

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

Held Saturday, November 17, 2018 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
Cindy Culcasi, Secretary
Bob Leichtner
Margaret Grahame

Rosemary Gorz was absent

Call to Order

Mr. Case called the meeting to order at 10:20 a.m.

There was a delay. Ms. Collett went to the Lyon's Court office to retrieve the pass code for the conference call.

Review and Approval of Agenda

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

Review and Approval of Previous Minutes

Upon motion duly made and seconded, the October 20, 2018 minutes were approved 6-0.

Public Comments

A member associated with the recent Roads Survey stated that a respondent had complained that her comments were not included with the Survey report. The member explained that the report included all comments made in the indicated spaces for "comments". The complaining respondent's comments extended into the borders and were not captured. Nonetheless, her views and questions were noted, and can be addressed at the next open forum or Town Hall. The respondent also seemed to confuse the source of narrative in the survey, believing they were the statements of the Board. The member again clarified that the Survey was prepared and presented by the Committee that supports alternatives to

the Association, including a Roads Agreement. The TCHA Board did not draft the survey, they only distributed it to members as requested by the Committee and required by law.

Mr. Gray responded to comments that surfaced in local social media regarding fire abatement. There are members pointing fingers regarding fire abatement concerns and they are just blaming folks. No one is suggesting constructive collaboration to solve problems, only finger pointing. Mr. Gray referenced the recent special fee assessment which caused a financial hardship to some members, who asked for an adjusted payment schedule because they lacked funds for the assessment. The financial burden of fire abatement for a number of lots is far more burdensome than the assessment. These members, dealing with a large number of dying oak trees haven't been able to do anything about fire abatement since it creates an unmanageable financial hardship for them. The fire conditions in Timber Cove impact all of us in the community. Is it realistic to expect some members to pay \$15,000 or \$20,000 for fire abatement this year? No, that obviously isn't going to happen. Do we want to engage in litigation to clear the property? That would waste time and money without solving the problem; We would still have issues regarding who will clear the lot.

Mr. Gray made a proposal that we organize a group of volunteers to help clear the heaviest burdened properties. We would start with the worst lots and contact the owners requesting permission to clear the lots. Think of what we could do with 6 people with chain saws. Mr. Gray is willing to take the lead on this project. We have the contact information. The owners would need to be notified, give consent, and preferably be present. Mr. Case asked if Mr. Gray wants to notify just the owners or everyone. Mr. Gray would like to notify the owners. He said you can't plan for 50 trees dying. We can assist our neighbors with cleaning up their properties.

Mr. Leichtner asked if we would coordinate with the fire department to identify the properties that pose the most urgent fire risks. Mr. Gray agreed that would be the best approach. Mr. Leichtner also asked about safety measures, since these are volunteers. The Board can help organize the project. The concern isn't an official function of the Board, but it is a terrific idea. To avoid any misunderstanding, and to keep the project aligned with member needs, it was suggested that Mr. Gray create a short written description of what he wants to do and why it is beneficial to the community and the property owner, and the Board can contact the property owner to get consent. Mr. Case asked that all volunteers sign a waiver for liability. The waiver will say volunteers will hold the Board and the home owner harmless. Mr. Gray added a comment. We all need to get together on fire abatement.

Ms. Graham discussed the Municipal Advisory Council headed by Sonoma County Supervisor Lynda Hopkins (District 5) which is made up of community members from all around the area. The Timber Cove area is represented by representatives Scott Farmer and Annie Creswell. The Council hasn't commenced operations yet, but Lynda Hopkins is very passionate about getting community feedback. This will be rolling next year. Ms. Grahame and Mr. Parmer attended a meeting with the Board of Supervisors to discuss TOT (Transient Occupancy Tax). Every hotel must charge TOT which totals 14.2% of the room charge. The tax goes to the state general fund and is divided equally amongst the districts. Fire maintenance is another important issue. Ms. Grahame called out the issue of the number dead oak trees and the cost of removing them from properties. Ms. Hopkins is very supportive and wants to

listen. Timber Cove's voice is being heard at the county level. Mr. Case asked Margaret to keep the Board up to date with the information discussed and thanked her

President's Report – Ron Case

Ms. Culcasi asked if there should be Board action regarding Mr. Gray's public comment. Mr. Case said no, not at this time. Mr. Gray will coordinate with the Fire Department and gather volunteers. He said after the rain starts is a good time to clear the lots. Mr. Leichtner added that this project is to down and clear dead trees, not to completely clear the lots. This step will lessen the fire danger, but the lot owner must complete more manageable clean up and maintain the lot.

Mr. Case reported that the Board discussed legal issues during the closed executive session

Office Communications – Melany Collett

Ms. Collett noted there are two lots in escrow. There are many lots for sale. The collection of the special assessment has been the focus at this time. Ms. Collett sent out 50 emails and 3 surface letters regarding the special assessment. We are down to 42 members who have not paid. Ms. Collett received 7 emails requesting deferred payment plans.

Business Items

Treasurer's Report - John Gray

The Treasurer's Report is posted on our website, timbercovehomes.org. Please refer to the report for highlights and details.

Prior to presenting the Treasurer's Report, Mr. Gray showed pictures of the condition of Lee Drive. The pictures showed the numerous pot holes from 4 to 6 inches deep. Lee Drive is the worst road in the community and requires urgent repairs.

Mr. Gray presented the November Treasurer's Report

Upon motion duly made and seconded, the payment of bills for normal business expenditures was approved 6-0.

Upon motion duly made and seconded, the payment (\$2,500) for repairs of Lee Drive was approved 4 with 2 abstaining. Ms. Grahame and Mr. Gray reside on Lee Drive thus they both abstained.

Mr. Wells asked to see the statement for the repairs to the mailboxes. Mr. Gray reminded Mr. Wells that he voted to approve the spend for the turnout and the cost was not simply materials, but also included the cost of labor. Mr. Wells said that he would still like to review the invoice.

A member asked about the insurance coverage counsel and the purpose and expense of her services. The Board retained an attorney who is an insurance coverage specialist, to attempt to reverse the denial of coverage by all our insurers for the McKay lawsuit. This attorney is a specialist. Her fees are

expensive, but her efforts have yielded excellent results. Mr. Leichtner said if it costs us \$25,000 for the coverage counsel successfully to persuade insurers to defend the association and thereby save us as much as \$150,000-\$200,000 if the McKay Lawsuit goes all the way to trial, it is an effort that is well worth the investment. The insurance counsel ensures the insurance company pays appropriately and is also seeking to obtain at least partial reimbursement of out of pocket legal defense costs the Association was forced to pay prior to the reversal of the denial of coverage. If the lawsuit goes to a jury trial, the jury will determine the damages paid, if any. Although the insurance will cover our attorney fees, it may not cover all damages awarded against us---that is controlled by the coverage provisions of our policies. For example, insurance generally will not pay punitive damages, which have been claimed by McKay. A portion of the special assessment was applied to hire our insurance coverage counsel.

A few members have been using social media to encourage members not to pay the special assessment. This is bad advice, and includes ridiculous falsehoods implying that the Board is somehow working with Ms. McKay. The funds were needed to pay the legal fees required to defend the lawsuit. If those members don't pay their fair share, they will be ripping off their neighbors while benefitting from the legal defense their neighbors have paid for.

Mr. Gray spoke about the high cost of insurance due to the TCHA problematic record over recent years. This is result of the litigation, potential litigation, threatened claims, and prior history of non-renewals or cancelations. Mr. Case said that every time TCHA receives a message threatening a claim or lawsuit, it adversely impacts our insurance costs and insurability. We need to inform the insurance company every time we are served with a lawsuit or receive a communication threatening a claim. There is a price to the entire community for the repeated threats of litigation some members repeatedly resort to. Ms. Grahame asked about the pending Labor Complaint regarding Retaliation and if it impacts worker's compensation. Mr. Gray said it does not have an impact.

Mr. Gray stated TCHA needs to set money aside to cover threats of litigations and the current lawsuit filed by Hannah Clayborn.

We need to budget \$35,000 for roads, but do not have the available funds right now. We may need to have the membership vote on how and when we raised these funds. If we do not maintain the roads on an annual basis, it will cost much more in the future.

A discussion occurred regarding the cost of insurance. Mr. Leichtner said the TCHA must have insurance in order to operate responsibly and protect our directors, officers, employees and members. The Board would resign if there was no insurance since they would be unprotected from liability claims, which are obviously a serious concern in our polarized and litigious community. Additionally, with required levels of insurance, under California law a judgment against the HOA might be limited to the insurance coverage. Without insurance, there is no maximum regarding the judgment amount. Each property might be assessed a percentage of the cost of the judgment by the Court.

We will need to put information out to the membership to increase the dues. There must be a vote by the community to increase the dues by more than 20% in one year. The current dues do not cover all expenses we have incurred. Some members support a proposal to dissolve the HOA. This may or may

not happen. We don't know at this point. In the meantime, we need to continue running the HOA as best as we can. Mr. Gray is open to suggestions and comments.

Ms. Grahame asked for 3 years of expenses for the HOA to be available on the TCHA website (timbercovehomes.org). Mr. Gray responded that the information (reviews and audit) is already available on the website.

Ms. Grahame asked when can TCHA members vote on the increase in dues. Mr. Gray said the vote must be by February 2019 prior to statements for TCHA dues. Mr. Leichtner added we would need to call for a special meeting of the membership to approve any dues increase over 20%. Mr. Case explained that we could schedule a Town Hall to discuss the dues increase and the background. Mr. Gray doesn't want to put this issue to the vote of the membership until he knows the cost of the new insurance coverage. Mr. Gray said his job is to communicate the financial realities, not decide if the dues increase is needed.

A member asked if the Tom Giacinto lawsuit threat resulted in the possible \$35,000 insurance premium increase. Mr. Leichtner said no, at least not directly, nor fully; however, our history of reported claims does increase our costs to some degree. There were various issues that resulted in the increase and the loss of the recent insurance. No insurer wants to write a policy for an organization that is likely to generate litigation that will cost many times the premium paid. The truth in Timber Cove anonymous email is probably the major reason our insurance is going up. Truth in Timber Cove provoked the McKay Lawsuit and gave Ms. McKay the details to sue. It violated the law and is the source of our financial and reputational problems.

Mr. Wells said there is no potential limit to the law suits that can be brought against us. Mr. Leichter said if we can't get insurance, there is no way we can safely and responsibly operate the HOA. We might need to suspend all activities of the association. A corporation can suspend its operations. If TCHA can't operate with insurance, the Board will do all we can to protect the membership against future problems. If the Association falls into a chronic, continuing shortfall of funds needed for essential operations, bankruptcy may be an option. But bankruptcy is a costly legal procedure requiring an attorney. A vote of the membership would most likely be required.

Legal Update - Bob Leichtner

A status conference was scheduled with the judge and all parties of the McKay lawsuit this past Thursday. Mr. Leichtner and Mr. Gray showed up, however the judge postponed the meeting until next February because new defendants had been added and the parties were not ready to proceed. We do have insurance now and it is paying our legal fees. When Ms. McKay added the new defendants to the lawsuit, we informed the insurance of the change and the prior Directors are now covered by TCHA insurance. Again, the reason TCHA and the prior Directors are covered is because we paid a special attorney to obtain the coverage that was denied previously. The Board levied the special assessment and was able to reverse the prior denial because they were able to pay for the attorney. Some of the prior directors and their friends complaining about the special assessment should be thankful since that is the reason their legal costs are now covered. Two of our previous insurance

companies are splitting the legal costs. The insurers declined to defend Hannah Clayborn. She is suing TCHA to cover her attorney's fees and any damages she is found liable for in the McKay Lawsuit.

Separate from the lawsuit, there is also an investigation under way by the State Labor Department, regarding a claim made by McKay alleging various instances of retaliation against her. The Labor Department could charge the HOA penalties up to \$10,000 per incident they prove against TCHA. If the Labor Department issues a determination in McKay's favor, and TCHA doesn't negotiate settlement of that award with McKay, the Labor Department may use their attorneys to sue the HOA to enforce their ruling.

We have repeatedly asked members not to comment on currently pending litigation in social media. Unfortunately, there continue to be postings in social media claiming the McKay lawsuit is frivolous. These postings are uninformed, misleading and foolish. There is no question that Ms. McKay's private email account was penetrated after she left her job at TCHA. The evidence has been spread across the community. There are state and federal laws with big penalties for violating electronic data. Ms. McKay's claim is real. One of the fundamental misleading statements asserts that Ms. McKay left her emails open on the HOA computer she used. That is false. Her private Gmail password was somehow found on the computer and used to repeatedly access her Gmail account with Google, without her knowledge or consent. Her laptop was not left open in the office for everyone to see. Her emails were downloaded without her consent and disseminated to the community by Truth in Timber Cove. Some of the stolen emails are dated in July 2017, AFTER she had returned the laptop. That obviously means she could not leave her emails on the laptop in July since she did not have possession of the TCHA laptop at that time. Please stop stirring the pot regarding the McKay litigation by ignorantly and recklessly mouthing off; you risk interfering with defense of the Association and the prior Directors

Mr. Gray spoke to the comment, that because "a majority of the current Board members were named in the anonymous email accusations from October 2017", it poses a real conflict of interest and they should step down. That statement is a lie, plain and simple. Mr. Gray is tired of all the innuendos and BS. If you want to make an accusation of wrong doing, come to me and show me actual evidence. There isn't any.

Next meeting is January 19, 2019. There will not be a December meeting.

Upon motion duly made, the meeting was adjourned at 12:22 p.m.

Respectfully submitted,
Cindy Culcasi
Secretary

