

Section-by-Section Feedback on Potential Changes

Hickory Grove Village Condominium Section-by-Section Feedback on Potential Changes to the By-Laws July-August 2020 As of August 21, 2020

The Board of Managers has received material feedback to the potential changes to the By-Laws from people in five Units. The summarized feedback-comments are labeled A through V below. The Board of Managers considered all the feedback in preparing the *Proposed By-Laws*. A total of nine changes (to the previously-published “*Potential Changes to the By-Laws*”) were made, **as indicated in bold red print** below.

It is Board’s intention to submit the Proposed By-Laws for a vote at the Annual Meeting that will take place later this year, on a date yet to be determined. The approval of the Owners of 39 Units, in addition to recording them at the Erie County Clerk’s Office, is required before any changes to the By-Laws become effective.

In the meantime, a copy of the current version of the Proposed By-Laws is available on the Condominium website under **Documents & Info > Miscellaneous > Potential By-Laws Changes**.

Cost of By-Laws Changes.

A. A Unit Owner requested that the costs of the By-Laws changes be disclosed.

Board of Managers’ Response: So far, the only cost was the \$135.15 for printing the 59-page document that was delivered to each Unit. The proposed changes will likely be included among other documents printed for the meeting notice for the Unit Owners meeting this fall. Erie County will charge a reasonable recording fee recording the revised By-Laws after their approval.

Absentee Ballots.

B. Absentee Ballots. A Unit Owner suggested a change to the By-Laws that would permit Absentee Ballots when no proxy was named.

Response: The existing By-Laws permit voting “at all meetings of Unit Owners” and, by implication, through proxies. In practice, Hickory Grove Condominium uses absentee ballots as the method for directing the proxy’s vote on behalf of the Unit Owner being represented.

The Board of Managers considered using absentee ballots more freely. However, after scanning the internet for condominium best practices, there was strong advice against using absentee ballots for condominium votes in absence of a proxy. The reasoning is that where absentee ballots are used without proxies, frequently the attendance is insufficient for a quorum. And if there is no quorum, no votes can be taken.

Therefore, the Board has decided against adding a new provision to allow absentee ballots without proxies.

Section-by-Section Feedback on Potential Changes

Grievances and Suggestions.

- C. A Unit Owner suggested that one member of the Board of Managers be designated as the recipient of grievances and suggestions, and that all grievances and suggestions be posted for review.

Response: Each Board member, from time to time, receives complaints, comments, and suggestions, that they then share with the remaining members of the Board. Sometimes all Board members receive a complaint, comment, or suggestion simultaneously. Limiting these communications to one Board member may be problematic, because that person may not always be available, and some Unit Owners prefer communicating with some Board members over others. The existing practice of allowing Unit Owner address the Board member of their choice has not caused concerns. The proposed By-Laws do not limit the ability of Unit Owners to address the Board member of their choice.

- D. The same Unit Owner also suggested that all grievances and suggestions be posted for all to see.

Response: Posting all issues is a problem because of privacy concerns. It might also discourage some from bringing their concerns to the Board of Managers. Sometimes a complainant does not want to be identified, and sometimes complaints (some perhaps justified, some not) are about specific people in the community. Some complaints are about specific Units. And, believe it or not, some complaints are irrelevant or incorrect. Sometimes a complaint is based on a misunderstanding and its public discussion would embarrass the person making the statement(s). In general, the topics of the most significant concerns are already reflected in the minutes of meetings or other communications. No requirement to post all grievances or suggestions is included in the proposed By-Laws.

ARTICLE II UNIT OWNERS VOTING RIGHTS AND MEETINGS

Section 2.04 Annual Meeting

- E. A Unit Owner noted that there was no mention of two meetings per year in the By-Laws.

Response: That's correct. The existing By-Laws document only requires an annual meeting. However, it also permits additional meetings (called "Special Meetings" in the By-Laws). The Hickory Grove Village Condominium Unit Owners are not meeting this summer due to COVID-19. We have had summer meetings in the past and I think that they likely resume next year.

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- F. One member of the Board of Managers noted a technical correction. The existing By-Laws contain an incorrect reference in the phrase “in accordance with the requirements of Section 4.04 of these By-Laws.” Instead of Section 4.04 (OFFICERS, President), it should refer to Section 3.04 (BOARD OF MANAGERS, Nomination Election and Term of Office).

Response: [Change 1] **The reference to “Section 4.04” was changed to “Section 3.04”.**

ARTICLE III BOARD OF MANAGERS

Section 3.02 Powers and Duties

- G. A Unit Owner suggested adding a footnote or otherwise indicate, in Paragraph 3.02(b), that the repairs and maintenance that are the responsibility of the Condominium are discussed in Section 7.01 (Repairs and Maintenance that are the Responsibility of the Condominium).

Response: [Change 2] **The following footnote was added:
“Repairs and maintenance that are the responsibility of the Condominium are described in Section 7.01 of these By-Laws.”**

- H. A Unit Owner suggested that any increase of the Annual Charge that determines the monthly HOA Fee in excess of 2% be subject to the approval of a majority of the Unit Owners. The Unit Owner argues that larger increases are difficult on people in the community that are on a limited income and pointed out that the increases surpassed that threshold in three of the last four years; 25.0% (2017), 0.0% (2018), 6.9% (2019), and 2.7% (2020).

Response: The Hickory Grove Condominium Offering Plan established a 15% limit on the increase in the Annual Charge and HOA Fee without Unit Owner approval. The proposed change would be too restrictive. The law places the responsibility of setting the Annual Charge and HOA Fee on the Board of Managers, which has a fiduciary responsibility to act in the best interests of the Condominium community. Causing the fee to be approved by a majority of the homeowners would relieve the Board of their responsibility and is inconsistent with condominium best practices. Inflation rates change from year to year. For these reasons, no limitation on the annual increase in the HOA Fee is included in the proposed By-Laws.

Section 3.04 Nomination Election and Term of Office

- I. A Unit Owner suggested that term limits should be specified for each Board position.

Response: The use of term limits is not a common practice for condominiums. It can be detrimental in smaller communities like ours because there is a limited number of people willing to volunteer their time to serve on the Board of Managers. Some argue that the members of the Board who are willing to serve more than one term are already subject to re-election every two years and might not be reelected if most Unit Owners thought they’ve served too long. Therefore, term limits are not included in the proposed By-Laws.

ARTICLE IV OFFICERS

Section 4.04 President

- J. A Unit Owner suggested that agreements, contracts, and leases must be approved by a majority of the members of the Board of Managers.

Response: The By-Laws gives the President the authority to execute agreements, contracts, and leases on behalf of the Condominium, “except as the Board of Managers by resolution may otherwise determine.” In practice, the contracts and agreements are for services already approved by the Board of Managers. The contracts and agreements sometimes must be executed prior to the next meeting of the Board. The additional review of contracts or agreements by all Board members prior to their execution would serve no useful purpose. For these reasons, no requirement for the Board of Manager to approve agreements, contracts, and leases was added to the proposed By-Laws.

Section 4.06 Treasurer

- K. A Unit Owner asked what will the Treasurer do to ensure our funds are safeguarded and What role does an Auditor play?

Response: In practice, on a monthly basis, the current Treasurer reviews the bank statements, reconciles them to the balance sheet and income statement, reviews all transactions for reasonableness and consistency with the budget, and ensures that all expenditures are approved. Copies of contracts, invoices, and other documentation are also requested as needed. The annual financial statements are analyzed and the Treasurer participates fully in the budget process. The CPA reviews the annual statements (balance sheet, statement of revenues & expenditures, cash flow, notes, etc.) and offers an opinion as to whether any "material modifications" are necessary under GAAP. No "auditor" is required in New York State and none is hired.

Section 4.07 Agreements, Contracts, Leases, etc.

- L. A Unit Owner suggested adding a requirement that a minimum of three bids be obtained for every contract, agreement, or lease, and that the names of the bidders be posted.

Response: The Board of Managers is already charged with using good judgement and acting in the best interests of the community. In light of their fiduciary responsibilities, the Board of Managers has adopted a practice of obtaining three bids on contracts over \$5,000, where practical. Where appropriate, multiple bids are also sought on smaller contracts. In some cases, such as emergencies or very specialized services, multiple bids may not be practical. Therefore, no specific requirement for multiple bids on each contract agreement, or lease is included in the proposed By-Laws.

ARTICLE V COMMON CHARGES AND ASSESSMENTS

Section 5.01 Determination of Common Charges

M. A Unit Owner asked how the proposed budget and adopted budget (and the Annual Report in Section 6.01) would be made available.

Response: The information would be made available by posting on the bulletin board, posting on the website, emailing, and a document available at the annual meeting.

ARTICLE VI RECORDS AND AUDITS

Section 6.03 Availability of Records and Legal Documents

N. A Unit Owner suggested a requirement that all agreements, contracts, and leases be posted, with the terms and parties identified. That Unit Owner also suggested that the community be apprised as each contract ends.

Response: The public posting of copies of all contracts, some of which are quite lengthy, is impractical, and a reasonable alternative is already in place. The notification of the community at the end of each contract would appear to create an unnecessary administrative burden. Section 6.03 already makes records of the Condominium available to any Unit Owner, for inspection. In addition, copies of records are available, for a reasonable fee, to cover the cost of furnishing those copies. The proposed By-Laws contain no provision requiring the posting of all agreements, contracts, and leases.

ARTICLE VII MAINTENANCE OF THE CONDOMINIUM PROPERTY

Section 7.01 Repairs and Maintenance that are the Responsibility of the Condominium.

O. A Unit Owner said that it would be nice to see something like “Common areas are those areas of the property and *periphery* that are not on one of the 76 lots.” [Emphasis added]

Response: [Change 3] **The proposed footnote was changed to reference “the periphery”:
“Common areas are those areas of the Property, including the periphery, that are not on one of the 76 lots.”**

Section 7.02 Repairs and Maintenance that are the Responsibility of the Unit Owners.

P. A Unit Owner asked if the responsibilities of the Unit Owner included “regular maintenance and repair of the irrigation system.”

Section-by-Section Feedback on Potential Changes

Response: It is the intent that the Condominium generally is responsible for the operation of the irrigation system. However, the owner generally is responsible for the repairs required for those portions that service their unit only. To help clarify the Unit Owners' responsibilities, these two additional changes were made:

[Change 4] **The phrase "irrigation system" was added to the first paragraph of Section 7.01:**

"The repair, maintenance and replacement of the Property's private roadways; snow removal from the roadways, driveways, front walkways and sidewalks; the maintenance of the pond, mail kiosk, and all common areas; Condominium fence repair; tree services; front sidewalk repair; lawn cutting and care of grass and green areas, flower and shrub beds and front landscaped areas; maintenance, repairs and replacements of pipes, wires, conduits, the irrigation system, water and sewer lines and utility lines which serve two or more Units shall be caused to be made on behalf of the Condominium by the Board of Managers. The cost of all such snow removal and property maintenance shall be a common expense." [emphasis added]

[Change 5] **A footnote was added to the word "pipes" in Section 7.02:**

"The term 'pipes' includes connectors, valves, and other connected equipment for the portions of the irrigation system, water, and sewer lines, that service only that Unit."

- Q. A Unit Owner asked if the "Condominium contractor activities" referred to in the proposed language referred to contractors hired by the Unit Owner or the Condominium? They pointed out that contractors, whether hired by the Condominium or hired by the Unit Owner, should carry insurance and should be responsible for any damage they cause.

Response: Section 7.02 is referring to damage be a contractor hired by the Condominium. If any damage is done by a contractor hired by the condominium (landscaping, snow removal, etc.), the contractor or their insurance company should cover it, and it would be the Unit Owner's responsibility to pursue a claim with the contractor. The Condominium will not pay for the damages that are the contractors' responsibility.

[Change 6] **The following footnote was added for additional clarity:**

"Any damage to a Unit Owner's property caused by a contractor hired by the Condominium should first be reported to the property manager, or other authorized representative of the Condominium, who will initiate the contact with the contractor on behalf of the Unit Owner."

- R. A Unit Owner asked who is responsible for sidewalks on the side of the Units on corner lots.

Response: The Condominium is also responsible for the sidewalks near the street on the side of those Unites on corner lots. *[Change 7]* **The following clarifying footnote was added:**

"The term 'front sidewalks' includes the sidewalks near the street on the side of those Units located on corner lots."

Section-by-Section Feedback on Potential Changes

Section 7.04 Restrictions on Use of Units and Common Elements

- S. A Unit Owner suggested that the term “nuisances” needs to be detailed for a firmer explanation.

Response: [Change 8] **The following footnote was added:**

“Nuisances include, but are not limited to, noises, odors, trash, unsightly Units, unhealthy conditions, littering, illegal drug activity, invasions of privacy, threats, intimidation, and dangerous activity or conditions.”

- T. A Unit Owner suggested that the form for submission of any required plan should be attached to the By-Laws document, as required for approval.

Response: The *Application for Approval of Architectural Change* form is readily available to Unit Owners on the website or at the Property Manager’s office. In order to maintain the ability to update the form from time to time, without requiring a formal vote of By-Laws changes and recording at the County Clerk’s office, the specific form is not made part of the By-Laws proposal.

ARTICLE VIII INSURANCE

Section 8.01 Insurance

- U. A Unit Owner asked why this section refers to “directors and officers liability insurance” when the By-Laws do not identify any “directors”.

Response: “Directors and officers insurance” is term commonly used in the insurance industry to refer to the type of insurance that would cover the members of the Board of Managers.

[Change 9] **The add clarity, the following footnote was added:**

“The term ‘directors’ and officers’ liability insurance’ is a generic term intended to describe the type of insurance that would cover duly elected or appointed members of the Board of Managers.”

ARTICLE X AMENDMENT

Section 10.01 Amendments to By-Laws

- V. One person asked for an explanation of the term “mortgage holder”.

Response: A mortgage holder is the bank, mortgage company, other financial institution, or person that you make your mortgage payments to. A mortgage holder generally has the right to foreclose on a property if the mortgage payer fails to make payments or otherwise defaults according to the terms of their mortgage agreement.