

THE TIMBERS OWNERS ASSOCIATION, INC.
BOARD OF DIRECTORS MEETING
FEBRUARY 2, 2021
VIA ZOOM

Those Participating:

Kat Hassebroek
Reggie Park
Patrick Walsh
Rob Harper, Toad Property Management
Chet Boyce, Toad Property Management
Marcus Lock, Law of the Rockies
Steve Loden, Diamond McCarthy
Brad Wyly, Diamond McCarthy

Other owners:

008 Kendra Fuller
100 Emily Herbert and Jill Wiesner
101 David Syson
102 Tim Covington
108 Keith Stieduhar
109 Nate Meckes
201 Susan Bencivenga
202 Bruce Joss
204 Sarah Van De Bogart
206 Lynette Hunt
207 Andrew Heltzel
305 Susan Bencivenga
306 Marguerite Roy
309 Miquel Maldonado

Rob called the meeting to order at 5:38 pm and said there was a quorum with three board members participating.

Rob explained the Association's legal counsel would give an update, a short question time and then the Board would go into Executive Session and non-Board member owners would rejoin the meeting after the Executive Session.

Reggie made a motion to approve the minutes of the January 19, 2021 meeting. Kat seconded the motion and it was unanimously approved.

Steve Loden had distributed a letter to owners with an update prior to the meeting and explained the purpose of the meeting was to discuss a special assessment to cover the approximately \$100,000 KW Construction expenses, plus interest, which were not covered by the Seneca insurance claim. Steve said KW Construction had indicated a willingness to wait for payment until additional funds were recovered in litigation but KW Construction was now

seeking immediate reimbursement of over \$200,000 including interest and threats of a lien and/or lawsuit had been made.

Steve Loden said Toad had reached out to representatives of KW Construction regarding a settlement. Steve and Brad have also reached out to the KW Construction attorney, Milo Miller about the possibility of a settlement. It appeared KW Construction had been adding interest on amounts outstanding prior to any funds being received from the insurance company (Seneca).

Rob said KW Construction had expressed a willingness to work with the Association but KW Construction had expressed concern that their window of opportunity to recover the outstanding expenses and interest was running out. Brad Wyly explained the construction defect lawsuit had been filed against the parties responsible for defects in the fire suppression system to avoid the need for a special assessment but the lawsuit had been delayed in the courts due to the company that designed the fire suppression system being identified and added to the lawsuit, and KW Construction was now requesting payment prior to that litigation being settled.

Steve Loden explained that the amount of damages ultimately recovered in the construction defect lawsuit was not known.

Rob explained that if the Association paid KW Construction the full amount they were demanding, which is over \$200,000, a special assessment of \$5,000 per unit would be required. A special assessment would have to be collected as quickly as possible.

Steve Loden said Diamond McCarthy were attempting to keep legal fees as low as possible and in accordance with comments during the Seneca settlement Diamond McCarthy would wait for full payment if necessary and would not push for payment which might result in additional special assessments. Brad Wyly reminded owners that some owner insurance policies might include loss assessment coverage and special assessments might be recovered from the individual unit owner's insurance carrier.

At 6:09 pm Kat made a motion to go into Executive Session to discuss legal matters with legal counsel pursuant to C.R.S. Section 38-33.3-308(4)(b). Reggie seconded the motion. Rob explained the Zoom call would resume at 6:30 pm after the Board had met with legal counsel. The motion was unanimously approved.

At 6:36 pm Kat made a motion to leave Executive Session and return into public session on Zoom. Reggie seconded the motion and it was unanimously approved.

Marcus Lock said resolution of the KW Construction claim would avoid an additional legal action, which would be beneficial but recognized that another special assessment would be difficult for owners. Marcus explained the Board proposed a \$3,750 special assessment per unit and Marcus encouraged owners to review their unit owner insurance policy to see if the policy would cover the special assessment as well as the previous two special assessments. The \$3,750 special assessment per unit would be added to the construction defect litigation. Kat explained

the settlement offer of \$165,000 to KW Construction would require KW Construction to acknowledge full settlement of their claim and waive any and all additional interest or penalties.

Kat made a motion for a \$3,750 per unit special assessment, due immediately, late in 30 days, to settle with KW Construction. Pat seconded the motion and it was unanimously approved. Rob reminded owners prompt payment of the special assessment would allow the Association to make the settlement and move on. Rob said invoices would be sent to all owners, with a description of the charges and owners should check with their individual insurance carrier as the invoice might be covered.

Rob thanked the Board and the attorneys involved. Steve Loden said he would request that the Judge in the construction defect action order mediation in March or early April and if settlement could not be reached further mediation could occur in the Fall. If settlement failed, trial would likely be in 2022.

Marcus Lock encouraged interested owners to reach out to Toad if they wanted updated information on invoices submitted for the legal work. Kat thanked Steve, Brad and Marcus for all the assistance given to the Association.

At 6:50 pm Kat made a motion to adjourn the meeting. Reggie seconded the motion and it was unanimously approved.

Prepared by Rob Harper,
Toad Property Management, Manager