

**Minutes of the General Session of the Board of Directors
Timber Cove Homes Association
September 15, 2018 at the Fort Ross School**

A General Meeting of the TCHA Board of Directors was held on Saturday, September 15, 2018 at 10:00 a.m. at the Fort Ross School.

Attendees:

Directors:

Ron Case, President

Russell Wells, Vice President

John Gray, Treasurer

Cindy Culcasi, Secretary

Bob Leichtner

Rosemary Gorz

Margaret Grahame

Ms. Gorz arrived at 10:50 and voted on the last motion.

Melony Collett, Office Manager, was present.

A conference call using the land line was utilized to enable remote members to attend.

Call to order

Mr. Case called the meeting to order at 10:09 a.m.

Approval of Agenda

Upon motion duly made and seconded, the agenda was approved (6-0)

Approval of Minutes

Upon motion duly made and seconded, the minutes from the August 18 Regular Meeting were approved (6-0) with the following updates:

- Number of lots was erroneously stated as 280. The number of lots is 208 and will be corrected
- The approval of motions will be changed. Absent Directors will be listed in the attendee list at the top of the minutes once. Number of votes will be listed as, e.g. (7-0) abstains will be listed by name after the ()

Introduction of Board Members

The Board members all introduced themselves with the exception of Rosemary Gorz who arrived later in the meeting.

Public Comment

Mr. Gray, as a member of the community, reminded everyone of the fire danger. He talked about fire abatement and the individual responsibility of each member. We need to take care of hazards on our properties and we need to remind our neighbors to take care of their properties. Mr. Gray's home was damaged and Ms. Collett lost her home in the Coffey Park Fire, Santa Rosa, last October. The county will be increasing their fire abatement activities. Many may not want to undertake the cost for fire abatement activity, but we are all responsible for our own homes and lots.

A member added the fire in Redding was started from a spark from a weed wacker. Members should keep that in mind. Weed wack early in the morning when it is damp.

Anne Vernon reminded members about the Town Hall scheduled after the Annual Meeting to discuss alternatives to the current CCR/Association structure. A copy of the recent survey results will be handed out.

Highlights:

- Total surveys received was 114
- Final Tally:
 - 102 members (89.5%) want to dissolve the HOA
 - 12 members (10.5%) want to keep the HOA
- 21 surveys received via the internet
- The majority of the surveys were submitted via snail mail
- 17 were anonymous
- 95 members identified themselves
- 73% want a roads structure after the HOA is dissolved
- All comments were read and reviewed and were considered very important by the committee
- Members are concerned to make sure the roads are maintained in the future
- The committee wants members to attend the Town Hall to share their opinions and exchange ideas. The Board has a mandate to help interested members explore the options, owing to the overwhelming response of the membership in favor of a road's maintenance agreement and the dissolution of the HOA

A member asked why the Water Board Meeting didn't take place. Mr. Case ask John Rea to respond. Mr. Rea said there was not a quorum since many Board members were out of town. They did hold a closed session meeting to discuss employee issues and the employee hand book. There is a meeting scheduled for September 29th at 10:00 a.m. at the Fort Ross School.

President's Report

Mr. Case noted that legal issues were discussed in the closed session. Legal issues will be discussed later in this meeting.

Office Communications

Ms. Collett is still working to bring QuickBooks up to date. Some past invoices were not posted correctly, and it may appear in QuickBooks that the invoice wasn't paid. There are 22 transactions currently that need to be updated to correct the account balances. If a member paid an invoice and they are notified the invoice is not paid, please contact Ms. Collett and let her know. She will work with you to rectify the issue.

If members aren't getting the Timber Cove emails or snail mail, please contact Ms. Collett and she will update your information. TCHA also has a contract with Reach Air Medical Services and members can receive a \$10 discount when purchasing coverage. Ms. Collett will give members the account number needed to receive the \$10 discount. Call Ms. Collett for the details. The normal annual fee is \$55 without the \$10 discount. A member noted that Reach and CalStar are now one company, so the fee covers both.

Treasurer's Report

The Treasurer's Report is available online at the Timber Cove Homes Association website (timbercovehomes.org)

Highlights of the Treasurer's Report:

- Mailboxes
 - \$1,458.46 has been donated towards the mailboxes. These funds have been kept separate because the donation is specifically to help pay for the new mailboxes. Anyone who initially had a mailbox was given a new mailbox. Members requesting a new mailbox now are charged a one time \$100 fee.
- Assessments - The Board will decide regarding how to handle arrangements for members who are unable to pay the entire fee at one time. The Reserve Account portion is not required to be funded until January. The law suit portion is needed immediately.
- Dues Collected - As noted by Ms. Collett during Office Communications, she is working on updating QuickBooks to correct balances showing invoices due in error
- Review of the Budget
 - There are about 6 unbuildable lots in Timber Cove. People buy at a tax sale and then find out the lots are not buildable, so they stop paying the taxes and the lots fall back to the county and are sold again at a tax sale.
 - A member suggested the Board should petition the county to take unbuildable non-paying lots off the county tax records. Mr. Gray noted that our auditor was taking care of this issue for TCHA
 - Insurance budget is listed as \$20,000 because of our past history (insurance cancelled twice, and pending lawsuit not reported). Our new policy cost almost \$15,000. Mr. Gray is concerned about the insurability of the HOA
 - The budget will be posted on the web

- Mr. Gray read the audit report recently received from Goranson & Associates, Santa Rosa
 - Prior to October 2017, the previous Board did not approve financials, did not bring major expenses or budgets to the membership, did not disclose conflicts, did not follow best practices or the Board meeting rules.
 - Per audit recommendations, the board will prepare and sign policies/disclosures to address the following:
 - Conflict of Interest
 - Confidentiality
 - Whistleblower
 - There were no formal accounting policies and procedures. The Board will create and implement accounting policies and procedures
 - There were several cash disbursements that either were not appropriately approved by the Board as well as not adequately disclosed to the membership. Additionally, expenditures or fund transfers were made without a membership vote, as required by the bylaws:
 - \$38,000 transfer to Unit 1 during the split of Unit 1 and Unit 2
 - Employee legal issue in which the board paid approximately \$15,000 for the employee's payment for a criminal defense lawyer.
 - Trail expenses of approximately \$30,000 with no justification. This was not properly disclosed in advance.
 - Road improvements to benefit Unit 1 roads of approximately \$21,000, after the secession of Unit 1.
 - Tax returns were not timely filed for years 2015, 2016, 2017; those filings were brought current early in 2018 by the current Board. The 2018 taxes will be filed by Goranson & Associates.
 - There were no approved budgets in the minutes. There is mention of budget update in April 2016, but no vote. Bylaws require approval of budget no later than 30 days prior to fiscal year meaning it must be presented and voted on no later than April 1st of each year. No budget found at all for 2017 and no mention in minutes
 - The required Reserve Study that was due in fiscal year 2017 was not completed until 2018 when the new Board was voted in
 - The Board prior to fiscal year 2018 did not provide a financial review with annual financial statements as required. All three years were completed in early 2018
- A member stated there was \$350,000 in the TCHA accounts in 2014. When the current Board took over in October 2017, there was less than half that amount in the accounts. Mr. Gray knew there were problems with TCHA when he was voted on the Board, but he had no idea how bad the problems were.

A member complemented this Board. He has owned a home since 1970 and has seen some good and some bad Boards. This is a good Board.

James Ernst, the election monitor, gave an overview of the election process and requirements:

- A quorum of 100 ballots is needed for the election to meet requirements of the By-Laws. During the Annual Meeting of September 15, 2018, a total of 91 ballots were received which did not constitute a quorum. Because there was not a quorum, the annual meeting was reconvened (per the By-Laws) and a new meeting was rescheduled for September 22 (the requirement to reconvene is within 5 to 30 days). The quorum requirement drops from 51% to 33% when the meeting is reconvened. Mr. Ernst can be available on September 22 or October 13.
- On September 22, the votes received so far, and any other ballots received during the next week will be counted. 66 ballots are needed to meet the 33%. Since 91 ballots were received, the quorum for the reconvened meeting has already been met. Mr. Ernst will bring the ballots back to his office and will bring the ballots back for the rescheduled meeting. No member can change their vote or vote again. Any member who has not voted, may mail in their ballots or bring their ballots with them for the September 22 meeting. The counting of the vote will comply with the California Civil Code and the TCHA By-Laws.
- **The reconvened meeting is scheduled for September 22 at 10:00 a.m. at Fort Ross School. The result of the vote will be announced at the September 22 meeting.**

A member asked about the total possible ballots. There are 215 members. There are 19 members who have not paid dues timely and are not allowed to vote. This reduces the quorum requirement to 196 members. The quorum required is 51%, which requires 100 members to vote to reach the required quorum. When the meeting is adjourned, the required minimum votes required is 66 (33%) which is already met since 91 ballots were received.

Mr. Ernst stated that if anyone has any questions, they can call his office.

A member stated that because of the apathy of some members, Mr. Ernst has to come back for the next meeting and TCHA will have to pay additional costs for the reconvened meeting.

The Regular Meeting continued to discuss two action items

Upon motion duly made and seconded, the Board approved the audit report (5-1) Mr. Leichter abstained.

Upon motion duly made and seconded, the Board approved to return the performance bond to Mr. Parker (6-0)

Legal Update

Mr. Leichtner provided an update on developments in the McKay lawsuit and a lively discussion ensued with many thoughtful questions and comments offered by members in attendance.

Mr. Leichtner referenced the update recently issued about the filing of the Amended complaint. In essence, that means the lawsuit is reset. The new defendants will need to be served and will file answers to the Amended Complaint. TCHA will have to file a new answer as well. The former directors may seek indemnification.

It appears that the special insurance coverage counsel working for the Association may be having success obtaining coverage for our legal defense going forward from one or more insurers. We expect to know more definitively in a couple weeks or so. If the insurers agree to defend, they will require us to substitute a competent attorney chosen by them (and subject to a special fee agreement with the insurers) and are not likely to allow us to continue to use the Spaulding firm. That would mean a new attorney will need to take time to review the records and the legal issues they raise before the case proceeds. We are still at the earliest stage of discovery, and now things will be further delayed for some weeks.

There was considerable questioning about whether the former board members could or should be held accountable for the wrongful acts alleged by McKay. Quite a bit of evidence has already been publicly exposed, much of it at one time or another by the new defendants. But there is other important documentary or testimonial evidence that has not yet been brought to light, and therefore it is really premature to speculate about allocations of blame or accountability. The plaintiff has not been deposed yet or questioned as to what she found and what she did while employed or afterward. There are important questions to be considered including what the facts indicate as to whether any defendants acted wrongfully, and if so, whether those acts fall within their authority as directors or were unauthorized actions not in the interest of the Association. A related question is whether the Board has any cross complaints it could credibly bring against the prior directors. Insurers generally pay for defense of claims, not affirmative claims against other parties, but that is a valid question to be raised here. We will be exploring all these questions with defense counsel, once his/her appointment is settled.

Questions were raised about prospects for obtaining an early dismissal of the case, or what would happen if McKay were to win a large judgment against the defendants after a jury trial. Again, at this early stage it is not possible to speculate. Not enough is clear about the evidence, or Ms. McKay's intentions. A lot would depend both on what damages she can prove and who the jury holds accountable, if anyone. Questions were also asked about possibilities for settling the case against the Association. Punitive damages could be a significant concern. Again, that is premature when so little evidence has yet to be formally discovered. Moreover, we are not clear on the extent to which our insurers might be willing to contribute to some settlement arrangement, and if they did, what leverage they might have with us or other defendants.

Bottom line, it is very tempting to speculate, but it is simply too early in the case to do so in any significant way. What the board can say is that our primary objective is to get the HOA out of the litigation as early and as cheaply as possible. Others may have additional goals, including holding any bad actors accountable. But that kind of legal action requires paying attorney's fees and prolonging the legal battle. That kind of decision may require a lot of advice and debate. We're not there yet, but we will be sure to actively explore with our legal counsel all the issues raised by our members, as well as set in motion via the complaint itself. Please keep in mind that the attorney client privilege limits what we can share, even though we want to be forthcoming. Again, until there is more document discovery, and depositions of the plaintiff, defendants, and other witnesses under oath, it is premature and not really useful to speculate about alternatives and outcomes.

Financial Hardship - Assessment

Upon motion duly made and seconded, TCHA will offer a standard arrangement for financial hardships, with parameters, and universally applied. The Board approved (7-0). Ms. Gorz voted since she joined the meeting at 10:50am.

A member suggested the arrangement consider if the member has a history of delinquency. If so, they may be denied.

Mr. Case stated that a monthly billing would be difficult for Ms. Collett. Additionally, he suggested a committee be created to review each hardship.

Mr. Case announced that we have a birthday cake for Melany Collett's son, Marcus so please stay for cake. After the meeting adjourned, the members sang Happy Birthday to Marcus and cake was served.

Adjournment

Upon motion duly noted and seconded, the meeting was adjourned at 12:01 p.m.

The Town Hall followed the meeting. Mr. Case reminded members to stay involved.

A BBQ and pot luck lunch were served for the members. It was well attended.

Respectfully submitted,
Cindy Culcasi, Secretary

Reconvened Annual Meeting is scheduled for September 22, at 10:00 at the Fort Ross School.