

THE TIMBERS OWNERS ASSOCIATION, INC.
BOARD OF DIRECTORS MEETING
MARCH 6, 2020
318 ELK AVENUE, SUITE 24

Those Present:

Ann Mallow (by phone)
Erin Stock
Evan Sandstrom
Rob Harper, Toad Property Management (by phone)
Mary Zimmerman, Toad Property Management
Steve Loden, Diamond McCarthy (by phone)
Brad Wyly, Diamond McCarthy (by phone)
Marcus Lock, Law of the Rockies
Aaron Huckstep (representing Bill Coburn, Coburn Development) (by phone)
Multiple Unit owners (by phone and at the office):
102 Tim Covington
109 David Meckes
112 Meredith and Mike Arth
204 Sarah Van de Bogart
206 Mike and Lynette Hunt
208 Bill Meyers
300 Reggie Park
304 Stacey Schultz
309 & 312 Chad Markle

Mary called the meeting to order at 6:30 pm.

Marcus Lock explained the purpose of the meeting was to discuss claims against various construction professionals for construction defects and as part of the statutory process outlined in Colorado Revised Statute Section 38-33.3-303.5 those contractors had been notified of the meeting and given the opportunity to attend. Aaron Huckstep said he was representing Bill Coburn, Coburn Development, who could not attend the meeting and requested a copy of the recording of the meeting. No other involved construction professionals or their representatives were participating in the meeting. Marcus said if litigation action was taken Diamond McCarthy would be representing the Association and following the meeting there would be a 90 day period during which Owners would vote in writing to authorize or not authorize the legal action. Marcus explained at least 23 units would need to vote in favor of construction defect action proceeding or not proceeding.

Steve Loden explained Diamond McCarthy had been negotiating with Seneca regarding the insurance claim and Steve and Brad Wyly would be working on any construction defect action taken by the Association connected with the June 17, 2018 flood. Steve said PIE Engineering had been hired following the June 17, 2018 flood and PIE had provided a written report stating that during the remodel of the building with Coburn Development as the General Contractor, the fire suppression system, installed by Western Slope Fire, had used undersized PVC pipes that was insufficient to deal with Mt. Crested Butte pressure spikes and did not install pressure relief valves. Steve explained the PIE report said the June 17, 2018 failure happened at

the weakest point, at a joint in the piping which had not been glued correctly and had foreign debris in the joint when it was glued.

Steve explained Seneca Insurance had paid a substantial amount of the damages on the claim, approximately \$1.8M, but the Association was still out of pocket. Steve said final payment of the Seneca claim had been received and the insurance claim closed in December, 2019. Steve explained that damages are difficult to predict at this early stage, but approximately \$400,000 was outstanding for unpaid expenses or special assessments paid by owners in addition to the \$1.8M already paid with funds from Seneca, the insurance company. Steve said Seneca would be attempting to hold the various contractors responsible for the money they had paid out on the claim and litigation had commenced and the Association was considering similar action to recover the additional out of pocket expenses paid by the Association and unit owners and that was the reason for the meeting.

Steve cautioned owners against asking litigation strategy questions or questions which would impair the Association's position in any future lawsuit during the public meeting due to the attendance of representatives of potential defendants in the case. Brad Wyly and Marcus Lock asked potential defendants in the case to put forward their comments at that time and Aaron Huckstep said he did not have comments at that time, on behalf of Coburn Development, and no other potential defendants were represented at the meeting.

Marcus Lock asked owners participating in the meeting to put forward their questions but not add comments at this time as there would be other opportunities for owners to express their views or concerns in the future and to keep questions as brief as possible. Owners attending the meeting proposed their questions.

In response to questions Steve explained the entire sprinkler system had not been replaced but in accordance with the PIE recommendations the failed joint had been replaced and, at the Association's expense, pressure relief valves had been added in an attempt to prevent a similar event occurring in the future. Steve and Brad explained the out of pocket expenses and said those figures were not final and just approximate at this time. Marcus explained litigation expenses would be significant if the case went to trial, mediation would be encouraged by the Court and settlement prior to trial was also a possibility. During the lengthy process of a construction defect action legal expenses would be incurred and win or lose the Association would likely be responsible for its own legal expenses although efforts would be made to recover those fees and it was unlikely the Association would be held responsible for Defendants legal expenses. A request was made for the Association's current financial information to be circulated with the Ballot to owners and Marcus said that was currently being worked on. Marcus cautioned the cost of legal action was unknown and could not be estimated prior to any action as there are too many variables in litigation, especially in a situation where there were multiple defendants.

Marcus said the Ballot and financial information would be emailed to unit owners and encouraged unit owners to make their own independent decision on voting in favor or against legal action for construction defects. Marcus explained in his opinion the Association has meritorious claims, and authorization for legal action would be necessary for the Association to

have any chance of being made whole. In the event of legal action it was possible settlement would be reached prior to trial but owners should not count on that, and owners must balance the potential risk of incurring additional expenses against the effort to be made financially whole on the losses already incurred.

Marcus thanked everyone for participating in the meeting and the meeting adjourned at 7:18 pm.

Prepared by Rob Harper,
Toad Property Management, Inc., Manager

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