

**NEW MARK COMMONS HOMES ASSOCIATION
BOARD OF DIRECTORS MEETING
THURSDAY, JANUARY 5, 2017**

Attendees:

Board members: John Hansman, John Daroff, Ellen Stein, John Brown, Alex Manolatos, Magnus Turesson. NMC Administrator Jim Denny was present.

Board member absent: Dorie Mangan

Residents present: Pat Reber, Judy Rudolph.

Community Forum: Sean Connolly from HMS Insurance Associates, Inc., NMC's insurance agent, planned to attend the meeting but inclement weather prevented his attendance. Sean was able participate in a conference call to discuss reimbursement of legal fees spent in defense of the complaints filed by a resident with the Commission for Common Ownership Communities (CCOC). Sean said any claim would be handled by United States Liability Company (USLI), who issued our Officers & Director's professional liability policy. Sean said coverage would be determined by the carrier. The first step would be to put the carrier on notice that a complaint has been filed against NMC. He believes USLI will not reimburse us for past legal fees. There will not be retroactive payment of legal fees. John Daroff explained the first complaint, #53-16, was served in May 2016, a hearing was held in November and we are waiting for a decision. Sean asked if the decisions are binding. John Daroff replied yes, but they can be appealed to the Circuit Court.

The second complaint filed, #80-16, was filed in November 2016. The complainant has agreed to mediation and we are waiting for a date from the CCOC.

Sean advised us to put USLI on notice of the two complaints. He will have Sedrick Chavis, Senior Claims Advocate with HMS Insurance, contact Jim tomorrow to start the notification process.

Judy Rudolph had several suggestions for the upcoming Board elections for the Board to consider. She suggested we start notifying the community immediately of the upcoming election, the self-nominating process and timeline. Also, develop an outline for candidates to use in submitting their information. The Board should consider devoting part of Community Forum at the February Board meeting to give residents considering running for the Board a chance talk to current and past Board members about the serving on the Board. She also suggested having some type of community forum where residents can meet the candidates. After discussion, the Board agreed to start the February Community Forum at 7 p.m. for a Board election information session. They also agreed to start the March Community Forum at 7 p.m. for a meet the candidates' session. Attachment A.

Approval of Minutes and Agenda:

John Hansman had a change to the December 1, 2016 minutes. Upon a motion by Ellen Stein and seconded by Alex Manolatos, the minutes of the December 1, 2016 Board meeting were unanimously approved as amended.

Officer and Committee Reports

Architectural Control Committee (ACC): John Hansman presented for the ACC. He had a draft of a process on addressing ACC Violation and how NMC Responds. There were several scenarios for the Board to consider. The first is where the current owner did not make the exterior modification that was in violation. Can the Board over rule past exceptions approved by prior Boards? He asked the Board to review and send any comments or concerns to the ACC. Attachment B.

Communication Committee (CC): John Daroff mentioned the Communications Committee did not meet in December. He said that updating NMC data bases and website would be a priority for the Assistant Administrator position. Our volunteers, Judy Rudolph and Pat Reber are doing an outstanding job with the website and communications. Attachment C.

Community Enhancement Committee (CEC): Magnus reported the committee is drafting a revised notification letter for the next round of the Community Enhancement inspections. Several residents have expressed interest in using permeable asphalt and concrete when replacing driveways and sidewalks. Jim will review if this is feasible use in NMC. John Hansman mentioned the ACC had investigated permeable asphalt and concrete from the City and County. It can be more expensive than conventional product, the initial cost is greater and there is significant maintenance required to keep the product permeable. It was suggested links to information on permeable asphalt and concrete be included in the next NMC Newsletter. Judy has several residents who would like to Piggy Back on NMC's concrete work this spring. The next CE meeting is scheduled for February 23rd.

Landscape Committee: Ellen Stein presented the Board with a Mission Statement and Policies for the NMC Landscape Committee. The committee is also planning to publish a list of gardening links for the NMC website. The Mission Statement is attachment D.

Pool Committee: Jim mentioned the Pool Committee will have a meeting on January 30, 2017.

Old Business

2017 proposed budget: Jim presented the proposed budget for 2017 with the 16.5% increase in operating budget and a 20% increase for the reserve fund. Jim asked if there are any areas that present an opportunity to reduce expenditures. One possibility was to defer the reserve fund increase. Currently there are sufficient funds to repair the townhouse parking lots, make ADA accessibility modifications to the clubhouse and other smaller reserve project that come up during the coming year. Joh Daroff suggested we consider a more aggressive investment strategy for the reserve fund. Currently, the reserve fund has been invested in Certificates of Deposit (CD) and money market funds. He believes there may be minimal risk investments with dividends that may be available to us. He suggested we contact our accountant and attorney to see if they could recommend a financial management firm. John Daroff also mentioned if we postpone the reserve fund increase, we would be in the same situation next year looking for an increase to fund future projects, such as dredging the lake. He recommends we hold the line on the proposed 16.5% operating fund increase and the 20% reserve fund increase. Ellen mentioned we need to develop a 5-year plan for future expenditures. Jim mentioned a new reserve study would identify and forecast future repairs and replacement cost.

Jack Croarkin gave Magnus the swim team financial report for 2016. The swim team had a net operating income of \$588 for 2016. Jim would like the swim team to handle ice cream sales next year. The life guards are not hired to sell ice cream. Their primary responsibilities are the safety of the residents and maintenance of our pool facility. Jim mentioned there is a Pool Committee meeting scheduled for January 30 where this topic will be raised.

A process to invoice our newsletter advertisers needs to be implemented. Judy mentioned the Communications Committee established the rates for the electronic newsletters. The rates were purposely kept low because we were on a learning curve with the electronic newsletters. Judy is trying to get the click rate up on the ads which would act as pull for advertisers.

Assistant Administrator search: There are six candidates for the position. The selection committee, consisting of several board members and Jim will meet on January 7 to discuss the interview and selection process and candidate interviews. The selection committee will present their candidate to the board at the February meeting.

Capital Improvement Projects (CIP): Jim did not have any new projects to report. A new report format needs to be developed for 2017.

NMC Clubhouse: Jim will solicit bids from other contractors to build the handicap ramp to the second level of the clubhouse and an ADA accessible bathroom on the clubhouse second floor.

CCOC case #53-16, Berman V New Mark Commons: The Association has spent \$34,225 as of November 30, 2016, on legal fees. A decision is expected from the CCOC in January or February 2017.

CCOC case #80-16, Berman V New Mark Commons: Both parties have agreed to mediation and hope to have a February date for the meeting.

Water main breaks in 100 and 800 block: There was a water main break in front of 824 NME during the night of November 23. While repairing the water main break, the City crew hit a natural gas line which necessitated the evacuation of twenty-three residents. Washington Gas had to be called to repair the break which extended the time needed to make the repair. During the repair, the Amir's home at 824 NME suffered damage to their front step and front door. Despite assurance from the crews working that evening, the City has not made any repairs other than the installation of temporary steps. The City Public Works Department decided to refer the case to the City's insurance carrier for resolution. There was also damage to Association concrete, turf, bushes and trees. Jim obtained an estimate from Stolburg Landscaping, LLC for concrete repair and replacement of damaged plantings. The total cost is \$1,585.50. Jim will file a claim for damages from the City.

The International Dinner is scheduled for February 25, 2017.

New Business

Reserve Study: Jim has solicited proposals from two companies that perform reserve studies. We should have the proposals for the February board meeting.

Administrator's Report

Dues update: Jim reported that 3 residents are in arrears.

Out of Office: Jim will be out of the office from January 14 to January 24.

Annual audit: Our accounting firm, DeLeon and Stang, have scheduled our annual audit for February 13-14.

Community Association Institute (CAI) Conference: The annual conference will be held Saturday, February 25 at the Washington Convention Center from 8 a.m. to 3:30 p.m. Magnus, John Hansman and Jim expressed interest attending.

The meeting was adjourned at 10:05 to go into a closed session to discuss personnel and legal issues. The Written Statement for Closing a Meeting Under the Open Meeting Act is Attachment E.

ATTACHMENT A

Suggestions for the 2017 NMC Board Election Process Judy Rudolph to the NMC Board 1/5/2017

I suggest a more robust approach to the Board election process:

- Developing a candidate questionnaire or providing more specific guidelines for the written statements of qualifications, to ask candidates to state
 - Their priorities for NMC activities and budget/expenditures
 - Their vision for community governance, and
 - Ideas for encouraging greater resident input and participation.
- A broadcast email ASAP--in advance of the 1/21 newsletter--to alert people to the upcoming elections, the self-nomination process and timeline. This will give people more time to consider their interest in running.
- Targeting part of the Feb 2 Community Forum to a dialogue among anyone considering running for the Board, present and former Board members, and any interested residents, to engage in dialogue about being on the Board.
- An opportunity for some kind of community forum after the slate is final, to give residents an opportunity to meet and talk with candidates before the ballots go out (alternative: a virtual forum in a Nextdoor Group)

ATTACHMENT B

DRAFT

ACC Violations and How NMC Responds

The enforcement of architectural regulations is a vital function of the NMC Board and its Architectural Control Committee. It is vital, therefore, that these regulations and the treatment of violations be spelled out clearly and communicated to all residents. While absolute adherence to the regulations and strict enforcement is the goal, it is important to note the Board and the ACC are allowed some flexibility in decision-making.

As Montgomery County's Commission on Common Ownership Communities (CCOC) has stated: *“The board of directors has a fiduciary duty to enforce the association’s rules, but that does not mean it must strictly enforce every rule in every case. The association documents give the board discretion on how to enforce the rules. However, the continued failure or refusal to enforce rules can eventually lead to a finding that the association has abandoned or waived its covenants.”*

There are several categories of violations. The Board and the ACC have agreed on the following responses:

1. Cases in which a homeowner has NOT applied for ACC permission for a change he/she has made that required advance ACC action.

Owners shall be required to submit an ACC application. If approved, no further action is necessary. If denied, the owner may appeal to the Board. If the Board denies the appeal, the owner shall be required to comply with the ACC’s decision. This may entail a modification of the change or complete removal of the alteration at the owner’s expense. Any owner who refuses shall be taken before the CCOC.

2. Cases in which a homeowner has applied for ACC approval and received it but has made a change that differs from what was applied for.

Owners shall be required, at their own expense, to make the change conform to the original ACC ruling. Any owner who refuses will be taken before the CCOC.

3. Cases in which a homeowner is denied ACC approval but makes a change anyway.

Owners shall be required, at their own expense, to remove the change. Any owner who refuses shall be taken before the CCOC.

4. Cases in which a change was approved in the past but the change was in fact in violation of the ACC regulations or NMC covenants.

The sitting ACC will inform the owner of its finding of a violation and require that the change be removed or brought into conformity with current regulations before the property can be sold or otherwise transferred.

In all cases, it is the position of the Board and the ACC that owners have two weeks to respond to a notice of violation and 60 days to bring their property into conformity. No property in NMC can be sold or otherwise transferred until it is in conformity with ACC and Board decisions.

The ACC and the Board are empowered to consider any external changes, including but not limited to, doors, windows, railings, hardscaping, paint color, lighting, extensions and sheds.

The following excerpts from CCOC rulings are provided as illustrations to homeowners in support of the NMC position:

“A homeowner who obtains approval for an application, but then makes changes and does not build according to the approved application, can be ordered to submit a new application for the structure as finally built and to comply with the association’s ruling on the revised application.”

“If a homeowner builds something different from what he applied and obtained approval for, and if the changes do not meet the community’s architectural standards, the CCOC will uphold the standards and require the homeowner to comply with them and make the necessary alterations.”

“When an association approved a member’s plans for a new deck, and he built the deck following the approved plans, the association cannot thereafter force him to change the deck, nor can it alter the deck without his approval, until such time as he sells the house.”

“When a member cannot show that he ever applied for, and received, approval for a deck, the association can require him to alter it, or can enter on the property to alter it at the owner’s cost.”

Despite the last citation, please note, the NMC Board and the ACC have decided the NMC administrator or a contractor hired by NMC will NEVER enter any property to make mandatory changes required by the Board or the CCOC. However they will strictly enforce requirements for such changes before the sale or transfer of any property.

ATTACHMENT C

NMC Communications Committee Report to the NMC Board January 5, 2017

The Committee did not meet in December.

January billing enclosures

- Information update sheet—Judy will input the incoming data from this round, but it is hoped that this and all database maintenance can become a staff function in the near future
- Communication Preferences Survey—In addition to the hard copy form, we created an online version using SurveyMonkey. (Thanks to new resident Melanie Huston for volunteering and providing technical assistance.) We will use the results of this survey to guide our recommendations for the frequency and media (paper vs. electronic) for the newsletter.

Website ○ 61 residents have requested and received login credentials for the Resident Area ○ Documentation has been tested, approved, and turned over by the consultant; we are ready to train staff, pending their availability

- We continue to post to/update the Resident Area and calendar and have increased using the Community News function for community updates. The challenge is to get residents to begin to consult the website for current information; we will develop an article for the January newsletter and post a note on Nextdoor to encourage this.

Newsletter

- We are trying to increase advertising click rate/visibility so that we can market ads more successfully as a revenue source
- We have temporally tabled recommendations for a delivery/charge for PDF'd paper copies of electronic newsletters, and guidelines for email broadcast, pending the results of the Communication Preferences Survey.

Google Business implementation

- John Daroff continues to support Google drive access/sharing/training
- Next step: Populating Google drive ○ Board and other committees
- Google calendar—We have learned to fully integrate this with the website, including attaching agendas to events. Again, we hope this will become a staff function

Broadcast emails—Tabled pending survey results

- Updated policy needed (earlier from 11/2015 is OBE)
- Should we transition to Mailchimp for all and just maintain AtoZ for the Directory? (*related discussion: synching the 2 databases*)

Databases: Synching AtoZ with Mailchimp should be a priority when the new staff member is hired. The next meeting is scheduled for Thursday, January 12 at 7:30 PM.

ATTACHMENT D

MISSION STATEMENT and POLICIES - NEW MARK COMMONS LANDSCAPE COMMITTEE

The mission of the NMC Landscape Committee is to advise the Board of Directors on maintenance and improvements to common areas, all trees in the community, and lake quality. The Board and the Committee work together: the Committee assists with the planning and design for the common areas plantings and the Board consults with the Committee as part of their planning prior to taking action.

TREE POLICY

Trees are an integral part of the quality of life in New Mark Commons. Their natural beauty enhances our landscape, and their presence encourages beneficial wildlife and contributes to keeping our neighborhood cooler in the hot summer and warmer in winter and improves both soil and water quality. All NMC trees, whether on private property, in common areas, as well as the street trees maintained by the City of Rockville, are an important part of our community's environment.

Members of the Tree Committee will review applications for the removal of trees with the following principles in mind:

- Safety of residents and safeguarding of property are the first consideration.
- Addressing an issue by pruning, trimming or other maintenance is preferable to removing a tree.
- Preserving the integrity of the New Mark Commons urban forest.

RULES AND RESOURCES

1. NMC requires a Tree Modification Application be submitted before removal of any tree (healthy, diseased or dead).

The Application Form is found on the NMC website: www.newmarkcommons.net.

2. Native trees with a caliber of at least 1" or greater are recommended for replacement. Removed trees should be

replaced to sustain our community's urban forest.

a) Native Plants for Wildlife Habitat and Conservation Landscaping (PDF) at

www.fws.gov/chesapeakebay

b) The City of Rockville Community Wildlife Habitat at www.rockvillemd.gov/index.asp?nid=839

c) Nurseries with a good supply of native trees include: Behnke's, Stadlers, Good Earth, and Potomac Garden Center.

3) A homeowner concerned that a tree on Association property may pose a hazard should contact the Tree Committee.

ASSOCIATION POLICY

- The Landscape Committee provides information to help residents in choosing native plants that are adapted to and will thrive in our local environment with minimal care and resources.
- The Committee assists in maintaining and improving the plantings in the common grounds of the community.

LAKE POLICY

- To insure the health of our lake, New Mark Commons has hired a lake management contractor to assist with the following:

1. Water Quality

a) Minimize chemicals and other toxic substances added directly to the lake

b) No chemicals or other toxic substances are added to landscaping near the lake

- c) The community will be notified when chemicals or toxic substances are added to the lake
- d) Maintain level of water quality that keeps marine wildlife alive such as oxygen level

2. Appearance

- a) Maintain the appearance of the lake
- b) Maintain landscape around lake
- c) Maintain the walking path around the lake
- d) Recommend dredging when sediment buildup is too high

3. Structures/Equipment

- a) Ensure dam and overflow are free of debris
- b) Ensure lake equipment is in working order, including the fountain and aerators

NOTE: The independent lake contractor makes two visits a month to check the operation of the fountain, aerators, and compressors. If unwanted aquatic growth is noticed during the visit the technician will determine the type of vegetation and make the appropriate treatment.

ATTACHMENT E

WRITTEN STATEMENT FOR CLOSING A MEETING UNDER THE OPEN MEETINGS ACT

Date: 4/5/2017 Time: 10:09 PM Location: NMC Clubhouse Motion to close meeting made by: John Brown

Seconded by Ellen Stein, Members voting in favor: John Hansman, Ellen Stein, John Karoff, Alex Manolatos, John Brown, Magnus Turesson Opposed: None Abstaining: None Absent: Jorie Mangano

STATUTORY AUTHORITY TO CLOSE SESSION, General Provisions Article, §3-305(b) (check all that apply):

- (1) To discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom this public body has jurisdiction; or any other personnel matter that affects one or more specific individuals;
(2) To protect the privacy or reputation of individuals concerning a matter not related to public business;
(3) To consider the acquisition of real property for a public purpose and matters directly related thereto;
(4) To consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
(5) To consider the investment of public funds;
(6) To consider the marketing of public securities;
(7) To consult with counsel to obtain legal advice on a legal matter;
(8) To consult with staff, consultants, or other individuals about pending or potential litigation;
(9) To conduct collective bargaining negotiations or consider matters that relate to the negotiations;
(10) To discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including: (i) the deployment of fire and police services and staff; and (ii) the development and implementation of emergency plans;
(11) To prepare, administer, or grade a scholastic, licensing, or qualifying examination;
(12) To conduct or discuss an investigative proceeding on actual or possible criminal conduct;
(13) To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
(14) Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

FOR EACH CITATION CHECKED ABOVE, THE REASONS FOR CLOSING AND TOPICS TO BE DISCUSSED:

§3-305(b) (1) Employ Assignments - review time sheets for December 2016
§3-305(b) (8) Review str. from resident on potential complaint Assoc.
§3-305(b) ()

This statement is made by _____, Presiding Officer: _____ SIGNATURE

WORKSHEET FOR USE IN CLOSED SESSION (CHECKLIST OF DISCLOSURES TO BE MADE IN MINUTES OF NEXT REGULAR MEETING- NOT A PART OF THE CLOSING STATEMENT)

PERSONS ATTENDING CLOSED SESSION: John Hansman, John Karoff, John Brown, Ellen Stein, Alex Manolatos, Magnus Turesson.
TOPICS ACTUALLY DISCUSSED: Employee Personnel matters + potential case complaint.
ACTION(S) TAKEN (IF ANY) AND RECORDED VOTES: Determine response to resident.

TIME CLOSED SESSION ADJOURNED: 10:40 P.M.
PLACE OF CLOSED SESSION: NMC Clubhouse, 607 Tegner Way, Rockville, MD.
PURPOSE OF CLOSED SESSION:

STATUTORY AUTHORITY FOR THE CLOSED SESSION: §3-305(b) (1); (8); () 1 + 8
MEMBERS WHO VOTED TO CLOSE: John Hansman, John Karoff, John Brown, Alex Ellen Stein, Alex Manolatos, Magnus Turesson
(Form Revised 10/1/14)

Appendix C