

THIRD WALNUT CREEK MUTUAL

REGULAR SESSION MEETING MINUTES OF THE BOARD
MONDAY, NOVEMBER 18, 2019 AT 9:00AM
BOARD ROOM, GATEWAY COMPLEX
1001 GOLDEN RAIN RD., WALNUT CREEK, CA 94595

Call to Order

President Rothman called the Regular Meeting of the Board of Directors of Third Walnut Creek Mutual (TWCM) to order at 8:58 a.m.

Roll Call

Directors Present:

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

Directors Absent: John Swearingen, Dist. VII.

Also Present: Mutual Operations staff was represented by Paul Donner, Mutual Operations Director; Clayton Clark, Building Maintenance Manager; and Lucy Limon, Administrative Assistant.

Members' Forum

Residents were afforded the opportunity to express their general concerns and make comments. Topics discussed included: History regarding TWCM and the status of the CC&R's.

Approval of Meeting Minutes

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

- a) Regular Meeting MinutesOctober 14, 2019
- b) Executive Meeting MinutesOctober 14, 2019
- c) Budget Meeting Minutes.....October 23, 2019

The aforementioned meeting minutes were approved as presented.

Moved, Seconded, Carried 10-0

President's Report

No report was presented.

Secretary's Report

Secretary Mason reported that the Code of Ethics Policy was passed at the last Board Meeting. She asked all the directors to please sign a copy and return it to her. A summary of each Board meeting will be published in the Rossmoor News the week following each meeting.

Finance Committee Report and Treasurer's Report

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Treasurer Kaplan gave the following Report:

This report is based on the TWCM financial report for September 2019. As of September 30, 2019, the TWCM bank balance was \$20,789.

TWCM expenditures in September, allocated to the projects was \$11,466.

MOD recycling was \$7,647. Legal payments were \$947, with \$852 to Hughes, Gill, and Cochrane, and \$95 to Ann Rankin. Trash enclosure cleaning was \$2,872. All payments were allocated correctly to the Projects.

TWCM Owner Billables (amounts owed by owners to their project) as of September 30, 2019 was \$103,417.

TWCM Assessments (Coupon) owed as of September 30, 2019 was \$37,525.

A review of the September Republic Services Billing showed that TWCM projects were charged \$402 “extra” for August pick-ups. Eight separate entries had charges. The largest charge to a single entry was \$108. Republic Services is charging either \$40.30 (overage or contamination) or \$53.75 (non-scheduled pick-up) for these items. One additional item, exactly \$600, was an “extra” charge for a second change (adding four 96 Gallon Carts) this year to an entry’s receptacle configuration. According to Republic Services, each entry is only allowed one change per year without being charged. This policy certainly is not widely known.

In September, at least some projects have had funds transferred from their operating accounts into their reserve accounts to “reimburse” their reserve accounts for previous borrowings. This was done without prior notice to affected directors. Accounting has promised advance notice for future transfers. This will give directors the chance to question the prospective transfers.

- a. **Motion that the Mutual Funds Report has been reviewed by the Treasurer and all Directors:** The motion was made for the October 31, 2019 Mutual Funds Report.
Moved, Seconded Carried 10-0
- b. **Motion that all Directors have reviewed their Project Specific Financials:** The motion was made for all Project Specific Financial Reports ending on October 31, 2019.
Moved, Seconded Carried 10-0

Building and Maintenance Committee

Kay Barthold presented the following report:

Clayton Clark made a presentation to the committee regarding unpermitted connections of water hoses to resident above-grade balconies, which can possibly result in damage to the balconies. The committee voted unanimous approval for Clayton to send a letter to these residents to advise them that these water hose installations must be removed at the owner’s expense, and that they may be held responsible for any damage to the balcony caused by these water hose connections.

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Discussion followed regarding the cleaning of dryer vents. Clayton advised that residents may hire Welcome Building Maintenance to clean the dryer vents, but Welcome will only do this from the inside of the unit, cleaning the vent from the bottom up. Welcome generally will not access dryer vents from the roof, though they may agree to do so on some single-story units.

The Welcome Building Maintenance phone number is 925-288-1911.

Residents can call MOD to request roof cleaning of the dryer vent, but this is an owner-billable expense and will not be paid for by the Project. Cost will be billed as the time it takes for a 2-man crew to do this work. For safety reasons, two men are required to work on a roof.

Marilyn Mason and Roxanne Stallings presented the first draft of a policy for a special application procedure for residents who want to change the color of their front door to an accent color, i.e. a color different from what the Project had painted the door when the building was last rehabbed.

Nan Warren and Joe Tracy said that they are working on the revisions to the current Electrical Policy.

Landscape Committee

No report was given. A staff report by Steve Ormond was provided in the Board Packet.

Governing Documents Committee

Kay Barthold gave the following report:

The committee discussed changes to Policy 16, Policy 45 and Policy 50, including previously board-approved changes, as well as new, additional changes.

New changes to Policies 16, 45 and 50 will be discussed later in the meeting.

Previous changes to Policies 16 and 45 were approved by the board at the March 11, 2019 board meeting. The committee reviewed these changes as noted in the board packet materials and minutes for that meeting, and discussed drafting them for implementation, which, as with all Policy changes, must be mailed out to members for a 28-day review and comment period.

It is the plan that all changes to Policies 16, 45 and/or 50 will be included in a packet for mailing to members early next year, along with the previously approved BBQ Policy 78 and the new Exterior Paint Color Selection Policy. Any additional amended or new Policies that the Board approves in the next few months will also be included with this mailing.

Alterations Permit Application Review Committee

The committee had no report to give this month.

Communication Committee

The committee had no report to give this month.

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Emergency Preparedness Committee

The committee had no report this month.

Budget & Finance/Audit Committee

The committee had no report to give this month.

New Business

- a. **Discussion on SB 323:** President Rothman briefly reported on the new SB 323 law. She reported that the new voting and election rules have to be adopted before January 1, 2020. More information to come.

Old Business

a) **Approval of Changes to Policies 16, 45 and 50:**

1. The following is a clarification change to Policy 45.3.0 recommended by the Governing Docs Committee. If approved, this change will be added to the other changes to Policy 45 that were previously approved by the board that require mailing to homeowners for 28-day review.

Policy 45.3.0 currently states:

45.3.0 DELINQUENT PAYMENTS

“Unpaid assessments become delinquent at 5:00 p.m. on the 15th day of the month.”

Proposed change to Policy 45.3.0:

45.3.0 DELINQUENT PAYMENTS

“Unpaid assessments become delinquent at 5:00 p.m. on the 15th day following the assessment due date.”

2. The Governing Docs Committee voted to recommend adding the following to Policy 16 and/or Policy 50. This was previously discussed at the April 8, 2019 board meeting.

“In cases of litigation affecting the Directors and Officers Insurance, the deductible, which is currently \$10,000 per claim, is to be shared on a pro rata, per unit basis among all Third Walnut Creek Mutual Projects.”

The Board made a motion to add to following to the above change after Projects: “unless the Board finds compelling evidence that it should be project specific.”

Moved, Seconded, Carried 10-0

- b) **Update on ADR:** Melissa Ward provided the following report:

Dear Third Mutual Board,

I write to update you on the status of the Carter, et al v TWCM arbitration matter. The

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contents of this email may be shared in the open board meeting. As you know, last December, four owners (Duncan Carter, Roxanne Stallings, Marilyn Mason, and Kathleen Solares) demanded binding arbitration (essentially a private mini trial) at JAMS (Judicial Arbitration and Mediation Services, a private arbitration and mediation company) with Retired Judge Ellen James serving as the arbitrator, seeking to void the July 20, 2018 gov doc election and subsequent Project re-votes to approve the proposed Bylaws and Master CC&Rs. The Mutual accepted the arbitration demand and completed a 5 day arbitration over this past summer.

Judge James issued an Interim Arbitration Award on August 23, 2019 finding in favor of the Mutual and upholding the gov doc elections on each and every claim brought by the four Claimants. Judge James determined that: (1) the Mutual's rules regarding access to TWCM media and meeting rooms were sufficient; (2) the Mutual gave opposition viewpoints equal access to communication with the owners; (3) the Inspector properly counted all ballots which contained signatures on the outer ballot envelopes, either by direct member signature on the envelope or by limited proxy; (4) the Inspector properly counted ballots which were hand-delivered to him; (5) the Inspector's files were not tampered with; (6) the volunteer Board did not mislead the membership or make material misrepresentations during the course of the gov doc election; and (7) the Board did not improperly prevent members with opposing viewpoints from leafletting at the gov doc town hall meetings. Overall, Judge James found that the gov doc elections were conducted properly and that there was no evidence to support voiding the elections.

Judge James did invite the parties to submit briefs on any "additional issues" which required further decision by her. Claimants took this opportunity to submit six more communications to the Arbitrator asking her to reconsider her decision on a variety of claims. The Mutual requested only finalization of the Interim Award and clarification on the issues of confidentiality of Claimants' identities and scope of the decision (i.e., whether it related to the July 20, 2018 election only, or to the July election and all subsequent Project "re-votes"). In late October, Judge James issued a Supplement to the Interim Arbitration Award. She again found in favor of the Mutual as to all claims.

In addition to confirming the substantive issues decided in the Interim Arbitration Award, clarifying the scope of the decisions (all gov doc elections, not just the July 20 one), and deciding on the issue of confidentiality of Claimants' identities (not confidential – we may refer to Claimants by their full names), in her Supplement to Interim Arbitration Award, Judge James invited us to brief the issue of recovery of attorneys' fees and costs. She ordered the briefing to be done on a bifurcated (i.e., two-part) basis, with the first round of briefing to determine whether the claims were "frivolous, unreasonable, and without foundation" such that recovery of attorneys' fees and costs was authorized pursuant to Civil Code section 5145. While we had hoped to obtain a final Award without the need to do any further briefing, we were not able to reach an agreement with Claimants to that effect. Accordingly, we agreed to a briefing schedule, with our first brief regarding recovery of arbitration costs (only, our attorneys' fees are not recoverable in this matter but the defense of this matter was picked up by the Mutual's insurance carrier) due this Tuesday, November 19. We are hopeful that this remaining issue will be decided by mid-December, allowing a Final Award to be issued.

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Once a Final Award is issued, the arbitration matter will be concluded, and we can proceed to petition the superior court pursuant to Civil Code section 4275 for approval of the Master CC&Rs as to all remaining Projects which approved them.

Thank you for the opportunity to update you regarding this important matter. As always, I will keep you apprised of further developments as they unfold.

Best,

Melissa Ward

Next Board Meeting

The next Regular Meeting of the Board is scheduled for Monday, December 9, 2019 @ 9 a.m. in the Gateway Board Room. Special Meeting of the Board to adopt SB 323, December 31, 2019 at 10 am in the Board Room at Gateway.

Adjournment

There being no further business, the Regular Meeting of the Board was adjourned at 10:15 a.m. and the Board moved into Executive Session.

Executive Session Summary

An Executive Session was held immediately following the regular meeting where the Board discussed a variance request and held a disciplinary hearing.

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.

Respectfully Submitted,

Lucy Limon
Administrative Assistant