

**TIMBRSHOR ASSOCIATION ANNUAL MEETING**  
**JULY 7, 2012 AT 1:00PM**  
**On the Timbrshor grounds**

Agenda

Call to Order  
Presentation of Proxies  
Determination of Quorum  
Date of annual picnic  
Date of today's meeting

New Business

1. Budget for past and upcoming year - Dan McCarthy, Treasurer
2. Election of two new at large trustees for 3 year terms
3. Bears – trash cans
4. New website – Stephi Isbell
5. Parking – Tom Roy
6. Handling of homeowners' meeting minutes
7. Lodge construction and Timbrshor Rules
8. Drain field construction plan – Andy Short, Territorial Landworks

Items 1-8 are scheduled from 1-2 pm. The discussion of the drain field plan is scheduled from 2-4 pm. Andy Short has agreed to stay until 5:00 pm to entertain any additional questions.

Summary of Motions:

- The members approved a motion to permit the 2012 annual meeting to occur on July 7, 2012 rather than on or before June 30.
- The members also approved motions to re-elect Blake Johnson to a new three year Board term and to elect Liahna Armstrong to a three year term on the Board.

Prior to the start of the meeting Dennis Duty (a non-member who was at the meeting as a proxy for the Rose's) began to set up video equipment. A number of members advised the Board that they objected to being video taped. The Board advised Mr. Duty that since he did not have the consent of all members and because video taping would interfere with the meeting and quell discussion, he was directed to remove his equipment. Nichole Borchers-Michione challenged the Board's authority to deny the videotaping of the meeting. Dan McCarthy indicated that Boards generally have the power to set reasonable meeting rules. Jack Manning, a Montana lawyer indicated that he was of the view that the Board's decision on video taping would be viewed as reasonable and proper under Montana law.

Call to order:

Present: Tom and Ann Brooke, Nancy Lewis, Blake Johnson, Burke and Karen Townsend, Jim and Liahna Armstrong, Tom and Caryl Cox, Lane and Aleta Mead, Lorin and Audrey Peterson, Beverly Rountree, Fred and Anne Long, Tom and Sue Roy, Stephi Isbell, Evie Fordahl, Ruth

Rotondi, Adam Rys-Sikora, Julie Kuykendall and J.B. Anderson, Bill Borchers, Nichole Borchers-Michione, Doug Rotondi, Mark and Leigh Estvold, Phil Korell, Tim and Kristen Rose, Kimberly Maxwell and Brad Hanzel, Mary Alice Acher, Ken Stam, Dan McCarthy, Jack Manning, Dennis McCormick, Dennis Duty, Andy Short, and Ken Stam

Presentation of Proxies: Caryl Cox for James Payson; Tom Cox for Jock Schwank; James Cole for Dan Novinski and Jill Nichols; Steph Isbell for Margaret Tillinghast, Mary Alice Acher for Amy Acher; Phil Korell for Kristin Rose (Power of Attorney), Alice Borchers (12% Ownership, Power of Attorney) and Christine Puckett (Power of Attorney), Dennis R. Duty for Tim Rose (Power of Attorney)

Determination of Quorum – It was established that a quorum of members and proxies was present. Forty four out of 50 members or proxies were counted.

Date of Annual Picnic: The annual picnic will be held on Saturday, August 4<sup>th</sup>, 2012 at 4 PM.

Dan McCarthy moved and Blake Johnson seconded that, the members approve changing the date of the 2012 annual meeting to July 7, 2012 (rather than before June 30<sup>th</sup>) to permit more members to attend and participate. Nichole Borchers-Michione asked the Board if they had received a letter from an attorney objecting to the meeting being held on July 7<sup>th</sup> rather than on or before June 30<sup>th</sup>. The Board advised that the only letter they were aware of was from Maggie Tillinghast, and based on that letter they decided to ask the members to formally waive the annual meeting date. Ms. Borchers-Michione asked if the Board had received a letter from Mr. Rose's attorney regarding the meeting, and they advised that they had received no such letter. The motion was approved by the members by a vote of 30 for and 11 against.

New Business:

1. Treasurer's Report: Dan McCarthy summarized the expenditures for the 2011-2012 fiscal year. Dan noted that the most significant cost pertained to the unanticipated legal fees associated with the Rose litigation. He indicated that the Board had decided to pay those costs, in an equal fashion, out of "general" and "dock" funds because the litigation deals with claims pertaining to (1) the enforceability of HOA rules and (2) whether the Rose's have some special rights to use/own a dock slip. He indicated that the HOA has sufficient funds on hand to prosecute the litigation, and that there is a very good chance that the HOA's D&O insurance carrier would agree that coverage applies. If that occurs, the insurance company would then pay the HOA's legal expenses. Dan's amended Treasurer's Report is appended to these minutes.

Dan pointed out that it is difficult to project a new budget for FY 2012-2013 because of the litigation and the need to get a revised cost estimate from Territorial Landworks for the septic plan. He indicated that he hoped that the Board would be in a position to pin those matters down in the near future, and then conclude a budget for 2012-13.

Adam asked if we contributed to the volunteer fire department this year. No, but we can do this – typical donation has been \$300 per year.

2. Election of two at-large board members: Tom Cox asked for nominations for the Board. Blake Johnson and Liahna Armstrong each agreed to stand for a three year at-large term on the Board. No other members ran for these open positions. Dan McCarthy made a motion to elect Liahna and Blake to the Board. Jack Manning seconded the motion. Blake and Liahna were approved by acclamation and a unanimous voice vote from the members
3. Bears – trash cans; Chairman Cox reminded members that this is bear season – please attempt to refrain from placing trash in community bins until Tuesday morning when trash pickup occurs. Each community bin now has three chains on the lid, thanks to Jim Payson. Please make sure all three chains are secured after you place your trash in the bins. Alternatively, trash can be dumped at the Lake County Transfer Station at the turnoff for the Jolly Pack Rat on highway 93 south of Polson.
4. New website: Stephi Isbell briefly described how to access the new website. If you can't access, please contact her. She provided the internet address (Timbrshor.org) and the password. Registration information will be provided to members via email. You can contact Stephi at: [stephi@montana.com](mailto:stephi@montana.com)
5. Parking: Tom Roy asked who would like to continue on the Parking Committee – this committee will be concerned with overflow parking areas (which needs to take drain field location into account), fire access, etc.
6. Homeowners' meeting minutes: In the past we have approved them the following year. This year minutes will be circulated a few weeks after the meeting so that members can review and make whatever suggested changes they think appropriate. The minutes will continue to be approved at the next Association meeting.
7. Lodge Construction: Dan McCarthy indicated that since the matter is currently being litigated that it would be best not to discuss the Rose litigation in any detail. He mentioned that members have received copies of some of the filings and can make their own determinations. Dan noted that the Rose's have "every right" to bring litigation if they think their legal rights have been violated, that the Association has "every right" to defend its position, and that the Court will decide the issues. He noted that on July 3<sup>rd</sup> the Court ruled that while the Rose's are allowed to use a boat slip this summer, they are precluded from engaging in any further major external construction until the litigation is resolved. He also noted that Mr. Tabaracci had advised that, per Montana law, all Timbrshor Directors are entitled to be indemnified against any legal costs or losses that they incur while serving on the Board. He also noted that Mr. Tabaracci had advised that, since there are no "conflicts" between the positions of the HOA and Tom Cox, that it is perfectly proper for his firm to represent both parties. Dan noted that if any conflicts do arise and cannot be resolved that joint representation by Mr. Tabaracci would no longer be appropriate. In that case, both parties would need to retain separate counsel, and the Association would then be obligated to pay for two lawyers rather than one.

- a. Julie Kuykendall questioned why the Board initiated litigation against the Roses without first bringing the matter to the entire membership for a vote. Dan explained to Julie that the Board did not initiate the litigation. He noted that the litigation was initiated by the Roses, and the Board has a fiduciary duty to defend the Association. He also pointed out that the summer construction moratorium rule, which is at the heart of the controversy, was reaffirmed by the Association at last year's annual meeting and that the vast majority of Julie's neighbors want the Board to enforce the rule.
- b. Ms. Borchers-Michione indicated that she does not support how the Board has handled the Rose matter. She indicated that the Board should supply the members with copies of everything they receive on the Rose litigation and all other matters. Dennis McCormick said that he did not agree with Ms. Borchers-Michione's suggestion. Dennis noted Ms. Borchers-Michione's suggestion would only impede the process. Jack Manning also noted that he did not agree with Ms. Borchers-Michione's views. He said that the present Board has been the most "transparent" Board that the Association has ever had, and that all members ought to be supporting their efforts to enforce the summer construction moratorium rule. Jack noted that the rule benefits all members by ensuring that our short summer seasons are not disrupted by noisy construction that can easily be done at other times. Ms. Borchers-Michione also asked if Board members could be held personally liable in connection with the Rose litigation. Dan McCarthy noted that, per advice from Mr. Tabaracci, such a result would be extraordinarily unlikely unless it could be shown that Board members engaged in willful misconduct or gross negligence. Liahna offered to help facilitate communication by updating and sending out a list of owners.

The agenda was concluded, a short break was taken prior to TLI's representative Andy Short taking the floor to explain what had been done on the drainfield feasibility study. It was noted that the drain field issue(s) had been under consideration by the Association for five years.

8. Septic Plan – Andy Short: Andy, a registered sanitarian, described what TLI does. They are a firm with 15 staff members including engineers, sanitarians, land use planners, and surveyors. He said that Timbrshor originally had been approved for a common public water and sewer system. This was never built. While a few sites are in compliance with the COSA (Certification of Subdivision Approval), Timbrshor's community septic system is out of compliance with State and County regulations and must be fixed. He noted that the best way to proceed is by cooperating with the County. He said that if Timbrshor wants to fight the County, he is not interested in handling our work. He encouraged all members to work together to fix the issues. He noted that it was his understanding that the general plan would be funded by the HOA, but each drain field group would have to pay their separate design/construction/equipment costs. During the course of Andy's long presentation, he made a variety of points including the following.

- DEQ will want to see a total plan (including water and sewer) but currently they are willing to consider only the septic plan. Until we are completely in compliance with the COSA, titles to our houses may be clouded.
- Drain field capacity is now defined differently – For drain fields with ten or more hook-ups, capacity is determined by a formula using 2.5 persons/home. For drain-fields with less than ten hook-ups, capacity is determined by the number of bedrooms.
- Systems are based on everyone’s individual septic tank and/or lift station. Systems will be designed to surge, then dose. Since MTDEQ has no jurisdiction on the reservation, septic plans are approved by the EPA. If a drainfield exceeds a threshold of 5000 gallons/day, additional regular monitoring must be done. We will try to stay under this threshold.
- System A: It will include the Lodge and the four-plex in addition to those already on the “boatyard” drainfield. A new system will be designed to replace the old system.
- System B: Includes a total of 12 sites – or, if System A is split into two parts, System B could be reduced to 7 sites.
- System C: Eight are on this system. Part is within 100 feet of the McCarthy well, so a portion of that drain field has to be relocated.
- System D: It was pointed out that 4 sites on the drain field were flagged by the county as not buildable. Should those four be included in the design of the new field? Adam Rys-Sikora suggested that drain field D could be expanded for use by seven homes. A second drainfield, perhaps attached to the first, may be necessary to serve all of the proposed homes in the area.

-Dan McCarthy noted that that the Board will be working with the County to try to get the County to approve a comprehensive septic plan for the community. He also explained that Mr. Tabaracci has advised that the Association has no authority to create a new plat (all unit owners would have to agree and the likelihood of that ever occurring is almost nill), and that the Board would be working with the County to follow-up on the County’s observation in 2010 that most of the remaining unbuilt sites could be approved as exceptions to the County’s sub-division requirements. Andy short mentioned that Jarrod Moore from DEQ and Susan Brueggeman from Lake County Environmental Health will be reviewing the septic plan.

\*-It was asked if the BOD had a position on the number of bedrooms to be built in future homes. The BOD has used 3 bedrooms as a guide for future homes.

\*The WSD came to TLI requesting a proposal for a either a Professional Engineering Report or a Feasibility Study. The Homeowners decided last year that the PER was expensive and not in their best interest and that a Feasibility Study would meet the Association's needs. The WSD and the HOA have entered into two separate contracts with TLI (one for the remainder of the assessment from earlier for the drain field issue, and one with the WSD for the \$7500 grant).

\*TLI submitted a draft plan to the DNRC. DNRC as agreed to reimburse us for one half of the grant money. TLI will have to complete the Feasibility Report under the grant requirements before submitting a request for the remaining funds. Not only the existing homes will be included with the final plan, but, any buildable undeveloped sites will also be included.

\*Will current permitted (newer drain fields) need to be upgraded and additional costs assumed? Andy said that TLI would submit the necessary documentation and permit application(s) necessary to insure they are properly permitted. It is possible that they may not need any additional work done. Adam's drain field is apparently properly permitted and undersubscribed at this time. If it is expanded to accommodate additional houses, work done will largely be borne by new subscribers.

\*The number of drain field sites are limited by the topography at Timbrshor. Therefore, any significant departure from most of the recommended sites may prove to be not only cost prohibitive, but limited by geography. Also, we need to keep the configurations clustered because at a future date we will need to deal with water issues and we may need maximum flexibility.

\*A County regulation states that if one system is up-graded then all the systems will have to be upgraded. However the County and the DEQ have indicated that we can upgrade one drain field at a time (piece meal), hopefully before any fail as long as we have an overall plan for all of Timbrshor.

\*Ken Stam and Marc Estvold suggested that their drain field (seepage pit) was not in violation. Andy Short noted that the County's position is that their system is out of compliance. An extensive discussion then ensued as to how a group could show that their system was in compliance and who should pay for such work. It was suggested that if the County considers a system to be out of compliance, it ought to be the responsibility of those owners to convince the County otherwise and to pay the associated expenses.

\*The different drain fields and user groups were discussed. Andy, from TLI doesn't want to field calls from individual homeowners and asked if just Tom Cox and/or Sue Roy would collect the information and questions from the user groups and relay them to him. Having individual homeowners asking questions separately from the user groups would probably run into thousands of dollars of Andy's time..

\*Burke wanted to know if we should be concerned about developing individual septic systems. Andy would not advise going to individual systems considering that we have limited drain field space. Going to individual systems might impede our ability to deal with water issues at some time in the future.

\* If the County approves the TLI plan, does TLI think that the DEQ will also support the Counties decision? Andy responded yes.

\*Kimberly Maxwell asked if we could legally draw water from the lake?

Andy said legally “no”. He also responded to other questions regarding “water” but cautioned that he was not prepared to discuss that subject.

Kimberly also requested a time line for approval of TLI’s plan and getting the user groups together to determine how to proceed.

Andy said that we have to establish the user groups, finish the plan, and get the approval from the County and DEQ. Also, according to Andy, the cheapest way to go is to not fight with the County. If a homeowner wants to change user groups, he will work with them. However who would pay for this was not resolved. It was suggested that the (single) homeowner wanting to depart from the user group should pay any additional costs.

\*Some homeowners have permits from the Tribe to draw water from the lake. We have always assumed that new houses would be allowed to draw water from the lake, also. Andy said if we go this route that we might need to hire a water rights attorney; that would take additional time and money. Many of the original houses have water rights from the state.

\*What will it cost to finish the current plan? Andy said that he would pull some numbers together and give them to the Board in the near future.

\*Sue Roy wanted to know what field work remained for TLI to finish the feasibility study for the different systems. Andy said it would take about 5 days minimum.

\*After the general plan is completed, the expenses for design and construction of each drainfield will be shared by the users in that group.

The questions ended and the meeting was adjourned at 4:16 pm.

Respectfully submitted

Doug Rotondi, Secretary  
Timbrshor HOA