

MINUTES  
COBMOOSA SHORES ASSOCIATION BOARD  
April 10, 2021 9:00 a.m.

CALL TO ORDER: 9:01 a.m.

MEMBERS PRESENT: Tom Boersma, Rich Campbell, Ed Dedic, Rick Emerson, Paul Jordan,  
Tim Pieri, Bill Rafaill

MEMBERS ABSENT: Sara Collins, Dennis McKelley

GUESTS PRESENT: Jill Dedic, Kevin Kelly, Rick Schlagter, Tom Spees, Bob Van Liew,  
Rick Zane

COMMUNICATIONS: None

REPORTS:

- **Secretary:**

- Minutes November 14, 2020, meeting

The November minutes have been posted on the website and the south access bulletin board since November.  
**Rick Emerson moved acceptance of the November minutes, with a second from Ed Dedic. The motion passed unanimously.**

- **Treasurer:**

**Budget Status**

Item	Budgeted	Balance
Roads	\$18,000.00	\$12,554.99
Trees	\$ 2,600.00	\$ 2,400.00
Beach and Parks	\$ 2750.00	\$ 468.20
Insurance	\$ 3,700.00	\$ 2,345.00
Accounts Receivable Clerk	\$ 900.00	\$ 450.00
Communications	\$ 1,110.00	\$ 956.00
Postage and Supplies	\$ 800.00	\$ 789.00
Miscellaneous Admin	\$ 800.00	(\$ 75.35)
Legal and Professional	\$ 75.00	(\$ 880.00)
Taxes	\$ 775.00	\$ 37.27
Contingencies	\$ 60.00	\$ 60.00
Total	\$31,570.00	\$19,105.11*

*\*Note that we need \$20,060.46 to cover each of the line items in the budget, assuming that none of the line items can be reduced to account for the overages in Administrative and Legal and Professional.*

*Accumulated Surplus:* \$33,041.12 (Calculated as statement balances plus uncredited deposits plus receivables minus remaining budget minus outstanding checks). This amount may be an overstated due to the negative balance in legal expenses.

The Money Market account balance reflects receipt of \$4.41 in interest since the last report.

Checkbook balance is reconciled with bank records as of 04/09/2021.

#### *Items of note*

At this time, only 7 members have a balance on their accounts.

The budget remains technically in balance at this point. I anticipate that the admin account will be over budget by about \$201.00 as additional Google expenses accrue. Tree budget may have enough surplus to cover the admin and current legal expense overage.

Remaining Beach and Park budget needs to cover anticipated expenses of clean up and mowing of the park and porta-potty rentals through June. It is not likely that a substantial surplus will be realized in that line item.

It is anticipated that the remaining Roads budget will be required for the crowning project that is planned.

We have current outstanding invoices of \$2996.98 for the North Access stairway and \$3668.00 for the final balance on the legal opinion on rentals. Currently, assuming that we do not receive additional dues payments that were due October 1, 2020, there is enough remaining in the checking account to cover all remaining budgeted expenses, the anticipated additional overage in the administrative budget, and the North Access and the legal opinion. Board approval is needed to exceed budget in these two items.

**Motion: Rick Emerson moved with a second from Bill Raffail to at this time pay the bill for the North Access stairs in its entirety, to pay half of the bill from the Varnum firm, and to pay the remainder of the firm's bill from 2021/2022 funds.** The motion passed unanimously.

- **Roads:** Ed Dedic reported winter plowing was average this year with about 12 plows. Gravel on lawns and corners can be raked back into the road if anyone is up for some spring exercise. The Association has a landscape rake to level this gravel.  
Salt barrels were used on a regular basis but did not require swapping materials from lower used barrels to higher traffic areas as in past years. Owners need to be reminded that salt in the barrels is for road use only not personal driveways. Roads have been maintained with surgical grading as the snow and ice melted. Recent rains have started to wash out some areas. Minor grading needs to be done to fix some washouts.  
Road crowning project is being estimated which will provide a better runoff process, create drainage and keep potholes from forming on the roadway. We will also be changing aggregate to limestone (sometimes known as dolomite). Asphalt millings are being repurposed back into road projects and are not always available for months at a time therefore cost as much as limestone. Limestone will hold better on the hills and is not prone to washouts. We will start with all of Ridge Trail and then Chippewa Trail from the Entrance to Ridge Trail. The limestone will have a lighter finish and once washed from rains will be solid and create less dust. Roadways and ditches will be cleaned of leaves contoured for runoff. Roads will be shaped to 24' at their widest part. Narrowing the roads that have widened to 30+ feet over the years will also slow folks down.  
Brining is scheduled to be done just before Memorial day if consistent rains fail to keep dust to a reasonable level.
- **Beach:** Parking stickers. Payment for north access work, south access repairs. Additional materials for hand railings are estimated, not ordered.

- **Building:** Courts building project on South Ottawa has been underway since late Jan. Multiple building projects are starting in Cobmoosa there are plans for homes and cottages to be built on Erie, Ottawattamie, Shawbacoung, Chippewa Trail.
- **Trees:** McEntaffer Tree Care has been contacted to dispose of brush and cut up downed trees at the southern end of Ottawa trail. They have not yet completed the work and have not billed us for it. Rick Emerson will follow up with them this week.

#### COMMITTEES:

- **Park and Entrance:** R & D Lawn Service has completed spring clean up of the park and the entrance.
- **Social and Event:** Given the state of the pandemic, it is too early to know whether the Memorial Day coffee can be held. It will be determined at the May meeting.
- **Communications:** Bill Rafail reported that since our last meeting (November 2020): The November minutes were posted to the CSA website; 6 eNewsletters were sent; 7 Calendar updates were posted to the CSA calendar; and there were 7 updates to the website. The website changes included an update to the Trustee list (resignation of Tim Huls, appointment of Tim Pieri), posting of the 2021 board meeting dates, and additional News & Notes items.
- **Rental:**
  - Recommendations from the Rental P & P Committee

A legal opinion (see attachment) on the Board's authority to regulate short-term rentals was received in February. It revealed that the original Cobmoosa Shores deeds contain a prohibition against operating businesses within Cobmoosa Shores. These restrictions cannot be altered by the Association, nor do the original deeds give the Association the legal obligation to enforce any prohibitions. The committee recommended that (1) language in the Protective Covenants that seemed to contradict the prohibition should be deleted, and (2) that the Rental Registration Program should be discontinued because, under the circumstances, it could give the impression that registered rentals are approved—which the Association has no power to do. Two motions were offered:

**MOTION: Because to the best of the Board's knowledge and belief Section 1d of the Protective Covenants is inconsistent with original deed restrictions against commercial businesses within Cobmoosa Shores, in accordance with Section 10a of its Protective Covenants the Board of the Cobmoosa Shores Association on its own authority hereby deletes Section 1d in its entirety, and rennumbers the subsequent subsection.** It was moved by Paul Jordan with a second from Tim Pieri, and passed unanimously.

**MOTION: The Board of the Cobmoosa Shores Association hereby ends its Rental Registration Program, and directs that a letter accompanying a copy of Ms. George's opinion should be sent to every registrant explaining that it has recently come to the Board's attention that the original deeds for properties within Cobmoosa Shores contain restrictions to the effect that, "No part of said [Cobmoosa Shores] premises shall be used for commercial or manufacturing purposes", and that, as a result, the continued of the program is inappropriate.** It was moved by Paul Jordan with a second from Tim Pieri. Six trustees voted in favor, and Bill Rafail abstained.

- **Nature:** No report
- **History: Tell your Story!** [history@cobmoosashores.com](mailto:history@cobmoosashores.com) just send an email with a picture attached and explanation of who, what, where, when.

#### OLD BUSINESS:

- *Possible Bylaw Revision*

Additional changes may be appropriate due to some contents of Ms. George's opinion regarding membership in the Association.

- *New owner welcome packets*

The folder exists on the Board Google drive to facilitate storing documents that would be provided.

- *Pack it in - Pack it out*

**MOTION: All artifacts that are brought down to the CSA-owned beach area must be removed by the end of each day.** Moved by Ed Dedic with support from Bill Rafaill, and passed unanimously.

NEW BUSINESS: None

OTHER ITEMS FOR DISCUSSION:

- *Three trustees' terms are up this year:* Rich Campbell, Bill Rafaill, and Dennis McKelley.

Members wishing to put their names forward for the election may contact any trustee.

- *Association Document Archive*

An archive folder has been created on the Google drive into which scanned and saved official documents will be permanently stored.

- *Please update your contact information on CSA Website or <https://forms.gle/ejEma59QAYXGEsYy8>*

ADJOURNMENT: 10:08 a.m.

NEXT MEETING: May 8, 2021. To be held at the Stony Lake Inn unless there's a change in executive orders from the state.



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February 19, 2021

Via e-mail: [rick.emerson@cobmoosashores.com](mailto:rick.emerson@cobmoosashores.com)

Cobmoosa Shores Association  
Attn: Mr. Rick Emerson  
9316 Erie Trail  
Shelby, Michigan 49455

Re: Cobmoosa Shores Association

Dear Rick:

We have had an opportunity to review the documents you provided us concerning the Cobmoosa Shores Association (the "Association") and the Cobmoosa Shores development, specifically:

- The June 2020 title insurance policy for your unit, which reflects the following specific title exception documents which we have also reviewed:
  - Cobmoosa Shores Protective Covenants recorded in 2009 and 2017; and
  - Restrictions and easements in warranty deed recorded in Instrument No. 791763
- Neil Kimball's title search issued by Advanced Land Title Agency in 2009, which identifies the following title documents which we have reviewed pertaining to the Cobmoosa Shores (original) plat and the Association:
  - Deeds representing the original conveyance of some Cobmoosa Shores lots subject to certain deed restrictions;
  - Cobmoosa Shores Protective Covenants recorded in 1995, substantially similar to those reflected in the title policy noted above; and
  - Bylaws of the Association recorded in 1995 at Instrument Number 957176
- Correspondence dated October 29, 2015 and November 30, 2015 from Attorney James M. Rose to the Association on behalf of Cobmoosa Shores lot owner Bosco Construction, Inc.; and

- Cobmoosa Shores Protective Covenants dated July 2017, Association Bylaws dated July 1999, and meeting minutes on the Cobmoosa Shores website

In addition to the above, we reviewed the plats for Cobmoosa Shores, Cobmoosa Shores No. 1, and Cobmoosa Shores No. 2, as amended, and the Articles of Incorporation for the Association. We also briefly reviewed publicly available recorded real estate documents involving Cobmoosa Shores and the Association and contacted the Oceana County Circuit Court and District Court clerks, inquiring about the status of any lawsuits involving the Association, whereby the authority of the Association may have been challenged and decided upon by a court, and contacted Benoni Township to discuss the status of a short term rental ordinance. Below is a summary of our findings and conclusion.

#### **Creation of Cobmoosa Shores Plats and Original Property Restrictions**

As you likely know, the development commonly referred to as "Cobmoosa Shores" actually consists of three (3) separate plats. The original plat consists of 256 lots (Lots 1-256) and was filed in 1960 by Mason Land Company, Benjamin and Ruth Marcus, and Don and Shirley Foote. The second plat, known as "Cobmoosa Shores No. 1" consists of Lots 257-298, and was filed in 1963 by Oceana Land Company, Benjamin and Ruth Marcus, and Don and Shirley Foote. The third plat, known as "Cobmoosa Shores No. 2", added Lots 299-376 in 1963 and was filed by Oceana Land Company and Don and Shirley Foote. For purposes of this letter and except as otherwise expressly stated "Cobmoosa Shores" refers to all three of these plats and their 376 lots.

Although no rules or property restrictions pertaining to the lots in Cobmoosa Shores are recorded on the face of the plats, it is our understanding based on the 2009 title search provided and the conclusion made by Advanced Land Title that following the creation of the Cobmoosa Shores plats, all the lots were deeded to third parties from the developer of Cobmoosa Shores subject to the same or substantially the same deed restrictions, a sample set of which are listed on the attached **Exhibit A**. Notably, the restrictions do not contain any language about the ability to modify or enforce the restrictions. Nor do the restrictions indicate that the owners of the Cobmoosa Shores lots are members or shall be members of an association. Likewise, there is no mention of the Association at all.

#### **Cobmoosa Shores Association and its Filings**

In 1968, the Association was formed under the Incorporation of Summer Resort Owners Act, Michigan Public Act 137 of 1929 (the "Act"). The Association's Articles of Incorporation recite that the purpose of the Association was for the welfare of the owners and occupants of the Cobmoosa Shores plats, for the purchase and improvement of lands for summer homes and summer resort purposes, to acquire property not to exceed 320 acres, and to generally exercise such powers and requirements as set forth in the Act. The Articles set forth a limited description of the Cobmoosa Shores lots that were to be subject to the jurisdiction of the Association, which included Lots 3, 9, 10, 12, 16, 17, 31, 32, 40, 41, 85, 126, 127, 139, 149, 177, 189, 199, 235, 277, 278, and 279. The original term of the corporation was thirty (30) years. In 1998, the Association was renewed for another 30 years, so **the Association's term is set to expire in 2028**. If the

Association wishes to maintain its corporate existence beyond 2028, it will need to file an amendment to its articles to extend its corporate existence.

Almost 30 years after its formation, in July 1995, the Association recorded Bylaws with the Oceana County Register of Deeds, which recited that ownership of property in the Cobmoosa Shores plats constituted membership in the Association. Although a signature at the end of the Bylaws indicates that the Bylaws were adopted as of July 1, 1995, there is no further mention as to whether the Bylaws were adopted by all members of the Association by way of a unanimous or majority vote, or by the Board of the Association.

Also on July 1, 1995, and again in 2009 and 2017, the Association recorded documents entitled "Protective Covenants" with the Oceana County Register of Deeds, purportedly to govern the affairs of the Cobmoosa Shores plats. The 1995 Protective Covenants fail to indicate how they were adopted (i.e. by unanimous vote of the lot owners). The 2009 and 2017 Protective Covenants indicate that they were adopted by the Association board and ratified by the members, but they do not state specifically how they were ratified by the members (i.e. by a majority or unanimous vote). In reviewing the annual meeting minutes for those years on the Cobmoosa Shores' website, neither a majority or unanimous vote of the members appears to have occurred. Consequently, we were unable to find any evidence that any of the Association's Protective Covenants were adopted by a majority or all of the members, or whether a vote was taken at all. If the Association has records as to how these Protective Covenants were approved by the members, please provide those to us as those records may modify the conclusions we reach in this letter. If express written member approval was not obtained from all of the lot owners, then the Protective Covenants would not be enforceable against all of the lots – the owners had to expressly approve in writing the enforceability of the Protective Covenants against their respective lots in order for the Protective Covenants to be enforceable.

#### **The Association's Authority to Adopt and Enforce Restrictions**

As noted on page 2 above, the lots in Cobmoosa Shores were made subject to certain deed restrictions – namely, those set forth in the deeds back in the 1960's and 1970's from the original developers. Those deeds restrictions included a building limitation (that "no building shall be erected or maintained on any lot...other than a private residence and a private garage for the sole use of the owner or occupant") and a prohibition against commercial activity, which we believe relates most closely to the Association's concerns about short-term rental activity within Cobmoosa Shores.<sup>1</sup> Unfortunately, because the deed restrictions do not contain any language requiring lot owners to be members of the Association, or to require the lots to be bound by the rules and regulations of the Association, or that the original deed restrictions may be amended by the Association, we believe that the Association's authority over the lots in Cobmoosa Shores is limited

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<sup>1</sup> The assertion that all lots in Cobmoosa Shores are subject to the deed restrictions is based on Advanced Title Company's statement to that effect. It is recommended, however, that in the event enforcement action is taken to prohibit activity in violation of a deed restriction, that a title search be performed to confirm the existence of the recorded restrictions against the title of the subject property.



to enforcement of only the original deed restrictions as agent on behalf of the lot owners<sup>2</sup> and to any other authority it may have obtained from the individual lot owners in writing subsequent to the original deed restrictions.

With respect to any other authority the Association may have obtained over the lots from the individual lot owners after the original deed restrictions were recorded, we have been unable to find any evidence that the lot owners, or any of their predecessors in title, expressly consented to the application of additional property restrictions against their lots, or specifically, to any of the provisions of the Protective Covenants. Unless the lot owners have otherwise expressly consented to the jurisdiction of the Association over their lots in writing<sup>3</sup> or there is a court order determining that the Association has authority,<sup>4</sup> the Association does not have authority to adopt additional restrictions or modify the old deed restrictions. To the extent the Association seeks authority to bind the entire Cobmoosa Shores development to new or expanded property restrictions, it must obtain the written consent of all the lot owners in the Cobmoosa Shores development, which written consent should be recorded with the Register of Deeds so as to put successor owners on notice of the Association's authority.

#### **Short-Term Rental Activity**

As to short-term rental activity in Cobmoosa Shores development and limiting or restricting such activity, two avenues should be considered: 1) property restrictions recorded against the title of the subject properties; and 2) local ordinances.

As to property restrictions against the title of the subject properties, we already mentioned the existing "no commercial purpose" restriction and the building restriction limiting buildings on lots within the development to "private" residences and garages, as set forth in the early deed restrictions recorded against the Cobmoosa Shores lots. These types of restrictions support a conclusion that short-term (and in fact, any) rentals for profit are prohibited on the lots affected by the deed restrictions.

The current holding of our Michigan courts is that short-term rental active whereby a property owner engages in the act of renting his or her property for profit is considered a commercial purpose.<sup>5</sup> As a result, under current Michigan case law, short-term rental activity would be prohibited under the deed restrictions as a "commercial purpose". Please note that although this is the current holding of Michigan courts, there has been legislation proposed in the recent past which could modify this holding, not to mention a alternate decision by our Michigan Supreme Court.

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<sup>2</sup> *Civic Ass'n of Hammond Lake Estates v Hammond Lake Estates No. 3 Lots 126-135*, 217 Mich App 130, 135; 721 NW2d 801 (2006)

<sup>3</sup> See *Conlin v Upton*, 313 Mich App 243, 259-260; 881 NW2d 511 (2015)

<sup>4</sup> In contacting the Oceana County Circuit and District Courts, we were able to confirm that there was a 1974 lawsuit filed by the Association against a Quentin Sella. Although you noted that a lawsuit involving Mr. Sella may have involved the authority of the Association to govern his unit, the Court no longer has a file or any information which is sufficient for us to confirm the nature of the lawsuit.

<sup>5</sup> *Eager v Peasley*, 322 Mich App 174, 189-190; 911 NW2d 470 (2017)



Based on current Michigan case law, the Association or other lot owners in Cobmoosa Shores have a good argument that property owners who have never lived on their lots but have always used them exclusively for rental activity are using the lots for commercial purposes which is not permitted (presuming those same lots have all been made subject to the recorded deed restrictions). Notwithstanding this conclusion, we should have a conversation about whether historical use of the lots in the development has given rise to a waiver argument that the owners who are engaging in rentals may use as a defense. Waiver may apply and be argued where other properties in the development have also engaged in the same type of rental activity that the Association may now be seeking to enjoin. Regarding waiver, Michigan courts have determined that as long as the restrictions are of value to the property owners and the breaches of the restrictions have not caused a "subversion of the original scheme of development resulting in a substantial, if not entire, change in the neighborhood", there is no waiver.

Additionally, as we noted above, the other avenue to consider relative to short-term rental activities is the local zoning ordinance. In this instance, per our conversation with the Benona Township Zoning Administrator, there is no applicable short term rental ordinance currently in place in the Township. However, the Township is looking to adopt such an ordinance in the near future. During the course of that adoption, the Township will hold public hearings to review and take comment on the proposed new ordinance. If members of Cobmoosa Shores are interested in short-term rentals of their property or in limiting other owners' short-term rental activities, we encourage those members to attend the public hearings and voice their opinions about the proposed new ordinance.

The Benona Township Zoning Administrator indicates that the Township is currently looking at two other municipalities' ordinances as sample ordinances. Copies of these ordinances from Acme Township and Golden Township are attached as **Exhibits B and C** for your review. If you have any questions concerning these ordinances, please let us know. Given that the Township is interested in adopting a short-term rentals ordinance, we encourage the Association to keep in contact with the Township and to do its best to work with the Township to potentially adopt an ordinance that is acceptable to the Association as a whole and encourage the Township to move ahead with adoption of the ordinance as expeditiously as possible.

### **Conclusion**

As stated above, the Association does not have the authority to impose additional restrictions on the lots within the Cobmoosa Shores development. If it desires to implement additional restrictions beyond the original deed restrictions, it must obtain the written consent of the lot owners to do so. Notwithstanding the foregoing, the Association does have a basis to enforce the existing deed restrictions that were recorded in the 1960's and 1970's as agent for the lot owners, presuming that the lots in violation do contain such deed restrictions in their chain of title. Under current Michigan case law, rentals of the Cobmoosa Shores lots for profit (either on a long or short term basis) would likely be a violation of the "no commercial purpose" deed restriction. Further analysis and discussion needs to occur for our office to determine if the "no commercial" deed restriction may have been waived over the years as a result of a continuing course of conduct that has substantially changed the character of the development.

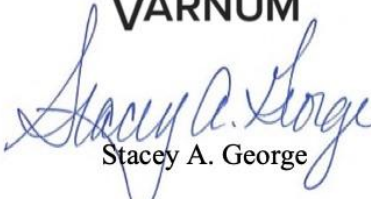
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In addition to the Cobmoosa Shores' deed restrictions, Benona Township is working to develop its own short-term rental ordinance, which we recommend the Association work on with the Township to ensure that the proposed ordinance is drafted most consistently with the goals of a majority of the lot owners in Cobmoosa Shores. Once a short-term rentals ordinance is in place, enforcement against a violating property owner may be an easier task, and can also be undertaken by the Township, not just the Association.

Please let me know if you have any questions concerning the above or if you would like to have a conversation to discuss this letter. Thank you.

Very truly yours,

**VARNUM**



Stacey A. George

SG  
Enclosures  
17598086.1

## EXHIBIT A

### Property Restrictions Set Forth in Original Cobmoosa Shores Conveyancing Deed

Subject to the following restrictions and easements:

1. No building shall be erected or maintained on any lot in Cobmoosa Shores, other than a private residence and a private garage for the sole use of the owner or occupant.
2. Any garage erected or maintained must conform in appearance and construction to the residence on such lot.
3. No part of said premises shall be used for commercial or manufacturing purposes.
4. No residential building shall be erected or maintained on any lot in Cobmoosa Shores having a ground floor area of less than 720 square feet.
5. No building shall be erected or maintained on any lot in Cobmoosa Shores closer than 10 feet from front lot line, nor closer than 5 feet from back or side lot lines.
6. No outside toilet or privy shall be erected or maintained in Cobmoosa Shores.
7. No animals or birds, other than household pets, shall be kept on any lot in Cobmoosa Shores.
8. Building exteriors must be of brick, frame or block construction; and wood exterior or block exterior must be painted.
9. The placing of house trailers, regardless of size and facilities, shall be prohibited on any lot in Cobmoosa Shores.
10. Easements are reserved along and within 5 feet of the rear line, front line, and side lines of all lots in this subdivision for the construction and perpetual maintenance of conduits, poles, wires and fixtures for electric lights, telephones, water mains, sanitary and storm sewers, road drains, and other public and quasi-public utilities and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines, with right of ingress to and egress from across said premises to employees of said utilities. Said easement to also extend along any owner's side and rear property lines in case of fractional lots.  
It is understood and agreed that it shall not be considered a violation of the provisions of the easement if wires or cables carried by such pole lines pass over some portion of said lots not within the 5 foot wide strip as long as such lines do not hinder the construction of buildings on any lots in this subdivision.
11. These conditions and restrictions shall be binding upon all owners of lots in Cobmoosa Shores, their heirs and assigns.