

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

Held Saturday, January 21, 2023, at 10:00 AM
Fort Ross School, 30600 Seaview Road, Cazadero
In Person & Zoom

Attendees:

Directors Present

Cindy Culcasi, President
John Gray, Treasurer
Bob Leichtner, Secretary
Ron Case
Rosemary Gorz
Richard Mogford

Melany Collett, Office Manager

Call to Order

Cindy Culcasi called the meeting to order at 10:07 a.m.

Per Davis Stirling, the meeting is recorded to assist the Secretary with the minutes. The recording will be deleted once the minutes are approved.

Review and Approval of the Agenda

Upon motion duly made and seconded, the agenda was approved by the Board, 6-0

Review and Approval of Previous Minutes

Upon motion duly made and seconded, minutes of the November 12, 2022, meeting were approved by the Board, 6-0.

Community Update

Cindy Culcasi reported on recent developments.

She noted that for this meeting we were introducing use of the OWL Zoom meeting system to facilitate and enhance the on-line participation experience.

Cindy addressed the recent severe weather emergency, with countless trees toppled, numerous wires downed across roads, and widespread property damage. Contractor Bill Seymour assisted with emergency remediation measures; we appreciate his energetic efforts. Directors Richard Mogford and Keith Thompson carried out a field survey of road conditions to

assist repairs; Cindy expressed the Board's appreciation for their initiative. The mailboxes had been knocked down and the supporting structure was reinforced when the mailboxes were righted.

Cindy offered to look into the availability of FEMA and County financial assistance for storm damage recovery.

Office manager Melany Collett explained that the procedure for obtaining Board approval for tree removal requests had been upgraded to make it easier. See the TCHA website, timbercovehomes.org. Cindy noted that the County is still considering a pending proposal to delegate their tree removal permitting authority within our subdivision to TCHA.

Cindy commented on member complaints of frequent outages in Frontier internet service. It was suggested that contacting Frontier management, and the CPUC. See timbercovehomes.org for contact details under the Contact Us/Urgent Issues page.

Public Comment

No comment was offered.

Continuing Business

1. Treasurer's Report

The Treasurer's Report is posted on the TCHA website timbercovehomes.org

John Gray presented the Report for November and December 2022.

Upon motion duly made and seconded, payment of bills was ratified by a vote of 6—0

December Bills

- Intuit \$250.00
- Frontier \$153.73
- Mail & More \$78.22- Mail fees
- Carbonite \$287.99- Annual Backup fee
- Cindy Culcasi \$1,117.95- Reimbursements for Owl
- Payroll \$3,174.09
- Vacation Payout \$1,686.43
- Total \$6,748.41

Upon motion duly made and seconded, the Board approved payment of November bills, 6-0.

November Bills

- Frontier \$149.61
- Intuit \$250.00 (cloud services)
- Timber Cove Excavating \$2,700.00 – Road sweep.
- Payroll \$3,942.80
- State Farm Insurance \$1,874.00- Annual premium
- Pauline Rafael \$256.73- Reimbursement for water used by contractor on road repair (TCHA responsibility)
- Zoom \$74.95
- HOA Elects \$792.05– This additional expense was due to lack of quorum and reconvene costs
- Caufield Law firm \$5,130.00
- Walls Law \$1,920.00
- Cindy Culcasi \$227.24 – Reimbursement for road signs
- Staples \$147.11- Copies and Ink
- EDD \$694.27
- Total \$18,158.76

Mr. Gray reported that the annual financial review and preparation of tax filings was proceeding.

Upon motion duly made and seconded, banking resolutions required by our bank, Redwood Credit Union, to update the TCHA bank account and appoint new check signers were approved by the Board, 6-0.

Resignations of Directors and appointments of interim successors. (Shifted from New Business on the Agenda)

a. Resignation of John Gray.

Mr. Gray announced that he was resigning from the Board, and from his position as Treasurer of the Association, as of the conclusion of this meeting. He had previously advised the President of his plans and had recommended that Joe Bettencourt be appointed Director to serve until the next Board elections, and that Joe assume the duties of Treasurer. Mr. Bettencourt had been a director candidate during the last Board elections.

Upon motion duly made and seconded, the Board appointed Joe Bettencourt director to serve until the Annual Meeting when the next Board elections will be held, and also to serve as Treasurer, by a vote of 6-0. Mr. Bettencourt expressed his appreciation and accepted the appointment to serve as Treasurer.

b. Resignation of Ron Case

Mr. Case announced that he was resigning from the Board and from the Architectural Design Review Committee as of the conclusion of this meeting. He had previously advised the President of his plans; Cindy recommended to the Board appointment of Keith Thompson to serve as Director to fill the vacancy.

Upon motion duly made and seconded, the Board voted, 6-0, to appoint Keith Thompson to serve as director.

c. Resignation of Margaret Grahame. Cindy informed the Board that she had very recently received a message that Margaret was resigning as Director. The Board was not prepared to consider appointment of a replacement for Margaret at this time and would consider recommendations at the next meeting. Cindy invited interested parties to contact her or Melany.

2. Legal Update

Speaking for the Legal Committee, Bob Leichtner presented a report on the conclusion of the Board's ongoing review of the disputed pedestrian easement issues, including the Ruling and Judgment in the Sonoma County trial issued in May 2022. [Note: The Board was informed after the meeting that the remote Zoom connection failed while this report was being presented, due to internet connection problems at the school. Accordingly, we are here presenting a more detailed summary, prepared from the notes Mr. Leichtner spoke from at the meeting.]

Over the past several years, the Legal Committee of the TCHA Board has carefully examined claims of private pedestrian easement rights within Unit Two, reviewing Timber Cove governance documents, original sales brochures, legal and insurer advice, Sonoma County records, and relevant legal caselaw. That review confirmed the validity of the 2015 legal opinion of Association Legal Counsel Barbara Zimmerman that the pedestrian and equestrian easements shown on the 1965 Unit Two Subdivision Map had been created and expressly dedicated to Sonoma County by the subdividers solely for public access, and that no private easement rights were created or described. In 2018 and 2019, the Board published analytical reports, explaining how their research findings supported Ms. Zimmerman's conclusions.

However, more recently, in 2022, a trial was held between opposing property owners regarding a dispute over claimed private easement rights in our subdivision involving one property. The judge resolved the specific dispute between the parties in the lawsuit, but he left many broader questions about the easement rights unanswered.

The judge made the following rulings in the pedestrian easement lawsuit:

He declared that the 1965 subdivision map created six miles of private pedestrian easement rights **by implication**, which rights belonged directly to the owners of lots in Unit Two.

He stated that the easement rights were not unlimited and must also take into account protection of the privacy rights of the owners of a lot burdened by such easements.

Therefore, in the specific case before him, he stated that fairness required that the easement route be relocated to a boundary of defendants' lot, to avoid intrusion upon the privacy of the planned homesite and garden; he was prepared to order injunctive relief to assure that relocation. The injunction was not required because the parties entered into a settlement agreement relocating the easement route on that property which was approved by the judge.

The judgment's legal affect on non-parties is unclear. In an earlier ruling in that case, the Court stated that any judgment issued would only be binding on the named parties actually before the Court. Thus, the judge's ruling and the approved settlement resolved only the disputes about pedestrian easement claims affecting the Vernon/Rea property; no other parties, no other properties and no other issues were before the court. TCHA was not a named party in the litigation. Therefore, many questions of community interest remained unresolved.

It is also important to recognize important issues the judge's ruling did NOT address. Because the judge declared the private pedestrian easement rights arise **by implication** from the map, that means there is no document actually describing the rights or obligations of users. The judge's opinion did not offer any further guidance; his opinion is silent about maintenance, security, safety, fire abatement, liability, and insurance. Those important concerns were not raised or addressed in the trial or the judgment.

How the judge's ruling affects the Association:

Because of the questions left unresolved by the Court's decision, especially regarding rights or obligations of our Association, as well as questions or concerns raised to us by our members, the Board felt it advisable to obtain expert, independent advice from real estate counsel. The Legal Committee consulted with the nationally recognized California real estate law firm, Miller Starr Regalia, as well as with our insurers and insurance counsel, to help clarify the Judge's ruling and how it might impact the Association, if at all. Based on our recent consultations, as well as input from insurers and other authorities, the Legal Committee has reached the following findings and conclusions, which the Board has adopted.

1. The Association was not named a party to the recent lawsuit and is therefore not bound by the judge's ruling. At the trial, members of the TCHA Board were called by Defendants' counsel as witnesses to testify about the impact of Unit Two governance documents on the easement question, and present other pertinent evidence, but Plaintiff's lawyer blocked their testimony. Therefore, the judge never considered the Association's evidence or interpretation of relevant legal authority or its concerns about community impacts in reaching his decision. The Board's views and research were never heard or addressed. We believe that failure to consider the Board's research, findings and concerns, , undermines the validity of the Court's ruling.

Nonetheless, the Board has no intention to initiate any action to challenge or interfere with Court's declaration in any way. In effect, the Court reached the same conclusion we did, via differing logic: neither the map, nor any other document, grants the Association rights over the private pedestrian easements on the map. To explain further:

2. According to the judge's ruling, the private pedestrian and equestrian easement rights are derived directly from the recorded 1965 Unit Two Subdivision Map. They belong to each current individual Unit Two property owner, who bought a lot shown on that map. The Association owns no property in Unit

Two. Therefore, the Association neither owns nor controls the easements. It has no obligations or authority to manage their use. The judge's ruling has the effect of taking the Association totally out of the pedestrian easement picture. The only way to challenge that would require more expensive litigation, which we absolutely do not wish to pursue and which would require membership funding approval that is extremely unlikely.

3. Since the Association does not control the right to use pedestrian easements, holding a vote for or against the easements as some have suggested would have no legal effect whatsoever, regardless of outcome. Such a vote would merely waste member funds and would needlessly exacerbate divisions and acrimony in the community and would resolve nothing. The Board sees no value in that.

Similarly, we note that the "trails website" or any organized group of trail advocates **also** have no special powers or authority over the easements based on the judge's ruling. Trails advocates who own lots in Unit Two have exactly the same rights in the easements as every other owner of property shown on the Unit Two Map, no more, no less. Each owner has direct limited rights of access to easements which are implied directly from the subdivision Map; no other owner or group has power to dictate otherwise.

4. Reinforcing the absence of any power of the Association to involve itself further in pedestrian easement issues, the CCRs, Articles of Incorporation and the Bylaws do not authorize use of member funds for the pedestrian easements.

Clause XI of the CCRs (Upkeep) enumerates the authorized uses of member funds. No mention is made of pedestrian and equestrian easements. The Bylaws approved by an overwhelming membership vote in 2019 do not authorize expenditures for easements. Taking on responsibilities to develop, maintain, oversee, police and insure six miles of easements, with the cost and liability involved, would constitute a major expansion of Association burdens, liabilities and financial obligations far beyond the authorized uses of member fees. The CCRs would require amendment by supermajority vote to permit that.

5. Liability concerns:

Our previous insurers and legal counsel have all highlighted serious potential liability exposures arising from the risk of severe injury to persons using the easements which cross miles of unimproved, rugged, treacherous, densely forested terrain. The trial judge, a seasoned hiker, personally inspected the easement routes during the trial, and commented on the challenging conditions he encountered in his opinion: "Many of the easements traverse steep terrain, littered with fallen branches and trees."

Our insurers have warned us to make clear the Association does not own, control or maintain the easements in order to mitigate any risk of claims against the Association. The Board takes those warnings very seriously. That includes using authority granted in the CCRs if needed to prevent installation of signage that could create a misleading impression that the pedestrian easements belong to or are maintained by TCHA. Pursuant to the CCRs, no signage may be posted relating to the pedestrian easements without prior approval of the Board. Any signs that state or imply ownership, management or maintenance of the easements by the Association are misleading and unacceptable and will be removed.

In a related vein, The Association will continue to enforce basic generally applicable binding restrictions set forth in the CCRs which require prior approval of the Association for removal of trees or for construction of man-made structures on properties within the subdivision.

6. At our meeting, attendees raised questions about the legal consequences, including liability and insurance, for individual property owners of lots in Unit Two resulting from the judge's decision. As explained above, those questions do not involve or relate to the Association, and our lawyers therefore did not provide guidance, nor can we. We do note that trail advocate communications have pointed to two statutes which they claim apply to these issues; the Board does not agree with their interpretations. California Civil Code 845 addresses the responsibility and costs of maintaining easements generally. It appears to state that the owners of the easement rights (the users) are responsible to maintain the easements, and that costs for such activities should be allocated in proportion to how much each owner uses them. Perhaps liability for injury claims arising from easement use would follow the same principle? We don't know, that is nothing more than speculation. CC. 846 creates a limited liability exemption for landowners who allow **public** access on their lots for certain recreational uses. It does not protect an owner from being sued, and since the entire legislative purpose is to provide a benefit to the public, it is questionable whether the exemption applies to a limited number of **private** users of **private** easement routes. Again, this is beyond the authority or advice of the Association or its counsel. If you have questions about your rights or obligations regarding pedestrian easements, it's best to contact your own lawyer.

7. Regardless of the legal questions, as a practical matter of community wellbeing, the Board continues to believe that these pedestrian easements represent more detriments than benefits to the community, since they raise concerns of invasion of privacy, nuisance, endangerment of personal and property security, increased fire risk, and increased liability exposure. They were never developed by the subdividers and they are not needed to enjoy our private home sites. In any case, please remember to be thoughtful neighbors. Use of easements across private homesites in our residential subdivision can adversely impact residents' privacy, security, and peace of mind, if not handled with good sense, kindness and due care. We urge our residents to keep in mind what it means to be a good neighbor, and to avoid walking across neighbors' lots without the consent of affected property owners.

3. Architectural

a. Approval of Plans.

New home at 22083 Lee Drive

The Architectural Committee reported that design information for the proposed new home construction had been submitted and reviewed, no variance was requested, and no significant problems were identified. Clarification was pending regarding color samples for siding and roofing, which was being processed. Board approval was therefore recommended, pending that final clarification.

Accordingly, upon motion duly made and seconded, the plans for a new home at 22083 Lee Drive were approved by the Board, 6-0, conditioned on receipt of approved samples as mentioned.

b. Architectural Approval Guidelines Update

Bob Leichtner is working on amended guidelines for the plan approval process which haven't been updated in nearly a decade, with a goal of clarifying the requirements and the approval

process to update, streamline and clarify where possible. He will obtain input from Ron Case based on his experience working with the guidelines over many years, and then review any proposed revisions with Chris Feddersohn before presenting a draft for Board review by Spring 2023. He anticipates the Board will provide opportunity for public comment before approving new guidelines.

4. Roads Update

Cindy Culcasi reported that new “No Outlet” road signage was being procured for cul de sacs, to avoid problems with unfamiliar drivers. This was approved at the last meeting.

Roads Committee members Richard and Keith completed a post-storm damage survey and found significant deterioration on a portion of Lee Drive which will require prompt repair.

Cindy suggested exploring a multi-year contract for road maintenance. Bill Seymour has been doing work as needed recently. Bids could be solicited from Bill and other interested contractors. The Roads Committee can assist.

5. CCR Violation Process Update

Cindy provided a report on compliance progress. Most members have been cooperating. We are referring non-compliance problems to our attorney, Peter Walls, for enforcement action as needed.

Cindy commented that the CCR Compliance Advisory Committee has completed its key function in establishing the process and getting it underway. She recommends that the Committee framework is no longer essential and that the remaining duties can efficiently be performed by Cindy, with Melany’s assistance. The Board concurred that it was not necessary to appoint new committee members at this time.

6. Coastal Municipal Advisory Council (“MAC”) Update

Cindy Culcasi who also serves as Secretary of the MAC reported on recent issues discussed, including plans to install lane divider rumble stripping down the center of Highway One from Jenner to Gualala for safety.

7. New Business

1. **Assessment of Fines:** Cindy reported that the Legal Committee was working with Attorney Peter Walls to develop a schedule of fines for violations. When ready, it will be introduced to the membership and a full membership approval vote will be required.
2. **Certification of TCHA Bylaws:** We have been advised by counsel that we need to obtain formal certification of our Bylaws. We will do so.
3. **Director resignations and appointments** (addressed earlier; see above)

4. Appointment of Committees

a. **Roads Committee.** Upon motion duly made and seconded, the Roads Committee was reauthorized, and Keith Thompson and Richard Mogford were appointed members, by a vote of 6-0.

b. **Architectural Committee.** Upon motion duly made and seconded, the Architectural Committee was reauthorized, and Chris Feddersohn and Joe Bettencourt were appointed members, by a vote of 6-0.

c. **Legal Committee.** Upon motion duly made and seconded, Cindy Culcasi and Bob Leichtner were reappointed to the Legal Committee, a standing committee, by a vote of 6-0.

8. Adjournment.

There being no further business, the meeting was adjourned by a vote of 6-0. The next regular meeting will be held March 11, 2023.

Respectfully submitted,



Bob Leichtner, Secretary

Participants:

In Person:

1. Linda Saldana
2. Tom Screnci
3. Anne Vernon
4. John Rea
5. John Duarte
6. Pam Duarte
7. Chris Feddersohn
8. Diane Feddersohn
9. Jianna Satore
10. Carolyn Abst
11. Melany Collett

Via Zoom:

12. John Howland
13. Susan Williamson
14. John Rosson
15. Lisa Klerman
16. Susan Williamson
17. Alex Kramer
18. David Levine