

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE

LONE MOUNTAIN SHORES OWNERS)
ASSOCIATION, INC.)
)
Plaintiff,)
)
vs.)
)
HENRY BENNAFIELD, JANICE)
BENNAFIELD, BELLA GOLDEN, JAMES)
HAWS, DENISE HAWS, VIC WARTHMAN)
ELIZABETH WARTHMAN, TROY)
VANDERHOOF, PAM VANDERHOOF, ED)
LUND, LAKE FRONT RENDEZVOUS, LLC,)
M & C EAGLESNEST, LLC, B & M)
STORAGE, LLC, MICHAEL SISLOW,)
BRANDY SISLOW, JASON JORDAN, 836)
JACKSBLUFF, LLC, FRED MAESS, KRISTY)
WAMBOLD, JAMES SCRUGGS, DEBBIE)
HUNLEY, BRENDAN FRANTZ, AIMEE)
FRANTZ, DAVID LANG, DAVID)
NORCROSS, MICHELLE NORCROSS, PETE)
SZUCH, CAROLINE SZUCH, and JAMON N.)
SELLMAN,)
)
Defendants.)

No.: CV-2354

ANSWER TO SECOND AMENDED COMPLAINT AND COUNTER-COMPLAINT

Come now, Defendants Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Vic Warthman, Elizabeth Warthman, Troy Vanderhoof, Pam Vanderhoof, Ed Lund, Lake Front Rendezvous, LLC, M & C Eaglesnest, LLC, B & M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 Jacksbluff, LLC, Fred Maess, Kristy Wambold, James Scruggs, Brendan Frantz, Aimee Frantz, David Norcross, Michelle Norcross, Pete Szuch, Caroline Szuch, and Jamon N. Sellman (hereinafter collectively “Defendants”), and for answer to the Second Amended Complaint filed by the Plaintiffs state as follows:

1. The allegations of Paragraph 1 are admitted.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted.
5. The allegations of Paragraph 5 are admitted.
6. The allegations of Paragraph 6 are admitted.
7. The allegations of Paragraph 7 are admitted.
8. The allegations of Paragraph 8 are admitted.
9. The allegations of Paragraph 9 are admitted.
10. The allegations of Paragraph 10 are admitted.
11. The allegations of Paragraph 11 are admitted.
12. The allegations of Paragraph 12 are admitted.
13. The allegations of Paragraph 13 are admitted.
14. The allegations of Paragraph 14 are admitted.
15. The allegations of Paragraph 15 are admitted.
16. The allegations of Paragraph 16 are admitted.
17. The allegations of Paragraph 17 are admitted.
18. The allegations of Paragraph 18 are admitted.
19. The allegations of Paragraph 19 are admitted.
20. The allegations of Paragraph 20 are admitted.
21. The allegations of Paragraph 21 are admitted.
22. Paragraph 22 is denied as stated though it is admitted that Amended and Restated

Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores

(the “2020 Declaration”) is filed as stated and attached to the Second Amended Complaint (the “Complaint”). No rights of quiet enjoyment are being infringed by the actions of the Defendants in this lawsuit. Rather, it is the Plaintiff Association that is seeking to deprive the Defendants of their right to the free use of their property through this lawsuit.

23. The 2020 Declaration speaks for itself. It is denied that the 2020 Declaration contains the formatting which Plaintiff has added in Paragraph 23.

24. The 2020 Declaration speaks for itself. It is denied that the 2020 Declaration contains the formatting which Plaintiff has added in Paragraph 24.

25. The 2020 Declaration speaks for itself. It is denied that the 2020 Declaration contains the formatting which Plaintiff has added in Paragraph 25.

26. The 2020 Declaration speaks for itself.

27. The 2020 Declaration speaks for itself.

28. The allegations of Paragraph 28 are admitted.

29. The allegations of Paragraph 29 are denied. For decades, short term rentals have been permitted by the Association. Further, there are no specific or verifiable facts being alleged.

30. The allegations of Paragraph 30 are admitted however the scope of Paragraph 30 is unlimited in time. There has been no issue with short term rentals or the advertisement of the same for decades up until Plaintiff’s August 8, 2022 Cease and Desist letter.

31. The allegations of Paragraph 31 are denied as stated. There are many reasons why the 2020 Declaration was adopted.

32. The allegations of Paragraph 32 are denied. Nowhere in the 2020 Declaration does it state that short term rentals are prohibited. The 2020 Declaration speaks for itself.

33. It is admitted that Plaintiff sent the stated letters and that they are attached to Complaint. It is also admitted that this is first time in decades that the Association has ever indicated that short term rentals were not permitted. Indeed, several months prior to this letter, members voted on changes to the Association By-Laws to provide rules for short term rentals. However, the Association Board claimed that those rules which were supported by a majority of the votes were invalid because bylaws can allegedly only be adopted by the Board. This is despite previous Boards permitted amendment of the Association By-Laws in such a way.

34. The allegations of Paragraph 34 are admitted.

35. The allegations of Paragraph 35 are denied. Short term rentals are not banned by the 2020 Declaration and the ability to short term rent actually adds value to properties. Indeed, the ability to use one's home for short rentals undeniably increases its value. Further, there are no specific or verifiable facts being alleged.

36. The allegations of Paragraph 36 are denied. The Frantz Defendants were not using their home for short term rentals at the time the cease and desist letter was sent and have not used it in such a way since. Further, the Sislow Defendants, Defendant Lake Front Rendevous, LLC, and Defendant Lund all stopped renting their homes upon receipt of the cease and desist letter.

37. The allegations of Paragraph 37 are denied to the extent that Defendant cannot infer that a failure to respond to the cease and desist letter indicates intent to continue renting. It is admitted that Defendant Sellman has not responded to the cease and desist letter.

38. The allegations of Paragraph 38 are denied. Short term rentals are not prohibited by the 2020 Declaration, no member's right to quiet enjoyment of anything is being infringed, it is denied that renters are causing any nuisance, and it is denied that property values would be

reduced by continuing the longstanding community accepted and endorsed practice of short term renting in Lone Mountain Shores.

39. It is denied that the Plaintiffs are entitled to any of the relief set forth in their Complaint.

40. All allegations not expressly addressed are hereby denied.

41. The Defendants aver that they are entitled to payment of their reasonable attorney's fees, expenses, and costs accrued in defense of this case as provided for by the 2020 Declaration.

AFFIRMATIVE DEFENSES

1. Judicial Estoppel – The Association has admitted in previous judicial proceedings that short term rentals were permitted in the Lone Mountain Shores community. See Lone Mountain Shores Owner's Association, Inc. v. The Elizabeth Lynn Webb Revocable Trust, et. al., Claiborne County Chancery Court, No. 18369, filed on November 10, 2014. Based on the prior admissions of the Association, the Association must be estopped from now claiming that short term rentals are prohibited.

2. Equitable Estoppel – The Association has previously made affirmative representations to the Defendants that short term rentals were permitted in the Lone Mountain Shores community. The Association made these representations to the Defendants knowing that Defendants intended to act upon them regarding the short term rental of their homes. The Association knew of the language in the 2020 Declaration that they are currently relying on in the present lawsuit and persisted in informing Defendants and others that short term rentals were permitted. Defendants relied on these representations when they purchased their homes, spent money to upgrade their homes to accommodate renters, and ultimately continued to short term

rent their homes. The Association must be estopped from now claiming that Defendants cannot short term rent their homes.

3. Waiver – The language in the 2020 Declaration upon which the Association is basing their claim that short term rentals are prohibited was adopted on August 12, 2013. See Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores, recorded at the Claiborne County Register of Deeds Office at Book 1388, Page 649. Since that time, the Association has not only failed to claim that such language prohibits short term rentals, they have indicated to Defendants and others that short term rentals are actually permitted. Further, the Association’s interrogatory responses to the prior lawsuit operate as a written waiver in satisfaction of Section 10.07 of the 2020 Declaration. As such, the Association has waived any right to claim that short term rentals are prohibited.

4. Abandonment due to Community Acquiescence – Restrictions are rendered unenforceable due to community acquiescence to continued violation of such restrictions. The restrictions relied upon by the Association have been recorded since August 12, 2013. As such, even if the restrictions relied upon by the Association are deemed to prohibit short rentals, for approximately ten years, the Association acquiesced to Defendants and other Association members purchasing homes that were explicitly advertised as having the ability to be short term rented. Also, many Defendants would not have purchased or otherwise made other investments in their homes in Lone Mountain Shores if they could not short term rent them. If Defendants are forced to stop short term renting their homes despite the longstanding acquiescence, they and the community will be economically injured. The Association has abandoned any right to prohibit short term rentals by community acquiescence.

5. Selective Enforcement – Defendants assert that the Association has engaged in selective enforcement of the 2020 Declaration. These actions are a complete bar to the enforcement of the 2020 Declaration against the Defendants. Further the Association is being arbitrary and capricious in attempting to find the Defendants in violation of the 2020 Declaration and therefore it should be barred from recovery. Indeed, there are others in the Lone Mountain Shores community who have in the past and who are believed to be currently engaged in the practice of short term renting their home. By arbitrarily and selectively attempting to enforce the 2020 Declaration against these Defendants, Plaintiff should be completely barred from recovery.

6. Laches – The Association has long known owners in the Association were short term renting their homes. If the Association truly believed that the 2020 Declaration prohibited short term rentals, it was negligent of them to fail to inform the members of the same for such an extended amount of time. This negligence caused economic harm to the Defendants as many of them purchased their properties with the intention to short term rent them and they spent funds upgrading their properties to accommodate renters. The defense of laches therefore precludes Plaintiff from now claiming that short term rentals are banned.

7. Equitable Estoppel Related to Stopping Rentals – In the Cease and Desist Letters sent to the Defendants, the Association informed Defendants that “any continued action on your part to use your property as a short-term rental must immediately cease and desist. *Otherwise*, the Board will authorize our firm to pursue legal claims against you and move to enforce the covenants.” (see Exhibit C attached to the Complaint)(emphasis added). Defendants Ed Lund, Lake Front Rendezvous, LLC, Michael Sislow, and Brandy Sislow all stopped their rentals per the terms of the Cease and Desist Letters. Further, Defendants Branden Frantz and Aimee Frantz were not even short term renting their home upon receipt of the Cease and Desist letter. And yet,

despite promising not to bring suit, the Association brought suit against them all the same. Based on the Association's representation that it would only bring legal action if the recipient failed to cease short term renting, the Association should be estopped from bringing suit against parties who performed as the Association requested.

8. Breach of Contract - In the Cease and Desist Letters sent to the Defendants, the Association informed Defendants that "any continued action on your part to use your property as a short-term rental must immediately cease and desist. *Otherwise*, the Board will authorize our firm to pursue legal claims against you and move to enforce the covenants." (see Exhibit C attached to the Complaint)(emphasis added). Defendants Ed Lund, Lake Front Rendezvous, LLC, Michael Sislow, and Brandy Sislow all stopped their rentals per the terms of the Cease and Desist Letters. Further, Defendants Branden Frantz and Aimee Frantz were not even short term renting their home upon receipt of the Cease and Desist letter. And yet, despite promising not to bring suit, the Association brought suit against them all the same. Based on the Association's representation that it would only bring legal action if the recipient failed to cease short term renting and the Defendants agreement thereto by not short term renting, the Association breached a contract with the parties who performed as the Association requested.

WHEREFORE, the Defendant demands that this matter be dismissed with the costs taxed to the Plaintiff.

The Defendant demands such further relief to which they may show themselves entitled at a hearing of this case.

COUNTERCLAIM FOR DECLARATORY RELIEF

Come now, Defendants Henry Bennafield, Janice Bennafield, Bella Golden, James Haws, Denise Haws, Vic Warthman, Elizabeth Warthman, Troy Vanderhoof, Pam Vanderhoof, Ed

Lund, Lake Front Rendezvous, LLC, M & C Eaglesnest, LLC, B & M Storage, LLC, Michael Sislow, Brandy Sislow, Jason Jordan, 836 Jacksbluff, LLC, Fred Maess, Kristy Wambold, James Scruggs, David Norcross, Michelle Norcross, Pete Szuch, Caroline Szuch, and Jamon N. Sellman (hereinafter collectively “Defendants”) in their role as Counter-Plaintiffs and for their case against Plaintiff/Counter-Defendant Lone Mountain Shores Owners Association, Inc.(hereinafter the “Association”) and state as follows:

1. This action for declaratory relief concerns the Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores as filed with the Claiborne County Register of Deeds Office at Book 1555, Page 291 (the “2020 Declaration”). See Exhibit A to Association’s Complaint. The 2020 Declaration was filed on September 25, 2020.

2. On September 18, 1998, the Lone Mountain Shores community was established via a Declaration of Covenants, Restrictions and Easements for Lone Mountain Shores which was recorded at the Claiborne County Register of Deeds Office at Book MISC54, Page 274. (the “1998 Declaration.”)

3. The 1998 Declaration contained a “Residential Use Only” provision at Section 6.03 and explicitly stated at Section 6.09 that “residences may be rented.”

4. On August 12, 2013, an Amended and Restated Declaration of Covenants, Conditions, Restrictions, and Easements for Lone Mountain Shores was recorded at the Claiborne County Register of Deeds Office at Book 1388, Page 649. (the “2013 Declaration”).

5. The 2013 Declaration adopted section 2.14 which states as follows:

Section 2.14 "**Single Family Residential Purpose**" shall mean the property, consisting of just one primary Dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or

groups occupying a motel, hotel, bed & breakfast, or boardinghouse. Additionally, allowances are made for one accessory living quarters, such as a mother-in-law suite, without violating the "single family residential use" provided this secondary living quarters meets the requirements of Section 6.05 of these Covenants. Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.

6. The 2013 Declaration also adopted section 6.04 which states as follows:

Section 6.04 **Residential Use Only**. All Lots shall be used for single family residential purposes only, and no commercial use is permitted. This restriction is not to be construed to prevent rental of any Lot or any dwelling for private single family residential purposes or to prevent an Owner from conducting home occupations in a Dwelling, provided such occupations: (a) are subordinate to the primary residential use;(b) occupy no more than twenty percent (20%) of the Dwelling's floor area; and (c) employ not more than two (2) persons. Examples of prohibited commercial uses of a Lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed-and-breakfast or providing other atypical rental services of a commercial nature.

Examples of non-single family residential purposes uses of a Lot or any dwelling include, but are not limited to: occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the Lot or any dwelling as a fraternity, sorority or dorm complex; or using the Lot or any dwelling as a Group Home or institution of any kind.

All provisions of these Covenants and of any rules, regulations, or use restrictions promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

7. The 2013 Declaration also adopted section 6.07 which states as follows:

Section 6.07 **Rental**. Lots and Dwellings may be rented only for private single-family residential purposes subject to the following provisions:

- a. The renting to unaffiliated individuals or groups at the same time is prohibited.
- b. Tenants are required to abide by all LMS Governing Documents.

c. Owners are responsible for the actions of their tenants. Each Owner shall take appropriate steps and should put in place additional rules, limitations and restrictions as necessary to ensure that tenants do not conduct deleterious activities or otherwise create a nuisance to other Owners.

d. All rules, regulations, or use restrictions of these Covenants promulgated pursuant hereto that govern the conduct of Owners and that provide for sanctions against Owners also apply to all occupants of any Lot.

8. On November 10, 2014, the Association filed a lawsuit in the Claiborne County Chancery Court (No. 18369) against several parties who were connected to Lot 823 in the Lone Mountain Shores subdivision. (Complaint attached hereto as Exhibit A)(hereinafter the "2014 Lawsuit")

9. The primary allegation in the 2014 Lawsuit was that the defendants therein were operating Lot 823 as a commercial resort that was functionally an all-inclusive bed and breakfast with on site employees, full-service cooking and cleaning, a meal plan, and an emergency vehicle among other amenities.

10. The 2013 Restrictions were adopted in part as a response to the bed and breakfast type activities then currently going on at Lot 823. Indeed, there were other properties that were short term renting at the time who were not included in the 2013 Lawsuit.

11. In July 2017, the then Association president responded to civil discovery from the 2014 Lawsuit. In an interrogatory, the Association was asked to "[d]escribe in detail the factual basis for any [Association] assertion that [the defendant] operated as a commercial resort, specifically how its operation was different than other lots operating as short-term rentals in Lone Mountain Shores Subdivision." The Association responded that "unlike other short term rental properties in the subdivision, [the defendant's] pricing varied based upon the number of guests. The Association was unaware of other rentals in the subdivision that offered services and per-

person pricing.” Therefore, the Association admitted that it was aware that short term rentals were both ongoing as late as July 2017 and that prosecution of Lot 823 was not selective because the Association actively condoned short term rentals.

12. On September 25, 2020, the 2020 Declaration was recorded. Both section 2.14, 6.04, and 6.07 from the 2013 Declaration which were effective during the pendency of the 2014 Lawsuit were adopted verbatim in the 2020 Declaration.

13. From an unknown time up until sometime in or around 2022, the Association had a legal opinion posted on its community website which stated in pertinent part as follows:

the practice of certain homeowners in LMS of advertising their homes on the Internet for continuous rental does not constitute a ‘commercial use’ within the meaning of the bylaws and restrictive covenants....

In the context of the Declarations restrictive covenants, “commercial purposes means a commercial business which is not a residence, and thus prohibited uses of a residence located in the development would include, for example, a restaurant, a professional building, an inn, a boarding house, a bed and breakfast, or for that matter any kind of multi-family dwelling, such as a duplex, triplex, apartment building, townhouses, lodging houses, a clubhouse, or a similar dwelling for group use. Simply renting ones property is not, however, commercial use. Renting of one home for single family residential purposes is clearly permissible, and there is no requirement that an owner occupy the premises.

An owner could purchase a property, never live there, and lease it out (perhaps continuously), provided the tenants are using the property for single family residential purposes....

Because the serial renting of dwellings to families or small groups of unrelated persons, for example, a group of “guys on a weekend fishing trip”, is arguably permissible under the covenants, in my opinion the covenants should be amended to more particularly detail this situation. Since the current practice seems to be to allow this type of renting, a defense to prohibit the enforcement of the covenants as written may arise over time, based on the equitable defenses of estoppel and/or laches, where homeowners have engaged in this practice for a period of time, perhaps even purchased their property with the understanding that they would be able to do so, and where the homeowners’ association has acquiesced in this conduct. (Attached hereto as **Exhibit 1**)

14. On October 2, 2021, the Association Board of Directors (the “Board”) sent out a ballot of proposed by-law and covenant changes that had “been reviewed and approved by the board to present to owners for a vote.” Item 4 proposed a change to the Association Bylaws as follows:

Owners of Rental Property shall be required to Register their property for rental and require owners who rent their properties to provide renters with a copy of the LMSOA Rental Requirements. Specific language and requirements relating to each topic shall be contained in the Board Policies and procedures.

History -The Rental Committee, owners and board identified that there are no requirements for owners who rent to provide to renters a copy Of LMSOA rental requirements. Additionally, there is no method to track the number Of rentals within LMSOA. The board supports knowing who is renting within LMSOA and ensuring that owners who rent provide a set of minimum requirements for renters to follow while renting within LMS. Following is the language proposed for registering rental properties along with LMSOA rental requirements.

Thereafter followed two pages of proposed Rental Requirements that the Board desired for renters to comply with. (Attached hereto as **Exhibit 2**)

15. Article VI of the Bylaws of Lone Mountain Shores Owners Association, Inc (recorded on September 25, 2020 at the Claiborne County Register of Deeds Office at Book 1555, Page 275) provides in pertinent part as follows:

These Bylaws may be amended from time to time by action of the Board, unless specifically prohibited by the Covenants or these Bylaws. Before approving any material change to the Bylaws, the Board must notify Owners of the proposed change and provide Owners with the opportunity to see the proposed new Bylaws. If, within 30 days after sending such notification, 10% or more of the Owners request in writing a meeting to discuss the proposed change, the President will call a meeting for open discussion of the subject; otherwise, the changes will become effective at the end of the 30-day notice period.

16. T.C.A. § 48-60-202(b) provides in pertinent part that “[a] corporation's members may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. An amendment to the bylaws shall be approved by members by two thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less.”

17. Despite garnering more than two thirds ($\frac{2}{3}$) of the votes cast in favor of adoption of Item 4 and despite the passage of thirty (30) days since notice of the proposed change, the Board failed to implement the proposed change regarding rental requirements that they themselves had indicated had already “been reviewed and approved by the board.” In addition, the Board did implement Ballot item 3 to amend the Declaration to regulate camping in the community. (Recorded on December 8, 2021 at the Claiborne County Register of Deeds Office, Book 1593, Page 353)

18. On February 15, 2022, several members of the Association sent a letter to the board asking why, despite garnering 167 votes out of 243 votes cast (i.e. 68% of all votes cast), the Board was failing to adopt the proposed Bylaws changes from the fall of 2021. (Attached hereto as **Exhibit 3**)

19. On March 21, 2022, a Board meeting was held wherein the Board was asked about the proposed changes to the bylaws that were approved by a majority of votes but were not adopted by the Board. Specifically, the minutes reflect that the board was made aware that “[t]he Tennessee Non-Profit Corporation Act (TNPCA) states that Bylaw changes which garner more than 66% of the votes cast can be adopted even if this procedure is not in the existing Bylaws” and that the proposed Bylaws received more than 66% of votes cast. In response, the Board requested a letter from the questioners’ attorney explaining why the Board should be compelled to adopt the same. It was also noted in the minutes that “[t]he Board has not taken any actions regarding short term

rentals.” The minutes also reflect that “[t]he Board President was asked by a member if it was his goal to eliminate short term rentals, and *he responded that it was not his goal to eliminate short term rentals.*” (See March 21, 2022 Board Minutes attached hereto as **Exhibit 4**)

20. On August 8, 2022, despite the fact that: (i) the 2020 Declaration does not specifically ban short term rentals; (ii) the intent of the drafters of the 2013 Declaration, language from which was adopted almost verbatim in the 2020 Declaration, was to address bed and breakfast uses in the Lone Mountain Shores community, not to ban short term rentals; (iii) the Association admitted in a prior lawsuit that short term rentals were active and permitted in the community; (iv) the Association had just five (5) months prior informed the community that eliminating short term rentals was not a goal of the Board; and (v) the established pattern and practice since 1998 of not only allowing short term rentals in the Lone Mountain Shores community but actively informing members that short term rentals were permitted, the Association began sending cease and desist letters to Defendants, demanding that they cease short term rental activity or face litigation.

21. Despite the fact that several Defendants did in fact abide by the onerous cease and desist letter to avoid the present lawsuit, the Association nonetheless brought suit against them in violation of their own contract not to do the same.

22. Many, if not all, of Defendants’ properties were advertised as being able to be short term rented when Defendants purchased the same.

23. From 1998 up through the present, the only instance of the Association ever attempting to ban short term rentals is the present lawsuit.

24. Defendants seek a declaration from this Court that short term rentals are permitted in the Lone Mountain Shores community under the 2020 Declaration.

25. Defendants seek a declaration from this Court that the intent of the drafters of Sections 2.14, 6.04, and 6.07 of the 2020 Declaration was not to ban short term rentals.

26. Defendants seek a declaration from this Court that Defendants have the right to short term rent their properties because that right is not specifically removed and Tennessee favors the free use of property.

27. Defendants seek a declaration from this Court that, even if short term rentals are deemed to be banned by the 2020 Declaration, the Association waived the right to enforce the same by community acquiescence.

28. Defendants seek a declaration from this Court that Item 4 from the October 2, 2021 notice from the Board regarding rental restrictions was validly adopted by operation of either the passage of thirty (30) days from notice as provided under Article VI of the Bylaws or by operation of T.C.A. § 48-60-202)(b) as more than two thirds ($\frac{2}{3}$) of eligible votes cast supported the same.

29. Defendants seek a declaration from this Court that Plaintiff breached a covenant not to sue when it sued those Defendants who abided by the cease and desist letters.

30. Defendants are entitled to attorneys fees for breach of the covenant not to sue.

31. Defendants are entitled to attorneys fees under the 2020 Declaration.

WHEREFORE, Counter-Plaintiffs/Defendants demand as follows:

1. That proper process issue and be served upon the Counter-Defendant/Plaintiff requiring it to answer within a time set forth by law.

2. That this Court declare the rights and responsibilities of the parties and declare that the Counter-Defendant has no right to prohibit Defendants from using their homes in the Lone Mountain Shores for short term rentals.

3. For the costs of this cause to be charged to the Counter-Defendant.

4. Attorney fees.

5. For such other and general relief to which the Counter-Plaintiffs may show themselves entitled at a hearing of this cause.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

Respectfully submitted,

KIZER & BLACK, ATTORNEYS, PLLC

By: _____

JOEL P. REEVES, BPR #040766
217 E. Broadway Avenue
Maryville, Tennessee 37804
Telephone: (865) 980-1625
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been properly served via United States mail, postage prepaid, and/or e-mail upon the following:

Preston A. Hawkins
Lewis Thomason, P.C.
One Centre Square, Fifth Floor
620 Market Street
P.O. Box 2425
Knoxville, TN 37901

This 27 day of March 2023.



Joel P. Reeves



June 20, 2003

Dave Kramer
853 Society Court
Woodstock, GA 30188

Rod Smith
1042 Whittier Road
Grosse Point, MI 48230

Jim Blair
4335 Old Salem Road
Englewood, OH 45322

Larry Pearson
217 Vista Avenue
Vandalia, OH 45377

Rick and Brenda Hayward
205 East Fifth Avenue
Covington, LA 70433

Re: *Lone Mountain Shores ("LMS") Clarification of Covenants/Bylaws - Residential Rentals*

Dear Board Members:

I am writing this letter at the request of Rick and Brenda Hayward, Secretary(ies) of the Lone Mountain Shore Owners' Association ("LMSOA"), concerning a controversy which has arisen under the LMSOA Covenants and Bylaws, concerning the practice of certain homeowners in LMS advertising their homes on the Internet for continuous rental. Based on the inquiry, I am writing the following opinion letter.

Questions Presented

1. Whether the practice of certain homeowners in LMS of advertising their homes in the development on the Internet for continuous rental constitutes a prohibited "commercial use" within the meaning of the bylaws and restrictive covenants?
2. Whether the practice of certain homeowners of advertising their homes in the development on the Internet for continuous rental is otherwise violative of the restrictive covenants and/or bylaws?
3. Assuming that the practice of certain homeowners of advertising their homes in the development for continuous rental is not violative of the covenants and/or bylaws, can LMSOA impose a limitation as to the amount of time for which a home is rented?

Short Answers

1. With respect to Question No. 1, it is my opinion that the practice of certain homeowners in LMS of advertising their homes on the Internet for continuous rental does not constitute a “commercial use” within the meaning of the bylaws and restrictive covenants.

2. With respect to Question No. 2, the practice on the part of certain homeowners in LMS of advertising their homes on the Internet for constant rental may under certain circumstances be a violation of the restrictive covenants and/or bylaws, but that the restrictive covenants and bylaws are somewhat ambiguous on this point.

3. With respect to Question No. 3, the LMSOA can impose a reasonable restriction on the amount of time which a homeowner is allowed to rent out his property, but that such a change would have to be implemented through a change in the covenants and bylaws, pursuant to the provisions of those documents which allow for such changes.

Documents Reviewed

This opinion is based upon my review of the following documents:

- C the Declarations of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores, located at Book 1059, Page 733 of the Register of Deeds for Claiborne County, Tennessee;
- C the Amended Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores, located at Book 1003, Page 123, and Book 1059, Page 749, of the Claiborne County Register of Deeds;
- C the Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores, located at Book 1005, Page 633, and Book 1059, Page 751, of the Claiborne County Register of Deeds;
- C the Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores, located at Book 1024, Page 500, and Book 1059, Page 755, of the Claiborne County Register of Deeds;
- C the Amended Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores, located at Book 1024, Page 609, and Book 1059, Page 758, of the Claiborne County Register of Deeds;
- C the Phase IV Declaration of Covenants, Conditions, Restrictions and Easement for Lone Mountain Shores, located at Book 1027, Page 617, and Book 1059, Page 761, of the Claiborne County Register of Deeds; and

- C the Declaration of Covenants, Conditions, Restrictions and Easements for Tennessee Lone Mountain Shores Corp. To Include Property Owned by TN Emmons, L.L.C. as Part of the Subdivision Known as Lone Mountain Shores Subdivision, located at Book 1059, Page 728, of the Claiborne County Register of Deeds.

**Relevant Provisions of the Declarations of the
Declaration of Covenants and Bylaws**

Article VI, Section 6.03 (Residential Use Only) of the Declaration of Covenants, Conditions, Restrictions and Easements for Lone Mountain Shores (“Declarations”), located at Book 1059, Page 733, of the Claiborne County Register of Deeds states that:

The lots shall be used for residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling’s floor area or employs not more than two (2) persons. (emphasis added).

Additionally, Section 6.09 of the Declarations (Rental) states as follows:

As stated in Section 6.04 residences may be rented and all tenants are awarded owners’ privileges and are required to abide by all covenants and restrictions.

Section 6.03 of the Declarations was amended in the Amended Declaration of Covenants, Restrictions and Easements for Lone Mountain Shores (“Amended Declarations”), located at Book 1003, Page 123, and Book 1059, Page 749 of the Claiborne County Register of Deeds as follows:

Section 6.03 Residential Use Only. The lots shall be used for single family residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any dwelling for private residential purposes or to prevent an individual lot owner from conducting home occupations in the dwelling, which occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the dwelling’s floor area or employs not more than two (2) persons. (emphasis added).

Article XIV of the Declarations states at Section 2 (Amendment) as follows:

These covenants, the articles, or bylaws may be materially amended only by a unanimous vote of the Board and the affirmative vote of fifty-five (55%) percent of the Owners voting by absentee ballot. Any amendment must be recorded in the Registrar's office of Claiborne County, Tennessee.

Article XII (Principles of Interpretation) of the Declarations at Section 12.08 (Conflict Between Documents) states that:

In the case of conflict between these covenants and the articles of [*sic* - or] the bylaws, to be created by the Association, these covenants shall control. In case of conflict between these covenants and the architectural guidelines, the architectural guidelines shall control.

Article 4, Section 4 of the Bylaws essentially tracks Article XI, Section 6.03 of the Declarations, but has not been amended to reflect the revised Section 6.03 of the Amended Declarations. Article 4, Section 10 of the Bylaws tracks Article XI, Section 6.09 of the Declarations concerning the right of owners to rent residences, and awarding all tenants with owner's privileges and the duty to abide by all covenants and restrictions. Article 14 of the Bylaws at Section 2 tracks Article XIV, Section 2 of the Declarations concerning the method by which the Declarations and Bylaws are to be amended.

Thus, by amendment to the Declarations, the Declarations have changed from authorizing lots to be used for private residential purposes only, to authorizing the use of the lots for single family residential purposes only.

Summary of Relevant Law

It is well established law in the State of Tennessee that a person owning a body of land may sell portions thereof and make restrictions as to its use for the benefit of himself as well as those to whom he sells. Benton v. Bush, 690 S.W.2d 691 (Tenn. Ct. App. 1982). However, since restrictive covenants are in derogation of the right of the unrestricted use of ones real property, they are strictly construed. Id. Notwithstanding the law's unfavorable regard toward restrictive covenants and its strict construction of them, such restrictions, like other contracts, will be enforced according to the clearly expressed intention of the parties. Id.

Because restrictive covenants hinder the otherwise free use and enjoyment of property, they are to be strictly construed, with all doubts resolved in favor of the free use of ones property. Land Developers, Inc. v. Maxwell, 537 S.W.2d 904. Nonetheless, the words of a restrictive covenant should be given a fair and reasonable meaning in order to effectuate the covenant's purposes. McDonald v. Chaffin, 529 S.W.2d 54 (Tenn. Ct. App. 1975). When a restrictive covenant's terms are capable of more than one construction, Tennessee courts shall adopt the construction that advances the unrestricted use of the property. Maples Homeowners' Ass'n, Inc. v. T & R Nashville Ltd. Partnership, 993 S.W.2d 36, 39 (Tenn. Ct. App. 1998). Again, Tennessee courts shall also resolve ambiguities in the restrictions against the party who drafted them, and shall

resolve all doubts concerning a covenant's applicability against applying the covenant. Maples Homeowners' Ass'n, Inc., 933 S.W.2d at 39, citing Land Developers, Inc., supra., and Richards v. Abbottsford Homeowners' Ass'n, 809 S.W.2d 193, 195 (Tenn. Ct. App. 1990).

The analysis which a Tennessee court undertakes when asked to enforce restrictive covenant is as follows:

The court is required to give a fair and reasonable meaning to restrictive covenants in order to determine the parties' intentions and once the intention of the parties is ascertained, the covenant will be enforced, provided it serves a legitimate purpose and does not constitute a nuisance per se.

General Bancshares, Inc. v. Volunteer Bank and Trust, 44 S.W.3d 536, 540 (Tenn. Ct. App. 2000) citing Hillis v. Powers, 875 S.W.2d 273, 275 (Tenn. Ct. App. 1993).

In Parks v. Richardson, 567 S.W.2d 465, 468 (Tenn. Ct. App. 1977), the Tennessee Court of Appeals for the Middle Section stated that the use of a restrictive covenant restricting a property for "residential" use "does not prohibit construction of multi-unit residential buildings such as apartments, condominiums, and duplexes." The Court of Appeals rejected an argument that modern apartment buildings, for example, are primarily commercial in character and so were not within the meaning of the word "residential". Id.

Finally, Tennessee courts will uphold a covenant running with the land, (as the LMSOA Covenants run) "if the Assignees had actual notice, or if the restrictions appear in the chain of title." Hillis v. Powers, 875 S.W.2d at 274, citing Land Developers v. Maxwell, 575 S.W.2d 904 (Tenn. 1976).

Finally, while certainly not controlling, the Knox County Zoning Code (which should not be significantly different from the Claiborne County Zoning Code) defines the word "family" as follows:

one or more persons related by blood, marriage, or adoption, or a group of persons not exceed five persons not all related by blood or marriage, occupying the premises and living as a single non-profit housekeeping unit as distinguished from a group occupying a boarding or lodging house, hotel, club, or similar dwelling for group use.

Metropolitan Planning Commission Zoning Ordinance for Knox County, Tennessee and the City of Knoxville, Tennessee, Definition Section, at Page 2.1-7. This definition of

“family” is generally consistent with Tennessee law and also consistent with the requirements of the Federal Fair Housing Act, which defines “family” rather expansively.

Detailed Opinions

Based upon the foregoing, I am providing the following opinions.

1. Pursuant to Article XII, Section 12.08 of the Declarations, and Article XV of the Bylaws, the Declarations control over the bylaws. Thus, the Amended Declaration definition of residential use located at Deed Book 1059, Page 733 of the Claiborne County Register of Deeds is controlling.

2. In the context of the Declarations restrictive covenants, “commercial” purposes means a commercial business which is not a residence, and thus prohibited uses of a residence located in the development would include, for example, a restaurant, a professional building, an inn, a boarding house, a bed and breakfast, or for that matter any kind of multi-family dwelling, such as a duplex, triplex, apartment building, townhouses, lodging houses, a clubhouse, or a similar dwelling for group use. Simply renting ones property is not, however, commercial use.

3. Renting of one home for single family residential purposes is clearly permissible, and there is no requirement that an owner occupy the premises. An owner could purchase a property, never live there, and lease it out (perhaps continuously), provided the tenants are using the property for single family residential purposes.

4. Home offices are permitted, in essence if they do not seriously detract from the residential character of the dwelling. Thus, for example, I could practice law out of my home office, provided I lived in the residence, but I could not turn my home into a law firm, employing multiple attorneys and staff.

5. The “serial” renting for relatively short periods of time of dwellings to a family or to groups of unrelated persons, where no one is using the property as a single, “non-profit housekeeping unit”, is probably impermissible, but this is somewhat ambiguous based upon the “strength” of the repeated insertion of rental provisions in the covenants, and also the fact that Lone Mountain Shores is essentially a vacation or resort community, located on the lake where for most if not all residents, their home is not their primary dwelling, and where it is a commonplace practice in today’s economy to rent out homes in a vacation community.

6. Because the serial renting of dwellings to families or small groups of unrelated persons, for example, a group of “guys on a weekend fishing trip”, is arguably permissible under the covenants, in my opinion the covenants should be amended to more particularly detail this situation. Since the current practice seems to be to allow this type of renting, a defense to prohibit the enforcement of the covenants as written may arise over time, based on the equitable defenses of estoppel and/or laches, where homeowners have engaged in this practice for a period of time, perhaps even purchased their property

with the understanding that they would be able to do so, and where the homeowners' association has acquiesced in this conduct.

7. The fact that certain homeowners may have personally understood from the realtor when they purchased the property, that some of the property could be rented, where as others did not understand this, or were not told, is largely irrelevant, as any purchaser will be held to have either actual or constructive notice of the restrictive covenants based upon the presence of the Declarations in the chain of title, the relevant documents being easily accessible initially through the Register of Deeds Office and now through the Association's website.

8. The Association could adopt reasonable restrictions on the rental use of property pursuant to the method in the declarations and bylaws, both of which allow the declarations and bylaws to be amended upon (1) the unanimous vote of the Board of Directors, and (2) the approval of the amendment subsequent to the unanimous vote of the Board by fifty-five (55%) percent of the property owners, pursuant to Article XIV, Section 2, of the Declarations.

9. Tennessee courts will enforce restrictive covenants where they are reasonable and unambiguous, and exist for the mutual benefit of all property owners. However, since Tennessee law favors the free use of ones land, restrictive covenants which are ambiguous will be construed against the restriction, and in favor of the free use of ones property. The Association if it has a concern about, for example, the serial rental of property, could adopt a less ambiguous, more definite rule governing the situation. Both the declarations and the bylaws would need to be amended.

10. Finally, although not strictly a legal opinion, I would note that there is a concern that the prevention of easy rental of ones property might make the property less desirable to own, as it is doubtful that the properties could be leased in accordance with longer term, non-serial rentals.

If you have any questions concerning the foregoing opinion, please do not hesitate to contact me.

Sincerely,

BECKER, FLEISHMAN, BROWN & KNIGHT, P.C.

Samuel W. Brown



"A Covenant Protected Community"

October 2, 2021

Dear LMSOA Members:

The board of LMSOA has been working with owners on a number of issues and needs that require clarification by a vote of the full membership. The board is obligated under the By Laws (Article III, Section 12 (k)) to *"comply with the instructions of the majority"*.

Pursuant to the Covenants and By-Laws the following changes have been reviewed and approved by the board to present to the owners for a vote. Additionally, the items presented were reviewed by the LMSOA legal council for compliance. The board is therefore asking the owners to render their vote.

The voting ballot is attached to this mailing and is found on the last page of this document. For Covenant Amendments to pass there requires the affirmative vote of fifty-five percent (55%) of the Owners by absentee ballot.

Sincerely,

LMSOA Board of Directors

“A Covenant Protected Community”

October 2, 2021

2021 LONE MOUNTAIN SHORES COVENANT BALLOT PROCESS

Below are the instructions for the 2021 Lone Mountain Shores covenant change ballot. ***You must follow this process precisely and use the materials provided to assure your vote is counted.*** This process is necessary to assure the integrity of the count.

Specifically:

- Your privacy when voting (no one will know how you voted).
- Only one ballot is counted for each lot that is in good standing.

Ballot Instructions:

1. Mark your selections on the ballot provided.
2. Place your ballot in the small white envelope, seal and place in the pre-addressed **blue** return envelope to Jim Bull, CPA.
3. Complete Upper left corner of blue envelope with your name, address, and lot number(s).
4. Place a first-class postage stamp on the return envelope.
5. Mail your ballot so it will be received no later than October 22, 2021.

Note: Ballots received after October 22, 2021 will NOT be counted.

1. LMSOA Proposed Amendment to Covenants: Lot #42

Proposal to Amend the Covenants to allow the owners of Lot #42 to join the LMSOA Association.

History - The current owners of lot #42 made a request to the board to join the Association. Several lots were developed prior to the creation of LMSOA and therefore not subject to the associations Covenants and restrictions, including Lot #42. (Covenants Article I, Section 10.04). The board weighed the benefits of their joining against the liabilities and voted to approve a recommendation to present a vote to the owners to vote against or in favor of allowing Lot #42 to join the LMSOA Association. Board rationale for allowing Lot #42 to be added to Covenant Change Ballot: binds the property to the ARC requirements, nuisance restrictions and use of the property. Dues collected will exceed the additional incremental expenses created by their joining.

PLEASE VOTE ON THE ATTACHED BALLOT – Last Page of this document

2. LMSOA Proposed Amendment to Covenants: Delegation of Use

Proposal to Amend the Covenants to strike the word “accompanied” from the Covenants (Article IV; Section 4.03- Delegation of Use).

History – In August of 2020 a group of owners presented to the board their concerns regarding rentals within LMSOA. Discussion led to the creation of a committee to review and make recommendations to the board regarding their findings. Following 6 months of work the committee came to no formal agreement and suggested a survey of owners regarding identified issues, needs and desires. The board with advice and input from the committee findings, developed a survey that went to owners to seek input and feedback. Survey responses provided feedback to the board. The survey responses indicated strong support to retain the language to allow rentals in the community. However, the Rental Committee and owners identified conflicts in the Covenants whereby the provisions in the Covenants Section 4.3 – Delegation of Use, were conflicted. Section 4.03 reads “Any Owner may delegate, in Accordance with the Bylaws, his/her right of enjoyment to the Common Area and facilities to the members of his/her family or the Owner’s accompanied guests”. The board considered the issues of defining accompanied guests including: renters, owners’ visitors, sub-contractors, guests of guests along with the issues of enforceability and insurance coverage. The board also considered if striking the word accompanied limited their options regarding enforceability and determined that other provisions in the Covenants and Bylaws provide suitable language for enforceability. Note, regardless of the outcome of the vote our insurance coverage for the docks and property covers guests whether they are accompanied or not. The board seeks the owners vote regarding the issue.

Vote to strike the word “accompanied” from the Covenants (Article IV; Section 4.03- Delegation of Use).

PLEASE VOTE ON THE ATTACHED BALLOT – Last Page of this document

3. LMSOA to amend the Covenants to add language pertaining to: Camping

Proposed change to add definition to the language in Section 6.32 to define: Camping requirements on owners' property.

History – Section 6.32 of the Covenants defines no allowance of camping on common areas but does not define camping or the placing of temporary structures on individual lots. Clarification of permitted camping on individual lots provides the board clear direction. Therefore, the board recommends a Policy and Procedure that states: *"Camping or erecting temporary structures by owners on individual lots is limited to three consecutive weeks; with a maximum of nine (9) weeks per calendar year; except during periods of construction. Camping and temporary structures permitted during times of construction will be on a case-by-case basis as mutually agreed upon by the owner and ARC Committee prior to use.*

Proposal to Amend the Covenants to add language to Section 6.32 to define: Camping requirements on owner lots.

PLEASE VOTE ON THE ATTACHED BALLOT – Last Page of this document

PROPOSED CHANGES TO THE BYLAWS

The board, in efforts to provide consistency and clarification developed language to augment the current language in the Bylaws. Per the Bylaws of Lone Mountain Shores Owners Association, Inc., amendments to the Bylaws per Article VI: Whereby, *“the Board must notify the Owners of the proposed change and provide Owners with the opportunity to see the proposed new Bylaws. If, within thirty days (30) after sending such notification, 10% or more of the Owners request in writing a meeting to discuss the proposed change, the President will call a meeting for open discussion of the subject; otherwise the changes will become effective at the end of the of the 30-day notice period.”* The Board, based on the input and request of owners through committee, open board meeting discussion and members input formulated the following changes. Council has reviewed and offered input on the language and proposed changes. The Board through unanimous vote recommends the changes and refinements.

4. LMSOA Proposed change to the Bylaws pertaining to: Rentals

Proposed addition to the Bylaws Article IX – Miscellaneous Provisions: Owners of Rental Property shall be required to Register their property for rental and require owners who rent their properties to provide renters with a copy of the LMSOA Rental Requirements. Specific language and requirements relating to each topic shall be contained in the Board Policies and procedures.

History - The Rental Committee, owners and board identified that there are no requirements for owners who rent to provide to renters a copy of LMSOA rental requirements. Additionally, there is no method to track the number of rentals within LMSOA. The board supports knowing who is renting within LMSOA and ensuring that owners who rent provide a set of minimum requirements for renters to follow while renting within LMS. Following is the language proposed for registering rental properties along with LMSOA rental requirements.

LMSOA Rental Requirements – Provided by Owners to all Renters using their homes

The LMSOA RENTAL REQUIREMENTS shall be provided to all renting parties within LMSOA. Additionally, it shall be posted by the owner in a prominent visible space in the rental unit such as on the refrigerator or similar location.

LMSOA is Residential Community occupied by permanent residents, their guests, family members, children and grandchildren. As such it is expected that behaviors of all parties including owners and persons renting exhibit respect for the peace and enjoyment of all parties and their properties. In essence, be respectful.

Persons who rent are expected to follow the Covenants and Bylaws of Lone Mountain Shores Owners Association (LMSOA). This document outlines those expectations.

BEHAVIOR - Please understand that young children and families are represented within the community. No excessively loud music and profanity. Quiet time is 11:00 pm to 8:00 am. Please be respectful.

LIABILITY - Persons renting and the owners renting their properties assume all liability for themselves and all individuals within their party when using LMSOA properties. LMSOA is held harmless for any injury, accident, or damage as a result of personal action or negligence either knowingly or unknowingly, on the part of the individual. Individuals renting and/or the owner shall be responsible for the damage and repair of any property owned by LMSOA that is damaged as a result of renters' actions.

EVACUATION - in the event of an evacuation of LMSOA, there is an **EVACUATION PLAN** provided by each owner or owners representative that outlines how to evacuate the community in the event of a disaster, major wildfire or the one road allowing ingress/egress is blocked. Please familiarize yourself with the plan.

Note: this section is subject to the outcome of LMSOA Proposed Amendment to Covenants: Delegation of Use. **USE OF LMSOA FACILITIES** - If provided, gate cards are for access to docks at Dock 1 - Pebble Creek and Dock 2 - Stillwater. Persons using the docks and facilities assume all responsibility for their property, watercraft and trailers while using the facilities. Trailer parking is limited to first come first serve basis and may be used for a maximum of 14 days. Owners assume all liability for their trailers while parked at the docks. Chocks or other methods to minimize movement of the parked trailers is strongly recommended. It is encouraged that the owners place a tag on their trailers with a contact phone number to enable LMSOA to contact you if in the event a trailer is hit or has to be moved to facilitate trash removal or similar activity. You are responsible for damage caused to others property and the properties of LMSOA while maneuvering trailers/watercraft on land and in the water within the dock areas. **Persons are allowed use of one dock space per house** on a first come, first serve basis. Dock lines, mooring bumpers and locks must be removed each time the dock space is vacated. **BOAT RAMPS** are provided at each dock area. Please be respectful when using ramps. You are held personally responsible for your actions.

SWIMMING - No diving is allowed off of the LMSOA docks as there are underwater cables and girders that support the dock structure. Swim areas are designated by signage. Swimming within associations property is at your own risk.

WAKES AND SAFE BOATING - Please be especially mindful of wakes and shoreline damage as a result of erosion. Stay 50 yards from shore when wakes are present from your boat to preserve docks and shoreline. Wake boats are encouraged to use uninhabited lake shore areas and maintain maximum distances from shores, docks and other boats to minimize shore damage and other risks to boaters as a result of large wakes. **NO WAKE AREAS** are designated within all dock areas of LMSOA.

LITTERING AND PERSONAL TRASH - Keep trash in its place. Personal trash _____. (** Subject to the outcome of Vote #2, regarding "accompanied guests"). Please recycle personal trash and haul out any excessive waste such as damaged watercraft parts, tubes, tires and similar large items. Be respectful as our trash hauler has very specific requirements for allowed items in the trash bins. Regarding the waterway, Norris Lake is a beautiful waterway that is abused with littering and trash on a routine basis. If you see trash on the waterway, help remove it if you can. Let's all try to improve and preserve this scenic waterway and do not do anything to add to the existing problems. Please do not litter.

CAMPFIRES - Following the tragedy in Pigeon Forge there is tremendous concern about fire safety. Near the entrance to the community at the corner of Chimney Rock Rd and Mountain Shores Road there is sign that posts the Forestry Service fire risk levels for our area. If the fire danger level is "High", no campfires are allowed within LMSOA at rental properties. Campfires are permitted when fire level risks are designated at "Moderate" and "Low" levels. The following guidelines shall be followed: All fires must be attended to at all times by a responsible adult. Fires are for recreation purposes only and shall be contained within a fire pit or fire ring. No non-recreational burning of brush or debris is allowed. No fire of any size may be allowed to reach a size large enough that creates a nuisance to adjoining properties due to excessive heat, noxious odor or density of smoke. "Remember only You can prevent wildfires"

DISCHARGE AND USE OF FIREARMS - Discharge and use of firearms are not allowed by anyone renting within LMSOA.

FIREWORKS - Fireworks and the use of fireworks are not allowed to be used by anyone renting within LMSOA.

PETS - if allowed by your rental agreement, LMSOA expects you to be a responsible pet owner. Please do not leave pets unattended, especially dogs that bark or exhibit abandonment issues. Leashes are strongly encouraged when walking dogs on roadways and trails. Owners are solely responsible for their pets behavior while on LMSOA property.

Owner Registration for rentals LMSOA

PURPOSE - Owners who rent their homes, defined by the "receipt of monies for the use of ones home", shall be required to register their homes with the home owners association. The purpose being LMSOA is a Residential Community bound by Covenants and Bylaws that obligate all owners to certain conditions, and requirements for the safety and enjoyment of all owners within LMSOA. The governing documents require that all owners are obligated to follow the provisions of those requirements regardless whether they, their guest or those renting their homes are occupying the homes within LMSOA and using LMSOA property.

The requirement of registering is for the purpose of requiring owners who rent their homes to provide to all renters, at the time of renting, a copy of the LMSOA "Rental Requirements". The Rental Requirements outlines the LMSOA expectations for the use and expectations of the guests while renting within LMSOA based on the Covenants, Bylaws and general expectations of the owners of properties within LMSOA.

The Rental Requirements are not meant to replace an owners or rental agencies contract, it is meant to augment and define certain expectations of all persons renting within LMSOA and designates a person to "be available and accessible if it becomes necessary for the neighbors, Association, Sheriffs Office or TWRA to take action due to the behavior or violation of the property Rental Requirements". **The owner assumes ultimate responsibility for their property when guest or renters of the property use the home and any LMSOA properties per the Governing Documents.**

There shall be no cost to the owner for registering their home as a Rental Unit within LMSOA. Registration shall be on the honor system for the sole intent of preserving the value and safety of all homes within the Association. *If it is discovered that an owner is renting their home without a valid registration the board may invoke fines and penalties on a case-by-case basis for failing to register.*

The board may revoke a homeowner's registration for renting if in its sole discretion it determines that there is a pattern of abuses, problems and continued violation of the Rental Requirements that have not been addressed by the owner or their rental representative. Once the Registration is revoked, an owner may not rent their home until they have adequately assured the board they have addressed the boards documented concerns and have taken measures to mitigate the problems in the future.

Completion of the Registration document, signed and accepted by both owner and LMSOA board action shall be required before renting of a home within LMSOA. The Secretary shall retain copies of all registrations. The Registration document shall include an emergency contact, be it the owner or their designee, to respond to all violations of the Rental Requirements while the home is occupied by the renter. The registrations shall remain in effect unless either party rescinds the registration, information within the registration is no longer applicable, or the property transfers ownership. New owners shall be required to re-register a property for renting purposes. The Owner is required to provide updates to the board if changes occur regarding information contained within the Registration document.

Rental properties, addresses of rental homes along with the Emergency contact information may be posted for use to report complaints and/or concerns regarding violations of the Rental Requirements. **Community members are directed to call the Sheriff's office: 911 to report offensive noise, safety and related major concerns.**

POLICIES AND PROCEDURES

The board may *“formulate policies for the administration, management and operation of the Property”* (Bylaws Article III, Section 12 (d) – Powers and Duties). The board, in efforts to provide consistency and clarification developed policies and procedures to address key concerns identified by the board and owners. These Policies and Procedures are being posted in accordance with the provisions in the Bylaws Article VI – Amendments. Adopted Policies and Procedures will be posted on the LMSOA Website under the Owners Tab and available to future boards for their use in electronic and/or hard printed copies. *The following policy and procedure was reviewed by legal council for compliance applicable Tennessee State Laws and the LMSOA governing documents.*

5. LMSOA Proposed Policy and Procedures regarding - Request for Documents

Proposal to define in Policy and Procedures language to clarify details regarding: Article IV in the Bylaws – Section 3: Association Records in accordance with applicable State Laws and the Governing Documents of LMSOA.

History - Boards past and present have been requested to provide owners copies of the Corporations documents and financial records. While there are provisions to provide certain documents there are no policies and procedures for consistent applicability to ensure compliance with our Covenants, Bylaws and State of Tennessee applicable statutes. The following language was reviewed by legal counsel for LMSOA. The board endorses adding language to the Bylaws that defines policies and procedures for requests for documents.

Policy and Procedures for Request for Documents

I. The following documents are considered public documents available for general distribution, including:

- a. LMSOA Tax Return
- b. Annual Audit Report
- c. Latest filing of the Annual Report to the TN Secretary of State

Upon request by an owner of property within LMS (as defined in the Covenants) shall be provided a copy of these documents.

II. Requests to review the Corporations Financial Records & Documents

Owners have the right to request to review the associations Financial Records and Documents

The board has a duty and obligation to follow the Covenants and By-Laws to protect the interests of all owners of property in LMS when disseminating corporate records and documents. As such, specific policies have been established to ensure those duties and obligations are met (Bylaws - Article III Section 121 (d)(e)). The policies as defined herein are predicated on the LMS Covenants & By-Laws and TN Secretary of State requirements. They are defined as follows:

In performing their duties, the board requires that any request for information be:

1. In writing. The corporate address as registered with the TN Secretary of State is: Lone Mountain Shores Owners Association, 171 Bluff View Road, New Tazewell, TN 37825. The documents and required records of the organization are held at this address which is the Community Center. (Covenants - Article III Section 3.03)
2. Requests should be specific in nature with a stated purpose for requesting review of the documents. (TN Nonprofit Corporation Act 48-66-102 (1)(c)(3))
3. Upon receipt of a request, the board will identify who is best to meet with the individual(s) to address the question and make arrangements with the requesting party to meet at the Community Center.
4. The board as a matter of practice will invite the individual to the next board meeting, personally or electronically, to address their specific questions and offer the availability of the board members email address and phone number of record for the specific board member who is responsible for the material being requested. The intent being that questions are best answered in a personal manner as many times there are a series of questions that require clarification and further detail.
5. The Association board, including any committee, is not required to make available correspondence between the board, a committee and individual Association members. (Covenants Article III – section 3.03)
6. Copies of specific documents may be made. The requesting party shall be charged for copying costs, which shall be defined as normal and customary charges as established at the time at the Claiborne County Court House. Financial documents other than the Audited Financial Statement shall be marked "Internal Financial Information Subject to Audit and Review (Bylaws - Article IV - section 3)
7. The requested documents shall be copied and mailed to the requesting party by Certified Mail, return receipt requested. Accompanying the mailing LMS shall include a transmittal sheet listing the documents requested and included in the mailing. The requesting party shall be responsible for reimbursing LMSOA the cost of copying and mailing of the information requested. An invoice for such services shall be provided to the requesting party.
8. LMS Website - The owners of Lone Mountain Shores manages and operates a Website for communication by and between owners. It is recognized as an informational and social media platform and does not serve as a platform for managing, communicating and distributing the business and activities of the corporation, its board and its members. Therefore, official business does not occur on the website and the website represents the sole view and opinions of users posting information.

9. The board may choose to post internal documents and records for registered users of the website to access as a matter of convenience; however the organization recognizes that the website is a proprietary third-party managed electronic media platform and as such is an unsecured environment for posting, managing and maintaining copies of corporate master association records. Additionally, the organization recognizes the website is utilized by only a portion of the members that choose to register as a user and as such is not the method used for distributing organization information. Although not required, generally the board has chosen to post the Audited Financial Statement, Board meeting minutes, Annual Meeting minutes and general mid-year financial updates as a method to provide for general information sharing to the members. Formal information to the owners such as notice of the Annual Meeting, liens, voting and ballots shall be in the form of mailings through the United States Postal Service to the recorded address of record as provided and updated by the owner, or as otherwise required by the governing documents.
10. Under no other circumstances shall requests for information be handled differently than defined in the Covenants, Bylaws and herein.

February 15, 2022



Certified Mail – Return Receipt Requested

Lone Mountain Shores Owners Association
171 Bluff View Road
New Tazewell, TN 37825

Dear LMSOA Board of Directors,

On behalf of the undersigned, this letter is to formally request the status of the following items:

- Bylaw changes pertaining to short-term rentals identified as proposed Article IX. While it is understood that by-law changes do not require a membership vote, a vote by members is not prohibited, and was in fact conducted. Owners approved the Article IX changes in the fall of 2021 by a vote of 167 to 76; and the Board has a responsibility as elected officials to honor the direction of the majority of owners. Please address the following questions:
 - When will the Bylaws be amended to include the Article IX changes?
 - How will the membership be notified of said amendments, and where will the documents be filed?
 - On March 21 – the date of the next Board meeting – it will be 8 weeks since the January 22 meeting regarding Article IX. If the Board does not have a timeline for amending the Bylaws to include Article IX by the March 21 Board meeting, what is causing the delay and when do you anticipate the delay being resolved? It was mentioned at the January 22 meeting, that next steps were for the board to discuss the topic. What additional information is needed in order to enact the proposed changes?
 - If the Board does not intend to amend the Bylaws to include Article IX, please explain the justification for disregarding the will of the majority of owners.
- How does the Board plan to resolve the ongoing discussion of short-term rentals causing division within the LMS community? This topic has been under active discussion for many months, and it is a board responsibility to resolve or mediate such disputes between or among owners. Please address the following questions:
 - What specific steps does the Board plan to take to mediate or resolve the short-term rental issue?
 - What is the timeline for bringing the topic of short-term rentals to resolution?
 - How does the Board define “resolution” for the issue of short-term rentals?

It is felt the Board’s responses at the February 7 Board meeting to owner questions relating to short-term rentals were evasive and did not foster an atmosphere of transparency. Specifically, when asked to speak to the board’s interpretation of the LMSOA covenants as written, the response was that they were “being interpreted as written,” when in fact, if *interpretation* is enacted, then by definition, the topic is open to ambiguity. Please be specific and mindful of your pledge to be transparent when addressing the questions posed in this letter. Please receive this as a formal request to be placed on the agenda for the March 21 Board meeting to be given an opportunity to respond to the Board’s answers to these questions. Thank you!

Sincerely,

See reverse side for signatures (in alphabetical order)

Deb Hays

Deb Hays

Michelle Lund

Michelle Lund

Gail Robinson

Gail Robinson

Margaret Kaniecki

Margie Kaniecki

Kathy Nixon

Kathy Nixon

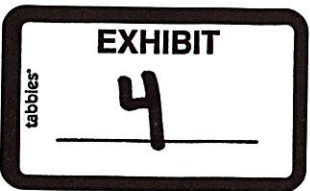
Annette Schell

Annette Schell



Lone Mountain Shores Owners Association
"A Covenant Protected Community"

Board Meeting Minutes
March 21, 2022



1. Welcome and Introductions

- a. Call to order -- meeting called to order at 3:00 p.m.
- b. Pledge of allegiance
- c. Roll Call - President, Vice President, Treasurer, ARC Liaison, and Secretary

2. Approval of the agenda for today

President called for a motion to approve the meeting agenda, a motion for approval was made by the Secretary and seconded by the ARC Liaison. There was no discussion, a vote was taken and the agenda was approved unanimously.

- 3. Brief member comments – a request was made to read aloud the agenda, because the agenda was not posted to the website two weeks prior to the meeting. The President read aloud the agenda.
- 4. Approval of the minutes – the President asked for a motion to approve the February board meeting minutes. The ARC Liaison made a motion to approve the February board meeting minutes which was seconded by the Vice President. There was no discussion and the vote for approval was unanimous.

5. Reports

- a. Treasurer
 - i) All bills due in March have been paid.
 - ii) The 2021 Tennessee Corporate Annual Report was filed March 8, prior to the April 1 due date.
 - iii) 2021 association income taxes are in process and will be completed before the April 18 deadline.
 - iv) January and February bank account reconciliations are complete, and have been provided to all board members for their review. Checking account balance - \$12,500.00, Holding account balance - \$21,600.00, and Money Market account - \$295,600.00 are more than normal due to receipt of annual dues, and being unable to purchase a CD at Knoxville TVA Employees Credit Union as planned.
 - v) CDs - At the last board meeting it was decided to move the \$230,000.00 CD to the Knoxville Federal Credit Union however this institution was unable to meet the association's requirement for two signatures. Upon further investigation, another institution was located that would meet the association's two signature requirement. Citizen's Bank & Trust of Grainger Co. meets the two signature requirement. **The Treasurer made a motion to deposit the \$230,000.00 CD for 12 months at 0.30% interest at Citizen's Bank & Trust of Grainger Co. The motion was seconded by the Vice President. There was no discussion and the motion was approved unanimously.**

- vi) CD Consolidation - Currently there are multiple CDs maturing at multiple times. The Treasurer plans to consolidate into four CD's, one maturing each quarter, while ensuring all association funds are insured by FDIC or NCUA. The Treasurer made a motion to transfer the \$41,000.00 CD at Commercial Bank, (maturing April 21st), to the Money Market account for holding until September. At that time, the \$41,000.00 will be combined with another CD due to mature in September. The motion was seconded by the Vice President, there was no discussion and the motion was approved unanimously.
- b. Secretary – no report
- c. Vice President
 - i) Culvert on Whistle Valley – Claiborne County has placed the request for paving over the culvert they replaced on their list of required road repair. The paving of the replaced culvert will be addressed when general road paving and repair is being done in this area.
 - ii) Lawn Care – upon receipt and examination of bids from John Hecknick, Chad Mincey, and K & K Lawn Care, the bid from K & K Landscaping was at least \$100.00 lower than the other two bids. The Vice President made a motion to employ K & K Landscaping for the association's landscaping maintenance needs. The motion was seconded by the ARC Liaison, there was no discussion and the motion was approved unanimously.
 - iii) Trash Removal – the vendor maintaining the dumpsters at Dock #1 will no longer service this area as of April 1st. Of the other vendors contacted, Waste Connections was the most cost effective. They have agreed to provide and service 6 eight yard dumpsters. The Vice President made a motion to use Waste Connections for the association's dumpster service at Dock #1 beginning April 1st. The motion was seconded by the Treasurer, there was no discussion and the motion was approved unanimously.
 - iv) Dock Signage – in order to more clearly communicate the use requirements for the common areas in Lone Mountain Shores the signs at Dock 1, Dock 2 and the Community Center need to be changed. The new signs would be changed to,
 - (a) *“These facilities are for the use of Lone Mountain Shores owners and accompanied guests only, no trespassing, violators will be prosecuted. Area under surveillance”*The Vice President made a motion to purchase new signs for Dock 1, Dock 2 and the Community Center at a cost not to exceed \$200.00. The motion was seconded by the ARC Liaison, there was no discussion and the motion was approved unanimously.
 - v) Community Center Maintenance – the community center needs to be stained and the carpenter bee holes repaired. After receiving bids on the work. The Vice President made a motion to allocate no more than \$5,000.00 to repair and stain the Community Center. The motion was seconded by the Secretary, there was no discussion and the motion was approved unanimously.
- d. ARC Liaison
 - i) Projects – since February there have been 2 approved construction extensions, 2 approved new construction projects and 1 approved clearing project. Currently, there are 2 clearing projects in progress
 - ii) Illegal cutting – the owner of lot 197 discovered that sometime last summer the trees on his lot had been cut down without his knowledge.

- iii) Home Fire – The fire on lot 816 is suspected by the owner to be arson. The lot owner has made arrangements to return the site to its original state with the exception of the gravel driveway which will remain.

e. Special Committees

- i) Welcome Committee – the committee is requesting \$500.00 from the board, over a three year period, to cover expenses such as 30 welcome tote bags, paper, printing supplies and sundry supplies to fill the totes. The Secretary made a motion to approve the Welcome Committee's request for \$500.00 for expenses over a three year period. The motion was seconded by the ARC Liaison. The Vice President asked about the tote bags supplied by Claiborne County Chamber of Commerce and the response was that those totes were not very well made. The President called for a vote, the vote was unanimous.
- ii) Firewise – the previous board set aside \$15,000.00 for street sign replacement not covered by Firewise funds. Firewise funds are now depleted and the street sign replacement is not complete. Firewise needs to purchase an additional 24 street sign posts, (21 to complete the project and 3 to be kept as replacements). The committee is requesting \$5,000.00 from the board to order the remaining sign posts to complete this project. The Vice President made a motion to spend \$5,000.00 of the allocated \$15,000.00 to complete the street sign post replacement project. The Treasurer requested that the motion be amended to reflect that allocation of these funds be by invoice payment, the amendment was accepted and seconded by the ARC Liaison. After discussion; the President called for a vote, the vote was unanimous.
- iii) Firewise/Annual Picnic Committee – this year's annual picnic will be in conjunction with Firewise. The picnic will be held on April 23rd. Firewise has agreed to fund half of the cost of the picnic and asked that the association fund the remaining half. The cost will include catering, paper goods, and drinks. The Vice President made a motion to spend \$350.00 for expenses related to the Firewise/HOA Annual Picnic on April 23rd. The motion was seconded by the ARC Liaison, there was no discussion and the vote in favor of the expenditure was unanimous.

6. Unfinished Business

- a. Dock #2 cameras – the purchase of cameras has been tabled and will be addressed at another time.
- b. Signage for common areas – see the Vice President's report
- c. Old dock #1 removal – the old #1 dock which was in the bay at Dock #2 has been removed
- d. Update on guideline review – A special meeting was held on January 22, 2022 in accordance with Article II, Sect on 4 of the Bylaws of Lone Mountain Shores Owner's Association. The board was asked to consider the installation of a Bylaw amendment regarding Rentals and a policy regarding Requests for Information proposed October, 2021. The board has discussed these issues and has decided not to install the Bylaw amendment or the policy proposed October, 2021. This decision was 4 to 1, against implementation with the Vice President dissenting. The board's reasons are stated below.
 - i) Bylaw Amendment – At this time the board does not believe that it is appropriate to amend the Bylaws to create new restrictions upon the use of property by individual owners. Furthermore, the proper method of amending Bylaws is not by written ballot. Adding further restrictions to the individual owners' use of property through the Bylaws is inconsistent with the Covenants. The previous board's proposed amendment to the Bylaws did not follow the documented process for amending Bylaws and is therefore not viable.

- ii) Request for Information policy – the proposed policy regarding information requests does not concur with Tennessee Nonprofit Corporate Act and this board will be following Tennessee Nonprofit Corporate Act regarding information requests.

7. New Business

- a. Clearing permit refunds – current ARC guidelines require a security deposit for clearing permits and a security deposit for construction permits and upon completion of construction both security deposits are refunded. **A motion was made by the ARC Liaison that upon ARC approval for construction to begin the clearing security deposit be refunded to the owner. The Treasurer seconded the motion and the President called for a vote. The Vice President, Secretary, Treasurer and ARC Liaison voted yes and the President abstained. The motion was passed.**
- b. Annual picnic – the Annual picnic will be held in conjunction with Firewise on April 23rd.
- c. Bylaw Amendment and Request for Information policy – Michelle Lund spoke for a group consisting of herself, Deb Hays, Margie Kaniecki, Gail Robinson, Kathy Nixon and Annette Schell. Her main points are summarized below.
 - (1) A certified letter had been sent to the Board requiring that the Bylaw amendment and information request policy be adopted.
 - (2) The Tennessee Non-Profit Corporation Act (TNPCA) states that Bylaw changes which garner more than 66% of the votes cast can be adopted even if this procedure is not in the existing Bylaws.
 - (3) The Bylaw amendment received more than 66% of the votes cast, and it must be adopted.

In response, the Board President requested a letter from their attorney explaining the legal argument. This letter will then be forwarded to the HOA attorney for his legal opinion.

Mrs. Lund asked the Board:

- (1) How they planned to resolve the division within the community regarding short term rentals.
- (2) How the Board plans to resolve the issue that the community does not want short term rentals. She acknowledged that no one has asked her to stop renting, but feels that the Board ignoring a majority vote indicates that it might, in the future, take unilateral actions that would harm short term rental businesses.

The Board President's responses:

- (1) They do not see a major division as only one member has contacted them on this issue.
- (2) The Board has not taken any actions regarding short term rentals.
- (3) The majority of the Board disagrees with Mrs. Lund's interpretation of the TNPCA. The decision was 4 to 1 with the Vice President agreeing with Mrs. Lund's interpretation.

Mrs. Lund reported that she received a letter from a realtor alleging that the Board President came to his office and made negative remarks about short term rentals being allowed in the future, and that he has made similar statements to others in the community. The President disputed this allegation.

Mrs. Lund concluded with her concern about the lack of transparency by the Board, their lack of dedication to the community, and a commitment to pursue this further, including by legal means.

d. Rentals – Kathy Nixon

Mrs. Nixon stated that Lone Mountain Shores has been legally rental friendly for twenty years, but she has recently heard rumors that members of the current Board have expressed anti-rental opinions to the public. She stated that if these rumors persist she will take legal action against the board, including "cease and desist" letters and possibly followed by a petition to remove the Board. On being questioned by the Board President, she acknowledged that she had not been asked by anyone to stop renting.


The Board President was asked by a member if it was his goal to eliminate short term rentals, and he responded that it was not his goal to eliminate short term rentals.

8. Motion to adjourn -

The President called for a motion to adjourn the meeting, the motion was made by the Vice President. The President called the meeting closed at 4:15pm.

After the meeting the President opened up the room for discussion and at this time there was much discussion by the audience regarding rentals.

Minutes Submitted by,


Sabrina Izbrand, Secretary, LMSOA