

**ZELMANSKI, DANNER  
& FIORITTO, PLLC**



*Experienced Condominium & HOA Attorneys*



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& FIORITTO, PLLC

## **Amending Your Governing Documents**

Village of Hickory Pointe  
Homeowners Association  
February 4, 2021

## Amending Your Governing Documents



The Association's Governing Documents



An Overview of the Amendment Process



Goals of the Amendment Project



A Closer Examination of Some Key Amendments

\*\*\*Please see the *Guide* for a specific listing of all proposed amendments\*\*\*

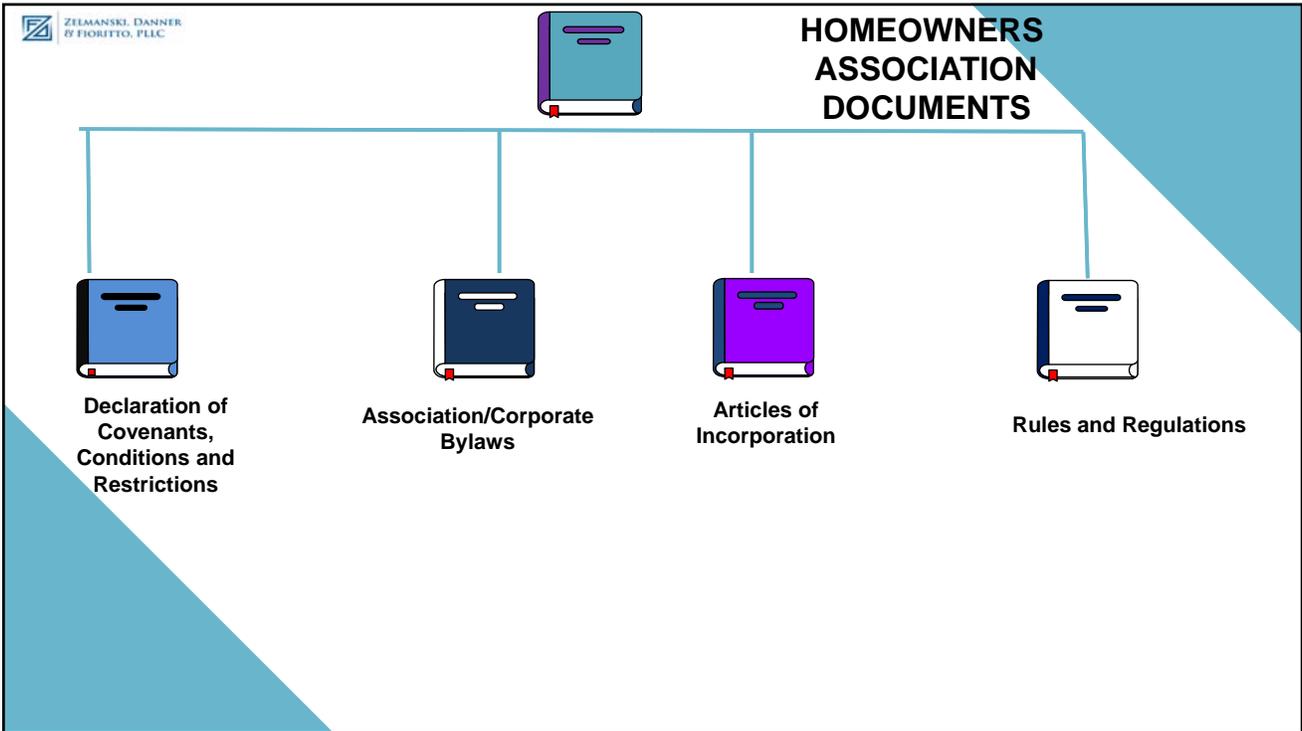


Questions and Answers- Questions may be placed in the chat at any time to the moderator, but will be addressed at the end of the presentation.



# THE ASSOCIATION'S GOVERNING DOCUMENTS





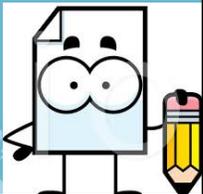
## What are the Association's Governing Documents?

**01** Declaration of Covenants, Conditions and Restrictions  
The legal instrument that the developer recorded with the Washtenaw County Register of Deeds to create the Association and establish covenants/ Restrictions applicable to all lots. Contains the legal description of the land, definitions of various terms, establishes the power to assess the members, use restrictions and architectural controls.

**02** Association Bylaws  
This document includes everything required by the Nonprofit Corporation Act. It creates a framework for Administration of the homeowners' shared ownership interests including governance, meetings, voting rights, Board of Directors.  
  
Not filed or recorded with anyone.

**03** Articles of Incorporation  
Created the Association as a Nonprofit Corporation. Filed with the State of Michigan. sets forth basic membership, limitations on liability and corporate purposes.

**04** Rules and Regulations





## A History of Your Articles, Declaration of , and Bylaws



- February 18, 1998- Declaration of Covenants, Conditions, and Restrictions recorded with the Washtenaw County Register of Deeds
- May 5, 1998- Articles of Incorporation filed with the State of Michigan (never amended)
- May 5, 1998- Bylaws adopted (never amended)
- May 18, 1998- First Amendment to the Declaration recorded with the Washtenaw County Register of Deeds (paving of Munger road)
- May 26, 1998- Second Amendment to the Declaration recorded (“Landscaping and Irrigation Improvements”)
- August 24, 1999- Third Amendment to the Declaration recorded with the Washtenaw County Register of Deeds (Hickory Pointe Drainage District)
- October 20, 2000- Fourth Amendment to the Declaration recorded with the Washtenaw County Register of Deeds (added Sub. No. 2)
- May 23, 2001- Fifth and Sixth Amendments to the Declaration recorded with the Washtenaw County Register of Deeds (added Subs. 3 and 4)



## This Amendment Project Consists of:

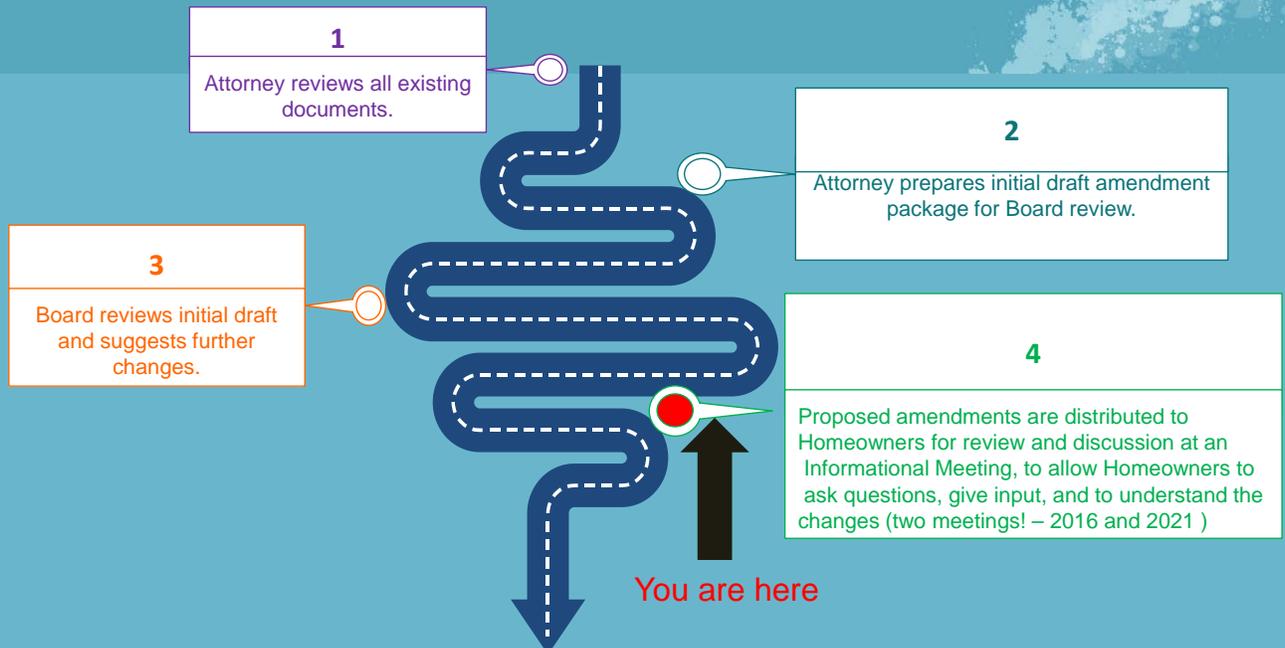
**Improving, restating, consolidating, updating and customizing your Declaration and Bylaws.**

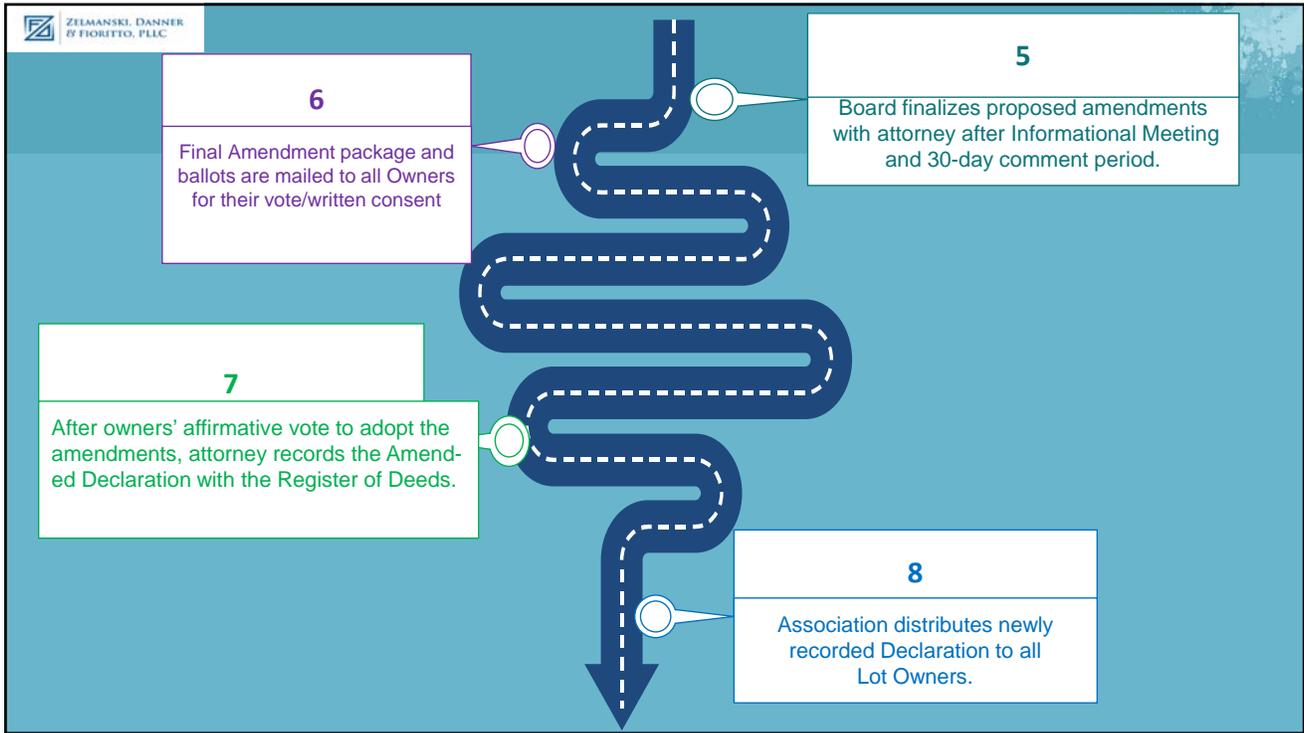




# AN OVERVIEW OF THE AMENDMENT PROCESS

## THE AMENDMENT PROCESS ROAD MAP





## Amendment Approval Requirements

**DECLARATION**

- ❖ All amendments must be approved via a “written” instrument signed by the owners of 75% of the total lots contained within all Subdivisions in the Association. A meeting is not required.

**BYLAWS**

- ❖ May be amended “in the same manner as amendments may be made to the Declaration as provided in Section 8.01 thereof (75% lot owner approval)

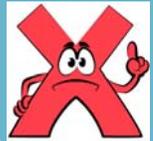
There are 258 homes in the Association, so the approval of 194 lots will be required to amend both documents

The proposed amendments will be voted on **as a single proposal** instead of “piecemeal” because of their mostly “objective” nature (more efficient to do all at once then via multiple, separate amendments)

## GOALS OF THE AMENDMENT PROJECT



## What The Board Is NOT Proposing



1

To radically change your existing governing documents, and the rules under which you live, for random or no reasons.

2

To propose changes that a substantial minority of the Association members might oppose (i.e., more than 25%)

3

To impose new or different restrictions on your enjoyment and the use of your homes, Lots, and the Common Areas that do not comport with existing practices or the wishes of most of the Homeowners.



## What The Board IS Proposing

01

Changes that are *objectively* superior to existing text and in the best interest of Homeowners (i.e., such changes would be in the interests of any similarly-situated association)

02

To modernize, customize, consolidate and improve the text of your existing documents *for the benefit of all Homeowners*.

03

A few changes, to be discussed tonight, are *subjective* to your community's needs and wants (reasonable minds could differ).



## Goal No. 1- Tidying Up

- ❖ Your existing documents repeatedly mention the word “Developer”. Most Developer-related provisions can be deleted. See, e.g., Declaration, Recitals; Art. II, Bylaws, Article III (Board of Directors)
- ❖ Remove all obsolete Articles (Art. III, Sec. 3.03 (b) regarding Developer Class B voting rights), and consolidate all previous Amendments (One through Six)
- ❖ Removal of Developer provisions can help protect Association, prevent any argument that a certain power still belongs to the Developer rather than the Association (e.g., deletion of old Art. VIII, Sec. 8.09 regarding Developer’s assignment of powers to the Association)
- ❖ Consolidate Bylaws into the Declaration – now a single, recorded document of public record, instead of two documents, one of which is not recorded.

## Goal No. 1- Tidying Up



- ❖ Declaration, Art. I, Sec. 1.10 – the Plats for all 4 Subdivisions are now referenced.
- ❖ Declaration, Art. II – text regarding the Hickory Pointe Drainage District is now included (from previous amendments).
- ❖ Declaration, Art. I, Sec. 1.8 – the definitions of “Member” and “Owner” are now combined. Every Owner is a Member.

## Goal No. 2: Improving the DNA of Your HOA

- Improvements and upgrades based on functionality and our experience as Community Association Lawyers (what is standard for modern HOAs AND what works better)
- There are some provisions that every Association’s governing documents should have, changes that would make your documents objectively superior to their current state.
- Remember our Goal!: to propose amendments that nearly the entire community would support (or at least 75% of Lot Owners).
- Attorney’s role is to suggest where such changes can be implemented (Board’s/Membership’s role is to help customize).
- Working with hundreds of Associations over many years informs us of what a “good” set of Association documents should look like (quality of HOA documents varies greatly).



## Goal No. 2: Improving the DNA of Your HOA

Examples of these “objective” upgrades to your HOA DNA:

- Declaration, Art. III, Sec. 3.05: delinquent owners or owners in violation of Restrictions may not vote.
- Declaration, Art. III, Sec. 3.08: Notice of Meetings may now be given via means of “electronic transmission” per revised Nonprofit Corporation Act (e.g., email, text).
- Declaration, Art. III, Sec. 3.11: Voting by proxy is now expressly permitted (old documents conflicted).
- Declaration, Art. III, Sec. 3.20: Voting may be done solely by written ballot without a meeting per revised Nonprofit Corporation Act. Gives more flexibility to HOA to get things done.



## Goal No. 2: Improving the DNA of Your HOA

- Art. IV, Sec. 4.01: an owner must be a resident of a Lot in the Subdivision and in Good Standing in order to serve on the Board of Directors.
- Art. IV, Sec. 4.01: Directors must serve without compensation.
- Art. IV, Sec. 4.06: Directors who fail to attend meetings, become delinquent, or who violate the Declaration may not serve on the Board.
- Art. VII, Sec. 7.05: Illegal interest rate of 15% has been changed to 7%. Usury laws. See current Declaration, Art. V, Sec. 5.05 (b) (iv).
- Art. X, Sec. 10.02 (c): The Association would have right to fine for violations. A fine schedule is included. A Lot owner is entitled to written notice and a hearing with the Board before a fine may be assessed.





## Goal No. 3: Leaving the Wild West Behind: Updating Your Documents to Comply with Modern Laws

The “web of laws” affecting Associations continues to change (federal, state and local).

Example – The 2008 and 2015 amendments to the Nonprofit Corporation Act authorized:



- Giving of notice for meetings via electronic means (email/text) - MCL 450.2143 (2) – Association may give written notice to member electronically if they consent. Declaration, Art. III, Sec. 3.08, 3.22.
- Voting Electronically – MCL 450.2441(1) – The members may vote by electronic transmission if Bylaws say so. Declaration, Art. III, Sec. 3.20 and 3.22 now authorizes Owners to vote via email and “electronic transmission.”
- Holding Board Meetings via videoconference/teleconference (“ZOOM”) – MCL 450.2521 (3) – board members can participate in meetings by means of “remote communication,” as long as all members can communicate with each other. Declaration, Art. IV, Sec. 4.09; Art. IV, Sec. 4.14 (Board can vote via email without a meeting if vote is unanimous).



## Goal No. 3: Leaving the Wild West Behind: Updating Your Documents to Comply with Modern Laws

- “Virtual” Association Meetings - allows Association members to participate in membership meetings via means of remote communication. Art. III, Sec. 3.19. This Section allows Owners to participate in a meeting by means of remote communication as long as (i) the Board adopts a resolution authorizing it, OR (ii) the Owners of at least 10% of all Lots in the Subdivision request that they be able to attend by means of remote communication.
- F.C.C. “OTARD” Rules- Per federal law, the Association/Board cannot prohibit owners from placing satellite dishes/antennas in certain areas under their exclusive ownership or control if such placement is required to obtain an acceptable quality signal. See Declaration, Art. VIII, Sec. 8.24.

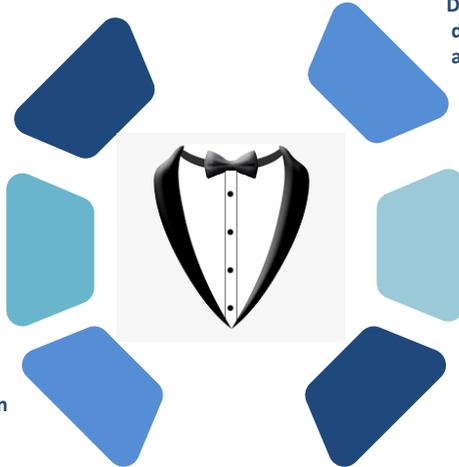


### Goal No. 4: Improved Marketability- Putting Your Best Foot Forward As A Homeowners Association

Better readability, organization and visual appeal for the potential buyer (e.g. no Developer language, more section headings, separating big paragraphs into smaller, separate subparagraphs, inclusion of new introductory paragraphs to some Articles, examples, etc.).

Correct all identified errors in text/ Typos.

Combining all previous amendments in to one document.



Documents reorganized according to modern document "templates" and formats. Less ambiguity and more detail where needed.

The end result will be a single modern-looking, comprehensive, and customized document.

Correct erroneous terminology (e.g., "votes cast" in existing Declaration, Art. V, Sec. 5.04 (a) regarding required approval for Special Assessments). Changed to 60% of all Lots in the Subdivision. See new Art. VII, Sec. 7.04 (a)

### Goal No. 4: Improved Marketability- Putting Your Best Foot Forward as a Homeowners Association

A binder with all amendment documents will be provided to the Board for distribution to all Lot Owners after recording.

Successful amendments show others that you have responsible governance with Owners that pay attention to the community, important issues, and the law.

All of these things are marketing positives; realtors, lenders, insurers, and other third parties will appreciate it.





## Goal No. 5: Rounding up the Outlaws: Removing Illegal Provisions from the Association's Documents

- Remove and/or correct all illegal (or potentially illegal) provisions.
- Example – Removal of illegal 15% interest rate.
- Beware of Remington Steele, the Notorious Outlaw Cat!



## Goal No. 6: Customize Your Documents- Finding the foot for your HOA's glass slipper

- ❖ This is your opportunity to “fine-tune” your governing documents so that they fully match your Association's unique practices, desires, and needs.
- ❖ Although the “objective” amendments would benefit every HOA, every HOA is also *unique* in some ways.
- ❖ If existing practices are undesirable, this is your opportunity to change such practices (these are more *subjective* to the needs and desires of your particular community). Or to change the documents to match your existing practices.
- ❖ Most developer-drafted documents are extremely “cookie cutter” and are not necessarily drafted with your Association's best interests (or future Homeowners' interests or desires) in mind.
- ❖ All in all, these types of proposed (subjective) changes are in the clear minority in this project (mostly in Article VIII). Our main goal is to improve the documents for all co-owners, not to re-write them to fit the desires of a few.
- ❖ This is where the Board and YOU come in . . .



## Goal No. 6: Customize Your Documents- Finding the foot for your HOA's glass slipper

**Example** – Art. V, Sec. 5.10 – broad authorization for use of e-signatures by Directors and Officers.

**Example** - Art. VIII, Sec. 8.15: Owners must maintain trees on Lots and remove/replace dead trees within a reasonable time.

**Example** – Art. VIII, Sec. 8.19: All perimeter fences are prohibited (unless already constructed with prior written approval from the Developer or Board).

**Example** – Various Catastrophic Event provisions.



**Example** – Art. VIII, Sec. 8.23 (c) – new rule allows political signs not more than 4 square feet in area, placed no earlier than 30 days before election, and must be removed within 24 hours of election



## A CLOSER EXAMINATION OF SOME KEY AMENDMENTS



- Declaration, 3.12 - Note quorum changes (now 30% of all Lots instead of 35%) and “shrinking quorum” (if quorum not obtained, then at next meeting it is reduced to 20% of all Lots).
- Declaration, Art. VII, 7.07- Builder/Developer “Exemption from Assessment” provisions will be eliminated.
- Declaration, Art. VIII, 8.01- “Model Home” language will be eliminated.
- Declaration, Article X – Remedies - This is “standard” language for modern HOA’s. Documents are meaningless without enforcement power.
  - Sec. 10.01 – Describes the lien and collection process for unpaid assessments. The Association may record a lien, foreclose the lien and may sue the Lot Owner for a money judgment. The Association may recover its attorney’s fees, costs and expenses.
  - Sec. 10.02 – the HOA can file suit to enforce the Declaration, may recover its fees and costs, assess fines, and may abate violations.



## CATASTROPHIC EVENTS PROVISIONS



### Section 3.06- Annual Meetings

This section is revised to address what happens when a “Catastrophic Event” such as COVID-19 occurs and the HOA is unable to have the Annual Meeting.



### Section 3.21- Definition of “Catastrophic Events” and emergency powers of the Board

Brand-new Section defines “Catastrophic Events” and emergency powers that the Board has to protect the interests of the Association and its members.



### Section 4.05- Board service during “Catastrophic Event”

Brand-new Section clarifies that the existing Board continues to serve during a “Catastrophic Event” until an election can be held. Text will help maintain staggered Board Terms.



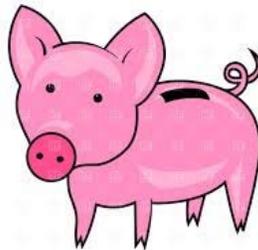
## SHED PROVISIONS

- Under existing Declaration, Art. VI, Sec. 6.01 “accessory buildings” are allowed with Developer/Board approval.
- Under the new Sec. 8.01, sheds are prohibited **HOWEVER** any Owner who had received written approval from the Developer for their shed prior to the recording of the Amended Declaration shall be permitted to keep their shed as it currently exists provided that proof of such approval is given to the Association upon request.
- Owners may not modify shed location or appearance without ACC approval.
- Draft will be updated with the above text before the vote.



## ASSESSMENTS

**Declaration, Art. VII, Section 7.01-** will be revised to read “Each Owner of a Lot, as defined in Section 1.7,…” to prevent someone from building on two Lots but paying only 1 assessment. E.g., if a person buys two Lots in the Subdivision, they should pay 1 assessment for each of the 2 Lots.



## HOME OFFICE PROVISIONS

- **Existing Art. VI, Sec. 6.08** – home occupations that requires members of the public to visit the Owner’s home or which requires commercial vehicles to travel to and from the person’s home are prohibited.
- **New Art. VIII, Sec. 8.08** - the text in the draft will be revised, as shown on the next slide...



## HOME OFFICE PROVISIONS

### Section 8.08 Home Occupation

All home occupations shall be subject to the following requirements:

(a) A home occupation must be clearly incidental and secondary to the primary use of the dwelling unit for dwelling purposes, and shall not change the character of the residential nature of the premises, both in terms of use and appearance. There shall be no external alterations, additions or changes made to the dwelling unit to accommodate or facilitate the home occupation unless approved in writing by the Architectural Control Committee.

(b) A home occupation use shall not create a nuisance or endanger the health, safety, welfare or enjoyment of any other person in the area by reason of noise, vibration, glare, fumes, odor, unsanitary or unsightly conditions, fire hazards or the like, involved in or resulting from such home occupation.

(c) Home occupations shall not generate vehicular traffic greater than that which is customarily generated both as to volume and type of vehicles by a family and its guests using a home for exclusively residential purposes.



## 30-DAY COMMENT PERIOD

Homeowners are invited to submit comments, suggestions, or concerns regarding the Document Amendments to the Board of Directors for 30 days following this meeting. During this time period, comments can be submitted to the Board via email using [BOD@hickorypointesub.com](mailto:BOD@hickorypointesub.com) or to Mr. Jeff Dobbs at Select Community Management LLC at [jdobbs@thecondopros.com](mailto:jdobbs@thecondopros.com)

The comment period will end on March 6, 2021.



## QUESTIONS & ANSWERS



We are always looking for feedback on our presentations.

If you have any comments, questions, or suggestions, please email Gregory Fioritto at [gfioritto@zdfattorneys.com](mailto:gfioritto@zdfattorneys.com).

Please visit our website at [www.zdfattorneys.com](http://www.zdfattorneys.com)

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