

Tonto Hills Improvement Association

MINUTES  
of the MEETING of the BOARD OF DIRECTORS

Wednesday, February 20, 2008  
6:30pm- Christ the Lord Lutheran Church

The meeting was called to order at 6:33pm by President Rick Nelson.

**BOARD MEMBERS PRESENT:** Rick Nelson, Carol Landauer, Curt Blik, Dave Seymour, Billy Hayes, Richard Smail, Bill Victor, Denny Maple

**ABSENT:** Bob Malliet

**GUESTS PRESENT:** Louise Day, Jim Day, Terry Luker, Eric Luker, Kirk Landauer, Lou Frederick, Rick and Mary Pearson, Nancy Nelson, Charles Civer, Philip Maloney, Darryl Van Duyn, Frank Villars, Charlene Lavinger

- 1. ITEM INTRODUCTION AND OPENING COMMENTS:** Mr. Nelson announced that City of Scottsdale is holding Open Houses on 2/25/08 and 2/27/08 in reference to COS plans to implement city laws meant to control dust on Scottsdale's dirt roads. They are seeking feedback from residents regarding road surfaces, driveway regulations, etc.

Mr. Nelson reported that Jeff Mitchell, a reporter with ASU Cox 16 news, had contacted Richard Smail regarding interviewing people who had experienced the Cave Creek Complex Fire. Mr. Smail contacted Mr. Nelson, who put the reporter in touch with THVFD fire chief Robert Kroger. The interview will air next week.

In answer to Bob Malliet's email question regarding where to put more than one write-in vote on the ballot, Mr. Nelson replied that there is one line on the bottom and ample room on the back of the page, same as last year.

Mr. Nelson then read a letter from Mr. Malliet that Mr. Malliet had emailed to Mr. Nelson and demanded be read publicly at the Board meeting. See attached. Also attached, please see Rick Nelson's rebuttal, Carol Landauer's rebuttal, and Dave Seymour's rebuttal. (Ms. Landauer and Mr. Nelson read their rebuttals to the Board; Mr. Seymour sent his later via email.)

In response to the aforementioned rebuttals, Mr. Smail asked Mr. Nelson to clarify his assertion that Mr. Nelson had asked in two consecutive meetings if any Board member knew about the unauthorized mailbox, as no member admitted to knowing about it until after the mailing. Ms. Landauer reread the portion of Mr. Malliet's email that stated, "Richard Smail had the key to the box so his secretary and a member of your anti-annexation group could retrieve and tabulate the cards."

- 2. OPEN FORUM:** Terry Luker presented a letter to the Board. Please see attached. She also questioned the use of the word “negotiate” in regard to approaching Scottsdale. She did not realize why/how voting for “exploring annexation” resulted in negotiations. Mr. Smail explained the process; Scottsdale needs to explain to the community what’s required for annexation. That list is open to negotiation. Mr. Smail explained there could be room for Scottsdale to give up certain things, such as accepting the water system as is, with minimal standards. Negotiations would allow us to list all the costs involved in annexation in detail.

Eric Luker reported hearing the results of the survey being characterized as the majority of the community being in favor of annexation. Mr. Luker strongly denounced this perception, claiming the results are being misrepresented. Mr. Luker clarified that the results indicate only an interest in obtaining more information.

The purpose of negotiation with Scottsdale is to get the terms of annexation written down, so the community can sign or not sign the petition based on facts.

Jim Day observed that the conflict within the Board is disturbing, noting that good will and honest, open conversation is needed, or we are all at risk. Mr. Day also pointed out that a Board member can be discharged for non-performance, and Mr. Malliet has not shown up for three consecutive Board meetings. Mr. Day asserted that Mr. Malliet’s email letter was disparaging, and “if I received it, I would be taking it to my attorney for slander.” Mr. Day claimed he doesn’t have a problem with looking into annexation but an honest, non-biased appraisal is needed in order to make a sound decision, and an honest effort in cooperation is required.

Mr. Luker noted that the City of Scottsdale has to approve annexation even if we vote for it. Mr. Nelson pondered possible answers to the question, “What’s in it for them?”

Frank Villars inquired about replacing the saguaro that was recently hit by a car. Mr. Nelson explained that though the cost was covered by insurance, our rates would go up. Mr. Villars also reported that it’s rejuvenation time for the front entry. He’d purchased 10 plants and will send the bill. He also expressed concern that the landscaping company is scamming us. Mr. Nelson will look into this.

Regarding graffiti on the water tank, Mr. Villars reported seeing suspicious activity (young kids and a truck) on the path that goes up to Tract A. Mr. Nelson will call MCSO for more frequent drive-bys. Darryl Van Duyn has also seen a lot of kids, beer and wine bottles, etc. in that tract. He suggested contacting the owner of that lot and asking them to post No Trespassing signs or some other security.

- 3. ITEM APPROVAL OF DECEMBER 2007 AND JANUARY 2008 MEETING MINUTES:** Mr. Victor motioned to approve December, 2007 amended minutes. Mr. Maple seconded. Eight Board members approved; Mr. Blik abstained. Motion passed.

Mr. Hayes motioned to approve January, 2008 minutes. Mr. Seymour seconded. Eight Board members approved; Mr. Blik abstained. Motion passed.

4. **ITEM TREASURER'S REPORT:** Mr. Nelson reported \$11,201.18 in checking and \$57,370.60 in savings. Mr. Maple motioned to approve the report. Mr. Hayes seconded. Motion unanimously approved.
5. **ITEM COMMUNICATIONS AND REPORTS:** No ACC meeting in February.

ROADS AND ENVIRONMENTAL: Nothing new to report.

WATER COMMITTEE: Mr. Victor reported that the Town Hall meeting is Monday, February 25. Guest speakers will include the Chairman of the CAP Board, the engineer who did the PER, and Bob Swan who performed the financial due diligence. Mr. Blik asked if the PER report will be given to the Board first, prior to the Town Hall. Mr. Victor replied that there was no plan to do so. Mr. Blik opined that he thinks the Board should have the information prior to the general membership in order to review the findings, so we are prepared to answer questions. Mr. Victor agreed to provide the PER report to all Board members and to post it on the website. Mr. Blik requested another Board meeting be held so that Mr. Swan and Mr. Victor can present their findings to the Board prior to the Town Hall. Mr. Hayes wanted to be sure that the answers to the questions: "What happens if we do nothing? If an outsider buys the water company, what happens?" are provided at the Town Hall meeting. In response to another inquiry, Mr. Nelson claimed that the information gathered is pretty much the total amount of information available relevant to the DWID formation decision. Mr. Smail inquired if the community would be asked to make a decision based on the information presented at the Town Hall. He then asked, "Does that not negate any benefits regarding negotiating with Scottsdale? Aren't we keeping the tracks parallel?" Mr. Nelson answered that there are different timelines. Regarding the sale of THUC, a decision has to be made by July, as after July, Mr. Unthank will be offering the utility for sale to the public. Mr. Seymour suggested we get all the information from Scottsdale and present the facts together. Mr. Nelson responded that the timeline may preclude that as Scottsdale hasn't yet responded to the letter we sent requesting negotiations to begin. The DWID decision has to be made by July. Mr. Maple iterated that Mr. Hayes has a good point regarding finding out what happens if we do nothing. Mr. Nelson claimed the Town Hall meeting will clarify the potential results of taking no action. Mr. Smail asked what the AZ Corporation Commission's view was of our doing nothing. Mr. Nelson reported we are trying to get information from them. In answer to a query regarding what gets sent to people who can't attend the Town Hall or the AGM, Mr. Nelson replied that a copy of the PER, and other presentation reports can be mailed to property owners if the Board budgets it. And another informational meeting can also be held.

6. **OLD BUSINESS:** Gold Hill activity- The Board has submitted a complaint to the Army Corps of Engineers due to the dry wash that runs downhill to Bartlett Lake. Tom Classan, V.P. of Operations at Desert Mountain joined in the complaint, with Desert Mountain Properties approval. Sage Gold has completed a horizontal sampling

of the vein. They now plan to do a vertical sampling. So far, the yield appears sufficient to be profitable.

Mr. Nelson reported sending a letter to Mayor Manross regarding Scottsdale annexation on February 7, 2008. The letter included Board certification regarding the percentage of property owners interested in exploring annexation. No reply as of yet.

The Board also sent a letter to Richard Wallace (MCDOT) regarding the deteriorating condition of TH roads, seeking remedial work as soon as possible. MCDOT admits roads are not being graded according to specs of road. Some discussion ensued regarding the kind of dirt MCDOT is using to replenish roads. After January rain, they brought in clay to Blue Wash road, and cars were sliding. Then they brought in gravel/sand, which raised the road 3" to 4", but it all washed away in the next rain.

7. **NEW BUSINESS:** Community dumpsters- 40 yard dumpsters will be brought in for yard debris. \$3,000 is already budgeted for that purpose. Waste Management's price is \$50 (one time delivery charge), \$275 for each dumpster used, plus 16% fee. Mr. Pearson pointed out that the dumpsters would be more efficient if people would chop up their debris. That suggestion will be posted on the bulletin board notice.
8. **ADJOURNMENT:** Mr. Smail motioned to adjourn. Mr. Seymour seconded. Motion unanimously approved.

**ROBERT MALLIET** <[mallaz@msn.com](mailto:mallaz@msn.com)> wrote:

Your letter, dated January 23<sup>rd</sup>, claiming the Board unanimously agreed to the demands stated in your letter is disturbing. I talked to four of the members who tell me they don't recall a vote being taken in your executive session to send a letter. You seem to think that if people don't verbally disagree with you, they're agreeing. Maybe they're tired of the hostility and verbal abuse if they disagree with you or pose a question you don't like. Even worse, get a book thrown at them, as has happened in the past. This appears to be another instance where you're acting without Board approval in a transparent and pathetic attempt to get me off the Board so you can get someone on who will vote your way.

There were five members of the Board involved in the mailing that I printed and mailed, all of whom knew it was being returned to my post office box. Last time I counted, five members constituted a majority of the Board. I printed the material at no cost to the Association, as I did the prior mailing. I addressed it using a mailing list provided by Curt Blik and updated by Dave Seymour. Bill Hayes helped me, my wife and a neighbor stuff and seal the mailing. Richard Smail had the key to the box so his secretary and member of your anti-annexation group could retrieve and tabulate the cards. But, of course, you didn't bother to find that out.

All five of us felt this action was necessary because you and your group were doing everything you could to stall the mailing. The Board agreed to include information in the letter so members could take the survey on the Association website. Dave tried for two weeks by phone and E-mail to get the information to include in the letter. He never received a reply and the information never was put on the website, as agreed to by the Board. After Dave found a way around that stall, I tried for another week to get a current membership list so I knew how many letters and cards to print and how to stuff the multiple lot owners' envelopes. After several stalls on that request, we proceeded as outlined above.

We did the mailing ourselves because the stalling tactics made us doubt that we would get a complete mailing by you and your assistant, who never did answer any of my E-mails. It appears our suspicions were not unfounded, as I was told Carol admitted, during the executive session, that she did not want the mailing be sent. The reason we did not have the cards returned to the Association's address is the same reason the ballots are returned to a different address. We could not trust that the people who have access to the mailbox would provide an honest tabulation.

If anyone should explain their actions it's you and the other people who were trying to keep the mailing from going out. You decided to contact the attorney without even attempting to get a consensus of the Board. You provided him with erroneous information that all Association mailings are returned to the Association address so you could get the opinion you wanted, when you knew that wasn't true. You then, again without consulting the other board members, decided to resend the mailing. I'm sure the reason you decided not to consult the other board members is because you knew you could not get a majority vote for your actions.

You seem to think that being president gives you special power to act on your own. The president's job is to facilitate the wishes and actions of the board. He is not empowered to act without Board approval.

You know what you can do with your demand that I attend the next meeting and explain my actions. If I'm in town and if I decide to attend, it will be my decision,

not yours. If I'm not there I demand you read this E-mail in my stead and make it a part of meeting minutes. Also give a copy to those who you claim are demanding an explanation. What information were they provided that made them think there was any other reason for your unauthorized mailing than you stated in your cover letter? Could it possibly have been planted for some reason? Your feeble attempts to get control of the Board are a joke.

The good news is that the survey proved just what you didn't want to know. A majority of the membership is interested in looking into the possibility of annexation into Scottsdale. Maybe it's time you, as President, started representing the interests of the whole membership instead of your group's self serving interests.

In light of your and certain other people's hostile reluctance to explore annexation, I believe it is important that the team formed to negotiate with the City of Scottsdale include only members who are truly interested in securing the best terms and conditions to bring back to the membership for their consideration. Not people whos only interest is to torpedo the negotiations. Richard should be free to pick people he feels would be best qualified to get a result that would benefit the community.

**Factual responses by Rick Nelson to Mr. Malliet's email read at the THIA February Board Meeting.**

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Mr. Malliet states in paragraph two, "There were five members of the Board involved in the mailing that I printed and mailed, all of whom knew it was being returned to my post box."

**Response 1**

Mr. Blik, Mr. Hayes, Mr. Smail, and Mr. Seymour all stated publicly they had no knowledge of the mailing or P.O. Box until after the mailing occurred. We had to rewrite the December Board minutes to reflect their statements.

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Mr. Malliet continued in paragraph two to state, "Last time I counted, five members constituted a majority of the Board." He went on to describe the tasks of the mailing.

**Response 2**

Five members is not only a simple majority, but a quorum. If, as Mr. Malliet states, these five members met as a quorum Board and decided on an action, without public notice, publication of an agenda, and minutes, the Association could be in violation of AZS 38-431.01 the public meeting law.

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Finally, in paragraph two Mr. Malliet stated, “But, of course, you didn’t bother to find that out.” He is referring, I assume, to the facts behind the mailing.

**Response 3**

The Board asked for an explanation and reasons behind Mr. Malliet’s actions repeatedly at the December and January Board meetings. Mr. Malliet did not attend or respond.

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Mr. Malliet states in paragraph three, that the survey information and electronic link were never placed on the Association web page as agreed. He also stated that he tried for another week to get a current membership list.

**Response 4**

First, web issues concerning privacy needed to be resolved before the electronic survey link was added to our web page. Once that issue was resolved, the survey was posted. Unfortunately, the web page host, IPOWER.COM, suffered a complete server failure and all their clients were off line for over 5 days. The Association should and does guard the privacy of its members. It does this by limiting the access to member addresses. Second, it is the responsibility of the Association Secretary to conduct all official communications with members. This responsibility has been in place since the formation of the Association. Mr. Malliet had no authority to send a mailing on behalf of the Association. I repeatedly asked Mr. Malliet for the text of the survey letter and cards so the mailing could be done.

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Mr. Malliet states in paragraph four that “We could not trust that the people who have access to the mailbox would provide an honest tabulation.”

**Response 5**

This accusation is at least an insult and perhaps worse. I don’t respond to unsubstantiated accusations. If Mr. Malliet has proof that any member of the Board is untrustworthy, let him produce it, or withdraw the accusation and apologize. The survey was successfully completed by the Secretary, and 48% responded in favor of finding out more information about annexation.

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The remainder of Mr. Malliet’s statements are filled with personal insults and not worth the effort to respond.

This letter is Carol Landauer's response to Robert Malliet's version of events.

Regarding paragraph one in which Mr. Malliet states four Board members told him no vote was taken to send him a letter: My recollection of the Executive Session is that every person agreed to send Mr. Malliet a letter, and because the agreement was so uniform, a formal vote was not taken. We can parse words in terms of the definition of "vote" but certainly an agreement was reached by all parties, as in fact it is reasonable to assume agreement when no dissent is offered in response to an invitation to protest.

Paragraph two addresses the fact that five people, a majority of the Board, participated in the mailing. That is an interesting fact, but irrelevant. Being a 5-4 majority does not confer authority to open an unregistered, unofficial mailbox under the aegis of THIA.

In paragraph two, Mr. Malliet refers to "a member of your anti-annexation group" being able to retrieve the cards if Mr. Nelson had only bothered to find that out. First, upon what evidence does Mr. Malliet base his "anti-annexation" charge? Mr. Malliet is openly pro-annexation, and a group of four Board members did vote against Mr. Malliet's inaccurate, misleading survey letter-- a vote against the *wording* of the letter-- *not* against the annexation due diligence itself. The specificity of our opposition was documented in the letter Rick Nelson, Denny Maple, Bill Victor, and I (Carol Landauer) later sent to the community, contending and clarifying some of Mr. Malliet's biased statements, yet still urging all property owners to vote *for* investigating annexation. Furthermore, logically, if Mr. Malliet truly intended to offer the key to me, granting access to that P. O. Box, then why bother to open an unauthorized address at all?

Paragraph three accuses Mr. Nelson and "his group" of doing everything they could to "stall the mailing." Again, according to my recollection, the timeline between Board meeting and mailing was consistent with the timelines of most chores the Board must carry out. We are volunteers with busy lives and other responsibilities. I know that I was sick during that period and not working at my computer (That is why Mr. Malliet's emails went unanswered. I do not know why Mr. Malliet didn't simply call me, as we do know each other.) Rick was out of town in California. Hence the delay in forwarding the membership list to Mr. Malliet. There was no conspiracy to stall the mailing. However, I am willing to acknowledge the frustration that Mr. Malliet experienced, especially based on his interpretation or misinterpretation of events. Still, I submit that Mr. Malliet's solution to his frustration- opening an unauthorized mailbox- is not justifiable.

In paragraph four, Mr. Malliet expressed suspicions that "the stalling tactics made us doubt we would get a complete mailing" and goes on to say that his suspicions were affirmed when I "admitted" in Executive Session that I "did not want the mailing to be sent." First of all, Mr. Malliet was not at that session to hear me speak. Second, my comment referred to my initial willingness to allow Mr. Malliet to do the mailing, as he had offered to do it, and I was happy to turn over the labor to him. But Mr. Nelson later informed me that I had to do the mailing per my responsibility as secretary, and I capitulated accordingly. I *never* stated that I didn't want the mailing to be sent. In fact, my stance was actually supportive of Mr. Malliet, as I was happy for him to do the work- if protocol allowed it.

Also in paragraph four, Mr. Malliet states he had the cards sent to another address because he “could not trust that the people who have access to the mailbox would provide honest tabulation.” First, that statement belies the earlier statement that Mr. Malliet intended to give me a key. Second, since I hold the keys to the mailbox, that allegation seriously impugns my character and reputation in my community. I’d like to know on what grounds Mr. Malliet bases his distrust and accusation of dishonesty?

In paragraph five, Mr. Malliet again charges Mr. Nelson and other people of trying to keep the mailing from going out. Where is the evidence? Blocking the mailing is not even feasible even if we were opposed, which we weren’t.

In paragraph six, Mr. Malliet accuses Mr. Nelson of contacting the attorney without attempting to get a consensus of the Board. That poses a compelling question. When five members of a Board secretly change the official mailing address behind the backs of four other Board members (three of whom are officers), do the four members need the permission of the five offenders to consult an attorney on the matter? As for the accusation that Mr. Nelson provided erroneous information to the attorney regarding all mailings getting returned to the Association address, I can only think of one mailing that is not returned to the Board address- the official ballot votes. And I cannot see how that clarification would have changed the lawyer’s answer. True, on the advice of the attorney, Mr. Nelson did re-send the mailing, using the proper address, without informing the other Board members who had surreptitiously created the bogus address. Mr. Malliet resents not being consulted, and seems to think that only he is entitled to act without consulting the entire Board because he had majority support. This raises another compelling question. If the 5-4 majority of the Board makes illicit decisions, are those decisions legitimate simply because the majority agrees?

Paragraph seven contains personal attacks on Mr. Nelson, including statements and questions that make no sense to me, so I cannot address them.

In paragraph eight, Mr. Malliet celebrates the results of the survey, accusing Mr. Nelson of dreading those results. Again, I’m not sure how Mr. Malliet reconciles that claim with the fact that Mr. Nelson, Mr. Maple, Mr. Victor, and I all personally voted to explore both options, and in writing encouraged everyone in the community to do the same. Yet Mr. Malliet doggedly repeats and repeats his accusation of bias.

Finally, his concluding paragraph once again states that Mr. Nelson and other people have “hostile reluctance” to exploring annexation as Mr. Malliet demands that only Mr. Smail and other pro-Scottsdale supporters should be involved in the negotiating process. This final paragraph greatly calls into question Mr. Malliet’s standard of objectivity, fairness, and serving the needs of community. The fact that a group of people exists who are so blatantly pro-annexation points to the upside-down nature of all of Mr. Malliet’s accusations. Mr. Victor, Mr. Maple, Mr. Nelson, and I have repeatedly stated and demonstrated that we have reached no such conclusions either way, as we do not have all the facts. This entire process began strictly as a matter of securing our water supply. That fact often gets lost in all the other pro-Scottsdale rhetoric. We will not know until after our Town Hall Meeting Monday night just how that water security issue plays out. Isn’t it irresponsible for any reasonable person to have made up their mind regarding the future of our water without hearing all the facts first? Isn’t it irresponsible for any reasonable person

to have made up their mind regarding annexation without hearing the costs first? ... or without learning about all other risks, benefits, and detriments? I contend that anyone who has so stridently already made up his or her mind is the one with the agenda, the bias, and the inability to serve our community in its efforts to obtain as much information as possible regarding all options affecting our future.

#### Dave Seymour's Rebuttal to Robert Malliet letter:

I was aware Bob had intentions of mailing out the survey cards after he asked me for an updated list, but that was his choice and not my call to tell him not to do it. I was not aware of the new post office box until after the cards were mailed and I received one in the mail. I did not participate on mailing out any of the survey cards from either survey.