

Hickory Woods Bylaws Committee Meeting Minutes

7/25/2017

Attending

Allan Putnam presided as the chair of the Committee

Philip Lee

Bob Medeiros

Pat Pannese

Liz Lannigan - as board representative

(Brian Wells was not present, but did send a note stating his positions on proposed changes and recommendations.)

Agenda

- Review and discuss the comments made on our proposed bylaw revisions from Dean Lennon who is a lawyer recommended by Evergreen Harvard Group.
- The Board suggests that after our review we make recommendations concerning Mr. Lennon's comments.

Call to Order

The meeting was called to order at 9:00 AM.

Proof of Meeting

The meeting announcement was made on the Hickory Woods Community web site.

The meeting was open to all unit owners: one attended.

Old Business

Review of Action Items

A draft of proposed changes to our by-laws was forwarded to Evergreen Harvard for review by their recommended legal counsel. The draft contained changes recommended by the committee that would bring our bylaws into compliance with state law and generally clean them up by removing references to the developer and removing remnants of the “cut and paste” process used by the developer to produce the document.

New Business

Minor recommended revisions to sections 2.6, 2.8, 3.1, 6.1 (b) (I) and 6.4 were approved.

Revisions and/or recommendations relating to the following sections are not to be included in the package of bylaw revisions for the following reasons:

- 2.9 Recommended quorum change (not mandated by state law)
- 3.3 Addition to Owner of Record definition (not mandated by state law)
- 3.31 Addition to Owner of Record definition (not mandated by state law)
- 3.6 Open Meetings (no real difference in language between ours and Lennon's)

- 3.12 Recommend change concerning filling of BOD vacancies (not mandated by state law)
- 6.6 (b) Snow clearance issue (Unnecessary, could be made a rule and not a bylaw)
- 6.7 Additions, Alterations or Improvements by the Board (not mandated by state law)

One issue which generated a great deal of debate in the committee was Lennon's recommendation to lower our Quorum requirement from 66 2/3 percent.

- Specifically, he stated: "This is a very high quorum number. Do you have an issue with satisfying it at annual meetings? I would suggest you consider a lower number such as 50%. Some associations go as low as 25% which may be too low."
- It should also be noted that Attorneys Dean Lennon and John Bison had advised this committee on a prior occasion and had recommended we make it a top priority to reduce the number to as low as 25%.
- Added to this is the fact that state law essentially recommends the quorum for an HOA this size be no more than 33 1/3%.
- It was pointed out during the meeting that most HOA's in the surrounding area already have their quorums set at 33 1/3% and, in spite of this, still have difficulty in meeting their quorum requirements.
- Aside from agreeing that the quorum needed to be reduced, the committee could reach no consensus regarding the number to which it should be reduced.
- Two committee members had no definitive opinion on the number to which it should be reduced.
- The board representatives on the committee both supported reducing it to 50%; their reasoning seemed to be based on their conflating quorums with voting standards or, put another way, as you lower the quorum you also lower the number of votes required to approve or reject.
- The Chairman and Secretary of the committee both felt strongly that it should be recommended that the quorum be reduced to 33 1/3 percent. Their reason for this is that this number could more easily be defended using the following rationale: 1. The State recommends it, 2. Our own legal counsel recommends it, 3. Surrounding HOAs have already done it, and 4. we have already experienced the inertia that develops in a community when we had difficulty in achieving a quorum at the last annual meeting.
- After some discussion, it was agreed we should take care that there should be no confusion of voting standards and the quorums. A quorum is only a standard to be met in order to hold a legally recognized meeting. If unit owners are sufficiently interested in an issue, they will attend the meeting and their vote will be counted.

Also, an issue that was raised by Brian Wells in his written comments is the unrealistically high voting standard for unit owners approving even minor motions at annual or special meetings. 66 2/3% of the unit owners of record are now required to approve any motion, even approval of meeting minutes. This is not a workable standard. It should be set to a majority of unit owners present at the meeting.

Finally, an issue that resulted in a great deal of comment was the quality of the legal advice we had received. The majority of the committee felt the quality to be poor.

It was noted the name of another condo community had been cut and pasted into the document meant for us.

In another instance, he rewrote a section of the bylaws pertaining to open meetings in such a way as there was no significant difference between our version and his version. He made the following margin notes referring to his rationale for the rewrite:

“I’m suggesting a re-write of this section. My reading of the statute is that you must meet at least once per quarter in an open meeting, but your other meetings can be closed and you don’t have to record them. You can record your meetings as a way of avoiding open meetings.”

He went on to say: “Some attorneys are taking the position that if a board meets 10 times per year, all must be open but I believe the proper reading is that so long as one meeting is open per quarter, the rest can be closed. No recording required for the closed meetings.”

Nothing in his rewrite reflected the above advice. Furthermore, the revised state law clearly requires the recording of meetings which are not open. Section 356-B:37-c, II reads: “At its discretion, the board of directors may meet in a meeting not open to unit owners provided the meeting is recorded and the recording is made available to unit owners for up to 30 days upon request.”

Action Items

Philip Lee will draft final recommendations from the Bylaws Committee to the BOD.

Bob Medeiros will search the State Condo Law, the declaration and the existing bylaws to cull out any other voting standards that should be included in 2.2.1 of the bylaws, Voting Standards.

The meeting was adjourned at 10:15 AM