

# Tonto Hills Improvement Association

President: Michael Jans  
Vice President: Nancy Nelson  
Treasurer: Kathleen Kuchta  
Secretary: Diana Cole

## Board of Directors Meeting Minutes Wednesday, June 15, 2022 6:30

This meeting was conducted via Zoom webinar.

- I. Call to Order: 6:31 p.m.
- II. Roll Call
  - A. Present – Robyn Baker, Diana Cole, Ann Dichiara, Jim Gibbs, Jacki Hoagland, Michael Jans, Kathleen Kuchta, Nancy Nelson, Bud Tolp
  - B. Guests – 15 Tonto Hills owners, 1 attorney attended all via ZOOM
- III. Opening Remarks
  - A. Michael Jans gave an overview on the THIA joining the Westhoff, et al. vs Rent-Sell, LLC litigation regarding the 1961 amendment to the Tonto Hills Declaration of Restrictions.
    - i. The process used to make the decision for the THIA to join the litigation involved the robust, thoughtful, and spirited discussion of the board members who come with a wide range of expertise and experience. Discussions took place in Executive Session as outlined by our Bylaws.
    - ii. The motivation to join the lawsuit was not personal, was not related to any outstanding complaints against any individual in the lawsuit, and was simply to uphold the Tonto Hills Governing Documents that we were all issued when we purchased our Tonto Hills properties.
    - iii. The communication methods used by the Board to update the community include email blasts and updates at board meetings. While the Board is bound to confidentiality as directed by the attorney representing the THIA, the Board will communicate whatever is possible on a regular basis.
  - B. Robyn Baker, CA licensed attorney and liaison with Quinten Cupps of VF Law who is representing the THIA, gave an additional update:
    - i. A committee of the Board interviewed and chose an attorney who does not only specialize in planned communities law, but is also familiar with Improvement Association law. Tonto Hills is an Improvement Association governed by Not-For-Profit laws as opposed to an HOA which is governed by different statutes.
    - ii. The amended counterclaim was signed and filed by the attorneys about a week ago. However, the Court has not issued an order yet accepting the amended counterclaim and lodging it on the docket. Until that happens, the time to respond to the counterclaim does not start running. Once the Court issues an Order, we will prepare a response to the counterclaim or another firm may get involved if the insurance company (State Farm) assigns the case to a different firm to defend against the counterclaim.
    - iii. As for the underlying complaint, the Association and the Westhoffs filed a motion for summary judgment a few weeks ago. Mr. Rensel will have until the first week of July

to file a response to the motion. After he files his response, we will have a chance to file a reply motion. At that time, the matter will go before the judge for a decision. We are hopeful the court will agree with the arguments made in the motion. If the court does agree with the arguments, a judgment will be entered in the Association's and Westhoff's favor disposing of the underlying complaint. If that were to occur, however, the counterclaim would still exist and would still need to be dealt with as separate claims have been made that have nothing to do with the validity of the D of R amendments.

- iv. We are doing a final exchange of documents and evidence with Mr. Rensel and his attorneys, which will be completed by this Friday. The discovery period (which is the time where the parties exchange documents and evidence) will close in a couple of weeks. Once that period closes, the next step will be to wait for the results of the motion for summary judgment stated above and then to set the matter for a trial if the motion for summary judgment is denied. Please remember that all of this only applies to the underlying complaint filed by the Westhoffs and the Association. With Mr. Rensel's pending counterclaim, it is likely that Mr. Rensel and his attorneys will seek to keep everything together and ask the court not to set a trial date until the counterclaim is ready for trial. That could result in many additional months tacked on to the timing of events.

#### IV. Open Forum

- A. Sean Doyle, attorney representing the owner of Lot #6 asked questions regarding dissemination of information, impact the lawsuit may have on buyers and sellers, and the expense incurred by THIA for legal fees. Michael Jans reviewed the emails sent to the owner and the ongoing communications used by the Board; stated that the Governing Documents serve the community and protect the economic and financial well-being of Tonto Hills property owners; and stated that legal fees are reviewed as part of the financial review presented by the Board Treasurer at Board meetings.

#### V. Consent Agenda Items:

- A. Acceptance of Meeting Agenda of 6/15/22
  - i. Ann DiChiara made a motion to accept the agenda with the amended addition of one item added to New Business, a discussion and resolution on late fees as requested by Kathy Kuchta. Robyn Baker – 2<sup>nd</sup>. The motion passed.
- B. Approval of Meeting Minutes of 5/11/22
  - i. Ann DiChiara made a motion to accept. Nancy Nelson – 2<sup>nd</sup>. The motion passed.
- C. Approval of Executive Session Minutes of 5/11/22
  - i. Robyn Baker made a motion to accept. Ann DiChiara – 2<sup>nd</sup>. The motion passed

#### VI. Election of Officers and Liaisons

- A. Diana Cole made a motion that Jacki Hoagland and Ann DiChiara co-chair the Welcome Wagon. Robyn Baker-2<sup>nd</sup>. The motion passed.
- B. Jacki Hoagland verbally agreed to abide by the Tonto Hills Board Code of Conduct. This completes all members agreeing to abide by the Code of Conduct.

#### VII. Reports

- A. Treasurer's

- i. Kathy Kuchta gave the Treasurer's Report as of May, 2022
  - a. 27 lots have not paid their annual assessment to date; 7 lots have partially paid
  - b. The budget is on track for the year with the exception of legal expenses. YTD expenses are \$7334.17.

B. ACC

- i. Bud Tolp stated Lot #54 and Lot #199 are under active review
- ii. Bud stated no submittal is required for the addition of solar panels.
- iii. The proposed language for the amendments to the Addendum A to the Bylaws of THIA is still under review.
- iv. Bud reviewed outstanding complaints that were investigated by the ACC. (see Old Business)

C. Environmental and Road Safety

- i. Robyn Baker stated that the Road Safety Committee had a very satisfactory meeting with MCDOT on 5/16/22. She reviewed the proposed plan which MCDOT presented which addresses residents' concerns. The plan allows for road widths of 20' and a 6 foot area on each side of the road for use by bicyclists, pedestrians, and horseback riders. This applies to all roads including Old Mine Rd. Robyn will prepare an eblast with complete information, design graphics, and a public comment form.
- ii. Bud Tolp asked for MCDOT to clarify that the 30' from center right-of-way on the graphic is on Old Mine Rd only and that the right-of-way on other roads in the community is 20'.
- iii. Robyn made a motion that the Board accepts the new design as presented by MCDOT with the clarification as presented by Bud Tolp. Nancy Nelson- 2<sup>nd</sup>. The motion passed.
- iv. Robyn thanked the work of the entire road committee and especially the expertise, history and knowledge shared by Charlie Civer.

D. Landscaping and Fire Mitigation

- i. Jim Gibbs reported that landscaping is going well.
- ii. Jim also reported that it is currently difficult to get solar products, bids, and manpower to do the work so this agenda item is on hold until some future time.

E. THVFD and Firewise

- i. Ann DiChiara reported Gil Stedman donated a 48 in TV for training purposes with the fire service and mounted it in the firehouse.
- ii. 5 firemen showed up for the 6/11 training. The next training is 7/9 and the community is welcome.
- iii. New volunteers include Don Schoonenberg, Keith Pierce, and Lee Walters.

F. Welcome Wagon

- i. Jacki Hoagland and Ann DiChiara hosted a Welcome Wagon "Tacos and Tequila" event at Jacki's home with 28 people in attendance.

VIII. Unfinished Business

A. D of R Committee Update

- i. There was a discussion on tabling this project until after resolution of the litigation which may impact our governing documents, although parts of the D of R's could begin to be reviewed. Robyn Baker will review this again in July.

B. Lot #126 complaint against Lot#125

- i. Nancy Nelson reported that Lot #125 owner has filed a complaint with Maricopa County regarding the unregistered and abandoned vehicles on Lot #126. The Board will also file a complaint as voted on 2/16/22 by the July meeting.
- C. Lot #108 complaint against Lot#230A
  - i. The Board has exhausted all routine procedures available and the owner of Lot#230A has not removed the debris. Michael Jans referred additional discussion on this complaint to Executive Session.
- D. Lot #212B complaint against Lot#230A dated 3/22/22
  - i. Ann DiChiara made a motion that the Board agree with the ACC recommendation that the owner of Lot#230A is in violation of Tonto Hills D of R's #17e and 17h. Nancy Nelson-2<sup>nd</sup>. The motion passed.
- E. Lot #212B complaint against Lot#230A dated 4/19/22
  - i. Bud Tolp stated that the ACC investigated and found that this complaint is similar to the complaint of 3/22/22 and the owner of Lot#230A is in violation of the D of R's #17e and 17h.
  - ii. Diana Cole made a motion that the Board agree with the ACC recommendation that the owner of Lot#230A is in violation of Tonto Hills D of R's #17e and 17h. Ann DiChiara -2<sup>nd</sup>. The motion passed.
- F. Lot #215A complaint against Lot#231F, 216, 230A, etc.
  - i. Bud Tolp stated that the ACC investigated and found that the discarded truck tire on Lot #216 is in violation of D of Rs #17e and 17h.
  - ii. Robyn Baker made a motion that the Board agree with the ACC recommendation that the owner of Lot#215A is in violation of Tonto Hills D of R's #17e and 17h. Ann DiChiara -2<sup>nd</sup>. The motion passed.

IX. New Business

- A. Lot#6 complaint against the Board for lack of communication regarding litigation, risk to property values, and expense to THIA.
  - i. Questions relating to this complaint were addressed under Open Forum with complainant's attorney. No additional comments were brought forward by the complainant. The matter was considered resolved.
- B. Discussion and resolution relating to late fees on our Annual Dues payments
  - i. Kathleen Kuchta reported that as Non-Profit, late fees should be based on interest and our attorney has recommended a rate of 12%.
  - ii. Kathy made a motion to set an interest rate going forward of 12% per year or 2.25% per month beginning 30 days past the date of the invoice. Robyn Baker – 2<sup>nd</sup>. Nancy Nelson requested an amendment that any Liens placed also bear the same interest rate as required by our D of R's #1f.
  - iii. Bud Tolp requested that the motion be written and circulated for comments prior to voting. Kathy accepted Bud's request.
  - iv. Jacki Hoagland asked what accommodations are made for those who cannot make their payments due to hardship. After additional discussion, it was agreed that Jacki and Kathy will continue the discussion outside the meeting.

- X. Announcements
  - A. The next board meeting is July 20 via Zoom.
  - B. Future Board Agenda Items – none
  
- XI. Adjournment– Michael Jans adjourned the meeting to Executive Session under Section 10.0 Reasons #1 and #2 of Tonto Hills Bylaws at 8:10 PM.

Diana Cole 7/20/2022

Diana Cole, Secretary