

# Holiday Beech Villas

## Special Meeting

### Declaration and Bylaws Revisions

### September 15, 2018

Board members in attendance: Phyllis Winter, Richard Mayeron, Bryan Martin

Board members on the phone: Mark Deasaro, Marlene Rockwell, Carol Robinson, MK Brennan, Jeff Hardin, William Peterson

Homeowners in attendance: Jan Marriott, Claude Chapman, Leslie Mayeron, Bob Goldberg, Mark Coplan, Bill Winter

Homeowners on the phone: Vicki Baker

Property Manager, Renée Castiglione was present at the meeting

Mark Deasaro, President called the meeting to order at 10:03am

Mark stated that since he had to call into the meeting, he ceded the meeting to Phyllis Winter, being that she is in attendance, to run the meeting.

Phyllis accepted this responsibility.

Phyllis called for a motion to open the meeting.

Richard Mayeron made a motion to open the meeting, Bryan seconded. A vote was taken. The vote passed unanimously. The meeting began.

Renée stated that we received proxies representing 54 units. With the attendees at the meeting and on the phone, representing 20 units, there was a quorum with 84.2025% of the undivided common interest.

Three proxies were eliminated:

- 1 proxy with Claude as their representative was not in good standing. It has a .9532 percentage rate.
- 1 proxy with Mark as their representative was not in good standing. It has a 1.4734 percentage rate
- 1 proxy with Claude as their representative sent the proxy with the September 1, 2018, and was not valid. It has a 1.4235 percentage rate.

After the elimination of these 3 proxies, leaving the remaining 51 proxies and 20 units represented by attendee on the phone and at the meeting, the quorum is 80.3524%

Renée asked Phyllis if she could give some background as to why this meeting was needed. Phyllis gave the floor to Renée.

### **Background Information**

Renée stated that in 2012 the Board made revisions to the Declaration and Bylaws. The Declaration change was solely based Section 14, Transfer of Units. Before 2012, within this section, the Board had first right of refusal on all sales of Holiday Beech Villas units. Renée stated that before July 2012 she had to sign waivers—with the permission of the Board—stating that the Board waived its right to make an offer on the unit which had an offer. A bank had refused to give a mortgage to one buyer due to this clause. Someone asked why this Right of First Refusal would be in the Declaration to begin with. Phyllis stated that it could be used in a discriminatory manner, and no wonder banks did not want to do business with that clause, as it could violate federal law.

Also in the Declaration, it stated that . . . *No unit owner may mortgage or otherwise encumber his unit or any interest therein unless such mortgage or encumbrance shall provide for written notice to the Board of Administrators and to the Declarant in the event of a default under such mortgage or other encumbrance, and shall further provide for not less than ten days written notice to the Board of Administrators and to the Declarant prior to any foreclosure under any such mortgage or other encumbrance.* Renée also stated that she recalled that two mortgage companies refused to do business with HBV because of the underlined portion of this clause.

At the time of the vote, the Declaration was unanimous in favor of removing the first right of refusal and that additional clause. The Board, and Renée, was unaware that instead of a majority of homeowners, which we believed was 45 units, it came to our attention through a homeowner in August 2018 that actually there needed to be a 66.6666% vote of the undivided interest of common property that is Exhibit C of the Declaration. Renée went back and applied said table and found that we had a 59.1323% affirmative vote to change the Declaration. This was not the 66.6666% needed; therefore the Declaration that was recorded was not enacted.

At the same time the Board made some changes to the Bylaws, basically bringing it up to date regarding electronic communications, making it non-gender specific, and

changing the outdated sections that referred back to an “organizational meeting” which was when HBV was just becoming an Association.

According to the Bylaws, the affirmative vote to make the changes was any percentage greater than 50% of the undivided interest table, which would be a majority. Having the 59.1323% affirmative vote, the Bylaws were changed.

Both the Declaration and the Bylaws were sent to the attorney. The Declaration was recorded, the Bylaws were not. Section VIII—Amendments requires the Bylaws to be recorded along with the Declaration. Therefore, the changes to the Bylaws were also not in effect.

Renée explained that is why it was important to anyone selling their unit (because of the first right of refusal) and the changes to the Bylaws should be voted upon and recorded as quickly as possible.

### **Declaration Vote**

After this explanation, a motion to remove the First Right of Refusal clause, and the clause stating notice to the Association 10 days before foreclosure was made by Phyllis and seconded by Carol. A vote was taken.

Claude Chapman had four unit owners name him as their proxy, plus his two units. The total of those six units from the undivided table of common interest is 6.5534%. The remaining 63 units named Mark Deasaro, 1 unit named Jeff Hardin, 1 unit named Marlene Rockwell as their proxy, plus attendees at the meeting have a 73.799%

The motion passed with 73.799% in favor of the Declaration changes, with Claude voting no with his 6.5534%.

### **Discussion**

At this time, Bob Goldberg asked Claude why he would vote no on this motion. Claude stated that he didn't want the Board telling him how he could sell his unit. Several people tried to explain, simultaneously, that by voting no, that's what the Board would have the power to do. At this point, Jan interjected that we voted “no” because Mike Howard told them to vote no on everything, and he has all the brains in the Association. An argument ensued and Jan and Claude wanted to leave and asked if they could. Renée said not if you want any other vote in this meeting to count. They left anyway, leaving Renée with their two proxies that were signed over to Claude.

## Bylaws

After this encounter, Renée then went over the changes in the meeting packet of the Bylaws, revision by revision. Part of this was Renée confirming that the Board wanted the quorum to stay at 34%; additional changes were also suggested by the Associations' CPA, Tony Pendry, who is also a homeowner, in Section VII—Records and Audits Financial Reports.

The Board took out the word Audit within the title and changed it to Financial Reports.

The changes within the that section had the following:

*A written report summarizing all receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners on or before the 15th day of the third month following the date of each ~~fiscal~~ calendar year covering the preceding year. And,*

*In addition, an annual report of the receipts and expenditures of the Condominium, ~~certified by an independent certified public accountant~~ checked by a certified public account for appropriate classification shall be rendered by the Board to all Unit Owners and to all mortgagees of units who have requested the same, as soon as practicable after the end of each fiscal year.*

Renée explained why Tony Pendry, CPA/owner, thought these changes would be a good idea . . . *to change the wording from fiscal year to calendar year is two-fold. One, Renée is already sending out statements for each unit at the beginning of each calendar year showing dues payments for the preceding year. Two, issuing the statements on a fiscal year would be meaningless to most owners. Most of the owners are already use to seeing statements on a calendar basis. Issuing those statements for July 1, xx through June 30, xy would just create confusion.*

Aslo Section VIII—Amendments states:

*These By-Laws may be amended by the affirmative vote of a majority over 50% of the voting members; provided, however, that any such amendment shall not become operative until set forth in amended declaration and duly recorded. All unit owners shall be bound to abide by any amendment upon the same being passed and duly set forth in an amended declaration, duly recorded.*

Renée wanted to confirm the change with the Board that spelled out what was considered a majority in this section.

## **Bylaw Vote**

Bob Goldberg made a motion to accept all the revisions in the Bylaws as stated and shown on paper, Mark Deasaro seconded the motion. A vote was taken and the changes were accepted as cited with a 73.799% vote. This vote did not include the 4 units that Claude represented by proxy, nor the two units owned by Claude and Jan, since they were not present.

Renée stated she would contact the attorney on Monday to start the process of recording the Declaration and Bylaw changes.

Leslie Mayeron suggested having Tony Pendry verify the percentages and vote count. Renée will do this. Letter is at the end of the minutes.

Richard made a motion to adjourn, Bryan seconded. The motion passed unanimously.

The meeting adjourned at 10:57am

ANTHONY D. PENDRY, P.A.,  
CERTIFIED PUBLIC ACCOUNTANT  
3314 HEALY DRIVE, SUITE 105-A  
WINSTON-SALEM, NORTH CAROLINA 27103

TELEPHONE (336) 774-6601

FAX (336) 659-7681

September 16, 2018

Holiday Beech Villas  
Condominium Owners Association  
102 Village Road  
Beech Mountain, NC 28604

To the Board Members and Owners:


In regard to the special meeting held on September 15, 2018, I have calculated the voting rights of the owners either present at the meeting or represented via proxy.

For the vote on the changes to the Declaration, there were a total of 54 units represented via proxy and 20 units represented in person. This represents 84.09% of the units and 84.2% of the undivided interest of common area. This total represented provided a quorum.

For the vote on the changes to the Bylaws, there were a total of 48 units represented via proxy and 18 units represented in person. This represents 75% of the units and 75.27% of the undivided interest of common area. This total represented provided a quorum.

If anyone has any questions or needs any additional information, please contact me.

Sincerely,



Anthony D. Pendry, CPA

**Holiday Beech Villas  
Voting Record Sheet  
In Good Standing Owners  
Quorum**

UNIT	% INTEREST	PROXY	PRESENT
A101	0.9532	X	
A102	0.9532	X	
A201	0.9532	X	
A202	0.9532	X	
B103	0.9532	X	
B104	0.9532		
B105	0.9532	X	
B106	1.4235	X	
B203	0.9532		X
B204	0.9532		X
B205	0.9532		X
B206	1.4235		X
B303	1.1102		
B304	1.1102	X	
B305	1.1102	X	
B306	1.4734		
C107	0.9532	X	
C108	0.9532	X	
C207	1.4734		X
C208	0.9532	X	
C209	1.4734		X
C307	1.4734	X	
C308	1.1102	X	
C309	1.4734	X	
		16.2797	7.2299

UNIT	% INTEREST	PROXY	PRESENT
D111	0.9532	X	
D112	1.4235	X	
D115	1.4235	X	
D116	0.9532		X
D211	1.1102	X	
D212	0.9532		
D214	0.9532	X	
D215	0.9532	X	
D216	1.1102	X	
D311	1.1102	X	
D312	1.4734	X	
D315	1.4734		
D316	1.1102	X	
E117	1.4235	X	
E118	0.9532	X	
E119	1.4235		
E217	1.4734		X
E218	0.9532	X	
E219	1.4734	X	
E317	1.4734	X	
E318	1.1102		X
E319	1.4734	X	
		19.3709	3.5368

UNIT	% INTEREST	PROXY	PRESENT
F121	0.9532	X	
F122	0.9532		
F123	0.9532	X	
F124	0.9532	X	
F125	0.9532		
F126	0.9532		
F221	1.1102		
F222	0.9532		X
F223	0.9532		X
F224	1.1102	X	
F225	1.1102		
F226	1.1102		X
F321	1.1102	X	
F322	1.1102	X	
F323	1.1102		
F324	1.1102	X	
F325	1.1102	X	
F326	1.1102		X
		9.5208	3.0166

UNIT	% INTEREST	PROXY	PRESENT
G127	0.9532	X	
G128	0.9532	X	
G129	0.9532	X	
G130	0.9532		X
G227	1.1102	X	
G228	0.9532	X	
G229	0.9532	X	
G230	1.1102	X	
G327	1.1102		
G328	1.1102		X
G329	1.1102		X
G330	1.1102		
H132	0.9532	X	
H133	1.4235	X	
H232	1.1102	X	
H233	1.4734		X
H332	1.1102	X	
H333	1.4734	X	
K144	0.9532	X	
K145	1.4235		X
K244	1.1102		X
K245	1.4734	X	
K344	1.1102		X
K345	1.4734	X	
		17.9101	7.3377

Total Percentage 84.2025



**Voting Record Sheet  
In Good Standing Owners  
Declaration Vote**

UNIT	% INTEREST	PROXY	PRESENT
A101	0.9532	X	
A102	0.9532	X	
A201	0.9532	X	
A202	0.9532	X	
B103	0.9532	X	
B104	0.9532		
B105	0.9532	X	
B106	1.4235	X	
B203	0.9532		X
B204	0.9532		X
B205	0.9532		X
B206	1.4235		X
B303	1.1102		
B304	1.1102	X	
B305	1.1102	X	
B306	1.4734		
C107	0.9532	X	
C108	0.9532	X	
C207	1.4734		X
C208	0.9532	X	
C209	1.4734		X
C307	1.4734	X	
C308	1.1102	X	
C309	1.4734	X	
		16.2797	7.2299

UNIT	% INTEREST	PROXY	PRESENT
D111	0.9532	X	
D112	1.4235	X	
D115	1.4235	X	
D116	0.9532		X
D211	1.1102	X	
D212	0.9532		
D214	0.9532	X	
D215	0.9532	X	
D216	1.1102	X	
D311	1.1102	X	
D312	1.4734	X	
D315	1.4734		
D316	1.1102	X	
E117	1.4235	X	
E118	0.9532	X	
E119	1.4235		
E217	1.4734		X
E218	0.9532	X	
E219	1.4734	X	
E317	1.4734	X	
E318	1.1102		X
E319	1.4734	X	
		19.3709	3.5368

UNIT	% INTEREST	PROXY	PRESENT
F121	0.9532	X	
F122	0.9532		
F123	0.9532	X	
F124	0.9532	X	
F125	0.9532		
F126	0.9532		
F221	1.1102		
F222	0.9532		X
F223	0.9532		X
F224	1.1102	X	
F225	1.1102		
F226	1.1102		X
F321	1.1102	X	
F322	1.1102	X	
F323	1.1102		
F324	1.1102	X	
F325	1.1102	X	
F326	1.1102		X
		9.5208	3.0166

UNIT	% INTEREST	PROXY	PRESENT
G127	0.9532	X	
G128	0.9532	X	
G129	0.9532	X	
G130	0.9532		X
G227	1.1102	X	
G228	0.9532	X	
G229	0.9532	X	
G230	1.1102	X	
G327	1.1102		
G328	1.1102		X
G329	1.1102		X
G330	1.1102		
H132	0.9532	X	
H133	1.4235	X	
H232	1.1102	X	
H233	1.4734		X
H332	1.1102	X	
H333	1.4734	X	
K144	0.9532	X	
K145	1.4235		X
K244	1.1102		X
K245	1.4734	X	
K344	1.1102		X
K345	1.4734	X	
		17.9101	7.3377

Total Percentage 84.2025  
Invalid Proxy 3.8501  

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Total Vote Percentage 80.3524

## Holiday Beech Villas Voting Record Sheet In Good Standing Owners Bylaws Vote

UNIT	% INTEREST	PROXY	PRESENT
A101	0.9532		
A102	0.9532	X	
A201	0.9532	X	
A202	0.9532	X	
B103	0.9532	X	
B104	0.9532		
B105	0.9532	X	
B106	1.4235	X	
B203	0.9532		X
B204	0.9532		X
B205	0.9532		X
B206	1.4235		X
B303	1.1102		
B304	1.1102	X	
B305	1.1102	X	
B306	1.4734		
C107	0.9532		
C108	0.9532	X	
C207	1.4734		X
C208	0.9532	X	
C209	1.4734		X
C307	1.4734	X	
C308	1.1102	X	
C309	1.4734	X	
		14.3733	5.8064

UNIT	% INTEREST	PROXY	PRESENT
D111	0.9532	X	
D112	1.4235	X	
D115	1.4235	X	
D116	0.9532		X
D211	1.1102	X	
D212	0.9532		
D214	0.9532	X	
D215	0.9532	X	
D216	1.1102	X	
D311	1.1102	X	
D312	1.4734	X	
D315	1.4734		
D316	1.1102		
E117	1.4235		
E118	0.9532		
E119	1.4235		
E217	1.4734		X
E218	0.9532	X	
E219	1.4734	X	
E317	1.4734	X	
E318	1.1102		X
E319	1.4734	X	
		16.8372	3.5368

UNIT	% INTEREST	PROXY	PRESENT
F121	0.9532	X	
F122	0.9532		
F123	0.9532	X	
F124	0.9532	X	
F125	0.9532		
F126	0.9532		
F221	1.1102		
F222	0.9532		X
F223	0.9532		
F224	1.1102	X	
F225	1.1102		
F226	1.1102		X
F321	1.1102	X	
F322	1.1102	X	
F323	1.1102		
F324	1.1102	X	
F325	1.1102	X	
F326	1.1102		
		8.4106	2.0634

UNIT	% INTEREST	PROXY	PRESENT
G127	0.9532	X	
G128	0.9532	X	
G129	0.9532	X	
G130	0.9532		X
G227	1.1102	X	
G228	0.9532	X	
G229	0.9532	X	
G230	1.1102	X	
G327	1.1102		
G328	1.1102		X
G329	1.1102		X
G330	1.1102		
H132	0.9532	X	
H133	1.4235	X	
H232	1.1102	X	
H233	1.4734		X
H332	1.1102	X	
H333	1.4734		
K144	0.9532	X	
K145	1.4235		X
K244	1.1102		X
K245	1.4734	X	
K344	1.1102		X
K345	1.4734	X	
		15.4835	7.3377

Total Percentage	73.8489
Invalid Proxy	1.4734
<hr/> Total Vote Percentage	72.3755