

THIRD WALNUT CREEK MUTUAL  
REGULAR SESSION MEETING MINUTES OF THE BOARD  
MONDAY, JUNE 8, 2020 AT 10:00AM  
ZOOM VIDEO AND CONFERENCE CALL MEETING

**Call to Order**

President Rothman called the Regular Meeting of the Board of Directors of Third Walnut Creek Mutual (TWCM) to order at 10:00 a.m.

**Roll Call**

**Directors Present:**

Arylss Rothman, President Dist. IX, (2022)	
Gery Yearout, VP Dist. XI, (2021)	Nan Warren, Director Dist. XIV, (2022)
Matt Kaplan, Treasurer Dist. V, (2022)	John Swearingen, Director Dist. VII, (2021)
Marilyn Mason, Secretary Dist. XV (2022)	Donna Landeros, Director Dist. VIII, (2020)
Kay Barthold, Director Dist. XIII, (2020)	James McFarland, Director Dist. III, (2021)
Chuck Decker, Director Dist. X, (2021)	Poppy Tanner, Director Dist. IV, (2020)

**Also Present:** Mutual Operations staff was represented by Paul Donner, Mutual Operations Director; Clayton Clark, Building Maintenance Manager; Kelly Maki, Board Services Coordinator; Rick Chakoff, Chief Financial Officer; Tess Haskett, Assistant Controller; and Richard Fong II, General Counsel for Third Mutual

**Members' Forum**

Residents were afforded the opportunity to express their general concerns and make comments.

**Approval of Meeting Minutes**

President Rothman asked for any corrections and/or additions to the following minutes:

- a) Regular Board Meeting Minutes ..... May 11, 2020
- b) Executive Session Meeting Minutes ..... May 11, 2020

A motion was made to approve the May 11, 2020 Regular Board Meeting Minutes.

**Moved, Seconded, Carried 11-0**

A motion was made to approve the May 11, 2020 Executive Session Meeting Minutes.

**Moved, Seconded, Carried 11-0**

**President's Report**

Arylss Rothman reported on the last President's Forum: Presidents and GRF discussed re-opening of facilities. More information on the topic is to be published in the Rossmoor News for all residents.

**Secretary's Report**

Secretary Mason made a request for a header to be added to the minutes that indicates the meeting date, time, and location so it can be viewed on all pages of the minutes.

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**Treasurer's Report**

Treasurer Kaplan gave the following Report:

Treasurer Report: June 8, 2020

This report is based on the TWCM financial report for April 2020. As of April 30, 2020, the TWCM bank balance was \$20,610.

TWCM payments in April, were \$75,185 allocated correctly to the projects.

Republic Services trash pick-up was \$23,875. This included an 11% annual rate increase (effective March 1). Legal services were \$10,308, with \$2,765 to Hughes, Gill, and Cochrane, and \$7,543 to Fong & Fong. MOD trash recycling was \$8,323. Printing and mailing were \$4,204, to Integrity, and \$475 to Levy, Erlanger. The annual audit fee was \$28,000 to Porter & Lasiewicz.

TWCM Owner Billables (amounts owed by owners to their project) as of April 30, 2020 was \$121,257. We have approved placing a lien on the property of an owner owing almost \$34,000.

TWCM Assessments (Coupon) owed as of April 30, 2020 was \$63,049. This has increased approximately \$20,000 over the last couple of months.

The 2019 TWCM Annual Audit Report to owners was finally mailed out on June 2, but is late, having missed the 120 day from year end time limit established in law.

**CDARs (Short Term Bundled CD Investment)**

City National Bank has informed us that there are no banks participating in the CDARS program for the 4, 13- or 26-week terms. TWCM has 13 Projects with CDAR investments, 11 of which are 4-week terms, and 2 with 26-week terms. As these are maturing, the money will temporarily be placed back in the respective reserve accounts. We plan on discussing this at a future Board Meeting to share more information. Please note that potential interest foregone will be quite minimal. The 13 Projects have \$5.1M invested in CDARS, ranging from \$150K to \$970K. The current annualized interest rate on the matured CDARs is 0.13%. This would produce a total annual interest for the entire \$5.1M of \$6,630.

The bank is offering an alternative Brokerage CD, but this needs some discussion before it can be seriously considered by TWCM and individual Directors. One key facet of this type of investment is that it trades on the market at market value, not face value, and so, if liquidated (sold before maturity), the proceeds are at the then current market value.

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- a. **Motion that the Mutual Funds Report has been reviewed by the Treasurer and all Directors:** The motion was made for the April 30, 2020 Mutual Funds Report.  
**Moved, Seconded Carried 11-0**
- b. **Motion that all Directors have reviewed their Project Specific Financials:** The motion was made for all Project Specific Financial Reports ending on April 30, 2020.  
**Moved, Seconded Carried 11-0**

**Building and Maintenance Committee**

Nan Warren reported that the committee reviewed the policies about smoke alarms and carbon monoxide detectors. The discussion will continue at the next committee meeting.

**Landscape Committee**

The committee had no report to give this month.

**Governing Documents Committee**

Kay Barthold reported that the committee discussed requests for variances to policy 59 for hard surface floors in upper units.

**Alteration Permit Application Review**

The committee had no report to give this month.

**Communication Committee**

Marilyn Mason reported that the following article will be published in the Rossmoor News on June 10<sup>th</sup>:

**THIRD MUTUAL BEGINS CC&R PETITIONING PROCESS IN SUPERIOR COURT**

Third Mutual is poised to begin the final steps in the process to approve the new Master CC&Rs for the 22 Projects that obtained a majority vote in favor of the Master CC&Rs but not the 75% vote required under the Original CC&Rs. Civil Code Section 4275 allows TWCM to petition Contra Costa County Superior Court for an order reducing the 75% of affirmative votes necessary to approve the new CC&Rs, as required in the current CC&Rs, to a majority (more than 50%) of the voters in each Project that has filed a Petition. The Petitions were filed during the last week of May 2020 after the courts re-opened for accepting filings.

The owners in each of the 22 TWCM projects will be receiving a large package by US Mail sent from Veritech (the attorney service that is making all the photocopies and mailing them). This is an important mailing and contains numerous documents including the Notice of Hearing, the hearing date and time, as well as, for each Project, the Project's Petition and supporting declarations; the Memorandum of Points and Authorities in support of the Petition; the Proposed Order granting the Petition, and the court's order setting the briefing schedule.

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The Petitions have been assigned to Hon. Edward Weil in Department 39.

If your Project has filed a Petition and you don't object to the court granting the Petition, you need take no action.

If your Project has filed a Petition and you wish to file Opposition, the briefing schedule will inform you of the deadline to file such Opposition and the deadline for the Petitioners to file a Reply Brief.

The hearings on all 22 Petitions have been scheduled for July 16, 2020 at 9:00 a.m. in Dept. 39. The Court is hearing the Petitions by Court Call and not in person. Due to the emergency Local Rules adopted because of the Novel Coronavirus 19, no attorneys or owners will be allowed to attend the hearing in person by going to the courthouse.

If you have additional questions, please read the package of materials you will receive as it may answer these questions. If you have other questions you may send them to the Mutual Services Coordinator, who will work with your District Director or with the Mutual's attorney to provide answers.

**Emergency Preparedness Committee**

The committee had no report to give this month.

**Old Business**

- a. **TWCM General Account:** Rick Chakoff stated that MOD refers to the account as the TWCM General Fund Account. Rick went over the purpose of the account. Invoices that are addressed to Third Mutual and not a specific project are paid from this account (i.e. Republic Services and legal invoices). Richard Fong read policy 16.2.7. Richard stated that his brief audit of the April statement of the account confirms the account is being used as defined in the Mutual policies but that at times, the balance may exceed the funds that are permitted by the policy. Richard advised the Board that they should consider revising the policy in regard to the base amount per manor currently identified in the policy. Richard offered to do a further legal review of the account if the Board requests it.
- b. **Petitions Update:** The Board referred to the article that was referenced in the communications report.
- c. **Update on Dispute Resolution Committee:** The committee was asked to get a legal opinion on liability for a breach of confidentiality by committee members who are not Board members. Richard Fong provided his legal opinion to the Board stating the committee members would be covered under the D&O policy if their appointments are properly recorded in the Mutual's minutes. Richard also advised the Board to vet their committee members and consider having them sign a non-disclosure agreement.

A motion was made to establish a Dispute Resolution Committee with Nan Warren and

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Arlyss Rothman as committee members.

**Moved, Seconded, Carried 10-0-1, Director Tanner abstained**

The committee plans to properly appoint more owners to the committee at a future board meeting.

**New Business**

- a. **Review of Legal Opinion on Hard Surface Flooring in Upper Units:** Richard Fong summarized his legal opinion to the Board. Richard and the board discussed reasonable accommodations and compromise. Richard answered any questions from the Board.

A motion was made that when the Board considers a variance to policy 59 based on a medical reason such as allergies, that they first require the installation of hypo-allergenic carpeting.

**Moved, Seconded, Failed 4-7, Directors Decker, Yearout, Tanner, Swearingen, McFarland, Landeros, and Mason voted no.**

- b. **Appoint Inspector of Elections for District XI Disengagement:** A motion was made to appoint John McDonnell as the Inspector of Elections for the District XI Disengagement balloting.

**Moved, Seconded, Carried 11-0**

- c. **CDARS:** The Board was informed that on Friday, May 22, 2020 an email was received from City National Bank that there are no banks participating in the CDARS program for the 4, 13- or 26-week terms. This means that all the projects that have CDAR investments will mature and will be placed back to the reserve checking account. The Board had a preliminary discussion on annual percentage earnings, discussed what a CDAR is (Certificate of Deposit Account Registry), and the FDIC insured amount of \$250k. Treasurer Matt Kaplan agreed to meet with Rick Chakoff on the topic and report back to the Board. Directors John Swearingen and Chuck Decker agreed to assist Matt.
- d. **2019 Audit Report Late Mailing:** Rick Chakoff reported that circumstances surrounding COVID-19 delayed the audit report mailing.

**Next Board Meeting**

The next meeting will be the 2020 Annual Member's Meeting on July 13, 2020 at 10:00am currently scheduled in the Fireside Room at Gateway, subject to change if the facilities in Rossmoor remain closed. Directly following the Annual Meeting will be an Organizational Meeting of the Board.

**Adjournment to Executive Session**

There being no further business, the Regular Meeting of the Board was adjourned at 11:58am and the Board moved into executive session.

**Executive Session Summary**

The Board met in Executive Session to hold owner hearings, consider a lease extension

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request, and discuss a variance request.

**Secretary's Certificate**

I hereby certify that the foregoing is a true and correct copy of the minutes of the Board of Director's meeting.



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**Assistant Secretary**

Third Walnut Creek Mutual