

THE TIMBERS OWNERS ASSOCIATION, INC.
SPECIAL MEETING OF OWNERS
LEGAL ACTION QUESTION & ANSWER WORK SESSION
APRIL 3, 2020
318 ELK AVENUE, SUITE 24

Those Present By Phone:

Mary Zimmerman, Toad Property Management
Steve Loden, Diamond McCarthy
Marcus Lock, Law of the Rockies
Will Edwards, Law of the Rockies
010 and 012 Ahmad Ghazanfari
101 David Syson
102 Tim Covington
104 Christian Hiles
207 Andrew Heltzel
300 Reggie Parks
301 Christopher Menges
303 Kat Hassebroek
304 Stacey Schultz
305 Trevor Elsen
306 Marguerite Roy
309 and 312 Chad Markle

The meeting started at 6:03 pm. Marcus Lock explained the purpose of the meeting was to give owners an opportunity to ask questions about potential legal action against various construction professionals for construction defects.

Steve Loden explained KW Construction had submitted an invoice for approximately \$75,000 which was interest accrued on invoices that had not been paid within 30 days and the interest charges would be added to the claims against the various construction professionals. Steve clarified no assurances had been given to KW Construction that they would receive interest on those late payments.

Steve said during discussion with legal counsel for GOCB, the developer of The Timbers, it had been confirmed a \$2M policy was in place for GOCB but it was unknown if there was a WRAP policy or what coverage the subcontractors had in place. The phone conversation had raised several questions but due to the COVID-19 virus answers to all the questions had not yet been obtained. Steve explained Seneca would be attempting to recover \$1.7M from the policies so it was extremely important to know the levels of any other insurance policies which might exist in order for the Association to be reimbursed for the \$500,000 to \$750,000 additional expenses. Steve said Seneca might be willing to accept less than \$1.7M which would leave funds available to reimburse the Association. Steve said he had recently reached out to the legal counsel for GOCB but had not received a response and would continue to attempt to make contact.

Marcus explained a final decision had not been made to pursue legal action against the various construction professionals. If legal action was not taken unit owners would be responsible for payment of the amounts outstanding through special assessments and if legal action was undertaken there was no guarantee a settlement of the claim would cover all special assessments paid by unit owners.

Marcus said if the Association pursued legal action the Association risked spending additional fees for attorneys, witness fees, court costs and perhaps incurring court costs for the other side. Marcus explained settlement between the parties prior to reaching court happened in a majority of cases. Steve said settlement prior to trial might not provide reimbursement of all of the costs but settlement removed the risks associated with a jury trial. Steve explained reaching settlement prior to commencing litigation significantly reduced attorneys fees.

Marcus explained there was a 90 day voting period, which commenced March 6, 2020, for owners to vote either in favor or against legal action and at the present time there was not a majority for either option. If the Association did not receive sufficient votes to proceed with litigation due to unit owners not responding within the 90 day voting period no litigation action would be taken. The voting period would end June 4, 2020 unless a majority of unit owners voted in favor of litigation prior to that date. Steve encouraged owners to submit the questionnaires regarding lost rental income or out of pocket expenses as that information would be necessary if legal action was taken. After a long discussion regarding potential legal action unit owners were encouraged to vote and Mary agreed to send reminder emails and owners were asked to promptly respond if they had not already done so. Mary encouraged new owners to provide their contact information to Toad.

The meeting ended at 6:53 pm.

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