

# Minutes of a Meeting of the Board of Timber Cove Homes Association In General Session

Held Saturday, April 13, 2019 at 10:00 a.m.  
At the Fort Ross School and/or Conference Call

## **Attendees:**

### **Directors Present:**

Ron Case, President  
Russell Wells, Vice President  
John Gray, Treasurer  
Cindy Culcasi, Secretary  
Bob Leichtner  
Margaret Grahame  
Rosemary Gorz

Also attending Melany Collett, Office Manager

The connection to the conference call was intermittent during the meeting. The phone line is very staticky so wi-fi was utilized. The wi-fi was not consistent and the call dropped a couple of times.

## **Call to Order**

Mr. Case called the meeting to order at 10:07 a.m.

## **Review and Approval of the Agenda**

Upon motion duly made and seconded, the Agenda was approved by the Board 7-0

## **Review and Approval of Previous Minutes**

Upon motion duly made and seconded, the March 16, 2019 minutes were approved 6-0-1 (Ms. Culcasi abstained. She did not attend)

## **President's Report – Ron Case**

Mr. Case stated the Board discussed legal issues and the collection matters in the Closed Executive Session at 9 a.m.

## **Office Manager's Report – Melany Collett**

Ms. Collett reminded members that ballots (to raise dues to \$810) are due on May 1. 126 ballots have been received so far. The votes will be counted in the May Meeting.

The Annual 5300 Report (Budget & Annual Policy Review) was mailed to members. Two reports came back returned mail due to a change of address. Members were told to contact Ms. Collett if they did not receive a report

There are 4 active escrows in progress. Two were resurrected since there was a settlement for the McKay Lawsuit.

### **Public Comment – Members of the Community to the Board**

Ms. Grahame reminded members about the coastal MAC (Municipal Advisory Council). The link follows for further information <https://sonomacounty.ca.gov/Coastal-Municipal-Advisory-Council/Purpose/>

There has already been one meeting of the Timber Cove MAC. Information from the meetings are shared with County Supervisor Lynda Hopkins as well as from Ms. Hopkins back to the community. There was discussion regarding the upcoming marathon. The next meeting occurs the Monday after the TCHA April 13 Meeting.

The MAC is a way for Ms. Hopkins to hear about the issues in the community. She is very interested to learn about what is happening. A Board member asked if comments can be sent in advance, if a community member can't attend. Ms. Grahame responded comments can be submitted in advance. She will share the details with the Board.

A Board member asked that Ms. Grahame share the information about the meetings and when they occur. The Board will share the information with the community.

A member spoke about the portable toilet at the office and when a new bathroom will be completed. Ms. Collett responded that a county employee came out this past Monday to look at the office and discuss the issue. Timber Cove was turned in for not complying with county regulations approximately 2 years ago. The county has been backlogged and is just now following up. Chris Feddersohn removed a pipe located under the deck (most likely installed when the building was originally built) that was never hooked up properly. This was necessary to address the issue. Now, the process will be started over and done correctly. The permit process will start over when the county employee returns from vacation in two weeks. There is no ETA at this moment. Originally, a kitchen was planned to be added to short cut the addition of a bathroom. That was not completed. A Board member added that the Water Company owns the building, not TCHA. A notice was sent to TCHA (in error) stating the Association was to be charged \$35 a day for the violation until it was properly addressed. The building was transferred to the Water Company in 2015. Mr. Case said we are looking for the files regarding the issue, but at this time, none have been located.

A member commented on John Howland's public comments during the March Meeting. He asked if Mr. Howland was aware that his comments could be hurting Ms. Clayborn's (his wife) current court case. Mr. Leichtner noted that he cautioned Mr. Howland and advised him to cease discussing details of the case. The member additionally added that Mr. Howland seemed to be referring to privileged attorney client communications. Mr. Leichtner agreed that was disturbing. If Mr. Howland openly disclosed details that were subject to attorney client privilege, Ms. McKay could become aware of the information and seek to pursue those matters further in her lawsuit.

### **Business**

#### **Treasurer's Report - John Gray**

The April Treasurer's Report is located on <http://www.timbercovehomes.org/>

Slide 3 - Mr. Gray explained that for accounting tracking purposes, there are separate accounts for special assessment, insurance refunds, and dues for 2019/2020. The dues will not be spent until the start of the new fiscal year beginning on May 1, 2019.

Slide 5 - Mr. Gray shared that the Board has discussed the delinquent accounts for dues to go to collections. The Board discussed the names of the members in Closed Session but will not discuss any names in the General Session.

Upon motion duly made and seconded, the Board approved (7-0) the accounts discussed in Closed Executive Session will be submitted to collections.

Mr. Gray explained that the Association has the ability to pursue foreclosure sales of properties that are delinquent, however many times it is not cost effective to do so. There is a property on Davis Court with \$150,000 in liabilities (dues, taxes, etc.). The property is not buildable. It would not be financially prudent to foreclose and attempt to sell the property since the HOA would have to cover all the liabilities. TCHA has adopted the state rules regarding collections. A member asked about the number of accounts delinquent and was told there are 3 accounts. No members who have not yet paid the special assessments have been sent to collections thus far. TCHA does not send members to collections if the delinquency is less than a year. Mr. Case added a member not in good standing cannot vote.

Slide 6 – A member asked if there was a way to recoup the legal bills THCA has paid since insurance won't pay the entire amount due? Mr. Leichtner explained that the prior Board did not promptly put insurance company on notice when Carmen McKay filed a complaint so TCHA had no insurance to cover the cost of the legal bills. The Perry Law Firm briefly represented TCHA but because of a conflict of interest and lack of work product, Greg Spaulding was retained as the Association attorney. Mary Derner (special insurance counsel) was retained and was able to obtain insurance coverage from two of the previous insurance companies. The insurance company is only agreeing to reimburse bills at their panel rates (discounted rates negotiated by the insurance company), not regular rates charged to TCHA. TCHA has owed the Spaulding Firm \$30,000 for quite a while and Spaulding agreed to defer payment to enable TCHA to wait to pay until our insurance company made a decision. After insurance pays TCHA for Spaulding, the Association will still owe \$10,000.

Slide 7 - TCHA owed the Spaulding firm \$31,000 in March. \$5000 was paid last period and \$10,000 was slated to be paid this period. The \$10,000 was paid, but after April 1. The insurance cut a check for approximately \$6000 directly to Spaulding and sent the Association \$15,000 which was used to pay the Spaulding and Caulfield firms. There may be some additional fees owed to Caulfield as we seek to obtain further reimbursement of our out of pocket expenses, but we do not expect to gain all of our expenses back as the insurance company will not pay for the insurance council costs. The \$10,000 balance will be carried into the next fiscal year which we will pay after May 1.

Mr. Leichtner noted the current Board has spent minimal amounts on legal fees except for the McKay Lawsuit. The other expenditures have primarily involved efforts by our new Association Counsel, Peter Walls, to get up to speed and review the governing documents.

A member estimated that the lawsuit cost each member about \$750 if the costs were broken down. A Board member spoke about the \$810 proposed dues. She stated she wasn't sure she would vote yes to increase the dues. Mr. Gray explained the budget specific to the current \$35,000 annual insurance costs should be costing about \$5,000 or \$6,000 except for the recent litigation and threats of litigation, and we are still paying some past legal bills. Mr. Gray budgeted additional funds to cover legal fees and insurance. If that funding is not needed, it could go to the roads. If the Association receives a threat of a lawsuit, our insurance could increase even further or be cancelled. If TCHA can go for a year or more with no more threats or lawsuits, our insurance costs and legal costs may decrease.

A Board member asked if the \$810 annual dues is needed short term or will it stay at the same level. Another Board member reminded the Board, she had stated if higher dues are not needed, the Board can vote to lower the annual dues to an appropriate level.

A member asked if the Association would still be in place in a year or two. We don't know. Another member also shared their experience in searching for a lot on the coast. The new member added they were aware of the lawsuit but proceeded to purchase the lot anyway. A Board member added there is a responsibility of members to solve problems without a lawsuit. The claims and lawsuits of the past couple of years, all arose under the management of different board members, none of who currently serves on this Board. A Board member spoke about the possibility of updating the By-Laws to require alternative dispute resolution for claims between members and the Association. He also noted that the CCR's envision a "lean" budget for the organization: they state that no more than \$200 can be levied for annual dues. California State Law has since superseded that limit, to the extent necessary to meet the essential purposes of our CCRs, such as road maintenance and architectural reviews. The Association needs to adhere more rigorously to these constraints in its planning and spending decisions. That is the objective of the current board.

A member stated her husband and she have been in the community for 38 years. When she was in her 20's she pointed out that the \$200 limit wasn't feasible. The Board chose to ignore her. She is worried about the bad actors that come up every so many years. That is a concern to her since they cause the same trouble over and over. This has been the same for the past 38 years.

A Board member stated this Board is trying to make a difference and acts with transparency. He stated that there are guidelines within the documents that help rein members in. Updated governing documents could make it more difficult for other Boards to run off the rails to the detriment of the community. The entire membership must be more involved to limit what a Board can do without community agreement.

A Board member said when people started showing up at the meetings, that made a difference. Previous Boards got out of line and pursued their own aggressive agendas because no one showed up at the meetings. Members need to attend the meetings.

#### Bills Paid - March

- Office Depot - \$452.79
  - State Fund (Workers Comp) \$877.57
  - Spaulding Law Firm - \$5000 payment against balance
  - Frontier office phones - \$205.42
  - Chase Credit Card- \$813.27 (Dues mailer, ballot supplies and Postage)
  - National Partner - \$2053.65 (Insurance monthly installment)
  - Payroll - \$3508.88
- Total - \$12,911.58

Upon motion duly made and seconded, the Board approved payment of the bills (7-0)

Mr. Gray stated that he has presented a monthly Treasurer's Report from the beginning of his term to set a precedent of transparency.

A new member asked if they should vote since they don't know much about the dues issue. A Board member responded they can mail back the ballot with no vote. Another Board member said it is up to the member.

A member asked about suing prior Board members that caused the problems. A Board member commented that to sue, the Association would have to retain and pay lawyers, using member fees. A Board member stated that if TCHA sues, the defendant directors might turn around and ask for indemnification from TCHA; it is not clear whether or how our insurance would apply. More litigation would not improve our insurability.

A member said if the prior Directors are found guilty in the McKay lawsuit, that result might open up the door to go after them. We might even use small claims court, though that limits the amount we could recover. Other members agreed. A Board member observed that if a jury awarded punitive damages due to a criminal or malicious act that would raise a far more serious issue; such damages may not be covered by insurance. Depending on the results of the McKay litigation, the Board could ask our attorneys about the grounds and economics of suing previous Board members if serious misconduct were proved.

A member asked if the Association could face additional expenses from the suit. Mr. Gray said he believes the HOA is done because we are being defended from the Clayborn Cross Complaint by insurers.

A Board member thanked Mr. Gray for the transparent Treasurer's Report. This was not the case in the past.

#### **Legal Update – Bob Leichtner**

Mr. Leichtner stated we have already announced TCHA has settled out of the lawsuit. The law suit continues with the prior Directors and Ms. Clayborn. The part of the lawsuit still in progress that includes the 3 previous Directors continues to be covered by our insurance. Ms. Clayborn is covered by her home owners insurance company. TCHA insurance has declined to pay her legal fees. Ms. Clayborn filed a cross complaint against TCHA. TCHA insurance is covering the cross complaint against the HOA. The State Labor Board complaint will be dismissed against TCHA. The only complaint against TCHA still in progress is the cross complaint.

A member commented on the Hannah Clayborn cross complaint and the fact that Ms. Clayborn states the Sue Ellen McCann directed her to carry out any acts Ms. McKay has sued over. Ms. Clayborn claims she was in employee and bases it upon an invoice she sent to the Board. However, no W-2 was filed, and she was paid as a contractor. The dates when Ms. Clayborn states she worked for the Board precisely match the dates that Ms. McKay's email was breached.

#### **Architectural Review**

There was nothing to discuss.

#### **Continuing Business**

#### **Independent Member's Committee Update - Member Representatives**

Postponed for future date

## **New Policies and Procedures - Cindy Culcasi**

Today we will vote on the Code of Conduct and Whistleblower Policies. Both documents are attached to the agenda for today's meeting. Ms. Collett and each Board member will need to sign the Code of Conduct and Whistleblower Policies. The State of California requires TCHA have a Whistleblower Policy since we have an employee. The code of conduct also includes:

- Conflicts of Interest
- Confidentiality of Information
- Employment Practices
- Non-Retaliation Policy
- Business Practices

Still to be voted on are the Accounting Procedures and Employee Guidelines. Cindy will also be creating a list of reports and filings required and the dates due.

A member noted that in the past, a prior Board President tried to implement the conflict of interest policy, but some Board members refused to sign it. Mr. Leichtner stated that if a Board member refuses to respect standard board policies or state law, their participation in decisions might be limited.

A member said the community would want to know if a Board member refuses to sign. The significance of a signature, and reasons for deferring, may require careful specific review. The Board would discuss first and try to resolve before they communicate to the community members.

Mr. Wells asked that the Board discuss the policies further. He does not feel comfortable signing due to his past experience on the prior Board. He believes signing could be used against him. Mr. Leichtner suggested the wording of any statement a Director may be asked to sign may make a difference, and also that the document could be signed with a condition and the Board could review. Mr. Wells may choose to abstain. He shared his previous experience as did a previous Director who had a similar situation.

Ms. Culcasi reminded the Board that the Whistleblower Policy is required by law and should be voted on during the meeting. Other Board members agreed.

Mr. Leichtner suggested that we can vote, and Russell can vote no or abstain if he has reservations,

Mr. Gray reminded the members that a member last month brought up attorney client privilege information during the meeting. If any Board member had done the same in the recent past, it could have harmed the HOA in the McKay lawsuit and we may have not been able to settle with good terms.

Ms. Grahame believes the issues raised require fuller discussion, both regarding the purposes and application of the policies, and possible consequences, both good and bad.

Upon motion duly made and seconded, the Board approved the following, 5-0-2 (Ms. Grahame and Mr. Gray abstained). The approval covers:

- Approve the Whistleblower Policy
- Approval of all other procedures: Code of Conduct (Conflicts of Interest; Employment Practices; Non-Retaliation Policy; Business Practices), Accounting Procedures and Employee Guidelines.
- Agreement to Review the confidentiality provision and perhaps modify as needed

## **Discussion of By-Laws – Cindy Culcasi**

Ms. Culcasi is working with Mr. Leichtner to research the By-Laws. She is focused on determining the last valid By-Laws. At this point, it appears the 1991 By-Laws may be the last valid By-Laws.

### **Water Theft**

A member announced that water was stolen when someone maliciously turned on their valve at the meter and it cost her a few thousand dollars. She called the sheriff and asked about patrolling the roads. He said he was told not to drive the roads. Sheriff Provost told the member he was retiring soon, and a new sheriff would be assigned to Timber Cove. Another member thought that conversation was strange since he had a break-in a while back and the sheriff said he would step up driving around the neighborhood. There were some positive comments regarding Nick Lee, a prior security guard hired by the Association, who knew everyone and always stepped up to help when needed.

A member asked a Water Board Director if a Water Company employee might be interested in a part time security position. Members like the idea. A member added that water theft has occurred to other members recently, including herself, and it was reported to Mr. Provost. These are extremely costly criminal attacks. Some members have installed security cameras, turned off their water at the street, and or locked the water meter.

A member suggested that members look into Next Door Jenner (a social media for neighbors) as a way to communicate what is going on in the neighborhood. Next Door Jenner is already available online. It was also suggested that the Board should be warning the community about the recent thefts of water.

### **Adjournment**

The president adjourned the meeting at 12:05 p.m.

Respectfully submitted,  
Cindy Culcasi, Secretary