

BYLAWS

For

ETOWAH'S REACH PROPERTY OWNERS ASSOCIATION

Replaces the Bylaws Dated October 2013.

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Article I

General

Section 1. Purpose. The Association shall have the responsibility of administering the Planned Community including those matters which either the *North Carolina Planned Community Act*, the *Declaration*, these *Bylaws* or the *North Carolina Non-profit Corporation Act* specifically require to be performed by the vote of the Association.

Section 2. Voting Preliminaries. Unless otherwise stated in these *Bylaws*, issues that require Association approval shall be put before the Eligible Voters of the Association in accordance with the following:

- 1) The appropriate spokesperson(s) will present the proposed issue(s) to the Board of Directors at an Association meeting for their acceptance and move it forward for the consideration of the Association members.
- 2) The ERPOA Board of Directors shall direct the appropriate spokesperson to hold one or more informational meetings within thirty (30) days of acceptance by the Board, as determined by the spokesperson/committee, to present the proposed changes and answer questions Association members may have relating to the change.
- 3) A summary of the proposed changes shall be distributed by one or more of the following means; newsletter, mail, email, hand delivery.
- 4) The proposals shall be voted on by a written ballot within 30 days of the summary distribution. The duration of the voting period shall be established by the Board of Directors each time a vote is authorized, but shall never be greater than fourteen (14) days.

Section 3. Voting Eligibility. Each Lot shall be entitled to one (1) vote which may be cast in accordance with the terms herein. A vote may be cast by the Eligible Voter or by a lawful proxy and shall be allocated as provided in the *Declaration*. When more than one person owns a Lot, the vote for such Lot shall be exercised as they between or among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted. The Board may prohibit any owner of a Lot from voting or from being elected to the Board of Directors if such owner is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 4 Voting Criteria. If an issue requiring an approval vote of the Association does not fall into issues that have voting criteria specified in these *Bylaws*, the voting criteria for approval of the action shall be a **majority of lot owners (50)**.

Article II

Definitions

Terms as used in these Bylaws shall have the meanings as set forth in Article 20 of the *Declaration*.

Article III

Association Meetings

Section 1. Annual Meeting. The regular annual meeting of the Association shall be held on the second Tuesday in September in the Association Clubhouse or in an adequate facility within fifteen (15) miles of the Clubhouse.

Section 2. Substitute Annual Meeting. If an Annual Meeting is not held on the day designated by these *Bylaws*, then a Substitute Annual meeting shall be held on the third Monday in September. A meeting so called shall be designated and treated for all purposes as an Annual Meeting.

Section 3. Special Meeting. A meeting for any purpose may be called at any time by a majority of the Board of Directors or upon the written request of twenty percent (20%) of the eligible voters.

Section 4. Emergency Meeting. In the case of an emergency, the meeting shall take place as soon as all the eligible voters in residence can be notified of the need for the meeting. Such notice must also be posted in the Clubhouse.

Section 5. Notice of Meetings. It shall be the duty of the Association Secretary to notify eligible voters of each annual or special meeting of the Association at least thirty (30) days prior to such meeting. The notice of any meeting must state the time and place of the meeting, the items on the agenda, and must be posted in the Clubhouse. This notice shall be given to each lot owner of record. If any lot owner wishes such a notice to be sent to an address other than the Lot address, the lot owner shall notify the Secretary in writing of such other address.

(1). In the case of a Special Meeting, the notice of the meeting shall state specifically the purpose or purposes for which the meeting was called.

Section 6. Lack of Proper Notice. Any member objecting to lack of proper notice of a meeting of the members must object at the time the meeting is called to order. If the validity of the objection is verified by the Parliamentarian, the meeting shall be cancelled or rescheduled.

Section 7. Official Meeting. A meeting shall be official only when a majority of lot owners (50) are present or represented by proxy.

Section 8. Adjournment. Any meeting may be adjourned by a majority vote of the eligible voters present. Only business which was on the agenda of the adjourned session of the meeting may be transacted at the continued session. All eligible voters must be notified of the adjournment and continuance within seventy-two (72) hours of the adjournment.

Section 9. Vote by Proxy. A Proxy shall only be issued for a stated meeting at the request of an eligible voter. To be valid, a proxy must be filed with the Association Secretary prior to the opening of the meeting for which it is to be used and must be dated. No proxy shall be revocable except by written notice delivered to the Secretary before a meeting or, if at the meeting, to the person presiding.

Section 10. Vote by Absentee Ballot. An absentee ballot shall be issued to an eligible voter who will be unable to attend the meeting in person.

Section 11. Vote by Written Ballot. In accordance with Section 55A-7-08 of the *North Carolina Non-profit Corporation Act*, any action that may be taken at any annual, regular, or special meeting of eligible voters may be taken without a meeting if the Association delivers by mail or otherwise a written ballot to every person entitled to vote on the matter.

Section 12. Conduct of Meetings. Commonly accepted parliamentary procedure shall govern the conduct of the meeting, when not in conflict with the *Declaration, Articles of Incorporation*, and these *Bylaws*. The meeting presider shall ensure that all attendees shall have the right to express their opinions without interruption and that these opinions will be respected. Reasonable restrictions may be placed on the number of persons who speak on each side of an issue and on the time each person speaks.

Article IV

Board of Directors

Section 1. Role. The affairs of the Association shall be managed by its Board of Directors.

Section 2. Size. The Board shall be composed of five (5) directors who are Association Members and whose residence is in Etowah's Reach. Only one person per Lot may serve as a director at any given time.

Section 3. Election of Directors. Directors shall be elected at the annual meeting for each position (See Article V, page 11) by votes cast by a **minimum of fifty (50)** eligible voters. The persons receiving the most votes for the respective positions to be filled shall be elected to

those positions.

Section 4. Term of Office of Directors. The term of office for any director shall be one (1) year. It shall commence at the start of the calendar year immediately following the date of election and shall continue to the end of that calendar year.

Section 5. Director Training. Newly elected directors shall serve an apprenticeship under the incumbent from the date of election to the day of taking office. During this time period each director shall review the documents and become thoroughly knowledgeable of their contents.

Section 6. Director Nominations. The Nominating Committee shall discharge its duties by presenting for the next election nominees who are qualified and willing to serve on the Board if elected to the identified positions. The Committee shall, via the September Newsletter, strive to distribute to all lot owners nominee names and offices sought and candidate qualification information adhering to a predetermined format as described in the *Rules and Regulations*. Members may make additional nominations for any position from the floor at the election meeting provided that the information on the Board Candidate Form for the nominee is presented to the meeting attendees prior to the voting action.

Section 7. Director Removal. Removal of Directors shall be governed by the following:

- 1) Any director who has been absent from three (3) consecutive board meetings may be removed from the Board by a unanimous vote of the other board members.
- 2) Any one or more directors may be removed, with or without cause, at a duly called Special Meeting of the Association. Removal requires a **majority of lot owners (50)**. Any director whose removal will be the reason for the special meeting shall be given ten (10) working days written notice so that the director shall have the opportunity to be heard at that meeting.

Section 8. Vacancies. Board of Directors vacancies shall be filled from candidates identified by the Nominating Committee. Election will be by a majority vote of the remaining directors at a meeting of the Board. Each person so selected shall serve the remainder of the term of his/her predecessor. If there are no candidates to fill any open board positions, the Board may appoint a departing board member to fill a vacancy.

Section 9. Compensation. No member of the Board shall receive any compensation from the Association for serving as a director. Directors, by assuming office, waive their rights to institute suit against or make claim upon the Association for compensation. However, each Director, upon approval of the Board, shall be reimbursed for documented out-of-pocket expense incurred on behalf of the Association.

Section 10. Regular Directors Meetings. At a minimum, there shall be a meeting every other month starting in January. These meetings of the Board of Directors shall normally be held at the Association Clubhouse at such time as shall be determined by the Board and printed in the ERPOA newsletter

Section 11. Special Directors Meetings. The Board may meet outside of regular Association meeting times to conduct Association business needing prompt attention or to discuss and perhaps revise the Rules and Regulations. Any action taken shall be reported at the next regularly scheduled Regular Directors meeting.

These Special Directors Meetings of the Board of Directors may be called by any two (2) or more members of the Board. The callers of the meeting shall give notice stating meeting time, place, and purpose at least three (3) days prior to the meeting. Minutes shall be recorded and filed with the Association Secretary's records.

Section 12. Executive Session Directors Meetings. The members of the Board may meet outside of regular Association meeting times to conduct board business needing immediate attention or to address sensitive topics. Any action taken shall be reported at the next regularly scheduled Board meeting. However, sensitive topics should be summarized so as to protect the rights and privacy of individuals.

These Executive Session Directors Meetings of the Board of Directors shall be called by the Board President, or President pro-tem, who shall give notice stating meeting time, place, and purpose at least 24 hours prior to the meeting. The Board may choose to invite non-Board persons to participate in an Executive Session Directors Meeting. Minutes shall be recorded and filed with the Association Secretary's records.

Executive Session Meetings may be held electronically (e.g., via e-mail); recording and reporting requirements remain in effect.

Section 13. Conduct of Meetings. A majority of the directors shall constitute a quorum for the transaction of business. A decision of the Board shall be by a majority of those directors present at an official meeting. Minutes of the previous board meeting and current financial status of the Association shall be presented at each board meeting. All board meetings shall include a Member input period. Reasonable restrictions may be placed on the number of persons who speak on each side of an issue and on the time each person speaks.

Section 13. Tie Votes. In the event of a tie vote by the Board of Directors, the President shall schedule another meeting at which a new vote will be taken.

Section 15. Board Member Conduct. Directors shall conduct the Association's business without prejudice and intimidation.

Section 16. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have the powers and duties necessary to do so as described in the Documents. Among the powers and duties are the following:

- 1) Enforce the *Rules and Regulations (Declaration, Article 6, Section 6.10 (page 8))*.
- 2) Implement budgets approved by the Association.

- 3) Contract with insured and licensed independent contractors. When possible, at least three (3) estimates shall be obtained.
- 4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting Etowah's Reach.
- 5) Establish bank accounts requiring signatures of the Treasurer and any one (1) other director.
- 6) Regulate the use, maintenance, and repair of the common elements.
- 7) Provide social and recreational memberships to Foxmoor Court condo residents.

Exercise such powers as may be required for non-profit corporations by the State of North Carolina.

Section 17. Decision Making. Decisions based on the Documents shall identify the pertinent paragraph(s) used to reach each decision.

Section 18. Execution of Association Business. All legally binding instruments to be executed on behalf of the Association require prior Board approval and shall be signed by at least three (3) directors.

Section 19. Committees. The Board of Directors shall ensure the creation of an Architectural Review Committee, an Audit Committee, and a Nominating Committee as provided in these Bylaws. In addition, the Board may create other committees as deemed appropriate in carrying out the affairs of the Association.

Committees shall make recommendations to the Board of Directors and shall not have the authority to act on behalf of the Association. Members of all committees shall be Members of the Association. The Board may, at any of its meetings, dissolve any and all board created committees whenever it considers that the committee charge has been completed or whenever it considers that the committee charge is not being pursued properly.

- 1) The Audit Committee shall consist of three (3) members, not holding a director position. An Audit Committee member may serve an unlimited number of terms. The Chairperson shall be appointed by the Board, periodically, as deemed necessary. The Audit Committee shall be responsible for the annual audit as specified in Article VII, Section 3 of these *Bylaws* (page 14).
- 2) The Architectural Review Committee shall consist of at least three (3) members, not holding a director position. The Chairperson shall be appointed by the Board, periodically, as deemed necessary. The Architectural Review Committee has the responsibilities specified in Article 13, Section 13.7 of the *Declaration* (page 14) and the *Rules and Regulations*, LOTS discussion.

- 3) The Nominating Committee shall consist of at least three (3) members, not holding a director position, who shall be nominated by the outgoing nominating committee. These nominees and any additional nominees offered shall be confirmed at each Annual Meeting by those in attendance and shall serve until the close of the next annual meeting. The Committee shall select its own chair. The Nominating Committee shall be responsible for identifying nominees for Directors positions including those when a vacancy occurs during a term of office.
- 4) Unless otherwise specified in these documents, committee chairpersons shall be appointed by the Board, periodically as deemed necessary, in consultation with the committee. The Board may have the committee select its own chairperson. A committee must always have at least an active second member. Association members are encouraged to volunteer to serve on Association committees and projects.
- 5) The Architecture Review Audit, Hearing and Waiver Committees may meet in an unannounced session as deemed necessary.
- 6) It is recognized that the Board and/or its committees may conduct association business electronically.

Section 20. Scope of Activities. Association sanctioned activities outside the confines of Etowah's Reach shall require the approval of the Board of Directors. Non sanctioned activities by members shall not make use of, in any form, the names Etowah's Reach Property Owners Association and Etowah's Reach.

Section 21. Gifts. The Board may not accept, on behalf of the Association, any gift that would become a burden to the Association. Acceptance of a burdensome gift requires Association approval. This approval requires a **majority of lot owners (50)**.

Section 22. Standard Operating Procedures. A set of definitions and procedures shall be established, written and promulgated for all Board positions and all committees. These may be amended or revised periodically as required. Once prepared, these standard operating procedures (SOPs) shall be maintained and approved by the Board. These SOPs will allow the Board to support and guide the activities of the person(s) or committee(s). Standard Operating Procedures become effective on the date that each is ratified and adopted by the Board. Provisions of the *Declaration, Bylaws and Rules and Regulations* shall take precedence over the SOPs.

Article V

Officers and Duties

Section 1. Officers. The officers of the Association shall consist of a President, First Vice President, Second Vice President, Secretary, and Treasurer. All officers shall be members of

the Board of Directors.

Section 2. Duties. Each officer shall have the responsibilities that follow:

(1). President. The President shall be the chief executive of the Association and shall see that all orders and resolutions of the Board of Directors and the Association are carried out. Additionally, the president shall preside at all meetings of the Association and the Board.

(2). First Vice-President. The First Vice-President, in the absence of the president or in the event of the president's inability or refusal to act, shall perform the duties of the president, and when so acting, shall have the powers of and be subject to the restrictions placed upon the president. Additionally, the first vice-president shall oversee the standing committees.

(3). Second Vice-President. The Second Vice-President, in the absence of the president and the first vice-president or in the event of their inability or refusal to act, shall perform the duties of the president, and when so acting, shall have the powers of and be subject to the restrictions placed upon the president. Additionally, the second vice-president shall oversee special projects and perform such other duties as might be assigned by the Board.

(4). Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Association; serve notice of meetings of the Board and the Association; keep appropriate current records showing the members of the Association and their addresses; and shall perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

(5). Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities. The Treasurer shall also be responsible for keeping full and accurate financial records and completion of all required financial reports and tax returns. Additionally, the Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall cause disbursement of such funds in the ordinary course of business conducted within the limits of the approved budget.

The Treasurer shall prepare the preliminary budget and the balance sheet statement which shall be presented to the Eligible Voters at the Association's annual budget meeting and shall, early in the new fiscal year, prepare and distribute to the Eligible Voters a final (adjusted) budget for the new fiscal year and a final (adjusted) balance sheet statement for the prior fiscal year. All such reports shall be posted in the Clubhouse.

Section 3. Non-Voting Appointees. The Board may appoint members of the Association to positions such as Associate Secretary, Associate Treasurer, Parliamentarian, etc. Such positions shall be non-voting positions.

Article VI

Indemnification of Directors

Every director of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees reasonably incurred by or imposed upon him in connection with any proceeding or settlement thereof in which he may become involved, by reason of his being or having been a director of the Association. This indemnification shall apply whether or not he is a director at the time such liabilities or expenses are incurred, except in cases wherein the director is adjudged guilty of wilful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the Board shall only approve such settlement and reimbursement if it is in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director may be entitled.

Article VII

Fiscal Management

Section 1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 2. Accounting Method. The Association shall conduct its financial business using the method of Cash Basis Accounting.

Section 3. Audit. An audit of the accounts of the Association shall be made annually by an Audit Committee and the results communicated to each Eligible Voter. However, after having received the Audit Committee report, the Eligible Voters may, by a **majority of lot owners (50)** affirmative votes, require that the accounts of the Association be audited as a common expense by an independent accountant.

Section 4. Reports. Financial status and planning reports shall include, at a minimum, the following reports:

- 1) An end-of-fiscal-year balance sheet.
- 2) A monthly financial report.
- 3) A preliminary operating budget for the Association budget approval meeting.
- 4) A final balanced budget reflecting necessary adjustments issued not later than February 1.
- 5) A capital budget for the Association budget approval meeting.

Section 5. Budget Adoption. The fiscal year operating budget and capital budget require Association approval to be adopted, but simultaneous adoption is not required.

- 1) The operating budget shall be considered in its entirety and approval requires a Majority of

lot owners (50) Approval of the operating budget automatically approves any change in the annual operating assessment that is required to balance the budget being voted on.

- a) In the event that a proposed operating budget does not initially receive association approval; the Board shall, until such time as an operating budget is approved, use an interim budget. This interim budget shall duplicate the most recent approved operating budget.
- 2) The capital budget shall be considered by treating each expenditure item as a stand-alone item and approval of each expenditure item requires a **majority of lot owners (50)**.
- a) A capital expenditure project started in a given fiscal year may be continued into the next fiscal year(s) by carrying forward any unspent monies approved for the project. A project not started during the fiscal year of approval, must be approved again as part of a subsequent fiscal year capital budget.
- 3) A capital expense project needing funding via the Anticipation Fund shall be assigned to the Anticipation Fund as a stand-alone item and the assignment approval requires **majority of lot owners (50)**. Annual transfers from the operating funds to accumulate the necessary monies shall be included in subsequent fiscal year operating budgets.

Section 6. (Removed)

Section 7. Non Specified Operating Expenses. The Board may, at its discretion, spend up to a total of \$500.00 per fiscal year for operating expenses not specifically covered in the line item expenditures of the approved budget. Excluded from this limitation are emergency repair expenses.

Section 8. Reserve Funds.

- 1) The Association's financial reserves shall consist of at least a Litigation Fund and a Replacement Fund and may include, when appropriate, an Anticipation Fund.
 - A. The Litigation Fund shall consist of a fixed amount set aside for potential litigation situations.
 - B. The Replacement Fund shall consist of monies set aside for major repair, renovation, replacement, or improvement of common elements. Each Replacement Fund subaccount shall have a formula for calculating the annual increase in the replacement fund to insure the accumulation of the estimated replacement cost. This formula shall utilize the estimated remaining useful life, the estimated current replacement cost, and the estimated salvage value. To compensate for inflation, local market conditions, and rate of deterioration, the annual amount shall be recalculated every three (3) years. The replacement fund sub-accounts shall, at a minimum, include the eight (8) listed below. Additional sub-accounts shall be added by unanimous affirmative vote of the Board when a need is identified.

- i. Clubhouse Roof
- ii. HVAC Equipment
- iii. Hot Water Equipment
- iv. Pool Structure
- v. Pool Water Filtering System
- vi. Pool Water Heating System
- vii. Tennis Courts Playing Surface
- viii. Tennis Courts Enclosure

- C. The Anticipation Fund shall consist of monies set aside in advance of a desired capital expense project which would require more than one (1) fiscal year to accumulate the necessary monies.
- 2) The Association's financial reserves shall be managed in a manner which only invests the reserves in FDIC-insured interest bearing accounts and/or short term CDs. Investments with maturity dates shall have investment periods no greater than two (2) years. Additionally, such investments shall be made so as to insure staggered maturity dates.
- 3) Withdrawals from the reserve fund, when needed, shall be authorized as follows:
- A. Monies held in the Litigation Fund shall be withdrawn for appropriate expenditures upon unanimous affirmative vote of the Board.
 - B. Once a Reserve Fund item is approved and contributions have been made to it, and a subsequent draw down is identified in an approved budget, the Treasurer is permitted to withdraw the funds from the Reserve Fund and make appropriate payout(s). If a draw down has not been identified in an approved budget, Association approval is required by a **majority of lot owners (50)**.
 - C. Monies held in the Anticipation Fund shall be withdrawn for a designated project upon receiving an affirmative vote of the Board.

Section 9. Operating Fund.

- 1) The operating fund in any given month shall be kept above a level sufficient to pay normal operating expenses for the next three (3) months under a condition of no income during those same three months.
- 2) When unusual operating expenses drop the operating fund below the level specified in (1) above, the Board may transfer from the Reserve Fund up to ten (10) percent of the reserve fund balance. This removal must be restored within the immediately following two (2) fiscal years.
- 3) If the transfer in (2) above does not provide sufficient monies, The Board shall call a Special Meeting for the Eligible Voters to vote on a means of providing the needed monies. Action approval requires a **majority of lot owners (50)**.

Section 10. Unauthorized Commitments. The Association will not be bound by unauthorized commitments affecting Etowah's Reach made by its members. Association Members making such commitments shall be personally liable for the commitments.

Section 11. Annual Operating Assessment Payment Schedule. Annual operating assessment payments are due in advance. Payment schedules (monthly, quarterly, semi-annual, etc.) for the fiscal year shall be established by the Treasurer. Payments shall be past due 15 days after the due date.

Article VIII

Miscellaneous

Section 1. Notices. Unless otherwise provided in these *Bylaws*, all notices, demands, bills, statements, or other communications to the owner of the Lot shall be to the address of record and shall be in writing. They shall be deemed to have been duly given if delivered personally, if sent by United States first class mail, or, if requested, by electronic delivery with delivery receipt specified.

Section 2. Management Agent. The Board may engage the services of a management agent only upon prior approval of the Association. Approval requires a North Carolina Mandated vote.

Section 3. Inspection. All books and records of the Association may be inspected by any Association Member, or his agent, for any purpose at any reasonable time at the Association's clubhouse. Inspection arrangements shall be agreed to within two (2) working days of delivering a written inspection request to the association secretary or other board member.

Article IX

Amendments

These *Bylaws* may be amended only by the Eligible Voters. Approval to amend requires a **majority of lot owners (50)**. Notice of the Special Meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment.