



Kala Point News & Views

February 2011

Serving our Community with Information

attention: kpoa members with water view properties

Have you been denied view maintenance?

The Bluff Management Advisory Committee, (BMAC), and KPOA Board have recently completed the third cycle of denying valid requests for maintenance of views that look out over the north segment of the bluff. The requests were to remove vegetation growth which was encroaching on the marine views enjoyed by you Members when you purchased your properties. Cycle 1 for the south segment of the bluffs in 2008, Cycle 2 for the central segment in 2009 and now Cycle 3 for the north segment in 2010 all were characterized by denials for various invalid reasons. The south segment requests were characterized by denials approaching 50%. Records could not be obtained from the Association regarding the decisions on the central segment. The consequences are that you have lost not only the intrinsic pleasure of a marine view but also a loss in the monetary value of your property.

The CC&R's, your contract with the Kala Point Owners' Association, has been unilaterally breached by the KPOA Board by denying you view maintenance. The CC&R's support your rights to view maintenance by express and implied content. The CC&R's do not authorize the Board to deny view maintenance. The CC&R's do not cite any conditions for denying view maintenance.

Based on the CC&R's there are no reasons for denying view maintenance. However, common sense tells us that consideration of safety of individuals and property is a valid reason for denying removal of trees on the bluff but safety was never in jeopardy for the denials to date. Based on recent Northern segment BMAC and Board decisions, bluff stability is being misused as a reason for denials in some cases. Despite professional site specific geo-tech conclusions to the contrary, bluff stability concern is still being used as the basis for denial in some cases of proposed tree removal. Conversely, at other

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Managing Editors:

Jay Burcham
Don Meister

Contributing writers include other named and unnamed individuals, all owners within the community, expressing their own viewpoints in this forum. Articles without a byline are presented by the editorial staff.

Please feel free to participate in any way, from submitting articles and/or opinions to volunteering in some capacity. Thanks and we look forward to your input. Email us at contact@ttnewsletter.com.

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sites, based on the inexpert opinion of BMAC Members, with no professional input, bluff stability is not a consideration when permitting tree removals for a privileged few.

The BMAC process was established to support the orderly, consistent and fair consideration of view maintenance requests for trees located on the bluff. The Bluff Management Plan, (BMP), states the following: “The Board instructed the ad hoc Bluff/View Task Force committee to develop a clear policy with intelligent and informed standards that integrate the consideration of bluff stability and marine view”. “This policy should recognize that marine views should be maintained to the greatest extent that is consistent with the safety of persons and property along and below the bluff”.

Unfortunately, the BMAC and Board are not following the established BMP but rather using the process to impose extraneous reasons for denying view maintenance. During a reconsideration hearing of 16 November 2010 it was moved that an ad hoc “Blue Ribbon” committee be formed with the goal “to create a more informed, coordinated and consistent plan for maintaining views and managing bluff stability”. Passage of this motion is a tacit admission by the Board that the current BMAC process is flawed in how it is being implemented and also recognition of the importance of view maintenance. Reviewing the current BMAC process and evolving the process is encouraging but only if the authority of the CC&R’s is considered paramount. The process proposed must be in accordance with

the CC&R’s instead of a reflection of the personal agendas of the ‘Blue Ribbon’ committee members. In the meantime, while the Board gets its act together, owners of view properties must wait during a yearlong moratorium on any tree actions on the bluff. All segments of the bluff will consequently have a four year wait while the view blocking trees continue to grow at the Northwest’s prodigious rate. Based on experience to date there is no assurance that the Board will respond favorably to any recommendations that improve your ability to maintain your view.

Are you ready to just accept the denial of your request to maintain your view?

Are you willing to continue to see your water view being diminished or have it disappear completely? Are the diminished aesthetics and monetary value of your view property unimportant to you? Do you believe the CC&R’s are just a casual document that has no bearing on the Board’s decisions?

If your answer to any or all of the preceding questions is no then are you willing to consider joining a group of wronged Members willing to pursue justice? If so, we ask you to take a moment and send us information pertaining to the denial you experienced and/or your present situation with respect to view. Even if a group solution does not appeal to you at this time please provide your view experiences. Your specific information will not be disseminated further without your express prior approval. Please send your information to: tellusaboutyourstory@hotmail.com

2010 bluff trees requests: board decisions summary

Inconsistent decisions interpreted as exercise of favoritism

The decisions, as summarized in the following table, regarding tree requests for removing or altering trees on the north sector of the bluff resulted in approving all but two of the tree removals and all of the topping and limbing actions requested by Members living on the crest of the bluff. Bluff stability, based on amateur, inexperienced opinions, was not considered a factor for these trees. Four of the eight trees requested for removal by Members living on Cedarview Drive were denied citing bluff stability concerns despite professionally obtained supporting site specific geo-tech and arborist reports provided by the Cedarview Members. How else can this inconsistent Behavior by the Board be interpreted as other than discriminatory favoritism by the Board? Are the Cedarview members being punished for standing up for their right to maintain their marine views?

2010 NORTHERN SECTOR BLUFF TREE DECISIONS

CASE #	REQUESTOR	<u>REMOVE TREES</u>		<u>REQUESTED & APPROVED*</u>	
		REQUESTED	APPROVED	TOPPING	LIMBING
<u>Members On Bluff</u>					
2010-01	Conklin	9	9		
2010-02	Farmer			2	4
2010-03	Keith			1	3
2010-04	Lilly	6	5		1
2010-05	Davis	1	1		4+(?)
2010-06	Lowe				6 to 8 (?)
2010-07	Althoff			4	
2010-08	Solvik/Graham			3 Groups=10 to 20 (?)	
2010-09	Eisenberger/Harper/Downing (Cut bluff trees without approval)				
2010-10	Reverman	2	1	3 Groups=25 to 30 (?)	
TOTAL		18	16	42 to 57	18+ to 20+
<u>Members On Cedar View Drive</u>					
2010-11	CVG-TOTAL	8	4**		
TOTAL-ALL REQUESTS		26	20	42 to 57 (?)	18+ to 20+ (?)

Note: (?) designates dense groups of trees; difficult to count individual trees; estimated.

* all requests that were submitted were approved.

** 1 approved, (N-43), also blocked the view of a BMAC member.

board still pushing clubhouse expansion— no member vote planned

Repackaging, Filtering, Controlling & Selective Listening—Again!

In a now familiar process employed by KPOA board insiders when members voice opinions contrary to their views, The “Presidents Message” in the February Kala Pointer announces yet another “Ad Hoc Committee” (read that as “carefully board handpicked to assure outcome”) headed up by former Board President Carol Fischbach, to supposedly capture the will of the membership on clubhouse expansion. But owners are cautioned, in the interview form, to comment only on the questions posed, not on the bigger question of whether or not this is the time to burden members with higher assessments for clubhouse expansion that could easily reach costs of \$500,000 for the agenda under consideration, or the other real ease-of-use limitation of parking. (For more background see June 2010 Kala Point News and Views (KPNV) at www.ttpnewsletter.com for more facts and perspective.)

So, yet again, KPOA insiders, responsive to a minority agenda, move to repackage the issue, filter direct member opinions, limit the discussion and listen selectively to only those special interest voices in agreement with their agenda. Meanwhile the board has not even acknowledged the clear member message of opposition to clubhouse expansion expressed 72-5 in writing to the Board Secretary last June. Fischbach and Schulte, in their writings on the subject in the current Kala Pointer are entirely silent on that recent ballot. This publication, KPNV,

has, through a formal KPOA records request, verified that the 77 member ballots were received by KPOA and are of record, having been directed to the association Board Secretary. A complete record of this board communication will be mailed to Fischbach to assure that those who already have spoken are heard in the deliberations of this new “Ad Hoc Committee”.

“...they will just vote it down like they have for years...no vote will be taken...if the members don't like what we do; they should just vote us out.” [Comments of KPOA VP Bill Lindeman, a driving force behind clubhouse expansion, during The March 9th, 2010 KPOA board meeting.]

Find the full story, with other quotes, online at www.ttpnewsletter.com June 2010 Issue. It's a fascinating read on how board sausage is made, which you then get to pay for.

If you would like to assist (volunteer or contribute postage) in a direct full membership balloting effort on the issue of clubhouse expansion capital expenditure, email us: contact@ttpnewsletter.com or drop a line to POB 816, Pt. Hadlock, WA 98339.

Readers of this publication are reminded that members need not limit their opinions on this topic (or any other) to the carefully crafted questions on the Fischbach survey form. We recommend, however, that members copy their correspondence direct to the Board Secretary as well, rather than only to Fischbach's home address or personal email as she directs.

Continued from previous page

Such communications to an individual may be treated by KPOA as “unofficial” and therefore not an association record. Including the board secretary will assure that your opinion is actually received, unedited, by board members, unfiltered by a select committee. **The address is: Secretary, KPOA Board of Directors, 1760 Kala Point Dr., Port Townsend, WA 98368.**



Kala Point Clubhouse- Amenities Included are the meeting rooms, swimming pool, Jacuzzi, sauna, wading pool, locker rooms, kitchen, decks, fireplace, restrooms, game room and parking.

In typical “facts revisionist” style, KPOA President Schulte, in his front page remarks in the Kala Pointer, tries to make it appear that there never was any serious effort to ram through clubhouse expansion mid-last-year. Nothing could be further from the truth. Lindeman had solicited a single contractor to create estimates, drawings were being prepared, motions were made to contract design professionals, and there was spirited board discussion on the topic at several meetings. A so-called “Town Hall Meeting” was even conducted. Make no mistake. There was a plan and there is a plan; only the tried and true KPOA mechanisms of bypassing owner direct approval are the new element.

In these times, with ever increasing assessments, do you find the current clubhouse so lacking as to warrant a major capital investment? **How do you feel about having no chance to vote on the additional assessment burden?** Let your board members hear from you.

JUST FOR LAUGHS



Things You May Have Never Known

- ◆ Many years ago in Scotland a new game was invented. It was ruled ‘Gentlemen Only. Ladies Forbidden’ and thus, the word GOLF entered into the English language.
- ◆ The first couple to be shown in bed together on prime time TV was Fred and Wilma Flintstone.
- ◆ Every day more money is printed for Monopoly than the U.S. Treasury.
- ◆ Men can read smaller print than women can; women can hear better.
- ◆ Coca-Cola was originally green.

Avalon
Hair Design

Gail Dahlman

260 Kala Point Drive
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gdahlman@cablespeed.com

underground electrical construction continues

PSE Subcontractors Still Far From Finished

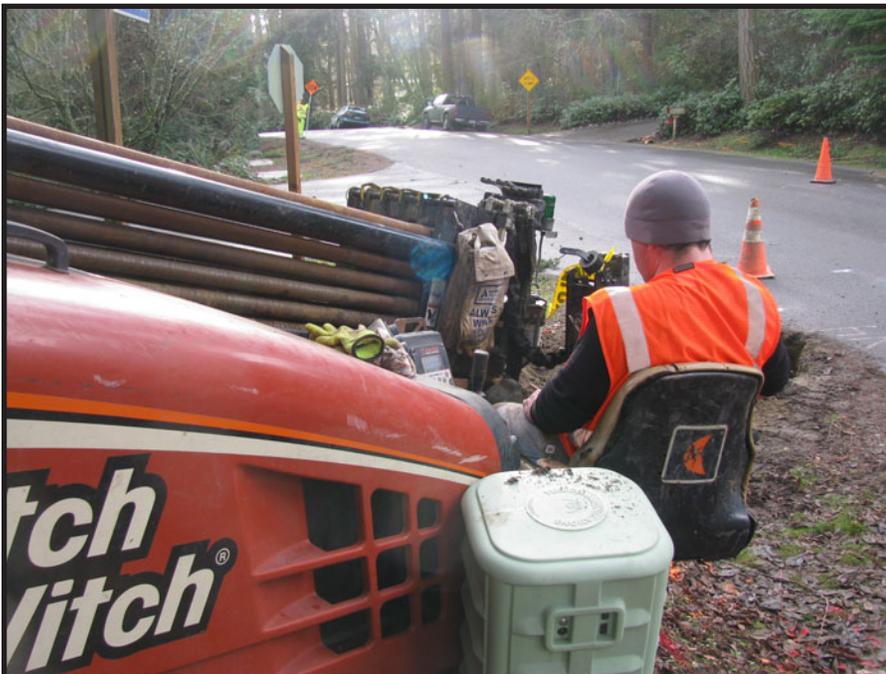
Puget Sound Energy Subcontractors have resumed, in recent weeks, work on the next phase of the underground electrical service rebuild in Kala Point, begun more than a year ago. This current phase involves a process called “guided boring”; sending a hydraulic-driven ram underground from the recently placed electrical vaults, beneath the streets, to existing transformer sites.

the transformer, called “medium voltage feeders”. From each transformer other conductors, operating at much lower voltage, extend to each home.

This conduit placement technique, while more expensive than trenching, has the advantage of limiting the necessity for pavement cuts, which, even when patched, still substantially reduce the life of recently overlaid pavement,

hastening its failure. Once all of the interconnections have been made between vaults and transformers, a different PSE Subcontractor, Potelco, will return to the project to place actual conductors in the conduits and splice everything together. Short duration outages will be necessary for these final connections.

The entire underground system rebuilding process is unlikely to be completed before summer. Timing is, to some extent, impacted by crew availability since many of the same resources for new construction are also deployed to repair storm damage throughout the region.



Operator David Smeltzer carefully guides sections of rigid boring stem forward inch-by-inch under KP Drive to connect transformer conduit.

On the tip of the boring ram is a special ground radar transmitter detectable on the surface. The directional boring system operator steers the ram very precisely, both horizontally and vertically, obtaining accuracy within a few inches. Once the ram has reached a small pit dug near the transformer across the street, a conduit is attached and drawn back across the roadway underground route to establish a pathway for connection of conductors between the vault and



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kpoa liability insurance coverage

So you think you are covered?

At the reconsideration hearing held on January 18, 2011 prior to the Board taking their vote, **Director Wright announced to the Board that they should vote without fear of being sued as they were all covered by liability insurance.** President Schulte quickly stated that was not a concern and to move on. KPOA Directors and Officers as well as various committee members are in fact covered by the general liability policy that we as members pay for each year as a part of our assessment. You can find reference to this coverage in the CC&R's and other association documents.



But that coverage is extended for only those cases where a person or persons acting on behalf of the Association and lawfully carrying out their duties **unknowingly** does something to harm the association or a member. The liability insurance would cover any legal costs or judgements against the association or a specific officer or committee member. What Director Wright said was true assuming the aforementioned conditions are satisfied and the operative word is unknowingly.

Now let us examine what this Board did in the matter of the 2010 BMAC Tree Action requests. In the September 17, 2010 meeting, President Schulte stated he was holding a secret meeting to decide the fate of Trees N44-47. He said he checked the CC&R's and he could do that.

Lane Stuart a former Board Member, an attorney as well as a judge and the father of the BMAC directive, and the chair of BMAC, Bill Kaune, emphatically stated in the meeting that it was improper to do so. Schulte held the secret meeting and turned down the trees. Did this action constitute an irreversible action, poisoning the decision process, with respect to subsequent open meetings concerning the trees which were the subject of the secret meeting?

If President Schulte had not reversed himself and held another open meeting regarding the trees, then there would be a good case that should the Association be sued the liability coverage would be in question. President Schulte had to reverse himself a second time with respect to the reconsideration hearing of November 16th, when the Cedarview Group did not ask for any changes to the board resolution of September 28 but merely wanted a clarification. President Schulte changed the resolution and turned down trees N44-45. On advice of the KPOA attorney he was forced to conduct another reconsideration hearing on January 18th because he vacated the earlier resolution. Had the second hearing not been held and assuming that President Schulte had the KPOA attorney input to hold the hearing, this would be another case where the liability insurance would be in question for the Board and Officers.

In the January hearing President Schulte and the Board once again turned down trees N44-45 and ignored the BMAC directive provisions and the CC&R's regarding view maintenance. The denial ignored detailed information provided to the Board by the requestors. So this now begs the question is he and the Board really covered by the KPOA liability insurance? It is the burning question of knowingly.



class action litigation defined

Views Dispute is Classic Class Action Candidate

“A class action” is a form of litigation

often utilized when the parties in dispute are seen as engaged in a “David and Goliath” conflict, wherein the offended parties are relatively powerless, acting alone, against a much better resourced opponent, but where there are actually many similarly offended parties with essentially the same set of grievances and claims, and similarly disadvantaged in trying to enforce their rights under explicit or implicit contracts. An often cited example would be individually wronged automobile owners suing a large manufacturer over defects, damages and loss experienced by many.

Typically, as is the case at Kala Point, there is contract law at play, and the class action remedy is seen as a way to bring to litigation a common interest set of issues, through class representatives called Named Plaintiffs. Named Plaintiffs, often as few as a handful of similarly aggrieved parties with the same set of issues and impacts, bring the legal action and seek to have the courts recognize the commonality of what could otherwise be a string of very similar causes. This is called “certification of a class”, by which the court recognizes the commonality and identifies a class of persons with standing to litigate, and to represent others. This is a significant early hurdle in the process.

In the case of The Kala Point Owners Association allegedly failing to enforce the view preservation terms of the member contract, a claim being pressed by many view homeowners, all persons credibly affected by alleged extra-legal actions of KPOA,

(credibility—as a class member defined by the court definition of the class) become joined in the action. Sometimes there are possibilities to “opt out” of the class, once certified, but that is seldom allowed if the class definition is suitably narrow.

One important aspect of class action litigation in the HOA context is the eventual court-ordered apportionment of both the benefits and of the costs of the legal action, even for those not original Named Plaintiff Parties. In other words, the court will determine what benefits accrue from the action, and will distribute the legal costs of the action to all members of the class, whether voluntarily or involuntarily participating. All class members can then be forced to pay “their fair share” of the legal costs of the action, not assessed against the class action target. Attorneys simply lien properties to assure payment of fees, which often run well into middle six digits.

Another important aspect of class actions is to block the necessity for similarly situated parties from re-litigating the same set of issues over and over on an individual basis, thus equitably distributing legal costs among all beneficiaries. Courts often favor class actions for this reason alone, since it makes for a much more efficient use of the courts; settling matters for a class of persons, in one action.

In a KPOA case, such a class action could forever address the question of whether successive boards are free to unilaterally interpret the intent of the written member contract, or be forced to abide by its meaning as written, or as modified by the requisite super majority, an issue much larger than a few trees.

from michelle at evergreen fitness center:

The REAL Fountain of Youth

Well, folks, it's happening. The baby boomers, popularizers of tennis and skiing in the 1970s, inventors of jogging and step aerobics in the 1980s, are advancing through middle age to the very threshold of senior citizenship. And if their parents' generation inaugurated the science of good nutrition — the five food groups and all that — the boomers' adult years have, fittingly enough, produced a major new body of evidence on the benefits of "getting physical."

This month's article for the most part, is not written by me. My mom sent me an article from the AARP magazine. I was impressed with the facts & information and that is what I would like to share with you...

Evidence suggests that exercising regularly during middle age and beyond is an enormously effective way to promote just the sort results old age boomers dream about: independence, robust and free of chronic disease or disability. "If you had to pick one thing, one single thing that came closest to the fountain of youth," says James Fries, M.D., a pioneer researcher on healthy aging at Stanford University, "then it would have to be exercise."

Exercise maintains healthy blood vessels for good circulation in the body and brain. It also helps people manage their weight and cope with stress. And exercise stems age-related losses in bone density and muscle mass while it keeps the heart and lungs strong.

The bottom line, reflected in dozens of studies, is that people who exercise, on average, live longer than those who don't, with a

reduced chance of heart disease, high blood pressure, stroke, type 2 diabetes, colon and breast cancers, depression, falls and even mental decline.

"Exercise seems to be one of the key factors that distinguish people who have a healthy old age from those who don't," says Suzanne Leveille, a professor of nursing at the University of Massachusetts Boston who is conducting research on disability in older people. "Being sedentary is a known risk factor for just about every poor health outcome, from being hospitalized to ending up in a nursing home, and even to mortality." In terms of longevity, regular exercise seems to have an impact that few other health measures can match.

Compared with sedentary men and women, people who did an hour and a half of moderate-to-vigorous physical activity **weekly** — **less than 15 minutes a day** — were 20 percent less likely to die during a follow-up period of more than a decade, according to a 2008 report by a federal guidelines committee. And when these exercisers spent more time moving — an hour a day — they cut their risk of dying by a whopping 40 percent more effective way to pursue a healthy life. As always, please feel free to contact me at

Continued on next page



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Continued from previous page

Studies also strongly suggest regular exercise helps keep us sharp. A federal report concluded that while being physically active in midlife and beyond may not prevent dementia, it seems to delay its symptoms. Research has shown, too, that regular walking helps delay or even prevents the brain shrinkage that heralds the onset of dementia.

So are the new seniors, with their treadmills and weight machines, set to defy old age? Boomers, especially those who are educated and well-off, do engage in more leisure time workouts than their parents did; they also eat more fruits and vegetables, smoke considerably less, and have access to better medications to control high blood pressure and cholesterol. But Americans born into post-World War II prosperity also are the first generation to face social changes, global in scope, that promote a sedentary lifestyle and calorie-rich diet. We work longer hours, we commute longer, we sit down to the TV and computer more than our parents did and we're paying for it by having higher rates of obesity.

Indeed, some experts predict obesity will be the boomers' Achilles' heel, negating their other health advantages as they age. **Still, boomers can start now to eliminate many health risks by — you guessed it — exercising.** Right now, we are lousy at getting people to lose weight, but hopefully, here at **Evergreen Fitness Center** we can get people to start exercising and keep it up. It's a much more effective way to pursue a healthy life. As always, please feel free to contact me at www.evergreenfitness.net or email at evergreenfitness@qwestoffice.net Michelle

the sea glass odyssey

A Journey into Sea Glass (Part II)

What is Sea Glass?

Usually, if someone is walking along a beach and sees me bending over, hands on knees, scrutinizing the sand and pebbles, they slow right down,

and kind of try to see what I'm looking for. Then, if they aren't too inhibited they'll ask, "What ARE you looking for?"

So, I'll say, "Sea glass," and see how they respond. Some will as right off, "What IS sea glass?" Some already know what it is.

On the other hand, some are hesitant to let on that they don't know what sea glass is, so then I'll usually ask them if they know what sea glass is.

If they don't know what sea glass is, I'll say something like: "You know, when you're walking along the beach and you find little pieces of glass of different colors.

Those are from busted up bottles and glassware that have been in the saltwater for a long time and because of the currents and the sun and the waves and the sand, they turn out really frosty."

If I get a blank look as if to say, "Why in the world would you want to pick up broken glass?"

I'll usually show them pieces of frosted glass that we've found that day.

Or, if I'm wearing a piece of sea glass jewelry, I will show them that. Then, it's like, "Oh, wow!"

Identifying Real Sea Glass:

Have you heard that the best way to learn to identify counterfeit money is by getting very familiar with the way real money looks? The same is true of sea glass or beach glass. One of the best ways to answer the question, "What is sea glass" is to see the real thing.

Get familiar with the look of genuine sea glass as seen in photos at www.odysseyseaglass.com.

Beach glass (also known as mermaid's tears, sea gems, and many other names) is glass found on beaches along oceans or large lakes that has been tumbled and smoothed by the water and sand, creating small pieces of smooth, frosted glass. When found on salt water shores, beach glass is called **sea glass**. The next series will address where you can find sea glass.

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Kala Point News & Views

kala point crew works hard to keep roads clear

Keith and his crew worked hard to keep our roads safe during this winters tough road conditions. They started sanding our roads early in the morning and tried to keep up as weather conditions worsened. They put in some long hours. Thank you Keith and crew!



The roads were slick coming down Kala Point Drive.



Keith braves the Nov 22 snow storm working to keep our roads as safe as can be.