

Introduction to the July 26th HOA Board Meeting: The Monday Working Meeting 2017/06/19 7PM

- An EBLAST Saturday July 17 announcing a working meeting for Monday July 19 at 7PM. It would be an open meeting to discuss a new Trees & Views policy for the Home Owner's Association. The announcement stated a draft policy would be discussed and later voted on during a Executive Session following the open meeting.
- Sunday - No further agenda or draft Trees & Views policy was published on website.
- Monday morning - The draft Trees & View policy is posted on the Official HOA website.
- Monday morning, after reading the proposed Trees and Views policy, Catherine Arnold and Bex Hollevoet posted a short video of the proposed policy on the LS-Community Facebook page. The video was posted around 3 PM and had 170+ hits before the 7 PM meeting began. The meeting was well attended and, to date, the video has been viewed over 477 times.

So, what happened at the Monday meeting:

The Board provided printed copies of the draft Trees & Views policy, but many of homeowners in attendance had read the proposal which was posted on the official HOA website. The proposed policy begins by claiming “inconsistencies with our governing documents and previous Boards' actions and the lack of maintenance in our neighborhood resulting in loss of property values.” The rest of the draft policy does not make the case that this is true.

The two pages of the draft policy are a discussion of the three Deeds of Dedication Mr. Shipler, the developer, gave to the City of Camas. They were part of his Conditional Use Permit agreement needed to comply with the laws on shoreline management. The draft Trees & Views policy presented by the Board used extraneous verbiage found in the original deeds granting the development “views” as authorization claiming extraordinary rights to views that are not in the CC&Rs.

Below is a timeline of events leading to the Viewshed Plan of 1994 and the corrections to the Deeds of Dedication:

- 1987-88 - Mr Shipler is a logger from Eugene, Oregon that has just completed a clear cut on the “Black Forest” of Camas and upset the locals.
- 1988 - Mr Shiper proposes a housing development called Lacamas Shores and does an EPA study.

- 1988 - Mr Shipler gets a Conditional Use Permit for his proposed development in June... subject to the conditions of the Shoreline Management Act of 1971. He is warned that the permit will be rescinded if he fails to comply with the terms... thereof.
- 1989 - Mr Shipler signs the first of three Deeds of Dedication giving the lake shoreline to the city to own and manage. The deeds have the language on the subject of “views” that the current HOA Board thinks now give them the right to manage the conservancy zone and the wetlands in the common areas.
- 1991 - Mr Shipler begins to sell lots on Lacamas Drive that wrongly overlap the “Conservancy Zone” set up under the Conditional Use permit. The new owners begin to cut down the trees for their views and to landscape their “Property”.
- 1992 - Lawsuits begin, and the city rescinds Shipler’s Conditional Use permit.
- 1993 - More lawsuits. The “views” portions of the “Deeds of Dedication” are explicitly challenged.
- 1993/94 - The Viewshed Plan redefines the conservancy zone issues into one document for all time. The verbiage from the Deeds of Dedication is NOT included in the redefined document.
- 1995 to present - The verbiage on views from the Deeds of Dedication are not mentioned in any of the governing documents... particularly, they are not in subsequent versions of the CC&Rs. The idea that they live on in the spirit of the CC&Rs is pure fantasy.

After the Q&A session with the neighborhood, the board goes into Executive Session to discuss the proposed Trees & Views policy. At least, that’s what they said they would do. In fact, the proposed Trees & Views policy was removed from the official website immediately after the meeting. Now for the June Board meeting.

2017/06/26 HOA Board Meeting Synopsis

June 26, 2017, 7 PM

7:09 PM - Begin recording

Opening Ceremonies (7:06PM)

Roll Call - Marie Callerame, Pat Lambert, Janine Smith, Ron Boyce, Marty Elzingre, Tom Kelly, Mark Guthrie.

Proof of Notice - Reading and approval of minutes of May 15.

Minutes are approved.

Audience Comment:

Richard Arnold speaks about state law restrictions on HOA board powers and violations by the HOA board:

1. Washington RCW 64.38.025 (2) - "The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners..."
2. CC&Rs 2.1.3 - "The right of the Association to dedicate or transfer all or any part of the Common Areas to any non-profit corporation, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members and subject to the approval of the City of Camas. No such dedication shall be effective unless an instrument signed by sixty percent (60%) of the Association has been recorded;"
3. The requirement for the super majority vote was discussed many times before Matt McCants and Marie Callerame signed away ownership of HOA common area property to the Ontkean's. The Ontkean's used the property for a patio expansion. Both of them knew it. Yet, no vote was taken, no explanation given.
4. Therefor, the Ontkean settlement may be invalid because neither Matt McCants nor Marie Callerame had the power to sign away ownership of any part of the common areas without a vote. The Ontkean property is now on the market and it is unfair for any new owners not be informed of the legal cloud over the ownership of the Ontkean patio.
5. If the Ontkean property is sold without full disclosure on this legal uncertainty, the HOA, the current HOA board, or any involved past member of the HOA board may be liable. This problem will only get worse if ignored by the current board.

Printouts of the RCWs and the CC&Rs I referenced above were given to Tom Kelley... the HOA board Parliamentarian. I requested a response and he agreed to respond within a reasonable time.

Report of the Officers: (7:06PM)

Presidents - nothing noteworthy

Treasurer - nothing noteworthy

Secretary - nothing noteworthy

Report of the Committees:

Architecture/Landscape Control Committee - Marty Elzingre wonders why the community expects an adversarial experience with the ACC. Also, there are apparently some lawsuits to be discussed in executive session.

Member Communication Committee - Marie Callerame is complimented on her recent work on the web page.

Boat Ramp Committee - A study/report will be prepared in advance of the fall lake drainage. Apparently, there is a City of Camas filing fee to even get the city manpower ready to consider the study/report when or if it is presented.

Maintenance and Capital Control Committee - A discussion whether a repair to the existing boat & storage building (in this case a new improved toilet) is a capital improvement (to be paid from the Reserve Fund) or just routine maintenance.

Traffic Safety Committee - no report

Common Area Land Use - no report

Old Business:

- A discussion on the June 19th meeting at the picnic area: The backlash from the membership was unexpected.
- 4th of July picnic: Sarah Bang is handling. Matt McCants will flip the burgers.

- A presentation on Previous HOA Tree Policies by Mark Gutherie: Powerpoint, but only a few overheads with talking points. Was the Trees & Views policy of 2014 ever voted/passed? Seems not. Apparently, there is a rich history of the 2014 discussion on the HOA Board Dropbox. About 4~5 of the 2014 topics are reviewed and discussed. (Document “History of Trees & Views 2014” is in the Owner’s Section of the Community website. Is the document too long... Yes. But it makes interesting reading and seems to answer every question brought forward in the current discussion and includes a paid for legal opinion. See a copy of the legal opinion at the end of this synopsis.) I am reminded of similar past discussions from 2006 that were referenced in the 2014 Trees & Views policy. The current 2017 discussion has two new items:
 - First, should all neighbors continue to be treated “equally”... that is, will someone with an offending shrub have to defend their refusal to comply with the new policy... while the neighbor complaining of a lost “view” not have to defend their protest?
 - Second, will the dollar value of a lost view be a deciding factor in view/tree disputes? Will minimizing cost/value lost be a definitive criteria?

My editorial on the above: In general, these are issues that will always be with us and it seems that every ~5 years, the board must re-hash the issue. Disputes like Trees/Views seem to be ubiquitous in our species. What we need are **not** new policies to give the Board power over our neighbors. What we **do** need is a willingness to accept each other as valid human beings. It is the loss of civility, respect and even... humanity that leads to this kind of dissension. Rancor and hate for our neighbors must not be used as a tool to “get our way”. When I was on the board, disputes like this were continual. The Board was often involved and called to intervene. Usually we were successful in getting our neighbors to talk with each other and reach a mutually acceptable resolution. We as a neighborhood seem to have forgotten how to do this.

New Business:

- no new business

The Executive session:

- ...perhaps the law suits mentioned in the ACC discussion?
- CC&R Non-Compliance/Property Maintenance
- Domain names update

Executive Session Summary

The board is obliged to put in their “official minutes” a summary of any decisions made in the executive session. This board has never done this.

Further, this board continues to overuse executive sessions. if you look at the Washington State RCWs on open meetings and the reasons listed for having executive sessions, you will see what topics need to be in closed sessions and which topics are discussed in open sessions. Generally valid topics for closed sessions are litigation, neighbor vs neighbor disputes, and allegations of crime. The topics and questions to be decided in a closed session need to be stated before the meeting begins and the decisions made are given after the closed meeting is over. The decisions are public and need to be in the minutes. Topics that are merely contentious are not valid for closed meetings.

Adjournment

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November 5, 2014

Mr. Michael Niquette
President
Lacamas Shores Homeowners Association
2836 N.W. Lacamas Drive
Camas, WA 98607

Re: Demand Letter to the Lacamas Shores Board of Directors
My file number: **222-01**

Dear Members of the Board:

You recently forwarded a demand letter dated October 27, 2014, that was written by a group of HOA members and directed to the Lacamas Shores Board of Directors. The letter accuses Board members of violating their duties under the CC&Rs by failing to compel the removal of trees anywhere a view could be improved. The letter suggests that the group may consider suing the HOA and its Board members for damages caused by the loss of views. You have asked me to address whether the letter accurately describes the Board's responsibilities under the CC&Rs. My opinion is that it does not. My reasoning is explained below.

1. The CC&Rs Do Not Impose a Duty on the Board to Increase a Member's Property Value:

The basic premise of the demand letter is that "the HOA Board exists 'for the purpose of protecting the value and desirability of' our properties". *See*, Demand Letter at 2, *quoting* the preamble to the CC&Rs at 2. The letter does not quote the CC&Rs accurately. The preamble actually says it is not the Board, but the CC&Rs themselves that exist to protect the value and desirability of all HOA property.

The demand letter then argues that this language requires the Board to increase home values by removing all trees that obstruct a 'view'. In the first place, the letter's author assumes that all Board action is measured by whether it preserves or enhances the price for which a member could sell his or her property. In fact, the reference in the preamble describes a more general purpose of protecting the overall community plan for Lacamas Shores, and not the personal financial interests of individual members or specific properties.

These misunderstandings have their origin in the relative importance placed on various provisions of the CC&Rs. The author of the demand letter has seized on language in the preamble about preserving the overall neighborhood plan, and elevated that statement of general purpose into a legal imperative that dictates all Board decisions. The letter's author then proposes to measure Board action by its effect on the market value of individual members' homes. These leaps of logic have no foundation in the law or the governing documents of Lacamas Shores.

The theory offered is essentially one of the ends justifying the means, and would potentially eliminate any opportunity for the HOA to balance different interests, (including the financial costs that are frequently associated with doing something that might increase a property's value). The theory also ignores the express language of many specific provisions of the CC&Rs, as discussed below.

2. The CC&Rs Do Not Mandate the Removal of Trees to Improve Views:

According to the demand letter, "no neighbor is allowed to block another's view with their landscaping, per the CC&Rs". Demand letter at 4, (emphasis in original.) I do not agree that the CC&Rs describe that kind of absolute protection for views.

As a preliminary matter, there is considerable evidence in the CC&Rs that trees are an important part of the neighborhood aesthetic, even where a homeowner's view may be affected. For example, §5.6 of the CC&Rs states:

No trees shall be removed by the property owner or the Association from the Common Areas or any lot without permission as provided for in Section 5.14.

§5.13 states "[n]o existing tree shall be removed or damaged within Lacamas Shores ... unless prior written consent as provided in Section 5.14 shall have been obtained."

§5.14 gives discretion to the Board to consider a variety of interests, including aesthetic interests, in making decisions about all manner of architectural and landscaping questions. In fact, the Board is given the "right to reject, for any reason whatsoever, including purely aesthetic grounds, any proposal which it decides is not suitable or desirable." These provisions, among others, contradict the assertion in the demand letter that proper Board action is measured by whether a member's view is impacted, or by how much it might increase home values in the neighborhood.

If there is anywhere in the CC&Rs that directly supports the protection of views, it is in §5.10, which provides:

All trees and shrubs or landscaping of any kind shall be kept neat and orderly and trimmed so as not to obstruct another lots [*sic*] view ... provided that landscaping necessary for the wetlands shall not be subject to this section.

This sentence in §5.10 describes a mandatory view covenant that gives an actionable right to each and every affected HOA member to seek preservation of a view. But the covenant also appears to limit that view right by its very terms: The covenant does not say that an offending tree must be removed. It says certain actions shall be taken so as not to obstruct views. The actions listed do not include removal of the offending tree. Instead, the covenant speaks in terms of keeping offending trees "neat and orderly". It suggests that trees be "trimmed" in a reasonable fashion, rather than cut down if blocking another lot owner's view.

Thus, the Lacamas Shores view covenant appears to offer only an opportunity to balance interests affected by a particular tree and a particular view. In other words, a judge might reasonably conclude that a view does not enjoy an automatic priority over an offending tree, and that what the CC&Rs really describe is a consistent plan for the reasonable and deliberate balancing of interests by the parties most directly affected.

To summarize, the demand letter suggests there is an imperative in the CC&Rs that trees be removed whenever and wherever they impair a view. In my opinion, if there is any imperative on this subject at all, it is an imperative that trees be preserved as part of the community aesthetic. Neither extreme is entirely accurate or helpful. The more reasoned interpretation of the CC&Rs is that they reserve discretion and authority in the Board of Directors and the membership to make these decisions in a deliberate way on a case-by-case basis.

3. Individual HOA Members Share an Important Role In these Issues:

The demand letter suggests that a responsibility to protect views lies exclusively with the Board of Directors. This conclusion misinterprets the CC&Rs. I see no specific or exclusive mandate in the CC&Rs requiring the Board to remove trees on HOA property. This is especially true when dealing with the private properties of HOA members.

Instead, the benefits and remedies described in the CC&Rs are shared expressly with the HOA's members at several points, including §5.35, ("These Covenants, Conditions and Restrictions are declared to create mutual equitable covenants and servitudes for the benefit of the Declarant and each owner or contract purchaser of a lot or building site"), and §6.12, ("The provisions contained in this Declaration, as herein defined or as hereafter duly amended, shall bind and inure to the benefit of and be enforceable by, the Declarant, the owner or owners of any unit in Lacamas Shores and their respective legal representatives, heirs, successors, or assigns". Equally important, §5.10 (the view covenant) imposes no express duty on the Board of Directors to maintain the views or trees affecting individual members.

The Board is clearly not the sole source of enforcement actions under the CC&Rs. The Board does not have the obligation to act as the enforcer in every dispute. Even where the HOA has authority to enforce a particular covenant, the HOA is not always an indispensable party to an enforcement action. Authority to enforce a covenant does not always equate to an imperative to enforce that covenant. The HOA Board is a general governing body. Governing involves judgment and selectivity.

The members of Lacamas Shores enjoy considerable freedom to make many of their own decisions about their properties, within the general guidelines of the CC&Rs. That is as it should be. HOA community plans are valuable and favored under Washington law. The freedom of members to act within those plans is equally valuable and favored. It is therefore understandable that a Board might feel awkward about taking a position in a dispute when the requested relief would help one member but hurt another, especially when the overall community plan is not affected either way. It may not always be appropriate for the Board to impose its judgment in disputes that are really personal between neighbors.

By contrast, the demand letter's author would have the Board force HOA members to remove trees they want to keep, or work to increase their property values in a way that would also increase property taxes when some may not want the higher costs. Put another way, if there was an overwhelming sense in the community that trees must be cut down to increase property values, the HOA's membership

would continuously be volunteering to eliminate all offending trees, rather than waiting to react to demands from their Board in the form of edicts, assessments, and liens.

In the end, I am unable to find any term in the CC&Rs that obligates the HOA Board to enforce a view covenant on behalf of or against any particular individual member of the HOA in the manner requested by the demand letter.

4. Board Member Duties Require a Balanced Approach to Such Issues:

The demand letter accuses the Board of failing to satisfy its legal obligations. The letter accuses the Board of a wrongful “hands-off” policy and of “gross negligence” in dealing with view issues. The letter also assumes that the Board will want to negotiate with the group “quietly” because “publicizing this information to the neighborhood could be problematic”. Demand letter at 4. From the information available to me, there is no basis for these characterizations.

A Board member’s responsibilities can be summarized as follows:

1. A duty of care, which is satisfied by making informed decisions in a prudent and reasonable manner, and by avoiding arbitrary or capricious actions;
2. A duty of loyalty, which is satisfied by acting fairly, in good faith, in the interest of, and for the benefit of, the HOA as a whole;
3. A duty to act within authority, which is satisfied by performing duties that the member is obligated to carry out, while avoiding actions that lack authority under state laws and the HOA’s governing documents; and,
4. A duty to share and disclose appropriate information with the membership of the HOA.

In this case, the Board does not have a “hands-off” policy when it comes to decisions about trees or views. Ironically, I understand the Board has already approved several requests from members to remove trees this year alone. Those requests followed the HOA’s established procedures for requesting architectural or landscaping changes. The Board considers applications to plant or remove trees on a case-by-case basis, as required by the CC&Rs. The Board has exercised its authority and discretion in a balanced way, respectful of the rights of individual members and the membership as a whole. These examples belie the letter writer’s suggestion that the Board is indifferent or has abandoned its responsibilities. The Board does not have, (and has never had), a “hands-off” policy: The Board has a “case specific” policy that purposefully works to understand and then balance the interests affected by a specific request.

Second, the letter suggests that the group is raising its concerns to the Board “quietly” as some kind of accommodation to the Board. The author assumes the Board is worried about liability and concerned that HOA members will learn something about the CC&Rs that the Board has been keeping secret from them. To my knowledge, the Board has never tried to keep members from understanding their rights under the CC&Rs. Frankly, I don’t know how the Board could do that if it wanted to. We are, after all, talking about a publicly recorded document. The special interest group says they are in a “predicament” because they are reluctant to share their theories with the membership at large. But an informed membership is not a “predicament” for the Board.

Third, as to the letter’s attempts to alarm the Board with comments about class action lawsuits and Board member liability, no reasonable basis or legal authority is described for any of it. As you already know, Board members avoid the risk of personal liability by exercising prudent judgment when dealing with enforcement matters. You satisfy your obligations as Board members by informing

yourselves about issues before making decisions, by ensuring you have the authority to act, and by always acting in the best interests of the HOA as a whole.

Conclusion:

In my opinion, the CC&Rs for Lacamas Shores offer protection for trees and the special ambiance that large healthy trees provide in a community. They also offer some protection for views. When it comes to deciding a particular case of 'tree versus view', the governing documents support a balanced approach to evaluating unique circumstances, protecting the aesthetic of the neighborhood, and considering the interests of the HOA as a whole.


I fear that my opinions will be misunderstood by the special interest group. I am not saying it is wrong from a legal perspective for members to remove trees or improve views. The preservation of views is a recognized and valuable interest that is not per se unreasonable. It is not wrong for the Board to accept proposals for the removal of trees and to make decisions based on a balancing of the interests involved if otherwise authorized by the CC&Rs, local ordinances, and other applicable law. As I noted above, the Board has already entertained several such requests this year alone, and it has approved every one. Contrary to the letter writer's suggestions, there is no intention among Board members to block views or lower property values in Lacamas Shores.

The demand letter from the special interest group relied on the CC&Rs as the primary authority upon which they based their demands. For that reason, I focused my analysis on the CC&Rs as well. My opinions may change given the facts and circumstances of particular requests or given the applicability of other law and authority not specifically mentioned here. I have not researched nor am I prepared to offer an opinion on the specific circumstances of every tree in the subdivision. I have not researched the unique circumstances that would additionally apply to the common areas and the conservancy zone. The Board is uniquely informed and capable of resolving these questions in individual cases without requesting costly legal advice for every decision.

At the same time, there is considerable support for my conclusions that I have not tried to include here. In addition to the legal issues, I saw a number of factual assertions in the demand letter that appear to be incorrect or exaggerated. Unless requested by the Board, I will not investigate or address these matters further.

Thank you for the opportunity to assist you. If there is any other information I can provide on these issues, please feel free to contact me anytime.

Very truly yours,



David W. Ridenour
/dwr