

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

Held Saturday, February 9, 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 was absent
Rosemary Gorz was absent

Call to Order

Mr. Case called the meeting to order at 10:05 a.m.

Review and Approval of the Agenda

Upon motion duly made and seconded, the Agenda was approved by the Board 5-0

Review and Approval of Previous Minutes

Upon motion duly made and seconded, the January 19, 2019 minutes were approved 5-0 with one change:

- A sentence in the Treasurer's Report section was corrected to read: A member asked how many membership votes are needed to pass the raise in dues in excess of 20% per year. Mr. Gray responded: a majority vote of a quorum is required. The original sentence stated, "a quorum plus one is required".

President's Report – Ron Case

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

Office Manager's Report – Melany Collett

Ms. Collett was absent. No report was given.

Public Comment – Members of the Community to the Board

A member read another member's statement since that member was on the phone and it was difficult to hear her. The member prefaced with her own statement before reading the other member's statement. She said this is the close of her 26th year in Timber Cove. She spoke of promise and was pleased to see the large number of members attending the meeting since she had attended meetings where only the Board members were present. She has observed a growing interest by members in participation and volunteering. She hopes to see Timber Cove develop into, for example, an Integrated Living Community, and a Conservation Community. The member wants our community to have common goals. She believes that Timber Cove can pull together. The member is happy to share articles regarding integrated communities if asked.

That member (acting as proxy) then read the letter from Sylvia Todd which will also be shared with the Independent Committee. Ms. Todd discussed her opinion regarding the dissolution of TCHA. She quoted the By-Laws, Davis Stirling, and other local regulations she believes should be considered. She also listed approvals she believes are required, practical considerations, maintenance considerations, and other concerns she has regarding the dissolution and the process.

Mr. Case stated that the community has a hard time talking face to face. There are many posts to social media, but few face to face discussions. Some things are shared second, third hand and we won't resolve issues if not shared face to face and heard first hand. Information is discussed in the meetings and in the minutes, but many don't hear what is being said. The Board continues to get questions for issues that are resolved or were discussed.

Anne Vernon and John Rea thanked everyone for their support and donations. It supports their belief that most in Timber Cove are here for good. She also updated on the Trails Lawsuit and stated that the plaintiffs have added two more property owners as defendants to the suit.

A member offered a comment about the litigation that was filed against Ms. Vernon and others stating the litigation has been misrepresented to the members and others. It has been described as a quiet title action simply to have the courts decide if there are valid private pedestrian/equestrian trails. That statement only describes half the lawsuit and what it fails to reveal is misleading and far more negative. The other part of the lawsuit is that this is a personal injury/property damage lawsuit against each of the property owners named as defendants, seeking legal monetary damages as well as punitive damages against them for asking the plaintiffs to stay off their properties because they believed the easement access claimed is not valid. Suing for money damages and punitive damages goes way beyond merely asking a court to determine who is right about the trails dispute: the tactic is a means to intimidate, attack, and increase the expense and risk for the defendants. This should concern the entire community because there are 60 properties or more in the community which have alleged pedestrian/equestrian easements shown on the Unit 2 subdivision map. Any of these properties can be brought into the suit at any time and this can cause expense to these members. If the plaintiffs prevail, property owners with pedestrian easements on their lots might be vulnerable to lawsuits for injuries arising from accidents on their lot. Our subdivision is at extremely high fire risk: A careless or uninformed trail walker could discard a lit cigarette and start a fire on a trail. The claimed easement is totally undefined as to who can use it and when. Strangers could cross our properties unsupervised anytime of the day, invading privacy, causing a nuisance, putting personal security at risk. There is no assurance of maintenance or policing. These are the risks of a trail in our rural, private residential subdivision. This lawsuit will affect our rights and more defendants can be added at any time. This is the more complete picture of what the lawsuit means that the plaintiffs are not disclosing. It is an attack on privacy, security and property rights of many members. The defendants were open to exploring a mutually acceptable compromise that could have avoided the lawsuit. The plaintiffs rejected their offers.

A member asked if the comments about the trail's lawsuit would be in the minutes. He was told that a brief summary will be included.

A member gave a public comment. He thought an earlier member's public comment was good regarding pulling together as a community. Mr. Gray noted that the TCHA previous attorney, Martin Hirsch, gave the prior Board the advice (wrote an opinion letter) to accept the compromise on the trails dispute across the Vernon/Rea property and put the matter to rest. This is not attorney client privilege since the current Board never retained Mr. Hirsch for advice on the trails. The prior Board chose not to follow the advice and did not compromise. Barbara Zimmerman, a previous HOA attorney, said the same as Mr. Hirsch. Later in the meeting, a similar opinion will be shared which was obtained by a prior Board in 2000. When Mr. Hirsch spoke informally with Mr. Gray about the letter he authored, he admitted he had never seen the actual map that showed easements were only granted to the county and were rejected by the county on the same map, prior to writing the letter. Mr. Gray told Mr. Hirsch nowhere is there any documentation stating that the HOA was granted easement rights. Mr. Gray pointed out documentation indicating that the roads and utility routes are the only easements. After reviewing what Mr. Gray pointed out, Mr. Hirsch did admit it is clear there are no pedestrian easements. What we have here is a group of people trying to force their agenda and control on others. This is the reason Mr. Gray is on the Board. He wants transparency and asks others to think about this when they try to get control over other people's property.

A member mentioned Yammer posts and how a former Board member is posting negative information about the current Board members. The same members who are complaining about an HOA dissolution for Unit 2 were fine with Unit 1 withdrawing from the HOA.

Another member agreed with the first public comment and Mr. Case. We are all struggling to get along both nationally and in Timber Cove. Members get heated and retreat to their corners. The member doesn't agree with the prior comments criticizing the purpose and impact of the easement lawsuit. The member was involved in planning some of the lawsuit, but then withdrew from helping prior to the punitive damages being added. She stated it is not uncommon to add a cost recovery piece to an otherwise non-financial decision. She is trying to figure out how to get along.

Mr. Case added a suggestion. When members hear things, the old adage "don't believe everything you hear and half of what you see" is pretty much true.

A member said how sad she was to hear of the passing of James Ernst. He was a former accountant of the HOA and served as an election monitor for the past few years.

Business

Treasurer's Report - John Gray

Mr. Gray reviewed the Treasurer's Report. The Treasurer's Report is available after the meeting on timbercovehomes.org.

Slide 9 and 10 - A member asked if raising the dues to \$810 will build up a reserve fund. Mr. Gray said there may be some reserve funds depending upon the bills received. It will cover current expenses.

Mr. Leichtner noted that the bylaws allow a 20% dues increase annually. Actually, the Unit 2 CC&R's set a maximum annual dues limit at \$200, but there have been court orders since the creation of our CC&Rs that would not recognize the \$200 limit to raise dues and require us to at least fund the essential purposes of the Association.

A member asked if there is money in the dues increase to cover the Labor Board issue. Mr. Gray said no, there is not. A member asked if it was better to increase the dues increase to \$900. Mr. Gray said some are not able to pay the current dues and this issue was taken into consideration.

Mr. Gray received emails and phone calls regarding raising the dues. Some just had questions and others were critical of raising the dues.

A member asked if it was prudent for Hannah Clayborn to continue with the McKay lawsuit. Mr. Leichtner explained she is a defendant and not a plaintiff thus she did not have a choice but to defend herself.

Mr. Gray reviewed the quarterly budget which is available on timbercovehomes.org next to the February Treasurer's Report

Upon motion duly made and seconded, the Board approved to pay the bills 5-0. See Slides 6 and 7 of the Updated Treasurer's Report listed below:

- Caulfield Law Firm - \$6,210.00
- Caulfield Law Firm - \$1,170.00
- Chase - \$324.91
- Wall Law Firm (HOA) - \$1,050.00
- O'Connor and Sullivan Insurance Premium - \$7,739.20
- National Pacific Insurance - \$1,447.24
- Frontier Office Phones - \$202.87
- Total - \$18,597.97
- Plus, an additional legal bill (Caulfield Law Firm) - \$7,020.00. Treasurer's Report was updated to include additional invoice included in the motion to pay bills
- Updated Total \$25,617.97

Legal Update – Bob Leichtner

Our insurers are defending the HOA against the McKay Lawsuit and Hannah Clayborn's claim against the Association demanding indemnity. It is pretty quiet right now. We are not sure what is going on currently, because the insurers have assumed responsibility for our defense. They could explore a settlement without alerting us, if they are totally funding it. A status hearing is scheduled later this month with the judge. The judge will inquire about settlement prospects or move forward to scheduling a trial.

Carmen McKay filed a complaint with the Labor Board in June 2017. The HOA did not hire a lawyer for this complaint. The State Labor Commission is investigating. Their investigator contacted Mr. Leichtner who wrote a letter to the Labor Commission stating it makes no sense to assess penalties against the Association and the current Board since we all have nothing to do with the complaint, which alleges retaliation against McKay while she was employed by the prior Board.

Mr. Leichtner noted that the Association is not a party included in the current Trails Lawsuit. Mr. Leichtner and Mr. Gray have been reviewing old files and researching prior trial related documents. During the review an old attorney letter was discovered, dated July 12, 2000, addressed to Tom Giacinto, TCHA from the Shapiro, Galvin, Piasta, and

Moran law firm in Santa Rosa. The letter addresses whether the Association has a valid pedestrian access and is signed by Adrienne Moran. Mr. Leichtner did not read the entire letter, which covered other non-related issues, but cited the following trail access statements:

- The two parcels on Ninive Drive do not appear to contain any pedestrian easement in the recorded description.
- Mr. Charlie Moore (most likely a county planning authority) further concluded that the pedestrian easement reflected on the map was rejected by the county supervisors. The attorney did not find any basis upon which the Association could base pedestrian easement over the parcel. She recommended the Association not build a staircase to the beach because there was no valid easement across the Ninive lot to access it.
- Other much more recent opinions (Martin Macomber, Malcom Manwell) related to the claimed pedestrian easements asserted that the Board cannot change existing easements. However, neither of those opinions actually address the certifications on the map signed by original land owners and developers which offered easements to the County. On the map, the County accepted the grant of the roads and public utility easements but did not accept the pedestrian trails. Around 2014, Barbara Zimmerman (prior HOA Attorney for ten years) cited the County rejection of the pedestrian easements and noted there was no grant of private easements. Her opinion matched the Moran opinion we just discovered nearly 15 years earlier referring to a totally different lot.
- The county planning department and the County Attorney also agreed with the interpretation of the statements recorded on the map and noted they had found no evidence of private pedestrian easements in their review.
- This may be put to bed by the current Trails Lawsuit. It was not disclosed by the prior Board and it should have been.

Continuing Business

Independent Member's Committee Update - Member Representatives

Carolyn Abst passed out a document that included an overview of the dissolution and the necessary steps.

- Time to develop a tranquil Timber Cove Community
- Timber Cove is still a community with or without an HOA
- Join together to protect what's great and get rid of what isn't working
- Based upon the recent opinion survey regarding dissolution (has a 51% response rate)
 - 86% urged to dissolution
 - Presenting this request to the Board to ask that the HOA seek any legal advice required to take the steps necessary to call for a vote to dissolve TCHA.
 - Next step is to gather FAQs from the membership (both pro and con)
 - Request the Board approve the FAQs and ballots
 - Propose voting period
 - If dissolution is approved and the membership requests a Roads Agreement be developed, they expect the Board to move forward and work with the development of a Roads Agreement with membership participation
 - If the membership approves dissolution, the Board will take the proper steps to legally dissolve the association

There was a discussion regarding seeking legal review of the proposal prior to moving forward. More details are needed in the final proposal prior to review by an attorney. The legal review would clarify the voting requirements for dissolution; it might include comments indicating if there is anything contrary to law or that would be extremely difficult

or problematic to follow through on. Board Member Cindy Culcasi will be the liaison and will share the messages between the Board and the Committee. Mr. Leichtner would like to clarify the function of the Board. They will conduct the election and follow their obligations under the By-Laws. The Board did not propose dissolution, takes no official position, and will not vote on the proposition as a Board.

Mr. Leichter said the Board will collect and share FAQs, comments, and arguments, both pro and con, with the community. Equal time will be given to each side. If a statement is not true, or people are attacked personally, these statements will not be included in the comments. Mr. Case noted this will be similar to how the state handles elections.

Mr. Case gave an overview of the survey prepared and conducted by dissolution proponents, and next steps of the Board. 114 members stated in the survey that they are interested in moving forward with a vote whether to dissolve.

A member questioned the development of the timing of a Roads Agreement and how the process will move forward. The Board clarified the proposal has not been finalized by the independent committee, and they are responsible to set that out, not the Board. Agreements both pro and con will be shared with the membership. The membership will determine the end result of the vote.

A member said it is presently unclear what the members will vote on. The members need to know what they are giving up. The Board members agree.

Mr. Leichtner said the Board needs to identify a new election monitor. We will review the vote with the HOA legal advisor, and we will identify an election monitor (who will review the ballot as well). The Committee will prepare a packet and the Board will present to the membership.

Mr. Gray said we also need to identify an election monitor for the vote to raise the dues.

A Committee Member asked if the Board should gather the pro and con statements. They suggested the Board could review and approve all the statements. There may be a counter committee gathering con statements.

Upon motion duly made and seconded, the Board authorized 5-0, John Gray and Cindy Culcasi to identify a new election monitor.

A discussion ensued regarding the timing of attorney review, the scope and the cost. Both members and Board Members participated. We have limited funds available for attorney review. The most important issues are the required vote definition, the clarity and legality of the proposal, and ensuring a fair process.

A Committee Member stated that the Committee is striving for transparency to the membership.

Signatures of 26 members were submitted to the Board several months ago to set in motion the dissolution vote. This step complied with the By-Laws.

Due to lack of time, the Discussion of New Policies and Procedures under New Business was postponed until the March meeting.

Adjournment

The president adjourned the meeting at 12:25 p.m.

Respectfully submitted,
Cindy Culcasi, Secretary