

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

Held Saturday, February 8, 2020 at 10:00 a.m.
At the Fort Ross School

Attendees:

Directors Present:

Ron Case, President
Russell Wells, Vice President
John Gray, Treasurer
Cindy Culcasi, Secretary
Bob Leichtner
Margaret Grahame
Rosemary Gorz

Office Manager Melany Collett was absent

We dialed into the conference call connection, but although no one identified themselves, there was no hold music playing so we assume someone was on the line listening to the meeting.

Call to Order

Ron Case called the meeting to order at 10:07 a.m.

Review and Approval of the Agenda

Upon motion duly made and seconded, the Agenda was approved by the Board 7-0.

Review and Approval of Previous Minutes

Upon motion duly made and seconded, the January 11, 2020 General Session Minutes were approved by the Board 7-0.

President's Report – Ron Case

Some outstanding legal issues were discussed in the Executive Session earlier this morning.

Office Manager's Report – Board

The Office Manager was not present and there was no report.

Public Comment

Ron Case discussed the follow up for the return of a \$5,000 performance bond to a member who has almost completed her home. He did some research and found a final from the county is not required. There is a check list that needs to be completed. Mr. Case asked if Melany Collett had given a copy to the member. She had not; therefore Mr. Case will email a copy to the member next week. The previous

owner of the lot signed the performance bond paperwork and the current owner who purchased the lot did not receive a check list.

A member asked about building a fence between their lot and their neighbor's lot. The purpose of the fence is to stop his neighbor from trespassing onto his land. The member had his land surveyed and the existing lot line was confirmed. A stake that was on the lot line has since disappeared. The neighbor still claims even though the lot line was surveyed and confirmed, that a section of his property belongs to her. She claims she was told by her realtor that the lot line the member had surveyed and confirmed to be correct is not correct. The member also used the same realtor to purchase his lot and when he asked about the placement of the lot line, the realtor told him he did not know exactly where it was. This situation has gone on for 3 years. Recently his neighbor parked an RV on a section of his land. The member did discuss the issue with the resident Deputy Sheriff. A Board member suggested possible mediation where the member and his neighbor could meet with a couple of Board members and discuss the matter. Ron Case sent a letter to the neighbor and told her she needs to get her own land survey. The neighbor has chosen not to get a land survey. The Board's power is very limited since this is a private civil matter. It was suggested the member could also screen the boundary with plants. He responded he doesn't have a house on the property and no sprinklers to water. A Board member suggested he plant myrtles now when the soil is wet, and he won't need to water them, and they will grow.

The Board will try to broker an agreement. Ron Case and John Gray have spoken with the neighbor regarding the lot line. The Board will table for now and will discuss during the next meeting. The member said the lot line is recorded with the county. The HOA does not have the authority to make a binding decision on the issue; it can advise and attempt to facilitate a resolution. A Board member asked the member if he has a picture he can leave with the Board for reference. The member agreed to leave the pictures. It was also suggested the member put up no trespassing signs on his property.

A member asked about how remote Association members sign in on the conference line for telephonic participation in the meeting. He asked if there was a record and if the report was documented. Mr. Gray responded it is documented and saved by Ms. Collett.

Business Items

Treasurer's Report – John Gray

Mr. Gray delivered the Treasurer's Report. The PowerPoint presentation of the Report and the Budget Update will be available on the timbercovehomes.org website under Board Meetings.

Highlights:

- Slide 3 - February Report - Checking 20/21 is a new account created for the new fiscal year. It separates last year's funds from the current year.
- Slide 10 - Road Reserves Study - Study was not completed in 2016 per the normal cycle. TCHA needs to get back on cycle. The consultant who performs the study advised John Gray that the study be completed on the same cycle as done in the past. The study must be completed by April 2021. Cost is about \$1,200.00 (\$900.00 for study, approximately \$300.00 for lodging)

January Bills:

- Mann Excavating - \$800.00 (repairs on Lyons Court)
- Timber Cove Excavating - \$2,500.00 (roads sweep)
- Office Depot - \$25.00 (auto pay)
- Chase - (cloud storage, virus protection)
- O'Sullivan Insurance - \$4,495.00
- National Partners Insurance - \$1,211.06
- Walls Law - \$1,170.00
- Frontier - \$246.73
- Payroll - \$3,230.63
- Total - \$14,160.49**

Upon motion duly made and seconded, the Board approved paying the January bills 7-0.

John Gray gave an overview of the budget update. Some highlights:

- Insurance costs were projected to be \$35,000.00, but came in a bit under at \$28,000.00
- Legal was projected at \$35,000.00. Cost to date was \$23,000.
- Roads were projected at \$5,000.00, but we needed to spend \$9,500.00. The additional funding was available as a result of the savings from legal.
- TCHA has taken in \$38,251.00 more than we have spent

The good news is that TCHA expects to have some money left over to pay back the last of the \$5,000.00 previously borrowed from the Roads Reserves and will have a few more dollars to pay towards operations. TCHA is headed in the right direction, but there are some headwinds we need to overcome.

TCHA raised the dues last year. The new budget allocates \$20,000.00 to pay for road maintenance and repairs. John Gray expects the cost of insurance to be slightly reduced next year unless we have new claims against us. He doesn't want to raise the dues. A Roads Reserve Study will be completed by early next year. If the resulting consultant recommendation is to raise the amount of Reserves, that could be an issue.

It was noted that TCHA has had to cope with a shortfall of roughly \$200,000.00 largely because of the consequences of past acts or omissions of prior Boards. Those losses include money spent on pet projects such as claimed trails, failure to timely notify our insurance company of the McKay Claim resulting in the denial of our insurance for legal defense costs TCHA then had to pay itself from member fees. \$38,000 in Road Reserve funds were transferred to Unit 1 after they seceded, which our Reserve expert and auditor criticized as improper, and \$21,125.00 was spent to repair roads in Unit 1, also AFTER secession. Well over \$100,000.00 was spent on legal claims that should have never been necessary if proper insurance notification had been made by that Board. The insurance premiums have also increased significantly from \$5,000.000 to around \$35,000 because of the claims and litigation arising under the prior Board.

An additional problem is the long running historical failure to adjust dues to keep up with inflation. Before last year's increase, dues were not raised for about 10 years. Mr. Gray stated he would rather

not raise the dues again; the Directors agreed. Dues pose a hardship for some members which is of course a significant consideration. The Board might be able to reduce the dues in the future if a recurrence of past excessive costs can be avoided. We must be real about where we are and the essential functions and the cost.

A proposal last spring to raise the dues more than 20% was rejected by a membership vote. Mr. Gray has been and will continue to strive to make the budget work within the current constraints, but we must cope with limited funds. We do have about \$20,000.00 to spend on roads. The Reserve Study of 2018 showed a recommendation of a \$70,000.00 reserve; the short fall was \$70,000 at that time. When we do another reserve study, we may have another short fall, though hopefully much less.

Given this history, a member asked about dissolving the HOA and creating a Roads Agreement. There was further discussion about how this could be done, noting the high percentage vote of the members required under the CCRs to implement such a change. A proposal along the lines suggested was previously initiated by a significant fraction of members, but action was paused to await passage of new, valid Bylaws. Anyone can renew that or another proposal if they choose and present it to the Association members for consideration. The Board can facilitate the discussion regarding creating a Roads Agreement if desired, but their current responsibility is to continue to manage the HOA as it currently is established.

A member asked if anyone is driving around and checking the culverts after a rain since it is expensive when one is damaged by water. John Gray stated he has driven around and checked the culverts after some of the bigger rainstorms.

Legal Report – Legal Committee

John Gray provided an update on recent developments and the current status of the lawsuit. These are the key points:

Recent Developments:

As previously reported, early in 2019, Mr. Fitzgerald, appointed by TCHA insurers to defend the Association, negotiated a settlement of McKay's claims against TCHA. The settlement amount of \$40,000 was entirely funded by our insurers. The case continued against the remaining defendants.

Several months later in 2019, settlement of McKay's claims against the three named directors was settled for an aggregate payment of \$135,000 on their behalf, again fully funded by our insurance. The case continued against defendant Clayborn.

Plaintiff made discovery requests to Clayborn and she was deposed in January 2020. Because of Clayborn's cross complaint against TCHA, two members of the Board's legal committee sat in on that deposition. Clayborn testified about her actions related to McKay's claims, and several documentary exhibits were entered into the record. Some exhibits were especially revealing.

Ms. McKay terminated her employment on June 12, 2017, publicly distributing a resignation letter that accused the prior Directors of malfeasance, and announced she was consulting legal counsel. She returned the office laptop she had been using to telecommute on June 15.

Ms. Clayborn testified that she was asked to assist the Board in a records review project, and that when she logged on to the recently returned laptop, Ms. McKay's private Gmail Account appeared on the screen. Ms. Clayborn viewed correspondence from McKay's Gmail account, and found messages that disturbed her between McKay and Director Russell Wells. On June 19 Ms. Clayborn sent an email to Sue Ellen McCann describing what she had found in Ms. McKay's private account. That email message was produced in discovery and introduced as an exhibit to Clayborn's deposition. It is attached to these minutes as Exhibit A.

Ms. McCann promptly forwarded Ms. Clayborn's message to HOA attorney Martin Hirsch seeking his advice. On June 21, 2017 by email, attorney Hirsch replied, clearly warning McCann and Board President Tim McKusick that Clayborn's invasion of McKay's private email needed to cease immediately because it could subject the Board to liability, and furthermore that they should not even disclose the email intrusion to anyone. Mr. Hirsch's memo to the officers was also introduced as an exhibit at the deposition. It is attached hereto as Exhibit B.

When asked in deposition if anyone told her not to read the emails, she said no. However, on June 22, 2017, an email from Tim McKusick to Clayborn told her that our attorney said to stop reading her emails. It is attached, hereto, as Exhibit C.

Notwithstanding TCHA attorney Hirsch's clear warning on June 21, the email invasion continued; Ms. McKay's private Gmails were repeatedly inspected and downloaded, by Ms. Clayborn and/or others, nearly daily for a three-week period ending July 12, 2017, all without Ms. McKay's knowledge or consent. Over two hundred messages were downloaded. A digital copy of all the downloaded content was provided to HOA Attorney Hirsch.

[It should be noted that the messages inspected and downloaded included very sensitive personal information about relationships, health matters, legal consultation. Contrary to false assertions on social media, it is important to understand that these many messages were not actually stored by Ms. McKay on the laptop when she possessed it. They were obtained by probing all her private Gmail correspondence **online**, covering over six months of correspondence, beginning before she accepted TCHA employment **and extending for nearly 4 weeks after she had resigned and physically returned the computer.**

It is also important to note that McKay has been publicly accused on social media of transferring confidential TCHA records, including personal financial information of members and employees, to others in our community including candidates for the TCHA Board elections that summer.

Contrary to those accusations, no evidence of any such transfer of confidential TCHA records was produced in discovery during the litigation. Attorney Hirsch informed the current Legal Committee that he was never shown, nor did he discover himself, any actual evidence that confidential TCHA

information was wrongly transferred by Ms. McKay, as alleged. Members of the Board Legal Committee were provided a digital copy of the downloaded McKay Gmail correspondence, and reviewed all the messages. They found no evidence of any such transfer of confidential records

Settlement Progress:

Shortly after Ms. Clayborn's deposition, her attorney commenced settlement negotiations with Ms. McKay's counsel. McKay's deposition, which had been scheduled, was canceled. We understand that Ms. Clayborn's insurer has agreed to settle McKay's claims against her for \$75,000.

Clayborn's insurer recently demanded the Association indemnify them for their \$75,000 settlement payment immediately, or they threatened to seek damages from TCHA of \$125,000 at trial of Clayborn's Cross Complaint, which remained pending. The Association's insurers have rejected that demand. Settlement discussions are continuing.

Financial Impacts:

The Legal Committee "guesstimates" the total financial damage incurred because of the wrongful invasion of McKay's private email account to exceed \$500,000. That includes the \$250,000 in settlement payments by the insurers, the \$150,000 in legal defense costs paid by TCHA before the insurers agreed to defend us, and an estimated \$150,000 or more paid to the lawyers retained by the insurers to defend the Association and the three prior director defendants.

The "good news", relatively speaking, is that because the special legal defense assessment enabled us to compel the insurers to reverse course and defend us, the insurers paid the entire settlement amounts for TCHA and the prior directors, and they also covered an estimated \$150,000 in attorney's fees that otherwise would have been the responsibility of Association members. Therefore, we believe the special emergency legal defense assessment protected our members from at least \$2,000 of additional liability cost per lot.

We will provide a further update when Clayborn's Cross Complaint is finally resolved.

Architectural Update - Architectural Oversight Committee

The update will be given under Continuing Business

Roads Update – Roads Committee

John Gray said he would like to go on a drive around the subdivision after the meeting if committee members were able to attend. The members agreed they were available for the drive around the community. The committee will come up with priorities considering the \$20,000 available in the budget. They will also look at the culverts for damages or problems. It was suggested that an email with pictures be sent to affected members if there is a problem with their culverts. It was agreed this would be done if needed.

Continuing Business

Review Tree Cutting Policy – Architectural Oversight Committee

Ron Case said the committee has met. Margaret Grahame has put together a first draft and the committee will come back with recommendations.

Return of Performance Bond to Member - Ron Case/John Gray

Ron Case noted this was discussed earlier in the meeting in Public Comment. The committee will make sure that members have the check list and the policy going forward.

New Business

Lot Mergers – Legal Committee

We were asked about a lot merger from a member who combined their two lots and recorded it with the County. After talking with our TCHA Attorney, we determined that two original lots shown on the Subdivision Map subsequently merged into one lot should remain two lots for HOA purposes, retaining two separate assessments. The member would also have two votes. The Association's operating costs are not lessened by the merger of two original lots into one lot. Releasing an owner from the obligation to pay one assessment per original lot will only shift the cost burden to the other lot owners.

Adjournment

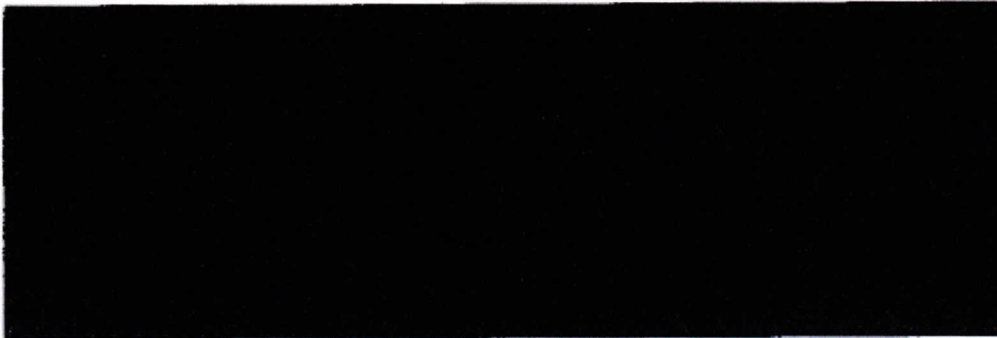
The President adjourned the meeting at 12:01 p.m.

Respectfully submitted,

Cindy Culcasi, Secretary

A handwritten signature in black ink, appearing to read "Cindy Culcasi". The signature is written in a cursive, flowing style.

H



From: Hannah Clayborn <hannahclayborn@sbcglobal.net>
Date: June 19, 2017 at 11:24:46 PM PDT
To: Sue Ellen McCann <sueellenmccann@gmail.com>
Subject: Email
Reply-To: Hannah Clayborn <hannahclayborn@sbcglobal.net>

Hi Sue Ellen

For now, until we get some advice maybe from Ray Seto, just destroy this email. I'm destroying the sent copy. I wouldn't mention this to anyone else yet.

I have downloaded everything of interest back to January in pdf form. It all comes up and prints.

I'm pretty sure she changed the recovery email very early, in April. I also am pretty certain she downloaded much of the computer into a Google Drive. So she probably has it all at home along with the mailing list that she sent Anne. You guys need some really good advice. I was going to ask your permission to talk on the phone to Ray Seto.

They are hoping to catch out the board tomorrow on the basis of FTB. Carmen has given Anne Vernon the TCHA lists and also the lists from TCCWD so she can email out Carmen's letter. Those communications and attachments have been saved. There is tons of stuff here. Russell is a super super weasel, a really mean spirited man. You won't believe the stuff he says about me and Sylvia. Snake in the grass.

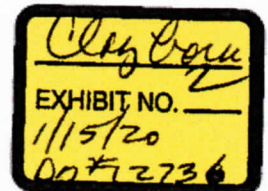
Here is just one quote of Carmen to a friend. Remember please delete this email after you read it to protect me.

Call me if you want tomorrow and we can talk:

I Erin Brocovitched Their Asses!

1 message

Serious Fun The Power of Play at Work <seriousfunbiz@gmail.com> Thu, Jun 15, 2017 at 8:59 AM To: Rayona Sharpnack <rayona@womensleadership.com>
Hi Rayona.



TCHA 2272

PLTF002280

B

From: Martin L. Hirsch
To: "Sue Ellen McCann"
Cc: Tim McKusick
Subject: RE: Checking back
Date: Wednesday, June 21, 2017 10:28:13 PM

Sue Ellen and Tim,

I talked this over today with Scott Lewis and Malcolm Manwell. Unfortunately, viewing the emails on Carmen's gmail account is an invasion of her privacy. You cannot and should not use her emails for any purpose or admit that you have them. You risk serious liability if this gets out.

In terms of a plan, I recommend writing a letter to the membership regarding Brian Todd. The letter should explain the basis for meeting to discuss this matter in executive session (i.e. it falls within 2 of the 6 categories of items that may be discussed in executive session), and explain the bases for the Board's decision to indemnify Brian (i.e. Sal pressed charges and the judge ruled against, and you received the opinion of an outside attorney and he recommended the Association indemnify Brian in full.

I suggest I write the letter. If you agree, I will send it to both of you for your input.

Please let me know if you'd like to discuss this matter further.

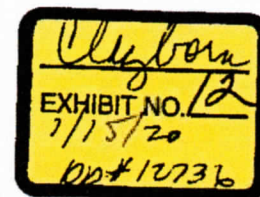
-----Original Message-----

From: Sue Ellen McCann [<mailto:sueellenmccann@gmail.com>]
Sent: Wednesday, June 21, 2017 12:03 PM
To: Martin L. Hirsch
Cc: Tim McKusick
Subject: Checking back

Hi Martin -- just wondering if we have a plan yet. An email was found indicating Carmen was sending TCHA computer files to her attorney. I've ask ask for a copy of it.

SE

Sent from my iPhone



0032

C

Re: I need basic information from the computer

From: Hannah Clayborn (hannahclayborn@sbcglobal.net)

To: timothymckusick@gmail.com

Date: Thursday, June 22, 2017, 09:12 AM PDT

Sue Ellen is probably most familiar with the files, but if you want to sit down together and try to find what you're looking for, maybe tomorrow? I'm in Vallejo today working in this heat.

Hannah Clayborn
22050 Timber Cove Rd.
Jenner, CA 95450
(707) 847-3125

From: Tim McKusick <timothymckusick@gmail.com>

To: Hannah <hannahclayborn@sbcglobal.net>

Sent: Thursday, June 22, 2017 9:10 AM

Subject: I need basic information from the computer

Hi Hannah: I just need to find basic information that is asked for in the escrow demand paperwork.. Most of it is probably on our website, like CC&R's etc....

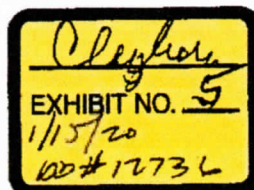
The HOA forms I sent have some boxes checked, showing what I am looking for... Once I find it, we are all set for current and future escrows, only needing to update things periodically.

Could you help me navigate the computer and find these files? I have the 21986 Timber Cove Rd escrow set to close, but cannot without this information. I am sorry to bother you. I know you have plenty to do...

Also, the TCHA attorney says we cannot read her emails.

Let me know if you have time to talk.

Tim
707-847-3433



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