



OPEN MEETING

REGULAR OPEN MEETING OF THE THIRD LAGUNA HILLS MUTUAL ARCHITECTURAL CONTROLS AND STANDARDS COMMITTEE*

Monday, June 27, 2022 – 9:30 a.m.
Laguna Woods Village Board Room/Virtual Meeting
24351 El Toro Road, Laguna Woods, CA 92637

Laguna Woods Village owners/residents are welcome to participate in all open committee meetings and submit comments or questions regarding virtual meetings using one of two options:

1. Join via Zoom by clicking this link: <https://us06web.zoom.us/j/93156707417>
2. Via email to meeting@vmsinc.org any time before the meeting is scheduled to begin or during the meeting. Please use the name of the committee in the subject line of the email. Name and unit number must be included.

NOTICE and AGENDA

This Meeting May Be Recorded

1. Call Meeting to Order
2. Acknowledgement of Media
3. Approval of Agenda
4. Approval of Meeting Report for May 23, 2022
5. Chair's Remarks
6. Member Comments - *(Items Not on the Agenda)*
7. Division Manager Update

Consent: *All matters listed under the Consent Calendar are considered routine and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.*

8. None

9. Variance Requests:

- A. 3460-A Column & Trellis Partial Removal
- B. 3456-A Raise Ceiling Heights
- C. 5214 Room Addition in Exclusive Use Common Area

New Business:

10. Disciplinary Rules on Contractors – Jules Zalon

Items for Future Agendas:

- TBD

Concluding Business:

11. Committee Member Comments
12. Date of Next Meeting – July 25, 2022
13. Adjournment

*A quorum of the Third Board or more may also be present at the meeting.



OPEN MEETING

REPORT OF THE REGULAR OPEN MEETING OF THE THIRD LAGUNA HILLS MUTUAL ARCHITECTURAL CONTROLS AND STANDARDS COMMITTEE

**Monday, May 23, 2022 – 9:30 a.m.
Laguna Woods Village Board Room/Virtual Meeting
24351 El Toro Road, Laguna Woods, CA 92637**

MEMBERS PRESENT: Robert Mutchnick – Chair, James Cook, Ralph Engdahl, John Frankel, Craig Wayne

MEMBERS ABSENT: Michael Plean - Advisor

OTHERS PRESENT: **Third:** Mark Laws
Michael Butler - Advisor

STAFF PRESENT: Bart Mejia – Maintenance & Construction Assistant
Director, Robbi Doncost – Manor Alterations
Manager, Gavin Fogg – Manor Alterations and
Resales Supervisor, Sandra Spencer – Administrative
Assistant

1. Call Meeting to Order and Establish a Quorum

Chair Mutchnick called the meeting to order at 9:30 a.m.

2. Acknowledgement of Media

Chair Mutchnick noted that the meeting was broadcasting on Granicus and Zoom.

3. Approval of Agenda

Hearing no objection, the agenda was approved by consensus.

4. Approval of Meeting Report for April 25, 2022

Hearing no objection, the meeting report was approved by consensus.

5. Chair's Remarks

None.

6. Member Comments - (Items Not on the Agenda)

None.

7. Division Manager Update

Mr. Mejia announced the recent resignations of Lauryn Varnum and Richard de la Fuente. These, and additional staffing shortages, will prove challenging in the short term and a slight delay in processing mutual consents and variances will likely occur while new staff is hired and trained. The goal to provide a high level of customer service remains.

8. Monthly Mutual Consent Report

Consent: *All matters listed under the Consent Calendar are considered routine and will be enacted by the Committee by one motion. In the event that an item is removed from the Consent Calendar by members of the Committee, such item(s) shall be the subject of further discussion and action by the Committee.*

The Monthly Mutual Consent Report was approved unanimously.

Variance Requests:

A. 2131-H (Monterey, PP08) Retain Non-Compliant Shade Structure Over Patio

Mr. Mejia introduced the variance, and the committee discussed details of the unpermitted shade structure.

- Two members attended the meeting and commented in favor of the variance.
- Two members sent emails commenting in favor of the variance.

The manor owner was requested to provide Manor Alterations with 1) manufacturer's requirements for anchoring the shade to the building, and 2) acknowledgement that any damage that may happen to mutual property would be the responsibility of the owner as conditions for approval of the variance. The owner verbally agreed to the additional conditions.

A motion was made and approved by consensus to allow the non-compliant shade structure over the patio at 2131-H to remain with the mandate that the additional general conditions be added and the verbiage edited.

Items for Discussion:

9. Cardoso & Associates Contract for Design Services on Water Heater Standard

Mr. Mejia updated the committee. The contract has been executed and work has begun. Staff will return to a future meeting with exterior water heater hut designs suggested by Cardoso & Associates after consultation with the city.

10. Revised Alteration Fee Schedule

Mr. Mejia updated the committee on specific questions that were raised at Board and committee levels in the past and the inclusion of those items in the revised alteration fee schedule. Discussion ensued regarding the suggestion that staff review and approve Basic variances and provide the ACSC with a monthly summary of those variances; the difference in the costs between the Basic variance fee and the complex variance fee; the difficulty in developing standards for the many possible alterations; and water heater relocations.

Staff was directed to review the procedure with the city for water heater replacements to potentially add that to list of alterations not requiring a mutual consent

A motion was made and approved by consensus to recommend the board approve Resolution 03-22-XX for the Revised Alteration Fee Schedule.

11. First Inspection Details

Chair Mutchnick commented on Third Mutual performing exterior inspections only while United provides both exterior and interior inspections. Discussion ensued regarding alterations that may have been done without a permit and that those alterations might only be discovered upon inspection for sale; that staff is trained to do both types of inspections and that adding an interior inspection will not be a strain on staff.

Staff was directed to provide an analysis of the difference in cost between Third and United's First Inspection Fees prior to recommending the board approve the Revised Alteration Fee Schedule.

A motion was made and approved by consensus that the First Inspection Fee include both exterior and interior manor inspections.

12. Common Area Use Policy

Chair Mutchnick introduced the previously addressed topic of cathedral ceilings as common area. Discussion ensued regarding potentially changing the General

Conditions regarding cathedral ceilings so that they may be included in the revised fee schedule as a Basic Variance with board approval.

Staff was directed to return to a future meeting with a report addressing the variance requirements to convert common area ceiling space to cathedral ceilings including a review of a 2018 resolution on the subject.

Items for Future Agendas:

- Contractor Violation Policy
- Handrail Policy

Concluding Business:

13. Committee Member Comments

Chair Mutchnick thanked Sandra Spencer for filling in for the previous ACSC Administrative Coordinator and also stated that it was a good and productive meeting. No other committee members had comments.

14. Date of Next Meeting – June 27, 2022

15. Adjournment

The meeting was adjourned at 10:41 a.m.


Robert Mutchnick, Chair

Robert Mutchnick, Chair
Baltazar Mejia, Staff Officer
Telephone: 949-597-4616

Third ACSC - June 27, 2022

Variance Requests

Agenda Item #9	Manor Address	Description of Request	Summary of Request and Staff Recommendation
A	3460-A Bahia Blanca West	Removal of one decorative exterior building column and partial removal of the above trellis	<ul style="list-style-type: none"> This plan contains a Courtyard enclosed with a +5'-0" high perimeter wall and front gate. Within this brick paver Courtyard are stucco and wood trellis elements as was built with the original construction of the building. The Members seek to remove one of the stucco columns and a portion of the trellis to allow more open space in the Courtyard. The Court (or Courtyard) is surrounded by a +5'-0" high privacy wall and decorative iron gate. This enclosure provides limited visual views from the street or sidewalk. The stucco column and trellis work, to be removed, are considered Common Area improvements in the Courtyard as these elements were constructed as part of the mutual building. The Courtyard in the Andaluz models are not designated as Exclusive Use Common Area but have all of the attributes of Exclusive Common Area. These attributes include the perimeter wall, entry gate, and very private access to the front door. <p>Staff Recommendation: Approve</p>
B	3456-A Bahia Blanca West	Raise living room and other ceilings in Manor	<ul style="list-style-type: none"> This variance request is to allow an increased ceiling height in the Living Room to a vertical height of 11'-6" without the need for structural changes. A mutual consent has been issued, and currently still open, #MC 22-0419 to allow an extensive remodel of the interior of the manor. The manor interior framing is exposed as all of the gypsum board has been removed thereby exposing the framing structure. Due to the original ceiling being of mutual ownership, considered to be Common Area, and there being no existing Standard plan for the proposed alterations, Staff seeks ACSC approval prior to issuing a revised Mutual Consent for the modification to the ceiling. <p>Staff Recommendation: Approve</p>

C	5214 Elvira	Room Addition in Exclusive Use Common Area	<ul style="list-style-type: none"> • This variance request is to allow the renovation work and expansion of the two building components for: 1) Bedroom and Dining Room into previously grandfathered Exclusive Use Common Area at the rear of the manor; and 2) New shed in front enclosed patio Exclusive Use Common Area behind the front wall and gate. • No interior structural modifications but both the room and shed additions will require engineering drawings and city permit. • The Tract Map denotes the original Patio to be 6'-0" X 40'-0". A patio extension of 4'-0" was performed prior to the latest resale and the area was enlarged to a patio measuring 10'-0" X 40'-0" under an appropriate mutual consent on 9/22/97. It is further verified in the 2/22/2011 First Inspection report by Manor Alterations. For these reasons the patio is considered "grandfathered". • Neighbor Awareness Notice was sent to Manor 5213, 5215, 5235, 5236, 5237, and 5238 due to the proximity of these manors having line of sight or being potentially affected during construction. <p>Staff Recommendation: Approve</p>
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Enforcing Our Disciplinary Rules on Contractors

We currently are violating our own by-laws by not disciplining contractors that violate our rules and state construction codes. However, a simple procedure will not only bring us into compliance, but will fulfill our fiduciary obligation to protect our members' interests. And we will look great for just doing our job.

Here are the relevant by-law provisions:

“2.2 POWERS. This Corporation has these powers:

“2.2.3 to adopt rules and regulations to carry out the purposes of this Corporation through its board of directors, including disciplinary procedures with regard to its Mutual Members, Qualifying Residents, Co-occupants, Tenants, **and their Guests.**”

That includes business guests ... like contractors.

“4.5.2 Disciplinary Action by Board. The Board may take disciplinary action against any Mutual Member . . . for breach of . . . any Rules or regulations . . . [by] the Mutual Member **or [their] Guest(s)**, any Co-occupant . . . or any Lessee . . . who may use the facilities

* * *

4.6 The term "Mutual Member" . . . shall include persons claiming or exercising rights under the Mutual Member, including Qualifying Resident, Co-occupant, Lessee **or Guest or invitee of Mutual Member.**”

So the by-laws that currently authorize us to discipline members also authorize us to discipline a Qualifying Resident, Co-occupant, Lessee or Guest or invitee of the Mutual Member. That seems to require us to do just that, which we aren't presently doing.

All we have to do . . . is to enforce our by-laws as they were intended to be enforced; against anyone found to be violating our rules. What could be simpler? What could be fairer?

The only obstacle is that we presently have no **jurisdiction** – legal authority to exercise power – over a contractor whose relationship is solely with the member. So if we wanted to discipline a contractor, he would be within his rights to tell us to take a hike.

While our by-laws authorize us to fine and discipline business invitees, we can only do that in the traditional way: through **consent**. We can discipline a member because the member – when joining the association – consented to our disciplinary powers.

And that is precisely how we can obtain **jurisdiction** over a contractor: through a consent to be subject to our disciplinary rules. That's all it would take. And we wouldn't even have to get involved. If the member wanted protection, they could just demand – as a condition to getting that \$50,000 job – that the contractor agree to comply with our rules . . . or be liable for their violation. What could be simpler?

All we would have to do is to encourage our members to require that their contractors consent to be subject to our disciplinary rules. A simple one or two paragraph agreement would do the trick. Then if the member went ahead with a contractor who refused to consent, they would have no one to blame but themselves in the event that the contractor committed a violation. And we would have done everything in our power to protect the member; **we would have fulfilled out fiduciary duty**.

Staff will have already investigated and determined that a contractor committed a violation and will have cited the member for the violation. [That's the only way this issue could come up.] However, if the member has obtained the agreement I propose, the member will show it to Staff; and Staff will then simply send the contractor a copy of the citation and notice of the hearing. It's that simple. The sole change from current practice is that Staff will send a copy of the citation and notice to the alleged culprit.

This procedure has several substantial benefits:

First, it enables our members to protect themselves (when they are helpless right now). And the members – to whom we owe a fiduciary obligation – would thank us for looking out for their interests. (They would know this when they received a hand-out at the Alterations window, urging them to protect themselves . . . by contract.)

Second, it enables us to discipline the real culprit, whether or not he ever pays a red cent. This avoids the situation where the executive committee substantially reduces a fine, because we felt sorry for the innocent member. I know this to be true: We did that on many hearing panels that I sat on. We gave up money we should have asked our members to pay.

Third, and even more importantly, the simple act of someone agreeing to respect our rules almost guarantees that they will respect our rules. It's simply human nature for folks to do what they say they will do. Especially when they concede in writing that they will be responsible for a violation. And in the final analysis, isn't that what all

these rules are for, anyway? We want everyone to voluntarily respect our rules. The alternative is the equivalent of a police state: an increase in violations; an increase in disciplinary hearings; and an increase in hostility (from an innocent but still liable member). So this procedure only has good things to say for itself.

The [name redacted] case is a perfect example: His contractor decided to avoid testing clearly suspicious floor tiles because he thought he could get away with it, saving thousands of dollars in testing and remediation costs he likely would have had to eat, himself. The guy might have thought twice if he knew he risked a substantial fine if caught.

My proposal for holding actual violators liable for rules violations is based on two simple principles: logic and fairness. **It does not exculpate a member.** The member is still liable to us; it just adds another party – the guilty party – to the process. All my proposal does is allow members to protect themselves by requiring that contractors agree to be responsible for their violations of our rules. And if a contractor refused to agree, that would tell the member a lot about who they were thinking of hiring!

In fact, pinning a large fine on a blameless member is guaranteed only to make the member damned angry. Especially if they discover that we are not enforcing our own by-laws, they will quickly put two and two together, and realize that they were prosecuted and fined by a board that at all times knew who the guilty party was; had an obligation to prosecute that guilty party; yet failed to do its duty. We will have violated our most basic obligation: looking out for the benefit of our members.

But as important is how this will all play out with the community as a whole. We should want to develop a bond with our members, a sense of belonging; that we're all in this together. We want our members to feel that they are a part of something bigger than themselves; that they are part of a special community; and their board is looking out for their best interests. It's why we all ran for the board in the first place. God knows, it wasn't for any monetary gain; and we sure have other things we can do with our time. I know I sure can.

Why a Member Would Never Sue a Contractor

At present, a member who was hit with a large damage award has only one remedy: suing the contractor. But that is a fool's errand. Even if the damages were \$15,000.00, it is almost certain that filing a lawsuit would cost at least that much: filing fees, the cost of deposition transcripts (>\$3.00/pg), obtaining an expert report and then paying even more for the expert's court appearance, legal fees, all this would cost a lot more than the case was worth. And the member would have to prove every single fact in court, a time-consuming exercise.

But if the contractor had agreed to be subject to our disciplinary process, and the Executive Committee had found the contractor liable for the violation or the damage, the member **might**** obtain a judgment against the contractor simply by filing a motion to confirm the Executive Committee's award.

** [I said "**might**." This would be based on treating the Committee's award as an arbitration award. Arbitration awards can be converted into Superior Court judgments pursuant to a simple – and inexpensive – procedure. I'm not thoroughly convinced that treating it as an arbitration award would work. But (1) there is no harm in providing for it; and (2) the mere fact that the contractor agrees to the arrangement makes it much less likely that he would commit a violation in the first place.

[Procedurally, the member would simply file a petition to confirm the award; and unless the court finds something wrong with the procedure, it will enter judgment in accordance with the award. Since arbitration is strongly favored, a court should draw all reasonable inferences to support the award and display substantial deference towards the panel's determination of its contractual authority.]

Sorry for the length of this tome, but I wanted to give you an accurate picture of how simple it would be to start enforcing our existing by-laws . . . and why adopting this proposal is so much fairer than sticking it to members who now have no way of protecting themselves. Our job is to protect the members, at least to the extent that we can.

Don't you agree?

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Notice Proposed to be handed out to members at the Alterations Department:

(To be Given to Members When Seeking Permits)

Protect Yourself When Hiring Contractors:

Members are reminded that they are personally responsible for the conduct of all individuals they invite into the Village. Specifically, members can be – and are – disciplined and fined for violations and damage caused by their lessees, contractors and guests. In the past, the Board has disciplined and fined members when their contractors or lessees violate rules concerning smoking, working hours, noise, nuisance and the like; also when they cause damage.

We therefore urge members – when hiring contractors – to require that the contractors agree to (1) comply with our rules and regulations, (2) be responsible for their violation, as well as any damage they cause, and (3) participate in any Executive Committee hearing convened to enforce these provisions.

While members at all times remain liable for the conduct of whomever they invite onto our premises, signing this contract will both encourage the contractor to actually respect our rules; and allow the Board to directly discipline the person who actually commits the infraction.

The only way in which the Board can discipline a contractor (for example) is when the contractor agrees in writing to be subject to our disciplinary rules. Therefore you should insist upon obtaining this agreement before signing any contract.

Third Laguna Hills Mutual

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Contractor Rules Agreement

Subject Manor Address:

Third Laguna Hills Mutual (“TLHM”) has enacted rules and regulations that govern conduct within Laguna Woods Village, including but not limited to working hours, noise, clutter, smoking, parking, dumping, storage, etc. These rules apply to all persons entering or working in these premises, and are applicable to all members.

In consideration for the right to conduct business with the listed Member/Occupant, in the conduct of such business I agree that I and all persons working under my control and/or with my authority will respect and shall abide by the rules and regulations of TLHM and Laguna Woods Village, as well as all state and local construction and other codes.

I understand that violation of this commitment might expose the Member/Occupant to a disciplinary fine and/or damage award by the TLHM Executive Committee; and I therefore agree that in the event that I or anyone working under my control and/or with my authority is found – by the TLHM Executive Committee – to be responsible for any such violation, or to have otherwise caused damage, I shall be responsible to the member for any fine or damage caused by me or such designee; and I shall promptly pay the same to the member upon receipt of the order affixing liability.

Both parties to this contract agree that, in rendering its decision, the TLHM Executive Committee shall be deemed to be an arbitration panel, whose decision is subject to confirmation in accordance with the provisions of the California Arbitration Act.

It is specifically understood that no liability of any kind shall be imposed upon me pursuant to this agreement unless (a) I am provided with the same violation notice as the member; (b) I shall have the right to appear (with counsel and with the member) at the Executive Committee hearing; and (c) I can participate fully in the proceeding, to the same extent as the member.

I designate the following name and address for service of notice of any such violation, and shall be responsible for notifying TLHM of any changes thereto:

This contract is made specifically for the benefit of TLHM, which is deemed a third party beneficiary.

Dated: Laguna Woods, California
 June , 2022

(Signatures of Contractor and Member/Occupant)