

**Minutes of the Regular Meeting of the Board of Directors
Timber Cove Homes Association
July 28, 2018 at the Fort Ross School**

A regular meeting of the TCHA Board of Directors was held on Saturday, July 28, 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

The conference call worked inconsistently during the meeting.

Also attending:

Melany Collett, Office Manager

Call to Order

Mr. Case called the meeting to order at 10:02 a.m.

Approval of Agenda

Upon motion duly made and seconded, the agenda was approved 7-0 with the following addition:

- Status of Ruoff Sign

Approval of Minutes of the June 16, 2018 Meeting

The Minutes of the regular Board meeting held June 16, 2018 will be approved at the next General Session after the changes are added.

- The Wi-Fi conference call did not work consistently for the entire meeting.
- John Howland is currently available for architectural review in addition to two other architects yet to be determined.

The June 16 Meeting Minutes will be reposted with the corrections after the next General Session.

Public Comment

A member suggested that the public comments be deferred to later in the meeting since the auditors are attending and presenting the results of the audit and there may be comments/questions.

No other public comments were made.

President's Report

The recent audit by Susan Gorenson & Associates was discussed during Executive Session and will be presented later in this General Session.

Some legal issues were discussed.

Audit Presentation

John Gray introduced Susan Gorenson and her daughter Blake. Mr. Gray interviewed three audit firms and recommended Susan Gorenson who was engaged by the Board. The audit is not quite complete, but Susan and Blake will present the highlights of their findings and recommendations today

- Records for 2016, 2017, and 2018 were reviewed
- Blake just received the additional documents requested from our previous accountant. It is expected he audit will be completed next week, and their final opinion will be sent to the Board
- Several recommendations will be shared today in addition to suggested controls to implement. Discussions took place with John regarding governance recommendations.
- It was noted that meetings in Executive Session are closed, and the records should reflect that. They are closed because they address confidential personnel or legal issues.
- Recommend implementation of the following:
 - Documentation of Board Policy and Procedures
 - Confidentiality Agreement signed by Directors
 - Whistle Blower Protection Agreement signed by Directors (for employees). This is a requirement in California
 - Conflict of Interest Agreement signed by Directors
- Annual Meeting Requirements:
 - Review of Previous Annual Meeting Minutes
 - Review of Internal Financials
 - Budget/Capital Improvements update
 - Election of Directors
- Board Minutes were reviewed starting in 2015. Minutes for 2015 through the first half of 2017 were lacking in necessary detail, and transparency. Payments of bills were approved, without disclosing the actual invoices. There was no disclosure of purpose funds were being spent. There were very few action items and motions recorded. The minutes improved significantly after September 2017 with the election of the new Board; they were complete, clear and well prepared. More details, action items, and motions were included. Susan Gorenson praised the newer minutes and noted there was a great deal of improvement compared to the minutes prior to 2017. Mr. Gray's Treasurer's Reports were also found to be excellent and include

enough details to keep the membership adequately informed. Previous Board minutes did not include payments, but the recent Treasurer's Reports include detailed explanation of the payments.

- Financials should be reported at every board meeting as a part of the fiduciary responsibility of the Board
- The auditors noted that they specialize in HOAs, Non-Profits, Special Districts
- They explained that their Opinion Letter will address several issues, including:
 - Reinstatement of TCHA license to operate after suspension by the Secretary of State
 - Long pending IRS delinquent tax filing issues and penalties for prior years. Review of these problems had begun under the prior Board in 2017. Mr. Gray took the initiative to meet with the IRA quickly, to avoid adverse legal proceedings and more penalties. The auditors were impressed with the speed of his resolution. (John Gray spoke up and thanked Melany Collett for assisting in his discussions with the IRS
 - It is advisable to formalize checks and balances, e.g. timely, regular bank statement review of cleared checks and disbursements to avoid fraud
 - Procurement should have a formalized process. For example, who votes to hire a contractor? Due diligence must be performed and documented
 - Explanation of approved payments must be attached to the previous Board minutes, for example, payment/approval of various payments totaling over \$45,000 for trails was not clearly documented in the minutes. The Treasurer's Report can be used as the documentation of paid items
 - \$38,000 paid to Unit One in 2015 was not properly documented in any minutes or agenda. It is questionable if this item should have been paid by prior Board. It should have gone before the membership for approval. Since the bills were approved without an itemized attachment to the minutes, the \$38,000 was not properly noticed and processed. The absence of a record of specific approval of itemized payment attachments as part of the minutes was a continuing problem until September 2017, when the new Board was voted in.
 - The auditors questioned the propriety of certain payments made for the employee altercation? Once the claim for indemnification to the insurers was denied it was not the responsibility of the Board to pay the employee. This payment request should have been brought before the membership if the Board believed they had an obligation to make the payment.
 - The budget should be reviewed with the membership at least twice a year, at the Annual Meeting and a specified General Session Meeting. Membership approval ideally should be a quorum according to CPA, but it was pointed out a quorum would rarely occur (51% of membership). It is up to Board to figure out the process. Mr. Leichtner noted the Board will share with the membership and give them time to comment.
 - The Budget should be added to QuickBooks for ease of tracking/review. Melany will add.
 - Add agenda item - Review of Performance Bond account to Annual Meeting
 - \$45,000 borrowed this year from the Reserve Fund will be included in QuickBooks. It will show as Due to/Due from Operating Funds. This will track the funds.
 - The auditor noted there is not much money left to pay the bills.

- The recommendation for documented policies and procedures will help with the transition and continuity when new Board members join and improve administrative performance.
- The CPA suggested the Board make a claim against the prior Directors and Officers Insurance for the transfer of \$38,000 to Unit One (which was not disclosed and approved by the membership as required under the bylaws) and the employee altercation legal expenditures to demand indemnification from the insurance company, which was unsuccessful. Since there was no record of Board approval, the insurance company might pay for those improper disbursements if a claim is made. Mr. Case reminded the membership that if an expenditure is non-budgeted and over 5% of the annual dues (per the bylaws), the membership must vote whether to pay. If insurance does not pay, the current Board can decide if action should be taken against the prior Board.
- There was no budget prepared by the prior Board for 2017 in violation of the bylaws, thus no money was officially budgeted for the roads. In 2015, the Roads Budget was \$45,000
- A Letter regarding Governance will be issued by the auditors, containing key findings and recommendations. It is a Board decision whether to share the formal written recommendations with the membership. Depending upon the seriousness or sensitivity of the findings, not all the details might be shared.

Treasurer's Report

Refer to the June 2018 Treasurer's Report posted on Timbercovehomes.org (HOA website) for discussion details

Highlights:

- Performance Bonds – A home was completed several years ago. but the performance bond payment has not been returned. Mr. Gray will check to determine why the delay to pay back to the member.
- Legal Bills – The lawsuit isn't covered by insurance because the prior Board didn't provide timely notice alerting the insurers of possible litigation as required under the policies, and the insurers denied coverage.
 - Mr. Gray met with our new attorney for 3 hours on June 8th. Response to plaintiff's initial discovery requests is close to completion. Previous attorney did not answer the complaint or prepare any response to discovery before they were terminated.
 - John Gray attended a recent judicial Status Conference with our defense counsel, Greg Spaulding, opposing counsel and the judge. Scheduling of the trial was discussed, and it was determined that neither side is ready to set a trial date. The parties will meet again with the judge in November 2018 to set a date for trial. Mr. Gray commented that our attorney has done an excellent forensic review.
- Special Assessment
 - Notwithstanding the denial of coverage by the insurers, the Board has retained an insurance coverage attorney to determine if we can find some basis to go back to the insurers and compel them to assume defense of the lawsuit. John Gray noted that this

was a long shot, and it was doubtful it could be resolved in time to avoid the special assessment

- A member asked why the new Board and members should have to pay for the lawsuit that they did not create.
- A member asked if we can sue the prior Board. Mr. Gray suggested possibly, if the evidence that surfaces in the lawsuit indicates they were responsible for the plaintiff's claims and the HOA's cost to defend. but that may not be cost effective to do so. Depending on the facts and attorney recommendations, we would need to determine if it is in the HOA's best interest to sue the prior Board. We will confer with our attorney and the membership as needed.
- Mr. Leichtner noted the plaintiff has indicated to the court that she may add new parties to the lawsuit. That may change the impact of the lawsuit on the Association. The case is still in the early stages of discovery and development. New parties added may or may not include previous Board members.
- Ms. Grahame asked about the prior Board's transfer of \$38,000 to Unit 1 and how that was defined by the bylaws. Mr. Gray explained the \$38,000 to Unit One was a transfer of assets and should have been voted on by the community,
- Paying to defend the HOA against a lawsuit is not discretionary matter, it is a fiduciary responsibility of the Board. If we do not defend the HOA, the plaintiff would win a judgment by default, and the resulting damages award could result in spending multiples more than the cost to retain an attorney and defend the HOA. We do not believe we have a reasonable, responsible alternative course of action. If the prior Board had complied with the notice requirements of our insurance, the costs of the Association's defense would be taken care of by the insurers and not the members.
- Mr. Gray noted that after the lawsuit was filed, the Perry Law Firm stated the defense of the lawsuit would cost approximately \$200,000 to \$300,000. They did not provide any useful work product before we terminated them. Our new attorney has advised that our defense costs will likely reach \$100,000 by the end of this year, and the case may not be ready for trial. Our new counsel has already provided a great deal of valuable analysis and work product. Additionally, when the Perry Law Firm transferred their files for Timber Cove to our new attorney, included were 7 boxes of records in complete disarray. There was no organization and our attorney had to start from scratch to prepare for the lawsuit. That was time consuming and expensive.
- The \$38,000 so far billed by our attorney, Greg Spaulding, represents development of the foundation of our defense. We hope the spending rate will slow a bit going forward after this initial labor-intensive startup phase.
- A member asked about arbitration and if it is required. Mr. Leichtner noted that binding arbitration must be agreed by both parties and is not likely feasible here, but that non-binding mediation can be required for smaller value cases in California. After the facts have been developed, mediation may be a useful tool to help facilitate a settlement. However, both parties must agree to either arbitration or mediation, for it to be used. It is too early in this case to consider either process. Mr. Gray got the impression during Status Update with the judge that the plaintiff wants a jury trial and therefore is unlikely to approve mediation or arbitration.

- A member asked about the state labor department retaliation investigation and if the Board has more details. Mr. Gray responded noting we have not been contacted by the state for more information.
- A member asked if the Board has requested a summary judgment for the lawsuit. Mr. Leichtner explained a summary judgment is a mechanism to try to resolve a case in which there is no factual dispute and the case can be determined by a judge deciding how the law applies to the uncontested facts. It is too early for a summary judgement since that would occur after the discovery phase is completed. There currently appear to be many key factual questions, so this case is probably not a candidate for summary judgment
- The same member asked if a deposition has been taken. Mr. Leichtner noted there have been no depositions yet. Mr. Gray stated he has been noticed for a future deposition.
- The same member also asked about mediation. Mr. Leichtner stated that we have made it clear to our attorney if he believes it is possible to work out a favorable settlement using, mediation, or a negotiating meeting with the parties, etc., that will end this sooner rather than later, we will pursue that. If the plaintiff adds new defendants to the lawsuit, this may completely change the landscape of the lawsuit, and would delay and complicate any proposal to mediate
- A member asked if the new parties added by the Plaintiff are the previous Directors, will the insurance cover them? Mr. Gray noted the previous insurers have already declined coverage because of the failure of the prior Board to notify them as well as multiple misrepresentations on the insurance application itself. Our current insurer, as a condition of providing TCHA insurance would not cover the cost of the current lawsuit. We were honest in disclosing all information to our current insurer. We are working hard to resolve the lawsuit, but it is not going to go away.
- Mr. Wells asked if the Perry Law Firm purposely was not responding to the lawsuit and sent the legal documents in disarray to our attorney, Greg Spaulding, intentionally. Mr. Leichtner noted that we can't determine that. The Perry Law firm may have thought that writing a large check immediately to settle was a good approach. They never provided an analysis of the risks or a strategy for our defense. Our new attorney has proceeded with discovery in an orderly fashion. We are aware of two depositions, Mr. Gray's, by plaintiff's lawyer and the future deposition of the plaintiff by our attorney. If new defendants are added, this will change things. There may be additional depositions, but we don't know yet.
- We have known for months we need to increase our reserves, even without the lawsuit costs. Specific details are noted in the Treasurer's Report. The \$444.71 additional assessment will cover the expected \$100,000 in legal costs for the Carmen McKay lawsuit through the end of 2018. The \$444.71 will be added to the \$336.53 assessment already approved by the Board. The \$336.53 was needed to replenish the Road Reserve account, which was depleting to cover operating costs including numerous legal bills generated by the previous Board and the payment of back taxes and penalties that were not paid by the previous Board.

- A member asked if they could pay the \$781.24 assessment to the Timber Cove Foundation and then the Foundation will pay. Mr. Gray stated no, that is not an option. The Timber Cove Foundation has no legal relationship to TCHA. All annual and special assessments can only be paid to TCHA.
- A member asked if we could add the assessment to our property taxes. Ms. Collett stated no, this is a Timber Cove assessment, not a county property tax issue. These are different entities.
- A member asked if the assessment is tax deductible. Our understanding is the assessment is not tax deductible: TCHA is a non-profit, but not a charitable corporation.
- Ms. Grahame emphasized that the \$441.71 special assessment will be specifically earmarked for the lawsuit and must be used for that purpose only.

Mr. Leichtner noted that (hypothetically) if we were fortunate enough to quickly settle out of court for a modest sum, such as \$25,000, we would not owe any more legal fees and might have funds left over from the assessment. In this example, we could refund what was left over or use for the future budget. There would be a vote of the membership to determine the action used.

Ms. Grahame asked what the members think about this assessment. Is there strong feeling either way about paying this assessment? A member asked why we must pay the entire assessment if some of the money spent was spent illegally. She asked why the membership is responsible for wrong doing? Mr. Gray stated we need to pay our legal bills to defend the HOA and we must pay any settlement or judgment against the Association in favor of the plaintiff. If the facts indicate other parties acted illegally, they might be held liable instead of the Association. Otherwise we could sue them to recover our out of pocket losses attributable to their wrongdoing, if the evidence will support that. If we don't defend the HOA against the lawsuit, we will lose, and the resulting cost may be significantly more.

A member stated that the legal issues and costs show the very poor structure of the HOA and a reason to move away from the current dying HOA. The structure should be for the maintenance of roads or similar constructive purposes that benefit all the members.

A member asked if Unit One has any responsibility to pay for the lawsuit. Mr. Gray noted that Unit One is not part of the association and does not have to pay any of the costs. The member asked why we keep the association when we are only paying legal bills. Should we "close up shop" of the HOA when the lawsuit is over? Several members commented the HOA should be ended when the lawsuit is done.

John Gray – Summary of Director's Statement

Per the bylaws, a Director can speak in a meeting. Mr. Gray wanted to share his experience. His remarks follow:

- No plans to be on the Board and had no interest in the politics of the area.
- What caused me to run for the Board:
 - Payment to Brian Todd for the head-butting incident
 - Intentional incorrect minutes by Susan Moulton that did not include important details, e.g. payment approved to pay Brian Todd for legal costs of the head-butting incident, transfer of \$38,000 to Unit 1, etc.
 - Private Investigator Report regarding assault which was missing important facts, e.g. signed confession by Brian Todd, eye witness statements, sheriff's report and other important details.
 - Memo circulating between the HOA Board and Water Board that appeared to be a violation of the of the Brown Act (Water Board) and Open Meeting Act (HOA Board) comparing some members to cat shit and was a deliberate attempt to keep some members from attending meetings
 - I wanted to help correct the malfeasance of the prior Board

Mr. Case thanked Mr. Gray for his statement and noted he is doing a great job. Mr. Case understands his frustration and is concerned the same could happen again in a future Board. In the past, maybe 2 or 3 people showed up for the meetings. When Mr. Case questioned any issues with the prior Board, he was either told he was out of order or we'll take this under advisement. The members need to keep pushing the Board. The agenda includes public comment and we want to hear what everyone has to say. The past Board was not open to comment, but we want to hear from everyone.

Election - John Gray

The election is coming up. There are two people running for two openings. There could be a write in vote. It is important that everyone submit their vote either in person or by mail to reach a quorum. The reason we need a quorum to ensure we don't incur the expense of holding an additional meeting and another election in order to officially seat the new directors.

A member asked why we are wasting money if there are two openings and only two people on the ballot. Mr. Case responded there can be write in candidates and we must accommodate it. Mr. Leichtner stressed members must return their ballot. There must be a quorum at the annual meeting which is determined by counting those in attendance and those who mailed in ballots. You don't need to attend in person but can mail your ballot to be counted.

Special Assessment Vote

Upon motion duly made and seconded, the additional \$444.71 assessment was approved 7-0. The assessment is specific to pay for the \$100,000 estimate for legal fees to pay for the defense for the Carmen McKay lawsuit. The total assessment of \$781.24 includes the previously approved \$336.53 to bring the reserves up to the amount required by our Timber Cove By-Laws and the state laws.

Office Communications

Ms. Collett has received 7 of the Roads Surveys back so far. The Roads Survey was sent by email and will be sent by snail mail shortly. Mr. Leichtner gave an overview of the survey. There are 3 questions:

1. Do you want to keep the HOA?
2. Do you want to get rid of the HOA altogether?
3. Do you want to get rid of the HOA and transition to a Roads Agreement Committee?

The results of the survey will reflect the entire community and help determine the next steps based upon the response.

The Election Material will go out shortly.

A member asked about the assessment and writing off the amount. It is up to the member to determine if they can write off the special assessment.

A member is concerned about abandoning the HOA resulting in condos being constructed. These are single lots and the subdivision map is was recorded with the County in 1965 and won't be changed. The subdivision map is permanent. The County requirements include keeping the current character of the neighborhood. There are other county oversight functions such as the Coastal Commission.

A member asked about trailers that might be an eyesore. Mr. Case noted we already have issues that aren't being corrected. There are county ordinances such as the "Junk Yard" law to address old trailers and junk on lots. The PRMD will assist with problems.

A member noted the previous Board allowed sheds as a residence. This is against county laws.

Fire Abatement - John Rea

Mr. Rea went out with John Gray and Warren Doyle for a brief fire abatement inspection. They visited Amanita Circle, Cyprus, Pine, Ruoff, Lee Drive, Hudson, and Timber Cove Road. They found 3 properties, all developed lots, with serious fire abatement issues. Mr. Rea described training he had participated in. A few highlights from training: Turn around and look at your own house first. If your house isn't cleared sufficiently, it won't survive.

He also inspected undeveloped property. Mr. Rea spoke to the County. They have a little money set aside and asked the Mr. Rea and group give them the worst-case properties and they would visit these properties and follow up.

There are questions regarding the monthly \$10 "fire abatement" fee by the Water Board. Over all costs for legal work developing the ordinance and the employee cost was \$44,000. The fire abatement fees paid have been applied to pay down \$20,000 of the costs to develop the Fire Abatement program. Future fees will be put towards the remaining \$24,000 legal cost left to pay.

Ms. Grahame asked about the priorities. Mr. Rea noted there are 3 homes and some lots on Lee Drive. A fire burning over Lee Drive will burn over the hill and take out the middle of Timber Cove. There are actions in the works to address the County Parks and the State's Responsibility. It is slow moving. Are there issues about the Fire Department getting to homes? Yes, some homes will be difficult to reach. Also, there is very low water pressure at the top of Koftinow.

Carolyn Abst is looking into grants to cut (widen) the roads for better firefighting access.

Even Timber Cove Road has issues with falling and dying trees. Mr. Rea asked the County to come out and they noted they are not responsible for the trees that he pointed out.

The Fire Department will protect hardened homes only. It is our responsibility to clear around our homes and have a plan and a "go bag". Home owners should photograph everything in their home for reference. Mr. Gray stated he and Yvonne had 10 minutes to get out of their home in Coffey Park in the October 2017 fire. Mr. Leichtner noted we need to maintain our roads.

Mailboxes – Ron Case

The new mailboxes are in. There is a total of 64 new mailboxes.

The Timber Cove sign on Ruoff and Hwy 1. Mr. Wells would like to take the remaining letters off and leave the stone. We need to review the newsletter and confirm that it was a gift to the HOA. When confirmed it is a gift, we can remove the letters without permission.

Adjournment

The meeting was adjourned at 12:38 p.m.

Next Meeting is August 18, 2018.

Respectfully submitted,

Cindy Culcasi, Secretary