

## AN IMPORTANT MESSAGE TO THE COMMUNITY

**BREAKING NEWS!** Just before we went to Press, we were advised that the Lathams filed the lawsuit against LSMCA, President Adela Franco, ACC Chair Lisa Klinger, and LSMCA Secretary/Treasurer Jim Alden. Your donations to the Legal Fund are even more important now as we must respond to the Court within 30 days. Please see below for an explanation.

Dear Lake San Marcos Community:

The Lake San Marcos Community Association (LSMCA) has served you for over 50 years. As you know, the LSMCA Board is comprised of volunteers dedicated to "building a better community." That is not just a slogan; it is our sincere desire and the reason we serve on the board. LSMCA offers a variety of services to the community, including an annual club fair, monthly town hall meetings with great speakers on topics of importance and interest to the community, advocacy and liaison with county and city officials and Lake and Lodge, partnership with community members seeking to protect our waterfowl, information about community/city events, events for families, contributions to our annual 4<sup>th</sup> of July event, LSM beautification days, and the all-important library offering books, music, videos, puzzles, and access to fax and copy machines. Our office is an information center for the community. Our Quail Call, published each month, keeps the community informed. All of these services are now put in jeopardy.

For the reasons explained below, the LSMCA board NEEDS YOUR HELP to fight another unexpected legal battle. We are asking you to donate whatever you can afford to build up enough money in the legal fund to help offset our projected legal expenses. We greatly appreciate your donations to the legal fund in prior years, but we don't have enough money to see us through this current crisis.

One of the committees of the LSMCA board is the Architectural Control Committee (ACC). When the Frazar Brothers were developing Lake San Marcos in the 1960s, Declarations of Restrictions (DofRs) were put in place for homes that were not in an individual HOA. A DofRs document is a covenant among a group of lot owners, and it runs with the property. These are often referred to as CC&Rs. The Frazar Brothers were responsible for administering the DofRs. In 2003, the Frazar Brothers sold the Lake & Recreational Facilities and turned over the Architectural Control enforcement function to the LSMCA, which formed its own ACC to administer the DofRs.

Over the past 20 years of enforcing the CC&Rs, we have experienced three lawsuits. The first was the landmark case in which the Court of Appeal affirmed the validity of the covenant. In that case, we were the plaintiff, so we could not tender to our insurance company. Instead, the community held fundraisers to pay the legal fees. We also won the second case in 2017, and the third case was dismissed. In the second and third cases, the successful defense had to be initially funded by voluntary contributions from the community because insurance didn't kick in until we'd paid the retention amount (most of us know this as the "deductible"). In the 2017 case, we covered the retention amount with donations, and the insurance company named a law firm to take over the defense. We won, but the cost of the defense was a mark against us. It didn't matter that we were right – the problem was the money the insurance company had to pay for the defense. So, in the following years, we had to scramble to get coverage.

In 2019 we had to obtain Directors & Officers (D&O) Liability from a different company. We ended up with a premium of \$20,000 per year and a \$75,000 retention (like a deductible). For 2022 our D&O insurance remains at \$20,000 per year, but with a \$100,000 retention. Before the 2017 lawsuit, the LSMCA paid \$2,000 per year for its D&O insurance with a near-zero deductible.

In February 2022, the ACC approved the construction of a side yard fence because it complied with County ordinances, our CC&Rs, and the ACC guidelines. The Beverly Latham Trust owns the lot adjoining the property on which the fence was built. Mrs. Latham's son, Scott, complained (one year and nine months after the fence was built) that the fence blocked the view from the Latham lot. According to the CC&Rs, the only prohibited obstruction is a view of the Lake (Lake San Marcos) or either of the two golf courses. The Latham lot has no view of these "protected" views; thus, an obstruction is not prohibited. Mrs. Latham's son, Scott, is now threatening to sue the ACC and the LSMCA. He challenges the definition of a view obstruction. In fact, he prepared a complaint that he filed with an arbitration service known as JAMS. The complaint names the LSMCA, the ACC, and personally names Adela Franco, president of LSMCA, Jim Alden, Treasurer, Lisa Klinger, Chair of the ACC, Ken Lounsbery, attorney for the LSMCA, and the neighboring property owner who built the fence.

Following the coverage rules, the LSMCA sent Latham's complaint to its insurance carrier. The carrier acknowledged its duty to respond on its insured's behalf and sent LSMCA a list of law firms authorized to undertake representation. However, because of the retention clause in the insurance contract, the LSMCA is responsible for paying the first \$100,000 of the cost to defend against the claim. We simply could not afford that expense. So, rather than referring the dispute to a law firm on the list, the LSMCA relied upon its internal resources to take action. The Chair of the ACC (a retired attorney), your General Counsel, and the attorney representing the neighbor who built the fence combined their resources. They prepared and filed oppositions to the complaint, which were coordinated. As a result, JAMS has instructed us that the matter will be held in abeyance until a court reviews and determines whether the matter is to proceed to arbitration at JAMS. The ACC Chair did not bill for her time, the neighbor paid for his attorney's time, and our General Counsel did the LSMCA work under our monthly retainer and did not bill for the additional time. However, this band-aid approach, no matter how successful, is not sustainable.

We find ourselves in a serious predicament. LSMCA is non-profit, and our only income source is our members' annual dues and revenue derived from Quail Call advertisers. Over the last four years, our memberships have decreased (far more significant with the advent of COVID-19). We are running at a deficit with a considerable increase in our D&O Insurance premium; coverage has skyrocketed, in some cases, as much as 35% since COVID. Across the board, insurance carriers are raising premiums and reducing coverage. We are not the only victims. These reductions in coverage are industry-wide.

Adequate insurance coverage is essential. No community member would agree to be a member of the LSMCA Board without such protection. Yet, coverage with a large retention is equally unsustainable. It is like having no coverage. The insurance world has made it clear that enforcement of the CC&Rs by the ACC is our point of exposure, an Achilles Heel. None of the other services provided by the LSMCA create the likelihood of liability.

The question facing the LSMCA Board and the LSM Community is, **WHAT DO WE DO?** We perceive ourselves as adding value to the community. Still, with our only sources of revenue being memberships and Quail Call advertising, it has become increasingly harder and harder to keep the association afloat. Since the Architectural Control Committee is our only liability, we are considering legally dissolving the ACC. Without the ACC, we believe the LSMCA could continue to function and provide even more services to the community. However, **WE NEED YOUR HELP** to fight this unexpected battle. As a result of your past generosity, we still have a legal fund that, as of July 31st, has a balance of \$3,994. Our only option is to ask the community for further funding. We estimate our costs to be less than the retention but still substantial. If you want to see the LSMCA continue, we ask that you donate whatever you can afford to build up enough money in the legal fund to help offset our current projected legal expenses. Again, we appreciate your donations to the legal fund over the years, but we don't have enough money to see us through this current crisis. Please give this some thought and serious consideration. Checks should be made payable to LSMCA Legal Fund and can be mailed to or dropped off in the office.

Thank you for your ongoing support of the LSMCA.