

Whippoorwill Homeowners Association

Amended By-Laws and Protective Covenants

See original by-laws recorded in Book 8918, Page 054-063

ARTICLE I - Purpose

The Whippoorwill Homeowners Association is a non-profit Maine corporation established for the purpose of administering the common areas in the Whippoorwill Subdivision (“Subdivision”), York, Maine, in order to preserve property values and amenities in said community and for the preservation, maintenance and improvement of open spaces and common facilities. Said plan being recorded in the York County Registry of Deeds at Plan Book 238, Page 50, with a revision being recorded in the York County Registry of Deeds at Plan Book 239, Page 15.

ARTICLE II – Membership

Every titled owner to a lot in the Subdivision shall automatically be a Voting Member of the Association (“Member”) and a representative of the York Land Trust shall be a non-voting Member of the Association and be entitled to attend all meetings of the Association. By acceptance of a deed to any lot in the Subdivision, each titled owner accepts the provisions of these By-Laws and the provisions of the Deed of Conservation Easement and agrees to abide by all the terms and conditions of these documents. The Association shall have the duty and authority to enforce all of the above documents as well as the establishment of any additional rules and regulations deemed appropriate to enhance the quality of residential living for the residents and owners of property in the Subdivision.

ARTICLE III – Association Meetings

Section 1 – Semi-Annual Meetings: There shall be two semi-annual meetings of the Members of the Association to be held on the 3rd Saturday of April and on the 3rd Saturday of October of each year at such time and place as may be designated by the Board of Directors (hereinafter the Board) for the transaction of such business as may come before the meeting. A notice designating the date, time, place and agenda of such meeting shall be provided to all the Members of the Association and the York Land Trust a minimum of ten (10) days prior to the meeting.

Section 2 - Special Meetings: Special meetings of the Members shall be held whenever called by the Board. The Board shall call such a special meeting upon its own vote or at the request of at least twenty (20) Members of the Association. Notice of such special meeting, stating the date, time and place and the purpose thereof, shall be sent by United States mail to all Members of the Association at least thirty (30) days prior to such meeting.

Section 3 - Voting: At any meeting of the Members, the owner(s) of any lot shall have one (1) vote for each lot owned. In the event there is more than one (1) owner of a lot, any owner present at any such meeting shall be deemed to have the authority to cast the vote for that lot. In the event that more than one (1) owner is present at a meeting and there is a dispute between the owners as to the manner in which a vote may be cast, each owner may vote the fraction of their vote in proportion to the number of owners listed in the records of the Secretary. Said fraction shall be established solely by the number of owners with no consideration given to the relative value of the ownership interests in the lot.

An authorized representative of any corporate owner may cast the vote(s) for the corporation and the oral representation of such person shall be sufficient to establish such authority.

Section 4 - Proxy: The vote of another member, on any or all issues, and/or upon such other business as may properly come before the meeting or any adjournment thereof, may be cast by proxy provided the Secretary has received, prior to or at the time of the meeting, written authorization from the listed owner(s) authorizing a specific person to vote in their absence.

Section 5 - Quorum: At any meeting of the Members a quorum shall consist of Members owning in fee simple, jointly or solely, or representative of a corporation owning in fee simple, a majority of the lots in the Subdivision present either in person or by proxy. A majority of the votes of those present, constituting a quorum, shall decide any question that may come before the meeting unless noted elsewhere in the Association By-Laws or covenants.

ARTICLE IV – Board of Directors

Section 1 - Number of Directors: The Association shall be governed by a Board of Directors consisting of five (5) directors who shall govern the Association and be responsible for the normal operations of the Association.

Section 2 - Election Procedures: The election of directors to such term shall take place on the first Saturday in December except for vacancies which will be filled in accordance with Section 4. There shall be one director representing each of the following Areas (Phases):

AREA I: Lots 1 through 23; AREA II: Lots 24 through 43; AREA III: Lots 44 through 61;
AREA IV: Lots 62 through 89; AREA V: Lots 90 through 100.

It shall be the responsibility of each area to hold the required election at the required time and to give the Board of Directors the name of the person so elected within 48 hours of the election.

A Directors' term of office shall begin on January 1st following the election, unless the term is to fill a vacancy. That term shall begin on the date of election and will end at the end of the unexpired term.

Section 3 - Terms: The term of each director shall be three (3) years with the exception of representation by the developer, whose term shall expire when eighty percent (80%) of the homes represented in each director's area, as noted in Section 2 above, have been transferred to a homeowner.

It is intended through this voting procedure to have directorship terms that are staggered and that no more than two directors will be elected in any given year. In order to facilitate this order, the initial directorship will end per the schedule to follow, regardless of the date of initial election:

AREA I: December 31, 2001; AREA II: December 31, 2002;
AREA III: December 31, 2003; AREA IV: December 31, 2004;
AREA V: December 31, 2005; and each subsequent term will be three (3) years as provided for above.

Section 4 - Vacancies: If the office of a director, other than a director representing the developer, shall become vacant, the unexpired portion of his/her term of office shall be filled by majority vote of the remaining directors. In the case where a director is required to fill a vacancy of the developer, then that director shall be elected by the owners of the particular phase of development as detailed in Section 2, above.

Section 5 - Qualifications: Except for the Developer, or his appointee, a person must be a lot owner in order to be a Director.

ARTICLE V – Meetings and Reports

Section 1 - Meetings: The Board of Directors shall meet for the transaction of business at such place and times as may be designated and voted upon. The Board, however, shall meet on the 3rd Saturday in April and on the 3rd Saturday in October which shall be the Semi-Annual Meetings of the Association, at minimum.

Special meetings of the Board may be called by any officer or by any two Members of the Board provided that notice indicating the purpose of the meeting shall be given to each member of the Board a reasonable time prior to such meeting.

Section 2 - Quorum of the Board: A majority of the Board of Directors shall constitute a quorum for the transaction of business at any regular or special meeting. In the absence of a quorum, a majority of those present at the time and place of any such meeting may adjourn that meeting from time to time without notice until a quorum is established. The act of a majority of directors present at any meeting at which there is a quorum shall be the act of the Board.

Section 3 – Semi-Annual Report: The Board of Directors shall provide the Members of the Association with an annual report following the close of the fiscal year. The report shall be issued ten (10) days prior to the April Semi-Annual meeting and shall indicate the financial condition of the Association and any relevant information concerning the administration of the Subdivision and its common areas and facilities.

ARTICLE VI – Officers, Election and Duties

Section 1 - Election of Officers: Prior to the April Semi-Annual Meeting of the Association, the Directors shall elect officers from the Board Members. These Members shall hold office for a term of one year or until a successor has been duly elected and qualified or until the officer's earlier death, resignation or removal in accordance with the By-Laws. The officers shall be chosen by a majority vote of the Board of Directors.

Section 2 - President: The President shall be the chief executive officer of the Association and as such shall have general supervision of the affairs and property of the Association and over its several officers, subject to the direction of the Board of Directors. The President shall, if present, preside over all meetings of the Board of Directors, and shall generally do and perform all acts incident to the office of President.

The President may sign in the name and on behalf of the Association all notes, leases, mortgages, deeds and all other written instruments authorized by the Board, except where the Board shall delegate the execution thereof to some other office or agent of the Association.

Section 3 - Vice-President: The Vice-President shall carry out the duties of the President in the event of the President's inability to attend meetings, resignation, removal from office, or early death.

Section 4 - Secretary: The Secretary shall act as Secretary of the Board of Directors and shall record the votes and keep the minutes of all proceedings in a file to be kept for that purpose. The secretary shall record the names and addresses of all Members of the Association, shall see that all notices are fully given as required by the By-Laws or applicable law, rules and regulations, administrative policies and/or procedures.

Section 5 - Treasurer: The treasurer shall receive and deposit in bank accounts approved by the Board all monies of the Association and shall disburse such funds as directed by a resolution of the Board. A resolution of the Board shall not be necessary for disbursements made in the ordinary course of business conducted within the overall limits of a budget adopted by the Members of the Association at the October Semi-Annual Meeting or subsequent special meeting(s).

Section 6 - Books and Accounting: The Treasurer shall keep proper books of account for all operations of the Association and shall be responsible for the preparation of an annual balance sheet for the current year and a proposed annual budget for the upcoming year, which shall be available to the Members ten (10) days prior to the October Semi-Annual Meeting.

Upon a vote of the Board, or at the request of any twenty (20) Members of the Association, the Treasurer shall engage an accountant to do a compilation and review of the Association's books at the completion of the fiscal year. Upon a majority vote of the Association an audit shall be conducted as prescribed above except that an audit shall be routinely conducted every three years.

ARTICLE VII – Budgets, Common Charges and Special Assessments

Section 1 - Association Budget: The Board shall prepare a budget for administration of the Subdivision on an annual basis, to include such things as administrative expenses, landscaping, roadway maintenance, drainage ditches and any other expenses of the Association. Copies of the budget shall be available upon request ten (10) days prior to the October Semi-Annual Meeting. The budget may include such amounts as the Association may deem proper for working capital, general operating reserve, reserve for replacements or any amount necessary to make up a deficit for any prior year. All dues paid in accordance with these By-Laws shall remain the property of the Association and no refunds or rebates shall be made except as specifically authorized by the Board.

Section 2 - Recreation Budget: The developer is committed under an agreement with the Planning Board as a condition of approval to provide funding to the Homeowners Association in the amount of Fifteen Thousand Dollars (\$15,000.00) for creation of active recreation facilities within the "Village Common." In addition, Ten Thousand Dollars (\$10,000.00) will be set aside for developing and maintaining passive recreation within the Open Space, subject to The Conservation Easement, as designated on the Whippoorwill Subdivision Plan. Passive recreation within the Open Space shall be administered by the York Land Trust. The funding is anticipated to be in phases, as determined by the Planning Board.

Section 3 - Open Space Maintenance: There shall be a budget item in the amount of Ten Dollars (\$10.00) per year per lot that the Board shall pay directly to the York Land Trust for ongoing maintenance of the Open Space as shown on the Whippoorwill Subdivision Plan. This fee will be included as a common charge. For the purpose of this Section 3, a lot shall be defined as a lot when the base coat of paving is completed for that particular lot.

Section 4 - Payment of Common Charges: All lot owners shall be obligated to pay the common charges assessable to each lot on an annual basis. At its April Semi-Annual Meeting, the budget for the Association shall be the basis for common charges. Such common charges shall be payable within thirty (30) days after the April Semi-Annual Meeting or in such other manner as the Board shall determine.

Common charges are not assessable to the developer until at least 80% (eighty percent) of the homes have been transferred to a home owner in each applicable area, as noted in Article IV, Section 2.

A homeowner is obligated to pay its share of that year's common charges, based upon the Annual Budget and prorated at the time of closing and payable at the transfer of title. Also at closing, each buyer shall make an initial contribution of 0.1% of the purchase price of the home to the Homeowners Association Capital Improvement Fund. This contribution is non-refundable and shall be made by every buyer as long as a Homeowners Association is in effect.

Section 5 - Special Assessment: The Board shall be authorized to assess the Members of the Association on an equal basis for unusual or extraordinary expense not anticipated in the budget or for additional expenses resulting from miscalculation in preparation of the budget. Such assessments shall be payable within thirty (30) days of receipt of notice from the Board or in such other manner as the Board shall determine.

Section 6 - Default in Payment of Common Charges or Assessment: The Association will send a second invoice as a reminder to any homeowner with a balance due after 30 days and a warning notice to any homeowner with a balance due after 60 days. The Association shall have a lien placed upon the lot of any owner(s) for any outstanding balance due after 90 days. Any outstanding balance due shall accumulate interest at a rate of fifteen (15%) percent per annum from the date due until collected or recovered by the Association. Any owner by acceptance of a Deed to a lot in Whippoorwill Subdivision thereby agrees that the Association may perfect its lien in the same manner as a lien for materials and labor under 10 MRSA 3251 et.seq. and that this lien shall be binding upon the transferees, their heirs and assigns. The Association shall be entitled to recover any expenses incurred in collecting overdue charges including, but not limited to, reasonable attorney's fees in the event legal action is required.

Section 7 - Enforcement Power: A violation or failure to comply with any of the provisions of these by-laws for the Whippoorwill Subdivision or any Rules and Regulations adopted by the Board or the Association shall give the Association the right to enter upon the premises of any owner(s) and abate any violation or correct any failure to comply at the expense of the owner(s). Said owner(s) shall be provided with written notice of any violation or failure to comply and given a thirty (30) day time frame within which to remedy the situation after which the Association may exercise the rights set forth in the previous sentence. The Association may take any legal steps necessary to enjoin or abate such violation or noncompliance.

ARTICLE VIII – Failure to Enforce Provisions

The failure of the Association, in any instance, to insist upon the strict compliance with any terms, covenants, restrictions or conditions shall not be construed as a waiver or relinquishment of the enforcement powers granted by these by-laws with regard to any future violations or noncompliance.

ARTICLE IX – Non-Liability of Directors and Officers

The Members of the Board of Directors and the Officers of the Association, or their authorized agents, shall not be personally liable to any lot owner(s) for any mistake of judgment, negligence or otherwise in the performance of their duties in those capacities except for their own individual willful misconduct, gross negligence or bad faith. The Association Members shall indemnify and hold the directors and officers harmless, as well as their authorized agents, from any and all contractual liability arising out of any contracts entered into in good faith on behalf of the Association as well as from the expense of any legal action taken against them resulting from actions taken in their official capacity where no liability is found.

ARTICLE X - Amendments

These By-Laws may be amended from time to time by a vote of not less than two-thirds (2/3) of the owners of lots in the Subdivision, voting in person or by proxy at a meeting of the Association specifically called for that purpose or at a semi-annual meeting, proper notice having been given of a proposal to amend these by-laws. Excluded from amendment under this Article is Article VII, Section 3. Any amendment to Section 3 requires the unanimous consent of the Board, the York Land Trust and the Maine Department of Environmental Protection.

ARTICLE XI - Notices

Any notice required to be sent to any Association member under the provisions of these By-Laws shall be deemed to have been properly sent when deposited in the United States Post Office at York, Maine, addressed to the lot owner(s) at the address contained in the Secretary's records and postmarked at least ten (10) days prior to said meeting, or shall be deemed to have been properly sent when delivered by hand and signed for by the lot owner.

ARTICLE XII - Invalidity

The invalidity of any article or section of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of the Articles.

ARTICLE XIII – Resolution and Disputes

In the event of a dispute arising with regard to any of the provisions of these by-laws between any owner, mortgagee, officer or director; any party involved shall first cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, the party requesting the arbitration will give immediate notice thereof to the Association, which shall notify all other interested parties as promptly as possible. The decision of the arbitrator shall be final and conclusive upon all of the parties. The arbitrator may include in his/her determination an award for costs and/or attorney’s fees against any one or more parties as deemed appropriate.

ARTICLE XIV – Homeowners Association Responsibilities

Section 1 - General operational Responsibilities: Upon issuance of occupancy permits for eighty percent (80%) of the homes in each phase as detailed in Article IV; Section 2 (Areas), the Association shall assume all operational responsibilities of that particular Phase with regard the following:

Operation and maintenance of fire hydrants, maintenance of road and all costs thereof, until such times as they may be accepted by the Town of York.

Maintenance of all specified landscaping for cul-de-sacs, roadway entrances, and supplemental plantings in buffer, and the cost thereof.

Maintenance and or reconstruction of sidewalks installed by the developer and cost thereof.

Approval process for additions, alterations, and all other aspects of Article XVII “Protective Covenants” of the Whippoorwill Subdivision.

Section 2 - Open Space Responsibilities: Upon issuance of occupancy permits for fifty (50) homes or Town acceptance of Chickadee Drive and Meadowlark Lane, whichever occurs first, the Association shall assume operation responsibilities of all of the Open Space, such as but not limited to:

Management of all Open Space lands and costs thereof. Such management shall occur in conjunction with the York Land Trust and Maine State Department of Environmental Protection.

The Association shall be responsible for maintaining any pathways, walkways or recreation facilities they have created on the common land.

The Association shall be responsible for the “Village Common”.

This section does not defer any payments to be made under Article VII – “Budgets, Common Charges and Special Assessments” by a homeowner.

Section 3 - Road Maintenance Agreement: All of the roadways in the Whippoorwill Subdivision are privately owned right-of-ways and until the roadways are accepted as Town Road, they will not be maintained by the Town.

The responsibility for maintenance of each roadway shall be by the developer until eighty percent (80%) of the homes in each Phase, as detailed in Article IV, Section 2, is reached. Upon reaching the eighty percent (80%) sale threshold, the Whippoorwill Home Owners Association agrees to maintain, in a normal and customary manner these roads including grading, general upkeep and snow removal as needed.

The Road Maintenance Agreement shall continue until each roadway is accepted by the Town of York.

ARTICLE XV – Lot Owners Responsibilities

Each lot owner shall be responsible for mowing and maintaining the lawn(s) to the edge of the road. Each lot owner shall also be responsible for maintaining the drainage swales in front of their lot, including keeping the swales mowed and free of any debris that might inhibit drainage flow along the swales.

It is the responsibility of the Association to enforce this ARTICLE XV. If the Association is unable to enforce this article with the lot owner, then the Association must take the responsibility for maintaining the swale(s) and budget the monies necessary to carry out the provisions of ARTICLE XV.

ARTICLE XVI – Conservation Easement

The development, use and management of the areas designated as “Open Space Subject to Conservation Easement” are governed by a Deed of Conservation Easement. The terms, conditions and restrictions of the Deed of Conservation Easement shall control the utilization of such Open Space. The “Village Common” is open space for the enjoyment of all lot owners and is under the exclusive control of the Homeowners Association.

ARTICLE XVII – Protective Covenants

Section 1 – Application: These covenants and restrictions apply to all owners of lots in the Whippoorwill Subdivision.

Section 2 – Approval: To insure the architectural homogeneity of the community as a whole, Bradford Realty Trust, its successor and or assigns shall approve, in writing, all architectural designs of dwellings to be built on the lots in the Subdivision said approval not to be currently withheld. No construction may start until the written approvals are obtained. Bradford Realty Trust may specifically assign all or any portion of its rights set forth hereunder.

This subdivision is to be phased and the anticipated completion of construction will be in excess of five (5) years, therefore, in accordance with “Areas” as established in Article IV, Section 2 of the By-Laws of the Whippoorwill Homeowners Association, upon occupancy of eighty percent (80%) of the homes in each phase, the approval rights under this paragraph shall pass to the Association

Section 3 - Exterior Appearance and Landscaping: Once construction of any building or structure to be erected or maintained on said lot is commenced, such construction including landscaping, shall be completed as to the exterior thereof before the expiration of one (1) year from that time. If said building or structure is completed during the winter months, then the landscaping shall be completed after the ground is free from frost.

Section 4 - Land Use and Building Type: No lot shall be used except for residential purposes. No building shall be erected, altered, or permitted on any lot other than one detached single family dwelling not to exceed two and one-half stories in height, together with wings, ells, garages, barns and outbuildings. No commercial activity of any kind shall be permitted except home occupations that do not require any client/customer contact.

Section 5 - Minimum Size of Residence: No dwelling shall be constructed with less than 1,600 square feet of living area, excluding garage, basement, porches, decks, attic, and or barn area, but may include unfinished future living areas.

Section 6 - Further Subdivision: No lot shall be further subdivided. Any lease, conveyance, or sale of any portion of a lot shall constitute a violation of this covenant.

Section 7 – Animals: No livestock or poultry shall be raised, bred or kept on any lot. Dogs, cats and household pets shall be permitted.

Section 8 – Nuisances: No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be of annoyance to other owners of lots within the Subdivision. Snowmobiles, ATV's and Motorbikes (Dirt bikes) shall not be operated upon any lot within the Subdivision. See the Deed of Conservation Easement for further restrictions with regard to the use of such vehicles on the adjacent open lands covered by the Easement.

Section 9 – Signs: No sign of any kind shall be displayed upon any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, one sign for each homeowner of not more than two (2) square feet and signs used by a builder to advertise the property during the construction and sales period.

Section 10 - Temporary Structures And Inactive Vehicles: No structure of a temporary nature including, but not by way of limitation, house trailers, mobile homes, auto homes, campers, trailers of any kind, basements, tents, shacks, garages, barns, or other outbuildings shall be used as residence, either temporary or permanent. No inactive automobiles, motorcycles or snowmobiles shall be stored anywhere except in an enclosed garage or shall be completely screened from abutters.

Section 11 - Rubbish Disposal: No lot shall be used or maintained as a dumping area for rubbish, trash, old automobiles, or similar materials offensive or degrading in appearance. This paragraph shall not limit the use of compost materials for individual use, provided they are screened from views of neighboring lots.

Section 12 – Enforcement: Enforcement of the Article XVII shall be by (1) Developer, (2) the Association, (3) any lot owner, or (4) any aggrieved person by proceedings at law or in equity against any persons violating or attempting to violate any covenant/restriction either to restrain violation or to recover damages. Any party successfully enforcing any of these covenants shall be entitled to or recover against the party violating such covenants, as a monetary award, reasonable attorney's fees and costs incurred in such enforcement proceeding.

Section 13 – Separability: Invalidation of any covenant by court order shall not affect the remaining covenants, which shall remain in full force and effect.

Section 14 - Terms and Amendments: These covenants shall run with the land and shall be for the benefit of all lots within the Subdivision, and shall be binding on all lots, all purchasers of lots, and all parties and all persons claiming thereunder. The Developer or his assign may upon written request of any lot owner, vary the terms contained herein.

Section 15 - Maintenance Responsibilities: Each lot owner shall be responsible for maintaining any landscaping to the roadways, and keeping any sidewalk(s) bordering their lot clear of snow and ice. Further, each lot owner shall be responsible for keeping any drainage swale in front of their lot mowed and clean of any debris that might impede flow in the swale. (See Homeowners Association Rules)

These by-laws are hereby adopted as and for the By-Laws of the Whippoorwill Homeowners Association this **1st day of October, 2008.**

WHIPPOORWILL HOMEOWNERS ASSOCIATION

Eric Spenlinhauer, President

STATE OF MAINE
YORK, ss

Then personally appeared the above named Eric Spenlinhauer, President of the Whippoorwill Homeowners Association, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.