Greetings, residents of Hickory Hollow, Smyrna Delaware 19977

Following is a response from Attorney EJ, regarding the Re-Amendment to the Declaration of the four-foot fence to six feet.

The amendment I drafted and sent to the Board was an amendment to the Amended and Restated Declaration. Pursuant to paragraph 11.10(a) of that document, the Declaration can be amended:

1. By an instrument in writing signed by President or VP and Secretary
2. After the change was approved by 2/3 of the members who:
3. are entitled to vote at a meeting; or
4. have given their written consent in lieu of a meeting

***Can a petition be used to legally change the deed restrictions****?*

My answer to this question is yes. The language of 11.10(a) allows for amendment of the Declaration if 2/3 of the members give their written consent then the Board records an appropriate document at the Recorder of Deeds.

I just want to be clear that while this is a way the HOA may amend the Declaration, I do not think that the Petition I have seen conforms to this standard. My issue with that Petition is that there was never a proposed written amendment which anyone was voting on or agreeing to approve. The document I drafted and sent to the Board is the only proposed amendment that I have seen in regard to fence height. It was drafted after all of the signatures were obtained. Thus, none of those signatures actually approved the proposed language. Owners may be in favor of an increase in the fence height but may take issue with the way the actual amendment reads.

Using that petition to change the Declaration is essentially having an election where each voter only gets to vote for “Republican” or “Democrat.” Then allowing whichever party prevails to then name the candidate who will serve in the office. People should be allowed to vote on the actual wording that will get approved not just the idea.

With that in mind, if the Board proceeds based upon the petition, I am still willing to file the written document at the Recorder of Deeds.

Respectfully,

Hickory Hollow, HOA Board Members