REPORT OF AD HOC VOTING COMMITTEE

Background

This is the Report of the Ad Hoc Voting Committee of the Shelter Harbor Fire District ("District") that was convened after the following motion presented by Betty Waters and Dorothy Bruno was adopted by the Board of Governors:

> I move we establish a committee with Board Members and members of the community to study the Shelter Harbor Fire District voting practices including multiple votes based on multiple properties and proxy voting. Said committee to prepare a report with options going forward to the community by March 15, 2021.

Underlying the creation of the Committee were concerns about (a) "multiple voting" based on ownership of multiple properties in the District as currently permitted by the Shelter Harbor Charter and Bylaws, and (b) the provision in the Bylaws that allows for the obtaining of up to three proxies per voter, both of which provisions may result in "harvesting" of multiple votes per owner in the District that would give such voters disproportionate impact in elections. The Committee has addressed these concerns in offering its recommendation.

The Committee met on five occasions (virtually) and members of the Committee conducted research that was presented to the Committee. At most of these open meetings, the public was invited to, and did, comment on the matters under consideration.

Current Voting Provisions in the Charter

The current voting provisions in the Charter and Bylaws are set forth in Exhibit A. Essentially, the Charter and Bylaws provide that a person who owns a 40% undivided interest in real property in the District (or his or her representative) is entitled to a vote at any District meeting, and a person who is a registered voter of Westerly and who lives in the District is also entitled to a vote at such meetings. For many years, the provisions in the Charter and Bylaws have been interpreted to entitle owners of a 40% interest in more than one District property to a vote for <u>each</u> property in which the voter has an interest. Owners may be individuals, entities[1], or estates. Further, a qualified voter is entitled to obtain and vote up to three proxies. This can result in multiple votes. For example, a voter owns a 50% interest in three District properties. At the annual meeting he also holds the maximum three proxies. One proxy is from an owner of three District properties in which he holds at least a forty percent ownership interest. The second proxy is from an owner of two District properties in which she holds the minimum forty percent ownership interest. The third proxy is from an owner of one District property with an ownership interest of 40%. At the annual meeting the voter would vote nine votes, his three votes plus six votes from the proxy holders he represents. If the voter's spouse owns the other fifty percent of their three properties, she would also get three votes at the annual meeting. If she also held three proxies, and if some are from owners of multiple properties, she could vote more than six votes

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[1] Entities include the following: property under a declaration of trust (UDT); a qualified personal residence trust (QPRT); a revocable trust, irrevocable trust, a living trust, a family trust, or any other form of trust; a corporation, limited partnership or any other form of entity.

at the annual meeting. It is this voting imbalance and its potential to overwhelm the votes of single District property owners and non-property owners to the point they can never influence an election's outcome that concerns many voters.

The Committee addressed the issues by focusing on the Bylaws and working within the Charter. Any change to the Charter would require legislative approval by the Rhode Island General Assembly, and this would involve uncertainties and risks inherent in the legislative process. The Charter, like a number of charters of coastal fire districts, is based on either property ownership or legal residency.[2] However, Shelter Harbor's Charter is unusual in the provides for a 40% ownership interest to qualify. There is nothing in the Charter or the Bylaws that addresses multiple voting, with the result that there is an ambiguity as to whether or not it is permitted.

<u>History of the Charter and Bylaws</u>

The Shelter Harbor Fire District was established in 1937 by an act of the Rhode Island legislature. The original Charter limited voting rights to individuals who owned real property with a net equity value of at least $134. Until it was repealed in 1973, the Rhode Island Constitution required a person to own real property or pay taxes on personal property amounting to at least $134 in "order to vote upon any proposition to impose a tax or for the expenditure of money in any town." The 1937 Charter by limiting voters to those who met the Rhode Island Constitutional requirements to vote on taxes and expenditures was able to combine the election of officers and approval of a budget and taxes into one annual meeting.

In 1985 and 1993 Section 2 of the Charter was revised. One of the most significant changes was to set a minimum forty percent (40%) ownership interest in real estate in the District to vote in elections. (Voting rights were also eliminated for various future and remote interests in District real property as well.) Another major change to Section 2 was to add a new voter category for people who were registered voters in the Town of Westerly and resided in the District. This change was mandated by a decision of the Supreme Court of Rhode Island in *Flynn v. King*, 433 A.2d 172 (R. I. 1981). The Charter also was changed to allow the executor or administrator of an estate which included District real property to vote. Also, if the title to a property is held in the name of a legal entity, *e.g.,* an LLC or trust, a representative of the legal entity is entitled to vote. Finally, a voter registration requirement was added.

The 1937 Charter generally required in person voting similar to the voting method used in financial town meetings. The only exception to this in person voting requirement was that a husband or wife could cast the proxy vote of their spouse. A 1985 Charter change authorized a Bylaw to be written to allow proxy voting for voters who were physically unable to vote in person. All references to proxy voting were removed from the Charter in 1993. The current proxy voting provisions are found exclusively in the Bylaws. In addition to a voter's spouse or family member, any qualified and registered voter may also vote a proxy. No voter may vote more than three (3) proxy votes in an election. Proxies may be utilized without providing a reason for not being able to attend the election in person. The current proxies are general

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[2] See the charters of the following Fire Districts: Weekapaug, Shady Harbor, Quonochontaug, Watch Hill, Misquamicut, and Pojack Point.

proxies, meaning no instructions are given as to how to vote. This means each proxy holder has unfettered discretion as to how they will vote.

<u>Legal Framework</u>

<u>Voting</u>

To be able to vote in a Rhode Island election you must satisfy three requirements. First, you must be an American citizen and be at least 18 years old. Second, you must be a resident of Rhode Island. Third, you must register to vote in a timely fashion. Residence under Rhode Island law means your domicile. You can have only one domicile[3], regardless of how many homes you own outside of Rhode Island and at which you spend some of you time. Without Article 2 of the Charter, which enfranchises all owners of a 40 percent or greater interest in District property, non-Rhode Island residents would not be able to vote in a District election of officers. This distinction is clear since District property owners also pay real estate taxes to the Town of Westerly without the right to vote in Town elections.

There is a narrow statutory exemption in Rhode Island election law for a meeting to elect officers of a fire, water or sewer district. It could be argued that if the Charter allowed it, multiple voting by multiple District property owners in a meeting to elect officers could be sanctioned. Additionally, this limited exemption might also allow the voting of three proxy votes by another voter at a meeting to elect District officers if sanctioned by the Charter. However, there is nothing explicit in Article 2 that allows (or prohibits) multiple votes by multiple property owners (or multiple proxies). Another equally plausible interpretation of Section 2 of the Charter is that it provides multiple ways to qualify to vote in a meeting. To cite another ambiguity, if I own at least a 40 percent interest in a property, Section 2 says I can vote at a meeting. If I am a registered voter in the Town of Westerly and I live in the District, I can vote. What if I am both? Am I entitled to two votes? Our historical interpretation of Section 2 of the Charter has been to say no, but that is unclear.

There is a series of U.S. Supreme Court cases and a Supreme Court of Rhode Island case that conclude allowing multiple votes to one voter in a local government election is likely to be a violation of the equal protection clauses of the U.S. and Rhode Island Constitutions. Two U.S. Supreme Court cases, *Reynolds v. Simms,* 377 U.S. 533 (1964) and *Kramer v. Union Free School District No.15*, 395 U.S. 621 (1969), taken together establish that whenever a local government decides to elect persons to perform a government function, each qualified voter must be entitled to an <u>equally weighted</u> vote. We think the principle should apply here. For example, in *Avery v. Midland*, 390 U.S. 701(1969) the U.S. Supreme Court strictly applied the equally weighted vote rule to a local government that made a substantial number of decisions which impacted all residents in the geographic area of its governing jurisdiction. These included equalizing tax assessments and setting the tax rate, conducting elections, letting contracts, issuing bonds, adopting a budget, administering peacekeeping and up keep of roads and bridges. <u>See</u> Section 6

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[3] Section 17-3.1(b) of the Rhode Island General Laws lists thirteen types of objective evidence to establish you are a resident of Rhode Island, *e.g.,* the address listed on your driver's license and car registration or federal and state tax returns.

of the Charter. The Supreme Court of Rhode Island in *Flynn v King,* 433 A.2d 172 (R. I. 1981) also strictly applied the *Reynolds* and *Kramer* equally weighted votes requirement to a Fire District election in a different context. The West Glocester Fire and Water District limited voting for District officers to taxable property owners. Non-property owners who resided in the District sued to have the charter provision, which excluded them from voting in District election, invalidated. The Supreme Court of Rhode Island found the District's charter voting restrictions unconstitutional and a violation of the equal protection clauses of the U.S. and Rhode Island Constitutions.

The *Flynn* case strictly applied the *Reynolds/Kramer* equally weighted vote principle in reaching its decision. Significantly, the Supreme Court of Rhode Island reaffirmed its long-standing position, going back to 1878, that fire districts are quasi municipal entities exercising general government powers over their geographic areas, which means that they are subject to principles relating to equally weighted voting. Further, there is the risk that multiple voting could be considered unconstitutional. One eminent election law expert has stated that "granting people additional votes could in theory violate the one person one vote principle of *Reynolds v. Simms* because some people will have a greater say than others. There might also be a voter dilution concern with respect to resident owners who do not own property." See Douglas, *The Right to Vote Under Local Law*, 85 Geo.Wash.L.Rev. 1089 (2017).

Putting these pieces together, we think voting should be consistent with applicable court cases, that multiple voting should be eliminated, and that voting should be restricted to one vote per person in District elections.

<div align="center">Proxy Voting</div>

Limited proxy voting was allowed prior to the 1993 Charter amendments. The Charter does not currently have any explicit provisions providing for proxy voting; proxy voting is set forth in the Bylaws. At the Ad Hoc Committee meeting on March 18,2021 Peter Ruggiero, the District legal counsel confirmed there is no Rhode Island statutory law that allows Fire Districts to use proxy voting in elections. Also, the Rhode Island Supreme Court in *Dias v. Portsmouth Water and Fire District,* 534 A.2d 178 (R.I. 1987) held that a voter who was seriously ill and physically unable to attend the District meeting was not entitled to a mail-in (absentee) ballot. The Supreme Court said Rhode Island election law did not provide for mail-in ballots in local elections, which included elections for fire district officers. The District Charter in Dias had no provision for proxy voting and indeed incorporated Rhode Island election law, and the Supreme Court did not address voting by proxy.

As noted, the Bylaws alone contain the rules on proxy voting. At the Ad Hoc Committee meeting on March 18, 2021 Peter Ruggerio, District legal counsel, opined that although it was ambiguous, the provision in section 2 of the Charter which reads: "or a duly authorized representative of any owner who is not a person" provides Charter authorization for proxy

voting. Accordingly, we think that proxy voting should continue, but on a more limited basis that will reduce the "harvesting" of votes.[4]

<div align="center">Recommendation</div>

The Committee, taking into consideration the history of the Charter and Bylaws, the legal framework, and the concerns of certain voters, has concluded that the Bylaws should be amended so that a qualified voter shall be entitled only one vote at an annual or special meeting, no matter how many properties the voter has a 40% interest in, and shall be entitled to a maximum of 2 proxies. A voter who resides in the District and who also owns property in the District would be restricted to one vote. The Committee believes that this balances the interests of the several types of voters in the District, is consistent generally with the principle of "one person, one vote," and still allows for proxy voting so that voters unable to attend a meeting can attend through a proxy. The Committee believes that these amendments are permitted under the Charter and Bylaws.

Because of the ambiguity over whether proxy voting to elect officers is authorized, and because our current proxies are general proxies, which have raised concerns about voter harvesting abuses, the Committee believes the maximum number of proxies another voter may vote in District elections should be reduced to two.

The Committee discussed other options, including no change to the Bylaws, allowing one vote per property (as opposed one vote per person), and further restricting proxies to one per voter or even eliminating them. One member of the Committee is of the opinion that the proposed change to one vote per owner would disproportionately affect those voters who currently have multiple votes. Others believe that the current system disproportionately favors multiple property owners. The majority of the Committee is of the latter view and does not find that the other options are either appropriate or warranted.

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[4] Although the conclusions of a report that produced a postmortem analysis of the voting at the 2019 annual election meeting has been disputed, the report showed the following results of multiple voting. Of the 292 votes cast at the meeting, 46 voters had 65 votes of their own because they were multiple owners of District properties. In addition, these 46 voters also cast 132 proxy votes for a total of 197 votes cast (some of votes were for people with multiple properties). There were 88 voters who cast 95 votes of their own because some owned multiple District properties. So roughly one-third of the voters cast roughly two-thirds of the vote at the meeting, according to the report. This encapsulates our concerns.

The majority view of the Committee is embodied in the Motion and Recommendation submitted herewith.

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Co-Chairman

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Co-Chairman

Dated: April   , 2021