

To: The Timber Cove Homes Association Members

From: Ron Case, President
John Gray, Treasurer
Bob Leichtner, Secretary

An Update

Dear Association Members,

We were elected to the Timber Cove Homes Association Board on September 9, 2017, and assumed our duties as officers on October 1, 2017. This is our first emailed message to the Community.

Since our election, we have been working hard with our board colleagues to review a number of important pending issues, investigating the facts and attempting to take appropriate remedial action. During that period we have been the target of many attacks and accusations on social media or other forums which we felt mischaracterized our efforts or intentions. Some objections, although misinformed and hostile, we took in stride as an unpleasant but unavoidable aspect of an open exchange of views. Regrettably other attacks were simply malicious, dishonest and destructive. Nonetheless, we still resisted the urge to counter.

We were silent for several reasons. For one thing, we all are committed to mitigating the endless volleys of acrimony that have afflicted TCHA over recent years; we didn't want to keep feeding the frenzy. Also, some of the attacks were related to the subject matter of threatened or actual claims the Board was addressing, and we withheld comment so as not to violate confidentiality protections or compromise our ability to defend the Association. Finally, and perhaps most importantly, we believed that if we worked hard to get problems sorted out, especially regarding the Association's financial disarray, and provided important information fully supported by detailed factual evidence, that good faith effort and honest sharing would be recognized and initial doubts or misunderstandings put to rest. Sadly, that hasn't worked as we'd hoped. So we now feel compelled to offer some comments to make clear the priorities and principles we are guided by, to clarify briefly our key findings to date, and to address a few specific accusations that have recently been made which misrepresent actual board proceedings or the factual record.

We are concerned a number of members may have missed some of the important information we've provided, or worse, received a fragmentary or slanted report that could lead to misunderstanding.

Up til now, we have not challenged those misstatements because we did not want to continue or aggravate the contentious debate that has disturbed all of us, regardless of our views, over recent years.

In brief, the fundamental principles we strive to fulfill:

1. **Transparency**---sharing as much relevant information about key issues that affect our members as we are legally permitted to do.
2. **Honesty**---presenting information accurately and fully.
3. **Non Disparagement**---explaining present and past actions and assessing responsibility carefully, without attacking personality or character; fostering constructive solutions, not recrimination.
4. **Recognizing our fiduciary responsibility to protect and support the entire Timber Cove community**, not simply the loudest, most energetic or most aggressive faction. We are all united by a respect and deep appreciation for the beautiful environment in which we live, but otherwise we are a diverse group with very different attitudes, interests and priorities, including a substantial number of property owners who are not local and who have not yet built homes here, folks who favor lots of community-spirited activities, and others who love the peace and solitude of a natural retreat where they can just be left alone.

Current Priorities

The tax and insurance problems we inherited, and the perilous state of TCHA finances we discovered, are our primary concern for now. We are still filling in missing pieces of the puzzle, rectifying shortcomings and developing plans to bring the organization current on its overdue obligations. As the Treasurer has explained over the past two meetings, that includes remedying three years of failures to file income taxes, payroll taxes, W-2s and 1099's and paying off the resulting penalties and interest. We aim to put in place basic annual calendaring to make sure every Board stays on top of all regularly required filings, notices, payments, etc. in the future.

We are way short of adequate operating funds and have been forced temporarily to cannibalize the reserve funds just to pay bills. The reserves are required for the road maintenance program, and must be restored. The current treasurer and his predecessor agree that the loss of dues from the secession of Unit 1 and legal expenses that exceed past levels by several times must be addressed, either by an increase in annual dues, a special assessment or both.

That also means we feel that the Board has no choice but to minimize any expenditures that are not absolutely essential until we have restored the reserves and stabilized required annual operating funds. The essentials we see are the

salary of the office manager, taxes, insurance, collection actions, defense of claims, road maintenance and collaboration with local agencies on fire abatement.

Legal expense claims and litigation. We are currently defending an enforcement proceeding by the State Labor Department that could result in serious financial penalties if an adverse finding results. We also face a claim by a former employee which might possibly result in a lawsuit. Our insurers have denied coverage. These matters mean significant legal expenses will continue, and depending on future developments, could increase significantly.

We feel it is essential that the Association do all it reasonably can to manage communications and actions so as not to aggravate the current legal exposures or provoke new ones.

Trails. This issue has been a center of fiery controversy and significant legal expense for all parties involved. We have taken trails off our agenda for the time being, primarily to avoid incurring any further expenditures during this financial crisis. Just to clarify, there remains a dispute with property owners regarding the legality and location of approximately 500 ft of trail. A proposed settlement was rejected by the prior Board, who then offered some alternative suggestions. No discussion is currently pending.

This Board would like to resolve the neighbor dispute in a complete, lasting non-litigious manner. We believe a new approach may be necessary if the parties are deadlocked. Members of the prior board have provided the new Board members with a collection of governing documents, records and legal opinions to bring us up to speed on the issues. It is our intention to review those documents, and then provide our findings and recommendations to the Board and the membership. We will be focusing on the trails in general, not the neighbor dispute resolution, which is a sensitive, confidential matter. We hope to explore opportunities to revive negotiations later this year.

Recent False claims by members

Recently, both at Board meetings and on social media or other websites, a member of the community has made a number of statements attacking the newest directors. Those statements have compelled us now to end our silence and to correct the misunderstandings or misleading statements that have been made.

The member accused the new directors by name of attempting to silence and harass her by pressing the HOA attorney to send her a threatening cease and desist letter. One wonders how she came to single us out by name, since she doesn't attend confidential Executive Sessions where such matters might be

discussed. In any case, those accusations are false. They demean us and the HOA Attorney. We should point out that the attorney was hired 3 years ago by the prior Board, and his firm represented Unit 1 in their secession process. He has represented and worked closely with the prior board in many matters, far longer than he has worked with us. The subject of the cease and desist letter referenced is related to the false accusations of the anonymous Truth in Timber Cove email and attached timeline that was sent to members of the community in October 2017. The HOA attorney is familiar with the matters referenced in the anonymous mailing and the member's subsequent repetition of false accusations. Indeed, he is more knowledgeable than the current Board members. His letter reflects his inquiries, his knowledge, his professional conclusions, not ours. Suffice it to say, it is ludicrous and irresponsible to paint the attorney as some kind of pawn of the Board members who were attacked.

The letter did not attempt to silence or harass. It merely presented a very narrowly focused request limited to specific false accusations. Up til now we have treated the cease and desist letter discreetly, as a private matter with the member. However, now that the member affected has chosen to discuss it publicly, and misrepresented both its intention and its content, we feel it necessary to let the document "speak for itself" so the Association can have accurate information about the member's misleading attacks.

No matter what, the complaining member has most certainly not been silenced or intimidated. Indeed, she attended the January 20, 2018 Board meeting and made numerous statements and challenges throughout the proceedings. She got some things very wrong, and repeated those mistaken assertions again on other websites. Allow us to explain.

The Treasurer's report discussed over \$9000 in penalties for delinquent tax filings. The member suggested that the largest chunk, \$3992, came from the 2014 Board chaired by Anne Roberts. She is mistaken. That penalty addressed delinquent filings for 2014-2015, which were the responsibility of the Board in office during 2015. The delinquencies continued throughout 2016 and into 2017, when Sue Ellen McCann and Sheri Flying Hawke began efforts to bring matters current. The filing delinquencies were sweeping, not only income taxes, but payroll taxes, w-2s and 1099s from late 2014 to mid-2017 (1099s still pending). It should also be noted that when Mr. Gray and our accountant recently met with the IRS to bring matters current, the IRS refused to reduce the penalties because the record of non-response to repeated notices was so persistent and flagrant.

Prior Board members have attributed these years of total tax filing delinquency to "communications problems" and failures by clerical staff. We haven't investigated and cannot comment on the accuracy of that assertion. But, even assuming that explanation is true, it cannot be an excuse. It is the Board that has the ultimate responsibility for compliance with applicable tax laws. They have a duty to diligently oversee the work of clerks if they delegate important

functions to them. And we are not talking about a single lapse, we are talking about multiple failures to file extending over more than 24 months. That spans multiple quarterly financial reviews and at least two annual budget cycles.

Sharing this information is NOT an unfair attack. This was not “business as usual”, nor a minor slip. Many tax filings were totally neglected for more than two years and we have been assessed over \$9000 in penalties. How can you share that information without concluding some kind of management failure occurred? That’s simply a neutral factual statement, and it is a legitimate concern of members who want to know if their funds are being responsibly administered, and if not, what remedies are advisable.

The member also criticized the Board’s report on insurance problems. First, she claimed that our reference to a prior lapse in insurance coverage was wrong, there was no lapse. She is mistaken. There was a lapse in 2015 for several weeks during approximately May to July. Tom Giacinto, then Board President, expressly acknowledged the lapse after the fact as recited in the June July 2015 meeting minutes. He attributed the delay to a breakdown in communications with admin staff, and noted the prior loss record was excellent new insurance coverage was actually procured at a reduced premium. The sad ensuing reality, however, is that in 2017 that excellent, low priced coverage was non-renewed after the Board retained an attorney to try to compel the insurer to pay the Todd legal fees claim.

The member also felt that the Treasurer’s comments about the inaccuracies in the July 2017 insurance application that led to the latest cancellation were unfair to the President who signed the application. Apparently the agent filled out the application incorrectly and the President didn’t catch the error. Maybe so, but the paragraph adjacent to his signature expressly warns that any material inaccuracies could lead to cancellation. And the inaccuracies were many, including items the agent would not know about, such as vehicle use, recent claims history, pending circumstances that might lead to a claim, etc. Under law, we believe the officer who signs is considered responsible for the accuracy of the content, not the agent who is helping out.

Does TCHA have a future?

The new Board has also been accused of plotting to bring about the dissolution of the HOA. A lot of members favor that idea. Let’s get something clear. Anyone looking at the recent history of contention, financial losses, management omissions, liabilities and legal exposures can reasonably question whether we should explore dissolution, whether the HOA can ever function successfully, or whether the chronic polarization and hostility render it hopelessly dysfunctional, and a source of harm to the reputation and property values of our neighborhood. Our neighbors and former partners in Unit One successfully voted to dissolve only three years ago. It’s obviously not a radical, unthinkable option. At least

one current board member strongly advocates dissolution; that is his right. But while we are serving on the board, we believe we are expected to keep TCHA operating viably at least for the present, meeting our legal and fiscal obligations. It's the membership who are the critical decisionmakers regarding dissolution.

The ultimate power to dissolve the HOA lies totally with the membership, given the extremely tough supermajority membership vote required for dissolution. This Board's duty is to respond to inquiries and initiatives from the members IF they wish to explore the mechanism, the consequences and alternatives dissolution might involve. If such questions are posed, we can respond with FAQs, surveys of opinion, town hall forums, or a combination of all. Our individual views as directors are, in the overall scheme, just a drop in the bucket.

Respectfully,

Ron, John, Bob