

NEW MARK COMMONS HOMES ASSOCIATION

BOARD OF DIRECTORS MEETING

Thursday, May 6, 2021

7:00 p.m.

Minutes Taken by Shireen Ambush

Attendees

Board Members: Alex Belida, Kathleen Moran, Karin Boychyn, Samuel Scheib, Timothy Petros, Lisa Halvorson and Joe Jordan

Abaris Community Management: Shireen Ambush, Glen Charles and Henry Leung

Call to Order

Kathleen Moran called the meeting to order at 7:07 p.m.

1. Community Forum 1 and Board Response

Tim Hefferon, the swim team representative was in attendance to answer any questions regarding the swim team's request for use of the pool.

Board Response

None

2. Agenda and Prior Meeting Minutes

Board Meeting Agenda 5-6-21: Alex Belida moved to approve the agenda with one addition which is the deck appeal for 224 New Mark Esplanade and one correction on the landscape agenda item b. The total number of trees is 18, not 6. The motion was seconded by Sam Scheib and carried unanimously.

Board Meeting Minutes 4-1-21: Joe Jordan moved to approve the minutes as amended. Karin Boychyn seconded the motion which carried unanimously.

3. Appeals

Stephen Harper, owner of 224 New Mark Esplanade was in attendance along with his neighbor, Jill Newman, owner of 226 New Mark Esplanade to discuss the ACC's recent approval of the application submitted by 224 NME for the installation of a new deck. The ACC reviewed the original application and deck plan and made some adjustments in response to the neighbor's oppositions and the owner has agreed to provide revised deck drawings. The ACC tried to accommodate the objections of the neighbor, Jill Newman which where that the ACC guidelines require any application to be rejected for lack of information and she thought her neighbor should have been required to re-submit a new application with the changes the ACC requested. Furthermore, she is very concerned about the impact on her view and privacy. Ms. Newman pointed out that there are only 3 decks around the lake, and they are set back so as not to block the neighbor's view and the set back prevents

neighbors from being able to look directly into an adjacent neighbor's home. She stated that if this deck was built, she would not have the privacy and view of the lake that she now has and NMC's historic designation includes the lake appearance. She finally stated that she felt this process was rushed and is precedent setting in nature and asked the ACC and Board to reconsider the approval. Stephen Harper commented that they have already reduced the size of the deck in so that it would not impede Ms. Newman's view. John Hansman, ACC Chairman summarized that the ACC has to consider the rights of a property owner and the impact on their neighbors when reviewing applications. This is the first deck request on this row of homes. The ACC did consider the precedent setting nature of this issue. This is the first of its kind in 50 years and the ACC finds the proposed deck acceptable once the dimensions were reduced. The ACC followed their normal process so that all applications are reviewed expeditiously so that decisions can be rendered promptly. The Board meeting happens to occur a few days after the ACC meeting every month which is regular timing and not rushed. The issues were well presented and considered. The ACC saw no need for the application to be re-submitted since the ACC specified the revised deck dimensions and railing detail and felt there was adequate information to render a decision. The owner needs a city permit to construct the deck which will require drawings. A discussion ensued regarding the owner's agreement to use plexiglass instead of white railings so as not to impede the neighbor's view. The Board agreed that it would be good to review the revised deck drawings which the owner has agreed to provide before ruling on the appeal. Timothy Petros and Alex Belida commented that there is no provision for a neighbor to appeal another neighbor's ACC application decision. Sam Scheib moved that the Board reviews the revised deck drawings before ruling on this matter at the next meeting. The motion passed with 5 Board members voting in favor and Timothy Petros and Alex Belida opposing the motion.

4. Hearing

None

5. Committee Reports

Architectural Control Committee (ACC) –

Timothy Petros reported that the ACC reviewed several applications this month and spent a considerable amount of time on the deck application for 224 NME. A CCOC complaint will be filed for the unauthorized door violation at 314 NME. The CCOC complaint for the unauthorized dog cages at 13 Welwyn has been filed.

Communications Committee –

Pat Reber reported that the 2021 – 2022 A to Z Directory proposal has been received. The cost will be \$2.50 per directory copy and we need 400 copies for a total cost of \$1000. The Committee will send the renewal contract to Abaris for execution. Pat noted that after 5 years of providing the directory for free, they must charge now due to lack of advertisement revenue caused by COVID-19. Alex Belida moved to approve the proposal. The motion was seconded by Karin Boychyn and carried unanimously.

Landscape Committee –

Lisa Halvorson reported on the Landscape Enhancement Day held last Saturday. There were several very enthusiastic volunteers who will be cutting back the Japanese honeysuckle. The pond garden is on hold for now. Resident concerns regarding landscape issues are ongoing and are triaged by Abaris and AW

Landscapes. There are a total of 3 proposals from S&P Tree Care involving 18 trees that total \$8525. The Committee has reviewed the proposals and recommends approval. Karin Boychyn moved to approve the proposals as recommended by the Committee. The motion was seconded by Lisa Halvorson and carried unanimously.

Lake Committee –

Lori Nicely reported that the Committee met on April 15, 2021. The request for the fountain to remain on until midnight was reviewed. After brief discussion noting that the fountain has always been turned off by 11 pm, Alex Belida moved to keep the timing the same and have the fountain turned off by 11 pm. Karin Boychyn seconded the motion which carried unanimously. NMC's legal counsel has been asked for an opinion regarding trespassers fishing in the lake. The opinion was just received today and will be placed on the agenda for the next meeting.

Pool Committee –

Sam Scheib reported that the County recently revised the maximum capacity requirement for the pool this summer to 120. There are 4 lifeguards which means 116 pool patrons can be permitted at any given time. There are 3 lap lanes which reduces the maximum capacity to 98. The social distancing requirements have not been lifted. Pool Personnel recommends that the maximum capacity be set at 85. The Pool Committee recommends 70-75 to start with and consider increasing to up to 85 over the course of the pool season. Karin Boychyn moved to accept the Committee's recommendation of 75 to start with a maximum of 85. Lisa Halvorson seconded the motion. Karin Boychyn amended the motion to include that there will be 3 lap lanes with 2 people per lane. The motion was carried unanimously.

The Board discussed the maximum limit for outside pool memberships. Sam Scheib and Lisa Halvorson suggested that the Board may need to reduce the number of outside memberships in the future to accommodate lots of new families with a greater number of residents in the household moving into NMC. The Board officially agreed that the maximum number of outside pool memberships will be 43 for this summer season.

The Board reviewed and discussed the swim team's proposal for use of the pool this season. Tim Hefferon commented that there will be 2 periods – before and after school in order to get lane time for practices. John Curry at Pool Personnel expressed no concerns of overlapping the swim team's use of the pool with their cleaning duties so that it won't impinge on lane time for pool users. Specific hours need to be set and the swim practices have to synch up with the swim sessions in Member Splash. After school gets out for the summer on June 15th, the time will change. Karin Boychyn moved to approve the swim team's proposal for use of the pool. The motion was seconded by Sam Scheib and carried unanimously.

Governance Committee –

Joe Jordan reported that on February 27, 2021, the Committee sent their proposal to the Board regarding the Bylaws and presented a timeline. The Board agreed to make the Bylaws a priority. On March 27, 2021, the Committee sent the full package with draft Bylaws to the Board. At the April Board meeting, Joe reviewed the February and March updates. On April 22, 2021, a memo was sent to the Board asking for feedback on the Bylaw documents. A final memo was sent to the Board last weekend. Joe Jordan gave a brief history of the Governance Committee and hopes to get a final Board decision tonight. Lisa Halvorson inquired if a provision should be included in the documents to allow for appeals from neighbors to an ACC decision similar to what occurred with the deck at 224 NME. Alex Belida suggested that we defer to the ACC for a

recommendation on Lisa's suggestion. After further discussion, Kathleen Moran suggested accepting Purpose Statement Option #2. Joe Jordan voiced his disagreement advising that the statement belongs in the Declaration, not the Bylaws. Karin Boychyn clarified that this statement is for the layman homeowner who does not know the Bylaws/Rules. Sam Scheib moved to approve Option #2. The motion was seconded by Karin Boychyn and carried with 6 votes in favor and 1 opposing vote from Joe Jordan.

The quorum issue was discussed. Lisa Halvorson suggested that the quorum be required and not only if someone asks about it. Raj Gupta suggested leaving the quorum language as it is and provided several Federal Government examples. Kathleen Moran commented on her consultation with NMC's legal counsel, Ruth Katz about this matter who confirmed that the current language is not common practice for HOAs. She further advised that a 10-15% quorum requirement is normal and customary today. The Board discussed various options presented by the Committee for the quorum requirement. Joe Jordan moved to accept Option #1 that includes a 20% quorum requirement and 15% quorum requirement for the subsequent meeting if the quorum is not met the first time around. Alex Belida seconded the motion which carried unanimously. Karin Boychyn moved to send the final version of the Bylaws incorporating the changes discussed this evening to Brian Bichy for final review. The motion was seconded by Sam Scheib and carried unanimously. The Board thanked Raj Gupta and Joe Jordan for their hard work on these documents.

After the meeting on May 6th, the Board unanimously approved the Governance Committee's request for action as per the message below. The Board decision became final when the last Board member approved the request on May 10th

ACTION ITEM FOR BOARD: Using the Board's authority under *current* bylaws Article VI Section 6, please approve the Governance Committee's recommendation to delete the last sentence in *draft* amended bylaws Article VIII Section 8(b) as soon as feasible prior to the June Board meeting, in order for the draft amended bylaws to be forwarded to Counsel for legal sufficiency review without delay.

Explanation:

I discovered this morning that the draft bylaws you approved on May 6th unintentionally include an inappropriate statement of appeal rights that are not established in Covenants. The Committee never purposely intended to include language in bylaws that can be misconstrued when considered out of context to confer new appeal rights on non-applicant homeowners. See draft at Article VIII Section 8(b) quoted below:

“(b) The Board may authorize committees to receive applications from homeowners and take actions to approve or disapprove such applications to ensure compliance with provisions of covenants. Examples include applications to make external modifications (architectural control) or to remove trees. Homeowners have the right to appeal actions of committees to the Board.”

The last sentence (highlighted in yellow) can be misconstrued to suggest that **ALL** homeowners, not just the applicant-homeowners, have a right to appeal a committee's disapproval of an application. It is therefore imperative that we delete the highlighted sentence from the draft bylaws to avoid any possible problems since we are still aspiring that these draft bylaws should be able to align both with existing covenants as well as changes proposed in draft amended covenants, and the issue about appeals from non-applicants is a new one that needs further discussion and development for Covenants.

The Committee will now try to develop for Board consideration whether and, if so, in what circumstances, non-applicant members may appeal a committee decision.

In light of the above, the Committee requests the Board to take the proposed action to approve the Committee's recommendation by unanimous approval using the *current* bylaws Article VI Section 6 authority.

Welcome/Social Committee –

Karin Boychyn reported that 2 new neighbors were welcomed to NMC since the last meeting.

6. Treasurer's Report

Karin Boychyn reported that NMC has roughly 1.3 million dollars in the bank and owed roughly \$568,000 on the commercial loan. We are operating on budget in general with the exception of snow removal. Based on the 2020 draft #3 audit, NMC had a good year that ended with a \$65,000 surplus. Karin Boychyn moved to transfer \$159,863 from unappropriated members' equity to the reserve fund per the auditor's recommendation. The motion was seconded by Alex Belida and carried unanimously. Karin Boychyn moved to accept the 2020 draft #3 audit with one change pertaining to the transfer of funds from UME to the reserve fund. The motion was seconded by Sam Scheib and carried unanimously. The Board thanked Karin for her research and time spent reviewing the draft 2020 audit report.

The final reserve study will be used for future capital project planning. Abaris will prepare the first draft of the 2022 budget over the summer.

7. Management Report

Shireen Ambush presented the Management Report from Abaris:

- A. **City of Rockville Stormwater Fee Credit** – Shireen Ambush reported that the official application and fee has been submitted to the City as they directed for approval of the stormwater fee credit. We hope to receive the official approval soon.
- B. **Deck Master Proposal for Lake Piers & Bridge** – Shireen Ambush confirmed that Deck Master is not the same company that she filed a BBB complaint against many years ago. Deck Master confirmed that all City of Rockville permits and associated fees are included in their proposal. The final proposal has been executed with Deck Master and the deposit has been paid.
- C. **MDE Dam Inspection Report** – Shireen Ambush reported that bids were originally sought in January for compliance with the MDE inspection citations and to also qualify for the City of Rockville stormwater fee credit. The criteria for the City's stormwater fee credit changed significantly since the initial talks with the city and much of the previously stated requirements have been waived. Now that it appears the stormwater fee credit will be approved, Abaris will send out new RFPs to engineering firms strictly for compliance with the MDE dam inspection report.

8. Old/New Business

Master Insurance Renewal - The Board reviewed the renewal master insurance policy proposal from HMS Insurance. Karin Boychyn moved to accept the renewal proposal. The motion was seconded by Alex Belida and carried unanimously.

Becht Reserve Study Update – The Board voted unanimously to accept the final version of the draft reserve study prepared by Becht Engineering. Karin Boychyn requested the disbursement schedule which will be sent to her.

Tennis Court Signs & Repair Proposals – The Board voted to table these items

332 NME Fence Repair Request – Kathleen Moran commented that the request from this owner for NMC to share in the cost of the fence repair was provided to NMC's legal counsel, Ruth Katz and she confirmed that this is solely the owner's responsibility. The homeowner will be notified accordingly.

9. Community Forum 2

Debbie Mesmer endorsed Lisa Halvorson's suggestion regarding appeals from neighbors on ACC decisions.

10. Executive Session

Consistent with the authority under Section 11B-111 of the Maryland Homeowners Association Act, Alex Belida moved to go into Executive Session for the following purpose: discussion of individual owner assessment accounts. The motion was seconded by Sam Scheib and carried unanimously.

11. Adjournment

Joe Jordan made a motion to adjourn the Board meeting which was seconded by Sam Scheib following the conclusion of the Executive Session. The meeting adjourned at 9:28 p.m.