

Village of Green Trails Indenture Proposal  
Owner Suggestions and Questions

1. Do the individual subdivision indentures need to be amended if the Village indenture is amended and the \$50 assessment changed?

The individual subdivision indentures do not have to be amended. The board received a detailed legal opinion from Jeff Schmitt and James Heffner at Danna McKitrick (posted on the website) explaining that the amendment of the Village indenture alone is sufficient to increase the common land assessment. The subdivision indentures are subordinate to the Village indenture.

2. Can the terms of the trustees be shorter to avoid trustee spending on pet projects, to require annual elections, to reduce the risk of ever having only 2 trustees?

To address these concerns and regardless of the added cost to hold annual elections, the board voted to reduce the term length for each trustee from the current 4 years to 3 years. Two trustees will be elected annually. Due to this change appointed trustees will have at most 364 days to serve as a group before the next election. The board noted that it takes at least one year to get oriented to the duties involved for this position. Terms of less than three years could possibly put future boards in the position of making decisions without sufficient aggregate experience and could result in too much turnover and potentially too few candidates.

3. Why is it necessary to incorporate?

Several of the attorneys the board interviewed said that HOAs are becoming nonprofit corporations since there are laws governing corporations. Indentures are basically contracts and Judges rule on them based on prior court cases or their own opinions. More importantly there is owner protection from any litigation arising from contracts entered into by the corporation. Any nonprofit corporation formed would be subject to the Village indenture and bylaws. In section 9 the sentence "*Owners shall be entitled to review of the corporation's financial statements, including budgeted and actual income and expenses*" was added at the end of the paragraph. Use of a nonprofit corporation also provides continuity from a legal and contractual perspective even though trustees change every year.

4. Corporations can borrow money, won't this saddle future owners with big expenses?

Corporations are allowed to borrow money but this is restricted in our bylaws which state that the Board may not enter into contracts for more than 3 years without voter approval. Also to make payments on a large loan, the assessment would have to be raised beyond the CPI amount and that requires voter approval. As a practical matter, the nonprofit corporation would not own the Village land and would not be able to give it to a lender as collateral, thus affecting the practical likelihood that the association would get a loan.

5. Explain that as Tenants in Common all owners of property in the Village are jointly and severally liable.

Under joint and several liability, an uninsured portion of a judgement can be collected from all owners that are tenants-in-common or from any single owner or group of owners. The winning plaintiff will collect from as few owners as possible rather than take the time and incur the costs to go after all the tenants-in-common. The board has increased the liability coverage on the common ground because of this.

6. Does allowing non-owners on our common ground increase the liability?

There is rental property within the Village so non-owners living here are allowed to enjoy the grounds. The grounds are open so anyone may cut through or across and our liability insurance takes this into consideration and covers all situations. "Residents outside the Village" using the grounds will be limited to "*relatives, friends, and acquaintances of residents and owners within the Village*" and this phrase will be added to the proposal in section 2.4 for clarification.

7. Owners commented that they do not want construction of improvements that affect the natural look of the grounds.

To this point in section 5.1 (c) the board is adding the qualifier "construction of improvements *related to maintenance of the common grounds.*"

The board added 5.1 (n)

*The Park Trustees shall not have the authority to make expenditures or otherwise construct or allow the construction of recreational type structures, such as playgrounds and gazebos, on the common lands without approval by vote of more than 50% of the residential lot owners.*

8. Why can't the owners vote on every assessment increase? Why use the Consumer Price Index (CPI) to compute small increases?

It is extremely difficult to get enough votes cast to pass an increase. In the past, the Village has had as many as 3 mailings asking for votes with no success. This process is costly with 637 owners. Also attorney's fees are incurred for writing and filing the amendment for the new amount if amendments to the indenture are required. Small increases taken periodically if needed by the board seem reasonable. Individual subdivision trustees supported this idea and mentioned how difficult it is to get the necessary signatures for amending. The CPI was suggested since it is readily available for all the owners at the US Department of Labor website and it is commonly used to talk about inflation and cost of living increases. Assessment increases are not automatic. The board will only raise the rate if the budget necessitates it.

9. How are assessments collected and recorded?

Currently the Chair, Mary Monachella, gets the mail from the Village post office box and opens it. She keeps records of the assessment checks by address, owner name and amount. She then gives the checks to the Treasurer, Tom Hornung, for

depositing and entry on the books. Every month (or two) Mary reviews the bank and other financial statements (and signs) to verify that Tom has entered all the checks. Tom is a CPA and bonded. Pending resolution of the assessment issue, this service will be provided by a firm such as City and Village.

10. Why should owners or the nonprofit corporation indemnify and hold the Park trustees harmless for their acts in performance of their duties?

Indemnify means to hold harmless. Our current indenture states “The Trustees shall not be personally responsible for any act in which they are empowered to exercise their judgment and discretion...” This is really the same. The Village carries Directors and Officers insurance coverage in order to cover the cost of indemnifying the trustees.

11. Why use proxies for voting as they give the holder too much freedom to make decisions?

In the proposal, a written limited proxy is allowed for voting on special assessments. A limited proxy is similar to an absentee ballot in that such a proxy identifies a specific choice or in this case a specific amount. The holder of the proxy cannot change from the stated terms on the proxy. The voting method is addressed in the bylaws. Article I, Section 8 in the bylaws states that “Proxy votes are not permitted unless specifically provided for herein or in the indenture. Under no circumstances shall general proxies be permitted.”

12. In section 8 (h) what is meant by assessment of fines against offending persons?

The board clarified by stating “ that a schedule of fines associated with prohibited activities will be maintained as a rule and regulation in the Village as stated in the bylaws in Article II, section 6 (n).

Increasing fines of \$50, \$100, \$200 after ample warnings for:

- a. dumping yard debris, tree limbs, garden waste, trash, non-native materials on the grounds
- b. driving motorized vehicles on the grounds
- c. swimming in the lake
- d. skating on the frozen lake
- e. vandalism
- f. not informing guests of these restrictions

Note: All costs to the Village resulting from a violation will be charged to the offender.

13. Why are nonresidential owners allowed to be trustees?

Nonresidential owners are allowed to become trustees under our current indenture. The board would not attempt to remove that right as they pay assessments. These owners are subject to the provisions of the indenture and cannot unilaterally conduct commercial or religious activities on the common grounds for their own benefit.

14. When would the board need to require licenses or fees?

Licenses may be required at an event voted on by the owners. We may have an emergency of some kind and want licensed food trucks and others to provide help.

Our lake could be overstocked with fish and we need to require fishing licenses to monitor the catching! A “just in case” provision.

15. In section 5 (e), Public Agency is undefined and could be a problem.

For purposes of the indenture, Public Agency is a government or state agency having the right to acquire real property for public purposes with Federal assistance, through eminent domain or by negotiation. MODOT had the right to take some of our land for the 141 interchange but had to give the Village owners a fair price for that land. MODOT did not talk with each homeowner individually as that would have been impossible. They talked with the trustees to get their backing and input. Section 5(e) officially allows the trustees to perform this service in behalf of the owners.

16. Should filling vacant trustee positions within 60 days be a requirement rather than an objective?

The Board cannot force owners to volunteer and only owners can be trustees.

17. Explain the line “Any interest in real property which may vest at any time in the future as a result of this Indenture shall vest, if at all, within twenty-one years of the death of the last to survive of the now living descendants of Warren Buffett, Chairman of Berkshire Hathaway, or such longer period as allowed by law.”

This is a way to give an ending to the Indenture without actually specifying a date. *Forever* is not an option legally, although this description may in fact be close to it! This language is a function of the law and not specific to our Village.

18. How will votes be taken on this indenture proposal?

Pending legal approval, ballots will be mailed with the final indenture proposal. A meeting will be called where ballots can be cast or ballots may be mailed. The process will be that all vote counting will be performed by an independent 3rd party. Any mailed ballots will be sent to the 3rd party. Any hand delivered ballots will be placed by the lot owner into a locked box and the box will be delivered to the 3rd party. The 3rd party will count the ballots and track lot owners who have voted. The trustees will not know how any lot owner voted but will know which lot owners have not voted to allow for follow up contact.

19. Why can't I get all my assessment credits if I am selling my property?

The board originally thought that the process for applying these credits would be too complicated for adjustments at closing and forfeiture of credits was the only option. There is limited cash so lump sum payments are not possible. After additional discussion, the board decided to assign any credits due to the property and so notify the closing agents.

20. Why is the new annual assessment amount so high?

There were differing opinions by the owners during the years 2015, 2016 and 2017 as to what assessment amount should be paid. The current indenture says \$50 and it has never been amended (from 1965). All attempts to amend came after

the summer of 2014. Until then everyone paid the amount billed. So in 2015 and thereafter some owners paid the \$200 billed knowing the grounds could not be maintained at \$50 per owner and others began paying just the \$50 per the indenture. There are reasonable arguments for both but the board wanted to move forward by not choosing a right or a wrong scenario. **Instead a plan was designed to insure that all owners paid the same total amount of \$1300 for the 8 year period 2015 through 2022, averaging \$162.50 per year.**

In order to achieve this, the assessment amount in 2018 will be \$230 per year with credits given to those who paid more than \$50 per year for the years 2015, 2016 and 2017. Those who only paid the \$50 per year will pay the full \$230. The maximum credit is  $(\$200 + \$200 + \$160 - \$150) = \$410$ , which will be allocated equally over the 5 years from 2018 through 2022. That will lower the amount for those receiving the maximum credit each year by \$82 leaving an assessment of \$148 per year. So at the end of the 8 years we all will have paid \$1300. The amount was also based on the 5 year budget, included in the meeting slides on the Village website. A basic concept has always been for everyone to pay the same amount and the fairest way to move forward for all parties is the method being suggested.

21. What is reasonable amount to be held in reserves?

Our attorney suggested 10% of the annual revenue should go into the reserve fund. The goal is to reach 100% of the operating costs in reserve at year's end. The Village does not bill for the budget year until April. So reserve funds to cover expenses from January through June as well as any unexpected expenses are necessary.

22. Several minor adjustments to the indenture have been suggested and many were already implemented.

These include:

- a. inserting the “lake” in the description—now in the 5<sup>th</sup> WHEREAS
- b. excluding *traffic islands* in Section 1 (d)
- c. Replacing “for commercial purposes” with “*and pertaining to the use of the Common Lands*” in Section 2.3 (c)
- d. Changing 10 days’ notice to *21 days*’ notice in Section 4.3
- e. Rewording phrases using “the owners” when it is intended to be all 637, Section 6(d) and Section 10.2
- f. Rewording the definition of “Lot” so it does not appear twice
- g. Fixing various typos

We hope all other questions were satisfactorily answered at the two meetings at held at Chesterfield City Hall on May 3 and May 16.

Sincerely,

The Village of Green Trails Park Board

