

Tonto Hills Improvement Association

President: _____

Vice President: Nancy Nelson

Treasurer: Kathleen Kuchta

Secretary: Diana Cole

Board of Directors Meeting Minutes

Thursday, February 16, 2023 6:30

This meeting was conducted via Zoom webinar.

- I. Call to Order: 6:33 p.m.
- II. Roll Call
 - A. Present – Robyn Baker, Diana Cole, Jim Gibbs, Jacki Hoagland, Kathleen Kuchta, Nancy Nelson, Bud Tolp
 - B. Guests – 15 Tonto Hills owners
- III. Opening Remarks
 - A. Nancy Nelson announced that the AGM would be a hybrid meeting taking place over zoom and in person at the Christ the Lord Lutheran Church. She informed all present that if you zoom in you will be asked to provide your lot number as well as your name.
 - B. Robyn Baker gave updates on the litigation:
 - i. Westhoff, et al. v. Rent-Sell, LLC:

The Rent-Sell litigation is still pending. The parties have been ordered by the judge to file one final motion to try and dispose of the remaining claims and issues alleged in the Plaintiffs' lawsuit. We will provide an update as soon as the judge issues a decision.
 - ii. Rent-Sell, LLC v. THIA, et al. (Counterclaim):

The Court decided to pause the litigation concerning certain allegations of the Counterclaim until the underlying declaratory judgment action has been resolved. Therefore, the Counterclaim is in a holding pattern.
- IV. Open Forum
 - A. Katie Lane made a formal request that the motion for dissolution of the THIA and its' committees be voted on tonight. Nancy Nelson responded that the motion is already on the agenda that was published to the community on Feb. 9 under VIII. New Business, and the item will be addressed at that point of the agenda.
 - B. Steve Rensel objected to his name not being put on the ballot since he previously submitted his candidacy form. He stated that he received a letter from Nancy Nelson (*by email and regular mail on 2/2/23*), explaining that he was not eligible. Nancy Nelson explained again that under the THIA Bylaws, members who are not in good standing, that is have outstanding DofR or county violations, are not eligible to run for the board or ACC. Nancy further stated that Steve has paid his assessments so he is eligible to vote. Steve Rensel stated that there are two of him – Rent-Sell Real Estate and Steve Rensel. He further stated that he isn't in violation; Rent-Sell RE, LLC is involved in the violations and Rent-Sell RE, LLC is a separate

entity from him, so he should be able to run. Nancy Nelson said this would be addressed under item VII.e. of the agenda.

V. Consent Agenda Items:

- A. Acceptance of Meeting Agenda of 2/16/23
 - i. Ann DiChiara made a motion to accept. Kathy Kuchta – 2nd. The motion passed.
- B. Approval of Meeting Minutes of 1/10/23
 - i. Ann DiChiara made a motion to accept. Kathy Kuchta – 2nd. The motion passed.
- C. Approval of Special Meeting Minutes of 1/24/23
 - i. Ann DiChiara made a motion to accept. Kathy Kuchta – 2nd. The motion passed.

VI. Reports

A. Treasurer's

- i. Kathy Kuchta gave the Treasurer's Report as of January 31, 2023
 - a. Legal expenses FISCAL ytd through JANUARY are \$41,086 and is the only item substantially over budget. All but approximately \$2700 is related to the Westhoff, et al. v Rent-Sell, LLC litigation.
 - b. Kathy has requested check history from Chase in order to identify the depositors of \$2000 in the ACC account.
 - c. The DWID has requested a check for the first two standpipes which the Board voted to pay for, based on past precedent. The agreement is that the THIA pay for the standpipes and installation and the DWID pay for maintenance. There are no "comingled" funds. Two new standpipes have been installed by the DWID to date.
 - d. There has been a significant savings to the THIA under the Administration category since switching to Foothills Accounting. This category is currently APPROXIMATELY \$1500 under budget FISCAL YTD.
- ii. Kathy Kuchta reviewed the proposed budget for 2023/2024 which will be included in the AGM mailing and approved by the next board.
 - a. A new category has specifically been added for "standpipes". Previously the funds were held in "Unanticipated Expenses".
 - b. Jim Gibbs stated the Dumpster cost may go over the proposed budget due to increases in the bids he is receiving. Kathy stated there was enough leeway in the budget to accommodate this. In addition, the THIA has \$89,000 in savings.
 - c. Nancy Nelson made a motion to accept the DRAFT budget for inclusion with the AGM mailing. Ann DiChiara-2nd. The motion passed.

B. ACC

- i. Robyn Baker made a motion to accept the revisions to the THIA Bylaws – Addendum A Design Review Process of March 1,2011. Kathy Kuchta -2nd. The motion passed. This revision includes definitions of "Professional" in lieu of "Architect"; removal of any reference to Deposits; Perc Test requirements; Dark Skies recommendations; and existing THIA lot owners' notification procedure for new builds in the community. The approved document will be available on tontohills.net under Governing Documents.

C. Environmental and Road Safety

- i. Robyn Baker gave an update on the roads from information she received from the new MCDOT Public Information Officer, Bill Leal:

“The Maricopa County Department of Transportation (MCDOT) will be making roadway improvements in the Tonto Hills community to help mitigate dust by paving roadways and will include localized drainage improvements to minimize the need for maintenance after storms. MCDOT is currently performing survey work, as some necessary land rights will need to be acquired for the project. Over the next 6 months, our team’s consultants, Acquisition Sciences, Ltd. and First Appraisal Services, will be notifying property owners by letter to schedule appointments to discuss land area needs. If you receive a letter from Maricopa County or one of our consultants regarding your property, please contact them directly per the information listed in the letter. The Tonto Hills Paving project is currently in the design phase. The design phase is expected to be complete in 2025. For more project information and to see a list of Frequently Asked Questions (FAQ’s), please visit our project page, mcdot.me/TontoHillsPaving. If you have additional questions, contact our project team at MCDOTProjects@maricopa.gov or (602) 506-3342.”

D. Landscaping and Fire Mitigation

- i. Jim Gibbs reported that he is getting dumpster bids and expects the first dumpster to be available March 1. A blast will go out with details.

E. THVFD and Firewise

- i. The Feb CPR training was cancelled and is being rescheduled. Interested residents should contact Ann or Nancy.
- ii. Ann reminded everyone to send in the hours spent clearing brush. These hours are needed for our Firewise certification.

F. Welcome Wagon

- i. Ann DiChiara reported that the paper directories will be available by the AGM.
- ii. Residents are encouraged to send any updates to Ann or Jacki.

VII. Unfinished Business

A. Lot #108 complaint against Lot#230A; Lot #212B complaint against Lot#230A dated 3/22/22; Lot #212B complaint against Lot#230A dated 4/19/22; Lot #215A complaint against Lot#231F, 216, 230A, etc.

- i. Nancy Nelson asked Steve Rensel if he had taken any action to remove the outstanding DofR violations against his properties. Steve Rensel replied he has not.
- ii. These complaints are on hold from further board action pending the outcome of the Westhoff, et al. v Rent-Sell, LLC lawsuit.

B. Resignation of Michael Jans

- i. Diana Cole made a motion that the vacancy created by Michael Jans’ resignation be left unfilled, and that Vice-President Nancy Nelson continue to fulfill the duties of President until the new board and officers are elected at the AGM. Kathy Kuchta-2nd. The motion passed.

- C. Lot#212B storage unit in violation of DofRs P11
 - i. Kym Westhoff sent information to the board shortly before the board meeting. As Kym was not in attendance and most board members had not been able to review the information yet, this item was tabled until the next regular meeting.

- D. Missing ACC Minutes
 - i. Diana Cole made another request to Steve Rensel to review his files for the missing ACC minutes as all other past members of the ACC who are still residents in Tonto Hills have already done.
 - ii. Diana Cole thanked Corey Garrison and Robert Tattle for providing 6 of the missing minutes

- E. AGM update
 - i. Nancy Nelson made a motion to accept the 2023 AGM cover letter. Ann DiChiara-2nd. The motion passed.
 - ii. Nancy Nelson made a motion to accept the 2023 AGM Agenda. Ann DiChiara-2nd. The motion passed.
 - iii. There was a discussion on the AGM Ballot and Bios. Bud Tolp stated that Steve Rensel is the only person ever present representing lots owned by Rent-Sell, LLC. Steve Rensel was asked who are the Board Members and Officers of Rent-Sell, LLC. Steve explained that he is the only Board Member and Senior Officer, except possibly for his sister. He said he would get back to the board regarding membership of his board.
 - a. The Board will confirm the Candidate names prior to sending out the AGM Ballot and Bios. (****See Below*)

VIII. New Business

- A. "We all know as a community that many properties skew the guidelines of the DofRs (for one reason or another), the only fair option to all property owners is to fully dissolve all committees, because enforcing the guidelines unfairly or inconsistently, the committees have effectively waived the right to enforce them at all. Therefore, I am requesting the board to vote on dissolution at this time, as to prevent any further and future litigation" (Agenda item submitted by Nick Tilley) – Katie Lane
 - i. Katie Lane presented reasons for dissolving the DofRs, THIA, ACC and all other committees.
 - a. THIA participation in lawsuit is unheard of
 - b. Concern over property values
 - c. Simpler organization and management through Maricopa County
 - d. Buyers either want to live in a well-run HOA like Grayhawk or DC Ranch or in an area with nothing other than county regulations.
 - ii. Ann DiChiara made a motion that we do not dissolve the THIA. Robyn Baker-2nd. The motion passed unanimously. Reasons given by the Board were:
 - a. The DofRs are deed restrictions that we each received when buying our property and they will not be dissolved if the THIA is dissolved. Deed restrictions run with the land, so the DofRs will not go away if the Improvement Association is dissolved.
 - b. If the THIA is dissolved, the DofRs will stand with no one to enforce them. In addition, the DofRs stipulate for the formation of the THIA and the ACC.

- i. Katie Lane disagreed that the DofR's could not be dissolved. The Board response was that the memo Ms. Lane distributed only discussed dissolution of the Association.
 - c. Litigation will actually increase because there will be no intermediary in the form of the THIA to try to assist with neighbor and community disputes to prevent lawsuits.
 - d. The THIA holds contracts for landscaping the front entrance, power for lighting, border agreements with Desert Mountain, and so on, all of which maintain Tonto Hills. Without the THIA these contracts would end and it is not clear who would assume the responsibilities.
 - e. The THVFD is supported by the THIA so the THVFD would be defunct without the additional support of the THIA.
 - f. The volunteers of the THIA and ACC over many years have been wonderful and tried their hardest to keep Tonto Hills the outstanding place it is.
 - g. There is no proof of inconsistencies in the application of the DofRs
 - h. The community does not gain any improvements by being controlled by Maricopa County only, which would not be the type of community at least several of the Board members relied on when purchasing property in Tonto Hills.
- IX. Announcements
- A. The next regular board meeting will be decided by the new board.
 - B. Future Board Agenda Items – nothing additional to what is pending
- X. Adjournment–
- A. Diana Cole made a motion to adjourn to Executive Session. Ann DiChiara-2nd. The meeting adjourned to Executive Session under Section 10.0 Reasons #1 and #2 of Tonto Hills Bylaws at 7:57 PM.

Diana Cole Approved 2/19/23
Diana Cole, Secretary

**** An issue was raised in the February 16, 2023 Board meeting regarding eligibility of a resident to hold office in the THIA as the member of an LLC that holds the property. The governing documents for THIA refer to “persons”. Based on the historical precedence in Tonto Hills and the language in the governing documents, the logical conclusion is that only individual members are eligible to be placed on the ballot to run for the board or the ACC.*

It is the opinion of the Board that the individual person or persons associated with an LLC owning property in Tonto Hills is/are in the position to act on behalf of the LLC, and therefore is/are responsible for the LLC property. If properties owned by an LLC have outstanding DoR violations, these properties are not in good standing. Accordingly, the member or members of the LLC is/are not a member in good standing as it relates to the LLC properties, and is/are not eligible for Board or ACC service.
