**BYLAWS COMMITTEE ASSIGNMENTS AND RECOMMENDATIONS**
**Committee Members: Kelly Woodward, Jamie Anderson, Alyson Von Feldt**
**Interim Chair: Kelly Woodward**

**Meeting held on 5/22/25, attended by Kelly Woodward and Jamie Anderson**

1. **<u>Board request</u>: Art. VII, Sect. 5.D Roads Only construction permit is a refundable deposit. Draft as a fee consistent with members.**

**COMMITTEE RESPONSE:** The Committee's understanding of this Board request is to draft an amendment to the Bylaws that applies a NONREFUNDABLE construction deposit to Road Access Only lot owners, as consistent with the recently adopted language applicable to Association Members. (See reference section for current language from the Bylaws and Covenants and Rules and Regulations pertaining to construction deposits.)

This request is complicated by the fact that specific legal agreements were negotiated by the Association Attorney and Board, and executed in 2017, with Road Access Only members. These agreements specify a refundable construction deposit and process for handling damage to the roads related to construction. These agreements apply to the specific parties to the legal agreement, and to future owners of the property ("bind them and their heirs, successors, and assigns, and shall run with the land … be binding on all parties having any right, title, or interest in the real estate"). Additionally, in 2023, the Board adopted an amended template for Road Access Only agreements with slightly revised language for the construction deposit, and there are at least two Roads Access Only lot owners that are subject to the 2023 version of the agreement. (Applicable language from both versions of the legal agreement is in the reference section below.)

The Committee considered the following questions:

1. Should the Bylaws be amended to be consistent with requirements for Association Members, but inconsistent with past executed Road Access Easement agreements? If yes, should the Association Attorney be directed to renegotiate all those previous agreements? Or should the Bylaws be changed and noted to be applicable only to "new" agreements?
2. Current Bylaws language tasks the Road Access owners with the responsibility of repairing any damage to the road and then getting approval after the fact. Should this responsibility be delegated to a non-member? Or should the Roads Committee oversee any necessary road repairs?

The Committee therefore provides the requested draft Bylaws Amendment regarding a nonrefundable construction deposit for Roads Access Only lot owners. However, the Committee recommends that should this amendment be adopted, the new provision would be implemented over time when new agreements may be negotiated upon changes of ownership resulting from sales of existing properties or the creation of new properties having access to Association roadways. While achieving the Board directive, this would save the Association from the time, costs and potential frustration of the Roads Access Only lot owners associated with renegotiating recently executed agreements. This action would require the Treasurer to research and apply the terms of the applicable existing agreement until 100% consistency in agreements has been achieved over time.

There is a rational basis for Road Access Only lot owners to contribute a nonrefundable deposit, as these funds are mandated by the Bylaws to be used only to benefit the specific roads that are accessible to these property owners. This amendment also eliminates the subjectivity of evaluating repairs and determining how much, if any, of the deposit to refund, and leaves the responsibility of repairs with the Association, simplifying enforcement.

**DRAFT BYLAWS AMENDMENT PER BOARD REQUEST – Delete current language and replace with the following:**

Bylaws and Covenants, Article VII – Budget, Assessments, Interest, Fees and Liens, Section 5 – Lake Road Access Only Assessments, Subsection D.

**Prior to the commencement of any construction on the property, Road Access Owners must pay a nonrefundable construction deposit to the Association in an amount consistent with the applicable provisions of the Association's adopted Bylaws and Covenants and Rules and Regulations. These funds shall be placed in the Road Maintenance and Repair Fund (aka Dedicated Road Fund) to be used exclusively for the purpose of maintenance and repair of the Association primary roads (Dabinawa Dr and Saratoga Dr.) This provision shall apply to all Road Access Easement Agreements executed after the date of adoption of this amendment. All previously executed Road Access Easement Agreements shall remain in effect as written unless and until a subsequent agreement consistent with the Association Bylaws and Covenants and Rules and Regulations is executed for a Road Access Lot.**

**REFERENCE TEXT:**

**Applicable State Statute:** None.

**Current language applicable to Road Access Only property owners:**

Bylaws and Covenants, Article VII – Budget, Assessments, Interest, Fees and Liens, Section 5 – Lake Road Access Only Assessments

D. Prior to construction the Road Access Owner must put down a $500 deposit with the Association Treasurer toward any possible damage to Lake Dabinawa roads occurring during construction and sign a paper to this effect. Any damage repair will be with like kind materials and be completed once the construction project is completed and is the responsibility of the Road Access Owner to have the repairs to the road approved by the Board upon completion. If there is no damage, the $500 deposit will be returned.

2017 Road Access Agreements

The Grantees shall deposit a $500.00 construction deposit with Lake Dabinawa prior to the commencement of any construction on the property to cover severe wear or damage to the Association Roads incurred as a result of construction on the property. Should there be minor damage, a portion of the construction deposit may be returned to Grantee following repair. Should there be no damage, the construction deposit shall be returned to Grantee following completion of construction.

Road Access Agreements executed after May 3, 2023.

12. The Grantee shall deposit an amount equal to the adopted construction deposit pursuant to Lake Dabinawa's bylaws with Lake Dabinawa prior to the commencement of any construction on the Property to cover atypical wear or damage to the Association Roads incurred as a result of construction on the Property. Should there be minor damage, all or a portion of the construction deposit may be returned to Grantee following inspection and approval of a repair. Should there be no damage, the construction deposit shall be returned to the Grantee following completion of construction.

**Current language applicable to Association Lot Owners:**

Bylaws and Covenants, Article IX – LAND USE RESTRICTIONS, Section 14 – Building Permit Requirements, D.

Prior to any new construction requiring a permit, the Lot owner must pay a nonrefundable construction deposit in the amount specified in the adopted Rules and Regulations, which will be transferred to the applicable roads fund to cover any damage or expedited maintenance costs to Association roads.

Rules and Regulations, Section 1 – General Internal Operating Procedures, F. Nonrefundable Construction Deposit.

Per the Bylaws and Covenants Article IX – LAND USE RESTRICTIONS, Section 14 – Building Permit Requirements, Subsection (D), the amount of the nonrefundable construction deposit is $500. These monies shall be transferred to the applicable Roads Fund. These funds include the Road Maintenance and Repair Fund for primary roads including Dabinawa Dr and Saratoga Dr, and the Secondary Road Maintenance and Repair Fund for secondary roads including all other roads.

2. **Board request: Art. VIII Sect 2.D certain records are to be kept "ongoing." This translates as "forever." Please critique and make recommendations, if any. Retention of records beyond legal requirements or business need creates an unnecessary liability and administrative burden. Receptive to any other recommendations to modernize records retention.**

**COMMITTEE RESPONSE:**

While the Committee is unaware of any liability associated with retention of records beyond legal requirements, an administrative burden is acknowledged. The Committee finds that there is a "business need" to retain some records longer than the 5-year statutory term to retain institutional knowledge and to serve as reference guides for future Board action. However, the Committee has recommended a shorter time frame for retention of some records that are not deemed useful beyond that time period. The items recommended to be retained ONGOING are deemed to be useful to inform future decisions regarding potential Bylaws amendments and compliance with regulations then in effect. Questions frequently arise regarding former decisions, and retention of minutes can sometimes satisfy concerns and ward off recurring discussions, supporting efficiency in action.

**APPLICABLE STATE STATUTE:** See attached sheet for K.S.A. 58-4616, which provides for retention of certain records for five years unless otherwise provided.

**DRAFT BYLAWS AMENDMENT PER BOARD REQUEST**:

Bylaws and Covenants, Article VIII – RECORDS AND OTHER ASSOCIATION PROPERTY, Section 2 - Records Retention (K.S.A. 58-4616)

A. The Board and its officers shall retain the following records for five (5) years or the time periods required by law:
   1. Detailed records of receipts and expenditures affecting the operation and administration of the Association;
   2. Other appropriate accounting records;
   3. Financial, tax records, and other records sufficiently detailed to enable the Association to comply with other requirements of law;
   4. Minutes of all Committees;
   5. The originals and/or copies of all contracts to which the Association is a party;
   6. A record of all actions taken by Association Members~~, Lot Owners, Committees,~~ or the Board of Directors without a meeting; and a record of all actions taken by a Committee in place of the Board of Directors on behalf of the Association.
   7. An alphabetical list of Lot Owners, mailing addresses and number of votes entitled to cast.

B. The Board and its officers shall retain the following records for one (1) YEAR or the time periods required by law:

   Ballots and other records related to voting by Lot Owners for one year after the vote was taken.

C. The following CURRENT records to be kept on file:
   1. Copies of current contracts to which the Association is a party.
   2. A list of the names and addresses of the current Board of Directors, including title/position on the Board.
   3. Rules and Regulations currently in effect.
   4. The most recent Annual Report filed with the Secretary of State.

D. The following records to be kept ONGOING:
   1. Original or restated organization documents.
   2. Bylaws and all amendments to them.
   ~~3. All Rules and Regulations and amendments thereto.~~
   ~~4. All tax returns and annual audits.~~
   ~~5. Records of Board of Directors or Committee actions to approve or deny any requests for design or architectural approval from Lot Owners. These records of architectural design, building sites and septic field position shall be maintained in individual folders for each Lot.~~ Records of all application materials for land uses, systems, buildings and structures requiring Board approval, and records of Board of Director and Committee actions to approve or deny.
   ~~6. Annual reports filed with the Secretary of State.~~
   7. Minutes of all meetings of the Association Members~~, Lot Owners,~~ and Board of Directors, other than executive sessions. ~~The list of owners required for voting should be placed with a~~

~~yearly summary of the minutes in the folder with that year's minutes.~~

**RATIONALE FOR CHANGES:** The changes to Section A bring Bylaws text into conformity with State Statute. A.4 and A.5 are not addressed in State Statute, but seem reasonable for 5-year retention. No change recommended for Section B. Recommend moving two items from Section D – Ongoing, to Section C – Current records. The Committee found that it is not necessary to retain an ongoing history of amendments to the Rules and Regulations, and historic annual reports. Only the current version was necessary. Recommend removing D.4 as tax and financial records covered in 5-year retention Section A.3. Recommend rewording D.5 so that it meets the statutory intent but is language more specific to our Association. Amend D.7 to be consistent with State Statute not requiring retention of minutes for Executive Sessions, and strike the section on voting as it is covered by the recommended addition A.7.

**REFERENCE TEXT:**

Bylaws and Covenants, Article VIII – RECORDS AND OTHER ASSOCIATION PROPERTY, Section 2 - Records Retention (K.S.A. 58-4616)

A. The Board and its officers shall retain the following records for five (5) years or the time periods required by law:
   1. Detailed records of receipts and expenditures affecting the operation and administration of the Association;
   2. Other appropriate accounting records;
   3. Financial, tax records, and other records sufficiently detailed to enable the Association to comply with other requirements of law;
   4. Minutes of all Committees;
   5. The originals and/or copies of all contracts to which the Association is a party;
   6. A record of all actions taken by Association Members, Lot Owners, Committees, or the Board of Directors without a meeting;

B. The Board and its officers shall retain the following records for one (1) YEAR or the time periods required by law:

   Ballots and other records related to voting by Lot Owners for one year after the vote was taken.

C. The following CURRENT records to be kept on file:
   1. Copies of current contracts to which the Association is a party.
   2. A list of the names and addresses of the current Board of Directors, including title/position on the Board.

D. The following records to be kept ONGOING:
   1. Original or restated organization documents.
   2. Bylaws and all amendments to them.
   3. All Rules and Regulations and amendments thereto.
   4. All tax returns and annual audits.
   5. Records of Board of Directors or Committee actions to approve or deny any requests for design

or architectural approval from Lot Owners. These records of architectural design, building sites and septic field position shall be maintained in individual folders for each Lot.

6. Annual reports filed with the Secretary of State.
7. Minutes of all meetings of the Association Members, Lot Owners, and Board of Directors, and executive sessions. The list of owners required for voting should be placed with a yearly summary of the minutes in the folder with that year's minutes.

**3. Board request: Art. VIII, Sect. 1.b Records to be Retained on Association computer. Consider updating to records to be retained securely and digitally.**

**APPLICABLE STATE STATUTE:** None.

**COMMITTEE RESPONSE:** The Committee understands that the evolution of technology results in new opportunities for records management, such as cloud storage. A more general statement regarding records retention may provide future flexibility and less frequent need to amend the Bylaws. If the Board feels that more specific operational instructions regarding records technology should be formally adopted (and not just put into practice as an operating procedure), this could be added to the General Operating Procedures of the Rules and Regulations by Board vote.

**DRAFT BYLAWS AMENDMENT PER BOARD REQUEST:**
Bylaws and Covenants, Article VIII – RECORDS AND OTHER ASSOCIATION PROPERTY,
Section 1 – Association Records and Other Property

B. ~~All bookkeeping materials and financial records, to the extent possible, shall be maintained on the Association computer, and shall be available for audit by any Board officer. Electronic copies of minutes shall be either provided to the Treasurer to add to the Association computer, or shall be stored on an electronic media device and a hard copy transferred to the Chairperson and filed in the Association's permanent records.~~ All records that are required to be retained per Section 2 of this Article shall be maintained in an accessible and secure digital format, with the exception that items D.1-2 shall also be retained as hard copies within the Association office. The Treasurer, Secretary, or other officer responsible for maintaining the Association's ~~computerized bookkeeping and financial~~ records shall ~~take reasonable steps to create a~~ ensure there is a back-up copy of those records at all times.

**RATIONALE FOR CHANGES:**
No need to state that records will be available for audit by any Board officer, as Section 3 of this article provides for Lot Owners to examine or copy records anyway. The Committee felt that in the case of widespread failure of digital technology, however improbable, retention of hard copies of the organizational documents and Bylaws would be necessary for the Association to recreate and continue the business of the Association.

**REFERENCE TEXT:**

Bylaws and Covenants, Article VIII – RECORDS AND OTHER ASSOCIATION PROPERTY, Section 1 – Association Records and Other Property

B. All bookkeeping materials and financial records, to the extent possible, shall be maintained on the Association computer, and shall be available for audit by any Board officer. Electronic copies of minutes shall be either provided to the Treasurer to add to the Association computer, or shall be stored on an electronic media device and a hard copy transferred to the Chairperson and filed in the Association's permanent records. The Treasurer, Secretary, or other officer responsible for maintaining the Association's computerized bookkeeping and financial records shall take reasonable steps to create a back-up copy of those records.

4. **Board question: If there a way we can make the bylaws so we can vote by email on some items so we can lessen the monthly meetings? Could votes for procedural non budgetary items be cast and recorded in advance and recognized or acknowledged in the monthly meeting?**

**APPLICABLE STATE STATUTE:** See attached sheet for K.S.A. 58-4612. In summary, meetings (conduct of business) of the board must be open to the unit owners. You cannot use incidental or social gatherings of the board or any other method to evade the open meeting requirements of this section. At each meeting, you have to provide a reasonable opportunity for unit owners to comment regarding any matter affecting the association. Any digital process of meeting must provide an opportunity for unit owners to hear or perceive the discussion and comment. This cannot be achieved via an email stream.

**COMMITTEE RESPONSE:** State Statute appears to preclude any conduct of business or decisions outside of an open meeting where members are permitted to listen and comment. Additionally, in matters that may be of concern to neighbors, it is important to support transparency in decision-making for all parties. Therefore the Committee recommends no amendment to the Bylaws on this matter. One way to reduce discussion time at meetings is to task a committee with review of detailed information ahead of time and report findings at the meeting to facilitate quicker Board decisions. State Statute allows the Board to act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the Board.