articles of  
6 Incorporation attached as Exhibit A to the Declaration of Steve Smith, filed contemporaneously herewith)  
7 for the purpose of supplying water to its members. The Articles provide at Article VII that bylaws shall  
8 be adopted "for the government and management of the corporation and its affairs." The bylaws (revised  
9 February 2020), a copy of which is attached as Exhibit A to the Declaration of Joan Pradhan filed herein  
10 on November 8, 2023, provide at Article I that: "The Association is a member cooperative. The  
11 cooperative is owned by the Members. The Board is elected by the owners of the cooperative to manage  
12 the Association." The bylaws define "member" as: "the individual or legal entity who has entered into  
13 a Membership Agreement." A Membership Agreement is defined as: "The contractual agreement  
14 between the Association and Water Users. ... [It] details the obligations and required actions of each  
15 individual or legal entity and the Association. ... Each Member will be a party to at least one Membership  
16 Agreement." See sample Membership Agreement attached as Exhibit B to the Declaration of Steve  
17 Smith. The Association had 1,217 members as of October 15, 2023 (see Exhibit B, page 31, Declaration  
18 of Joan Pradhan).

19 The Association is managed by a board of seven directors according to the bylaws, Article  
20 VI(A)(b) "At least two (2) and not more than three (3) Directors shall be elected at each annual meeting,"  
21 see bylaws, Article VI(A)D. Each member is entitled to one vote in any election, see sample Membership  
22 Agreement. "Upon election, Directors shall serve a term of three (3) years ....", see bylaws, Article  
23 VI(A)(g). If a director position becomes vacant during a term, the Board may "appoint a replacement to  
24 serve until the next annual meeting. At that time, the vacated seat must be posted for election by the  
25 membership to complete the unexpired term," see bylaws, Article VI(A)(j).

26 For the election conducted in November 2023, there were three positions to be filled by election,



1 all of whom had been appointed so their terms were to be filled by election at the annual meeting  
2 pursuant to the bylaws: Scott Lancaster, appointed on April 18, 2023 (see meeting minutes attached as  
3 Exhibit C to the Declaration of Steve Smith), Rick Christmas, appointed on August 29, 2023 (see  
4 meeting minutes attached as Exhibit D to the Declaration of Steve Smith), and Clyde Duke, appointed  
5 on December 6, 2022 (see meeting minutes attached as Exhibit E to the Declaration of Steve Smith).

6 In late October 2023, notice was mailed to the Association members, of which Plaintiff is one,  
7 that two directors would be elected by mail-in ballot. See Exhibit B, page 27, to the Declaration of Joan  
8 Pradhan: "This year we have two (2) open Director seats." A prior notice dated October 13, 2023, a copy  
9 of which is attached as Exhibit G to the Declaration of Steve Smith) incorrectly identified which seats  
10 were up for election and incorrectly stated what directors would be remaining on the board.

11 The election instructions incorrectly identified the number of directors that were being elected  
12 as two, stated that only two votes could be cast, and stated that voting for more than two candidates  
13 would invalidate the ballot. See copy of ballot and instructions attached as Exhibit B, page 31 to the  
14 Declaration of Joan Pradhan. Under the bylaws, the election should have been for three positions. The  
15 Association was aware that the election should include the third position for Clyde Duke's position, see  
16 Declaration of Mike Parnell filed herein on November 8, 2023, page 2, lines 1-2, and in fact, had  
17 included the other two appointed positions in the election, that of Rick Christmas and Scott Lancaster.  
18 Nevertheless, the defective election was not canceled.

19 Three seats were up for election because there were three appointees. The appointees were:

20 Seat 2 - Duke - appointed December 6, 2022  
21 Seat 7 - Lancaster- appointed April 18, 2023  
22 Seat 1 - Christmas - appointed August 29, 2023

23 Note, that the bylaws do not use seat numbers. They are added here for ease of reference. (See Board  
24 Term Expirations, Exhibit F to Smith declaration.)

25 Duke, Lancaster, and Christmas were all required to stand for election if they wished to remain  
26 on the Board. All three seats were vacated, as none of the three submitted their names as candidates.  
27 The third seat, that of Clyde Duke, which should have been up for election with the other two positions,

1 was instead filled by the board after the annual election by appointment of Jim Cook. This was contrary  
2 to the bylaws which required a position that was held by an appointee to be elected at the next annual  
3 election.

#### 4 SUMMARY OF ISSUES

5 1) The announcement of the 2023 election:

- 6 a) Incorrectly identified which seats were up for election.
- 7 b) Incorrectly identified the number of seats up for election.
- 8 c) Incorrectly identified the people who would remain on the board after the election.

9 2) The instructions for the 2023 election:

- 10 a) Incorrectly identified the number of seats up for election.
- 11 b) Incorrectly identified number of candidates a voter could vote for.
- 12 c) Directed the Member to send their proxy form with their ballot so that any business  
13 conducted at the annual meeting would have a quorum. There was not any business scheduled for the  
14 Annual meeting. The election was concluded prior to the annual meeting. The 2023 Board used the  
15 proxies to cast votes in the election.

16 3) The ballot for the 2023 election:

- 17 a) Incorrectly instructed the voter to vote for two rather than three of the four  
18 candidates. Stated that a vote for more than two would be an invalid ballot.
- 19 b) Failed to include the account number of the voter that would allow an election  
20 inspector to identify the number of votes each ballot was entitled to cast.
- 21 c) Failed to include the entity name of the voter that would allow an election  
22 inspector to identify the number of votes each ballot was entitled to cast.

#### 23 ISSUES

24 A. Did the Association violate its bylaws when it only included two director positions for election  
25 by the members in the November 2023 election?

26 B. If the bylaws were violated, should the election be set and a new election ordered to include  
27 the election of the three director positions that should have been on the ballot?

28 C. Since the election was not properly conducted and the board was not properly constituted,  
should all Board votes and actions from the point from November 16, 2023 (the day following the annual  
meeting when the election results were officially announced ) onward be nullified and submitted to the  
board after the new election for revote?



1 ARGUMENT

2 Summary judgment allows a party to move the court, with or without supporting affidavits, for  
3 summary judgment upon all of their claims or any part thereof. CR 56(a). Summary judgment is proper  
4 when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter  
5 of law. CR 56(c). "The [moving party] bears the initial burden of showing the absence of a genuine issue  
6 of material fact. (Citation omitted.) Once met, the burden shifts to the party with the burden of proof at  
7 trial to make a showing sufficient to establish the existence of an essential element to that party's case.  
8 (Citation omitted.) If the [responding party] fails to meet that burden, summary judgment is appropriate  
9 because there can be no genuine issue of material fact given that a complete failure of proof concerning  
10 an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *West*  
11 *Coast, Inc. v. Snohomish Co.*, 112 Wn. App. 200, 205-206, 48 P.3d 997 (2002). If the nonmoving party  
12 fails to establish the existence of a factual dispute concerning an essential element of its case, summary  
13 judgment should be granted. *Triplett v. Dep't of Soc. & Health Serve.*, 193 Wn.App. 497, 508, 373 P.3d  
14 279 (2016). Although the facts must be viewed in the light most favorable to the nonmoving party, they  
15 actually have to be facts. The facts alleged must then be material to the legal claims at issue; and ultimate  
16 facts, conclusions of law, and conclusory statements are insufficient to defeat a summary judgment  
17 motion. And, all assertions must be supported by evidence. *Grimwood v. Univ. of Puget Sound, Inc.*, 110  
18 Wn.2d 355, 359-60, 753 P.2d 517 (1988). Passing treatment of an issue or lack of reasoned argument is  
19 insufficient to merit judicial consideration, and the courts generally do not consider "conclusory  
20 arguments that do not cite to authority." *West v. Thurston County*, 168 Wn.App. 162, 187, 275 P.3d 1200  
21 (2012).

22 Bylaws are a set of rules established by an organization so as to regulate itself, as allowed or  
23 provided for by the legislature, here RCW 24.03A. Bylaws (and the Articles of Incorporation) are the  
24 governing document of a corporation. *Roats v. Blakely Island Maintenance Com'n*, 169 Wn.App. 263,  
25 279 P.3d 943 (2012). These must be followed unless they conflict with a law that supersedes a particular  
26 by-law. RCW 24.03A.125(2) provides that: "The bylaws may contain any provision for managing the

1 activities and regulating the affairs of the corporation that is not inconsistent with law or the articles."  
2 Thus, whenever a provision of the bylaws is inconsistent with a provision of the articles, the provision  
3 of the articles controls. Since the Articles are silent on how to conduct elections, the Association's bylaws  
4 govern. The bylaws do not specify what seats are elected in which years, but this can be determined based  
5 on when each position was elected. See Exhibit F to Smith declaration.

6 Bylaws constitute a contract between an organization and its members. The Association is a  
7 private, non-profit, non-governmental entity that is governed by its own rules to which members agree  
8 to abide. "The relationship between a (social) club and its members is one of contract. *Garvey v. Seattle*  
9 *Tennis Club*, 60 Wn.App. 930, 933, 808 P.2d 1155 (1991); *see also* 6 Am.Jur.2d *Associations and Clubs*  
10 § 5 (1965) (an association's bylaws "constitute a contract" between the association and its members, and  
11 one who becomes a member of an association is deemed to have known and assented to its bylaws and  
12 "cannot be heard to object" to the enforcement of the bylaws). We conclude the bylaws, and specifically  
13 Article 21, are enforceable as a contract. Therefore, as a contract, they must be followed by an  
14 organization." *Spokoiny v. Washington State Youth Soccer Assn.*, 128 Wn.App. 794, 798, 117 P.3d 1141  
15 (2005). *See also, Langan v. Valicopters, Inc.*, 88 Wash.2d 855, 859, 567 P.2d 218 (1977): "The bylaws  
16 of that organization are essentially a contract between [an association] and its members. *See Rodruck v.*  
17 *Sand Point Maintenance Comm'n*, 48 Wash.2d 565, 295 P.2d 714 (1956)."

18 When someone becomes a member of the Association, they are required to sign a membership  
19 agreement which states in relevant part that: "Eastsound Water is a member-owned cooperative.  
20 Eastsound Water acts through an elected Board of Directors, which manages the affairs of the  
21 cooperative." Page 1, paragraph 2 of agreement. "This Membership Agreement is entitled to one vote in  
22 any Eastsound Water election or proposed membership vote." Page 4, paragraph 1. Accordingly,  
23 members have the right to vote for the directors of their cooperative association. They were denied the  
24 right to vote for the third director position that should have been on the ballot.

25 In *Baldwin County Elec. Membership Corp. v. Catrett*, 942 So.2d 337, 345-346 (2006), the  
26 plaintiffs alleged that the board of trustees infringed upon their voting rights because the board failed to



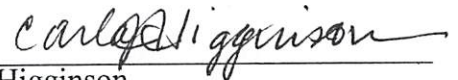


1 of how this could best take place is included in Exhibit I to the Declaration of Steve Smith.

2 While it may seem an unusual remedy to request that an election for directors be set aside, the  
3 members' rights were impaired by the failure of the Association to hold an election for the three required  
4 seats. More than four candidates might have submitted their names for possible election had they known  
5 that there were three positions open rather than two. And, without the participation of whoever would  
6 have been elected as the third director, the board functioned with only five directors rather than six. Votes  
7 taken on various matters could have been different with five rather than six directors, and the actions by  
8 an improperly constituted board were ultra vires. The Association knew prior to conclusion of the  
9 November 2023 election that they were holding an election for the wrong number of directors according  
10 to the bylaws, yet they chose to go forward with counting the votes, announcing the results and holding  
11 board meetings. Plaintiff, as a member, has the right to expect that the Association will follow its  
12 contractual obligation as contained in the governing documents. Summary judgment should be granted  
13 accordingly.

14 DATED THIS 18<sup>th</sup> day of March, 2024.

15 HIGGINSON BEYER

16 

17 Carla J. Higginson  
18 WSBA #10653  
19 Attorney for Plaintiff

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