

**NEW MARK COMMONS HOMES ASSOCIATION
BOARD OF DIRECTORS MEETING
THURSDAY, JUNE 5, 2014**

ATTENDEES: John Hansman, Magnus Turesson, Dorie Mangan, Dunja Baker, John Brown, Rocio Snowdy, Cathy Berman, Richard Berman, Sally Guardia, Bernadette Goovaerts and Jim Denny.

Members absent: Jeff Miller and Ellen Stein

Community Forum: Cathy Berman, Richard Berman, Sally Guardia and Bernadette Goovaerts were present for Community Forum.

Rocio Snowdy, representing the City of Rockville Neighborhood Services, had a couple of items for the Board. There will be a forum on the changing demographic in the City on June 18th. The City Parks Department is installing new playground equipment in Monument Park over the next couple of weeks.

Cathy Berman was present to discuss the community's tree pruning and removal process. She would like to see dead and dying trees left standing where it would not present a danger to residents. Jim informed her the large tree, she observed being removed behind the 500 block of NME, was rapidly dying due to a lightning strike. It was also situated adjacent to a walking path and the dead wood in the tree presented a potential hazard. She asked that the removal of a pine across the parking lot from her home be postponed. The Board and Jim agreed to have our arborist re-evaluate the health of the tree. The Tree Committee has been dormant since Gene Silverman moved from the community. Cathy offered to be the Chairperson of the Tree Committee. The Board accepted her offer.

Bernadette Goovaerts was present to discuss several items with the Board. Her neighbor's bamboo grove is spreading. It is sending up new shoots in her yard and spreading to community property on the hillside in front of her home. What can the Association do about this spreading, invasive species? Do we have a policy regarding the planting of invasive species? There is a storm water drain across the sidewalk in front of her home. She has cleared foliage from the area to allow better water flow but there are buried utility lines that need to be re-routed or buried deeper to allow for proper grading into the drain. Can the Association help? She also mentioned there is a crack in the concrete wall behind her home. When the lake is dredged, can the Association have an engineer evaluate the condition of the wall? Jim said he will ask our landscape contractor to look at the bamboo and the drainage issues. The hiring of an engineer when the lake is dredged sounded like a reasonable request.

Sally Guardia was present to express her concern over the shoaling of the lake behind her home. There is a large inflow pipe behind Sally's home that carries sediment into the lake. The sediment builds up to the point that the water is approximately one foot deep in sections. Sally would like to be included in any discussion dealing with the dredging of the lake and offered her assistance with the dredging project.

Officer and Committee Reports: There were not any officer or committee reports presented.

Approval of minutes: Upon a motion by Dunja Baker and seconded by Magnus Turesson, the minutes of the April 3, 2014 Board meeting were unanimously approved. Upon a motion by Dorie Mangan and seconded by Magnus Turesson, the minutes of the May 1, 2014 Board meeting were unanimously approved.

Administrators Report

Dues: Jim told the Board ninety (90) residents have not paid the second installment of their association dues. That includes four residents that have not paid for the entire year. Jim will send the past due accounts to our attorney to begin the collection process.

Pool update: Jim introduced our new pool manager, Charlie Bristor and the assistant manager, Raleigh Doscher. Charlie is an experienced pool manager and Raleigh has worked as a life guard for several years. Jim mentioned the staff has been doing a good job with pool admissions. They have been checking the pool roster diligently. There was discussion about our current Pool Rules and Regulations, specifically the minimum age that a child can come to the pool unaccompanied by a parent or a responsible person 14 years of age or older. The current rule states, a child between the age of 8 and 13 may come to the pool unaccompanied if they have passed a basic swim test and have a note from their parents or guardian giving them permission to come to the pool by themselves. Jim mentioned the City of Rockville's minimum age is 9 for unaccompanied children. After discussion the Board it was agreed it was too late to change the minimum age this year but it should be changed prior to the 2015 pool season.

We also need to clarify the requirement for children 7 years old and younger using the diving board unaccompanied by an adult. Should we require a swim test for any child, regardless of age, if they want to use the diving board?

The lifeguards need to establish more control over the diving board and diving well. The guards have the authority to close the diving board depending on the number of patrons and the preference of those using the diving well and board. Perhaps alternating times for diving and games in the deep end pool. An orange cone should be used to indicate the diving board is closed.

We have thirty-three non-resident family memberships this year which equates to \$18,975.

There was an email from Peter Kaplan outlining the Swim Team's salary distribution for 2014. The Association budgets \$7,200 for the swim team coaches salary. A salary of \$6,000 to be divide between the two coaches as decided by the Swim Team coordinators. The additional \$1,200 covers the payroll taxes. The Board agreed with the Swim Team coordinators proposed salary distribution.

Memos from Brian Bichy, association's attorney: Jim asked Brian to prepare a swimming pool access permission and liability waiver for NMC residents and non-resident members

for swimmers between the ages of 8 and 13 years old. Jim suggests a standardized form would be in the best interest of the community. After review, the text of the waiver was acceptable with several small formatting changes requested. Jim will work with Brian Bichy to have the changes incorporated in the final document.

The other memorandum dealt with the access of the pool by tenants. Approximately twenty homes in the community are leased to tenants and we asked whether the owner's right to use the pool transfers to the tenant when the home is leased. At least one owner has stated that he/she retains the right to use the pool, and that their tenant also has the right to use the pool. In addition, such nonresident owner's children swim on the New Mark Commons swim team, and swimming on the team requires membership at the pool. We have reviewed the Association's Declaration and By-Laws and the following provision is relevant: Article IV, Section 1(d) of the Declaration states that every member shall have a right and easement of enjoyment in and to the Common Areas and Community Facilities and such easement shall be appurtenant to and shall pass with the title to every Living Unit, subject to the right of the Association to limit the number of guests of members. Based on this provision, it is within the Board's discretion to determine how a "guest" is defined and to limit the number of guests. The Board's options are as follows:

- If the Board wants to limit the number of people using the pool, it may adopt a policy that requires that a member must make the choice to either retain their pool use privilege or transfer it to the tenant, but both households cannot have the right to use the pool during the lease term. Therefore, the tenant and his/her family may be prohibited as a "guest" from using the pool, unless the member agrees to transfer the pool privileges to the tenant.
- Similarly, the Board could limit use of the pool to residents only, which would include only those persons who actually reside in the community and claim it as their residence, either as a member of the Association or as a tenant under a written lease. Please note that a potential problem with this may arise if you have a member who does not reside in the community, has been current in paying assessments, and their home is vacant. However, the Board could create an exception for such a circumstance, which is consistent with Article IV, Section 1(d) of the Declaration.
- If limiting the number of people using the pool is not a concern for the Board, then the Board could decide to allow members and their immediate family residing with them, tenants and their immediate family residing with them, residents, and their guests to use the pool. Guests could then be defined as anyone other than the foregoing who is given permission to use a guest pass by extension of hospitality of a member, a tenant, or a resident. You could then determine a limit for the number of pool passes and/or guest passes given to each member.
- Regarding the swim team, the Association has the right to determine the requirements to participate on the team, such as residence in the community. Although Article IV, Section 1(d) grants a right and easement for members to use the pool, this does not extend to the member's family members and/or include a right to participate on the swim team. Having said that, if this has not been a previous policy or requirement of the swim team and as the season is about to commence, it may not appear fair or

reasonable to unilaterally impose such a requirement for this season at this late stage. Depending on the impact, the Board may want to revisit this issue prior to next year's season in its discretion.

After discussion, the general opinion was that pool usage should be based on the resident of the property, either the tenant or the owner, but not both. A landlord can write their lease with a provision that use of the pool stays with the owner or is granted to the tenant. We can make changes to the NMC Pool Rules and Regulations with the requirement the landlord notify NMC who has the right to use the pool, supported by a copy of the lease. We would have to set a future date for compliance in order to give landlords time to update their leases. It was agreed to table the discussion until January 2015.

Old Business

New Directory: The initial resident information was loaded to the AtoZ database. We are reviewing the data and making updates as required. We will send an email announcing the new directory and ask residents to review their information and send any changes to Jim.

Pool Pass System: The pool pass system is on hold until the NMC Directory is completed. We will use the directory information as the initial data base for the pool entry system.

Tree pruning and removal update: Last month the Board approved tree pruning and removal for over nineteen (19) items in various locations throughout the community. We received proposals from Titan Tree Care for \$13,210 and Bonifant Tree Service for \$13,790. Jim recommended we split the work between the two vendors. Titan and Bonifant accepted the revised proposals and the work was completed for \$11,913.

New Business

Use of Fire Pits: Jim mentioned he has received several complaints from residents concerning smoke from their neighbor's fire pit entering their home. Jim gave the Board a copy of the City of Rockville criteria for the use of fire pits, fire bowls and chimineas. Jim spoke to the Fire Marshall's office attempting to get clarification on item 10 which states: "Smoke is not allowed to cross property lines. Be mindful of the wind speed prior to starting this type of fire." Violations of the City criteria are not the responsibility of the Rockville Police Department (RPD). Violations would fall under the responsibility of the Fire Department. They would probably not respond to a smoke issue unless there was a concern about the safety of the location, installation or operation of the fire pit, fire bowl or chiminea.

Stolburg Landscaping Inc. proposals: We received five proposals from Stolburg Landscape Inc. totaling \$6,930. Four of the proposals were to address storm water flooding issues in four areas of the community. The fifth proposal was for the installation of 6x6 landscape timbers to replace rotting timbers removed when a large tree was cut down on community property. After discussion, Mangus made a motion that the Board accept three proposals from Stolburg Landscaping for a total of \$3,230. John Brown seconded the motion which passed unanimously. Jim felt the cost of replacing the 6x6 timbers was excessive and will discuss with Matt. The second item dealing with terraced steps near the playground was tabled for further review.

