

**Villages of Garrison Creek
Minutes - July 19, 2011 - APPROVED**

Attendees: Joyce Beecroft, Doug Botimer, Frank Brannon, Don Coleman, Allan Fisher, Marlene Oddie, David Shannon

Guests: Donna Fisher, Duncan Oddie, Susan Tarver, John Cress
Documents distributed prior to meeting: May Minutes, Financials (P&L vs. budget; balance sheet as of June 30, 2011 and detailed transactions for May and June 2011), Document Review Ad Hoc Committee Report.

Called to order 6:30pm

1. Move that Agenda be accepted – moved and accepted.
2. Acceptance of minutes to previous meeting
 - Allan requested additional items to be added via email, several members didn't remember the discussion. Allan withdraws the request that was made via email.
 - Minutes moved and →accepted as is.
3. Don moves that the VGC board of Directors wishes to conduct business in an open and transparent manner as it relates to association matters.

The minutes produced following each meeting, once adopted by the board at the following meeting, become the official, legal record of the previous meeting.

To minimize the possibility of errors being entered into the official record, each page of the draft minutes produced after each meeting will include a 'DRAFT' watermark. This watermark will be removed only after any needed amendments have been incorporated and the board has approved and accepted the minutes at the next board meeting. The minutes accepted by the board will be labeled as 'APPROVED'.

→PASSED.

4. Consideration of Borth/Williams boundary adjustment request.

Doug Botimer reports: 1996 setback from waterways was changed. Phase V and VI had 25' setback (from center of the creek). Some got permits from the city for improvements within setbacks. Setback averaging was used in Phase VII, home in question had permit to be built as is. New code for Phase VIII will not allow for this. Certificate of Occupancy that was granted at the time that the house was built provides a defacto use permit of the property.

David Shannon made a motion as follows: There having been an encroachment by the Builder onto common area of the Villages of Garrison Creek of approximately 3 feet and the matter having been recently pointed out by current

homeowner, Shaun Borth, to the Master Property Management Association (MPMA). And

At this point the MPMA has no opinion whether the MPMA may divest itself of any property without a vote of the membership and further no opinion whether the divesting would conflict with agreements between the Builder, MPMA, Developers and any governmental and/or conservation organization, but it appearing that any nonconformity is minimal. Therefore

It is moved that the MPMA is prepared to grant an easement to the new owner to allow the house to remain, upon the property subject to all applicable government regulations and restrictions placed on the MPMA and any new restrictions which may be required as a result of disclosure of the encroachment and that Borth and Botimer and Associates, as successor to the builder, indemnify, defend and hold harmless the MPMA, its Board and homeowners from any claim made as result of the encroachment.

Upon notice to the applicable agencies, and reasonable time to respond and signing of appropriate indemnities, the Board President and Secretary will be authorized to sign an easement prepared and reviewed by an attorney at Borth's expense.

Abstained: Doug Botimer; Voted in favor 6; →PASSED.

5. Allan Fisher reported:

He engaged an independent attorney who rendered the following opinions on the items of ARC authority and payment of board members:

1. The ARC has the authority to change and enforce the land use standards.
2. The Master Association Board is in precarious and vulnerable position if board members are paid for any services.

Since these items have been under discussion by the board I move that this report be included in the minutes for the July 19, 2011 board meeting.
Thank you.

Opposed: Marlene Oddie (no need for a vote, reporting does not give this information authority); 6 voted to include the comments. →PASSED

6. Susan Tarver, Summary of Hayner legal communiqués to ARC (copies of communiqués are attached)

- ARC has sought another legal opinion
- 1st opinion obtained Sept 2010 – at question: authority of ARC to adopt and modify land use standards.
- 2nd opinion obtain July 2011 – at question: opportunity to be heard.

David: inappropriate to seek legal opinion without approval from the board

Doug: barrage of attacks w/the ARC for 4 years, we needed to seek counsel

Marlene: having an HOA provides a stronger voice. There was no opportunity other than as an individual homeowner prior to the creation of the HOA.

Marlene: **Motion** to engage an HOA attorney to get an opinion from the HOA's point of view rather than the advocacy attorney who wrote the documents originally on how the ARC can change rules.

Susan: What is the procedure of appeal?

David: It is clear that the appeal goes to the board.

Susan: Show me the case law. Susan would like to work with whoever it is appropriate to figure this out once and for all.

Don: We bought here to have a maintained environment, and a nice place to live; we are arguing over procedure on how to maintain this.

Frank: request to table the motion until the document review is completed. Marlene agrees. → Motion to Table is Approved.

7. David Shannon, Report of Ad Hoc Document Review Committee
Referring to detailed report distributed prior to the meeting, general statements about details in the document were made. Copy of document is available in Secretary's copy of minutes.
8. Reports of Officers
Marlene - Review of requested estimates for Certified Audit/Cash to Asset Distribution Ratio
After calling most financial institutions in the valley, no financial institution for lending purposes requires audited financials. Since the last board meeting, Don requested that I continue to pursue the idea of an audit, so contacted several accounting firms and found out that the state requires an audit for homeowner associations with more than \$50,000 annual assessments, unless waived annually by the homeowners. I am in the process of obtaining bids from CPA firms who do this sort of work, including Andy Block @ Bruce Maughan & Associates and Dan Tompkins who is out of town until next Monday.
Allan Fisher suggesting contacting Thompson & Associates.
A minimum of two bids are requested by the board.
No information regarding cash to asset ratios or operating budgets was found.
Reserve requirements and studies have new legislation going into affect next

year which should be considered in the budgeting process.

<http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202011/1309-S.SL.pdf>

9. Motion to adopt clarified Conflict of Interest Policy
The Board of Directors of the Villages of Garrison Creek Master Association hereby adopt a policy that Board members may not be compensated by the MA for work done on behalf of the association. This policy is intended to prevent possible conflicts of interest and appearances of conflict of interest.
5 affirmative; 2 opposed (Frank and Marlene); →PASSED.
10. Nominations for board vacancies
Seeking interest for board members from under-represented phases. Marlene to send to treasurers for inclusion in August statements. Return interests to Marlene by August 15.
11. Review of updated financials; →ACCEPTED.

NEXT MEETING: August 2 – Budget planning; August 31 (Wed) – Board meeting

Adjourned 8:56pm

Allan Fisher

From: Minnick-Hayner <minnick@innw.net>
Sent: Monday, September 20, 2010 9:27 AM
To: Allan Fisher
Subject: Compliance Question

Allan:

The Architectural Review Committee for the Villages at Garrison Creek has the power as set forth in the CC&Rs to adopt architectural and land use standards, as well as modify and/or change them. However, a volunteer working on behalf of the Committee has no authority to act. Also, the Committee must meet, keep minutes, and observe formalities when adopting or modifying standards.

In regard to fines, Homeowners' Associations and Committees of HOAs have the power to assess fines against homeowners for violations of the CC&Rs in certain circumstances. If fines are assessed by the Architectural Review Committee, the process of assessing fines depends upon how the Committee is chosen. Under RCW 24.03.115, if an Architectural Review Committee is appointed by the Board of Directors, then two Committee members must also be members of the Board. However, because The Villages of Garrison Creek appoints its Committee via the CC&Rs, Committee members have the authority to enforce compliance regardless of whether any are current Board Members.

In regard to the Covenants Compliance Process form provided to our office, The Villages' governing documents allow the Architectural Review Committee to adopt comprehensive architectural review standards, rules, and regulations and to take action to remedy violations. Under the governing documents, the Committee is authorized to develop a fine schedule and levy a reasonable fine. The policy the Committee adopts should allow for notice and an opportunity to be heard by the homeowner against whom the fine is assessed. The fine must be in accordance with a previously established schedule adopted by the Committee and furnished to the owners for violations of the bylaws, rules, and regulations of the association.

Also, I recommend that the form refer to penalties for non-compliance of the CC&Rs as "fines" rather than "assessments". This will prevent any confusion that a fine is being assessed, as opposed to a regular or special assessment.

Please let me know if you have any further questions or concerns.

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Allan Fisher

From: Minnick-Hayner <minnick@innw.net>
Sent: Monday, July 11, 2011 2:45 PM
To: Allan Fisher
Subject: Opportunity to be Heard

Allan:

There is no specific state law which governs the manner in which the Architectural Review Committee must operate or by which it sets the procedure associated with opportunity to be heard.

There is a statute that applies to homeowners associations. Specifically, Chapter 64.38 of the Revised Code of Washington deals with homeowners associations. RCW 64.38.020(11) specifically indicates that a homeowners association may

Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association.

This statute allows the board of directors of a homeowners association to impose fines provided that it makes provisions for notice and opportunity to be heard before the board (the same body that set the fines).

In The Villages' situation, the Board of Directors of the Master Property Management Association does not specifically enforce the rules and covenant restrictions. Those are enforced by the Architectural Review Committee. The statute referenced above does not specifically apply to an architectural review committee. To the extent that the Architectural Review Committee has established rules and regulations to be followed, those rules control. It is desirable for the Committee to grant an opportunity to be heard to a person who is asked to comply with covenants and land use standards. There is no statutory requirement that a hearing be held before a different body than that which enforces and assesses fines; nor is there any statutory requirement that decisions by the ARC must be heard by the Board of Directors of the Homeowners Association. The statute quoted above contemplates that a board which makes decisions must allow a homeowner to be heard before that same board. It would therefore be incongruous for one to assume that an architectural review committee must provide for a hearing in front of some other body with regard to the committee's enforcement actions.

The statute makes clear that these rules apply "unless otherwise provided in the governing documents" of a development. The Villages' governing documents specifically provide that the authority is granted to the Architectural Review Committee, and therefore, this statute is not applicable to the Architectural Review Committee.

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