



Dear Community Members:

I am writing to update the community on the Boren vs. Livingston Bay Association legal challenge, and I am pleased to announce that it has been dismissed and the subsequent counter-claim filed by Livingston Bay Association has also been resolved through a Settlement Agreement.

If you recall, Robert and Gayle Boren filed a complaint in Superior Court against the Livingston Bay Association on November 3, 2017 seeking judiciary relief for "Complaint to Quiet Title" (Adverse Possession) shortly after being denied an easement in perpetuity by the Association for land that extended well into Community Property and ended at an unauthorized bulkhead. Their claim implied control of this area for their sole, exclusive and private use for a period to which they asserted met the statutory timeline for ownership through Adverse Possession.

In response, the Livingston Bay Association replied with positive and defensible answers, disputing all allegations presented by the plaintiff to support and affirm their claim. In addition to answering their complaint, the Association filed a counter-claim for illegal trespass in violation of CC&R's and sought unspecified damages for the installation and construction of the unauthorized bulkhead.

On December 22, 2017, the Plaintiff voluntarily dismissed their claim citing the interest of a prospective buyer. However, even though the original complaint was dismissed, the counter-claim remained active and led to further negotiations which resulted in a final and satisfactory agreement on February 9, 2018.

This settlement agreement included funds to remove the ecology block bulkhead and restore the shoreline to its original and natural state.

There were many lessons learned from this lawsuit, and one was the need to revisit the Community Property Use Policy, the Encroachment Remediation Policy and to update our Community By-laws.

One noted finding was a need for a "Welcome Letter" for new members purchasing homes and joining the Association which explained and described the primary goals and purpose of

Livingston Bay Association. A copy of this new document is enclosed for your general information.

In addition, for everyone's knowledge, here is a general explanation of our current Encroachment Policy which was written in a manner to encourage correction through voluntary compliance by the homeowner, but before the sale of the residence or transfer of property title and before enforcement or remediation action by the Association.

This policy has worked well up to the present, but now requires the Livingston Bay Board of Directors to revisit our rules and encroachment strategies to ensure an abundance of clarity for the few remaining homeowners who still have fences, filled drainage dike areas, moved recreational trailers, boats, and outbuildings on Community Property. With this review, I am hopeful this will discourage needless-legal challenges that will most likely not prevail and would result only in the wasteful spending of both community and individual funds.

One crucial Washington State Statue is provided below for your reading which safeguards Community Associations with natural, open and shoreline areas from claims of Adverse Possession and states:

*The legislature recognizes that the preservation of urban greenbelts is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner's association.*

Again, the legal challenge and counter-claim between Livingston Bay Association and Robert and Gayle Boren has been settled and resolved to the satisfaction of the Association. I encourage Community members to read and review the original court documents which are now posted on the Livingston Bay Association webpage under the password of "eagle."

2. The large culvert crossing Livingston Bay Shore Drive was recently repaired temporarily by Island County after high volumes of surface water backed-up at the front opening, washing supporting soil away from the pipe, road shoulder, and uncovering our main water service line. A detailed inspection by Island County Engineering of the culvert revealed extensive rusting that had deteriorated and weakened some structural components to a condition of partial collapse. This collapse restricted and hampered water outflow causing a backup at its face.



This temporary repair was accomplished using a 10-foot-long section of steel culvert pipe molded to fit inside of the existing structure to reinforce and stabilize the side walls and entrance opening. Sometime this summer Island County will replace the entire culvert with a new culvert drain pipe.

The Community also experienced a significant increase in the surface water runoff, which we believe was from SR532 into the drainage ditch which caused some overflowing and will be an issue to pursue with Washington State Transportation officials this coming summer.



3. King Water has notified the Association that the primary community water storage tank located adjacent to the pump house, is due to be drained and power washed inside sometime in late April. During this maintenance period, the Association will attempt to seal some minor leaking side-wall joints, and the Community should expect some temporary water use restrictions.

4. We now have a Facebook Page thanks to Shelly Greybeck titled "Livingston Bay Community Association." It is a great way to connect with other Community Members and share your thoughts, opinions and ideas. So please take a few minutes to join and be part of the Livingston Bay family.

In closing, I would like to recap and highlight the following important issues:

- a. We have a "No New Encroachment Policy. So, if you have moved items inadvertently onto Community areas, access points, etc., please relocate them off Community Property, especially before the end of March when lawn maintenance service begins.
- b. Homeowners on the beachside may expect to see some weed clearing, grading, and replanting.
- c. The installation of "Community Property" signs marking Community areas.
- d. Community Property Development Committee

We are currently formulating and organizing a committee to help develop the Common Areas of the Community. If you have an interest in being a part of this program, please contact any Board Member.

- e. Community Drainage Enhancement Committee

Members who would like to be involved in researching and exploring drainage responsibilities, repairs, enhancement options and make recommendations to the Board, Island County officials and State agencies, please contact any Board Member.



Regards,

John Gablehouse and LBCA Board of Directors