

HVPOA Board Policy: Fiber Optic Backbone Access Management

Approved 2/4/2016 and Amended 2/4/2016

The HVPOA Board agreed to implement a plan to treat the fiber optic backbone in Horizons Village as a Board-controlled capital project. This plan is in accordance with Virginia Law, Horizons Village Bylaws and similar to what other property owner associations in Rockfish Valley are using as a means to finance their neighborhood fiber backbone.

Policy:

The HVPOA Board agrees to manage access to the fiber optic backbone within Horizons Village. As such, the HVPOA Board will require anyone who wants to access this backbone to pay the same fee-to-connect as all original connected members. The fee-to-connect will be payable to the HVPOA and then distributed equally among all paid members as a credit to their annual assessment dues.

Background:

The fiber optics network backbone installed within Horizons Village is owned by the Nelson County Broadband Authority. Their intent is to establish an open network over which any provider may provide service. There are 21 Horizons Village lot owners contributing to the payment of this backbone with 17 of them contracting for service as well.

Based on Virginia code 55-514, a POA can manage access to the fiber optic backbone. Since the backbone will be on Horizons Village common land (our roads) and its installation is a capital project, the HVPOA has the right to levy a special assessment to pay for it. However, since some lot owners do not want to invest in the backbone at this time, a special assessment for all lot owners would be harsh and would need to be taken up by the community as a whole.

The HVPOA Board will treat the cost of the fiber optic backbone running through our "common area" (roads) as a floating-due-date assessment, that is, an assessment that can be paid at any time by a lot owner or not at all. It would only need to be paid if a lot owner wants to connect to the fiber optic backbone, thus it is a fee-to-connect assessment. We are legally able to put forth an assessment for this project because it is a capital expenditure for the good of the community. It is within the authority established by Virginia Code 55-514. It also does not violate HVPOA Bylaws Article III, Section 2 item K because it will not be an assessment against all lot owners. It is an assessment that will need to be paid only if the lot owner wants to connect to the HVPOA backbone. This is why it can be referred to as a fee-to-connect assessment or a floating-due-date special assessment. There is no requirement for a lot owner to pay it, unless they want access to the HVPOA fiber backbone.

This is not intended to be a money-making venture for the HVPOA. To do so would cause tax implications. It would have to be monitored by the Treasurer. When the fee-to-connect is paid by a lot owner, they will be marked as having paid. For the initial backbone build, 21 lot owners

have committed to pay for the cost of the fiber backbone. When a new lot owner wishes to connect to the backbone they will pay the same amount as each of the already-paid lot owners. **To avoid tax implications**, an equal share of that fee will be distributed as a dues credit among all those who have already paid. For example:

1. 21 current lot owners each pay the \$1516.68 to finance the build of the fiber backbone in Horizons Village.
2. The next lot owner wishing to connect pays \$1516.68 as a “fee-to-connect,” which results in 22 paid-up lot owners. Each of the original 21 lot owners receives a \$72.22 dues credit ($\$1516.68/21$) in the next billing cycle.
3. The next new lot owner wishing to connect pays the \$1516.68 fee, resulting in 23 paid-up lot owners. Then the 22 existing paid-up owners receive a \$68.94 dues credit ($\$1516.68/22$) in the next billing cycle.

In this way, HVPOA is not bringing in any funds that will need to be taxed, and each lot owner who pays the special assessment is returned some of their money.

The HVPOA Treasurer will be responsible for tracking the paid-up lot owners and managing the dues credits.

Here is the VA law dealing with special assessments.

§ 55-514. Authority to levy special assessments.

A. In addition to all other assessments which are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55-516 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member.

Section A refers to the ability of a board to make special assessments for capital expenditures that are in the best interest of the association. Therefore, we have the right to invoke a special assessment for laying the backbone. Although the concept of a "floating due date" for a special assessment is not specifically addressed in VA code, the code does not specify that we must have a specified date for payment.

Section B should be clearly forbidden in relation to this special assessment. The only time this would come into effect is if a lot owner tried to connect without paying the fee.

Section C gives the association the right to deny a lot owner access to "common areas" and in this case the fiber optics can be considered common area. Clearly the power of enforcement is with the Board because the HOA owns the common land that the fiber backbone runs through.

Here is the rule from the HVPOA Bylaws Article III, Section 2, Item K:

No special assessment shall be made against the entire membership unless passed by an affirmative vote of at least three fourths (3/4) of the total members of the Board of Directors after the special assessment has been considered at two (2) Board meetings, providing the special assessment was in the call for each meeting; and, approved by the membership by a majority of votes cast, in person or by proxy, at a duly called Special or Annual Meeting of the Members within 60 days of the Board of Directors decision.

The HVPOA Board does not believe it violates this Bylaw because the assessment is not being made against the entire membership. No one is forced to pay unless they want to have fiber to their home and therefore want to use the common property of the HVPOA.

This will provide HVPOA with the right to charge connect fees to new lot owners and will also provide a legal structure for the HVPOA to enforce those fees.

Finally, the HVPOA will state this policy in all future disclosure packets to potential buyers.

Amendment (Approved 2/4/2016):

After discussions with Nelson County officials, the Board agreed to amend the policy (also on 2/4/2016) accordingly:

Nelson County wants to be paid back the approximate \$7500 discount they gave Horizons Village to build its neighborhood backbone. Therefore,

- 1) Any new connectors beyond the current 21 will be assessed the same connect fee (\$1516.68) as the original 21 investors;
- 2) This fee will be assessed by BRI and paid directly to Nelson County
- 3) It will take 5 additional connectors to fully pay the County's contribution back

Until the County is paid back (through 5 additional connectors), there is no need for the Board of Horizons Village to be involved. The Board-approved proposal, described below, will be revisited with the County at such time.

The HVPOA disclosure packet will include whether or not a lot has paid its share of the backbone; if the lot has not paid, the packet will state that if the new owner wishes to connect to the Horizons Village fiber optic backbone, Nelson County will assess them \$1516.68 to connect to our backbone.