

Compiled Comments from Residents **Special Committee on Election Policies & Procedures**

Comments from different residents are separated by a blue line.

Dear Members of the Special Committee on Elections:

I have been unable to attend the committee for speak out due to work commitments, but have been watching the recorded sessions. I want to thank the Committee for their hard work but have significant concerns about the legality of some of the proposed drafts and the time frame set for deliberation on these very complex issues. Please forgive the length of this letter. There is much in the wording of the documents that needs correcting, but I raise the major points below.

For the reasons that follow, I urge you to defer acting on these documents until there is more time to work through some of the legal and policy issues.

Whether Non-Members Should be on the Board

Permitting someone outside of the membership to control or have significant control over major matters affecting the community has many ramifications. My firm belief (that I may share with Mr. Loesch) is that the covenants were intended to set up a structure of self-governance for members of the community with a vested property interest (ownership or lease) interest in the community.

From your discussions, the proposal appears to be centered on the talents of Ms. Dean at achieving her agenda. However, under such a policy, a single individual not invested in the community could have significant control over the membership for an unlimited amount of time. I have witnessed many elections, and incumbents tend to get re-elected due to name recognition and contacts (even without monetary contributions). The "incumbent advantage" often precludes new people that live in the community from a seat on the Village Board or at least extends the influence of the non-member elected official to those who run with her on a slate. We should be nurturing new leaders that have a vested interested in the community as it changes.

In addition, if we open the Board membership open to members outside of the community, who can prevent other special interests with differing agendas from controlling our community?

I also question why we are changing the By-Laws to accommodate a specific individual? I do not doubt Ms. Dean's commitment and talent, but surely there are many others members of the community who do or would have the same talents and dedication. Why is it so important to enable Ms. Dean to run again? While she may have won with a significant margin in the last election, the changes made to these documents are structural and will last far beyond her tenure.

If ultimately you decide to permit Ms. Dean to run again without being a member, I strongly urge the Committee to add term limits (I suggest two to three one-year terms) to prevent the incumbent advantage from precluding new members and new perspectives on the Board.

Redefining Membership

I also heard a comment {I believe from Mr. Inglis) that perhaps tenants should not be members. This could be determined to be discriminatory if it has a disparate impact on minorities that live in the community. First, this requirement is in the Article of Incorporation. However, there is no one of a racial or ethnic minority on the Election Committee, and I raise the issue for their information. While Columbia Association is a 501(c)(4) corporation, there are Supreme Court cases holding that the Fourteenth amendment applies to private entities operating as a structural government. I believe that before adopting such a measure, the Special Election Committee should at least study whether such a provision would disparately impact minorities. Aside from that legal issue, I believe that those who cannot afford homeownership but live in the community should have a clear voice, including my own sons. I also believe that we should be encouraging rather than discouraging minority involvement.

Campaign Pledge

There are legal issues regarding the "Campaign Pledge". I am unclear about the purpose of the "Campaign Pledge". I assume it is not mandatory, however, I would argue that it violates both the Equal Protection Clause of the Fourteenth Amendment and Freedom of Speech Clause in the First Amendment. This is because it chills the corporations in exercising their free speech rights. As you may know, the Supreme Court (rightly or wrongly) has held that a corporation is a person under the Free Speech Clause of the First Amendment and that its contributions cannot be arbitrarily limited. From a due process perspective (under the Fourteenth Amendment) the "pledge" is clearly targeting developer money rather than money from any other corporation. If there is a concern about corporate contributions in general, there is no rational basis for distinguishing between developers and any other corporation that may wish to influence an election for whatever reason. If the concern is that monetary donations of any kind influence elections, why not include any large donations, even those from individuals?

The established means of addressing donations is typically with a campaign contribution disclosure statement. This does not impact the ability to donate money; but it does allow the public to see all contributions to campaigns and choose for themselves who to support. There is no reason to enact a "pledge" that is so obviously targeted at one specific entity and even law firms that represent developments. This is clearly overreach that will not be upheld, particularly as there is a non-discriminatory means of ensuring transparency.

Further, the term "real estate development companies", which includes "proprietors" and "projects" is far too vague to be definitive of what the "pledge" is intended to promise. Is any commercial entity, even a small business, a "proprietor"? What about Meadows ice cream? Can they provide free treats to all candidates?

The donations subject to the pledge should be much more clearly defined so that individuals who sign the pledge know what they are signing. This could lead to significant litigation over whether someone violated their pledge or not. My suggestion would be that it is far better to have a candidate simply file a disclosure form than such an obviously discriminatory "pledge".

In Kind Donation Form

The \$250 cap on in kind donations violates not only corporation's free speech, it also violates individuals free speech for the reasons set forth above. People should be able to donate their time, labor or materials as an exercise of this right.

The definition of "in kind donation" is also too vague to put people on notice of what they can and cannot do without significant ramifications. If I lend my car to a candidate soliciting votes, is that an "in kind" donation? If I assist them in writing a mailing, is that an in kind donation? I can only foresee numerous arguments in the future about whether the "in kind" donation was made and unnecessary litigation before the Board.

Conflicts of Interest

1. Disclosure of proposed conflicts of interest and the Board's decision should at a public meeting.
2. Section 5.2 is far too broad an out. The circumstances of the Board's discretion to accept a conflict of interest should be clearly defined. Otherwise, a majority of the Board may be too ready to "forgive" conflicts of interest of some Board members and less likely to forgive other members. Transparency and fair dealing are the key to legitimacy and trust, and this is far too discretionary.
3. The "appropriate disciplinary actions" that can be taken by the Board should be far more explicitly defined. This could result in majority abuse.

Conflict Form

Conflicts should explicitly exclude investments held in mutual funds that are not in the control of the investor. Columbia Association may do business with numerous organizations, many of which may be national companies that participate in mutual funds. This is a common exemption in many conflict of interest ordinances, as the individual has no direct control over the investment decision.

Online Voting

I have worked with numerous governments and online voting has proved secure in almost all cases. As someone mentioned at the last meeting, the system used at the last election has a good track record. It *is* possible to hack anything; however, I urge the Committee to solicit information not just from one Board member who may have a vested interest in the outcome, but from a broader spectrum.

Transparency and Legitimacy of the Special Committee's Actions

Transparency, fair process and order lend legitimacy to the work of Committees and Boards. support Mr. England's comments at the last meeting that the Committee (and the Village Board)

should be following at a minimum Robert's Rules of Order. While Mr. Inglis does an excellent job of soliciting information from all those with raised hands, these basic rules (that almost universally govern Board, government, and many organizational meetings) are designed to clarify the action the Committee is taking through motions, ensure that all sides are heard, and to ensure discussion of different viewpoints. This comment applies to the Village Board's proceedings as well.

I agree with Mr. Loesch's position to eliminate the chat because the angry comments are not helpful to resolving issues. However, I strongly disagree with Mr. Inglis' comment that the anger expressed therein means the Committee is "getting close to the truth."

Key to public buy-in of the Committee's recommendations (and the Board's action) by *all* members of Hickory Ridge Village is transparency and the fundamental fairness of their proceedings. Too often, I have failed to observe either when viewing the Village Board proceedings. Many people (and yes there are quite a few), feel that procedures have been muddled and manipulated to ensure success of the majority's agenda. An example is the numerous motions {I believe at an October meeting) of who would attend the Kimco mediation on behalf of the Board. Another example is your admitted violation of the Open Meetings Act, even if inadvertent. Filing notes is *not* a substitute for an open meeting, and has resulted in numerous documents, many of which have legalese that is difficult for lay people to decipher, that you will adopt in about a week. Even the Board's selection of this Committee is an example. The statistical probability that three members would have identical lists out of 18 candidates is astronomical.

Many of those whose views may not be identical to the Board's have "dropped out" of this process, discouraged not so much by the outcome, but by the lack of transparency and fundamental fairness in the Board's proceedings. I again note that there is no young person on and no minority representative on this Committee and that several of the Committee members (the majority in fact) have openly opposed the Kimco project, sharing the majority's agenda.

The typical legal advice given to Boards and Commissions is that members may discuss association matters and communicate in writing through texts, emails, etc., outside of a public hearing if fewer than a majority are present at one time. If, however, this Association were subject to the Maryland Public Information Act (MPIA), all those communications would come to light. The Court of Appeals has held that the MPIA applies to privately held documents that concern public business. This is probably also the intent of the "sunshine" provision governing disclosure of documents under the Maryland Homeowner's Act.

I suggest to this Committee and the Village Board to treat communications between themselves on Village Board business as subject to the Maryland Public Information Act, to avoid the situations I have observed and which, in my opinion, severely compromise the legitimacy of the Village Board's and this Committee's actions. I can't speak for everyone's anger on the chat, but I do believe that it is creating a lot of bitterness in the community

Deadline for Committee Action

Related to the above is the timing of the Committee's work. These are really complex issues that may affect many constituencies, including minorities, young people, and businesses in the Village. Your work is taking place in a very abbreviated time frame, during the holiday season, during a pandemic for what reason? Comments from Committee members indicate that it is to make sure Ms. Dean can remain Chair of the Board. The actions you undertake, however, will be permanent structural changes, and in that light, should be subject to far more significant review by the membership and not simply to beat an election deadline for a single individual.

I strongly urge you and the Board to defer action until these documents can be corrected with broader involvement of the community.

I apologize for the length of this letter, but did want to express my concerns in a considerate and thoughtful manner. Thank you for your consideration of these remarks and thanks for your hard work.

I have voted at Hickory Ridge Village center for many years, and I have always been satisfied with the cordial and capable workers in the waiting area and voting area. I would be happy with the same election preparation and voting activity. I am likewise impressed with the quality and quantity of the village center activities and services.

Hi all,

First, thank you all for your service on this committee! What you are doing is extremely important. In particular, it is critical to keep developer money out of our elections.

Although I catch bits and pieces, I have missed most of your meetings. It's likely these topics are already at the front of your discussions. However, to avoid assuming, I wanted to express a concern over a range of possible scenarios that could complicate the goal of keeping developer influence out. Examples:

Straightforward cases

company or individual gives money to candidate's campaign

company pays individual directly

Potentially more complicated

company campaigns for candidate without candidate's consent (by design) (I thought - I could be wrong - Jessamine Duvall alluded to this, potentially as it related to her. I am looking for the video.)

company smears a candidate (without another candidate's consent)

company provides other campaign services to a candidate

company reimburses candidate well after the election (enabling the candidate to use more resources to campaign now)

Approaches to solving all of these are not obvious to me. For example, can we require candidates to disclose any promotions they become aware of that they did not create as part of their officially funded campaign and at least make this public? I don't know that it would do any good anyway. Can we require them to disclose interactions with developers? Should there be a section in the candidate summaries where some information about candidates is summarized (like developer interactions) that the candidates don't write. (I firmly believe that 70% of the voters vote based on the candidate summaries - the short paragraphs the candidates write about themselves - and almost nothing more. When all you have is a candidate-authored paragraph, the candidates can look like anything.)

In any case, I suspect these are all part of the considerations, but I wanted to check. I'm happy to contribute ideas as well if helpful. I'm guessing you have plenty.

Thank you again!

Hi Election Committee,

I wanted to reply to some statements on online voting made the other night and hopefully provide some clarifications.

1. There was a comment in the chat that for online voting, postcards are mailed to residents that have a unique code on them that must be entered into the website in order to vote. This is an important security feature that works to address whether or not a voter is valid, and whether that voter has already voted, however it does nothing to address the insecurity of user devices and the possibility that they could be compromised and alter a vote without the voter's knowledge before it is submitted. Malware on the host device could easily accept all the user's valid data, including the unique code from the postcard, change only the vote, and then forward everything along to the legitimate Intelliscan website. The legitimate website would have no way of detecting that anything suspicious had occurred. The postcard code does nothing to make that scenario more difficult for a malicious party to accomplish.

2. There was also a comment about how any system has the potential for fraud. That is true, but in this case it's conflating wildly different levels of risk. The risk of a physical election being subverted is extremely low, and very likely to be caught because of the complexity required. As just one example of what I mean, there would have to be people involved locally, and they would be doing physical things with ballots, all of which is much easier to prevent/detect, and if detected, people involved would be subject to legal consequences which is a huge deterrent and also

makes it much more expensive to pull off because it would take a lot more money to incentivize people to participate in illegal activities they could face serious consequences for. If someone wanted to subvert an online election, a foreign individual or entity could be paid and would not have any risk of legal consequences if caught. It would be very difficult to discover or trace a payment to a foreign entity. And because attacks on computers can be automated and scaled, it's much easier to have a large undetected impact. The skills needed to subvert an online voting system are not trivial, but they are definitely not hard to come by, either. I really believe we're comparing apples to baseballs here when we try to talk about how all systems have vulnerabilities, it is just a whole different game when you're talking about influencing online voting vs. a physical methodology.

3. A member claimed that Intelliscan has a good reputation and no complaints, and are highly incentivised to have good security. I do not believe that is relevant to what is being considered. Even if nobody is having problems or complaining, that does not make it secure. Online voting systems are not being used for elections where critical issues are at stake, so they are very unlikely to be targeted - because malicious parties don't perceive value or benefit in targeting them. Big banks and financial institutions have major incentives to have good security, and they do -- but they still get hacked. RSA, whose entire business model rests on people trusting them to have good security, has been catastrophically hacked. Google has some of the smartest security people in the world and huge incentives to be secure, and they have been hacked. We can go on and on and on. If somebody has enough incentive to hack you, you are gonna get hacked. And keep in mind that online voting is a lot easier to hack than any of the above.

All that said, I am not here to argue that there is anything wrong with the security of the systems that Intelliscan owns. They can, and probably do, make their security good - on their website and back end, which they control. They have absolutely no control over the security of the user's device. They cannot - and do not, if you look at their website - make any claims that they can fix the problem of securing user devices. And again: online voting companies are not being used for elections where critical issues are at stake. Go to intelliscan's website and look at the list of applications they advertise supporting. They do not claim to be able to handle government elections or anything where there is contention or a lot on the line in terms of power and money.

In our village, sometimes there is a lot of power in being a board member, and occasionally board members have the ability to decide issues where a lot of money is on the line. I do not believe it is responsible to use an insecure voting system to elect people to positions where that is the case.

4. There was also a comment to the effect that the discussion about the insecurity of online voting is hurting people's confidence in online voting, implying that's a negative thing, and seemed to suggest we ought to stop talking about it. With all due respect, the dangerous belief here is that online voting might be secure. There is a big difference between sowing doubt in voting systems without cause, and pointing out the legitimate, dangerous insecurity of a voting system. People absolutely should not have confidence in online voting. It is not secure. It cannot be trusted. I am not offended at all if people are reluctant to take my word on this, but please familiarize yourself with the many studies and reports by other experts and committees over many years that all reinforce this truth. (Here is a page with some relevant information:

<https://www.aaas.org/epi-center/internet-online-voting>) There is no faction of security researchers who believe that online voting can be secure. There is universal agreement in the security community that online voting is not secure and should not be used for things that matter.

In closing, there are essentially two questions here, in my mind:

1. Is online voting secure?
2. Do we care?

The answer to question 1 is no. I guess we each need to answer question 2 for ourselves, but for me the answer is yes.

I understand the big push for online voting being increased access and participation. I would love to hear alternative solutions that would further this goal. Please brainstorm and propose other ways to securely expand participation and access; I have some thoughts and would like to hear yours. I will support the village taking strong action on this. But for the reasons stated above and more, I cannot support online voting.

Thanks for the work you're doing.

Observations regarding the Special Elections Committee documents as submitted for comments:

- HRCA Conflict Interest Policy 122421 Rhona
 - Article III – definitions
 - Compensation – why stop at \$50? How many “insubstantial compensations” can one have?
 - Excess benefit transactions – does this apply to gratis use for HRVB members, RAC/AC and committee members of the Hawthorn Center?
 - Family – ANCESTORS? Great grandchildren? REALLY? If this definition applies to “family” in this policy, why does the definition for family comport all documents/policies? – (See Article V. b -Prohibited Activities- enumeration?)
 - Financial Interest –
 - d References a Section 3.2 below and there is no section 3.2 in the document. Additionally, will any discussion of applicability of Financial Interest vs Conflict of Interest be deliberated in open or closed meeting? Will the result of a vote or deliberation be publicly advertised?
 - Interested Person –
 - Who is a “principal officer” ?
 - Where is the definition of “disinterested person”? (See

4.1.b below)

- Where is the definition of “disinterested director”? (See 4.1.d below)
 - Article IV
 - Section 4.1
 - b. Will this meeting be public or closed during discussion?
 - c. The use of the words “with reasonable efforts...” “ more advantageous”....allow for a world of interpretation
 - d. Will this be an open meeting?
 - Section 4.2
 - a. Who is a Principal Officer?
 - Is a Hickory Ridge village member allowed to bring a concern of “reasonable cause” to the attention of the HRVB?
 - b. & c What is the “appropriate disciplinary and correction action” contemplated in this section and within this document? Please also cite the language in the Charter and By-laws of the Association that provide for grounds for removal
 - Article V.
 - b. Comport/enumerate all family members as in Article III
 - Section 5.1
 - a. What happens if a member violates this section?
 - How will anyone know?
 - Section 5.2
 - What is definition of “extraordinary circumstances”?
 - Will the discussion of this resolution regarding extraordinary circumstances be in an open forum?
 - Will the discussion of “otherwise prohibited participation” be in an open forum?
 -
 - b. Please provide an example of this section

- Article VII ▪ Over-reach once again
- Article VIII and Article IX

The Association is NOT a charitable organization.

- Campaign Money Pledge Rhona ○ This document is almost verbatim lifted from a website that aims for transparency in federal and state elections. As such, it is an extreme reach for candidates for HRVB.

- If item #1 excludes from contributions real estate development companies, why not exclude real estate agents, plumbers, construction, and home renovation companies who " have had previous projects...." may have future projects" Please also explain "correspondence between two persons, either written or verbal..." what is verbal correspondence?

- Please explain what is meant by # 7?

- Please explain the term in #8 " land development lobby"? Examples would be good.

- Please explain how this pledge makes the HRVB better? What problem is this pledge trying to solve?

- Candidate Financial Disclosure Stmt Draft Rhona

- Why isn't there a space for Residential address? ▪ Current Address for Correspondence seems non-transparent

- The current Hickory Ridge By-Laws and Articles of Incorporation do not address financial disclosure. If these items are not modified, this statement is not moot. Additionally, what happens "...under penalty of perjury....."?

- Conflict Weekly Pledge by Board Members Rhona ○ Add a section for residential address as we all know people move from the Village

This is over-reach....if someone misses the weekly pledge, what happens?

We want to **encourage** not discourage people from running for HRVB

- In Kind Contribution Instruction Page Draft Rhona

- This is lifted from Boulder Colorado Election Guidelines ▪ Is cryptocurrency included as US currency? It is by banks.

- Do we think this paragraph might be a little broad?

- Please provide a definition of the phrase "...the services are solely for the purpose of ensuring compliance with the provisions of this title". Paragraph 3 How will anyone know if the in-kind contribution limit has been violated?
 - In Kind Contribution Volunteer Draft Rhona
 - In Kind Donor Contribution Draft Rhona
 - Who decides the fair market monetary value of the volunteer services?
 - Who decides the fair market monetary value of donated good or service?
-

Dear Special Committee Members:

I want to preface my remarks by thanking you all for your time and energy on this project. You have been given a lot to do in a very short time frame.

I admire this group's focus on ensuring that elections are safe and free of outside influence. However, I feel like this committee is, in most cases, creating solutions where there are no problems. That in itself is not necessarily a bad thing, however, I have concerns about two issues and their possible unintended impact on community involvement in village elections.

As someone who has worked for three village associations over the course of the last 21 years, I can confirm that lack of viable board candidates and low voter turnout are real and sometimes crippling issues for village associations. There have been many years when Hickory Ridge did not receive enough votes to reach an election quorum so a second election had to be called. I am also aware of past issues in other villages where board seats remain unfilled for long periods of time due to a lack of interested candidates. When I was Village Manager, it was always a challenge to get enough candidates for a full board slate, let alone a contested race.

Over the past 21 years, it has been a personal mission of mine to educate people in Columbia about the importance of being involved in local village matters and to work toward making it easier for a diverse cross-section of people to be involved in local village elections, either as candidates or voters.

The ongoing lack of community involvement in village business is disheartening, to say the least.

It was during my time as Hickory Ridge's Village Manager that the villages first started taking a serious look at online voting, and were able to find a company that could execute this in a way that would meet the requirements of village legal documents. It was a 5+ year process to bring online voting to Hickory Ridge, and the higher vote count last year demonstrates its effectiveness. I am certain that if

online voting had not been available in 2020, we would have had significantly less participation. There were no issues with the online votes this year and there is no record of any attempts to tamper with our online voting system. We have heard lots of speculation about the possibilities of election interference, but, in reality, an online vote in the village election cannot be cast without a unique ID number that matches the property address. This makes it harder for a hacker to just "get in" and wreak havoc. No email communication with residents happens - there is no list of email addresses for everyone in the village. Every household receives a postcard with a unique code to type into an online form. The likelihood of someone going to all the trouble to circumvent this system in order to get 200 votes in a village election is highly unlikely. In the interest of continuing to increase involvement in village matters, I encourage the committee to recommend the continuance of online voting until there is a specific threat to be addressed. The benefits far outweigh the risks.

The other concern I have is around the proposed campaign finance documentation. I appreciate Mrs. Schwartz's hard work in creating multiple documents to ensure that all village board candidates disclose every outside contribution they receive. However, adding rules around tracking campaign finance would add at least (from my count) 4 forms that each candidate would have to complete in order to run for the Village Board.

Hickory Ridge has always prided itself on making it easy for candidates to run for the board - no "nomination packets" or neighbor signatures are required, just a 150-word statement. The changes proposed by Ms. Schwartz would make running for the board a much bigger hassle for any candidate. If we want more residents to be involved in the community, we need to make it easier to participate - not more difficult. Additionally, the information is all self-reported. If someone really did have bad intentions, they could just omit the information from the form. Would there be someone in charge of verifying the information provided on these campaign forms? How would this be enforced?

Again, there is no concrete evidence of there being a problem in this area. If the goal is to ensure that people of all financial means are able to run for village board, the recommended campaign finance forms would only hurt those candidates by making it more onerous for them to receive financial or volunteer help from their neighbors and friends. Wealthier candidates could just self-fund their campaigns, so only those who have to get outside support have to take the extra steps. The intent is good, but there will be unintended consequences - fewer candidates willing to "jump through hoops"

in order to run, more time required by busy people with full-time jobs to complete paperwork in order to volunteer, and more work for everyone involved. As someone who recruits and manages over 500 volunteers each year, I can tell you that making the application and/or onboarding process as easy as possible makes a big difference in someone's willingness to give their free time to their community. I hope you will consider my comments and recommend changes to the election process that will increase voter and candidate engagement in Hickory Ridge, not turn people away. The more people we have involved in Hickory Ridge, the better.

I would like to comment on the preliminary recommendations of the Special Committee reviewing Hickory Ridge election policies and procedures.

I could not quite understand from the materials if the wording implies that just being a Columbia Association would be allowed. I STRONGLY FEEL ***ONLY Hickory Ridge residents*** who are also part of Columbia Association should be allowed to be elected to the Hickory Ridge board.

I agree that candidates who move out of **Hickory Ridge Village** Columbia Association property should no longer be eligible to run for Hickory Ridge positions, and that those who move away from **Hickory Ridge Village** Columbia Association property while in office should step down from office.

Please continue to allow online voting. Since many of us are still (or again) uncomfortable in public places due to covid-19 conditions, and since many residents appear to find online voting more convenient and are therefore more likely to actually vote in this manner than through other means, I feel the benefits outweigh the risks. Agree also with the lockbox outside option that has been used as well.

I agree with the conflict-of-interest and campaign disclosure provisions suggested.

I would like to comment on the preliminary recommendations of the Special Committee reviewing Hickory Ridge election policies and procedures.

Please continue allowing online voting. Since many of us are still (or again) uncomfortable in public places due to covid-19 conditions, and since many residents appear to find online voting more convenient and are therefore more likely to actually vote in this manner than through other means, I feel the benefits outweigh the risks.

I agree that candidates who move away should no longer be eligible to run for Hickory Ridge positions, and that those who move away while in office should step down from office.

I agree with the conflict-of-interest and campaign disclosure provisions suggested.

I am respectfully offering the following comments on the recently prepared report on election procedures:

Question #10

Contributions from third parties should result in consideration of recusal of the recipient from participation in matters involving such donor before the Village Board if elected.

Committee Vote: FOR

This language is ambiguous. If you want candidates to recuse because they received contributions from a third party, it should be so stated. Leaving it up to the candidate "for consideration" is just fraught with problems. The rules should either indicate it is a problem, or not a problem. "Consideration of recusal" adds nothing to the effort for fair decision making.

Question #17

The Conflict and Ethics Policy should be revised to include disclosure of campaign expenditures, disclosure of campaign donors (money and/or in-kind) and amounts; certification of good faith attempt to identify sources and amounts of any third-party contributions (monetary and/or in-kind) from unknown sources; pledge of recusal from matters before the Village Board involving any corporate or substantial donor, and any other matters pertaining to campaign finance; and establish enforcement mechanisms of removal of office under Conflict and Ethics Policy for failure to comply with expenditure/disclosure/certification/recusal provisions of Conflict and Ethics Policy.

Committee Vote: FOR

Reports of expenditures and contributions will reduce participation in the community government. If it is required, it needs to be simple and easily achieved. Burdensome disclosures will discourage qualified and dedicated candidate from participation in Association elections and activities. Also, how will it be enforced? There is no obvious mechanism for enforcement.

Question #19

The committee will recommend to the Village Board how the word "recusal" will be defined as part of their recommendations, consistent with the Conflicts of Interest Policy.

Committee Vote: FOR (APPROVED THE DEFINITION OF "RECUHAL" - Disqualification or withdrawal [of oneself or someone else] from any position of judging or decision making to avoid a semblance of personal interest or bias.)

The words "decision making to avoid a semblance of personal interest or bias" should be changed to decision making to avoid the appearance of personal enrichment or bias.

The current language has no precedence and no common definition.

January 19, 2022

Ms. Parrish:

I am writing to provide comments on the Report of the Special Committee on Elections and associated documents. These are outlined by Question No. below.

I have one comment on the Special Committee's report in general: It contains only questions and votes. Nowhere is there an explanation or basis for the majority or minority views, leaving no context within which to judge the committee's recommendation. At the January 10, 2022 Village Board, I heard the Committee Chair reference all of the experts they had consulted. After viewing 90% of the Special Committee meetings, I saw no expert consulted unless it was (1) one of the Special Committee members or (2) Ms. Amari, who will be voting on this issue. The Committee's Report also fails to take into account the very good provisions of existing Board policies. Why were these not examined and compared to the proposed changes? As an example, the Board's existing conflict of interest policy in many ways is broader than that proposed by the Committee because it covers not only financial but personal interests that may create a conflict.

Question Nos. 1 and 2: I strongly support the Committee's final recommendation against allowing non-residents to run for Board office. This requirement appears unnecessary and certainly against the basic proposition that our Village should be governed by those with an interest in the Village. It also raises the possibility that an outside interest could end up running for office, to the detriment of those who live here, particularly as turn-out in Village elections has been quite low.

I disagree with the Special Committee's recommendation to permit a non-resident to be on the Board. I further believe that Ms. Dean has a conflict of interest on this matter and should recuse herself from voting. The Village Board's current Conflict of Interest Policy states that a Board member shall "not participate in or vote on any matter in which the Board or Committee member has a personal interest tending to impair the member's independence of judgment..."

Ms. Dean clearly has a personal interest, as the Special Committee had continuing discussions specifically on whether to permit Ms. Dean to run. One Committee member even offered to rent a room in his house to her if this measure does not pass.

Although Ms. Dean now disavows any interest in running again, this does not relieve her of the conflict of interest, as she may regain her interest in subsequent elections. Those with financial conflicts of interest may resolve them simply eliminating the asset; Ms. Dean cannot do this because she will continue to live outside the Village, unless she rents a room from the Special Committee member.

Nor does the legal opinion allowing her to fulfill her term support Ms. Dean's participation in voting or discussing Question No. 1. The legal opinion only permitted her to continue to serve out her term after she moved out of Hickory Ridge. That does not mean that she can serve in violation of the existing Conflict of Interest Policy.

Question 3: Should online voting be discontinued?

If the Board adopts the Special Committee's recommendation to discontinue online voting, I strongly suggest that it begin to consider other means by which to improve voter turnout. In the last Village Election, which had more participation than others, only a small percentage of residents vote. I ask that the Board look at ways to increase turn out and really "get the news out" about candidates and the important tasks they perform for the Village. I have some suggestions for this, but that issue isn't presented here.

Questions 6-10, 17 and 20.

All of these questions relate to funding campaigns.

I am concerned that the forms required of Board candidates are so confusing and voluminous that they will chill individuals from running for the Board. They may confuse lawyers. A requirement to disclose campaign contribution is much more direct, easily enforced, and straightforward than the "pledges" proposed by the Committee.

Pledge v. Disclosure of Contributions.

The Committee proposes to use several forms designed to eliminate contributions from “real estate development companies” to Village Board candidate. For some reason (without explanation), the Committee indicates based its forms on the Village of Chevy Chase. I have no idea why the Committee chose Chevy Chase nor has the Committee explained why. Contrary to its name, the Village of Chevy Chase is an incorporated municipality and therefore is entirely different than a 501(c)(4) homeowners association, such as the Hickory Ridge Village Association or the Columbia Association.

Nevertheless, some of the Special Committee’s forms do not appear on the Village of Chevy Chase’s website. These include the draft “Campaign Money Pledge for Candidates” and the forms requiring disclosure of “in kind” donations. The Campaign Money Pledge appears to be made up from whole cloth. This document is of most concern to me for several reasons.

First, I saw no factual evidence before the Special Committee that developers did play a financial role in the Village election. There was speculation about older cases and money donated by The James Rouse Project, which apparently doesn’t disclose the source of donations. I disagree with that approach and believe that transparency builds trust, but there is no evidence that financial contributions from developers actually occurred or influenced the election. This is particularly true because the election resulted a “slate” that were opposed to redevelopment of the Village Center. Even if one wanted to exclude development money (I take no position on that), one could ask “why not have this pledge”? There are many reasons.

The language is imprecise, vague, and doesn’t fairly place the candidate on notice of what the pledge prohibits. I am very concerned that it will prevent candidates from running for office because they don’t know whether they will or have violated the pledge. Hopefully some of those running for office will be non-lawyers—the language in the pledge may not be comprehensible to some.

Of particular confusion is the definition of “Prohibited Entities” and “project”:

Real estate development companies, partnerships, corporations, LLC. [sic] proprietors (or their entities) with projects in, or have had previous projects in, or having pending applications or currently planned future projects in, Howard County Maryland (individually or collectively “Prohibited Entities). Planned future projects may be defined as any correspondence between two persons, either written or verbal, of a specific project to be built within Howard County at any future time.

I looked for a precise definition of the term “real estate developer” without a consistent result.

Would plans to acquire an existing building be a real estate development? Would a sale of existing real estate assets be a “project”? Does a commercial or residential brokerage constitute a real estate development company? What about a multi-faceted company that has a real estate division or a subsidiary specializing in real estate? Are all employees banned in the conglomerate prohibited from running for the Village Board?

The “pledge” is also far too broad in its reach, particularly anywhere problem it seeks to resolve a problem hasn’t been documented. It extends to employees of marketing companies that have real estate developers as clients, employees of law firms that have real estate developers as clients, and employees of firms that represent the “real estate lobby”. Does it make sense to foreclose candidates that have no decision-making power in the “prohibited entity”? Are we going to penalize an administrative assistant in any company that has a “real estate development company” as a client. What does the term “real estate lobby” mean—is it a marketing lobby, a legislative lobby, or some other type of lobby?

Because the pledge is so far-reaching and vague, candidates may inadvertently violate the pledge. Nor is the “pledge” fairly enforced. An inadvertent violation of the pledge would require a candidate to return money presumably already spent on campaigning. The only other enforcement mechanism is to remove the Board member from office, again after spending the campaign money. Further, removal is done by a majority of the Board. Ms. Dean recently had the opportunity to inform me that I should not be surprised that three members of the Board voted for identical proposals against all odds because they were elected as a slate. This may or may not have been

true (I doubt it) but it raises the possibility that a majority working in a coordinated fashion could arbitrarily find a violation of the pledge to remove dissent from the Board.

Disclosure of Contributions: A far better approach to ensuring transparency in election donations is to require disclosure. While this need not be accomplished with the formal procedures in Del.

Terrasa's legislation, it would remove the vagueness, unintended reach, and unfair enforcement of the "Campaign Pledge". Rather, it gets straight to the point of who donated the money.

The Special Committee's draft "Financial Disclosure Statement" captures financial conflicts after being elected as a Board member. It does not capture monetary campaign contributions. Two more proposed forms require disclosure of in-kind contributions, but not monetary contributions. A disclosure of all campaign contributions would more accurately show the candidate's source of funds and permit residents to weigh candidates with full disclosure.

Finally, there are some procedural issues with the in-kind donation forms: who values the donations, particularly with regard to volunteer services and loans of equipment. The proposed Conflict of Interest Policy permits the Board to hire outside experts to "periodically review" compliance. There are other, better, uses for the Village's funds. I suggest more robust Village-sponsored outreach about the election and the different candidates.

Nothing in the Committee Report states how or why the particular cap on donations was chosen. Before adopting these sweeping documents, I urge the Board to engage in more fact-finding and careful consideration of these proposals. I will not go into further detail about the many forms for candidates proposed by the Committee. I don't know who formulated the "Campaign Money Pledge" or the in-kind donation forms. Whoever it was, it does not appear to be the Village of Chevy Chase.

There are many issues here that are quite complex. The Village has more time than this election cycle to better define what it wants to accomplish and how it should be accomplished. Kimco cannot return for another zoning case until two years after a decision in the recent case has been issued. Let's use that time to develop a fact-based, considered approach that is enforceable, encourages participation in Village Elections, and is understandable to the broader, diverse

community. This will take more than a two-three month review of the elections process.

Thanks for the opportunity to submit this testimony.

ADDITIONAL COMMENTS SUBMITTED BY SAME RESIDENT

Please forgive these piecemeal comments.

However, as I was thinking about the documents today, I realized there is no enforcement mechanism for the In-Kind Donation Pledges. The question is: Who will value the donation? I initially thought that the expert authorized by the Conflict of Interest Policy would value the donation, but then I realized that the authority provided there applies only to Village Board members conflict with the Association. What is the penalty for violating the pledge?

This is only one example of how confusing the documents are and how they are not coordinated into an understandable package. I think these documents are against public policy (applicable to HOAs) and will chill the Village's ability to get diverse candidates who represent all constituencies.

Upon further consideration, I believe that the documents recommended by the Committee ignore the real problem facing Village elections—how to get more people to vote and run so we do have a board that represents all in the Village.

The Committee Report gives no solid evidence that the elections were influenced by developer funding. The only thing I heard during the Committee meetings was some speculation regarding The Rouse Project but no hard facts. In the end, it must not have had a tremendous effect, as those opposing redevelopment won the election.

The source of candidate funding can be addressed simply by disclosure of all donations. Use of the documents recommended by the Committee will not block developer funding if that occurs, as they are entirely unenforceable.

I urge you to spend the Village's time and money focusing on a documented issue—the low voter

turnout. Having more residents engaged in the process combined with disclosure will check the influence

of development money without discouraging diverse and representative candidates for the Board.

At some point, if there is a need to exclude “developer” money (some of whom are members of Hickory Ridge Village), the Board can revisit these documents into a more coordinated and coherent format. In the meantime, please don’t burden participation in the elections.

-
- On the Candidate Disclosure Statement, I think there needs to be clarification on this item:

d. Prohibited Entity: Any person or entity (including, but not limited to corporations, partnerships, limited liability companies, and governmental entities, bodies and instrumentalities) with which the Association has had a transaction, contract, or arrangement within the Reporting Period, or any of the foregoing entities that has been involved in a matter (except for Exterior Alteration Applications) before the Association’s Board of Directors within the Reporting Period.

As I interpret this language, it could be argued that Columbia Association is a Prohibited Entity. There needs to be an exception here.

- On the Candidate Disclosure Statement, I think there needs to be clarification on this item:
 - c. Financial Interest: An interest held by a person who, directly or indirectly, through business, investment, Family relationship, or otherwise has (i) an ownership or investment interest in a Prohibited Entity, or a (ii) compensation arrangement with a Prohibited Entity*

What constitutes a compensation agreement? For example, would I have a “financial interest” in Ed Nicholson’s business because I have a “compensation agreement” for him to provide janitorial services for GOTR? I would think not, but candidates will need clarity on this and other aspects of this statement.

- **How are candidates supposed to know which entities are “Prohibited”** if they have not participated in every board meeting during the past year and are not knowledgeable about the daily business of the village? Perhaps the board should provide a list?

On the Conflict of Interest Policy:

1. The wording should be changed to "Conflict of Interest." **There should not be any pluralization of these words.** I'm not sure what document this language was sourced from, but nonprofit best practices are to call it "Conflict of Interest."
2. **The definition of Financial Interest here is different than the definition in the Candidate Disclosure Statement. There needs to be consistency between documents.**
3. **"Sanctions" needs to be defined under definitions** since it is referred to several times before actually being defined.
4. **"Personal Interest" and "Business Interest" need to be defined.**
5. **The following section is confusing. No Board Member should be receiving compensation from the Association or CA without it first being approved by the board as acceptable (not a conflict of interest.)** *3. Participation in Compensation Matters. A member of the Board or its committees who receives Compensation, directly or indirectly from the Association (and if Columbia Association Representative, the Association or the Columbia Association) for services is precluded from participating or voting on any matters pertaining to that member's Compensation.*
6. **Under 2. Reporting of Violations:**
 1. *Additionally, any member of the Board or its committees may request an **advisory opinion** regarding interpretation of the provisions of this Policy and its application. **From whom would someone request an advisory opinion? What does that mean?***
 2. **Definition of Sanctions:** *Sanctions. Following any vote by the Board that there is a Violation, the Board may impose sanctions it deems reasonably advisable, including, without limitation, admonishment, reprimand, **required recusal in connection with such Violation**, and, to the extent permitted by the Association's governing documents and law, removal from office by vote of Association members or as otherwise permitted. **Mandatory recusal of someone from a vote is not typical nonprofit practice. This effectively allows the majority to silence someone and has the potential to be abused. This should not be an allowable sanction. If there has been a gross Violation, removal of the board member is the appropriate response. We need to determine whether the required recusal opens the Association up to a potential lawsuit.***

Acknowledgment of Receipt Document:

Wouldn't the Election Procedures and Guideline be INCLUDED in the Candidate's Handbook, not attached?

Campaign Pledge Document:

- **I disagree with the \$50 limit per donor, especially if it applied to in-kind donations. That's not a reasonable amount due to inflation and the current cost of goods and services. \$100 or \$150 is more reasonable.**

Re: 9. *Violation of Pledge: Action by Board.* If, even after exercising reasonable and good faith due diligence, I knowingly violate this Pledge, in addition to returning any contributions accepted in violation, I agree that the Hickory Ridge Village Association, Inc. Board of Directors may take such action as they deem appropriate, including, but not limited to **reprimanding, sanctioning, requiring my recusal, and calling for a vote of the Association members to remove me from office.**

- **This is not consistent with the other documents. It should say something like "sanctions as defined in the Conflict of Interest Policy." Again, requiring recusal is not advised (see my explanation above).**

Contribution and Expense Report:

I AM aware of an Independent Expenditure(s) related to my campaign. [Attach a separate page (i) describing each Independent Expenditure you are aware of, (ii) the identity of the source who made the Independent Expenditure (or if unable to identify the source, a description of your good faith efforts to identify the source), and (iii) the fair market estimate of such Independent Expenditure.]

I do not believe that it is fair to ask the candidate to estimate the fair market value of an Independent Expenditure. How would they be able to estimate this? It should be adequate to describe the expenditure and the source to the best of their ability. For example, what is the fair market value of an endorsement by a local publication?

I understand the Hickory Ridge Village Board voted on January 24 to limit election campaign expenditures and contributions to no more than \$500 for each candidate. I believe that amount is too high and will discourage residents from running. I believe the amount should be no more than \$100-\$250, so that all residents feel they can afford to run as a candidate and serve our community.

In my capacity as a resident of Hickory Ridge, I firmly believe that we need to promote a resistance to outside monied-interests in Hickory Ridge Village elections. Therefore, I am asking that the Village Board revisit the candidate expenditure limit to no more than \$250 rather than the \$500 limit they voted on at the January 24, 2022 Village Board meeting.
