

**NEW MARK COMMONS HOMES ASSOCIATION
BOARD OF DIRECTORS MEETING
THURSDAY, JUNE 2, 2016**

ATTENDEES: John Hansman, Dorie Mangan, Ellen Stein, John Brown, Magnus Turesson, Alex Manolatos, Pat Reber, Joe Jordan, Jonathan Smith and Jim Denny.

Absent board members: John Daroff

Community Forum:

Jonathan Smith was present to ask for the Board's approval to install a Little Free Library in a location near the pool entrance. The Little Free Library is a 'take a book, return a book' free book exchange. He is not requesting funds from the Board at this time as residents have been volunteering to pay for such a project. The Board was in favor of the proposal and asked Jim and Jonathan to get together to determine a suitable location near the clubhouse.

Jonathan also mentioned the need for a place to store personal items, towels, shoes, etc at the pool when all the tables and lounges were occupied. He suggested a cube style storage system be installed under the clubhouse upper deck.

Approval of Minutes and Agenda:

Upon a motion by Ellen Stein and seconded by Magnus Turesson, the minutes of the May 5, 2016 were unanimously approved.

Officers and Committee Reports:

Pat Reber presented the Communications Committee report. The May issue of the New Mark News was printed and distributed all homes in the community. Barbara Quinn supported this initial hardcopy issue of the newsletter since the formation of the Communications Committee. There will not be a July newsletter. Website consultant, Josh Grabenstein will attend the June 9 Communications Committee meeting to begin design discussions. A copy of the Communication Committee report is Attachment A.

John Hansman spoke for the Architectural Control Committee (ACC). He mentioned the next ACC meeting will be tomorrow, June 3 in the NMC Clubhouse at 5 p.m. Policy issues will be discussed, along with a last minute ACC application. He thanked Joe Jordan for bringing to the ACC's attention the non-conforming gate on a home that was for sale. The ACC contacted the owner, asking that the gate be brought in compliance with ACC Guidelines or removed. The owner removed the gate prior to sale. One question the ACC will discuss is how we handle and prioritize past ACC violations.

Ellen Stein spoke for the Landscape Committee. She mentioned the next Landscape Committee meeting will be Tuesday, June 5 at her home, starting at 7:30 p.m.

Jim Denny gave a status update on the pool. We have a mix of international and local lifeguards this season. We started the season with a very promising manager but she was reassigned to another pool. A replacement manager has yet to be named. We have notified American Pools we need to get the staffing stabilized before we start summer hours. Dorie mentioned there was not any consistency among the life guards on how to announce adult swim.

Dorie Mangan reported for Community Enhancement Committee(CEC). A Community Enhancement meeting was held on May 25. The attendees were Ken Misner, Geri Misner, Barbara Cano and Toni Schierling. The third Wednesday of each month was selected for future CEC to meetings. The meetings will be held in the NMC Clubhouse at 7 p.m. The next meeting is scheduled for June 15. Toni will update the old list of items to be evaluated when looking at a home. The CEC wanted to know if they should include community common areas in their review.

Old Business

Dues increase for Storm Water Management: John Hansman presented an analysis he performed on the Boards authority to make special increases in the dues. The analysis was done in response to letters received from Richard Berman and Joe Jordan questioning the Board's authority to raise the dues without a 2/3 vote of the membership. After presenting the report to the Board, he asked they approve the report as the initial response to Richard Berman and Joe Jordan. Ellen Stein made a motion that the Board approve John Hansman's report as the initial response to Richard Berman and Joe Jordan. John Brown seconded the motion which was unanimously approved. Attachment B

ADA Chair Lift for the clubhouse: Magnus Turesson reported he met with a contractor who specializes in ADA compliant lifts and elevators. The requirements for location of the elevator, access from a handicap parking space, needed sidewalk and ramp enhancements were discussed. One contractor suggested building a new, ADA compliant restroom on the upstairs level of the clubhouse. Magnus mentioned he will be checking with the City of Rockville for their input. Manus asked for authorization to move forward to understand and develop all the requirements of a ADA accessibility for the clubhouse. John Brown made a motion that the Board approve developing a set of requirements for ADA accessibility to the clubhouse. Magnus seconded the motion which passed unanimously.

Mosquito Joe: Jim told the Board he spoke with the local representative for Mosquito Joe. They notify each customer the day before a treatment and the areas treated are posted with the date and time of the application. We will be able to give adequate advance notice to residents before each treatment. Jim asked for approval for 5 treatment package at a discounted rate of \$373 for this summer and fall. John Brown made a motion that we hire Mosquito Joe for mosquito abatement around the playground for \$373. Magnus seconded the motion which passed unanimously.

New Business

Action Fabricators proposal: Ellen and Jim identified three wooded handrails near 254 NME that should be replaced with ADA metal railings. There was also a damaged hand rail in front of 874 NME that should be repaired or replaced. Action Fabricators and Erectors submitted a proposal to fabricate, paint, install 4 new, 1 5/8" diameter metal railings and remove to old wooden railing for \$2,750. Ellen made a motion that we accept the proposal from Action Fabricators for \$2,750. Alex seconded the motion which passed unanimously.

Ricketts Home Improvement proposal: We received a proposal from Bill King with Ricketts Home Improvements to clean, prepare and repaint all the wooden street signs and black metal handrails in the community. In addition, the maintenance garage would be power washed and repainted. The total cost of the proposal was \$4,200. After discussion, Magnus made a motion that we accept the proposal from Bill King for \$4,200. John Brown seconded the motion

which passed unanimously.

Stolburg Landscaping Inc. proposals: We received three proposals from Stolburg Landscaping. Proposal 1 was to replace 3 squares of concrete sidewalk in front of 220 NME for \$675. Proposal 2 was clear the hillside, prune dead wood and remove debris behind 824 to 830 NME for \$725. Proposal 3 was to install a 24 linear feet 6" X 6" landscape timber wall on common property near 318 NME for \$1,275. After discussion, Magnus made a motion that we accept the proposals 2 & 3 for \$2,000 from Stolburg Landscaping. John Brown seconded the motion which passed unanimously. Proposal 1 was held until the decision was made about replacing the deteriorating railroad tie retaining wall adjacent to the sidewalk.

Capital Improvement Plan: Jim gave the Board a Capital Improvement Plan for the remainder of 2016. It included tennis court repair and cleaning, handicap access to the clubhouse, parking lot and sidewalk repair, replace the clubhouse roof and furnace and an estimated start time for each project. John Hansman noted the lake dredging was not on the list. After discussion, Alex made a motion that the Capital Improvement Plan presented a reasonable set of priorities for the remainder of the year. Ellen seconded motion which passed unanimously.

Request for home office: A resident inquired about the possibility of using their home as an office for their business. Article XI, Section 1 of the declaration of covenants addresses this possibility.

ARTICLE XI

Section 1. Residential Use. All Living Units shall be used for private residential purposes exclusively, except that a professional office may be maintained in a Living Unit, provided that such maintenance and use is limited to the person actually residing in the dwelling and one other professional associate, and, provided further, that such maintenance and use is in strict conformity with the provisions of any relevant zoning law or ordinance.

Section 2. Context. As used herein, the term "professional office" shall mean rooms used for office purposes but not by more than two members of any recognized profession, including doctors, dentists, lawyers, accountants, engineers, architects, but not including medical or dental clinics.

After discussion, it was agreed the request was allowable but must obtain any City approval required of a home office. If parking becomes a problem, due to the home office, the Board may reconsider the request.

Additional streetlight request: There was a request earlier in the year for an additional street light at the intersection of NME and Maryland Avenue. Jim submitted a request to the City for their consideration. Since there was not electric service to the location, the City asked PEPCO for a proposal to run power to the site and install the new street light. The estimate from PEPCO was approximately \$11,200 of which \$8,600 was for directional boring to bring power to the new street light location. Since there are 3 existing street lights near the intersection, it was decided not to install the additional light.

New ACC member: Joh Hansman asked the Board to approve a new member of the ACC, Christine Holdsworth. Upon a motion by Ellen and seconded by Magnus, Christine was unanimously approved as a member of the ACC.

John mentioned all ACC Applications must have the signature of the applicant's neighbors.

John had sent an email to the board members asking them to approve his proposal that minor ACC changes may be approved by the ACC chairperson and the NMC Administrator without review of the entire ACC. Ellen made a motion that minor ACC changes may be approved by the ACC chairperson and the NMC Administrator without review of the entire ACC. Magnus seconded the motion which passed unanimously.

Administrator's Report

Dues update: Jim reported that 130 residents have not paid the second installment of their HOA dues. At this time last year, 126 residents had not paid their dues.

Indecent exposure incident: There was an incident on May 26 of indecent exposure by an individual near the NMC lake. It is believed this is the same person that did the same act in the community earlier in the year. The Rockville Police Department now have a picture of the suspect.

Vandalism: There have been several incidents of vandalism in the community. A handicap street sign near the clubhouse was stolen along with the large red reflectors on the pilings at the end of New Mark Esplanade. There has also been graffiti on utility boxes and street lights along the walk path.

4th of July celebration: The Bean Bag will again provide the catering and Talk of the Town will provide the DJ. The children's entertainment TBD.

Pool update: The handicap lifts need to be repaired. There have been six pool pass distribution events leading up to the opening of the pool.

ATTACHMENT A

NMC Communications Committee Report to the NMC HOA Board of Directors 6/2/2016

John Daroff, Board Liaison; Judy Rudolph, Chair

The Committee met on 5/12/2016. **Attendees:** John Daroff, Judy Rudolph, and Jonathan Smith. **Absent:** Jim Denny, Pat Reber. The meeting was held at the home of Judy Rudolph.

Newsletter

- **May issue:** This issue, supported by Barbara Quinn, was the first hard copy only issue produced since the initiation of the Communications Committee support to the newsletter. Jim and Judy coordinated content and interfaced with Barbara Quinn, who performed the design and preparation. The issue was hand-delivered between 5/19-21; a follow-up email broadcast and Nextdoor post alerted residents to notify Jim if they did not receive one or would like a copy by email.
- **Upcoming newsletters:** The electronic/email June newsletter will feature NMC July 4th celebration plans. There will be no July issue. The August newsletter will feature Labor Day/pool closing activities and news of Board and committee fall plans.

Website redesign/rehosting

- **Website kickoff plan/logistics:**
 - The consultant, Josh Grabenstein, will attend our 6/9 Committee meeting to begin design discussions. The Committee has begun a list of specifications for the new website.
 - We further discussed the best platform to support official email addresses for NMC staff and officers, using the existing newmarkcommons.net domain name. The group decided that we will use Google Apps for Work (<https://apps.google.com/pricing.html>). Google Apps for Work will also support centralized storage of and access to NMC documents and correspondence and an integrated calendar feature. Jonathan Smith will be the administrator for the account.
 - A future agenda item is to draft a policy for Board approval relating to the electronic storage of NMC correspondence and documents.
- Judy Rudolph worked with Stacy Kovatch, the consultant supporting the legacy website, to update the critical content (2016 Board minutes, newsletters, and Board and Committee information). We anticipated minimal investment in the legacy website from this point forward. We hope to have a target date for cutover to the new website after meeting with Mr. Grabenstein in June. It should be noted that Ms. Kovatch has indicated that the age (2008 vintage) and outdated design of the current website make it difficult and expensive to maintain.

Databases (AtoZ and Mailchimp)

- Syncing/updating databases

- Resident information update sheets went out with the May dues billing. Judy will help Jim with inputting the updates in June.
- There was discussion of using Mailchimp, the tool that supports the electronic newsletter, for email broadcasts; it has more capability than the AtoZ software currently in use. Because AtoZ creates the annual directory, we will still have to maintain and synchronize two databases.

New residents welcome package [Per NMC Village/5/5 Board Meeting discussion]

- Beginning later in June, Judy will work with Jim and the Board/committees to coordinate the development of the package for new residents. When it is complete, the NMC Village has offered to coordinate volunteers to personally greet and deliver packets to new residents.
- Judy will initiate a Nextdoor discussion to solicit NMC resident input for content.

The next meeting is June 9 at 7:30 PM, location TBD.

ATTACHMENT B

To: New Mark Commons Board of Directors
 From: John Hansman, President
 Subj: Dues increases for Reserve Fund and Stormwater Management Fee
 Date: June 2, 2016

The Board has been challenged to justify the dues increases for the SWM fee in 2011 and, by implication, the increases for the Reserve Fund in 1987. In both cases, the dues increases were larger for townhouses using common parking lots than for detached and Tegner houses. Presented here is information on the Board’s authority and the rationale for the increases.

Authority to Increase Dues

Richard Berman sent an email to townhouse owners on March 7, 2016 complaining about the dues devoted to the Reserve Fund and also the stormwater management fee. He followed up with a letter of March 31 to the Board alleging that the SWM fee was illegal and asking for a search for all dues increases not authorized by a vote of the membership. Joe Jordan sent a letter of April 4 similarly complaining about the SWM fee. In response, the Board authorized a review of our records with the intent of clarifying the Board’s authority to make special increases in dues.

Article VI, section 5b of the Covenants authorizes the Board to increase dues annually by the CPI for the Washington Metro Area. This has been the typical pattern of dues increases since the HOA was created in 1967, although there have been some years when the increase was less than the CPI. In addition, there have been two cases where there was a dues increase separate from the normal CPI adjustment. One was for 1987 to establish the Reserve Fund and the other was for the City SWM fee in 2011.

Article VI, section 5a also allows the Board to increase dues without a vote of the membership, so long as the cumulative percentage increase in dues since January 1, 1968 remains below the cumulative

percentage increase in State property valuation over that period. Under this section, increases in dues do not have to be proportional to the original dues set out in VI section 3. See section 7. Section 5a is the basis for the Board's authority to make the dues increases for the Reserve Fund and for the City SWM fee.

Article VI, section 5c, allows increases above those in section 5a and section 5b per a vote of the membership. Mr. Berman and Mr. Jordan believe that a vote of the membership should have been required to authorize the SWM fee. By implication, such a vote might also have been required for the Reserve Fund. Mr. Jordan argues that the SWM fee is entirely different from the other kinds of expenses for which dues have customarily been used.

Article VI, section 2 contradicts this narrow interpretation. Among other enumerated purposes for which the dues may be used are: "the payment of taxes". A City tax is an obligatory payment required of a property. So is a fee. Experts in public finance make a distinction between a tax and a fee on account of the basis for the levy. However, for the property owner like our HOA, it is a distinction without a difference. We still have to pay and such fees are a normal part of doing business. Another annual local government fee, of over \$800, is for our pool operating permit. This fee has always been paid out of dues without question.

By the 1980's, the Board was concerned that expenses, particularly for the townhouse areas, were outstripping revenues. The Board commissioned an analysis by the law firm of Wilkes and Artis of the Board's revenue options under the covenants. That 1982 legal opinion is Appendix A. It notes section 5a as the most promising option.

In 1986, the Board approved for 1987 a dues increase of \$66 for detached houses and \$88 for townhouses, in addition to the usual CPI increase. The special increase was to fund the Reserve Fund for major construction projects. Appendix B is a note from Rose Krasnow, HOA Administrator at that time, stating that the Board relied on section 5a for the authority to make this increase in dues.

In 2010, the Board approved for 2011 a dues increase of \$13.47 for detached houses and \$44.11 for townhouses using common parking lots. These increases were for the City's new SWM fee. The rationale for these increases is presented in Appendix C.

Meeting the Section 5a Test: Property Value Increases v Dues Increases

Appendix D is a table of dues and property valuations. This table demonstrates that in both 1987 and 2011, property values had increased by much larger percentages than had dues. Therefore, the Board was acting within its authority under the Covenants to make those special increases.