

BYLAWS OF THE ELIZABETHAN DRIVE ASSOCIATION

ADOPTED August 6th, 2016

The name of the Association shall be **Elizabethan Drive Association**, and said Association shall be located in **Kennebunkport, Maine**, and is being formed as a Statutory Road Association under Maine Law.

[Note: Many provisions of these bylaws are taken directly from identical provisions in the Maine statute (23 M.R.S. §3101 et seq.), and are included for informational purposes only]

The following provisions shall constitute the Bylaws of this Association, established hereby, to wit:

Section 1. Composition, Powers and Duties of the Commissioner.

The Commissioner shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by this document may not be delegated to the Commissioner by the property owners. A property owner is defined as a person who, or entity that, owns property that is accessed via a private way in **Kennebunkport, Maine** known as **Elizabethan Drive** (the "Road"). The powers and duties of the Road Commissioner shall include, but shall not be limited to, the following:

1. Operation, care, upkeep, and maintenance of Elizabethan Drive.
2. Determination of the common expenses required for the affairs of the Association, including, without limitation, the operation and maintenance of the Association.
3. Collection of the assessed charges from the property owners.
4. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of Elizabethan Drive.
5. Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
6. Obtaining insurance for the Association, pursuant to the provisions hereof.
7. The Commissioner shall have the power to enforce obligations of property owners; to allocate income and expenses; and to do anything and everything else necessary and proper for the sound management of the Association.
8. Enter into contracts for the maintenance, upkeep, and repair of Elizabethan Drive.
9. Posting the road to ensure the safety of property owners and their guests.

Section 2. Expenses, Profits and Funds.

- A. Each property owner shall be liable for expenses of the Association according to his respective assessment which assessment may not exceed 1% of an individual's property assessment in any calendar year. The Commissioner may, to such extent as it has been directed by vote of the majority of the property owners attending any meeting, set aside funds of the Association as reserve or contingent funds and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of the following Section 4, for repair, rebuilding or restoration of Elizabethan Drive, or for improvements thereto.
- B. At least thirty (30) days prior to each annual anniversary of the adoption date of these Bylaws, the Commissioner shall estimate the expenses expected to be incurred during the next fiscal year, together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed funds from prior years, shall determine the assessment to be made for such fiscal year. If after a meeting of the property owners, an assessment is approved, then the Commissioner shall promptly render statements to the property owners for their respective shares of such assessment. Said assessment shall be paid to the Association no later than 30 September. Assessments not paid by 30 September will be delinquent. In the event of default by any property owner in paying the annual assessment, such charge shall be collected pursuant to Maine law, but no action to collect unpaid assessments and no recording of delinquent assessment payments in the Registry of Deeds shall occur without a two-thirds vote of the members present and voting at an Annual Meeting. Property owners delinquent in the payment of their assessment lose their right to vote at any meeting duly called so long as any portion of such assessment remains outstanding.

In the event that the Commissioner shall determine during the year that the assessment so made is less than the expenses actually incurred, or in his reasonable opinion, likely to be incurred, he shall make a supplemental assessment or assessments and render statements therefore in the manner aforesaid, and shall call a special meeting of the property owners to vote upon the same, pursuant to the terms of these Bylaws. Upon obtaining a majority vote of the attending property owners in favor of the same, such statements shall be payable and take effect as aforesaid.

- C. The Commissioner shall expend funds only for Association expenses.

Section 3. Insurance.

- A. The Commissioner shall obtain and maintain, to the extent available, a policy of liability insurance for the benefit and protection of the Association

Officers, and of all the property owners, naming this Association as the insured. This policy shall protect the Officers and property owners from liability arising from the usage of Elizabethan Drive by any person or persons, but said policy will not insure for the protection of any property owner for any liabilities incurred upon their property as to which it shall be the separate responsibility of the property owners to insure. Such insurance shall, unless the same is not obtainable, be maintained in the amount equal to one million dollars (\$1,000,000).

- B. Any liability policy shall, unless the same is not obtainable, provide:
 - 1. that such policy may not be canceled, terminated or substantially modified without at least thirty (30) days notice to the Association;
 - 2. for waiver of subrogation as to any claims against the Association, the Officers, agents, employees, the property owners and their respective employees, agents and guests;
 - 3. for waivers of any defense based upon the conduct of any insured; and
 - 4. in substance and effect that the insurer shall not be entitled to contribution as against any casualty insurance, which may be purchased separately by property owners.
- C. The cost of all such insurance obtained and maintained by the Commissioner pursuant to the provisions of this Section 3 shall be an Association expense.
- D. The Commissioner shall not be liable to the property owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The property owners comprising the Association shall indemnify and hold harmless each of the Officers against all contractual liability to others arising out of contracts made by Commissioner on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provision of these Bylaws. It is intended that the Commissioner shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 4. Rebuilding and Restoration; Improvements.

- A. In the event of any casualty loss to Elizabethan Drive, the Commissioner shall proceed, without notice to the property owners, with the necessary repairs, rebuilding, or restoration.
- B. A vote by the majority of the property owners present at any meeting of the Association properly called under these Bylaws may agree to make an improvement to Elizabethan Drive and assess the cost thereof to all property owners except property owners of Lots having contiguous vacant Lots shall not be charged for said vacant Lots.

Section 5. Meetings.

- A. That commencing with the calendar year 2016, there shall be an annual meeting of the property owners on the first Saturday in August in each year, at 10 A.M., at such reasonable place and time as designated by the Commissioner by written notice given to the property owners at least thirty (30) days prior to the date so designated. Special meetings of the property owners may be called by the Commissioner or by the property owners upon the written request of thirty-three percent (33%) of the property owners of the Association. Written notice of any such meeting designating the place, day, hour thereof shall be given by the Commissioner to the property owners at least thirty (30) days prior to the date so designated. The Commissioner shall appoint a person to act as moderator for the annual meeting of property owners. At the annual meeting of the property owners, the Commissioner shall submit written reports of the management and finances of the Association. At any meeting at which the Commissioner proposes to submit to the property owners any matter with respect to which approval of or action by the property owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter.
- B. At the annual meeting of the Association, the property owners shall elect a Commissioner, who shall be a property owner or spouse thereof or, if a property is owned by an entity, a person duly authorized by unanimous consent of all beneficial interests in the same.
- C. The Commissioner shall manage the Association as approved by the property owners pursuant to 23 M.R.S. §3101 et seq. at the annual meeting and within the guidelines of these Bylaws.
- D. The duties of the Road Commissioner shall be: to determine what repairs and maintenance are needed for upkeep of Elizabethan Drive, and to make recommendations to the property owners, and to perform such maintenance and repairs as the property owners or the Commissioner directs and/or as authorized by 23 M.R.S.A. §3101 to §3106, and to collect unpaid assessments on behalf of the Association as set forth in §3103.
- E. The Commissioner may be removed for any reason at a meeting duly called by the property owners. The vote required for removal shall be the same as otherwise required for approval of a budget (i.e., pursuant to 33 M.R.S. §3101.4). Any vacancy in the position of the Commissioner shall be filled by a vote of the property owners, and this appointment shall be valid for the remainder of the term for said position.

F. The property owners may vote on any other matter of the Association including but not limited to: (1) the level of maintenance requested, (2) the level of repairs to be made, and (3) any capital improvements made to the road.

Section 6. Notices to Property Owners.

Every notice to any property owner required under the provisions hereof, or which may be deemed by the Commissioner necessary or desirable in connection with the execution of the Association created hereby, or which may be ordered in any judicial proceeding, shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by the Commissioner to such property owner at his address as it appears upon the tax records of the Town, at least thirty (30) days prior to the date fixed for the happening of the matter, thing or event of which such notice is given, or such longer period of time as may be required by the specific terms of this instrument. Property owners may waive notice by duly executing an appropriate waiver of notice, and may consent to being notified by email pursuant to 23 M.R.S. §3101.3.

Section 7. Inspection of Books; Reports to Property Owners.

Books, accounts and records of the Association shall be open to inspection to any property owner at all reasonable times. The Commissioner at the annual meeting shall submit to property owners a report of the operations of the Commissioner for the previous fiscal year, which shall include financial statements in such summary form and in such detail as the Commissioner deems proper.

Section 8. Checks, Notes, Drafts and Other Instruments.

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the Association may be signed by the Commissioner.

Section 9. Fiscal Year.

The fiscal year of the Association shall be from 1 September through 31 August of the succeeding year.

Section 10. Proxy and/or Absentee Voting.

The Commissioner shall establish proxy and/or absentee voting for any forthcoming Association meeting, and shall establish parameters for said proxy and/or absentee voting, including but not limited to, appointment of voting member for any property, method of proxy and/or absentee voting, and time frame for said proxy and/or absentee vote. In any event, the proxy and/or absentee vote shall be held to the same standards as stated within these Bylaws.