

Minutes of a Meeting
Of the Board of Directors of
The Tower Ranch Community Association (TRCA)
BOD-28

Date: Wednesday, March 7th, 2018
Place: Members Lounge, Tower Ranch Clubhouse
In Attendance: Directors: Don Spruston, Glen Wood, Jennifer Bridarolli,
Maureen Watt
Committee Members: Jon Durkin

Welcome and Introductions

The meeting was called to Order at 7:05 PM with Don Spruston as Chairman.

Minutes

The Agenda proposed adoption of Minutes of BOD-26 (Jan. 31/18) and of Minutes of BOD-27 (Feb. 14/18). It was noted that the Jan. 31/18 BOD meeting did not have a quorum of Directors present and was held as a discussion/information meeting about the issue of security in the Tower Ranch development. It was agreed, in order to keep the meeting numbering in sequence to add "BOD-26" to the Emergency BOD meeting held on January 24th/18. The Minutes of the Emergency BOD meeting were approved at BOD-27 meeting on Feb. 14/18.

Referring to the Feb. 14/18 Minutes, Maureen sought clarification on Jon's summary notes of his discussions with the Golf Course manager about procedures and relationships. Jon suggested the notes did not need to be attached to and forming part of the BOD Minutes and all agreed they be removed from the Minutes and be filed as general information.

Jennifer Moved that the Minutes of BOD-27 be approved with Jon's summary notes removed; Seconded by Glen and carried unanimously.

TRCA Credit Card

Jennifer briefed the meeting on the two types of credit cards offered by Interior Savings Credit Union that would serve TRCA. A couple of instances had occurred whereby a Committee Member had to use a personal credit card to secure goods/services. After a brief discussion it was agreed not to proceed with acquiring a credit card at this time.

Parkbridge Petition

Don Spruston prepared a Memo to File to summarize the relevant documents and responses taken by the TRCA and himself on behalf of the TRCA related to the Parkbridge Petition to the Courts to remove the Tower Ranch Statutory Right Of Way and Easements. Referencing the Boards instructions at BOD-27 Don advised he and Glen had met with David Towill of Thomas Butler (lawyers) on March 7th with the outcome being Towill to write a letter to Pushor Mitchell advising that TRCA would not oppose the Petition under certain conditions. Pushor Mitchell would be obligated to present the letter to the Court at the Petition Hearing. Don directed and all agreed that his Memo to File be appended to these Minutes.

Bookkeeping Protocols

The Finance Committee had developed a number of protocols for bookkeeping which were then reviewed with Chris Kerr who had suggested some minor changes. A vetting of the Protocols by Directors and Committee members suggested there was no need for the repetitive reference to Chris Kerr in the protocols and that reference to the TRCA's bookkeeper was sufficient.

A draft policy – TRCA Financial Policy #4 TRCA Bookkeeping Protocols was also reviewed.

Moved by Glen to approve Financial Policy #4 TRCA Bookkeeping Protocols; Seconded by Maureen and unanimously approved.

Committee Changes

Don advised that as result of two priorities for the TRCA: (1) maintaining the membership list up to date and (2) trying to get Solstice homeowners membership rights that a shift in responsibilities for some Committees was essential. Therefore 'membership' will be removed from the legal/membership committee and moved to "communications and social" committee to become "communications/membership/social committee" and that Maureen will drop off the finance committee and Glen would be included in the finance committee.

Committee Updates/Reports

Strata & Clubhouse Operations – Jon reported that Ms. Tower and another family member are requesting use of the gym on same basis as homeowners. After discussion it was suggested that there might be an opportunity for a "trade off" if the Tower family could provide any details about the sales agreement with Parkbridge. Jon to draft a letter for review.

The Golf Course Manager has contacted the Liquor Inspector about what rules apply for the Members Lounge and a meeting, with Jon present, will be arranged.

Jon has contacted 5 alarm/security companies to review, at no cost, the current alarm system.

Landscaping – nothing to report.

Communications, Membership, Social – Maureen briefly reviewed her first draft for an orientation package and distributed copies for feedback.

Legal – for the next BOD meeting agenda the matter of Emil Anderson paying the \$45.00 will be discussed. Don to contact Greg Asling to request an update on their position.

Other/New Items

Two personal expenditure items were presented for Board approval:

- (1) Maureen Watt in the amount of \$22.96 for printing; and
- (2) Jon Durkin in the amount of \$230.00 being ½ of the cost of the new blind in the gym.

Moved by Glen that the amount of \$22.96 be approved for Maureen Watt, Seconded by Jon and unanimously approved.

Moved by Jennifer that Jon Durkin be reimbursed \$230.00, Seconded by Maureen and unanimously approved.

Adjourn and Next Meeting.

The next BOD meeting will be held Wednesday, March 21st/18. Adjourned at 8:56 PM

Memorandum

To: **Memo to file**

From: **Don Spruston**

Subject: **Parkbridge Petition to the Courts on Removal of the Tower Ranch Statutory Right-of-Way (SRW) and Easements**

Information in this memo summarizes the relevant documents and responses taken by the TRCA, and the undersigned on behalf of the TRCA, related to the subject Petition. The objective is to ensure the Association has a file record regarding the Petition and the TRCA follow-up. All relevant documents related to this memo are available from the undersigned.

January 17, 2018 – at the TRCA Board meeting Alex P advised of a letter from Parkbridge Lifestyle Communities [PLC] regarding a Petition filed in the courts to remove the SRW, covenants and easements on TR lands. A CD contained approximately 15 related files. Glen W suggested that the files be sent me [the undersigned] and Craig Fowler, both out of town.

January 21, 2018 – I received a web address that had the cover letter, Petition and supporting materials (from Alex P). On quick review, it was obvious that the Petition had a number of either intentional or unintentional errors. I suggested to the TRCA board that an emergency meeting be held to address the most significantly damaging provision in the Petition.

My Summary of the Petition Errors/Omissions/Problems

1. The TRCA was omitted as a respondent to the Petition, even though the TRCA holds the SRW and there is a requirement in the Reciprocal Easement Agreement that the Association be in agreement with changes to the easements.
2. Order 1, paragraph 3, calls for the complete elimination of the SRW and easements rather than application only to Lots A and B.
3. Order 1, paragraph 5, similarly incorrectly calls for complete removal of the SRW and easements.
4. The Petition states that the only amenities built to date are at the clubhouse. The landscaping amenity along the TR Boulevard is not listed.
5. The Petition is not clear in demonstrating that homeowner rights of access will be maintained in event of cancellation of the SRW and Easements. The Petition advises of a Trail Network Statutory Right-of-Way which purports to provide access rights to replace those that would be removed. No details of this SRW were included with the Petition. Further, no one in the community could be found that had ever heard of this provision, although the Petition advises that it was registered in 2015.
6. The Petition advises that a similar Petition was submitted by EAC the previous year. Although there were similarities in purpose, there are distinct differences. For example, EAC briefed the

TRCA and the TRCA provided a letter of support. Also, the EAC Petition involved only a small portion of their development lot and called for all roads and trails to be dedicated to the city. The PLC Petition provided for none of these.

January 24, 2018 – Craig F had a series of phone calls and emails with the PM lawyer (Mr. Kempf) regarding the most serious issue with cancellation of the SRW. The PM lawyer advised that the errors were unintentional and he would correct them in court. Crag sent a note to PM lawyer expressing concern re verbal commitment to advise the courts of the omission of reference to Lot A in the Order para 3.

January 24, 2018- an emergency meeting was held in the TRCA lounge. After discussion, it was agreed that Don Folstad would submit a 'response to petition' addressing the most significant issue, namely the omission from the Order, para 3, re cancellation of the SRW for the whole of Tower Ranch lands, as opposed to just the development properties, which was the implied intention.

January 25, 2018- Craig Fowler forwarded a copy of the summary of the meeting to members and the Pushor Mitchell (PM) lawyer. He advised that since the TRCA was not named as a respondent the Association could not submit a response and that Don Folstad would submit a response under his own name as a homeowner. Don Folstad subsequently filed a response on January 29 (Copy sent to me). It was submitted under his own name.

February 7, 2018 – on returning home I found that the PM letter to me was dated 24 January 2018, which meant I had time to submit a response within the three week requirement to receive notice of a hearing. I submitted a response on February 8 that pointed out the concerns with respect to the drafting error on removal of the SRW and easements in the Order paras 3 and 5. I also advised that I saw no reference to TRCA agreement with the provision as required by the Reciprocal Easement Agreement, hence a legal requirement for changing the easements.

February 7, 2018 – I sent the BOD a list of issues as I saw them and a suggestion that we send a letter to the PM lawyer, and seek legal advice for TRCA. A draft of the letter was circulated and a final signed and mailed on February 14. The letter summarized the TRCA issues with the Petition.

February 16, 2018 – Received an email from PM lawyer. Not conciliatory. Trail Network SRW forwarded but not the registered copy. He claimed that the TRCA had filed a 'response to petition' (Don Folstad's response).

February 18, 2018 – I sent a fairly lengthy email to PM lawyer advising of a number of things, including that TRCA did not file a response and that Don F response was in his name, need for registered copy of the Trail Network SRW and a number of other issues. His response was more cordial and he offered help including sending the Trail Network SRW. He ignored my consideration that Don F response was in his name not the TRCA (the reasons for which became obvious later).

February 19, 2018 - Over the next few days a number of emails were exchanged. Registered Trail Network SRW received. Communication ended when I advised that it was not clear that TRCA access rights are protected for TRCA homeowners in the upper part of the Solstice development

February 21, 2018 – I received an email from Bradley Cronquist of Pushor Mitchell advising that he could brief on the Petition access issues and Glen Wood accompanied me to meet Cronquist. We met

Cronquist at his office on Monday 26 February. Cronquist had a blown up graphic and color coded presentation that better demonstrated the Statutory Right of Way Parcels and how the access is protected by the Trail Network SRW. Glen and I were satisfied that the Trail Network Statutory Right of Way provided for access to the trails and roads through the Solstice development. Cronquist also advised that the road dedication to the city only extended to the park which is shown in the Petition as Lot B. The result is that TR residents have access up to the park through the road dedication, and the SRW provides access above the park on the Solstice property roads. Later that day Cronquist forwarded copies of additional provisions between PLC and the city regarding the Trail Network Right of Way.

February 22, 2018 – I sent an e-mail sent to the board and committee members summarizing communication with Mr. Kempf.

February 28, 2018 – I received an e-mail from Nicole Foster senior legal assistant at Pushor Mitchell. Attached were: 1. a notice of the hearing date, 2. a 'Notice of Application without Notice' filed by Mr. Kempf and 3. an affidavit signed by Nicole Foster dated 27 February 2018. The Notice of Application without Notice filed with the court presented Orders to include the TRCA as a new respondent, made some adjustments to respondents names and made a request to the court to dispense with the need to notify new respondents [namely the TRCA]. The notice goes on to provide the usual background factual information and within this dialog it points out that the TRCA was inadvertently missed as a respondent. It then says that the TRCA knew of the Petition because all homeowners received a copy. It advises that a TRCA 'response to petition' was submitted by Don Folstad. The Affidavit submitted to the courts by Nicole Foster includes reference to communications to and from Pushor Mitchell. It advises that Don Folstad filed a response to Petition on behalf of the TRCA. It further advises that Mr. Kempf communicated with Craig Fowler and incorrectly advises the court that Craig was the president of the TRCA. It advises that Kempf fully briefed Craig on the reasons for the Petition. In other words, PM is establishing a case for not having to formally serve the Petition on the TRCA.

February 28, 2018 – An e-mail was sent to the Board and committee members advising of the court hearing date. Also briefed on the results of the meeting with Cronquist.

February 28, 2018 – An e-mail was sent to the Board to clarify results of the emergency Board meeting held to discuss the PLC Petition. There is a need to determine if the response to petition filed by Don Folstad was in the name of the TRCA or Don F. as a homeowner. Don was of the opinion that he filed in the name of the TRCA (note to me dated March 3). Craig and Glen both feel the intent was a response from Don Folstad personally. Maureen felt that it was a response from the TRCA. This is an important distinction given that Mr. Kempf will argue in court that the TRCA was fully informed and had an opportunity to file a response and in fact did so.

March 5, 2018 – I received an e-mail from Shana Hunt, legal assistant at Doak Shirreff, representing EAC. Three documents were attached. The first was a letter to myself signed by Mr. Sommerey, EAC lawyer, indicating that EAC had no objections to the Petition as long as its application was only for Lots A and B and that Lots 4 and 6 were not to be involved. The second document was an EAC 'response to petition' filed in the courts in which they had tried to clarify the application of the Petition to Lots A and B. The EAC response does not do a good job in reflection of Part 1 Orders, para 3, as it does not provide adequate clarification. The text of the response points out the need to protect the right of access by TRCA members to all trails in the community. The third document was an Affidavit from Greg Asling in

which he provides background and his understanding of the need for access by TRCA homeowners. It also points out that PLC opposed a similar Petition made last year. It requests the court impose the same conditions on PLC as it did on EAC, namely that the company must provide a promise to the court that no amenities will be built on Lots A and B and that access rights must be provided for TRCA homeowners.

March 7, 2018 – Craig F sent email to PM (Kempf and Foster) clarifying previous correspondence and indicating clearly that Don F's response to petition was in his personal name and not that of the Association.

Meeting with Mr Towill of ThomasButler – Board meeting #27 on February 13 requested that I contact a lawyer to determine if TRCA could be damaged by the Petition beyond what was already recognized, and to provide a recommendation accordingly. After reviewing a number of lawyers and legal firms I contacted Mr. David Towill of ThomasButler and provided him with much of the relevant provisions. I met with him on March 7. He agreed that there were errors in the Petition and advised that the file was poorly handled by the Petitioner and their legal advisers. However, he felt the mistakes were unintentional and the general concept of the Petition was common practice. After some discussion, we agreed on a path forward that would be the most cost effective for the TRCA. He will draft a letter to be sent to Pushor Mitchell stating that the TRCA will not oppose the Petition under certain conditions. Those conditions were: 1. The error in drafting of paragraph 3 related to designation of Lots A and B would be corrected; 2. A draft of the revised Order be provided to the TRCA prior to dispatch to the Land Title Office; 3. The Petitioner provide to the TRCA briefing material with clear graphic presentation of the access protection provided by the Trail Network Statutory Right-of-Way so that the Board can communicate the provisions to Members. The letter is to be presented by Pushor Mitchell at the hearing on Monday. Mr. Towill advised that this is common practice and he has no concern that it may not be presented by PM.

Results of the Court Hearing will be provided to the TRCA Board after the hearing.

A handwritten signature in black ink, appearing to read 'Don Spruston', with a large, sweeping flourish above the name.

Don Spruston