

**TIMBER COVE HOMES ASSOCIATION  
BOARD OF DIRECTORS MEETING  
Saturday, January 17, 2015  
Fort Ross School, Multipurpose Room  
9 am – 3:15 pm**

**Board Members Present:** Anne Roberts (AR), Sal Culcasi (SC), Sue Drake (SD) until break, Tom Giacinto (TG), Fred Leif (FL), Tim McKusick (TM); after break new members: Susan Moulton, Richard Welch

**Staff:** Nick Lee (NL); Sharon Lynn (SL)

**Visitors:** Priscilla Gray (PG), Richard Welch(RW), Susan Moulton(SM), Joe Pearson(JP), John Rea(JR), Anne Vernon (AV), Brian Todd (BT), Sylvia Todd (ST), Hanna Clayborn (HC), John Howland (JH), Roger Simpson (RS), Bob Leichtner(BL), Ruth Marshall (RM), Claire Simpson (CS), Stuart Drake (SD), John Sperry, Ron Case, Tim Winterer, Katie Seymour, Jennifer Rodenbach (JR)

**Abbreviations used:** BZ: Barbara Zimmerman, attorney; D-S: Davis Sterling Act; BA: Brown Act; TCCWD: Water District

**Summary of Motions Passed and Action Taken:**

- **Approval of Agenda with additions, amendments and deletions.**
- **Susan Moulton and Richard Welch were appointed to replace Sue Drake and Claudia Woods positions.**
- **Tom Giacinto was elected Vice President; Susan Moulton, Secretary.**
- **Adoption of Statement by Members Policy issue tabled until March meeting.**
- **SM moved we rescind the April 5, 2014 decision regarding approval of “Trail Improvement”, and begin from scratch to collect all the relevant information and data in order to do this correctly. 2<sup>nd</sup> TM. Motion tabled until next meeting.**
- **Amend April 5, 2014 meeting minutes: motion tabled until next meeting.**
- **Payment of bills approved**
- **By laws: Review and update deferred for review.**
- **Review names of possible new attorneys for the HOA at next meeting.**
- **Next meeting: February 21, 2015 (Saturday) 9 am, Fort Ross School auditorium.**

1. **Meeting Called to Order:** By AR, 9:05 am. AR introduced new Administrative Assistant, Sharon Lynn.
2. **Discussion, Additions, Amendment of Agenda:** AR announced there was one addition, the appointment of a Vice President. Discussion of procedures for agendas, and suggestion that the agenda for the subsequent meeting be drafted at the end of each meeting and that it be amended and the approved by a vote at the beginning of each new meeting before business is conducted. Discussion of Civil Code requirements for recording meetings by TC. People must be made aware they are being recorded. SM recorded the meeting; AV, JR objected and RW believed this was a private meeting. Several guests asked that item 12, Trails, be moved up to item 7: Statements by members so the many people present would have a

chance to speak earlier. Agreed by consent. AR noted the agenda is usually a Consent item, one of the things that happen in the normal course of every meeting. Clarification by SL that she pays the bills before they come to the board for payment •**FL moved, SC 2<sup>nd</sup> approval of amended agenda. Vote: unanimous.**

**3. Requirement board members sign a Code of Conduct.** Discussion of having hired an attorney to draft this without board approval since it is already covered by Davis-Sterling and Rosenberg's Rules of Order. Discussion about who has the right to contact the Board attorney. SC moved to sign code of ethics, FL 2<sup>nd</sup>. **SC moved, TG 2<sup>nd</sup> item be postponed to Executive Session with a vote at next meeting. Vote: unanimous.**

**4. Approval of Minutes of October 18, 2014 meeting.** (All members reading minutes at meeting) TG, TM had not read them. TG objected to personal comment included in minutes. Suggestion they be tabled until they all have time to read them carefully.

•**FL moved, TG 2<sup>nd</sup> minutes approved after striking opinion and personal comment. Motion passed.**

**5. Appointment of New Board Member to replace Claudia Woods who resigned: TG moved Susan Moulton be appointed; TM 2<sup>nd</sup>. Discussion.** TG clarified she had the next number of votes and we should follow the same reasoning the board used to appoint SC in October. **Ayes TG, TM, nays SC, SD, FL abstain, AR voted nay.**

**5-6. SC nominated Richard Welch, SD 2<sup>nd</sup>.** Both candidates were asked to speak. SM spoke about her past service on a harmonious board and her contributions to Timber Cove and with the county, her experience with fundraising and networking. RW declined for sake of time. Discussion. AR called for another motion. TG moved again we elect SM; TM 2<sup>nd</sup> and suggested we use the same criteria for appointment, i.e. The next amount of votes. Vote: TG, TM aye, FL abstain, SC, abstain, SD nay, AR nay. Tie vote. Discussion of RW as candidate. Vote: TG, TM, **nays**, FL abstain, SD, SC aye. Tie vote. AR discussion about role of the Chair in voting and abstentions.

**\*\*BREAK (15 minutes)\*\***

SD resigned after the break, opening up two places on the board

•**FL moved, SC 2<sup>nd</sup> motion to accept SM and RW to fill the vacancies on the board by flip of a coin. Vote: TM, no, SC aye, FL aye, TG no, AR aye.** Determination of who would fill which seat determined by a coin toss. RW opted to take CW's longer term; SM will take SD's shorter term.

**6-7. Election of Officers to replace those who had resigned: •TG moved, TM seconded TG as Vice President. Vote: RW abstained, all rest ayes; TG moved, SC 2<sup>nd</sup>. SM as Secretary. Vote: unanimous.**

**7-8. Adoption of Statement by Members Policy** presented by AR. Formerly, "Public Comment." (Handout) **Discussion. •SM moved, FL 2<sup>nd</sup> issue be tabled until next meeting. Vote: unanimous.**

**8-9. Statements by Members and Trails: Public Comment:** Comments limited to 3 minutes. **Roger Simpson** discussed trails (no changes or additions in easements without overall membership approval); electrical power meters popping up all over the place be set back from the road and view; consider having board meetings

more frequently and special meetings for the membership around issues of concern. TM members meeting is in September. RW only takes 5% of members to call a special meeting. SC noted RS would like to be on sign committee. **Sylvia Todd** (BT and CG ceded their time to ST) spoke in favor of community, building relationships, preserving pedestrian easements and trails (decision of April 2014), believing the issue was not clearly or accurately presented at April Board meeting (identified as "trail improvement") and changes to our easements according to our CCRs which require a vote of members so decision should be rescinded, then we can step back and find a win-win. Volunteer board members can make mistakes. Easements were marked on her property title and subdivision map when they bought their property. There was no information about the real intent of the motion to vacate or remove a section of trail communicated to the property owners. There can be a reasonable process for negotiation. Easements are critical to our environment; if the action is not rescinded it will put all our easements in jeopardy. She asked to reboot, to go through the process the way it should have been done. **Hannah Clayborn** was disturbed that in the process it appeared there was an effort to bend to the wills of individual owners, rather than the good of the trails or the community. No one was standing up for the common welfare of homeowners, what is our common interest. Why were communications eliminated from the agenda? **Jennifer Rodenbach** had mixed feelings about trails. It seems unfair some have trails and others don't plus you don't see people using them often. If they were groomed and owners feel ok about people walking through, then its ok. But in this issue the trails go right through their yard with a beautiful view of the ocean. Moving the trail would be a compromise. Owners and hikers would have more privacy. ST clarified it was the process that she was concerned about. Ruth Marshall said we need trails, the easements were a part of the original understanding, they were a part of the purchase and a part of the sale. It isn't up to the owners discretion to remove legal easements. Nowhere did she ever understand that removal of easements was on the table. The agenda and motion were not clear. What was submitted to the county did not reflect the information given to homeowners. He will help with improvements. What the property owners who wanted to remove the trail wrote at the county did not reflect what happened at the meeting. The easements are legal. She is voting for trails. **Joe Pearson** noted there is a procedure for altering the CC&Rs and trails are part of that. Why don't we just follow the CC&Rs and change them if we want. Claire Simpson took the trail from Gordon to Koftinow. The trail was well marked and kept up until the other side where it is not marked, there are dogs barking, and if we are going to be a community the trails are a part of it. She is willing to help work on the trails. AV clarified that she sent out a document three months ago which she will send out again. They felt they had done everything properly, as they were told to do. JR noted they weren't being malicious. Showed a map with a property line adjustment and felt trails follow the property line. They offered to run a trail down the hill to avoid their new building envelope and septic tank. He feels what has been vacated is common sense has not been used. **John Sperry** said the issue isn't any

adjustment to trails but the precedent of a single act of the board in April to allow an adjustment that should not have happened. The solution is to rescind the motion, start from square one with negotiations with the owners about the trail. They are continually adjusting the trail. **Brian Todd** felt these were all pedestrian/equestrian easements granted not solely on subdivision map but on the CCRs 1965 (book 2112, p. 651 of Official Records, 2116, p. 810 OR) describes the rights given to homeowners association. It is clear from the declarations and CCRs that this should be part of the decision which should be made by all the property owners. Stuart Drake clarified that the Smith Ct. property isn't part of the subdivision. Where the trail goes and because the road was mis-drawn, if you follow the trail you will be walking on a driveway, between two houses. He has improved his trails. He has cleared many trees. He wants to reroute the trail. **AR** there are 10 randomly placed lots outside the subdivision. The boundaries of the association do not always include property in the association. **HC** suggested documentation is what matters.

**9. Trails: Report, F. Leif.**

A small trails group was formed in November. Members John Howland, Stu Drake and Anne Vernon. A number of documents were reviewed. He asked for an attorney statement. AR requested an opinion from Barbara Zimmerman. At their meeting yesterday they discussed the status outlined by BZ regarding what is an easement. He created the trails map using Photoshop. FL believes the county letter suggests there is not a legal way to define pedestrian easement. It was reported by a member of the audience that BZ supports the belief that we don't have fully described legal easements in Timber Cove, although her qualifications regarding this area of the law were questioned. They agreed upon: 1. Need clarification on the definition of "easements"; (discussion of equestrian use); 2. Do we need more legal opinions? There was a difference of opinion on this. They have the county one (not signed or dated), BZ concurs with the description of the county, but we could get a land use attorney's opinion; they believe these were not properly described to be a public or private easement. 3. There should be trails in Timber Cove. TG does have a legal opinion from a land use attorney recommended by County Council, McOmber. TG paid for it himself when the board refused to reimburse him. It covers conflicts of interest, BZ's letter and its authorization and payment by the board for two people on the board; This attorney was highly recommended by county counsel after he had provided McOmber with all the information from BZ and the county. BZ's letter says the same thing as the county, about public easements. The county action had nothing to do with easements. Discussion suspended so Board members could review the documents. AV would like to make all the information public to everyone. TG gave a brief synopsis—which declared the easements are there.

**10. SM moved RW's original motion be amended: To reimburse TG for the cost of the opinion letter up to \$1000 and that he share it with the association. 2<sup>nd</sup> TM.**

**Discussion.** TM noted in December BZ replied to trail committee's list of questions and pointed out she had formed her opinions and to this board without ever looking at the

subdivision map with easements on it. SM called the question which was challenged. Vote to vote on the motion and stop debate. Vote: unanimous. **Vote on amended motion above: Ayes unanimous.** AR: BZ letter, county letter and McOمبر letter will be sent to the community as information. TG will send the letter from McOمبر to everyone on the board. .

•**SM moved we rescind the April 5, 2014 decision to rescind “Trail Improvement” which was in fact the vacating of our easement, and begin from scratch to collect all the relevant information and data in order to do this correctly. 2<sup>nd</sup>. TM. Discussion.** SM wants to remove the board from liability and then reconsider all the new information for a clean decision.

### **Interruption for NL’s report.**

#### **11. Security and Fire Abatement: Inspection Report (Nick Lee)**

Postponed due to time shortage, NL asked about camping policy for owners in self contained vehicle overnight. AR referred to county camping policy which does not allow this. SM suggested we put this on the agenda. SC offered they can camp if they are cleaning their lot. NL noted we have a problem with downed telephone lines. Verizon has not responded for 5 months.

**Return to discussion of motion above to rescind April 2014 decision.** RW urged a no vote and put it on the agenda.

TM reported we have carbon credit grant funding opportunity for developing fire abatement, forest management and our evacuation routes, particularly at the top of Koftinow. Discussion of Fire Abatement and Forest Management Study.

Bob Leichtner, property owner and attorney spoke and believed the notice of the trails issue in April was defective, because it was advertised as an “improvement” an incorrect description denying people the ability to have input. It doesn’t revoke the process achieved to date. He submitted a letter in which he urged the Board to: 1. Rescind the trail easement action and reset it for reconsideration to take into account the interests of the immediately affected property owners, the trails supporters and the broader ownership community. 2. Set up, ASAP, one or more meetings and site visits involving the owners and trails supporters to attempt to agree on a mutually acceptable path for the disputed section of trail. 3. If those discussions are not productive, or the parties seem too polarized to carry them out on their own at present, retain an expert land use mediator, to work with the parties for a day to help them find their way to an acceptable non-litigious resolution. He offered his expertise to help the board and community find a resolution to the trails dilemma.

RW reminded we are required to follow the good judgment rule and we could be liable if we make a decision before the board can review the documents.

BT referred to the letter from the county, Laurel Putnam in surveyor's office regarding "irrevocable offer of trail easements." An irrevocable easement is something in the CCRs that was dedicated and given to every property owner at the time the map was recorded and accepted. It is not a "revocable" easement. Putnam distinguishes between public and private easements. This is what McOber is talking about and what BZ didn't see because she didn't use the subdivision map. SC wants to move the trail to avoid a lawsuit. SM made the motion to rescind to take the liability off the table. TG Breach of fiduciary responsibility is a matter of personal liability and return to a negotiation.

•RW moved to table the motion. AR 2<sup>nd</sup>. •Motion tabled until next meeting. Vote: Ayes: TG, TM, AR, FL, SC; Abstain 0, SM no. Motion passed.

**12. Amend April 5, 2014 meeting minutes. RW moved to table, SM 2<sup>nd</sup>. Vote: Without objection.** moved we postpone this item until the next meeting in order to discover what procedural issues are involved. •Motion tabled until next meeting.

•Fire Abatement continued: There is no fire abatement. He will bring Fire Abatement study to next meeting. TM was a community meeting regarding grant money from Carbon Credit from the state and fire abatement, emergency evacuation route, Timber Cove Forest Management Plan exists and will make application for grant money easier.

**13. Administrative Assistant's and Architecture Report.** They will earmark some for us.

**a. Administrative Report:** SL reported she took over at the end of October and has set up the TCHA phone lines in her home office. Office hours are: Tuesday, Thursday, Saturday. She does check the emails regularly.

**b. Architectural Report:** There are 2 homes under consideration to be built and 11 lots sold between last year and this year. Structure of architectural tasks: are working this out with Howland using the existing list for planning process. AR had asked to post the Architectural Guidelines (Handout—updated, revised 2014) on the web site along with fees. Discussion. JH noted PG&E does not allow meters to be put next to the road. We will draft a letter to PG&E to remind them to set the meters back from the street. Discussion of Davis-Stirling, outsourcing architectural process and CCR requirements. SM suggested TG bring us a proposal. Agreed we will post architectural guidelines as a working draft on the website.

**c. Correspondence:** There were not a lot of written letters; mostly emails from members to the board regarding the trails issue; considerable comment from the property owners to the board. Three realtors have requested architectural packages; there have been 5 escrow demands; 3 property lot transfers; one house in escrow, correspondence between association and Pacific View tree, and about the newsletter put out in the fall.

(Item 13 on Agenda) Discussion of policy re. trees that pose a risk to the community which are in our easements and who would pay for these.

**d. Annual meeting dates:** Decided September 12 would be the best available date since September 5 is over Labor Day.

e. **Social:** AR proposed a social get together for March. Discussion. SM suggested we put it out to the membership and see if there is any interest.

#### **14. Treasurer's Report (Fred Leif)**

a. **Reserve Study:** FL reported we are using Reserve Study funds for roads and fire abatement and other current year projects. (Handouts: Preliminary Budget (5/1/15 – 4/30/16); Operations and Budget Reports (10/31/14); (11/30/14); (12/31/14). A contractor is doing a study for us. Check Detail: October through December 2014. Discussion of expenditures. (See also 12, 13 below)

•**FL Moved , SC 2<sup>nd</sup> to pay the bills October through December. Ayes: TG, TM, AR, FL, RW; Nays: 0; abstain: SM, Motion passed.**

#### **14.- 15: Roads**

See above. Discussion of payment for emergency tree removal (SC, TM). Question of who should pay for emergency removal in easement and, HOA or homeowner payment for cutting within easement. January 2007 Fallen Tree Policy states property owner charged for removal. Owner will be sent a bill for the cost. Put this policy on the web site.

Discussion of 2015/16 Road plan based on what was not done in the priority list from this year, Cypress and Amanita, Hwy 1 and Ruoff pullout. Our budget for 2014-2015 was \$45,500. As of 12/31/14 we have spent or budgeted a total of **\$20,000**.

AR reported E. Tamm will remove the pampas grass on Ninive for a fee. TM reported on continued progress with invasive plant hot spots. Contact Tim McKusick.

#### **16. CCR's and By laws: Review and update (Priscilla Gray)**

PG distributed updated draft of By laws drafted by Barbara Zimmerman, the third revised draft received from B. Zimmerman.(Z1 2003; Z2 2006, and Z3 in 2012) This reflects the updated Davis-Stirling Act. This is the fifth restated version of the By laws. We are currently operating under 2006 By laws. 2007 D-S changed and our By laws need to reflect new requirements. Action deferred until members have had a chance to review the draft. A vote of the membership is necessary to change the bylaws or CC&Rs.

#### **17. Discussion of Legal Representation**

reported B. Zimmerman resigned last October and we are without approved legal counsel. She asked board members to submit names of possible attorneys and suggested we consider attorneys at the next meeting.

**18. Time and Place of next meeting:** February 21, 2015 (Saturday) 9 am, Fort Ross School auditorium.

**19. SM Moved, SC 2<sup>nd</sup> approved unanimously: Adjournment 3:15**

**18. Closed Session:** Discussion of delinquent property fees and collections and requirement of board members to sign a Code of Conduct.

*Draft minutes respectfully submitted, Susan Moulton 1.22.15.*