



MKL Organizational Study Group
Report
December 15, 2004

Agenda

- Who was on this study group?
- What was it supposed to do?
- Why was it doing the study?
- When did this work take place?
- What did the group do?
- MKL Governance
- What are the results-to-date?
- An Outside Perspective
- Shall we continue?

Who

- Lakeshore Company, represented by:
 - Gail Allyn, Austin Godfrey (now at large)
- MKL Association, represented by
 - Lori Denson, Terry Dwyer, Karen Morrison
- MKL Country Club represented by
 - Mick Merenda

What Is the Study About?

Our Charter

(Eye Chart Version)

Examine the structure of the three organizations of Mount Kemble Lake. Define the current structure and examine the historical roots of how we got to be where we are. Examine the strengths and weaknesses of the current organizational structure and operations of the present boards. Identify candidate actions that could address these weaknesses. The committee is encouraged to use MKL long-time residents with experiences on the various boards as well as written archives, if necessary. The committee is expected to identify issues (legal or tax, for example) where additional information or advice is needed. The committee is encouraged to identify early-on (say within 3 months or so) key areas requiring additional expertise and the expectation would be that Lakeshore and Association would provide funding to pursue specialized advice in these areas. The results of the committee's deliberations will be presented to the boards upon completion. Suggested term of this activity would be one year.

What Is the Study About?

Our Charter Interpretative Statement

- How are we governed?
- Why is it this way?
- What's good and bad about it?
- How can we make it better?
- Talk to folks around the lake
- Get outside expertise, if needed
- Report back in a year (or so)

Why Was the Study Conducted?

- A number of MKL Association members thought the current governance model
 - Inhibited coordination (e.g. digging/repairing roads)
 - For a community our size
 - There were redundant jobs (e.g. secretaries)
 - Areas not covered
- Asked for a joint study
- Charter established by presidents of 3 orgs

When Was the Study Conducted?

- Group chartered in the fall of 2003
- Suggested results in a year
- Initial report to Presidents – April, 2004
- This report to Full Boards - Today

What We've Done

- Reviewed the history of MKL governance
- Investigated how other NJ Lakes are governed
- Interviewed former officers
- Compared notes, discussed alternatives

What We've Done (cont'd)

- Made a preliminary recommendation to Corporation Presidents (April 2004)
 - Got their comments and questions
 - Refined recommendation
- Consulted with outside expertise (lawyer)
- Report to full Boards – this meeting!

MKL Governance

- MKL is governed by three corporations
 - Lakeshore Company (mandatory membership)
 - for profit – owned by residents (originally owned by developers)
 - owns all common property (except clubhouse)
 - maintains dam, provides water
 - MKL Association (mandatory membership)
 - not-for-profit – homeowners are members
 - owns the clubhouse and clubhouse lot
 - maintains all property (except dam & water)
 - Country Club (automatic membership)
 - not-for-profit – homeowners are members
 - owns no property, is holder of a club liquor license
 - organizes social events at MKL

A Brief History (Why We Have 3 Corporations)

- Originally
 - Lakeshore was a real-estate company (developers)
 - Lakeshore was to turn over all common property/operations to Homeowner's Association (after ½ lots sold), and then
 - Withdraw - resulting in one governance body
- Withdrawal was not accomplished because
 - Too few lots sold (depression, war?)
 - Aging of real estate company principals
 - Buyout of Lakeshore stock by homeowners
 - Lakeshore not dissolved
- In particular our governance structure
 - Was not by design – was by circumstance
 - Is unique

Organizational Differences

- Lakeshore Company
 - Elects a slate - yearly
 - Dues changes, assessments – not voted upon
 - Votes – 1 vote per property
- MKL Association
 - Staggered elections for 2 year terms
 - Dues changes, assessments - must be voted upon
 - Votes – owners & spouses (max of 2 per property)
- Country Club
 - Staggered elections for 2 year terms
 - No dues
 - Votes – owners, adult residents (max of 2 per property)

NJ Lake Survey

- About 10 lake communities in NJ surveyed
 - Similar to MKL in population, size
- All, except 1, has a single non-profit homeowners association
 - Most didn't understand why we had 3 corporations

MKL Officer Survey

- Talked to about two dozen current/former officers and long time residents
- Many different opinions

What We Heard: Pros of Current Structure

- It's worked for many years
- A Division of Labor
- Multiple Boards allows for
 - Variety of views
 - Many elected positions for volunteers

What We Heard: Cons of Current Structure

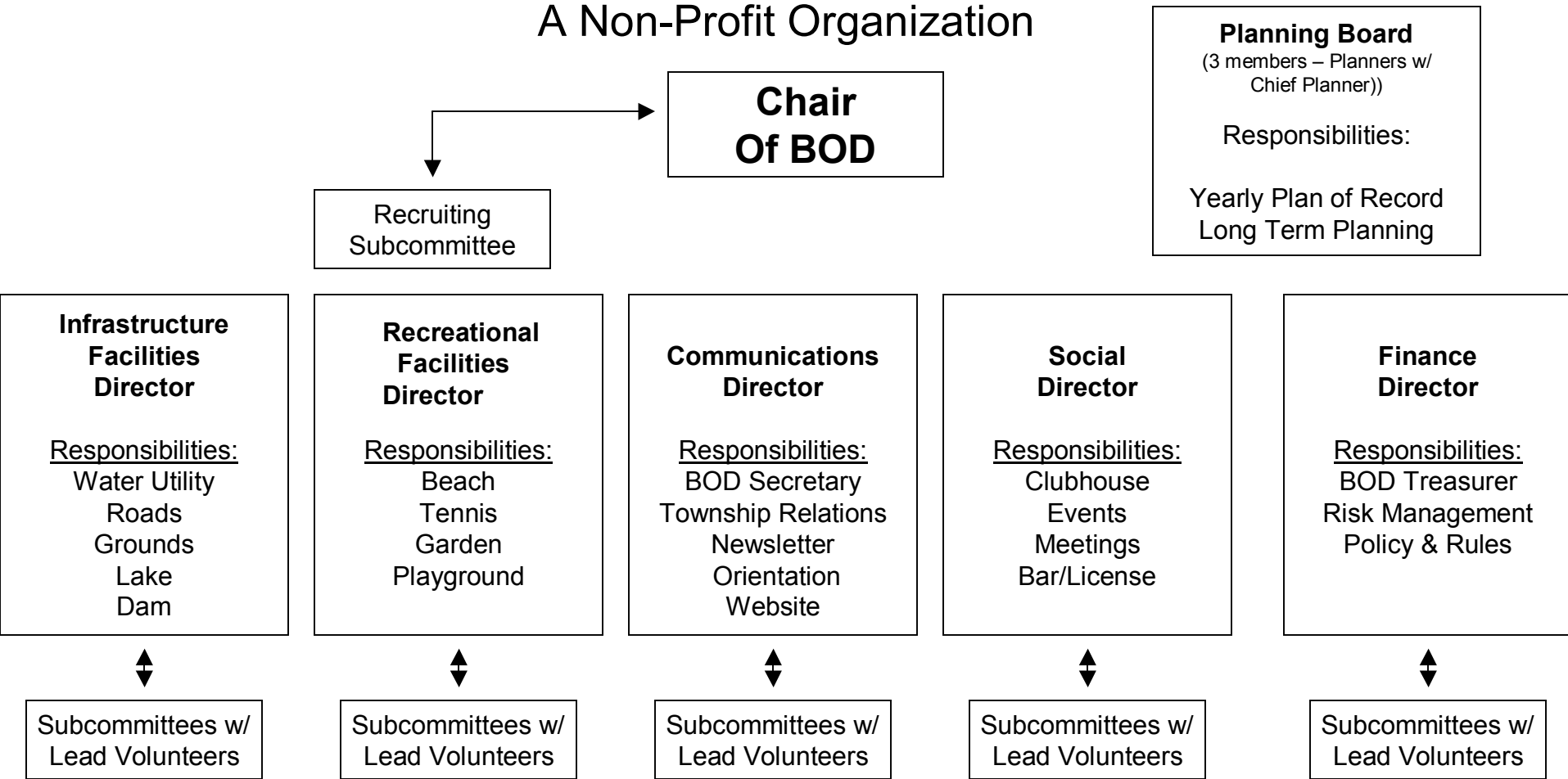
- Complex structure inhibits good service to residents
 - Bills from 2 corporations
 - No consolidated budget
 - Different election rules, bylaws
 - 3 annual meetings, elections
- “Stove-piped” orgs with little communication, and no coordinated spending
- Inefficient use of human resources, while some areas lack attention, e.g. Website, In-depth insurance study
- Some duplicate costs (insurance, tax preparation)
- Inconsistent coordination of long-term planning

Approaches We Considered

- Keep current structure, but modify
 - Move around some committees or functions
 - Enforce cooperation (e.g. coordinating subcommittees, require joint meetings)
- Have a Super Org subsuming all three
 - Make current orgs pro-forma corporations
- Start Over as if we were a new community
 - What would we do then?
- Our discussions of approaches converged on a preliminary recommendation in April 2004 to consolidate into a single corporation (MKLPOA)

Mt. Kemble Lakeshore Property Owners' Association (MKLPOA)

A Non-Profit Organization



Chair and Directors are elected to 2 year, staggered terms.
 The MKLPOA Board consists of the Chair, Directors and Senior Planner.
 Planners are appointed by the Board with 4 year staggered terms. Only the senior Planner is on the Board.
 Subcommittees are staffed with unelected volunteers. Each subcommittee has a Lead Volunteer.

MKLPOA: Board of Directors (BOD)

- Six elected directors (staggered terms)
- One Appointed Director (the Lead Planner from Planning Board)
- Principal Functions
 - Annual Budget
 - Policy decisions
 - Oversight of subcommittees' operations

MKLPOA: Subcommittees

- A set of unelected volunteer subcommittees
 - Do operational and maintenance work per yearly plan
 - Each subcommittee has a Lead Volunteer, who reports to a BOD member
- Generally no need for volunteers to attend regular meetings, but each Lead Volunteer does the following:
 - Inputs to budget
 - Provides status regularly to BOD
 - Meets yearly with BOD

MKLPOA: Planning Board (PB)

- Principal Functions
 - Maintains, updates and issues a yearly activity and projects plan (Yearly Plan of Record)
 - Solicits, plans, advocates, and reports to BOD on projects which span many years
- Membership
 - Members appointed by BOD
 - Long time residents familiar with MKL
 - PB elects its own Lead Planner for 2 year term
 - The Lead Planner is a member of the BOD
 - Terms are staggered

Topics for Study as Suggested by Presidents

- Liability
- Taxes
- Elections/Revenue Raising
 - Vote or not for dues increases/assessments
- Water Company
- Liquor License
- Volunteerism

Liability

- Current setup apparently not driven by risk management considerations
- Any new corporate structure must be created for legitimate purposes
- Most people we've consulted indicate that the current structure may not provide more protection
 - Plaintiffs generally sue as many parties as possible

Liability – the assets

- Common Property - \$3M?
 - Unsold Lots, the lake, the dam, clubhouse
- Private Property at MKL - \$60M?

Liability Risks: Common Property and Services

- Water System
- Dam or Lake
- Recreational facilities
- Roads
- Clubhouse
 - Events, liquor service
- Lots

Liability – Recommendations

- Buy more insurance - \$10M - \$20M
 - Solves a lot of problems
 - We currently have \$5M
- Require vote for assessments, dues increases
 - Lakeshore doesn't currently require this
 - Currently a judgment against Lakeshore might require/necessitate an assessment against homeowners.
- Individual homeowners may be able to add coverage to protect against assessments for liabilities.

Taxes

- Current Opinion: a single non-profit would pay equal or less total taxes

Elections

- Currently
 - Lakeshore elects a full “slate”
 - Association and Country Club elect individuals
- Our recommendation for MKLPOA:
 - Have Service Qualifications for candidates
 - 2 yrs as volunteer to run for BOD
 - 2-3 terms as director to run for Chair of BOD
 - 4 terms on BOD to be on Planning Board
 - Multiple candidates for each position
 - No term limits
 - Appointments to Planning Board for long term policy development/oversight
 - Appointment by current directors, staggered
 - Term of 4 years, renewable

Assessments, Dues Increases

- Currently
 - Lakeshore can raise dues or make assessments without a vote
 - The Association requires a vote for dues increases or assessments
- Our recommendation for MKLPOA is:
 - Require votes for increases and assessments
 - More democratic
 - Shareholders will reasonably fund needed maintenance (witness dredging)
 - Reduces threat of court-mandated assessment

Water Company

- There is some evidence that we can operate as a small un-regulated entity (i.e. not controlled by BPU), BUT
- This area requires expert legal advice

Liquor License

- Transferring the liquor license from MKLCC to MKLPOA is largely a question of mechanics
 - We need to obtain a waiver of the 3 year existence rule
 - same club members
 - same premises
 - We need to pay some filing/transfer fees (estimated cost < \$500)

Motivating Volunteers

- Give them freedom and control
- How much people pull together
- Support them
- Recognize and Reward effort
- Communicate news regularly
- Solicit their suggestions

Motivating MKLPOA Volunteers

- Give them freedom and control
 - They define how jobs are done
 - They can select their degree of commitment
- How much people pull together
 - They will form teams
- Support them
 - Meet with BOD rep often, and full BOD yearly
 - Input their needs
- Recognize and Reward effort
 - Annual dinner, service awards
- Communicate news regularly
 - MKLPOA website, email
- Solicit their suggestions
 - Annual BOD meeting, email, BOD rep

Opinion of Counsel

Jack Dusingberre of Mandelbaum Salsburg

- a perspective on how other communities of MKL's type are governed
 - is there anything unique about MKL?
 - does he agree with the proposal? why or why not?
- benefits and downsides to the proposed consolidation, particularly:
 - how would liability be impacted
 - how would taxes be impacted
- the legal requirements for operation of our water company
 - should we modify any of its current procedures?
 - can it be operated within a consolidated company?
 - must, or should, it be a separate company? why or why-not?
- should the community decide to go ahead with a consolidation:
 - recommend steps to make the consolidation
 - legal/financial impediments to the consolidation
 - what would happen to the current companies
 - what agreements would be required of our members
- what is an estimate of the costs to effect the consolidation
 - legal, taxes, property transfer, other

Background of Counsel

- 30 years of practice.
- Principal of Mandelbaum Salsburg.
- Focus on real property and community association matters.
- Author of more than 25 registered Public Offering Statements.
- Drafting of Homeowners Association Declarations.

Scope of Review

- Discussions with MKL Organizational Study Group
- Site Plans
- By-laws
- Financial Statements
- Budgets
- Discussions with legal specialists

Typical Condominium or Homeowner Association Structure

- Board of 5-7 Trustees of Single Entity.
- Staggered Terms.
- Declaration or Master Deed with By-laws to Establish Terms of Governance.
- Manages All Aspects of the Association.
- Committees Provide Advice & Support.
- Board Establishes the Annual Budget.
- Non-Profit Corporation.

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Counsel Comment

- Multiple Entities is Very Unique.
- Components Not Unique, But Having All in One Community is Unusual.
- Components Found in Other Communities Include:
 - Lake
 - Dams
 - Sanitary Sewerage Facilities

Counsel Comment

- Components Found in Other Communities Include - continued:
 - Clubhouse
 - Liquor License
 - Private Roads
 - Amenities
- One Unique Component Not Usually Found:
 - Owned Lots Available for Sale

Opinion of Counsel

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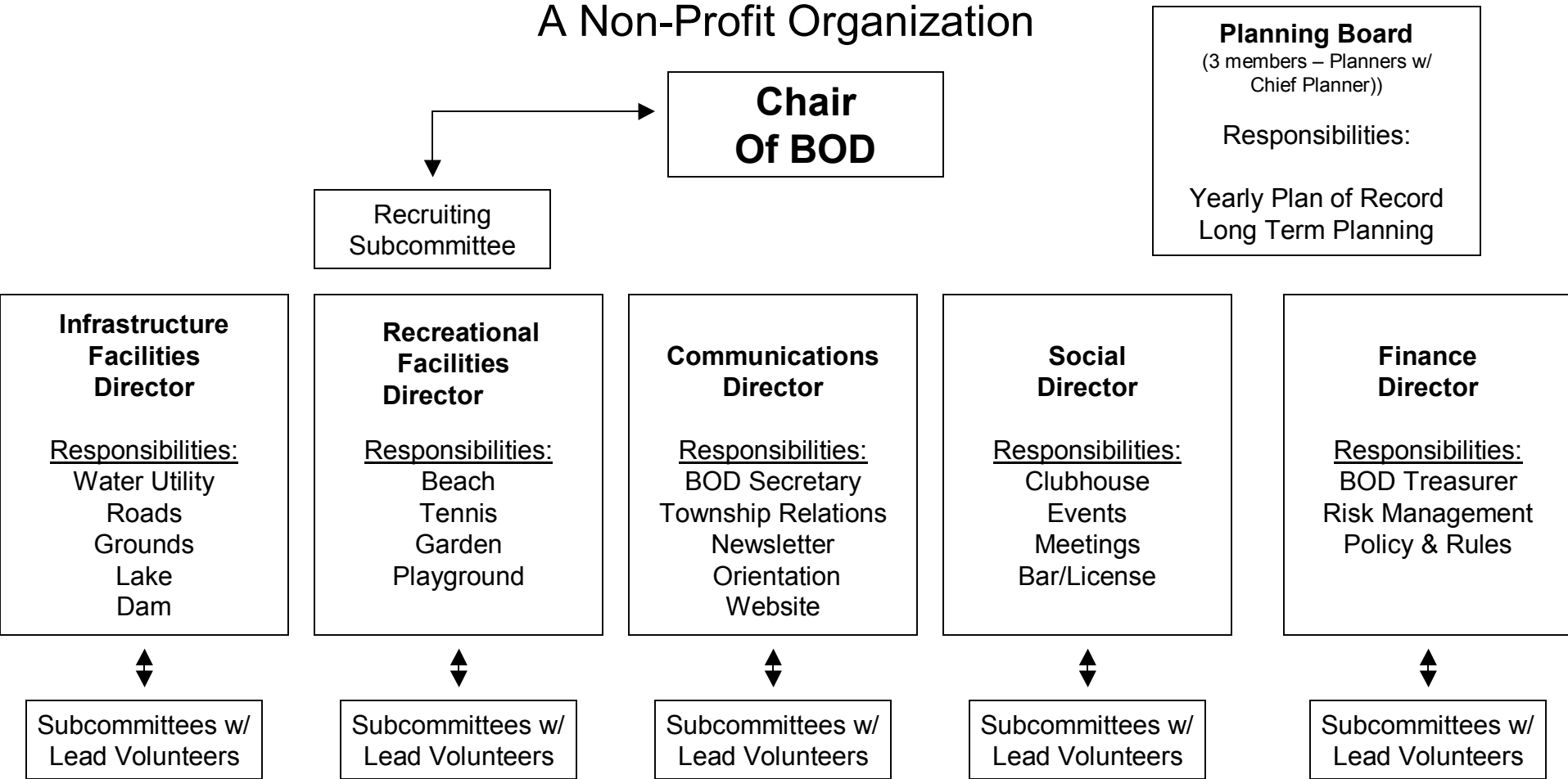
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Counsel Comment

- Consolidation is Good.
 - Less Competition Between Entities.
 - Better Communication.
 - Better Financial Co-ordination.
- Proposed Structure is Unnecessarily Complicated When “Committee” Organization Will Suffice.

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Counsel Comment

- Liability “perception” is Increased With One Named Entity Managing Everything.
- In Reality All Three Components Are Effectively One If Sued in Any Event.
- Liquor License & Perhaps Clubhouse Ownership Should Remain Separate.

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Counsel Comment

- Making Lakeshore A Non-Profit Will Permit Excess Annual Funds to Be Placed Tax Free Into Reserves or Next Annual Operating Budget.

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Counsel Comment

- Water Company is Captive – No Sales to Outsiders.
- Only Water Quality Regulated.
- As to Modification of Current Procedures, More Study is Needed.

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Counsel Comment

- It Has Been Within Lakeshore for Years Without Issues.
- No Reason Presently Known to Require Separate Company.

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Counsel Recommendations

- Lakeshore Becomes Dominant Entity.
- Re-name to POA, and Convert to Non-Profit.
- Eliminate MKL Association.
- Convey Clubhouse to Either Lakeshore or Country Club.
- Re-structure the Governing Documents of the POA.
- Re-structure Country Club.

Counsel Recommendations

- Country Club Re-structure Membership & Voting Rights.
- Keep Liquor Liability Where It Is.
- Make Sure Insurance Is Adequate.

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Counsel Comment

- Seek CPA Affirmation Regarding Qualifying As Non-Profit Corporation.

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Counsel Comment

- Lakeshore Becomes Dominant.
- MKL Association is Dissolved After Transfer of Rights and Clubhouse Property.
- Country Club Remains As An Entity Either under Re-structured Governing Documents Insuring “Separateness” From Lakeshore to Greatest Extent.

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Counsel Comment

- There Would Need to Be Widespread Community Support.
- The Voting Structure Should Become One Vote for Each Property, and Each Entity Will Have to Comply With It's Present Requirements to "Enable" the Lakeshore POA to Emerge.

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Counsel Comment

- Almost All Property Stays Where It Is.
- Only Clubhouse Property Transferred At Minimal Expense.
- Estimated Legal Fees & Professional Expenses at \$10,000 - \$15,000

Questions of Counsel

Cost Summary

- An estimate of \$20,000 over 2 years to consolidate orgs
 - About \$100/homeowner/year
- Will require a subcommittee to
 - Refine proposal
 - Work details
 - Bylaws
 - Transition strategy

Benefit Summary

- MKLPOA will be streamlined organization
 - “Easier to do business with” for residents
 - More efficient in operations
 - More comprehensive in services
 - With institutionalized planning

Shall We Continue?

- A lot of work has been done by this study group
- It's time for a checkpoint – we'd like a sense of the current boards before spending more effort and money
- In principle, should we continue to pursue the recommendation to consolidate these corporations?
- If not:
 - Is there another avenue suggested for exploration?
 - What should we do with this report?
- If so:
 - We need to socialize with community at large
 - Renew charter for next stage