

# Tonto Hills Improvement Association

President: Robyn Baker  
Vice President: Nancy Nelson  
Treasurer: Kathleen Kuchta  
Secretary: Diana Cole

## Board of Directors Meeting Minutes September 12, 2023, 6:30

This meeting was conducted via Zoom webinar.

- I. Call to Order: 6:35 p.m.
- II. Roll Call
  - A. Present – Sandra Abbey, Robyn Baker, Diana Cole, Jim Gibbs, Kathleen Kuchta, Nancy Nelson, Paul O'Connor, Chris Prentice, David Tappe
  - B. Guests – Tonto Hills owners
- III. Opening Remarks
  - A. Westhoff, et al. v. Rent-Sell, LLC:

At the recent status conference, the trial was set to begin on April 29, 2024. It is scheduled to last four days.
  - B. Rent-Sell, LLC v. THIA, et al. (Counterclaim):

The counterclaim against THIA by Rent-Sell remains on hold pending resolution of the underlying case.
- IV. Open Forum
  - A. Steve Rensel expressed concern over the language used to describe his comments in the Opening Comments section of the 5/16/23 ACC Minutes. Sandra Abbey suggested that a training be held on procedures for appropriate taking of minutes. The board will schedule training on this subject for board and ACC members as well as interested community members.
  - B. Steve Rensel claimed that certain board members were allowed to adjudicate other residents despite being in violation of the ACC Policies and Procedures. Diana Cole requested that specifics be provided so that the board could investigate his concerns. Steve stated Board member owning Lot #064 voted on Lot#054 issues despite being in violation of the ACC guidelines herself. The board will review and report back at the next meeting and asked that any further concerns of Steve's be submitted in writing to Robyn Baker for follow-up.
  - A. There was a question from Chat asking what the status of the trial and settlement or mediation is. Robyn Baker restated that the trial is scheduled for April 2024, and that it would be great if the parties driving the litigation, Rent-Sell and Westhoffs, would engage in mediation discussions and settlement. Robyn Baker reiterated a comment Steve Rensel made during his address, that we are all neighbors and should get along for a peaceful community.
- V. Consent Agenda Items:
  - A. Acceptance of Meeting Agenda of 9/12/23
    - i. Kathleen Kuchta made a motion to accept. Nancy Nelson-2<sup>nd</sup>. The motion passed.
  - B. Approval of Meeting Minutes of 6/6/23
    - i. Nancy Nelson made a motion to accept. Kathy Kuchta – 2<sup>nd</sup>. The motion passed.

- C. Approval of Executive Session Meeting Minutes of 6/6/23
  - i. Nancy Nelson made a motion to accept. Sandra Abbey-2<sup>nd</sup>. The motion passed.
- D. Approval of Executive Session Meeting Minutes of 8/10/23
  - i. Nancy Nelson made a motion to accept. Jim Gibbs-2<sup>nd</sup>. The motion passed.

## VI. Reports

### A. Treasurer's

- i. Kathy Kuchta gave the Treasurer's Report through August 2023
  - a. There is \$51240 in the Chase Checking account and \$89,432 in the Savings account.
- ii. Of 233 lots only 1 lot is in arrears. This past due amount will be added to the existing lien on this lot.
- iii. THVFD - \$4000 of \$8000 budgeted was disbursed
- iv. YTD Legal is \$4889 vs \$4167 budgeted.

### B. ACC

- i. David Tappe gave the ACC report.
  - a. Pre-design review NONE
  - b. Preliminary Design Review NONE
- ii. The Firehouse sign is up.
- iii. Jim Gibbs will be drafting guidelines on fire mitigation for use with new residents.
- iv. Lot#21 has met with their internet provider and there is no other place to move their antenna, so they agreed to place vegetation around it.

### C. Environmental and Road Safety

- i. Paul O'Connor presented the Environmental Report. See Appendix A.
- ii. Paul will be speaking with Traci Ruth next week and Robyn suggested an all-community meeting with Traci Ruth and the engineers be scheduled.
- iii. Paul will find out who people need to contact to get copies of the plans for the roads impacting their properties.
- iv. Paul stated that the temporary easement has a 1-year time frame for doing the work – it is not permanent.
- v. Ann DiChiara suggested that photos be submitted to MCDOT to show severe run-off patterns. Nancy Nelson will submit any photos provided to her to MCDOT using the Notify MCDOT app to have residents' concerns on record.

### D. Landscaping and Fire Mitigation

- i. Nothing to report.

### E. THVFD and Firewise

- i. Sandra Abbey reported the THVFD Checking has \$6,488 and Savings has \$11,670.
- ii. Savings are designated for new vehicles and fire station building improvements, a previous fire truck sale provided \$2500 earmarked for the new vehicle purchase(s)
- iii. A Tuff Shed to store materials and equipment is being purchased to make the Fire Station useful for community events also, as was originally intended.
- iv. A Fundraiser is planned for 10/22/23 and letters should be out soon to all lot owners.
- v. Ann DiChiara will send out information on alert systems, e.g., CENS and WEA.

- vi. The grant from Firehouse Subs was not awarded to THVFD.
- vii. Ann DiChiara also thanked Jim Gibbs for his work getting our landscapers to clean up around the Kachina which looks great.

F. Welcome Wagon

- i. Chris Prentice reported the membership book is being updated again due to all the new residents.

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. These complaints are on hold from further board action pending the outcome of the Westhoff, et al. v Rent-Sell, LLC lawsuit.

B. Review of Governing Documents to bring together and enhance procedures and outline steps to be taken for violations or disputes that would occur prior to litigation.

- i. Nancy Nelson reported that a Policy and Procedure update is in process. Duties of Pres, VP, Secretary, and Treasurer are being updated first.

C. Pet Provision #14 of DofRs

- i. Sandra Abbey made a motion that the THIA Policies and Procedures, March 2011 revised 4-25-2023 be revised with changes from Robyn Baker and David Tappe accepted, to read:

**14.0 Pet Policy**

Based on resident input from a general survey conducted in December 2022 to January 2023, the board will interpret the requirements of Tonto Hills Declaration of Restrictions, Amended May 2, 1987, #14, related to Tonto Hills allowing 4 horses without permission from the board and requiring residents to obtain written permission from the board for all other pets, to refer to outdoor animals rather than to common indoor pets. Therefore, the board will not require residents to request written permission to keep dogs, cats, or other common indoor household pets. If a complaint is received related to those pets, it will be addressed by the board. Diana Cole-2<sup>nd</sup>. The motion passed.

D. Request for Board to vote on dissolving the THIA brought by resident KT Lane.

- i. Robyn Baker reviewed the prior vote on this item as recorded in meeting minutes dated 2-16-23. At that time the Board voted unanimously not to dissolve the THIA for the following reasons:
  - 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.
  - 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. Over many decades the volunteers of THIA/ACC have worked diligently to maintain TH as an outstanding community to call home
  - 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.
- ii. Nancy Nelson made a motion NOT to dissolve the THIA. Kathy Kuchta-2<sup>nd</sup>.
  - iii. Discussion:
    - a. Sandra Abbey shared her positive experience of living in a community in a county island with a neighborhood association that supported the community. They still had deed restrictions and if there was a violation, those complaints went straight to the county. She felt the character of the Tonto Hills neighborhood would be maintained if the THIA was dissolved, however there would be a loss of support for the landscaping and THVFD.
    - b. There was a discussion on sending complaints to the county if someone built a home that violated the Tonto Hills DofR's. The county would approve builds according to their rules, so violations of the Dof R's would have to be taken by individual residents to court. The county would not enforce Tonto Hills DofR's. The only remedy would be litigation. It was also unclear how County rules would differ from Tonto Hills rules as outlined in the governing documents (e.g., Minimum footprint, setbacks, number of stories).
    - c. KT Lane stated that she is a Real Estate Agent and that:
      - 1. Due to a revolt against HOAs/IA's buyers are interested in county islands. Her goal is to raise property values.
      - 2. She also expressed concern that the THIA and ACC do not have the expertise and objectivity needed to make unbiased decisions.
      - 3. Maricopa County is better managed today and Improvement Associations are no longer needed.
      - 4. Commercial property values will soar as the commercial properties at Tonto Hills are the last commercial properties in Cave Creek that aren't spoken for. She stated that the corridor at the entrance of Tonto Hills is extremely valuable and that will enhance everything else.
      - 5. She felt the THVFD donation and landscaping, and other bills could be supported/paid through other means.
  - iv. The final vote was 8 in favor of the motion NOT to dissolve and 1 abstain.

VIII. New Business

- A. None

IX. Announcements

- A. Future Board Agenda Items –
- B. Next Meeting – December 5, 2023, at 6:30 PM
- X. Adjournment–
  - A. Diana Cole made a motion to adjourn the meeting to Executive Session under Section 10.0 Reasons #1 and #2 of Tonto Hills Bylaws at 7:38 PM. Robyn Baker- 2<sup>nd</sup>. The motion passed.

    Diana Cole 12/5/2023      
Diana Cole, Secretary

**Appendix A.**

**THIA Environmental Report**

**September 12, 2023**

**Paul J. O'Connor**

Our key environmental focus is the MCDOT planning to improve the remaining roads in Tonto Hills.

Our primary MCDOT contact person, Bill Leal has recently changed positions from his County role. Bill contacted me and explained his departure adding that his position will be filled by Traci Ruth, Division Manager for Strategic Communication and Outreach. Bill shared that Traci is very capable and looks forward to filling this role. I have explained to Traci Ruth that many of our residents have questions that need to be addressed. This is very timely given what is being asked of our residents. Many properties are affected including mine. As a resident I hold a July 5th letter from Timothy Haskins, Real Estate Appraiser No. 30668. It states:

“My appraisal will provide an opinion of value of the property which will assist you and

an MCDOT representative in negotiating a fair price for the Temporary Construction on Easement (TCE) needed for the project. The enclosed exhibit illustrates the location of the TCE on the lot.”

### **Summary Comments**

1. Many residents are requesting a public meeting for DOT to hear their issues and provide explanations
2. Some residents have concerns regarding their driveway sight distance particularly with large recreational vehicles
3. Another resident has identified a protected species habitat (Gila monster) and questions why this project is so much “beyond” what was done in the initial project completed in part on N. Deer Trail Road
4. Another resident has expressed concern as to what eminent domain means to them
5. A resident has expressed concerns with the project completion date being moved back to 2025
6. A resident has concerns related to the correct road center line relative to their lot, access to additional road plan details, reluctance to sign the Offer Package since construction will not start until 2025-2026, questions regarding the drone fly over results related to when those results will be available