

**Minutes of a Regular Meeting of the Board of Directors
Timber Cove Homes Association**

Held Saturday, March 16, 2019 at 10:00 a.m.
at the Fort Ross School, Jenner, CA 95450

Attendees:

Directors Present:

Ron Case, President
Russell Wells, Vice President
John Gray, Treasurer
Margaret Grahame
Bob Leichtner

Rosemary Gorz participated by telephone

Cindy Culcasi was absent due to illness
Office Manager Melany Collett was also absent.

Since the Secretary was absent, Bob Leichtner agreed to keep the minutes

Call to Order

Mr. Case called the meeting to order at 10:03 a.m.

Review and Approval of Agenda

Upon motion duly made and seconded, the Agenda was approved 6-0.

Review and Approval of Previous Minutes

Acting Secretary Bob Leichtner explained that the Board had received a lengthy email from a member complaining that reference made in the February 9 minutes to an attorney opinion letter which denied the validity of pedestrian access easements was inaccurate and misleading. The member stated he had extensively researched California law firms and lawyers and found that both the named Santa Rosa law firm and the lawyer identified as authoring the letter ("Adrian Moran") did not exist. He demanded an explanation and correction.

Because the implication of this complaint was that the Board was misrepresenting attorney input on a controversial subject, Mr. Leichtner responded to the member's complaint in detail. The attorney letter referenced in the minutes was genuine. The minutes contained two minor typos: The actual name of the law firm was Shapiro, Galvin, Shapiro, Podesta and Moran. The typo substituted "Piasta" for Podesta. The

other typo was that the name of the attorney who authored the letter was Adrienne Moran, not Adrian Moran. A quick web search indicates that, although nearly 20 years have passed, the law firm still exists in Santa Rosa under a nearly identical name, Shapiro, Galvin, Shapiro & Moran. Under "attorneys" listed on the firm's website, one can't miss "Adrienne Moran", who is identified as a principal in the firm, having over 20 years' experience. The complaining member had noted he actually had found the law firm website, but apparently, he didn't recognize that Adrian Moran might be an obvious misspelling of Adrienne Man, so he felt he needed to challenge the Board. Mr. Leichtner briefly displayed the letterhead and signature on the actual letter to members in attendance. One audience member commented that he had attended law school with Adrienne Moran, and confirmed she was a respected Sonoma County attorney.

Having addressed those typos, upon motion duly made and seconded, the Minutes of the regular Board meeting held February 9, 2019 were approved as corrected 5-0-1; Ms. Grahame abstained, since she had not been able to attend that meeting.

President's Report

Mr. Case reported that immediately preceding this meeting the Board had met in Executive Session.

Office Manager's Report

Since Ms. Collett was on vacation, Mr. Case relayed advice from the office manager clarifying that incoming payments for 2019-2020 dues were being segregated for use only in the new fiscal year beginning April 30, 2019 and also were recorded separately from payments for the prior special assessment.

Also, the ballots for the membership vote on whether to raise dues beyond the amount invoiced for 2019-2020 to approximately \$810 have been sent out, but some were slightly delayed. It is important to follow the instructions for the voting process for enclosing and mailing back the ballots. **Any dues or assessment payments should NOT be enclosed with the ballots**, because the envelopes will not be opened for several weeks until the election inspector tallies the votes.

Public Comment

Mr. Leichtner reviewed with the Board and members present the protocols in the bylaws and Davis Stirling regarding member participation in Board meetings and use of telephonic connections for remote director participation. Input from members in attendance is limited to the time allocated for public comment; it is not permitted throughout the remainder of the meeting. There is no provision for non-attending members to appoint a proxy to present their views at the meeting nor to require the Board to read their written statement to the meeting. During the course of the meeting after public comment, although members are not entitled to comment or question, a majority of the directors has discretion to allow limited attending member input,

especially for questions regarding complex financial or legal matters; the Board's practice been flexible about this, so long as the privilege is not abused. Telephonic participation is allowed to enable directors to attend and participate in discussions and voting at meetings remotely. If a phone connection is set up, members may call in to listen to the meeting remotely, but do not have a right to speak. We need to keep these protocols in mind, since recent meetings have been disrupted and delayed by members in the audience or on speaker phone talking out of turn or overtalking the directors.

At that juncture, board members and attendees complained that the old conference phone we were attempting to use to enable Ms. Gorz' participation was buzzing so loudly today as to be intolerable.

Member Kris Kilgore volunteered that she had brought along a better-quality, newer conference phone which she offered for use. After switching connections, unfortunately, the new phone suffered from the same loud buzzing noise, and it was determined to be a problem in the school phone line. Mr. Gray offered the use of his I-phone as a speaker phone which sufficed to enable Ms. Gorz to hear, be heard, and vote.

During Public Comment, members noted it was important to stick to TCHA business, and that it was valuable to hear what the community thinks, although only a fraction of the community actually participates in meetings.

Treasurer's Report

Mr. Gray offered a detailed power point presentation of his Report, showing income and expenditures.

He reminded members with past due annual assessments that if it becomes necessary to turn those accounts over to our collection agency, the resulting fees and collection expenses would be substantial, exceeding the amount of the debt itself. Moreover, delayed payments could result in filing a lien against the affected lot, at further cost. Eventually, prolonged non-payment could result in a foreclosure sale of the property.

He reported that the new mail boxes had been vandalized by drive-by gun fire. A claim was filed with our insurer, but we are not sure we will have coverage, especially given the deductible. Repairs have not yet been determined.

A motion was made and duly seconded to spend \$250 for a new community bulletin board near the mailboxes. Approved, 6-0.

Mr. Gray presented two budgets for 2019-2020. One, totaling approximately \$114,000 is based on the recently increased dues of \$551.04 per parcel which have been invoiced. Mr. Gray explained that amount would be insufficient to cover estimated operations costs for the new fiscal year. The second budget, totaling approximately \$168,000 was based on fully funding those estimated operations costs. The resulting

dues level required would be about \$810. That large an increase requires approval by full membership vote. Ballots have been sent out seeking member direction.

Upon motion duly made and seconded, the Board approved the lesser budget, based on current actual dues as invoiced, 6-0. If the Association members vote to approve the additional increase in dues to \$810, the board will need to pass a revised budget and send out supplementary invoices.

Legal Committee Report

Mr. Gray was very pleased to report that Carmen McKay has agreed to settle her lawsuit and release her claims against the Association in consideration of a cash payment made by our insurers. No Association funds are being used to pay the settlement. Additionally, Ms. McKay will dismiss her separate complaint filed with the State Labor Commission for retaliation.

Settlement negotiations and the decision to settle were controlled by our insurers and conducted by our attorney. Board members did not directly participate in the settlement negotiations. The preparation and signing of the settlement agreement should be completed over the next couple weeks or so. Attending members applauded.

It is important to note that this settlement only covers the Association, it does not apply to Ms. McKay's complaint against three prior directors and Hannah Clayborn. Her lawsuit continues against those defendants. With the help of special insurance counsel Mary Derner, the Board was able to obtain insurance defense for the prior directors. However, the insurers refused to cover Ms. Clayborn. We understand her homeowner's insurance is providing her defense. However, Ms. Clayborn has filed a cross complaint suing the Association to indemnify her from costs she incurs and damages she is found liable for from the McKay lawsuit, on grounds that any wrongful acts which McKay complains of against Clayborn were performed at the direction of Sue Ellen McCann, who was then the Treasurer of the Board.

Ms. Clayborn's husband, John Howland, who was in attendance, objected that Ms. Clayborn had NOT sued the Association. Mr. Leichtner, who is a lawyer, countered that she most certainly had sued the Association when she filed her cross complaint against the Association. A lawsuit is commenced when a complaint is filed and served on a defendant. A cross complaint is a type of suit filed by one party against another party within an existing lawsuit, based on facts at issue in that lawsuit. Ms. Clayborn may not wish to publicize the fact that she is suing the Association, but that's what she's doing. We have attached a copy of the cross complaint filed by Ms. Clayborn to enable concerned or skeptical members to review it for themselves.

Fortunately for the Association, Attorney Derner was able to persuade our insurers to defend us from Clayborn's cross complaint. In that regard, we wish to thank our attorneys Greg Spaulding, John Fitzgerald and Mary Derner for their excellent work on behalf of the Association on the McKay lawsuit. Members should be aware that the

efforts of our lawyers not just to defend the Association, but also to persuade our insurers to reverse their earlier denial of coverage, take over our defense, negotiate and pay the full settlement amount, and protect the Association from the Clayborn cross complaint were all made possible by the special emergency litigation assessment levied to cover the unexpected, unbudgeted costs of this litigation. We know that assessment was an unwelcome burden, but we are pleased that it provided substantial benefits for the Association, and the prior directors, that we could not otherwise have obtained.

Mr. Howland also spoke in defense of Ms. Clayborn, disputing claims she acted wrongfully. He asserted that she had stumbled onto Ms. McKay's email password on the HOA laptop accidentally and encountered troubling email correspondence. He added that others were also involved in her email search, and that she reported her findings to the HOA attorney, who then considered what to do for three weeks before telling her she could proceed.

Mr. Leichtner stated that Mr. Howland's account was mistaken and untrue. The evidence shows that after somehow obtaining Ms. McKay's Gmail password, Ms. Clayborn didn't pause or await advice, she (and perhaps others) repeatedly and continuously invaded and downloaded hundreds of Ms. McKay's private emails for a period of four weeks between June 19 and July 12, 2017. She didn't contact the HOA lawyer, (and if she had, any communications with him would likely not be protected by privilege). The lawyer did not "take three weeks to consider her information" and then OK her actions. Mr. Leichtner and Mr. Gray had both reviewed the hundreds of private messages Ms. Clayborn had examined and downloaded, as well as all available related correspondence between the Board and the HOA attorney, Mr. Hirsch. Mr. Gray and Mr. Leichtner had also interviewed Mr. Hirsch about his investigations and communications with Board members and Ms. Clayborn. Although we cannot share that confidential information publicly, we can say without hesitation that Mr. Howland's story is materially untrue.

Mr. Leichtner warned Mr. Howland that his comments about what the HOA attorney had done or said appeared to reflect a troubling violation of attorney client privilege and urged him to stop talking. Mr. Howland was not a Director. If he claims to know about the lawyer's communications, that suggests a former director has indiscreetly breached his or her fiduciary duty by disclosing confidential attorney communications to someone not covered by the privilege. Mr. Leichtner cautioned Mr. Howland that if he continued talking about confidential attorney work product or communications, he could be jeopardizing the attorney client privilege, which could adversely impact defense of the remaining defendants, including his wife.

Architectural Review

Mr. Howland briefed the Board on his review of proposed solar panels for the roof of a member home under construction. The Board inquired how the panel reflections might affect neighbors within 300 feet of the project. Mr. Howland and neighbors in the

audience stated that they were discussing the matter with the homeowner and expected any issues could be suitably addressed.

Independent Member Committee Update

No new report regarding development of the dissolution/roads contract proposal was presented.

New Policies and Procedures

Ms. Culcasi is leading this project and due to her absence, discussion will be postponed.

Director's Statement

Mr. Gray offered a statement condemning the use of social media by a few members, who don't attend meetings, to attack hardworking board members with false and defamatory accusations. As an example, he referenced recent comments on Yammer by Tom Giacinto that were untrue. Mr. Gray rejected false accusations that current board members were "complicit" in any way with Carmen McKay and caused her lawsuit. He explained that her lawsuit arose because Hannah Clayborn and others invaded McKay's private email account numerous times after she resigned as Manager and downloaded hundreds of her personal messages; then someone disseminated a compilation of her misappropriated private correspondence anonymously throughout the community in October 2017, with disparaging accusations of criminal misconduct and of her alleged "collusion" with opposing Board candidates to assist their campaigns. That's what elicited her claims.

Mr. Gray made clear he had had no more than four brief, innocuous contacts with Ms. McKay, mostly during meetings including lawyers connected with legal discovery. Any claim that he was complicit in her lawsuit is a blatant lie. Mr. Gray challenged Mr. Giacinto to stop hiding behind Yammer and to bring any evidence he had to support his charges to a Board meeting, so it could be directly examined and addressed. Mr. Gray added that he has questions he'd like to ask Mr. Giacinto, in front of membership.

Mr. Gray also noted that Mr. Howland had recently sent an email to TCHA members (without notice or permission by the Board) raising questions about the proposed dissolution and criticizing the Board. Mr. Gray read aloud a reply he had emailed Mr. Howland. He acknowledged that Mr. Howland had raised interesting questions about the dissolution proposal, but that he had gone on to repeat disparaging and destructive comments about the current board that undermine good faith efforts of the Board and serve to reinforce community doubts about the value and viability of the Association which Mr. Howland seeks to preserve.

Mr. Gray presented his own questions asking how management failures and lack of transparency by predecessor boards could be countenanced by Mr. Howland, referencing multiyear tax delinquencies, penalties, questionable transfers of funds in violation of the bylaws, concealment, and endless attacks on members and current Directors who have been working long hours to clean up the mess they inherited and trying to protect the members from the McKay lawsuit.

Mr. Gray observed in part:

"The lack of integrity and the cruel treatment of people displayed by a small group astounds me. People have been bullied long enough. Perhaps that's why 102 of 114 respondents to the survey favored dissolution in some fashion. People now see these actions as they are."

"While dissolving the Association and replacing it with a roads agreement may or may not be a viable solution, one thing is clear:

...we cannot allow the abusive behavior of a few to go unchecked."

Following Mr. Gray's statement, Mr. Leichtner added that he had been informed that Mr. Giacinto, in a recent conversation with another member, had accused Mr. Leichtner of drafting Carmen McKay's resignation letter, claiming he had seen evidence to prove that. Mr. Leichtner stated that accusation was absolutely false, that he had nothing to do with Ms. McKay's resignation letter and had neither drafted, edited, nor even discussed her letter with Ms. McKay. He invited Mr. Giacinto to bring his alleged "evidence" to a meeting to be examined in public, or to cease spreading falsehoods intended to discredit Board members such as himself.

Mr. Case commented that the Board is comprised of seven members each holding different, independent views, all working hard to benefit the entire community. The unsupported attacks only serve to demoralize good people.

Questions Regarding Bylaws

Mr. Leichtner commented that the Board has been using Bylaws amended in 2003, which are defective and invalid. Key sections about Board functions refer to provisions in the CCRs that don't exist. Mr. Leichtner speculates that the bylaws were prepared in anticipation that the CCRs would be amended and updated. But the proposed amendments were never approved by a full membership vote and the bylaws were thereby rendered meaningless. There are much earlier bylaws from 1991 which appear to be valid, but they differ greatly from the 2003 bylaws and include obsolete provisions that have not been followed for many years. They also require that future bylaw amendments can only be approved by a vote of a majority of the Association membership. We have found no evidence that any subsequent purported amendment of the by laws was approved by a full membership vote, including the 2003 amended bylaws now in use. Ms. Culcasi has been reviewing the limited available records for

further information. Unless we find a definitive, clearly valid set of bylaws, we will recommend that the Board authorize the Legal Committee to work with HOA legal counsel to develop a valid updated set of bylaws, to be submitted for member approval at the Annual Meeting later this summer. We must resolve this problem because without an approved, legally compliant set of bylaws, performance of essential functions by the Board or membership might be subject to challenge.

Missing Historical TCHA Records

To provide more storage space in the office shared by TCHA and TCCWD, in 2017 the former manager rented a storage locker in Forestville using her personal credit card, and moved approximately 15 file boxes of TCHA records to that storage locker. When she resigned in June 2017 and removed her credit card from the storage account, the Board President assumed control of the locker using his credit card. Around September 11, 2017 two days after his term as director ended, the President closed the account, removed the 15 boxes, and reports that he then left those boxes at the TCHA office. No one ever found those boxes at the office. The foregoing information was obtained with help of the Sheriff.

When Mr. Leichtner served as secretary in late 2017 and early 2018, he repeatedly asked all directors to check their home files for any records they might have removed for security or research purposes. We received no reply. Recently legal counsel for the State Labor Commission investigating Ms. McKay's retaliation complaint alerted us that Sue Ellen McCann had provided the Commission with several documents not in our files which appeared to be confidential attorney client communications, without the knowledge or permission of the current board. Our attorney is currently tasked with trying to retrieve all such documents from the Commission. The missing historical records could include attorney advice, records of proposals voted on at annual meetings (such as the bylaws as discussed above), contracts with members, etc. They are important. We believe some long term members may have retained some records such as minutes, meeting notices/agendas, reports, etc. We hope to enlist their help restoring as much as we can.

Newsletter

By motion duly made and seconded, it was agreed, 6-0 that the Board would prepare and distribute a newsletter updating all members on the settlement of the McKay lawsuit, seeking help on finding or reconstructing historical records, and addressing other community issues.

Removal of Outdated Camping Policy from the TCHA Website

The policy on the website conflicts with applicable law and will be removed.

Board Meeting Schedule Change

To better coordinate and avoid possible schedule conflicts with Water Board meetings, upon motion duly made and seconded it was agreed 6-0 to shift the date of regular TCHA board meetings from the third Saturday each month to the second Saturday each month, going forward. The next meeting will be held April 13, 2019.

Adjournment

There being no further business, the meeting was adjourned at approximately 12:35 p.m.

Respectfully submitted,


Robert Leichtner, Acting Secretary