

Whippoorwill Homeowners Association
By-Laws and Protective Covenants
Amended – June 2015

Doc#2008046975
Book 15504 Page 888-895

ARTICLE I – Purpose

The Whippoorwill Homeowners Association is a non-profit Maine corporation established for the purpose of administering common areas in the Whippoorwill Subdivision (“Subdivision”), York, Maine, in order to preserve property values and amenities in said community and for the preservation, maintenance, and improvement of open spaces and common facilities. Said plan being recorded in the York County Registry of Deeds at Plan Book 238, Page 50, with a revision being recorded in the York County Registry of Deeds at Plan Book 239, Page 15.

ARTICLE II – Membership

Every titled owner to a lot in the Subdivision shall automatically be a Voting Member of the Association (“Member”). A representative of the York Land Trust shall be a non-voting Member of the Association and be entitled to attend all meetings of the Association. By acceptance of a deed to any lot in the Subdivision, each titled owner accepts the provisions of these By-Laws and the provisions of the Deed of Conservation Easement and agrees to abide by all the terms and conditions of these documents. The Association shall have the duty and authority to enforce all of the above documents as well as to establish any additional rules and regulations deemed appropriate to enhance the quality of residential living for the residents and owners of property in the Subdivision.

ARTICLE III – Association Meetings

Section 1 – Annual Meetings:

There shall be one annual meeting of Association Members to be held during the second calendar quarter of each year at such time and place as may be designated by the Board of Directors (hereinafter the Board) for the transaction of such business as may come before the meeting. A notice designating the date, time, place and agenda of such meeting shall be provided to all the Members of the Association and the York Land Trust a minimum of ten (10) days prior to the meeting.

Section 2 - Special Meetings:

Special meetings of the Members shall be held whenever called by the Board. The Board shall call such a special meeting upon its own vote or at the request of at least twenty (20) Members of the Association. Notice of such special meeting, stating the date, time, place, and the purpose thereof, shall be sent by email or United States mail to all Members of the Association at least thirty (30) days prior to such meeting.

Section 3 - Voting:

At any meeting of the Members, the owner(s) of any lot shall have one (1) vote for each lot owned. In the event there is more than one (1) owner of a lot, any owner present at any such meeting shall be deemed to have the authority to cast the vote for that lot. In the event that more than one (1) owner is present at a meeting and there is a dispute between the owners as to the manner in which a vote may be cast, each owner may vote the fraction of their vote in proportion to the number of owners listed in the records of the Secretary. Said fraction shall be established solely by the number of owners with no consideration given to the relative value of the ownership interests in the lot.

An authorized representative of any corporate owner may cast the vote(s) for the corporation and the oral representation of such person shall be sufficient to establish such authority.

Section 4 - Proxy:

The vote of another member, on any or all issues, and/or upon such other business as may properly come before the meeting or any adjournment thereof, may be cast by proxy provided the Secretary has received, prior to or at the time of the meeting, written authorization from the listed owner(s) authorizing a specific person to vote in their absence.

Section 5 – Quorum:

At any meeting of the Members, a quorum shall consist of Members owning in fee simple, jointly or solely, or representative of a corporation owning in fee simple, at least twenty percent of the occupied lots in the Subdivision present either in person or by proxy. A majority of the votes of those present, constituting a quorum, shall decide any question that may come before the meeting unless noted elsewhere in the Association By-Laws or covenants. When voting by email, a quorum shall consist of a simple majority of the occupied lots in the subdivision.

ARTICLE IV – Board of Directors

Section 1 - Number of Directors:

The Association shall be governed by a Board of Directors consisting of at least five (5) and no more than nine (9) directors who shall be responsible for the normal operations of the Association.

Section 2 - Election Procedures:

A notice stating the number of open director positions shall be sent to all Members at least one month before each Annual Meeting. Persons interested in serving as a director should notify a member of the Board of Directors before the meeting. New directors shall be elected by attendees of the Annual Meeting regardless of the quorum status.

Section 3 - Terms:

The term of each director shall be three (3) years. There is no term limit.

Section 4 - Vacancies:

If the office of a director shall become vacant, bringing the number of directors below five, the unexpired portion of his/her term of office shall be filled by majority vote of the remaining directors.

Section 5 - Qualifications: A person must be a lot owner in order to be a Director.

ARTICLE V – Meetings and Reports

Section 1 - Meetings:

The Board of Directors shall meet for the transaction of business at such place and time as may be designated by the President. At minimum however, the Board shall meet on the same day as the Annual Meeting of the Association.

Special meetings of the Board may be called by any officer or by any two Members of the Board provided that notice indicating the purpose of the meeting shall be given to each member of the Board within a reasonable time prior to such meeting.

Section 2 - Quorum of the Board:

A majority of the Board of Directors shall constitute a quorum for the transaction of business at any regular or special meeting. In the absence of a quorum, a majority of those present at the time and place of any such meeting may adjourn that meeting from time to time without notice until a quorum is established. The act of a majority of directors present at any meeting at which there is a quorum shall be the act of the Board.

Section 3 –Annual Report:

The Board of Directors shall provide the Members of the Association with an annual report following the close of the fiscal year. The report shall be issued at least ten (10) days prior to the Annual meeting and shall indicate the financial condition of the Association and any relevant information concerning the administration of the Subdivision and its common areas and facilities.

ARTICLE VI – Officers, Election and Duties

Section 1 - Election of Officers:

As the first item of business at the Annual Meeting of the Association, the Directors shall elect officers from the Board Members. These officers shall hold office for a term of one year or until a successor has been duly elected and qualified, or until the officer's death, resignation or removal in accordance with the By-Laws. Each officer shall be chosen by a majority vote of the Board of Directors.

Section 2 - President:

The President shall be the Chief Executive Officer of the Association and as such shall have general supervision of the affairs and property of the Association and over its several officers, subject to the direction of the Board of Directors. The President shall, if present, preside over all meetings of the Board of Directors, and shall generally do and perform all acts incident to the office of President.

The President may sign in the name and on behalf of the Association all notes, leases, mortgages, deeds and all other written instruments authorized by the Board, except where the Board shall delegate the execution thereof to some other office or agent of the Association.

Section 3 – Vice-President/Secretary:

The Vice-President/Secretary shall act as Secretary of the Board of Directors and shall record votes and keep minutes of all proceedings in a file to be kept for that purpose. The Vice-President/Secretary shall record the names and addresses of all Members of the Association, shall see that all notices are fully given as required by the By-Laws or applicable law, rules and regulations, administrative policies and/or procedures.

The Vice-President/Secretary shall carry out the duties of the President in the event of the President's inability to attend meetings, or in the event of the President's resignation, removal from office, or death.

Section 4 - Treasurer:

The treasurer shall receive all monies of the Association, deposit such monies in bank accounts approved by the Board, and disburse funds as directed by a resolution of the Board. A resolution of the Board shall not be necessary for disbursements made in the ordinary course of business conducted within the overall limits of a budget adopted by the Members of the Association at the Annual Meeting or subsequent special meeting(s).

Section 5 - Books and Accounting:

The Treasurer shall keep proper books of account for all operations of the Association and shall be responsible for the preparation of an annual balance sheet for the current year and a proposed annual budget for the upcoming year, both of which shall be available to the Members ten (10) days prior to the Annual Meeting. Copies of the association's financial records shall be provided to any Member upon written request to the Treasurer.

Upon a vote of the Board, or at the request of any twenty (20) Members of the Association, the Treasurer shall engage an accountant to do a compilation and review of the Association's books at the completion of the fiscal year. Upon a majority vote of the Association, a full audit shall be conducted.

ARTICLE VII – Budgets, Common Charges and Special Assessments

Section 1 - Association Budget:

The Board shall prepare a budget for administration of the Subdivision on an annual basis, to include such things as administrative expenses, landscaping, maintenance, and any other expenses of the Association. Copies of the budget shall be available upon request ten (10) days prior to the Annual Meeting. The budget may include such amounts as the Association may deem proper for working capital, general operating reserve, reserve for replacements or any amount necessary to make up a deficit for any prior year.

Section 2 - Open Space Maintenance: There shall be a budget item in the amount of Ten Dollars (\$10.00) per year per lot that the Board shall pay directly to the York Land Trust for ongoing maintenance of the Open Space as shown on the Whippoorwill Subdivision Plan. This fee will be included as a common charge.

Section 3 - Payment of Common Charges:

All lot owners shall be obligated to pay common charges as dues assessable to each lot on an annual basis. The Association's annual budget shall be the basis for these common charges (dues) which shall be payable within thirty (30) days after the date of billing. Common charges are not assessable to the developer until at least 80% (eighty percent) of the homes have been transferred to homeowners in each applicable area.

At closing, both the buyer and the seller are responsible for their prorated share of that year's common charges which are payable at the transfer of title.

Also at closing, each buyer shall make an initial contribution of one-tenth of one percent (0.1%) of the purchase price of the home to the Homeowners Association Capital Improvement Fund. This contribution is non-refundable and shall be made by every buyer as long as a Homeowners Association is in effect.

All common charges (dues) and capital improvement fees received in accordance with these By-Laws shall remain the property of the Association and no refunds or rebates shall be made except as specifically authorized by the Board.

Section 4 - Special Assessment:

The Board shall be authorized to assess Members of the Association on an equal basis for an unusual or extraordinary expense not anticipated in the budget or for additional expenses resulting from miscalculation in preparation of the budget. Such assessments shall be payable within thirty (30) days of receipt of notice from the Board or in such other manner as the Board shall determine.

Section 5 - Default in Payment of Common Charges or Assessment:

The Association shall send a second invoice as a reminder to any homeowner with a balance due after 30 days and a warning notice to any homeowner with a balance due after 60 days. Any outstanding balance due shall accumulate interest at a rate of eighteen percent (18%) per annum after 30 days from the date of invoice. Also, a late fee of ten percent (10%) per month shall be added to any outstanding balance due after 30 days from the date of invoice. These fees shall continue until the entire amount due is collected or recovered by the Association.

Also, the Association shall have a lien placed upon the lot of any owner(s) with an outstanding balance due after 90 days. Any owner, by acceptance of a Deed to a lot in Whippoorwill Subdivision, thereby agrees that the Association may perfect its lien in the same manner as a lien for materials and labor under §10 MRSA 3251 et.seq and that this lien shall be binding upon the transferees, their heirs and assigns. The Association shall be entitled to recover any expenses incurred in collecting overdue charges including, but not limited to, reasonable attorney's fees in the event legal action is required.

The board has discretion to reduce or eliminate these fees on a case-by-case basis, where there may be extenuating circumstances or financial hardship. Any Member with extenuating circumstances or financial hardship must notify a member of the board in writing within 30 days of the original invoice date.

Section 6 - Enforcement Power:

A violation or failure to comply with any provision of these by-laws for the Whippoorwill Subdivision or any Rules and Regulations adopted by the Board of the Association shall give the Association the right to enter upon the premises of any owner(s) and abate any violation or correct any failure to comply at the expense of the owner(s). Said owner(s) shall be provided with written notice of any violation or failure to comply and given a thirty (30) day time frame within which to remedy the situation after which the Association may exercise the rights set forth in the previous sentence. The Association may take any legal steps necessary to enjoin or abate such violation or noncompliance.

ARTICLE VIII – Failure to Enforce Provisions

Failure of the Association, in any instance, to insist upon strict compliance with any terms, covenants, restrictions or conditions shall not be construed as a waiver or relinquishment of the enforcement powers granted by these by-laws with regard to any future violations or noncompliance.

ARTICLE IX – Non-Liability of Directors and Officers

Members of the Board of Directors and the Officers of the Association, or their authorized agents, shall not be personally liable to any lot owner(s) for any mistake of judgment, negligence or otherwise in the performance of their duties in those capacities except for their own individual willful misconduct, gross negligence or bad faith.

Association Members shall indemnify and hold the directors and officers, as well as their authorized agents, harmless from any and all contractual liability arising out of any contracts entered into in good faith on behalf of the Association, as well as from the expense of any legal action taken against them resulting from actions taken in their official capacity where no liability is found.

ARTICLE X - Amendments

These By-Laws may be amended from time to time by a simple majority of the owners of occupied lots in the Subdivision, voting by email or in person, or by proxy at a meeting of the Association specifically called for that purpose, or at an annual meeting, with proper notice having been given of a proposal to amend these by-laws. Excluded from amendment under this Article is Article VII, Section 3. Any amendment to Article VII, Section 3 requires the unanimous consent of the Board, the York Land Trust and the Maine Department of Environmental Protection.

ARTICLE XI - Notices

Any notice required to be sent to any Association member under the provisions of these By-Laws shall be deemed to have been properly sent when delivered by email, or when deposited in the United States Post Office at York, Maine, addressed to the lot owner(s) at the address contained in the Secretary's records, or when delivered by hand and signed for by the lot owner.

ARTICLE XII - Invalidity

The invalidity of any article or section of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of Articles.

ARTICLE XIII – Resolution and Disputes

In the event of a dispute arising with regard to any provisions of these by-laws between any owner, mortgagee, officer or director; any party involved shall first cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, the party requesting arbitration shall give immediate notice thereof to the Association, which shall notify all other interested parties as promptly as possible. The decision of the arbitrator shall be final and conclusive upon all of the parties. The arbitrator may include in his/her determination, an award for costs and/or attorney's fees against any one or more parties as deemed appropriate.

ARTICLE XIV – Homeowners Association Responsibilities

Section 1 - General Operational Responsibilities:

The Association assumes all operational responsibilities for: Maintenance of all specified landscaping for cul-de-sacs, roadway entrances, supplemental buffer plantings, and the cost thereof; and Maintenance or reconstruction of sidewalks installed by the developer and the cost thereof.

Section 2 - Open Space Responsibilities:

The Association assumes operational responsibilities of all of the Open Space, such as, but not limited to, management of all Open Space lands and costs thereof. Such management shall occur in conjunction with the York Land Trust and Maine State Department of Environmental Protection. The Association shall be responsible for maintaining any pathways, walkways or recreation facilities they have created on the common land. The Association shall also be responsible for the "Village Common". This section does not defer any payments to be made under Article VII – "Budgets, Common Charges and Special Assessments" by a homeowner.

Section 3 - Road Maintenance: All of the roadways in the Whippoorwill Subdivision are town owned right-of-ways and are maintained by the Town of York. This maintenance includes general upkeep and snow removal as needed.

ARTICLE XV – Lot Owners Responsibilities

Each lot owner shall be responsible for mowing and maintaining their lawn(s) to the edge of the road. Each lot owner shall also be responsible for maintaining the drainage swales in front of their lot, including keeping the swales mowed and free of any debris that might inhibit drainage flow along the swales.

It is the responsibility of the Association to enforce this ARTICLE XV. If the Association is unable to enforce this article with the lot owner, then the Association must take the responsibility for maintaining the swale(s) and budget the monies necessary to carry out the provisions of ARTICLE XV.

ARTICLE XVI – Conservation Easement

The development, use and management of the areas designated as “Open Space Subject to Conservation Easement” are governed by a Deed of Conservation Easement. The terms, conditions and restrictions of the Deed of Conservation Easement shall control the utilization of such Open Space. The “Village Common” is open space for the enjoyment of all lot owners and is under the exclusive control of the Homeowners Association.

ARTICLE XVII – Protective Covenants

Section 1 – Application:

These covenants and restrictions apply to all owners of lots in the Whippoorwill Subdivision.

Section 2 – Approval:

To insure the architectural homogeneity of the community as a whole, the Board of Directors shall approve, in writing, all architectural designs of new dwellings to be built on lots in the Subdivision, said approval not to be currently withheld. No construction may start until written approvals are obtained by the homeowner.

Section 3 - Exterior Appearance and Landscaping:

Once construction of any building or structure to be erected or maintained on said lot is commenced, such construction, including landscaping, shall be completed as to the exterior thereof before the expiration of one (1) year from that time. If said building or structure is completed during the winter months, then the landscaping may be completed after the ground is free from frost.

Section 4 - Land Use and Building Type:

No lot shall be used except for residential purposes. No building shall be erected, altered, or permitted on any lot other than one detached single family dwelling not to exceed two and one-half stories in height, together with wings, ells, garages, barns and outbuildings. No commercial activity of any kind shall be permitted except home occupations that do not require any client/customer contact.

Section 5 - Minimum Size of Residence:

No dwelling shall be constructed with less than 1,600 square feet of living area including unfinished future living areas, but excluding garage, basement, porches, decks, attic, and or barns.

Section 6 - Further Subdivision:

No lot shall be further subdivided. Any lease, conveyance, or sale of any portion of a lot shall constitute a violation of this covenant.

Section 7 – Animals:

No livestock or poultry shall be raised, bred or kept on any lot. Dogs, cats and household pets shall be permitted.

Section 8 – Nuisances:

No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be of annoyance to other owners of lots within the Subdivision. Snowmobiles, ATV's and Motorbikes (Dirt bikes) shall not be operated upon any lot within the Subdivision. See the Deed of Conservation Easement for further restrictions with regard to the use of such vehicles on the adjacent open lands covered by the Easement.

Section 9 – Signs:

No sign of any kind shall be displayed upon any lot except one sign of not more than five (5) square feet advertising the property for sale or rent or used by a builder to advertise the property during the construction period, or one sign for each homeowner of not more than two (2) square feet.

Section 10 - Temporary Structures And Unregistered Vehicles:

No structure of a temporary nature including, but not by way of limitation, house trailers, mobile homes, auto homes, campers, trailers of any kind, basements, tents, shacks, garages, barns, or other outbuildings shall be used as residence, either temporarily or permanently. *No unregistered automobile, motorcycle, snowmobile, boat or utility trailer* shall be stored anywhere except in a permanent structure.

Section 11 - Rubbish Disposal:

No lot shall be used or maintained as a dumping area for rubbish, trash, junk automobiles, or similar materials offensive or degrading in appearance. This paragraph shall not limit the use of compost materials for individual use, provided they are screened from views of neighboring lots.

Section 12 – Enforcement:

Enforcement of the Article XVII shall be by (1) the Association, (2) any lot owner, or (3) any aggrieved person by proceedings at law or in equity against any person violating or attempting to violate any covenant/restriction, either to restrain the violation or to recover damages. Any party successfully enforcing any of these covenants shall be entitled to recover against the party violating such covenants, as a monetary award, reasonable attorney's fees and costs incurred in such enforcement proceeding.

Section 13 – Separability:

Invalidation of any covenant by court order shall not affect the remaining covenants, which shall remain in full force and effect.

Section 14 - Terms and Amendments:

These covenants shall run with the land and shall be for the benefit of all lots within the Subdivision, and shall be binding on all lots, all owners of lots, and all parties and all persons claiming thereunder.

Section 15 - Maintenance Responsibilities:

Each lot owner shall be responsible for maintaining their landscaping to the roadway, and for keeping any sidewalk(s) bordering their lot clear of snow and ice. Further, each lot owner shall be responsible for keeping any drainage swale in front of their lot mowed and clean of any debris that might impede flow in the swale. (See Homeowners Association Rules)

These by-laws are hereby adopted as and for the By-Laws of the Whippoorwill Homeowners Association this *1st day of June, 2015*.

WHIPPOORWILL HOMEOWNERS ASSOCIATION

Peter R. Smith, President

STATE OF MAINE

YORK, ss

Then personally appeared the above named *Peter R. Smith*, President of the Whippoorwill Homeowners Association, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.