Agenda
BOARD OF DIRECTORS MEETING
ORCAS HIGHLANDS ASSOCIATION
23 October 2014
MEETING CALL-IN INSTRUCTIONS:
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REPORT FROM THE RV COMMITTEE:
Members from the committee attending: Ed Wilson, Richard Jordan, Marcia West, Lee Goodwin, Arthur Winer, Gayle Benton, Bea Von Tobel. RV Committee began presentation at 7:00. The following is the document presented by the committee.

Recommendation to the Orcas Highlands Association Board of Directors
by the RV Policy Committee (10.23.14 FINAL)

Committee: Gayle Benton, Lee Goodwin, Richard Jordan, Madie Murray, Bea vonTobel, Marcia West, Arthur Winer, Ed Wilson. Guest: Carl Hoagland, OHA homeowner, retired attorney.

All eight members of our committee (and our guest advisor Carl Hoagland) are longtime Orcas Island residents and Orcas Highlands homeowners. Our committee exists because, at the June 21 OHA annual meeting, all but three homeowners raised their hands when asked if we needed more information before voting to "end discussion on the RV issue" or "spend more money getting legal advice." The question was raised in light of a Kirkland attorney's legal opinion, sought by the OHA Board regarding the enforceability of our CC&R's on the RV issue.

Our committee has met four times, studied relevant language in our CC&R's and gathered a lot more information – including an extensive summary of past discussions and enforcement of Highlands RV policy over a 30-year period, assembled by Lee Goodwin from past Board minutes and legal correspondence on behalf of the Association. We've also studied certain comments from the Kirkland law firm, those which were read aloud at the OHA annual meeting.

Our purpose tonight is to make a recommendation about RV policy. Our goal is to prevent a proliferation of RV's in the Highlands. We have two primary concerns: 1) negative effects on our neighborhood's safety and appearance, and 2) negative effects on our property values.

The Original CC&R's Language

Let's begin with the language of our CC&R's:

"No building, trailer, tent or structure of any kind shall be erected on any lot prior to the erection of the main dwelling thereon...." – CC&R's July 27, 1972

"A trailer or camper may be placed on lot during the construction for a period not to exceed ninety (90) days, provided it is properly hooked to septic tank." – CC&R's July 27, 1972

The Clear Intent

We believe that the intent of the CC&R's is clear – that the expression "trailer or camper" refers to a variety of dwellings or shelters on wheels, commonly called recreational vehicles or RV's.
Based on past Board minutes, the wording of complaints about RV's, the language of enforcement by past Boards, even the responses by violators – there is a clear and consistent pattern of usage and understanding about the words "trailer or camper" – regardless of the length, height, or specific construction of the recreational vehicle in question.

So, to the question of legal enforceability, while it's true that our CC&R's have never been tested in court, they've never had to be, because in practice, the original language has been enforced time and again since 1972 – sometimes with a polite request from the Board, sometimes with a formal letter from the Board president, and sometimes with a letter from an attorney on behalf of the Board. In all instances, the offending vehicles have been removed, without going to court.

A Look at Four Specific Examples:

1) As early as September 11, 1982, BOD minutes talk about Ralph Sutton's trailer on Discovery Circle. It was parked next to the house long after construction ended. Neighbors complained because they believed our CC&R's didn't permit trailers for any purpose after a home was built. Board minutes responded this way: "...mobile homes may not be permanently installed, but may only be placed on a lot during construction for a period not over 90 days, per CC&Rs." After the Board's response and request, Sutton removed the trailer.

2) In September of 2001, Board President George Jenkins gave permission to a lot owner named Berringer to park his fifth-wheel camper on a Highlands lot, even though Berringer's home construction would not begin for some time. The camper was parked in a driveway that was barely visible to passersby, but it triggered many complaints. Homeowners said that it was a CC&R violation and should never have been permitted, since it was known that construction would not begin for many months. In fact, it was four years before the RV was finally removed – and then, only at the insistence of a subsequent OHA Board, which asked San Juan County attorney John Linde to write to Berringer and demand removal, saying, "OHA is prepared to seek injunctive relief if necessary to enforce the CC&R's prohibition against keeping trailers on the subdivision lots."

3) In the fall of 2002, Lynn Short, an absentee owner of a property on Discovery, parked a small house trailer on her lot. Neighbors complained, and OHA Board President Tom Corrigan wrote to Lynn Short in

Texas, saying that the Board could not permit trailers to be parked on OHA lots. He informed her that the Association had recently demanded that another lot owner remove his trailer or that Board might take legal action to enforce the CC&R's. The trailer was removed.

4) In August 2003, at the request of OHA Board President Beth Jenkins, the Law Offices of John O. Linde, representing Orcas Highlands Association, informed two OHA homeowners named Hyde that they were violating the OHA CC&R's. Quoting the Linde letter, "Your trailer has been on your property for more that the allowable ninety days period." The letter concluded, "The Association hopes that formal enforcement measures will not become necessary and that you will comply with the CC&R's without significant delay. If you have questions in any regard to the Association's position on the trailers prohibition or in any other regard to the CC&R's, please do not hesitate to contact me." After receiving this letter, the owners removed the trailer.

It is important to note that earlier this year, when the Kirkland law firm was considering the enforceability of our CC&R's, they had not seen Lee Goodwin's 30-year summary of RV policy enforcement. Nor did the Kirkland law firm have a copy of the attorney John Linde's letter, which supports the Board's interpretation. The Linde letter is also important because it was written by a respected San Juan County attorney, familiar with Washington state law, and familiar with local interpretations of CC&R's. The language of Linde's letter strongly implies he had confidence in the enforceability of the Association's RV policy.

Nevertheless, based on the Kirkland firm's recommendations, based on the current Board's concerns that enforcing the original RV policy language might incur litigation from property owners who interpret the language differently, there seems to be a need to clarify the policy. Also, the Highlands has a growing number of absentee owners with transient renters who may not be as familiar with the CC&R's or as concerned with appearances and property values as those of us who live here full-time. We want to avoid overloading our systems – our water and road systems, as well as electrical and septic systems – and to avoid diminishing our property values with a proliferation of RV's scattered throughout the Highlands.

The Need to Clarify Our RV Policy

The Kirkland law firm of Leahy McLean Fjelstad was specifically asked by the OHA Board, "Do the covenants prohibit keeping an RV on a lot for a long-term period of time, especially if the RV is visible from outside the lot?" Their answer: "Not specifically, though a rule could be adopted to address the issue."

They go on to say, "The language in the restrictive covenants regarding a 'trailer or camper' only address situations where construction is occurring on the lot. Section 2 states...that a 'trailer or camper may be placed on lot during the construction period for a period not to exceed 90 days....' This provision is located in the "Building Restrictions and Limitations Section."

Finally, the Kirkland firm writes, “The Association has a reasonable argument that the language above implicitly prohibits a ‘trailer or camper’ on a lot at any time that construction is not occurring. However, the Association would be in a far stronger position to prohibit or regulate trailers and the like if the Board adopted a rule specifically prohibiting or regulating them. The Association has authority to adopt rules and regulations pursuant to RCW 64.38.020(1).”

A new rule is one option. According to the Community Associations Institute, another option would be a “Clarification of the Governing Documents.” Here’s an example:

Clarification of the Governing Documents – 10.23.14 REVISED DRAFT by EdW
(Based on Sample Policy Resolution #2 from the Community Associations Institute)

WHEREAS, the Board of Directors of Orcas Highlands Association is empowered to govern the affairs of the Association, including the interpretation and enforcement of the governing documents and the development and approval of rules...

AND, WHEREAS, there is a need to clarify Document #7923G Declaration of Protective Restrictions, Item #2 regarding Building Restrictions and Limitations, Paragraph #3, which says, “...no building, trailer, tent or structure of any kind shall be erected on any lot prior to the erection of the main dwelling house....A trailer or camper may be placed on lot during the construction for a period not to exceed ninety (90) days, providing it is properly hooked to septic tank...”

AND, WHEREAS, the specific need is to clarify the intent of the words “trailer or camper” and “during construction for a period not over 90 days,” which have been subject to different interpretations...

NOW, THEREFORE, based on the clear intent of the original CC&R’s wording – as evidenced in RV policy discussions, correspondence and enforcement by OHA Boards of Directors, including legal representation, over more than 30 years – and also based on the concerns of active homeowners expressed at the most recent annual meeting on June 21, 2014...

BE IT RESOLVED THAT the following be adopted as official guidelines regarding trailers, campers, and other wheeled or movable dwellings commonly referred to as RV’s or recreational vehicles:

The clear intent of the original CC&R’s language regarding a “trailer or camper” (for up to 90 days during construction of the permanent dwelling house) is to refer to the broad category of movable, non-permanent dwellings or shelters known as recreational vehicles or RV’s, that wide variety of wheeled enclosures that includes but is not limited to motorhomes, fifth wheelers, pop-up or pop-out campers, large conversion vans, and converted busses.

The original CC&R’s 90-day allowance is generous and continues to be appropriate and neighborly, but it should not be abused even by one day and should be allowed only during construction – because

"trailers, campers" and other movable, non-permanent dwellings tend to reduce home values if left in place on a long-term basis. Even if they might be considered attractive in other settings, they tend to be visually distracting in a neighborhood of well-maintained permanent homes, which is what the CC&R's are intended to protect and enforce.

BE IT ALSO RESOLVED THAT violation of any of the CC&R's or any official clarification such as this one shall be subject to the enforcement policies of the OHA Board of Directors.

AND, FINALLY, BE IT RESOLVED THAT this clarification remain in effect until otherwise rescinded, modified, or amended by a majority of the Board of Directors, and be communicated with all current property owners, prospective buyers and real estate brokers of Orcas Island.

The Need for a Compliance Process

As our committee's guest advisor Carl Hoagland noted at our first meeting in July, clarifying the RV policy – as a first step – is actually "putting the cart before the horse." His point? Our Association should first have in place a compliance process and fine schedule for enforcement – that is, spell out the exact steps to take when someone violates a covenant or rule.

The Kirkland law firm made the same observation, saying, "Typically an Association begins a compliance process with a warning, and follows up with fines. A lawsuit is the absolute last option. Your governing documents do not yet include a fine schedule or procedures for issuing fines. If the Association is interested in issuing fines going forward, it should adopt and distribute a compliance policy and fine schedule to owners. We can assist with that if requested."

The Kirkland law firm then listed the specific steps to take to address owners of RV's that are not in compliance with the RV policy: First, draft an RV policy. (Our committee is recommending a "clarification of RV policy" instead.) Next, send a copy to owners with notice that this policy is being considered. And finally, adopt the policy.

Once an RV policy is adopted, send a letter to (any violating) lot owner notifying the owner that the RV must be removed in compliance with the RV policy, or fines will be issued as set forth in the fine schedule. Lastly, send letters to other owners who are violating the RV policy to ensure that enforcement is consistent among owners.

Here's our committee's summary of steps to take with a CC&R's rule violator:

Step #1 Polite notification, ideally in-person, followed up by a polite letter.
Step #2 Violation letter from attorney (a local attorney, for local knowledge and efficiency)
Step #3 Warning of impending fine
Step #4 Official notice of fine
Step #5 Last resort: legal action

Our committee believes that any new rule or rule clarification should be distributed – along with the compliance policy and fine schedule – to every current homeowner, every prospective OHA homeowner, and (perhaps most importantly) every real estate agent on Orcas Island.

The Summary

The original language of the Highlands CC&R's has served to enforce the "trailer or camper" rule for more than 30 years. However, recent efforts by property owners to work around the language of our CC&R's suggest a need for a "new rule" or a "rule clarification."

Our committee believes that a rule clarification, rather than a new rule, is appropriate. It would emphasize that the intent of the original CC&R's has not changed. The fact that the longstanding RV policy has not been enforced in recent years does not mean that the rule went away. A clarification should stress this point, because there is no rationale for "grandfathering" if the rule being enforced is the same one accepted when owners bought their properties.

Regarding current violators of the original CC&R language, we believe that those property owners should be politely informed of the rule clarification and of the Board's intent to enforce the language of the CC&R's. They should be given time to find other locations for their RV's. We believe that it is extremely important to establish a precedent of CC&R's enforcement, to avoid not only a proliferation of RV's but a proliferation of other CC&R's violations.

Whether a "rule clarification" or a "new rule" is passed, either will establish an important precedent for informing our community of stakeholders – including property owners, current violators, and all real estate agents on Orcas Island. The message will be that our Association protects its property owners by enforcing our CC&R's.

It is equally important to create and pass an OHA compliance process and fine schedule. Even though enforcement has been achieved in the past without these, the Kirkland firm's advice is persuasive. Furthermore, establishing a consistent process will provide an orderly way for future OHA Boards to proceed, as boards members change from time to time.

Who would monitor compliance with the RV policy? We recommend the already existing Architectural Policy Committee, because the allowed usage of RV-type vehicles is related to building homes on OHA properties, which must be reviewed by that committee. The role of the committee would be to monitor violations and recommend appropriate steps to the Board.

Lastly, we want to commend the OHA Board for having sought legal advice on this issue from the Kirkland firm and for inviting our committee's careful thoughts and recommendations. We believe that the CC&R's are not merely rules for property owners to follow, but promises that the Association makes to each of us and needs to keep. Those of us who have followed the rules for years want to see them

enforced for others, too. We believe that we all want to protect the appearance and safety of our beautiful neighborhood and to protect our property values.

– End –

Following this presentation, many questions were asked by the Board:

How many of committee members have RV's? None.
Does occupation of the RV bear on the policy? No, it shouldn't, but this might need further research.
Are there exceptions to enforcement? No, over the history, the Board has enforced no RV's
Regarding history, should other members weigh in on this policy, or can the Board just vote? All but one feel that active homeowners (owner/residents) mostly agreed at annual meeting that Board can make the decision. Owners want CCRs enforced.
Is there data supporting devaluation of property value due to presence of RV's? Just anecdotal evidence from committee members' experience.
Would architectural committee monitor compliance? That's what the committee suggests. They think the Board should delegate responsibilities.
Can 90-day limit for construction be extended? Apparently yes.
Should committee address relatives visiting in RV's? Should permission be sought?
How much would it cost to use an attorney for enforcement? Could we use the lawyer's letter multiple times? What is the process for last legal process, and how much would it cost?
Can attorneys' fees be recovered? Courts generally come down on side of association, in most cases this is resolved out of court, but fees not necessarily allowed. Hardly ever ends up in court, if association is enforcing a CCR, association almost always wins.
Would a fence be a defense for an RV owner? Shouldn't be necessary, as RV's not allowed under original CCRs

It was suggested by committee members that Board meetings be open to all in OHA. Could put date of meeting in newsletter and post it on website.

Following are the minutes from the regular meeting that followed the RV Committee's presentation:

I. **Roll Call:** Dennie Carter, Ron Claybourn, Lee Goodwin, Duffy King (excused), Roxy Marck, David Turnoy, Marcia West

II. **Call to Order:** Ron Claybourn called the meeting to order at 8:07.

III. **Minutes** (Correspondence) dated 9/15/2014. Approved.

IV. Officers Reports:
A. **President's Report:** WUTC complaint and order to suspend WWSC tariff revisions (9/25/14): tariff revision suspended, lack of provision of data to justify additional revenue, Washington Water will have

to submit evidence. We requested a different tariff structure due to our two inch rate charge, but staff says they can't make any changes in that due to constraints.

B. **Treasurer's Report**

1. Financial report (D. Carter): Large negative number right now under water expense, but haven't received payments for Oct. 1 billing yet. Meter purchase and installation and water repair work led to a large amount on line 26. SmithBarney account being closed, money will be sent to Board. We are $2,400 ahead in cash flow due to water and road funds. New authorized signers for Key Bank account are Ron Claybourn, Dennie Carter, Marcia West, David Turnoy
2. Aging A/R status 10/19/14: Carter girls are ready to retire from meter reading, Ahrens family interested in taking over. Two residents were notified of being very delinquent; Ron will follow up with them.
3. Alternate investment options (D. Turnoy): Investment with First Internet Bank of Indiana has a 0.6% rate for money market (minimum $4,000) or savings (minimum $1,000), 6 transactions allowed per month, 1-888-873-3424, 1.0% for 12-month CD, hours are M-F 4:00 AM-6:00 PM, Saturday 6:00 AM-12:00 PM. We want liquid account, easy access.

C. Water System Maintenance and Operation

1. Water meter readings (L. Goodwin): $2,400 of lost water in the last quarter, 18% of water. Carl will be leaving his Eagle Lake job next July, which will make him more available to us.
2. Maintenance report: Carl hasn't found any significant new leaks. New 3 inch meter on Highlands should help. Still have a leak most likely on Parks property on their side of the meter. Leak in bypass meter was fixed. Carl is coming to do more testing this weekend of Switchback Road, Lindsay Way. Carl is also proposing two new bypass meters to monitor water along part of Discovery and Tall Trees and another one related to tanks. These meters are ¾ inch residential meters, not expensive, will help to locate leaks.
3. Site assessment of OHA water system by WWSC: We were very impressed by the competence of Mike Ireland and Roy Stanton. Mike felt that our system is in pretty good shape, that it wouldn't need a lot of major repairs in the near term, but he wouldn't know for sure until managing the system for a while. Mike and Carl met, very productive, might work for Carl to be a consultant to Washington Water. Proposed contract is very complicated to understand. We would need to run it by an attorney. It was asked if there are any other alternatives to Washington Water, and there really aren't. Benefit of WW would include billing, collections, day-to-day management of the water system. Our thought is that down the road we might want to have WW take over ownership, but for now we are considering their management. If we do get bought out, we could then go to ¾ inch rate. Meetings with Mike and Roy were constructive and informative.

D. Roads Maintenance

1. Survey of OHA roads for selective tree removal and limb cutting: Bathan Shaner will provide estimate for removing problematic alders, remove smaller trees, prune overhead. Most of this is on common right-of-way. Probably will cost about $4,000-$4,500. Should be good for a decade. Will be done ASAP, hopefully by Nov. 23.

2. Cold patch repair status: Lee and David patched holes.

V. Unfinished Business:

A. Alternative evacuation route evaluation and recommendations: We are exploring an escape route through Eric Youngren's property. We need to look at cost of excavation, how many people would benefit, other factors before we start negotiating with Youngrens. We need to meet with the Youngrens to set up a legal document, would grant us an easement. Shelter in place hardens a property to make it survivable in case of a fire, this could be an alternative. Are there other catastrophes to prepare for? The fire report from ten years ago will be put on the website. Ask Eric what he and his dad would like in terms of a deal, and say that we probably wouldn't be doing anything until spring.

B. WWSC Management Agreement draft status and OHA proposed revisions: Ron presented information on rate comparison between our current system and under Washington Water. If WW manages us, our costs would go up about $20 per quarter or 18%. If WW owns us, our cost drops about $10 per quarter or 11%. Board members need to look at proposed agreement, make changes, propose to Mike, have meeting or presentation with members. If we get out of water business, will we still have the ability to turn off water if resident doesn't pay dues? WW only becomes our billing agent if they manage the system, so we don't lose any leverage. Roxy would like an attorney's opinion; Ron thinks CCRs give us the authority to turn off people's water. Question as to whether bills for water and other items would come from OHA or WW; it would be from WW, concern this may confuse some of our members, but we can have the various items itemized on the bill to alleviate confusion. Ron will send out the WW proposal to everyone on the board.

VI. New Business:

A. Emergency contact map corrections and distribution: Info was wrong for a couple of individuals, Ron will ask members to provide updated information.

B. OHA invoices December 2014: David and Geri will do it, Marcia and Roxy willing to help. Ron will write a newsletter.

C. Discussion/adoption/revision of RV policy committee recommendations: Re-read the draft provided by the committee. We should look to get a local attorney for any possible litigation, though local attorneys may not have the expertise in homeowners associations.

VII. Next Meeting: Dec. 4, 7:00 PM, several people will be attending by phone.

ADJOURNMENT: There being no further business, the meeting was adjourned at 10:00 PM.