

Dear LMC Member(s):

The current LMC regulation on trees and views was adopted by the Board of Trustees in May 2007. A copy of it is enclosed for reference. It was a considerable improvement over the previous regulation, but during the past 2½ years of working with it, the Architectural Control Committee (ACC) which is responsible for administering it has found that some of its provisions are subject to multiple interpretations and inconsistent enforcement. Even with the best of intentions, the regulation has proven difficult to enforce consistently by the ACC with its inevitable turnover of volunteer members.

At the request of the ACC, the LMC Board voted at its August 8th, 2009 meeting to place a moratorium on all view relief requests while the regulation was thoroughly reviewed and a revision drafted. We are hopeful that the resulting improvements will allow the regulation to be more consistently interpreted by the ACC and the LMC members at large, and promote voluntary compliance.

Please note that the only regulation affected by the moratorium and proposed revision is the one pertaining to relief from view obstructions on neighboring properties. The current regulations pertaining to the cutting of trees on one's own property and the cutting of hazardous trees remain intact and the ACC continues to act on those matters.

A copy of the latest draft of the revised regulation is enclosed for your review and comment. The Board of Trustees is very interested in receiving feedback from all members interested in this issue so we can adopt the best possible language to meet the needs of all members. Please send any comments you may have to the Beach Club no later than March 5 so that the LMC Board can take action on this regulation at its next scheduled meeting on March 13th, 2010. Responses are welcome by mail (P.O. Box 65060, Port Ludlow, WA 98365), hand delivery, or email (beachclub@olympus.net). We recognize that this is a relatively short time period to respond to this rather complex regulation, but we would like to lift the moratorium and get back to the business of processing view obstruction relief applications as soon as we can.

Why is the regulation being changed?

The following are some of the difficulties the ACC has had administering this regulation.

Parts of the current regulation are subject to multiple interpretation. For example, Paragraph b. states, in part, "Property owners are not entitled to any more view than that which existed when they purchased their property and are encouraged to document that view by photos and other means."

- Complainants often take the position that, regardless of other considerations, they are always entitled to the view that existed when they purchased their property.
- Tree owners often take the position that the complaint is not valid unless it can be documented by photos. Can a property owner be allowed to ignore the regulation to keep trees at rooftop height if no neighbor has photos of a prior view?
- The terms "encouraged to document" and "other means" are too vague.

Paragraph a. states, in part, “When landscaping their lots owners shall select varieties of plants, shrubs and trees which will not grow to exceed their roof line height.”

- The regulation pertains to the act of landscaping. If landscaping did not comply with this regulation, what should the consequences be?
- The first LMC regulation limiting the height of trees in the North Bay of Port Ludlow was adopted in January of 1984. Some tall vegetation was planted by previous owners long ago before this regulation was in effect, yet there is no provision for “grandfathering” such vegetation.
- There is no reason to arbitrarily restrict the height of vegetation in areas of North Bay that have no views.
- The topography on some lots makes it impossible to landscape below the height of the roof.
- The ACC has found it difficult in some cases to ascertain whether or not certain trees were planted by property owners.

Paragraph a. states, in part, “Hedges, shrubs and rows of trees planted by owners along property lines shall be pruned so as not to exceed a height of eight feet.”

- It is sometimes very hard to differentiate between planted trees and trees that were left in place when a lot was developed.
- There is no specific definition of what constitutes a “row of trees” (is it 2 or 3?).
- Proximity to all property lines can encompass most of a lot.

Paragraph b. states, in part, “Mature native evergreens/conifers designated by the ACC to remain on the property when developed are exempt from removal unless ruled to be diseased or hazardous to persons or property”. The historical records the ACC has on file for house construction do not support such a designation.

Paragraph c. states, in part, “Criteria used for determining the extent of relief to be granted will include but not be limited to the following and will apply to all interested parties.” Subparagraph 1, states, “The extent to which property values, screening of property, soil stability and drainage (soil structure, degree of slope and root system), surrounding vegetation and community aesthetics are affected.” Soil stability and drainage can be a critical issue in some applications. The ACC is made up of volunteers who usually do not possess the expertise to make judgments about such issues, and there is no budget to hire professional consultants to evaluate whether cutting a particular tree will cause a drainage problem.

Paragraph c. Subparagraph 3, states, “The extent to which view has been obstructed as expressed in percentage of total view and the extent to which trees obstruct sunlight and reduce air circulation.” The terms of this criterion are difficult to apply consistently.

How does this revision differ from the current regulation?

After considerable research into regulations and ordinances of other view communities in the Puget Sound Area, the ACC incorporated clear language developed by these

communities which in many cases was tested in the courts. This gives the regulation added strength. *The intent of the effort to revise the regulation is not to make it any more or less restrictive for trees versus views, but rather to improve the process for resolving the inevitable conflicts.*

In the revised regulation, the concept of relief from view obstructions has been expanded to include views, sunlight and air circulation.

In the revised regulation, there is a clear reflection of the provision in the LMC Covenants that approval for cutting of trees on undeveloped lots can only be requested by the owner of that lot.

While the current regulation encourages neighbors to communicate and negotiate with each other the revised regulation insists that it at least be attempted. A further step of requiring mediation by the Peninsula Dispute Resolution Center has been added which should result in many, not all, cases becoming resolved at this point. The cost of mediation is minimal ... as low as \$25 for a session, depending on one's ability to pay.

While the current regulation states that experts may be consulted, the fact is that the ACC currently has no resources to hire experts. The revised regulation provides a means to pay for expert consultation when necessary, and more clearly identifies who bears the burden of costs for tree alterations.

The current regulation requires property owners when landscaping their lots to select varieties of plants, shrubs and trees which will not grow to exceed their roof line height. The revision does not limit the varieties of vegetation planted. The approach in the revision is rather to focus on trees that actually obstruct views, sunlight or air circulation, and provide a series of steps to resolve conflicts between neighbors beginning with encouraging mutually agreeable solutions. Exempted trees are clearly defined.

The current regulation requires that hedges, shrubs and rows of trees planted by owners along property lines be pruned so as not to exceed a height of 8 feet. The revision adopts the concept of a "living fence" which is clearly defined and has been used in other communities. The language has been tested successfully in the state courts. The revision limits living fences to a height of 8 feet.

We clearly all want our views preserved, but we also want peace and harmony in the community. We would very much appreciate your taking the time to carefully review this information and respond with any comments you may have.