

# APPROVED

## MINUTES OF THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF LUDLOW MAINTENANCE COMMISSION, INC.

September 23, 2010 – 6:00 p.m. – Bay View Room

**Trustees:** Elizabeth Van Zonneveld, Richard Babaian, Jim Boyer, Vaughn Bradshaw, Teddy Clark, Glee Hubbard, Stan Kadesh, Michael Larkin and Sharron Sherfick.

President Van Zonneveld called the regular board meeting to order at 6:06 p.m.

**Opening Remarks:** President Van Zonneveld asked attendees to sign in if they had not already done so. All meetings of the LMC are recorded for transcription and accuracy. Meetings are not operated entirely by Roberts Rules of Order, but a general parliamentary procedure will be followed. Skype is used occasionally to allow board members to participate while out of town. President Van Zonneveld stated it is not her policy to vote on a matter before the board except to break a tie. Participants are asked to wait until recognized, go to the podium to use the microphone, announce their name and speak one at a time. Motions will be disposed of as they occur. President Van Zonneveld stressed the trustees, committee chairs and the members participating on the committees are all volunteers. Committee members are needed on several committees and interested members are urged to talk with the committee chairs if they have any questions. The trustees will go into executive session later today to review a legal matter.

### **Call to Order:**

Secretary Bradshaw called the roll. All trustees were present with the exception of Trustees Babaian, Boyer and Clark. General Manager Brian Belmont was also in attendance. A quorum was present.

**Changes to the Agenda:** An executive session was added to follow the regular board meeting. The policy and procedure on LMC meetings, as a first reading, will be added following g. under Board Business.

**Member Comments:** None

**Approval of Minutes:** *Trustee Kadesh made a motion to approve the regular Board minutes of August 26, 2010. The motion was seconded by Trustee Sherfick and carried 4:0:2, with Trustee Larkin and President Van Zonneveld abstaining. 10-09-01*

*A vote to approve the executive session minutes of August 26, 2010 was deferred at this time.*

### **STAFF & COMMITTEE REPORTS:**

#### **Covenants & Regulations Committee (CRC) – Sally Orsborn, Chair**

1. **Regulation III, Article III, Section 5, d. (new addition)** concerning the Greenbelt Committee Security Deposit was proposed by the CRC as a second reading with the recommendation that it be approved by the board as a new regulation. Discussion followed.

*Trustee Kadesh made a motion that the board accepts and adopts the recommended amendment of Regulation III, Article III, Section 5, d. into the Regulations, as submitted by the CRC.*

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*Trustee Sherfick seconded the motion. Discussion followed. The motion carried 5:0:1, with President Van Zonneveld abstaining. 10-09-02*

2. **Introduction to Regulations, 7** concerning a well-defined means of amending Regulations was presented as an initial reading (see below).

Deletions – strikethrough

Additions – *italic*

**Rationale:** The LMC Board of Trustees, committees, members and staff may bring forth suggestions for modifications to the LMC Regulations. The board carefully considers need, content and clarity before adopting any amendments and additions. The proposed regulation defines an orderly process for making changes to the Regulations providing adequate time for serious consideration and member comment.

## RECOMMENDED AMENDMENT TO THE REGULATIONS

- **LMC Introduction to Regulations, 7.**

Amendment. These Regulations are subject to future amendment and addition at the discretion of the LMC Board of Trustees [Articles of Incorporation, Article VII (i) and (j)]. ~~Prior to approval, all proposed amendments and additions to the LMC Governing Documents including the Regulations shall be subject to at least two public readings at regularly scheduled meetings of the Board of Trustees.~~ *Proposed amendments and additions to the Regulations shall be subject to no less than two readings at separate regularly scheduled meetings of the Board of Trustees, notice to be published on each agenda. Draft copies of proposed changes shall be made available to members at meetings, sent to members electronically, posted on the Beach Club bulletin board and posted on the LMC website. Member comment shall be invited. Prior to adoption, a proposed Regulation change shall be approved without modification at two regularly scheduled meetings of the board.*

Discussion followed. *Trustee Kadash made a motion that the recommended amendment to LMC Introduction to Regulations, 7. be accepted from the CRC as a first reading. Trustee Bradshaw seconded the motion and it carried 5:0:1, with President Van Zonneveld abstaining. 10-09-03*  
The wording will be made available for member comment.

The Communications Committee will be asked to review and comment on this Amendment as part of the first reading. Discussion continued.

3. A proposal concerning **replacement of trustee representatives on committees in cases of prolonged absence** was presented as an initial reading (see below). CRC requested that the submission be considered for inclusion in the LMC Board of Trustees Policies and Procedures.

Deletions – strikethrough

Additions – *italic*

**Authority:**

RCW 24.03.115 provides for the establishment of one or more committees “...each of which shall consist of two or more directors....”

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LMC Bylaws, Article V, Section 4. provides for the appointment of two trustees to each of the standing committees. It further states that all appointments shall be reported to and approved by the Board of Trustees and published to all members at the first opportunity. Also, LMC Bylaws, Article III, Section 8 a. gives the Board of Trustees the power and authority to appoint and remove committee members.

## **Rationale:**

The Washington RCWs require that directors (trustees) be assigned to committees to ensure connection between boards and committees. Trustees are considered full members of committees and are figured in constituting a quorum. Prolonged absence of assigned trustees from meetings can disrupt the ongoing work of the corporation.

## **RECOMMENDED ADDITION: POLICIES AND PROCEDURES**

- **LMC Board of Trustees Policies and Procedures**

### **Trustees on LMC Committees: Replacement Due to Prolonged Absence**

*The LMC President may replace a trustee who is unable to attend committee meetings for an extended period of time. The appointment shall be subject to board approval.*

Discussion followed. Suggested changes will be forwarded to the CRC. The topic was referred to a board workshop.

4. CRC members presented written responses to the newly assigned task concerning **Policies and Procedures for Filling Vacancies on the LMC Board of Trustees**. The committee wishes to consider this topic at a CRC meeting.

5. CRC is holding the revision of **Regulation V, II, 4, a.** concerning the times that applicants have to file appeals pending clarification from the board as to what “starts the clock” (e.g. presentation of the appeal at a board meeting; arrival of the appeal at the Beach Club; postal date). Clarification will also affect revision of **Regulation V, II, 4, c.** concerning the time the board has to consider an appeal before making a decision.

**Port Ludlow Village Council – Larry Scott Trails Committee** – The committee had and completed three goals for 2010. The first included completion of a small piece of re-route around the bay trail across from the Kitsap Bank. The second was completion of the chipping and final dressing of the Lower Rainier Trail. This was accomplished by homeowner Scott Johnson allowing access to his second piece of property to get to the area. The third was to get approval from all the various agencies locally for some long range planning for additional trails in the Port Ludlow area. All agencies were onboard for this project.

Mr. Scott provided an in-depth discussion and visual presentation of the future plans the Trails Committee wants to accomplish. Discussion followed. President Van Zonneveld explained that conceptually the LMC would have to approve adding the proposed trails the Trails Committee is recommending and then the Trails Committee would work with the Greenbelt Committee on every individual trail as they are ready to develop. Discussion continued. A copy of the proposed trails map will be provided to LMC for member input. The proposed trail recommendations will be scheduled for further discussion at a workshop.

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Trustee Babaian joined the meeting in progress at 6:55 p.m.

**Manager's Report – Brian Belmont** – The Trustees have been provided with a copy of Mr. Belmont's monthly exception report.

97.2% of LMC's annual assessments have been collected through the end of August 2010. Year-to-date LMC is \$8,966 under budget on assessment collections. Total income through the first 8 months of 2010 is only \$1,051 under budget. Although there are 30 delinquencies, some of the lost revenue has been made up in other areas.

Legal expenses are \$3,007 over budget for the entire year. Total expenses through August 2010 were \$26,816 under budget. Earlier concerns related to a deficit at the end of the year are somewhat relieved. With careful spending the remainder of this year, we should be okay, but there are concerns for next year. Mr. Belmont and the Finance Committee are tracking the budget very closely and things look a lot better than a few months ago.

Usage at the Beach Club, including meetings and other events, has been tracked since the first of August. For the month of August there were 1,627 non-recreational users, 4,213 recreational users, for a total of 5,840 users.

The parking lot was restriped by the Beach Club staff. The staff rebuilt the deck on the back of the Bridge Deck. Jim Irvine, husband of Beach Club hostess Ruth Irvine, volunteered and helped the staff with this project. The outdoor pool will be closed on September 30.

Peggy Schafran has been organizing a fundraiser to update the sound system for the Beach Club. The event will be held Sunday, September 26 at the Beach Club.

**Operations Committee (OC) – Jim Goode, Chair** – Mr. Goode reported the Operations Committee had agreed on a contractor to do the required work at the RV lots. The OC recommendation will be presented to the Finance Committee and then to the board for approval.

Mr. Goode discussed several properties the OC has had difficulty with. Letters have been written, but they have been returned unclaimed. Hiring a private company to get a good address for the owners of these properties was discussed. Discussion followed.

**Finance Committee (FC) – Ian Feltham Chair** – The FC met on September 9. Mr. Feltham discussed raising the rental rates for the Bay View Room to outside groups and the rates for the RV lots. Research on other rentals in the area show the Beach Club rates to be considerably lower than other venues.

Each month at least two members of the FC go through the financial records with Mr. Belmont for a mini internal audit. To date, all financial records appear to be in good condition. Mr. Belmont was complimented for his excellent financial record-keeping.

**Architectural Control Committee (ACC) – Trustee Bradshaw for Bill Clark, Chair** – Trustee Bradshaw discussed the summary schedule of all the projects that have been completed over the last month. The summary schedule was emailed to all the trustees.

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The ACC met on three different dates since the last board meeting. There has been no new activity regarding the new Trees & Views Regulation the past month. The ACC still needs additional members.

**Greenbelt Committee (GBC) – Ross Robson, Acting Chair** – Mr. Robson discussed the need for clarification related to members on a leave of absence not counting toward a quorum. Mr. Robson recommended Skip Rasmussen be placed as a leave of absence member from November 1 through April 30. He also stated proxies would be very helpful at times, and submitted a proxy form for use by LMC committee members. This proxy would not allow any one person to have more than one proxy. He requested the trustees consider the use of proxies.

*Trustee Babaian made a motion to appoint Karen Brattain as chair of the Greenbelt Committee. The motion was seconded by Trustee Bradshaw and carried 6:0:1, with President Van Zonneveld abstaining. 10-09-04*

The GBC approved a request for soil testing in the greenbelt related to the Grace Christian Church property at the corner of Oak Bay and Osprey Ridge. Depending on the results from that testing, approval from the Port Ludlow Drainage District and concurrence of the County, the GBC will give approval for the church to put in an infiltration system. A request for an easement will be made by the GBC pending outcome of the above requirements.

*Trustee Babaian made a motion to authorize the GBC's approved geotechnical soils survey on the LMC Greenbelt next to the Grace Christian Church property at the corner of Oak Bay and Osprey Ridge Road. All expenses, including the geotechnical survey and restoration of the land of the greenbelt are to be paid by the church. The motion was seconded by Trustee Kadesh. Discussion followed. The motion carried 6:0:1, with President Van Zonneveld abstaining. 10-09-05*

In the 2010 budget the GBC had allocated \$5,000 for clearing of trees around the RV lots. The GBC voted to release that money immediately. The GBC has offered another \$5,000 for clearing around the greenbelt or another project deemed more urgent. The committee has completed their budget for 2011. This year's budget was \$16,000 and the 2011 budget for the GBC is \$10,000. In that budget there is another \$5,000 for clearing around the RV lots. Discussion continued related to tree removal around the RV lots.

**Communications Committee (CC) – Sue Milner, Chair** – A CC summary report was previously submitted to the trustees.

The CC offered to support any of the committee chairs with regard to preparing articles for the Navigator.

The committee orientation is scheduled to be held on Monday, September 27.

The CC needs additional members. Proofers for the Navigator are needed and volunteers from the community will be welcomed. Call Sue Milner to volunteer.

**Port Ludlow Village Council (PLVC) – Larry Nobles** – Mr. Nobles announced the hearing examiner ruled on the side of the County in the appeal submitted by Mr. Jelinek. One paragraph in the opinion indicates the owner at the present time has leased the property long term to a religious organization and is using it as a quasi conference center. The hearing examiner

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indicated he would not rule on that at the time of the appeal hearing because it had not been included in the appeal. If the community still has concerns about that usage, another complaint will have to be filed. The County Department of Development will have to decide whether or not it wants to issue a cease and desist order to the owner and presumably he would then appeal and it would come back to the hearing examiner.

Mr. Nobles reported the Iron Mountain hearing took place in Kitsap County Superior Court on September 22. There was an hour long presentation by the attorney from Iron Mountain and a somewhat briefer presentation by the attorney for the County. The judge took the matter under advisement and asked pertinent questions of both lawyers. A written opinion will be issued in two weeks.

President Van Zonneveld reported on the PLVC Utilities Committee and the recent notification by Olympic Water and Sewer, stating they have filed a request with the State Utilities Commission to raise utility rates in Port Ludlow. The committee met with PLA's President, Diana Smeland and Larry Smith, President of the water and sewer company. They reported that their application was found to have errors in it. The water rate increase has been a matter of concern to LMC because it would raise our water budget by about \$2,000 for just next year. Admiralty II and other areas would also be affected for landscape watering. If the application for rate increase is incorrect, there is the likelihood the rate increase may be reduced by about one-third. Overall, within the past three years this represents an 85% increase.

Discussion followed.

*Trustee Hubbard made a motion to approve draft five of the executive session minutes of August 26, 2010. The motion was seconded by Trustee Bradshaw. Discussion followed. The motion carried 3:2:2, with Trustees Bradshaw, Hubbard and Sherfick in favor, Trustees Babaian and Kadash against and Trustee Larkin and President Van Zonneveld abstaining. 10-09-06*

The meeting went into recess at 8:00 p.m. and reconvened at 8:09 p.m.

### BOARD BUSINESS:

- a. **LMC Board Vision, Mission Statement & Goals – Trustee Larkin** – Trustees Larkin and Boyer are working together as an ad hoc committee. To open better communication between LMC and the community, a fall social event is being planned to familiarize the members with the different components of LMC. An information display is being considered for the glass cabinet at the back of the Bay View Room. Discussion followed.

*Trustee Larkin made a motion to schedule a fall social event for the LMC from 6:00-9:00 p.m. on Saturday, November 13. Trustee Kadash seconded the motion and it carried 6:0:1, with President Van Zonneveld abstaining. 10-09-07*

*Trustee Kadash made a motion to serve wine and cheese at the November 13 LMC fall social event. Trustee Boyer will secure prices from the vendors he has selected and will present the budget at the next LMC meeting for ratification. Trustee Babaian seconded the motion. Discussion followed. The motion and second were withdrawn. Discussion continued. Mr. Belmont reported the LMC insurance company strongly discouraged LMC selling wine but a vendor may do so. Lengthy discussion continued.*

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- b. Liability Exposure – Greenbelt Volunteers** – Deferred at this time.
- c. Board Non Compliance Cases** – Trustee Bradshaw reported the results of a thorough investigation of the non compliance referral to the board involving lots #2-3-196 & 2-3-197. The report was as follows:

In June 2006, the Dennons wrote to the LMC Operations Committee complaining about the height of the trees growing between the Nobles and Siler houses on Harms Lane. The Operations Committee attempted to resolve the complaint until the LMC board made the decision that all tree and view matters be overseen by the ACC. The pertinent regulation in effect at the time stated:

*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. A scattering of tall evergreens is encouraged, however, to enhance the beauty of the neighborhood as long as views from neighboring lots are not unduly impaired.*

In March 2008, the Dennons again wrote to the Operations Committee asking for enforcement of the regulations regarding the height of the Nobles and Siler trees. The letter was referred to the ACC. The ACC determined that the trees were in violation of the following regulation on the basis that they were planted:

LMC Regulation II, Article I, paragraph 3 a. (adopted in May 2007) stated 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.*

In December 2008, the Ludlow Maintenance Commission (LMC) Architectural Control Committee (ACC) referred to the LMC Board of Trustees the matter of trees growing above eight (8) feet high along the common property line between these two lots in violation of the LMC Regulations.

In June 2009, a special board meeting was held to meet with Larry Nobles and Frank Siler to discuss the matter and receive any new information. A letter from Archie Charawall (the builder of the houses on both lots 2-3-196 and 2-3-197) and photographs taken in late 1986 were presented to the board at the meeting supporting the Nobles' and Silers' position that the trees in question on the Nobles/Siler property line were not planted, but were instead left in place when the two lots were cleared for construction in 1986 and 1987.

A core sample taken in July of 2010 on one of the trees broke off inside the tree and thus, does not reflect the full age of the tree. All parties present at the time of the coring counted at least 25 rings (2010 minus 25 = 1985). This supports the contention that at least this tree was on the property at the time of construction and not planted by the lot owner.

## Conclusions

Based on the LMC Regulations in effect in 2006 and 2008 when the complaints were first submitted by the Dennons and when the ACC referred the matter to the board, any of the

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trees along the property line that were not planted by the owners do not to violate the eight-foot height restriction. Any of the trees that were planted by the owners, including the Atlas Cedar and pines and the Arbor Vitae, are in violation and should be brought into compliance.

Note that this conclusion is consistent with past precedent that enforcement is based on the regulation in place at the time of the complaint or request. If, however, the board were to decide to apply the current regulation pertaining to trees and views, adopted in April 2010, it states that trees classified as a "living fence" (naturally-grown barrier) "must be maintained at a height not to exceed eight (8) feet" (LMC Regulation II, Article I, Paragraph 3b). Also, "Since the first regulation 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" (LMC Regulation II, Article I, Paragraph 3a). In this case, it would be necessary to determine the age of the trees in question such as by core sampling. Any of those over eight feet in height determined to be younger than 26 years old would be in violation.

Also note that actual view obstruction has not been considered because of the reason for the referral to the board by the ACC. If the Dennons wish to pursue relief from their view obstruction, it would be best for them to submit a request to the ACC under the terms of the current regulation.

*Trustee Bradshaw made a motion to direct the Nobles and Silers to bring the three (3) planted trees along the common property line between their two lots into compliance with the eight (8) foot height limit required in the LMC regulations. Before any cutting of trees greater than six inches breast height diameter takes place, an application must be approved by ACC. This will close this matter before the board. Trustee Sherfick seconded the motion. Discussion followed. The motion carried 6:0:1, with President Van Zonneveld abstaining. 10-09-08*

The secretary will convey the results of the vote to all the parties involved. The letter to the Dennons will notify them the board is exempting the other three trees in question and the reasons for doing so.

Trustee Larkin provided background on the matter pertaining to Fessler, et al and provided the trustees with a report detailing the recommendations of Trustees Larkin and Clark. Lengthy discussion followed.

*Trustee Larkin made a motion that the Board of Trustees clarify the regulation applying to undeveloped lots as to whether planting or landscaping makes them an improved lot subject to LMC Regulations. Trustee Bradshaw seconded the motion. Discussion followed. Trustee Kadash called for the question. Discussion continued. The motion carried 5:1:1, with Trustees Babaian, Bradshaw, Kadash, Larkin and Sherfick in favor, Trustee Hubbard against and President Van Zonneveld abstaining. 10-09-09*

*Trustee Babaian made a motion to form a task force made up of the CRC and the ACC, to define what constitutes an undeveloped lot. Trustee Hubbard seconded the motion. The motion carried 6:0:1, with President Van Zonneveld abstaining. 10-09-10*

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Lengthy discussion followed related to the current language in the regulations pertaining to undeveloped lots. A decision on the Fessler matter was deferred until further investigation.

- d. Elections Committee** – Mr. Belmont stated the board had been provided a draft of the policies and procedures for the Election Committee. This matter will be an agenda item at the September 30 workshop. Mr. Belmont requested the board approve Catherine Garrison and Gene Carmody as members of the Elections Committee.

*Trustee Hubbard made a motion that Catherine Garrison and Gene Carmody be appointed to the Elections Committee. Trustee Bradshaw seconded the motion. The motion carried 5:0:2, with Trustee Babaian and President Van Zonneveld abstaining. 10-09-11*

President Van Zonneveld appointed Trustees Bradshaw and herself as the board representatives on the Elections Committee.

*Trustee Bradshaw made a motion to approve Trustee Bradshaw and President Van Zonneveld to serve as board representatives on the Elections Committee. The motion was seconded by Trustee Babaian and carried 6:0:1, with President Van Zonneveld abstaining. 10-09-12*

- e. Ad Hoc Committee – Condominium & Lot Owner classes within the governing documents** – No action at this time. President Van Zonneveld will investigate how to approach this matter and will bring it back to the board.

Trustee Bradshaw discussed another pending non compliance case involving the cutting of a trees without prior approval. The time for appeal has not passed and will be deferred at this time. Mr. Belmont stated there is another non compliance issue on Cressey Lane that has not been resolved. Mr. Belmont, Trustees Clark and Larkin were tasked with developing an enforcement option for that property prior to the September 30 workshop. To date this has not been accomplished.

- f. Board Replacement Policy – 2<sup>nd</sup> reading** - Deferred until clarification by the CRC. Discussion followed.

- g. Regular Board Meeting – future dates** – Various options for board meeting dates and times were discussed at length.

*Trustee Sherfick made a motion to hold the LMC Board meetings on the fourth Thursday of the month, with the exception of November, from 4:00-7:00 p.m. This schedule will continue through April 2011. Trustee Hubbard seconded the motion and it carried 5:1:1, with Trustee Kadash against and President Van Zonneveld abstaining. 10-09-13*

- h. Policy and Procedure on LMC meetings as a first reading** – Lengthy discussion followed. Tabled at this time.

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## CORRESPONDENCE:

Secretary Bradshaw reported the following correspondence: email dated August 31 from Roger Oster about liability exposure; letter dated August 27 from Richard Babaian; email dated September 2 from Roger Oster about the Lambe lawsuit; email dated September 18 from Tom Stone inviting the board members and managers of LMC and SBCA to a PLVC sponsored social event October 20; email dated September 19 from Dave Armitage suggesting a joint meeting between the SBCA and LMC Board. The trustees agreed meeting with the SBCA would be beneficial to LMC.

Lengthy discussion followed. Secretary Bradshaw will respond to the above-mentioned correspondence.

The agenda for the September 30 workshop was discussed. The two main items on the agenda will include the Trustees role on LMC committees and the Election Committee policies and procedures.

President Van Zonneveld recessed the regular meeting at 10:50 p.m. The trustees went into closed executive session for the purpose of discussing a legal matter.

The regular meeting reconvened from executive session at 10:53 p.m.

*Trustee Bradshaw made a motion to accept the Release that was prepared by LMC's legal counsel, Lee Smart, P.S. Inc., which should effectively settle the Lambe v. LMC lawsuit. In addition, LMC President, Elizabeth Van Zonneveld is authorized to sign the document on LMC's behalf. Trustee Babaian seconded the motion and it carried 6:0:1, with President Van Zonneveld abstaining. 10-09-14*

There being no further business to come before the Board of Trustees, President Van Zonneveld adjourned the regular meeting at 10:58 p.m.

Vaughn Bradshaw, Secretary  
Ludlow Maintenance Commission, Inc.

Prepared by Carol Shamhart  
LMC Recording Secretary