

## First Reading Draft of New Regulation

3. **Trees Obstructing Views, Sunlight or Air Circulation on Private Property.** Trees and views both provide significant psychological and tangible benefits for property owners and are essential to the character of our Port Ludlow community. However at times they may come into conflict with each other. This regulation is written in recognition of the importance of scenic resources, views, trees, drainage and sunlight to properties and is intended to provide a fair mechanism for resolving *issues* relating to trees and views (*as defined below*) of LMC property owners.

This regulation applies only to those trees that are impeding the view, obstructing sunlight and/or air circulation of a neighboring property. Further, this regulation applies only to developed lots. A request to remove or alter trees or vegetation on an undeveloped lot can only be made by the owner of that lot.

The ACC recognizes that its regulations and rulings are subordinate to the Jefferson County Critical Area Ordinance and the State of Washington Shoreline Management Act and will inform the parties of this fact.

- a. **Exempted Trees.** Since the first regulation ever written regarding trees impacting views in LMC was adopted in January of 1984, all trees whose age antedates the 1984 regulation shall be exempted from this regulation. It may be necessary to determine the age of the tree(s) in question by core sampling.
- b. **Tree Obstruction.** All trees on private property unless exempted by age or that can be documented that it was exempted by the ACC when the property was developed with a copy of the plan, must be maintained so they do not unreasonably obstruct the view, sunlight or air circulation from a neighboring property. An obstruction can be resolved by windowing, wind thinning, topping to roofline height or complete removal. The exception to this restriction is if the tree(s) are classified as a “living fence” as defined in Regulation II, Article II (16) which must be maintained at a height of eight (8) feet.
- c. **Obstruction Relief.**
  - i. The initial step in the process is for the complainant to make all reasonable efforts to find a voluntary solution with their neighbor. Both parties are urged to approach the discussion with rationality, reason and respect.
  - ii. If after exhausting all reasonable approaches as neighbors the obstruction is still unresolved, the complainant is required, with the voluntary concurrence of the tree owner, to seek the services of the Peninsula Dispute Resolution Center.

iii. A property owner who desires to take advantage of the provisions of this regulation to resolve the conflict between trees and obstructions, shall submit a written report to the ACC stating with particularity the manner in which the view, sunlight or air circulation from her/his property is being unreasonably obstructed by the growth of one or more trees on the neighboring property; and that all efforts to mediate or arbitrate a resolution of the unreasonable obstruction through the Peninsula Dispute Resolution Center have been exhausted. The complainant will deposit with the LMC an amount to be established by the LMC Board, which shall be refunded in any amount not used, against the consulting expenses incurred by the ACC for arborists, geotechnical engineers, or other consultants and shall agree in writing to pay in full the reasonable amount of any such expenses, even if such expenses exceed the amount of the advance.

iv. The ACC shall, within 30 days (unless extended for good cause) after introducing the matter on the agenda, render a decision regarding the offending trees. The ACC shall visit the site of the complainant to gain a full and clear understanding of the issue. The ACC will also visit the site of the tree owner. The decision will be based on, among other things, considerations of the amount of the view, sunlight or air circulation obstructed, drainage issues (soil structure, degree of slope and root system), and if deemed necessary, the opinions of professional consultants, including but not limited to, the Port Ludlow Drainage District.

v. Within 15 days after the decision of the ACC becomes final, the tree owner will obtain at least two bids from licensed and bonded tree service companies to have the prescribed work done, and shall present all bids to the complainant. Within 15 days after presentation of the bids, the complainant will deposit with the LMC an amount equal to the percentage of the lowest bid deemed appropriate by the ACC. Failure by a complainant to deposit with the LMC the full amount required by the LMC within the 15 days required shall constitute a withdrawal and abandonment of the claim. The tree owner will, at her/his sole discretion, choose the company by which she/he wishes the work done and shall order the work done within 30 days after LMC receiving the complainant's deposit or such other period of time as the ACC may determine to be reasonable and appropriate. The tree owner shall pay the difference between the deposit amount and the bid amount of the company she/he has chosen. The ordered work shall be done by a licensed tree service under the sole discretion and control of the tree owner. However, nothing in this section shall prohibit the tree owner from doing the work herself/himself. The complainant shall pay the entire lowest bid amount of the ordered work, unless the ACC makes an express finding that:

- The tree constitutes a hazard to safety of the complainant or his/her property, and is being maintained by the tree owner in disregard for the safety of others, in which case the tree owner may be required to pay up to 100 percent of the cost of the work, the actual percentage to be determined by the ACC, including replacement of the complainant's deposited fee; or
- While no view, sunlight or air circulation obstruction to a neighbor's property existed when the complainant took possession of the dwelling, but due to growth of a tree an obstruction occurs at a later date, and the tree owner, since he/she took possession of the tree, disregarded the view, sunlight or air circulation obstruction to the neighbor's property by allowing the tree to grow to an obstructive height, the tree owner may be required to pay up to 100 percent of the cost of correcting the view, sunlight or air circulation obstruction, the actual percentage to be determined by the ACC.

vi. If the view relief remains unresolved, the last alternative is for the complainant and the tree owner to settle the matter in a Court of Law.

d. **Pruning.** Once a tree or "living fence" has been brought into compliance with regard to these tree height regulations the necessary regular pruning required to maintain the tree height requirements does not need to be expressly approved by the ACC.

e. **Replacement Trees.** In order to maintain an environment where tree removal does not negatively affect the drainage issues for the community at large, it will be a requirement to replace the removed or topped tree(s) with new vegetation. A suggested list of trees is available at the LMC office.

f. **Debris Clean-up.** All debris resulting from approved request shall be disposed of within 2 months. Burning of yard debris is permitted only under Regulation I, Article I, 10 and is subject to Jefferson County and local Fire Department permitting process.

g. **Definitions**

**View.** A view of Puget Sound, Hood Canal, Port Ludlow Bay, Cascade Mountains, Olympic Mountains or a distant territorial view.

**Fence.** A fence shall be any barrier which is naturally grown or constructed. See paragraph 16.

**Pruning and Limbing.** "Pruning" and "limbing" are general terms for removing selected limbs for a tree in order to provide a relatively unobstructed view through a part of the tree canopy.

**Windowing.** “Windowing” is a term for the removal of selected limbs to provide a view window through the foliage.

**Thinning.** “Thinning” implies that selected limbs may be removed to allow a partial or filtered view through the canopy.

**Topping.** “Topping” implies that the upper trunk may be pruned or removed.

**Cutting/Removal.** The term “cutting” or “removal” implies that the tree may be cut at or near the base of the tree.

DRAFT

**16. Fencing.** *A fence shall be any barrier which is naturally grown (“Living Fence”) or constructed. Fencing will not be allowed except for containment of children, pets or at the discretion of the ACC on a case-by-case basis. Objections from adjoining property owners will be considered. All adjoining neighbors whose property abuts the requesting party will be notified by the ACC.*

a. All fencing materials, finishes, designs and placement must be approved by the ACC. Effective March 12, 2005 chain link fencing will not be approved. The LMC corporation is exempt from the prohibition against chain link fencing exclusively for the purposes of safety, security and well-being of the public. Examples include but are not limited to: pools, tennis courts, storage areas and collection ponds.

b. Except on lots where livestock is permitted under the terms of the applicable restricted covenants, fence height will be restricted to no more than six (6) feet *measured from the original grade. Whenever a fence is placed on top of a retaining wall the height of the fence and the retaining wall together shall not exceed six feet as measured from the original grade. Naturally grown fences shall not exceed eight (8) feet in height as measured from the original grade.* Containment fencing may not extend beyond the front of the home; fencing to the street line will not be permitted. The entire front of the home will be open to the street.

c. The establishing of fence lines in relation to the adjoining properties is entirely the owner’s responsibility.