

**NEW MARK COMMONS HOMES ASSOCIATION  
BOARD OF DIRECTORS MEETING  
THURSDAY, FEBRUARY 2, 2017**

**Attendees**

Board members: John Hansman, John Daroff, Ellen Stein, Alex Manolatos, Magnus Turesson, Dorie Mangan. NMC Administrator Jim Denny.

Board member absent: John Brown

Residents present: David Schwartzman, Lori Newman, Pat Reber, Judy Rudolph, Alex Belida, Richard Berman, Joe Jordan, Raj Gupta, Joe Rosen, Mira Frost.

**Community Forum:** David Schwartzman asked the question if anyone can take the CCOC New Board Member course without being a board member? John respond yes. It is an online course that takes a couple of hours to complete. Joe Jordan said there was not enough notice to the entire community about the coming annual meeting and Board of Directors elections. He believes we need more paper newsletter delivered to all residences. Raj Gupta said email is not enough communication. Judy Rudolph mentioned the November 2016 paper newsletter had election information. David Schwartzman asked if there is a board member who acts as liaison to each committee? Jim told him that Ellen Stein is the Board liaison to the Landscape Committee and serves as chairperson. John Hansman is the liaison to the ACC and serves as chairperson. Alex Manolatos is a member of the ACC. Magnus Turesson is liaison to the Community Enhancement committee and serves as chairperson. John Brown is the liaison to the Pool Committee.

Mira Frost and Joe Rosen had several topics to discuss with the board. They gave the board several handouts with correspondence concerning storm water runoff behind their home, dead bushes in front of their home that were not replaced and tree pruning that has not been completed. They are concerned about erosion in flat area behind their home. They are worried about falling trees due the soil washing off the roots and leaving the roots exposed. They had one contractor recommend installing water breaks to slow down the runoff. Jim mentioned we could ask Mark Willcher and Co. and the Rosen's consultant look at the low area behind their home. Mira mentioned they will come to future meetings and that she was concerned about rising legal fees.

Lori Newman who lives at 276 NME mentioned she has also has erosion issue alongside her home. She also said the surface storm drain backs up when it rains. She said a civil engineer who was working with the contractor repairing her home noticed some settling in her home that may be attributed to the erosion. They did not get a written report from the engineer due to the cost of the report.

Judy Rudolph wanted to discuss a letter dated December 12, 2016, she sent John Hansman, Jim and the Board concerning open issues dealing with Open Meeting Act violations and failure to enforce HOA rules and covenants, and several other issues. Jim mentioned her letter was discussed at the January board meeting during the closed session. Jim mentioned he was assigned the task to respond to Judy but overlooked putting together a response. Judy's annotated letter is ATTACHMENT A.

Joe Jordan said the interviews conducted by the Board for the Assistant Administrators position were a violation of the Open Meeting Act. There should have been only three board members on the interview sub-committee. John Daroff agreed the hiring process was flawed but the Board learned from the process and would do better with future hires.

John Hansman introduced Kirsten Hall. Kirsten was recently hired as a contractor to help Jim Denny with administrative task.

**Approval of Minutes and Agenda**

Upon a motion by Magnus and a second by John Daroff, the January board minutes were approved. Dorie abstained.

**Officer and Committee Reports**

**Architectural Control Committee (ACC):** John Hansman presented for the ACC. He discussed ACC Violations and How NMC Responds.. John Daroff mentioned if a prior board approved what is considered a violation today, we must uphold the prior Board's decision. But if the change is requested again it will not be approved. See ATTACHMENT B

**Communications Committee (CC):** John Daroff mentioned the CC need approval of Bill Holdsworth as a new member of the Communications Committee. See ATTACHEMENT C.

**Landscape Committee:** Ellen Stein Stolburg crew trimmed Red Twig dogwood, need to cut dead bamboo. February meeting – links for plants, trees and deer resistant plantings. Recommendation for trees around the lake. Get away from willows, root damage. The March meeting will be a community walk through.

**Community Enhancement Committee (CE):** Magnus Turesson, Board liaison to the CE Committee mentioned residents are still leaving their trash cans out and visible after refuse collection on Mondays. He will draft a letter reminding residents to store their trash and recycle receptacles out of site. He mentioned there is a list of people that wish to piggy back on the concrete and asphalt work the community is having done this summer.

At 9:24 pm, John Daroff mentioned he would have to leave promptly at 9:55 p.m. Dorie said she would also have to leave soon. John Hansman suggested we change the agenda and go into Closed Session now. At 9:24 pm, John Daroff made a motion to close the meeting. Dorie seconded the motion that was approved by John Daroff, Dorie Mangan, Magnus Turesson, Ellen Stein, Alex Manolatos and John Hansman. Board member John Brown was absent.

At 9:57 pm, Alex Manolatos made a motion to exit closed session. John Daroff seconded the motion which was approved by John Daroff, Dorie Mangan, Magnus Turesson, Ellen Stein, Alex Manolatos and John Hansman. Board member John Brown was absent.

At 9:58 pm, Ellen Stein made a motion to resume the February board meeting. Dorie seconded the motion which was approved by John Daroff, Dorie Mangan, Magnus Turesson, Ellen Stein, Alex Manolatos and John Hansman. Board member John Brown was absent.

John Daroff and Dorie Mangan left the meeting at 9:58 pm.

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**ATTACHMENT A**

Judith P. Rudolph  
830 New Mark Esplanade  
Rockville, Maryland 20850-2750 [judy.rudolph@verizon.net](mailto:judy.rudolph@verizon.net)

December 12, 2016

John Hansman, President  
New Mark Commons Homes Association, Inc.  
P. O. Box 4206  
Rockville, MD 20849

Dear John:

I would prefer not to resort to filing CCOC complaints; I do not want be responsible for the HOA incurring legal fees, nor for forcing a process that redirects staff time from providing basic resident services. We have experienced both of these problems over the past few months.

You, the Board, and Jim have continued to fail to respond to and/or resolve the issues below. I consider these matters to be essential to maintaining and/or improving the quality of life in NMC, strengthening NMC's self-governing community structure, and enhancing the value of property within NMC. Therefore, as a last resort—"in the absence of any dispute resolution procedure in the NMC governing documents—I am making this last, formal request for response before filing CCOC complaints to "show that the party complaining has 'exhausted all remedies provided for in the Association documents.'"

I can provide documentation of repeated attempts to bring these matters to your attention and request resolution.

## Open Meetings Act violations

- **Minutes**
  - Multiple missing, incorrect and incomplete ACC minutes and documentation of actions
  - Outstanding Board, Pool Committee, and draft and final Annual Meeting minutes.

Currently outstanding are:

- 10/19 Budget work session minutes
- 11/16 Board conference call minutes
- 8/2016 Pool Committee minutes
- Draft 2016 Annual Meeting minutes, final minutes of any previous Annual Meetings

### **Agendas**

- Even after being notified in mid-October of the new regulations effective 10/1/2016, the Board has failed to publish/publicize agendas for multiple November and December meetings that met the 24-hour advance time requirement and were complete with support materials<sup>1</sup>
- **Failure to ensure that a Board member or employee has completed OMA Training**
  - You and I discussed this in a 10/28/2016 telecom, for which I have an email documenting our agenda

- **Governance/Board conduct of business: Inaccurate/incomplete minutes and agendas**
  - Inaccurate minutes, not corrected even when inaccuracies have been identified
  - Failure to follow up on issues raised at earlier meetings (Board and ACC) as Old Business at subsequent meetings, so items “fall between the cracks”

## Failure to enforce HOA rules and covenants

- **ACC**
  - Failure to follow up re: changes not adhering to the scope of ACC approval: specifically re: [redacted] well as many other instances<sup>2</sup>
  - [redacted] 1 Harlow Court fence not approved in open session or documented<sup>2</sup>
- **Property maintenance**
  - Resistance and/or failure to enforce covenants
- **Trash carts**
  - Failure to enforce straightforward covenant requirement regarding trash containers, or even contact homeowners individually regarding violations<sup>3</sup>
- **Parking regulations**
  - in Pool lot lacks tags
  - rear [redacted] White truck [redacted] tags
  - [redacted] Volvo in front of 824 [redacted] lacks front bumper and tag

<sup>1</sup> The revised 2/2/2017 Board agenda posted on 2/2 at 4:36 PM, includes the draft January 2017 Board minutes. They do not include the Written Statement for Closing a Meeting Under the Open Meetings Act for the 1/5/2017 meeting. Thus, I have no indication regarding whether this letter was discussed during the January closed session <sup>2</sup> ACC policy proposed 1/2017

<sup>2</sup> Corrected and/or revised ACC minutes provided 1/15/2017

<sup>3</sup> Appears on 2/2/2017 Board agenda

### law regarding Resale packages

- Failure to implement longstanding MD Resale package notification requirement re: adherence to HOA rules, even after it was brought to your attention 3/31/2016

Failure of the Board, its President, and its employee/agent to consistently adhere to the following elements of the [CCOC Bill of Rights and Responsibilities](#)

- *There is a documented pattern of failure to respond in a timely manner (or at all) to written and/or verbal requests for information and/or action regarding the issues outlined above.<sup>4</sup>*
- *There is documented evidence of occasional dismissive verbal and/or written responses to residents' attempts to exercise these rights*
- *There is documented evidence of resistance to encouraging and supporting residents' right to and requests for open communication and transparency regarding HOA*

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- activities*<sup>5</sup>
- 2. You have the right to be treated with respect by your neighbors and by the directors and managers of your community.
  - 4. You have the right to prompt and effective service from your association's directors or management.
  - 7. You have the right to honest and reasonable government from your elected board and the managers it chooses.
  - 12. You have the right to architectural and other rules (such as parking or pets) that are properly adopted and published, that are clear and reasonable, and that are fairly and consistently enforced.

Please provide me with a response, plan, and commitment to correct these issues no later than January 12, 2017.

Sincerely,



Judith P. Rudolph

cc by email: New Mark Commons Board of Directors  
Jim Denny, NMC Administrator

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<sup>4</sup> **Continued lack of response to this letter, previous communications from me, and other residents**

**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  
February 2, 2017**

*Please review the full contents of the minutes of the 1/12/2017 committee meeting. The items below require Board action and/or are particular importance:*

**New/additional committee member:** Bill Holdsworth has attended the last 2 committee meetings and is contributing significant IT expertise. **Board Action Requested** to approve Bill as a member of the committee.

**January Billing Enclosures:**

- *Online survey responses:* To date, these very preliminary and incomplete newsletter preferences lean toward monthly email delivery plus quarterly printed delivery of newsletters.
- Report of 120 responses received by 2/2/2017 is attached.
- The survey period will end 2/15/2017; the committee will review the final survey results, consider and discuss the feedback they provide, and develop recommendations to the Board later in the spring.
- We will also use the feedback to develop targeted informational/educational newsletter articles about how to use existing NMC tools.

**Website:**

- As of 2/1/2017, 67 residents have requested/received website Resident Area logon access
- Pat Reber and Bill Holdsworth have been trained on the basics of and can now serve a backups to perform basic website updates. Thanks to their input, the committee now has the skills to implement some of the enhancements and changes that we previously thought would require support from our consultant
- We are prepared to train Jim and the new staff member whenever they are available
- The committee agreed that access rights for editing/updating should be limited to some committee members and paid staff.
- The Board should note the items **Future Enhancements** and **Community News Criteria** in the January committee meeting minutes

**Newsletter:**

- **February Newsletters:** Electronic newsletters will go out ~2/18; a short printed newsletter/Annual Meeting notice for door-to-door distribution before the 10-day advance notice requirement for the 3/13 Annual Meeting.
- **Future Paper Newsletters:** See plan to simplify the production of future paper newsletters by NMC staff and Communications Co. volunteers.

**Google Business Implementation:** Note in the minutes information about the need for and availability of additional staff and Board training

### **Broadcast Emails**

- **Updated Policy/Guidelines:** Tabled pending results of Communications Preferences Survey and the availability of click-rate data for the website.

1

- **Mailchimp for broadcast emails:** The unanimous opinion of the committee, as well as Jim Denny, is to use Mailchimp for *all* broadcast emails.

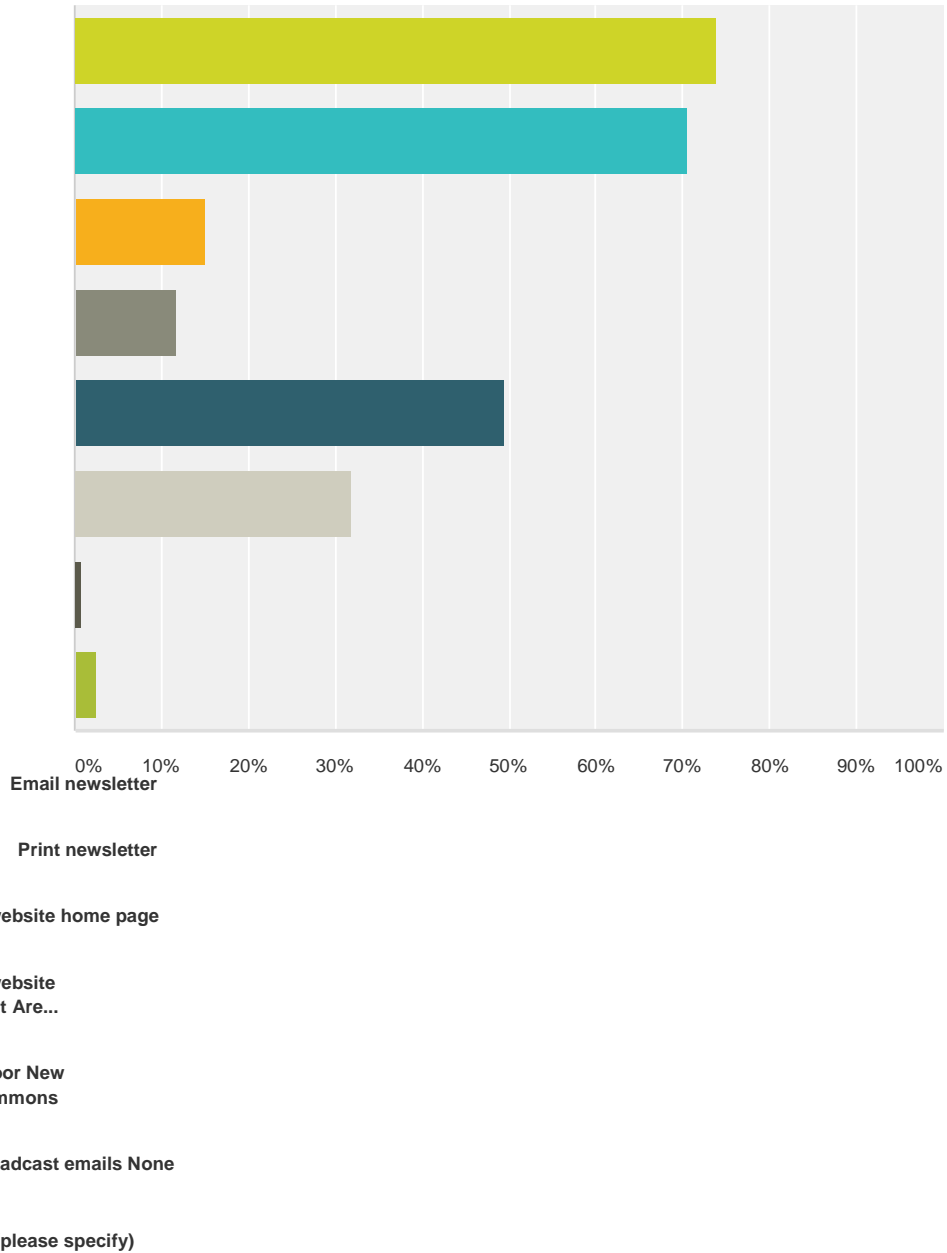
### **Databases:**

- **Non-Resident requests for Newsletter Subscriptions/Mailchimp: Request Board approval** of recommendation that only current residents get electronic newsletter deliveries, with these exceptions: (1) non-resident pool members should be put into a subgroup for delivery of newsletters from April to August; (2) adult children of residents who ask to be kept informed if their elderly parents live here; (3) landlords, who under their lease should be obligated to keep their renters informed. **Jim Denny** to an updated list of non-resident owners and ensure that owners are aware of this requirement.

The next meeting is Thursday evening, 2/9/2017 at 7:30 PM.

### Q1 1. Currently, which of the following do you use to get news and updates about New Mark Commons and its activities?

Answered: 119 Skipped: 1



Answer Choices	Responses
Email newsletter	73.95% 88

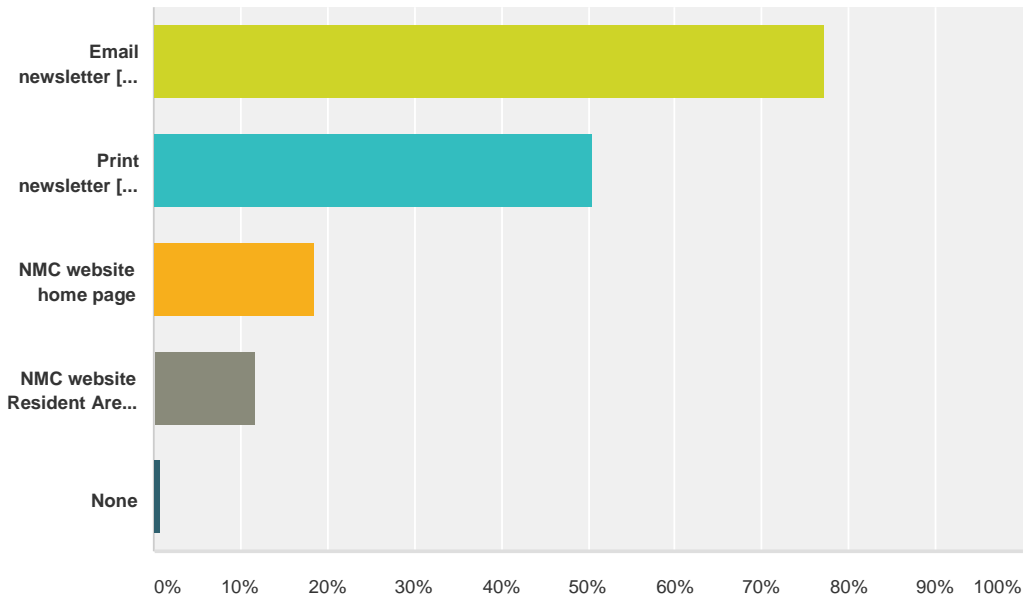
Print newsletter	70.59%	84
NMC website home page	15.13%	18
NMC website Resident Area pages	11.76%	14
Nextdoor New Mark Commons	49.58%	59
Broadcast emails	31.93%	38
None	0.84%	1
Other (please specify)	2.52%	3

**Total Respondents: 119**

#	Other (please specify)	Date
1	Neighbors	2/1/2017 11:47 AM
2	Attend meetings!!!	1/29/2017 4:07 PM
3	Accidental conversation (gossip)--[what are the green dots on the curbs?]	1/12/2017 3:56 PM

## Q2 2. If New Mark Commons offered all of the following, which would you most likely use to get information about NMC or its activities?

Answered: 119 Skipped: 1



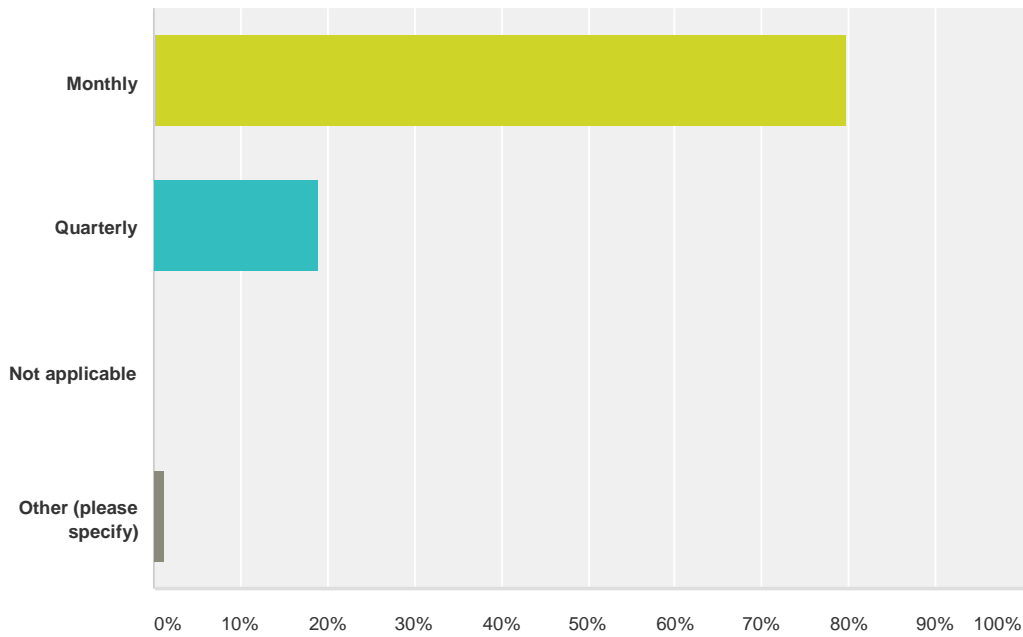
	Responses
er [see item 2a]	77.31% 92
er [see item 2b]	50.42% 60
home page	18.49% 22
Resident Area page	11.76% 14
	0.84% 1
s: 119	
er (please specify)	Date
required	2/1/2017 2:58 PM
preference	2/1/2017 11:42 AM
nt is not as good environmentally but to be realistic, more people will read it.	1/29/2017 5:15 PM
er monthly email OR monthly print newsletter	1/29/2017 11:33 AM

homepage: "it's nice, but have to be logged in to be there."	1/12/2017 4:02 PM
the way we always received info. I pay my dues and I shouldn't be forced to pay extra for the community Board of Directors' minutes, planned activities, and all news that involves my membership in New Mark Commons	1/12/2017 3:56 PM
Home page only if I receive notifications when new content is posted. I want to be notified when something has changed, not go hunt for it.	1/9/2017 2:28 PM

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### Q3 2a. If applicable, how often would you like to receive an email newsletter?

Answered: 84 Skipped: 36



	Responses
	79.76% 67
	19.05% 16
	0.00% 0
Other (please specify)	1.19% 1
	<b>84</b>
Other (please specify)	Date

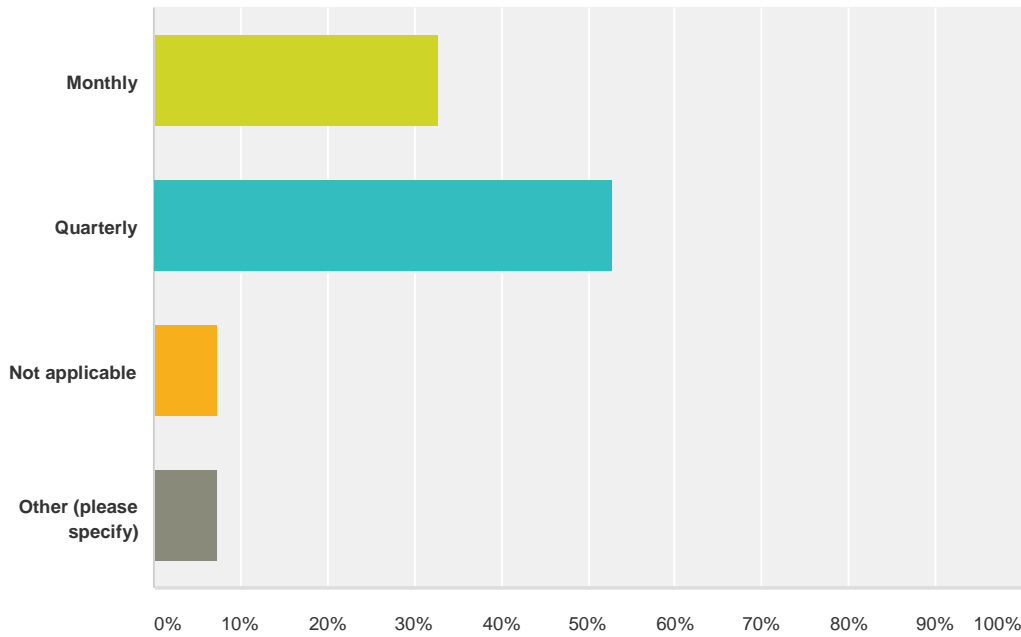
needed

1/12/2017 3:47 PM

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### Q4 2b. If applicable, how often would you like to receive a print newsletter?

Answered: 55 Skipped: 65



	Responses
	32.73% 18
	52.73% 29
	7.27% 4
specify)	7.27% 4
	55
er (please specify)	Date
er monthly or quarterly	2/1/2017 12:19 PM
ear	1/29/2017 11:31 AM
needed	1/12/2017 3:47 PM

have access to info online I do not need a paper copy. I know some people still want a paper copy. May be we can opt or out of the papercopy like you can at your bank.	1/11/2017 5:08 PM
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### Q5 3. What types of information would you like more of via online resources?

Answered: 24 Skipped: 96

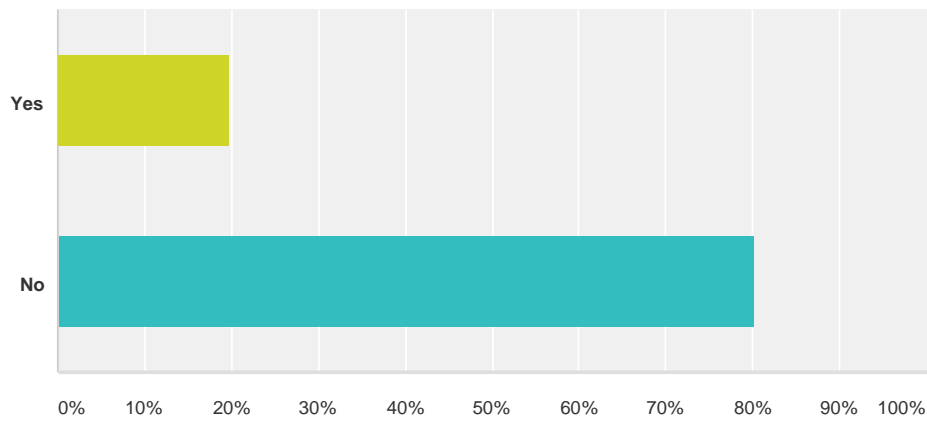
Responses	Date
broadcast emails	2/1/2017 7:13 PM
board updates (including agenda & reports post-meeting)	2/1/2017 2:58 PM
community news	2/1/2017 12:25 PM
event affecting the whole community--not for buying/selling stuff from residents	2/1/2017 12:18 PM
service recommendations	2/1/2017 12:15 PM
lost online info seems to be redundant! Currently too many messages!	2/1/2017 11:59 AM
alerts as when lights are out or tress down along walkways	2/1/2017 11:45 AM
information about committee activities	2/1/2017 11:39 AM
NMC Resident Area website	1/31/2017 10:23 AM
progress on nuisance [sic] issues. Parking of cars in front of residences and never driven. Dumping of refuse in lake. neighbors not picking up of spillage after trash & recycling pickups.	1/29/2017 5:13 PM
sales of homes in NMC	1/29/2017 4:18 PM
leaf pick up; trash schedule changes; inclement weather; consider clubhouse in emergencies	1/29/2017 4:09 PM
none	1/29/2017 4:07 PM
time sensitive information	1/29/2017 11:37 AM
would like a more detailed itemization of out litigation expenses, with an summary description of each legal action.	1/14/2017 1:55 PM
stuff for sale and ability to post stuff for sale. Reg notices when any crimes, even petty, occur in NMC	1/12/2017 4:02 PM
current content is great. Info on NMC homes for sale. Helping NMC residents make HOA payments online	1/12/2017 3:45 PM
alerts: Burlaries, neighborhood problems-H2O main breaks and resolutions	1/12/2017 3:43 PM
crime reports, unusual wildlife sightings	1/12/2017 3:39 PM
current ____ info adequate	1/12/2017 3:38 PM
covenants, By-Laws, City of Rockville Regulations, CCOC, lake, alternate road surfacing	1/12/2017 3:36 PM

community news-crime, ACC info, etc.	1/12/2017 3:32 PM
All info should be available on the resident area of the website	1/11/2017 5:08 PM
Ability to pay dues, buy pool passes, easier access to surveys (took 4 clicks to get to this one - could have easily been )	1/9/2017 2:28 PM

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**Q6 4. If there were a charge for hard copy/home delivered newsletters, would you still want them?**

Answered: 111 Skipped: 9



	Responses
	19.82% 22
	80.18% 89
	111

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WRITTEN STATEMENT FOR CLOSING A MEETING UNDER THE OPEN MEETINGS ACT

Date: 1/5/2017 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: Aric Mangum

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 of CCOC.
§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 CCOC 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 Manolatos, Magnus Turesson, Ellen Stein, Alex Manolatos, Magnus Turesson
(Form Revised 10/1/14)

Appendix C

