

**The By-Laws & Resolutions Advisory Committee  
January 21, 2022  
Microsoft Teams**

Present: Chair Jim Trummel and Committee members Lora Pangratz, Keith Kaiser, Steve Jacobs, and Bob Hillegass. Also, present were Director Colette Horn, committee liaison and Josh Davis, OPA Marketing and Public Relations Director. Chair Jim Trummel called the meeting to order at 1:00 PM.

The agenda was approved

The minutes of the January 7, 2022 meeting were approved.

**PUBLIC COMMENTS:** None.

**UNFINISHED BUSINESS**

The meeting consisted of a review of the By-laws amendment proposals of the Committee with liaison Director Horn. The final proposals at the conclusion of the meeting are included on the By-laws Proposals dated 1/21/2022 which is attached. The By-laws Status Summary, dated 1/21/2022 is also attached.

**NEW BUSINESS**

The next meeting was scheduled for February 11, 2022 at 1:00 PM on Microsoft Teams.

The meeting was adjourned at 3:27 PM.

Jim Trummel

Minutes Recorder

1/21/2022

#### BY-LAWS PROPOSALS

This document includes the proposals for amending the By-laws being prepared by the By-laws and Resolutions Advisory Committee. The information contained herein should be read in conjunction with the By-laws Review Status

12/3/2021

Eligible to vote  
Sections 3.01(c) and 5.02(a)

**Explanation of proposal:**

The primary proposal is to revise Section 5.02(a). The revision is intended to address concerns that a board candidate applicant may contend that the “eligible to vote under 3.01(c)” in Section 5.02(a) gives the applicant until 35 days prior to vote counting to pay the annual charge and qualify as eligible to vote. The proposed revision of 5.02(a) deletes reference to 3.01(c), but retains payment of annual charges as a requirement for an applicant.

The proposed revisions to Sections 1.11 (add), 3.03(c), 3.05 and 4.07(a) are non-substantive, provide a clear definition of the term “eligible to vote” and make “eligible to vote” the only variation of the term used in the By-laws.

- a. Section 1.11 defines the term “eligible to vote” which is used in multiple places in the By-laws.
- b. The proposed revisions to 3.03(c) and 3.05 are for the purpose of standardizing the term “eligible to vote” throughout the By-laws (“eligibility” is replaced).
- c. The proposed revision to 4.07(a) removes a duplicate reference to member signing a petition must be eligible to vote. The eligible to vote requirement remains in the fourth sentence of the section.

**Proposed revisions:**

Revise 5.02(a) to read:

a) **Eligibility.** All candidates must be one of the owners of record of real property in the Subdivision on the first day of January of the year in which the election is to be held. ~~Notwithstanding the provision in Section 3.01(c) of these bylaws, any candidate for the Board of Directors shall have paid the annual charge, including any assessed interest by the Association by May 15<sup>th</sup> of the year of the election.~~ No member may be a candidate for election as a Director of the Association if he or she is an incumbent Director completing a second consecutive elected full term of office.

Deleted: and eligible to vote under Section 3.01(c)

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Add new section 1.11:

**Section 1.11. “Eligible to vote” refers to a member who has paid the annual charges and interest levied under Section 5.14(a) and has not had the right to vote suspended under Section 5.13(e).**

Revise the first sentence of 3.03(c) to read:

(c) The Secretary shall ~~confirm that the member is eligible to vote,~~ and valid proxies are delivered to the Elections Committee no later than forty-eight (48) hours prior to the beginning of the meeting.

Deleted: ensure that the member’s eligibility to vote is confirmed...

Revise the second sentence of 3.05 to read:

~~The Elections Committee, shall require identification and verify that the member is eligible,~~ to vote.

Deleted: members

Deleted: eligibility

Revise the second sentence of 4.07(a) to read:

The petition must be in a format prescribed by a Resolution adopted by the Board of Directors.

Deleted: and signed by members eligible to cast a vote.

DRAFT  
Maximum Number of Votes  
Sections 4.07(c)(2) and (c)(3) and 4.0

December 8, 2021

#### Explanation of Proposal

The purpose of this proposal is to clarify the number of signatures that are required under By-laws Sections 4.07(c)(2) and (c)(3) for a petition to be valid under Section 4.07.

A member petition to amend the By-laws was filed at the Association annual meeting of August 10, 2019. The purpose of the proposed amendment was to revise the Section 5.13(d)(1) expenditure amount that requires a referendum.

The petition was referred to the Association counsel for advice regarding whether it met the requirements of a valid petition as specified in Sections 4.07(a) and 4.07(c)(2). It was the advice of counsel that the petition met the signature requirements of 4.07(c)(2), but not the requirement of 4.07(a) that the proposal be suitable for an affirmative or negative response. On the basis of counsel's advice, the petition was rejected as not valid. The petitioner initiated legal action contesting the rejection. As a result of the petitioner's action, the petition proposal went to referendum in May 2021 and was approved in a membership vote.

As indicated above, the number of signatures required to cause the petition to be valid was determined through advice from the Association counsel. Interest has been expressed in amending the relevant By-laws provision such that advice of counsel is not necessary. The required number signatures are established in Section 4.07(c)(2) of the current By-laws and reads as follows, with emphasis provided:

"(2) For issues for referendum under Section 4.08, removal of a Director under Section 5.12(a), or for amendments to the By-laws under Section 11.01, a petition requires signatures representing at least ten percent (10%) of **the maximum number of votes that can be cast.**"

Advice from counsel was that "**the maximum number of votes that can be cast**" means the number of votes in the Association that were eligible to be cast on the day a petition is filed.

The history of By-laws petition signature requirements was reviewed as part of the evaluation of proposals to clarify the provision. It was determined that:

- a. The "maximum number of votes that can be cast" was introduced into the petition provisions of the By-laws as part of the By-laws approved in 2008.
- b. By-laws records indicate that from July 28, 1982 until the approval of new By-laws on August 9, 2008, the By-laws provision for the required number signature required for a valid petition was in then Section 4.09. The relevant portion of 4.09 read as follows, with emphasis supplied:

"Section 4.09. Referendum Issues. Issues for referendum action may be proposed by the Board of Directors or by the filing with the Secretary of the Association of a petition signed by voting members in good standing representing at least ten percent (10%) of **the total voting units.**"

The terms "member in good standing" and "voting unit" were defined in the By-laws, but were deleted in the August 9, 2008 By-laws approval. Eligible to vote is the current equivalent to member in good standing. Voting unit was replaced by the definition of "Member" in the current By-laws.

The signature provision in the By-laws prior to 2008 did not make a distinction between those eligible to vote and not eligible to vote as to validity of the petition signatures. A review of materials distributed at the time of the 2008 referendum does not indicate an intent for the different language to revise the number of signatures required for a valid petition.

The proposal to clarify the existing By-laws provision uses the pre-2008 understanding of the required number of signatures. If approved, the proposal would increase the number of required signatures over the those required using the criteria for the 2019 petition. The proposal adds a reference to Section 3.01(a). This reference encompasses all the votes within the Association, without regard to being eligible to vote on any given day.

It is also proposed to amend Section 4.03 because it is a duplicate of 4.07(c)(3).

**Proposed Revisions:**

Revise Sections 4.07(c)(2) and (c)(3) to read:

(2) For issues for referendum under Section 4.08, removal of a Director under Section 5.12(a), or for amendments to the By-laws under section 11.01, a petition requires signatures representing at least ten percent (10%) of the maximum votes that can be cast **as referenced in Section 3.01(a).**

(3) To call a special meeting of members under Section 4.03, a petition requires signatures representing at least fifteen percent (15%) of the maximum number of votes that can be cast **as referenced in Section 3.01(a).**

Revise Section 4.03 to read:

Section 4.03. Special Meetings. A special meeting of the members of the Association may be called by the President, by a majority of the Board of Directors, or upon written petition signed by members representing ~~the number of~~ votes required under Section 4.07(c)(3).

**Deleted:** at least fifteen percent (15%) of the maximum number of votes that can be cast.

#### Explanation of Proposal

The purpose of this proposal is to clarify the required process for providing written notices of the annual or special meeting of the members under By-laws Sections 4.04.

Section 4.04 of the Bylaws require a notice, in writing, be provided to all members of upcoming special meetings of the membership and specifically the Annual Membership meeting. This can be challenging and under certain circumstances, nearly impossible when the property is owned by an entity with multiple owners in common (LLCs, Trusts, etc....).

It became necessary to ensure that the responsibility of providing the designated contact information be placed on the property owner(s) or entities. In the event that more than one set of contact information is provided, or the owner(s)/entities choose to have such related correspondence sent to a separate address, the owner(s)/entities are responsible for designating a single mailing address for these written notices.

Additionally, as these notices may include election materials and ballots for electing members to the Board of Directors, only one notice per property will be provided. Therefore, the written notice will make it clear, that the recipient of the notice is responsible for providing this information to all other owners in common of the property for their consideration.

#### Proposed Revisions:

Revise Section 4.04(b) to read:

(b) Adequate notice of a meeting shall be deemed to have been given to any member if mailed or sent electronically to the address ~~provided~~ designated by the member(s) or entities for this purpose. **In the case of properties owned by entities or those with multiple owners in common, Ocean Pines will not be responsible for determining who is authorized to provide this information.**

Add a new 4.04(c) to read as follows:

**(c) A single notice, addressed to indicate it is to all members in common of the subject property, shall be sent to the address designated above. It is the responsibility of the recipient to forward such notice as necessary to other members who hold property in common with the recipient. Required notices to members shall be sent without regard to the eligibility to vote.**

**DRAFT  
Referendum Issues  
Section 4.08**

December 13, 2021

Explanation of Proposal

Section 4.08 of the By-Laws provides for the initiation of referendums. Subsection 4.08(c) provides that *“Any proposal presented in a referendum requires a majority affirmative vote of the total votes cast in order to become effective...”* There is no requirement in 4.08 for a minimum number of members voting, only that of those who did vote on the issue, a simple majority will pass the measure. Theoretically this would permit as little as 1% of eligible voting members to decide a referendum. Since subjects that go to referendum are typically of significant importance, as many association members as possible should be involved in the decision.

This concern is particularly applicable to stand alone referendums, as opposed to those bundled with a Board of Directors (BOD) election. A standalone referendum may not have the same community interest or appeal as a BOD election. Some might consider updating our By-Laws as an administrative effort where the suggested changes and impacts are not well understood. Although on average, voter turnout has been healthy for standalone referendums; should that not be the case in the future, and lacking a minimum voter participation requirement, passing of the referendum would not clearly establish community consensus on the issues.

Some studies show that referendums typically draw 40% of the eligible voting population. This aligns with the average Ocean Pines turnout for BOD elections. Previous Ocean Pines standalone referendums drew an average of 57% of eligible voters. Therefore, a 40% minimum participation rate, equivalent to that of a BOD election, seems reasonable for Ocean Pines. Please note, the last major revision to the By-Laws passed in August of 2008, only returned 39% of the ballots distributed. It was passed by 28% of the total eligible votes that could be cast, or 25% of the total membership. It seems a fair argument that By-Law changes should be approved by a larger portion of the membership.

This low voter participation rate may be attributed to lack of community awareness and understanding of the issues. This puts the onus on Ocean Pines to more effectively communicate these changes and their impacts, pro and con, to the public to encourage participation. Additionally, lumping all By-Law changes into a single for or against vote, could discourage some from voting if they agree with some changes, but not others. For consideration, future referendums involving multiple issues, especially for multiple By-Laws changes, could be presented individually on the ballot, allowing members to vote on each change subject individually.

#### Proposed Revisions:

Revise Section 4.08 to require a minimum voter participation on standalone referendum ballots:

Insert a new 4.08(c) after 4.08(b): **Any proposal presented in a standalone referendum must receive a minimum of total votes cast, for, and against, equal in number to 40% of the total votes, eligible to be cast.**

Renumber the original 4.08(c) to 4.08(d) and retain the current wording

Deleted: or

Deleted: that can

**Revised 4.08(c) as indicate above a 1/21/2022 meeting.**

Search Committee Status  
Section 5.02(b) and 5.02(c)

Guidance was requested from the Board of Directors as to how to proceed with proposals for the Search Committee. The Board provided guidance at its 12/11/2021 meeting. The Committee is proceeding with work on proposals in accordance with Board guidance.

See Article V proposals beginning on page 17 for related Search Committee and M-09 proposals

December 8, 2021

**DRAFT**  
**Informal Action by Directors**



## Section 5.10

### Explanation of Proposal:

This proposal is intended to clarify the Informal Action process whereby the Board of Directors may act without a meeting.

The current By-laws provision, copied below, can be understood to mean that consent to take Informal Action must be unanimous, but consent to the action does not have to be unanimous. The concern is that the separation of "consent" and "action" in the last sentence can be misconstrued to allow non-unanimous consent to the action.

"Section 5.10 Informal Action by Directors. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken if a unanimous written consent to take action without a meeting is signed by each Director. The consent and action taken shall be filed with the minutes of the Board meeting."

The Corporations and Associations Article of the Maryland Code on which Section 5.10 is based indicates that consent to the action must be unanimous. The Code provision follows:

"§ 2-408 Action by directors

(c) Informal action by directors. Any action required or permitted to be taken at a meeting of the board of directors or a committee of the board may be taken without a meeting if a unanimous consent which sets forth the action is:

(1) Given in writing or by electric transmission by each member of the board or committee entitled to vote on the matter; and

(2) Filed in paper or electronic form with the minutes of the proceedings of the board or committee."

The proposed revision refers to the code provision rather than using text to describe the permitted action. This avoids the potential for appearing to modify the authority expressed in the Code as well as the potential for having inaccurate provisions in the By-laws if the Code is amended. A similar approach in the By-laws is used in the Section 5.07 Open Meetings provision where there is only a reference to the Code and not a list of the Code exceptions to open meetings.

The last sentence of the proposal adds a requirement that the Informal Action be reported at a Board meeting. The Board is currently following this practice.

### Proposed revision:

Revise Section 5.10 to read:

Section 5.10 Informal Action by Directors. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting as specified in Article 2-408(c) of the Corporations and Associations Article of the Maryland Code. The consent to an action under this Section 5.10 shall be reported at the next regular meeting of the Board of Directors and filed with the minutes of the meeting.

file:informalactionBOD

12/7/2021

***DRAFT PROPOSAL - - FOR DISCUSSION ONLY***

To Revise Board Member  
Amenity Privileges

## Section 5.11

### **Explanation of Proposal:**

The purpose of this proposal is to address the last sentence of Section 5.11 of the By-laws. Section 5.11, entitled "Compensation" bars compensation for Members of the Board of Directors and officers for services in connection with those positions. There is a provision for reimbursement for necessary expenses. The last sentence as currently written provides "Family Membership" for specified amenities (golf, swimming, tennis, paddleball and Beach Club parking privileges). By enumerating the amenities offered, new amenities are not included in this Section (i.e., pickleball). It is possible that new amenities will be offered in the future as well.

The proposed revision would avoid the listing of specified amenities and just provide for "Family Membership" for those amenities offered by the Ocean Pines Association.

### **Proposed Revision:**

Revise Section 5.11 to read:

Section 5.11. Compensation. Members of the Board of Directors and officers of the Association shall not ~~receive a salary~~ in connection with these positions. The Board of Directors may authorize reimbursement for necessary expenses in connection with service on behalf of the Association. ~~Members of the Board of Directors shall be provided with "Family Membership" for all amenities offered by the Association.~~ (Note: the listing of amenities "golf, swimming, tennis, paddleball and Beach Club parking privileges" are stricken from this revision)

Deleted: be compensated for services

Deleted: except as set forth in the Section

This Section was revised as indicated above at the 1/21/2022 meeting.

This action is pending a response from Jeremy Tucker

By-laws conflict with ARC Authority  
Section 5.13(h)

**Jim and LouAnn Trummel** <jetlat@verizon.net>

To: Robert Hillegass, Keith Kaiser, Lora Pangratz, Lisa Romersa, Camilla Rogers

Cc: James Trummel

Thu, Jun 24 at 12:48 PM

I met with Jeremy Tucker, OPA counsel, this morning by Microsoft Teams to discuss the By-laws issue of Section 5.13(h) and the authority of the Board regarding ARC(ECC).

Mr. Tucker is going to provide us with suggested wording for 5.13(h). Although the current provision is a standard or common by-laws provision regarding committees, in the context of OPA and our governing documents (DR's in particular), it is imprecise and can lead to confusion.

Specific points from the meeting:

\*The Board does not have authority to intervene in ARC decisions or hear appeals. However, there is an exception in later section DR's where a right of appeal does exist and has to be recognized.

\*The Board does have the right to approve the ARC Guidelines.

\*The Board can set criteria for ARC membership and general committee procedural provisions that do not limit ARC decisions. This Board can also set length of terms, term limits and other committee considerations such as are in resolution C-01.

Some other interesting comments: (these comments are in my words as I understood Jeremy)

The authority given to ARC(ECC) in the DR's is common among HOA's and in many ways preferred. The approach is based on appointing persons who can be expected to be attentive to their responsibilities. It is expected that a committee like an ARC/ECC would act professionally and consistent in performing its duties. The committee authority is intended to avoid instances in which a board, not being involved in the decision process as fully as a committee would, could make inconsistent decisions, or perhaps even decisions based on a degree of favoritism. If a committee is not showing due regard for covenants (in the case of OPA, the DR's) or established guidelines, the board should act aggressively with regard to retaining committee members.

Jeremy gave an interesting example (not OPA) of a committee approving a privacy fence that went across the front of the property although the covenants/guidelines for a privacy fence do not allow across the front of the property. The owner had the fence constructed as approved. The board is now faced with "what do we do now? can the association sue the owner based on an unauthorized approval"? (decisions to be determined)

Jim

12/7/2021

***DRAFT PROPOSAL -- FOR DISCUSSION ONLY***

To Determine How to Identify  
Source References in the By-laws  
**Sections 5.14(e) & (f), 8.04(b) and 9.02(c)**

**Explanation of Proposal:**

Each of these Sections discuss actions to be taken by the General Manager or the Board in the areas of budget management, personnel matters and financial decisions.

- a. Sections 5.14(e) & (f) delineate the duties of the Board as it applies to execution of checks, contracts and purchases [5.14(e)] and the financial institutions and grants of authority to withdraw funds from those institutions [5.14(f)].

Sections 5.14(e) & (f) as currently written could be interpreted to allow for the Board to change guidelines, procedures and even financial institutions from one session to another and lose consistency in policy and procedures. While there are manuals used to avoid this problem, specifying the manuals by title or name could create additional problems if the manuals were updated or superseded by newer volumes.

**Proposed Revisions:**

Section 5.14(e) to read:

(e) The Board shall establish the limits and guidelines applicable to the execution of checks, contract, and purchases made by the officers of the Association, Board of Directors, and the General Manager or management firm **in applicable financial policy and procedures manuals.**

Section 5.14(f) to read:

(f) The Board shall designate depositories for the Association funds and designate those officers, agents and employees who shall have the authority to withdraw funds from such accounts on behalf of the Association **in applicable financial policy and procedures manuals.**

- b. Section 8.04(b) allows for the General Manager to transfer budgeted items within a department as well as other transfers of budgeted items pursuant to “guidelines and limits established by the Board of Directors”. Currently the permissible actions referred to under this Section are codified in financial manuals with which the General Manager must comply. The language in this Section does not refer to those manuals and could lead to the interpretation that the Board has established guidelines and limitations.

**Proposed Revision:**

Section 8.04(b) to read:

(b) The General Manager, or management firm, may make transfers of budgeted items within a department and make other transfers of budgeted items as authorized by the guidelines and limits established in the financial policy, and financial procedures manuals.

- c. Section 9.02(c) requires the General Manager to maintain personnel policy manuals and “review all benefit programs, wage schedules, training programs, classification schedules, personnel policies, including grievance procedures, and make recommendations to the Board of Directors. As currently written this Section refers to “Personnel Policy Procedures Manuals” (note the capitalization) which could be interpreted to suggest that there is a specific manual so entitled, which is not the case.

**Proposed Revision:**

Section 9.02 (c) to read:

(c) The General Manager shall maintain personnel policy procedures manuals, review annually all benefit programs, wage schedules, training programs, classification schedules, personnel policies, including grievance procedures, and make recommendations to the Board of Directors.

The Work Group proposal to amend section 6.06(a) (president's duties) by adding a new 6.06(a)(6) was discussed at the August 6, 2021 meeting of the By-laws and Resolutions Advisory Committee. The meeting can be viewed on the Ocean Pines Association website. The Committee does not support amending 6.06(a) as proposed. Explanation of the reasoning of the Committee follows.

Work Group Proposal: The proposal is to add the following to 6.06(a):

6.06(a)(6) keeping all directors informed of all Association issues in a timely manner.

Committee Comments: The Committee does not support this proposal for the following reasons:

- a. To require that directors be informed of "all issues" restricts the president from making a determination that an "issue" brought to the attention of the president can be handled within the Association without the necessity of informing the other directors. "All" is so general that it encompasses any Association topic brought to the president's attention.
- b. Timely is too subjective. It is subject to differing opinions among the directors as to what is timely.
- c. Keeping other directors informed can be seen as an inherent duty of the president in which the other directors must bear a responsibility for how well it is performed.

12/13/2021

Withdrawn from consideration at 1/21/2022 meeting

**PENDING BOARD DISCUSSION**

Associate Members as Committee members

**Section 10.02**

Background: During the Executive Council meeting May 26, 2021 there were comments to the effect that committee member recruitment could be enhanced if Associate Members were allowed to be committee members. The chair of By-laws and Resolutions agreed to add the topic to the ongoing review of the By-laws.

Discussion by By-laws and Resolutions:

a. It would be necessary to formulate amendments to the By-laws and Resolution C-01 that would authorize and implement the suggested action. In particular, the parameters of participation of an Associate Member would have to be established in some detail.

b. Concern was expressed regarding a potential conflict of the interest of the owner of the property and the interest of an Associate Member residing at the property. A means would have to be developed to authorize the Associate Member to not only participate in a committee, but also act in the capacity of the owner. The possibility of using a proxy approach was discussed. It is recognized that the current By-laws provisions for proxies is limited to voting on issues at a members' meeting.

c. The discussion was expanded from committee membership to a more complete authorization to act for the owner of the property. This would include determining the extent to which an owner could formally authorize an Associate Member to act in place of the owner and the means by which this authorization would be conveyed to the Associate Member and informed to the Ocean Pines Association.

Options: The following options were discussed:

a. Pursue an option of only permitting Associate Members to participate in committees. This would require a By-laws amendment and resolution provisions (likely in C-01) implementing the scope of such participation.

b. Pursue an option of an expanded authority, granted by the owner (perhaps in the form of a proxy), to allow an Associate Member to act for the owner. This would require a By-laws amendment as well as determining the means of implementing the authorization and its content, possibly in a resolution.

c. Advise the Executive Council that the proposal is an undesirable alteration of the rights and obligations of membership in the Association.

d. Associate Members have rights of membership in the Association as described in The Charter SIXTH, paragraph 7. The primary exception is the right to vote. An option would be to communicate the range of opportunities available for community participation by Associate Members.

Consideration of Options:

The topic considered by By-laws and Resolutions did not come from the Work Group and discussion was expanded beyond the original suggestion from the Executive Council. By-laws and Resolutions requests guidance as to whether any of the options that would implement some form of Associate Member participation should be pursued.

12/13/2021

**A PROPOSAL WILL NOT BE PREPARED**

Removal of a Director by Association Members

**Section 5.12(a)(4)**

Background:

An Association Member expressed concern that the provisions of the By-laws make it impossible for Association Members to remove a director from office. The specific concern is that the vote threshold is too high. In accordance with Section 5.12(a)(4) the vote of a majority of the votes that could be cast in the referendum is required for removal.

Discussion: The committee reviewed the history of the By-laws provision for removal of a director by the membership. The By-laws adopted in 2008 reduced the vote to remove requirement from 2/3<sup>rd</sup> of the votes that can be cast to the current provision of a majority of the votes that can be cast. For comparison purposes, the Maryland Code provision is also that removal of a director requires a majority of votes that can be cast. Note: There is a Code provision applicable to non-stock corporations in which the director removal provision can vary from what is otherwise required in the Code. Other discussion items included:

- a. It is not desirable to have a removal provision that can be used by a minority to remove a director.
- b. Director elections typically do not have a majority of ballots returned making a removal referendum unlikely to succeed.
- c. The removal provision could be made similar to the referendum Section 4.08(c) proposal ("supermajority").

Comment: The concern from the Association member did not originate with the Work Group. The expressed concern is reasonable in the context that Association voting history makes it questionable that a majority of votes that can be cast is an achievable result. However, the committee does not want to begin weighing options between what is too easy for removal and what is too difficult without further guidance from the Work Group. If the removal topic is not to be pursued further, the committee will advise the member of the decision.



12/12/2021

**Petition Review Sections 4.07(a) and 5.14(l)**

Background: A member of By-laws and Resolutions has proposed revisions to 4.07(a) and 5.14(l) that would add detail that is missing from the petition review responsibilities of the Secretary. The Secretary is to file a public report with the Board when a petition is rejected. However, the requirement for certifying a valid petition is less clear. The proposed amendments are as follows:

4.07(a) revise the last sentence to read:

Within ten (10) calendar days after a petition is filed, the Secretary shall certify **in writing to the Board of Directors** that the petition meets the requirements of this Section or file a public report with the Board, specifying the basis for rejecting the petition.

Deleted: of Directors

5.14(l) revise the section to read:

5.14(l) The Board of Directors shall consider a petition submitted under Section 4.07 **and certified as valid by the Secretary** at a meeting of the Board within sixty (60) days of the petition being filed.

**Section 5.02(a)**  
**Director Eligibility**

**ARTICLE V**

**THE BOARD OF DIRECTORS**

This Article of the By-Laws is to be the only authority for issues of membership, term of office, qualification, candidacy, election, vacancies, organization of the Board, conduct and notice of meetings, quorum determination, permissible actions, compensation, resignation and/or removal, powers and duties of the Board of Directors. [This language is an attempt to address the concerns of some relating to language in the DR's and Charter about beneficial ownership and its application to Board elections and practices of the Board.]

Section 5.01 (unchanged)

Section 5.02. Candidates for Election (unchanged)

(a) Eligibility.

(1) All candidates must be owners of record as listed in records of Worcester County Land records [need correct name of office in County Clerk's office] and/or the automated compilation of records found in the Maryland Department of Assessments and Taxation of real property in the subdivision the first day of January of the year in which the election is to be held.

(2) Notwithstanding the provision in Section 3.01(c) of these bylaws, any candidate for the Board of Directors shall have paid the annual charge, including any assessed interest by the Association by May 15th of the year of the election.

(3) No member shall be a candidate for election as a Director of the Association if he or she is an incumbent Director completing a second consecutive full term of office, has a familial relationship through marriage, parentage or is a sibling of any other member currently serving on the Board.

(4) No member shall be a candidate for election as a Director of the Association if he or she is an employee of the

Association as of the date the candidate's application is submitted for consideration by the Secretary.

(5) No corporate entity (including but not limited to a Corporation, LLC, Partnership or agency) that is listed as the owner of record may have an individual residing full or part-time be a candidate for the Board of Directors.

Did not address the issue of litigation, 3 year residency or part-time resident. There are traditional forms of legal ownership [tenancy by the entirety, tenancy at will, tenancy in common, etc.] which may give rise to the same concerns found in Section 5.02(a)(5) - potential conflict of interest between the association and the entity such as a corporation or LLC. This is a matter which demands review by counsel.

(b) Search Committee (unchanged)

(c) Candidate Applications. Each member who desires to be a candidate for election to the Board of Directors shall complete an application form provided by the Search Committee. The candidate must list their full legal name (First, Middle, Last including any prefix or suffix). The form shall also require the candidate to provide appropriate documents which identifies the candidate as the owner of record or is the named Trustee if a trust is listed as the owner of record. The form shall be submitted to the Committee not later than May 10th and shall state that the candidate meets the requirements of paragraph (a) of this section and is willing to serve as Director if elected. At the candidate's option, the application form may include the candidate's experience, past participation in Association governance, and reasons for becoming a candidate. All candidates shall be informed that upon inclusion in the list of eligible candidates the completed application shall be made available to the members of the association electronically and by any other means deemed by the Elections Committee. [Did not include reference to legal counsel since it would seem to be a disincentive to run if the candidate had to secure legal counsel or in the alternative went to the Board's counsel which would create a conflict of interest for counsel. In addition, the restriction on corporate entities avoids potential conflicts between the duties owed by a board member to the association and the duty owed by a corporate officer to the corporate entity.]

(d) The Secretary shall verify that the Association's records as of May 15th as well as the records required in Section 5.02(a) support each candidate's eligibility and shall

submit a list of eligible candidates to the Elections Committee not later than June 1st. If at any time during the time frame of the election process, the Secretary is informed or becomes aware of a question of a particular candidate's eligibility, the Secretary shall review all appropriate information and documentation and make a report to the Board of Directors as expeditiously as possible. The Board shall then consider and vote on a motion to disqualify the candidate in question after the candidate is given an opportunity to respond to the report of the Secretary. Any Board member who is a candidate for re-election in this election process shall recused from voting. A vote on a motion to disqualify a candidate shall pass by majority vote of those Board members eligible to vote on the motion. IF THE SECRETARY IS A CANDIDATE FOR RE-ELECTION IN THIS ELECTION PROCESS, THE SECRETARY SHALL RESIGN NO LATER THAN UPON RECEIPT OF THE APPLICATION FORM FROM THE SEACH COMMITTEE. If the motion passes the Board shall make public notice of the disqualification of the candidate within three business days. If the ballots for the election are printed, the ballots will be mailed, the election will continue and all votes will be tallied. Votes for the ineligible candidate will not be counted towards determining the winner of the election. This will be the same procedure should a candidate die, ceases to own property as defined in Section 5.02(a) or withdraws from the election. Candidates may be disqualified at any time during the election process up to and including the last date for submission of ballots. [Note: did not include reasons for disqualification since it is unclear if there would be reasons other than those provided for in eligibility paragraph 5.02(a) or if that paragraph needs other criteria. Avoided use of the term "any reason" "for cause" and attempted to answer Director Parks' concern about the use of the word "conclusion". Additionally, limited the decision making of the Secretary since while he/she has delegated authority from the Board, the decision to disqualify a candidate should be on the Board as a whole.]

The Daly proposal has added a new paragraph 5.02(g) which it seems to raise a host of questions, not the least of which is that it applies to a "board member" and not a candidate and therefore would not seem to be an appropriate addition to 5.02 which addresses Candidates for Election. Additionally, it was not included in the Charging Document which the committee received from the Board. It may be that the grounds for deciding a board member should be found ineligible to serve as listed in the new 5.02(g) are appropriate, in need of expansion or limitation. It may also be appropriate to impose the same conditions on a candidate for election to the Board, but that is certainly a matter for further discussion.

It appears that the remaining Sections in the Daly proposal 5.03, 5.04 and 5.05 do not have changes in those Sections from the current by-laws.

#### **EXPLANATION**

In addressing the request of the Board in the Charging Document we took into consideration the discussion at our last committee meeting, the proposal of Director Daly, the comments in response to that proposal by Directors Parks and Peck (as provided by Jim). In addition, we were aware of comments and discussion found on various social media posts which raised issues that we felt needed, for the future, to be addressed. Assuming this was edited properly, existing language is in black, new, proposed language is in red and explanatory information is in blue. Keith Kaiser took it upon himself to develop a revised candidate questionnaire. While that document may be revised as the committee and Board see fit, it is our opinion that the questionnaire is a significant improvement over the current one and strikes the proper balance between identifying eligibility requirements that need to be in the bylaws and other information which the voting members can and should take under consideration when voting. The candidate questionnaire that Keith developed will be sent under separate cover for your consideration.

#### ATTACHMENT A

##### OCEAN PINES ASSOCIATION, INC. BOARD OF DIRECTORS ELECTION INFORMATION & CANDIDATE APPLICATION FORMS

Attached is the OPA Candidate Registration Form. To be considered by the OPA, this form must be completed and returned to the OPA General Manager's office at the Administration office at 239 Ocean Parkway to the attention of the Search Committee no later than the end of Association business on May 10<sup>th</sup> of the year of election. If Association offices are not open on May 10<sup>th</sup>, or not open for a full business day, Candidate Registration Forms are then due no later than the end of business the next full business day of the Association offices.

For your convenience, additional information is provided that gives a brief description of Board responsibilities. Additional corporate documents are available for review at the OPA Administration Office. The OPA Elections Committee supervises the election process and will provide further instructions to all candidates in addition to that below.

##### Board Responsibilities

- The Ocean Pines Association is governed by a seven member Board of Directors elected by the lot owners who make up membership in the homeowners association.
- Section 5.13 of the By-Laws establishes the Powers of the Board. Section 15.14 establishes the duties of the Board.
- The Board determines operational and fiscal policy and assesses property owners at a rate set annually. These assessments provide the funds for the operation of the Association.
- The Board sets a meeting schedule for the coming year at the Organization Meeting after the election of directors. A Board member who misses three consecutive regular meetings is subject to removal for cause.
- Board members do not receive monetary compensation for their service.
- Board members serve three year terms on a staggered basis. Directors cannot seek reelection after serving two consecutive terms.
- A Board candidate must be an owner of record on January 1<sup>st</sup> of the year of the election and not have unpaid annual charges or vote suspended by the Board as of May 15<sup>th</sup> of that year.
- Board members may be assigned as Board liaison to Advisory Committees.

##### Elections Committee

- The Elections Committee has the responsibility for administering the election process. See Board Resolution M-06 Elections and Referendums Procedure. The Committee will provide further instructions and information for all candidates.
- Candidates will be requested to supply information, which will be distributed to the media and included with ballots sent to Association members. This includes biographical information, and answers to questions prepared by the Elections Committee. Candidates will be asked to participate in a Candidates Forum.

Resolution M-09 Attachment B: Candidate Registration Form, approved by the Board of Directors: XXXX XX, 2022



ATTACHMENT B  
OCEAN PINES ASSOCIATION, INC.  
BOARD OF DIRECTORS [YEAR] CANDIDATE REGISTRATION FORM

1. Applicant's Full Legal Name:

(Attach a copy of a state issued ID)

Property Owned

I have owned property in Ocean Pines since (date):

List of all Ocean Pines property addresses for which I have an ownership stake:

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(If your legal name as provided on your state issued ID does not appear on the property deed(s) listed, attach supporting documentation for proof of ownership. Corporate entities including but not limited to a Corporation, LLC, Partnership or agency are not allowed.)

Contact Information: Home Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_

Primary Phone to use: Home Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_

Email Address: \_\_\_\_\_

Mailing address if different from above: \_\_\_\_\_

2. A response to the following questions is mandatory. A "YES" answer to any of the following questions makes you ineligible as a candidate for the Board of Directors pursuant to the Ocean Pines By-Laws:

- Are you an incumbent Director completing a second consecutive full term of office?.....YES \_\_\_ NO \_\_\_
- Do you have a familial relationship through marriage, or parentage; or are you a sibling of any member currently serving on the Board of Directors?.....YES \_\_\_ NO \_\_\_
- Are you ineligible to vote under section 3.01(c) of the Ocean Pines By-Laws?.....YES \_\_\_ NO \_\_\_
- Are you currently an employee of the Ocean Pines Association?.....YES \_\_\_ NO \_\_\_

3. Comments on the following questions are not mandatory. However, be advised, these issues have proven to be of interest to voters and may become known as part of the candidate vetting process.

- Have you been convicted of a felony within the past 5 years?
- Are you currently under investigation by Local, State, or Federal Agencies for any alleged crime?
- Have you ever served on any HOA Board of Directors where you were forcibly removed?
- Are any other owners of the property listed above currently serving on the Board of Directors?
- If the property listed above is part of a Trust, are any members of that Trust, representing any other real property in Ocean Pines, currently serving on the Board of Directors?



ATTACHMENT B  
OCEAN PINES ASSOCIATION, INC.  
BOARD OF DIRECTORS [YEAR] CANDIDATE REGISTRATION FORM  
(Continued)

**4. The following types of information is suggested, but optional. Attach related information to this application as you desire:**

Memberships in social clubs and/or organizations  
Service on any OPA Advisory Committees  
Chairmanship of any committees  
Service on executive board of any organizations in Ocean Pines  
Service in other communities where you have resided  
Education  
Work Experience

**5. Disclosures and agreements**

You agree:

- that you will immediately notify the Secretary should any of the information provided on this form change at any time prior to the reading of the votes
- that should any of the information provided on this form be found to be incomplete or inaccurate at any time prior to the reading of the votes, the Board shall have cause to consider rescinding your eligibility as a candidate for the Board of Directors
- that should any of the information provided on this form be found to be incomplete or inaccurate after your election to the Board, the Board shall have cause to consider removing you
- that if you are approved as a candidate for the Ocean Pines Board of Directors, information provided on this form will be available to the association members, the public and the media
- that if elected, you will familiarize yourself with the Ocean Pines community governing documents, uphold them, and honor the fiduciary responsibility to all association members.

I meet the Director eligibility requirements of Section 5.02 of the Association By-Laws and am willing to serve as Director if elected. To be considered by the OPA, this form must be completed and returned with all attachments to the OPA General Manager's office at the Administration building at 239 Ocean Parkway to the attention of the Search Committee no later than the end of Association business on May 10th of the year of the election. If Association offices are not open on May 10th or not open for a full business day, Candidate Registration forms and attachments are then due no later than the end of the next full business day of the Association offices.

Required Attachments:

1. Copy of a State Issued Identification
2. Supporting documentation of Proof of ownership as required by Section 1

Optional Attachments:

1. Response to any non-mandatory questions of Section 3
2. Desired Biographical work experience information per Section 4

Applicant Signature

Date

For Office Use Only:

Received by OPA Date: Signature: OPA Designee	Received by Association Secretary Date: Signature: OPA Secretary	Verification of Property Ownership Section 1 Above Date: Signature: OPA Secretary	Verification of candidacy pursuant to Ocean Pines By-Laws Section 2 Above Date: Signature: OPA Secretary
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as of 1/21/2022

## By-laws Review Status

The following sections for review and proposal are from the By-laws Work Group

Sections/pages	Purpose of Proposal	Status
3.01(c) & 5.02(a) page 2	Clarify voting eligibility	A draft was accepted at 12/3/2021 committee meeting <b>Go to page 17 for 5.02(a) final proposal as response to Board Charge Document</b>
3.04 and 4.07(a) page 2	To provide increased certainty as to who is eligible to vote or sign petitions	These sections will not be revised. However, the eligible to vote is clarified in revisions accompanying 3.01(c) and 5.02(a)
4.03, 4.07(c)(2) and 4.07(c)(3) pages 3 & 4	To clarify the meaning of "maximum number of votes"	Draft dated 12/8/2021 is ready for review
4.04(b) & (c) page 5	The proposal is to add members' meetings notice provisions from charter	Draft dated 12/13/2021 is ready for review
4.08(c) page 6	To require a minimum number of votes be cast for approval of a referendum	Draft dated 12/13/2021 is ready for review <b>Revised at 1/22/2022 meeting</b>
5.02(b) page 7	To determine the future of the Search Committee	Draft proposal is to be prepared based on Board discussion at the 12/11/2021 Board meeting
5.02(c) page 7	To revise board candidate application going to the Search Committee	Same as 5.02(b) Search Committee
5.10 page 8	To clarify requirements for Informal Action by making direct reference to Code	Draft dated 12/8/2021 is ready for review
5.11 page 9	To revise Board member amenity privileges	Draft dated 12/7/2021 is ready for review
5.13(h) page 10	To consider if there is a conflict between this provision and ARC authority in DRs	Input from counsel has not been received.

as of 1/21/2022

### By-laws Review Status

Sections/pages	Purpose of Proposal	Status
5.14(e) & (f), 8.04(b), & 9.02(c) pages 11 & 12	To determine how to identify source references in the by-laws	Draft dated 12/7/2021 is ready for review
6.06(a)(6) page 13	To add a duty to the list of duties for the president	A proposal will not be prepared

#### The following proposals have been received from outside the Work Group and By-laws and Resolutions

10.02 page 14	To allow associate members of OPA to be committee members.	This topic is tentatively scheduled for a Board discussion at a January 2022 meeting of the Board. <i>Withdrawn from consideration at 1/21/2022 meeting.</i>
5.12(a)(4) page 15	To make it easier for association members to remove a director	A proposal will not be prepared
4.07(a) and 5.14(l) page 16	Insert references to a petition that has been certified as valid by the Secretary	Draft dated 12/12/2021 is ready for review

#### The following Advisory Committee Charge Documents have been received from the Board of Directors

5.02(a)	Provide a clarification of the meaning of "owner of record"	This is subject to further review by counsel with no current action at the Committee level
5.02(a) and 3.01(c) page 2	Clarify whether the 35 day provision of 3.01(c) applies to candidate eligibility	A draft was accepted at the 12/3/2021 Committee meeting. This item is the same as in the topics from the Work Group.
5.12(c)	Discuss meaning of "cause" and merits of resolution containing a code of ethics which can be used as a reference for "cause"	This is subject to further review by the Board. No current action at the Committee level

as of 1/21/2022

### By-laws Review Status

5.02(a) pages 17 thru 23	Recommendations for expansion of candidate criteria in 5.02(a)	Draft reviewed and revised at the 1/7/2022 meeting. Includes application form in Resolution M-09. Drafts are subject to review by the Board
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**Note:** Pages numbers in the left column refer to the page(s) in the By-laws Proposals document. That document contains the current proposal for the topic.