

# THIRD WALNUT CREEK MUTUAL

REGULAR SESSION MEETING MINUTES OF THE BOARD  
MONDAY, AUGUST 13, 2018 AT 9:00AM  
BOARD ROOM, GATEWAY COMPLEX  
1001 GOLDEN RAIN RD., WALNUT CREEK, CA 94595

## **Call to Order**

President Bank called the Regular Meeting of the Board of Directors of Third Walnut Creek Mutual (TWCM) to order at 9:01AM.

## **Roll Call**

### **Directors Present:**

Judy Bank, President XV (2019)	Claire Wolfe, Director District XII (2020)
Gery Yearout, Vice President District XI (2018)	Matt Kaplan, Director District V (2019)
Hillery Trippe, Treasurer District VII (2018)	Ron Mucovich, Director District IV (2020)
Arlyss Rothman, Secretary District IX (2019)	Kay Barthold, Director District XII (2020)
Toby Dicker, Director District VIII (2020)	Chuck Decker, Director District X (2021)
Christine Monsen, Director District XIV (2019)	

### **Vacant:**

Director District III (2020)

**Also Present:** Mutual Operations staff was represented by Paul Donner, Director of Mutual Operations; Rick Chakoff, Chief Financial Officer; Clayton Clark, Building Maintenance Manager; Kelly Mattison, Board Services Coordinator.

## **Members' Forum**

Residents were afforded the opportunity to express their general concerns and make comments. The topics discussed in members' forum were: landscape contract, landscaping, CC&Rs, Third Mutual re-organization, Carter vs. TWCM, letter from a member in Project 23, next steps on CC&Rs, and the need for project 49 to fill the vacant Director Seat of District III.

## **Approval of Meeting Minutes**

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

Special Meeting of the Board.....	June 26, 2018
Regular Meeting of the Board.....	July 9, 2018
Executive Session Meeting of the Board .....	July 9, 2018
Executive Session Meeting of the Board .....	August 7, 2018

The aforementioned meeting minutes were approved with one motion.

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

## **President's Report**

President Bank reported on the topics recently discussed in the July 19<sup>th</sup> President's forum: upgrading the internet website design and functions and who would maintain it. Presidents were given clarification on the delinquent account process.

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Judy also reported that she has been asked to sign P49 contracts and work orders that were already in the works.

### **Secretary's Report**

Secretary Rothman restated a motion from a previous executive session held on August 7, 2018: A motion was made by Director Trippe and seconded by Director Rothman and stated; **For TWCM to obtain a second opinion from an experienced HOA lawyer to confirm that the approach outlined by Corporate Counsel at the last Board meeting with regard to the CC Section 4275 petition represents the best approach for TWCM.**

After much discussion, a friendly amendment was added:

**In the meantime, all legal activities relating to the CC&Rs and the associated elections be placed on hold.** The motion carried by a vote of 6-0.

Director Trippe and Director Mucovich agreed to work on a task force to develop criterion and directives for potential candidates.

### **Treasurer's Report**

Treasurer Trippe gave the following treasurer's report:

Financial Matters: Project 51 experienced disruption in dues collection due to the implementation of two new bank accounts as a result of the Carter v. Third Walnut Creek Mutual lawsuit. The project will not have financial statements available until next month as a result of these disruptions.

Notable TWCM expenses this month included an invoice from Levy Erlanger Company for the month of July for \$8,630 for services provided from June 25 to July 31 in connection with the CC&R voting.

### **Budget and Finance Committee Report**

Treasurer Trippe gave the following Finance Committee Report:

The Business and Finance committee met for their quarterly meeting on August 6, 2018.

The committee reviewed for a second time a draft policy that would expand upon the existing TWCM policy 16.0 that states "each project will pay its own expenses". The committee discussed at length the application of this policy insurance deductibles under the fire insurance policy for TWCM and the Association Liability Policy Aka Directors' and Officers' Liability Policy. The committee reached tentative agreement that the \$10,000 deductible on the Directors' and Officers' Policy should be shared in the same way by all projects in the same that the \$10,000 base fire insurance deductible is shared amongst all projects. The policy will contain criteria for situations where an exception should be made to the sharing of insurance deductibles in the case where a specific party can be identified as being legally liability for the loss. The committee will review a final version of the policy at its next meeting and forward it for review to the Governing Documents Committee.

Under new business, the Committee discussed the desirability for more actionable information in the monthly financial summaries provided to Directors and will undertake at the next meeting to consider improvements that will then be discussed with MOD management. In addition, the

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committee discussed the desirability of a monthly report for each director showing more clearly the status of owner billables and monthly revenue related to collection of owner billables.

The committee also discussed the desirability of directly connecting MOD system data regarding capital improvements made to project buildings to the Helsing Reserve Report through an automated data feed or update. Current practice requires the Director annually to update the report manually for all capital improvements made to buildings and grounds within the project during the year. This process is time very consuming involving and can lead to inaccuracies in the information that forms the basis of all analysis and projections performed by Helsing.

The Committee discussed the upcoming annual audit and the Chair will provide to the committee members the schedule for the 2018 audit and audit planning process.

As a final matter, the Committee discussed the desirability of having a formal mission statement and agreed to review GRF committee mission statements and draft a similar document for future use.

### **Building and Maintenance Committee**

Director Mosen reported that the committee met last month, and Clayton Clark gave a presentation on what the Fire Marshall does in terms of inspections on paint, BBQs, utility rooms accessing electrical panels, oxygen storage, and carport structures. It was announced that mandatory inspections on elevated structures is likely to only apply to apartment complexes and not condo homeowner associations. These elevated structure inspections not been added to the Helsing reports yet.

### **Landscape Committee**

Director Yearout announced that she is the newly appointed chairperson of this committee and does not have a report to give at this time. The committee will be meeting soon to create the scope of work for a new landscape maintenance contract. Marie Kahn was nominated to join the committee.

### **Governing Documents Committee**

A report was not presented.

### **Alterations Permit Application Review Committee**

A report was not presented.

### **Communication Committee**

Director Rothman reported that the article in last week's paper had an incorrect title. The committee will discuss the next article soon.

### **Emergency Preparedness Committee**

Director Rothman reported that there is currently 3 members on the committee and they need more volunteers.

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## Old Business

### a. Approve Committee Matrix 2018-2019:

Directors:	Alt/ Permit	B/F & Audit	Bldg. Maint.	Comm.	Gov. Docs.	Landscape	Emer. Prep
Judy Bank				X	<b>Chair</b>		
Kay Barthold	<b>Chair</b>	X			X		
Matt Kaplan		X					
Toby Dicker						X	
Arlyss Rothman				<b>Chair</b>	X		<b>Chair</b>
Chuck Decker			X				
Hillery Trippe		<b>Chair</b>		X			
Christine Monsen	X		<b>Chair</b>				
Claire Wolfe							
Gery Yearout				X	X	<b>Chair</b>	
Jay Fischer							
Ron Mucovich							X

Members:	Alt/ Permit	B&F	Bldg. Maint.	Comm.	Gov. Docs.	Landscape	Emer. Prep
Paula Erickson						X	
Jean Faszholz						X	
Mark Forette							X
Harris Greenberg							X
Doug Hipsley							X
John Van Duinen							X
Walt Braun			X		X		
Joe Tracy			X				
Floyd Yearout						X	
Dale Harrington		X	X				
Jerry Foott			X				
Milford Waldroup			X				
Marie Kahn						X	
Bill Claussen						X	
Roxanne Stallings		X					

A motion was made to approve the committee matrix.

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

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- b. Governing Documents; Next steps:** Paul Donner reported on the History of Third Mutual and President Bank reported on her non-legal summary of the history of Third Mutual. The Board discussed the purpose of one set of CC&Rs. The Board also discussed how the August 14<sup>th</sup> date was determined for the project meetings that did not reach majority.

### **New Business**

- a. Landscape Contract Task Force:** Due to time restraints, this topic was tabled until the next board meeting.

Per Civil Code section 5120(b) that states in part, "The tabulated results of the election shall be promptly reported to the board and shall be recorded in the minutes of the next meeting of the board and shall be available for review by members of the association" here are the election results for the amended and restated Bylaws and Master Declaration of Covenants, Conditions, and Restrictions:

Ballots for Third Walnut Creek Mutual's long-awaited election regarding the proposed Master CC&Rs and Amended and Restated Bylaws were tabulated by Inspector of Elections Levy Erlanger, CPAs, on Friday, July 20, 2018. 1223 ballots, representing 73% of the membership of Third Mutual, were counted.

### **RESULTS OF VOTE REGARDING BYLAWS**

In order to adopt the proposed new Bylaws, approval of a majority of the members overall, or 839 affirmative votes, was needed to adopt the proposed new Bylaws. The Amended and Restated Bylaws were approved as follows: 967 FOR, 256 AGAINST. Accordingly, the new Amended and Restated Bylaws were approved by the members directly and will be adopted by the Mutual.

### **RESULTS OF VOTE REGARDING CC&Rs**

A chart stating the vote counts and results for each Project is included here. To summarize:

- **Supermajority (75%) Direct Approval:** Five Projects (26, 32, 44, 50-B, and 64) achieved more than 75% member approval of the Master CC&Rs. As a result, these projects have approved the Master CC&Rs by direct vote and no further action is required by the members of these Projects.
- **Majority (more than 50% but less than 75%) Approval:** Fourteen Projects (31, 33, 37, 42, 41, 45, 50A, 50C, 53A, 53B, 54A, 54B, 55A, and 55B) achieved more than 50% member approval but less than supermajority 75% member approval of the Master CC&Rs. As a result, the Mutual intends to petition the superior court for approval of the Master CC&Rs pursuant to Civil Code section 4275 (the section of the Davis-Stirling Act which authorizes the petition process where supermajority approval is required by existing CC&Rs but only majority approval is achieved).
- **Less Than Majority Approval:** Eleven Projects (23, 27, 34, 35, 36, 38, 39, 40, 49, 51-1,

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and 51-2) failed to achieve majority approval of the Master CC&Rs.

Project #	# of Units	75%	Majority	# of Yes	# of No	% Yes	Result
23	39	30	20	6	24	15.4	Not Approved
26	98	74	50	83	2	84.7	75% Supermajority Approved
27	48	36	25	22	11	45.8	Not Approved
31	48	36	25	35	7	72.9	Majority Approved
32	18	14	10	14	0	77.8	75% Supermajority Approved
33	16	12	9	9	4	56.3	Majority Approved
34	10	8	6	5	0	50.0	Not Approved
35	36	27	19	17	1	47.2	Not Approved
36	84	63	43	33	12	39.3	Not Approved
37	90	68	46	50	11	55.6	Majority Approved
38	84	63	43	29	25	34.5	Not Approved
39	130	98	66	39	41	30.0	Not Approved
40	114	86	58	48	17	42.1	Not Approved
41	72	54	37	44	9	61.1	Majority Approved
42	32	24	17	23	4	71.9	Majority Approved
44	88	66	45	66	15	75.0	75% Supermajority Approved
45	148	111	75	101	29	68.2	Majority Approved
49	80	60	41	34	13	42.5	Not Approved
50-A	34	26	18	22	5	64.7	Majority Approved
50-B	34	26	18	28	4	82.4	75% Supermajority Approved
50-C	42	32	22	31	1	73.8	Majority Approved
51-1	72	54	37	34	13	47.2	Not Approved
51-2	52	39	27	26	10	50.0	Not Approved
53-A	42	32	22	31	3	73.8	Majority Approved
53-B	30	23	16	22	5	73.3	Majority Approved
54-A	30	23	16	16	0	53.3	Majority Approved
54-B	30	23	16	22	0	73.3	Majority Approved
55-A	30	23	16	18	5	60.0	Majority Approved
55-B	36	27	19	26	1	72.2	Majority Approved
64	9	7	5	8	1	88.9	75% Supermajority Approved

### **Next Board Meeting**

The next Regular Meeting of the Board will be held on Monday, September 17, 2018 at 9:00 a.m. in the Club Room at Creekside.

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### **Adjournment**

There being no further business, the Regular Meeting of the Board was adjourned at 10:56 a.m. and the Board moved into Executive Session.

### **Executive Session Summary**

An Executive Session was held following the regular meeting where the Board held a disciplinary hearing and discussed architectural variance requests, an owner billable dispute and legal matters.

### **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.

A handwritten signature in blue ink that reads "Kelly Patterson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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### **Assistant Secretary**

Third Walnut Creek Mutual