

**Minutes of the Regular Meeting of the Board of Directors
Timber Cove Homes Association
October 20, 2018 at the Fort Ross School**

A regular meeting of the TCHA Board of Directors was held on Saturday, October 20, 2018 at 10:00 a.m. at the Fort Ross School.

Attendees:

Directors:

Ron Case, President

Russell Wells, Vice President

John Gray, Treasurer

Bob Leichtner

Margaret Grahame

Absent:

Rosemary Gorz

Cindy Culcasi

A telephone conference call connection was effective, permitting remote member participation.

The sign-in sheet for onsite attendees is attached.

In the Secretary's absence, Mr. Leichtner agreed to keep the minutes for this meeting.

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 5-0.

Approval of Minutes of the September 15, 2018 Meeting

The Minutes of the regular board meeting held September 15, 2018 were approved 5-0.

Public Comment

A member informed the meeting that she and two other members had recently been sued in a quiet title action claiming that pedestrian and equestrian easements exist on their lots which entitle property owners within Unit 2 to use those alleged easements without limitation. The plaintiffs are several individual property owners. The member further explained that her property rights had been under hostile attack by local "trail advocates", including the plaintiffs for several years, costing her considerable expense to defend her property rights and causing her great distress. She felt it was extremely unfair to be continuously under attack simply for wishing to use her own parcel in peace. She asked for support from the community.

A discussion including members of the Board and members in attendance ensued.

The claimed easements were granted to Sonoma County by irrevocable dedication on the Subdivision Map for Unit 2 dated March 1965, but expressly rejected by the County on that same Map, as filed in March 1965. The Map does not contain any language granting the easements to any private property owners.

The claimed easement across the member's property was the subject of a Petition by the member to Vacate any residual County rights across her property in 2016. After voluminous documentation by all interested parties, in a public hearing the County Board of Supervisors unanimously agreed to vacate any public rights to the claimed easements. In connection with that hearing, the County Planning department, and the County Counsel, both issued opinions stating that, aside from the irrevocable dedication to the County that was being vacated, they were not aware of any grant of easement rights to private parties.

No other legal documents granting those easements to property owners within Unit 2, nor to the Association, have come to the TCHA Board's attention, and no new legal documentation has been provided with the new Complaint. The Board conducted a thorough study of the relevant governing documents and legal opinions submitted in support of the trail advocates' claims before the County; we also conferred with our insurers, because of the liability exposures involved. We issued a detailed memorandum of our analysis and findings early in 2018. We concluded there was no evidence of any grant of pedestrian or equestrian easement rights to the Association, and that we therefore had neither rights nor obligations to enforce or maintain the claimed easements.

The Board is not a party to the newly filed lawsuit. It was noted, however, that the complaint includes 500 fictional defendants who could be named subsequently. In addition to the members who are currently named as defendants, approximately 50 parcels within the community are traversed by the pedestrian easements shown on the 1965 Unit 2 Map that were granted to, and rejected by, the County.

A comment was made that the proliferation of litigation, and threats of litigation, is adversely impacting the community's reputation and property values.

No other public comments were made.

President's Report

Mr. Case reported that a closed meeting of the Board in executive session was held immediately prior to this meeting. It addressed the pending McKay lawsuit and related issues.

Architectural Review

The Board discussed a submittal by Eric Tamm for approval of a small pump house structure on his property. He had submitted documentation for his project and obtained approval from neighbors affected for his screening efforts. The structure has already been built, so this review is in the nature of a retrospective "ratification", rather than approval for a proposal for a future project. That said, the Board voted 5-0 to approve the pump house project.

Mr. Case updated the Board on other architectural review activity. He noted a member had inquired whether the CCRs permitted Modular Homes. Mr. Case opined that there was no specific exclusion, but

that review would depend on the quality of the Modular Home design and materials, and compliance with the Architectural guidelines within the CCRs, on a case-by-case basis. No specific proposal has yet been submitted, so there is nothing at present to review.

Office Communications

The Office Manager, Ms. Collett, was not present; no report was made.

Treasurer's Report

Mr. Gray offered the Treasurer's report with a power point presentation. The file will be posted with the minutes on the Association Website.

Mr. Gray reviewed the current balances in the Association's bank accounts, funds received and expenditures. Payments received for the Special Assessment now exceed \$80,000 and have been allocated to replenish the Road Reserve and fund defense of the McKay lawsuit. Mr. Gray reviewed the standard collection process for fees and assessments, noting that after repeated payment reminders, delinquent accounts will be referred to our Collection Agency, as described in our standard procedures. Upon referral for collection actions an additional fee of \$534 attaches. Further remedies can include filing a lien on the property, and eventually, the possibility of recovery by TCHA of amounts owed by a foreclosure sale. He noted that for the Special Assessment, the Board has established a process to review hardship requests on a case-by-case basis for an adjusted installment payment schedule to extend the payment period for the special assessment by mutual agreement.

The Board discussed two proposals regarding road maintenance and repair. Mr. Gray noted that no significant regular road maintenance, other than sweeping, had been done since 2015.

On motion duly made and seconded, the Board approved \$3500 for rock to be applied to the new mail box turn out, 5-0.

On motion duly made and seconded, the Board approved the purchase of a road repair kit which can be used for repairs on Umland, 5-0. [dollar value???

An estimate will be obtained for needed repairs on the southern portion of Lee Drive.

Mr. Gray also discussed legal expenses related to the McKay litigation. He noted the reversal of prior denial of defense by the insurers and appointment of new defense counsel, paid by the insurers, to defend the HOA through trial, if necessary. That was a welcome, very important achievement. We are working with the same insurance coverage attorney now to attempt to recover at least a portion of the amounts already paid for defense counsel by the Association resulting from the prior denial of coverage by the insurers.

Mr. Leichtner commented on a message received by the Board from a member falsely accusing the Board of failing to heed advice of prior counsel that McKay's claim should not require significant defense efforts. That statement is untrue, none of the three legal defense firms we have used since the McKay lawsuit was filed suggested the case could be quickly and easily disposed of; quite the contrary. Also, the advice of our attorneys is privileged and confidential. If any director, past or present, is improperly disclosing confidential attorney advice, that would be a serious violation of our bylaws, of fiduciary duties, and could harm all members by undermining the fundamental principle of confidentiality of all attorney-board communications. That same member chastised the Board for failing to provide a

defense for the prior directors. That accusation is also completely false. Because our attorney succeeded in persuading the insurers to defend the Association, they have also agreed to defend the prior directors, for actions within their authority as directors. So the prior directors' defense is being provided by our insurers, and they are not out of pocket. That benefit, won by our attorneys, was achieved courtesy of the special assessment to fund attorney efforts in the McKay litigation.

Mr. Gray emphasized advice received from our insurance broker, Kevin Sullivan who is currently seeking to procure new insurance for the Association since our current insurer has announced its intention not to renew our policies when they expire in late December, 2018 on account of excessive claims activity. Mr. Sullivan warned all members to be careful about making threats to sue the Board or the Association. The Board is required to report those threats under our policy as "circumstances that might result in a claim", or they may not be covered if they later materialize because we failed to notify the insurer. An example is a recent written threat received from a member cursing the board and promising to sue us all "back to the stone age" if we attempted to collect the Special Assessment. Mr. Sullivan said the only prudent course for the Board, even if we suspect the threat is just a tantrum, is to make the incident report, "just in case". The downside is that such threats can lead to increased premiums or non-renewals, since they make TCHA look like a more risky client. They can also complicate new insurance applications. A member urged the Board to warn the entire membership of the adverse consequences of making threats of litigation on the future cost and availability of essential insurance for TCHA.

Legal Update

Mr. Leichtner informed the meeting about recent developments in the McKay lawsuit. He and Mr. Gray have met with our new insurance-appointed defense counsel, John Fitzgerald, of the Freeman, Mathis firm in San Francisco. Files have been transferred from our prior lawyer, Greg Spaulding, and Mr. Fitzgerald is getting up to speed.

As noted earlier, the insurers have appointed separate counsel to defend the prior directors who were named as individual defendants. They have not appointed counsel for Hannah Clayborn, since she was not a director, and the records indicate that any actions she performed which McKay complains of were done in the capacity of independent contractor, not employee, and therefore not covered by our insurance.

Ms. Clayborn has recently filed a cross complaint for indemnity against TCHA in the McKay lawsuit.

As previously discussed, separate from her lawsuit, Ms. McKay also filed a complaint with the State Labor Commissioner against TCHA for retaliation and other wrongs allegedly committed against her during her employment by the prior board. Confidential interviews of witnesses are now underway by a State investigator. When their investigation is complete, they will announce their determination whether TCHA has any liability to Ms. McKay, and, if so, proposed remedies, if any. If the Commission finds TCHA liable, we will have a limited period to attempt to settle or pay and award required. If TCHA does not comply, the Labor Commission will file a lawsuit against the Association to enforce their decision. Obviously, we are hoping they reject McKay's claims. We have not retained legal counsel for this matter yet. For one thing, we have no funds available to pay for yet another defense lawyer, and we do not feel a further assessment is yet justified. We have minimal information about McKay's claims or the investigation, which is being handled by the Commission on a confidential basis; it is possible TCHA will be found blameless. Therefore we think it reasonable to await the Commissioner's determination to learn what, if any, liability TCHA may face, and what the basis is. At that time, if we are

faced with a new potential lawsuit by the Commission, we may be compelled to retain counsel, and to raise funds either to try to negotiate a settlement, or contest an adverse damage award in court.

The Survey Results Regarding the Proposal to Dissolve and Replace the Association with a Road Maintenance Agreement

Mr. Case stated the Board had received a summary report of the survey results. Approximately 115 survey replies were submitted, an unexpectedly high rate of response. The overwhelming majority (roughly 90%) of respondents favored dissolving the Association and CCRs. Of that group, a majority expressed interest in a road maintenance agreement. Most respondents identified themselves and did not request anonymity. The Proponents of the Survey are preparing a detailed report. They stressed that the purpose of the survey was to invite member input, and that aside from the basic choices expressed, many respondents included comments that are relevant and important in assessing their preferences and planning next steps. The detailed report will include member comments.

A member asked what it would cost to carry out the dissolution; would it track the Unit 1 dissolution? Mr. Leichtner speculated that dissolution of Unit 2 would probably be more complicated and costly than Unit 1, because Unit 1 only involved annulment of their CCRs---it did not affect the legal existence, rights and obligations of the Association, which is a formal, non-profit corporation. Winding down all the affairs of the corporation and dissolving it, would be required, in addition to annulling the CCRs. We would require substantial legal assistance to carry out the process to its conclusion.

It was resolved, 5-0, that upon receiving the detailed report of the Survey results and comments, the Board will communicate those results to the full membership via a newsletter and discuss what steps are next appropriate.

Adjournment

There being no further business, the meeting was adjourned at 12:24 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Leichtner", with a stylized flourish at the end.

Robert Leichtner, Acting Secretary for this meeting.