

MINUTES OF THE SPECIAL MEETING OF
THE BOARD OF DIRECTORS
TELLURIDE MOUNTAIN VILLAGE OWNERS ASSOCIATION
MARCH 9, 2009

BOARD MEMBERS PRESENT: Nelson Sharp, Jonathan Sweet (via telephone), Daniel Zemke, John Volponi, and Jonathan Greenspan

BOARD MEMBERS ABSENT: Dave Riley, Jeff Proteau

STAFF PRESENT: Erin Neer, Stephanie Fanos, and Leanne Hart

OTHERS PRESENT: Ron Brumley, Bob Trenary, Richard Child, Valerie Child, Matt Skinner, Stephen Barrett, Steve Treacy, Carly Shaw, Greg Ritter, Seth Cagin, Davis Fansler, Matt Beaudin, Linda Cook, Jeffrey Fasolo, Hillary Mescall, Don Perotta, Kim Hewson, Ward Veale, Karla Barlow, Scott Shifrom, Art Kulscher, Lucy Kensford, Anneliese Riebel

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- 1) **Call to Order** – President Sharp called the meeting to order at 1 PM

 - 2) **Petition submitted by members representing 10% of votes regarding submission of amendments to the Articles of Incorporation to a vote of the members** – President Sharp summarized the purpose of the meeting. He then asked staff to confirm the verification of the petitions. Ms. Fanos first confirmed that the total number of eligible votes is 3,844.85 as of March 9, 2009. At the time of the meeting, petitions from members representing 479 votes had been received as well as another 7 petitions representing 21 votes that could not be accepted. Stephanie then confirmed that the required number of signatures / votes had been met for a valid petition. President Sharp then asked Ms. Fanos to confirm the process. Ms. Fanos explained that the petitions came to staff from various sources via e-mail, faxes, hand delivery, etc. When staff received them, Leanne Hart sorted each petition alphabetically, and then Erin Neer, Leanne & Brianne Hovey verified each petition against the records in our files and in some instances, Stephanie was called upon to verify their authenticity. Staff has prepared a list by name, class and number of votes indicating that they have been verified and where the records are stored. President Sharp asked the board if there were any questions on the process. Director Sweet clarified that at this point TMVOA is obligated to proceed based upon the number of signatures. President Sharp stated that it was his understanding that TMVOA has a statutory obligation to proceed with an election at this point. Ms. Fanos concurred. Director Sweet further clarified that TMVOA is required by the process to put this issue to a vote of the membership and asked whether the board needed to make a motion to that effect before asking for questions from the public. President Sharp asked for clarity on the process from Ms. Fanos. Ms. Fanos recommended that the Board submit the amendments set forth in the petition to the members. The petition sets a deadline for ballot return of 4/2/09 and a record date that we can't use since it is in the past so the Board would need to set a new record date. Ms. Fanos stated that given a 4/2/09 date, TMVOA actually needs to get the notice and ballots in the mail no later than Friday, 3/13/09 due to the 20 day noticing requirement. Director Zemke asked a question on the language of the ballot and the notice of the ballot, but stated that he did not have a problem moving forward with the election motion. Director Sweet requested

that the board move forward with a motion and then have discussion. He then made a MOTION that per request from TMVOA membership, the Board submits amendments to the Articles of Incorporation to a vote of its membership per the petition and that the election would be done by secret ballot, in accordance with CIOA, with ballots due by 4/2/09 with a record date of tomorrow, 3/10/09. Director Zemke asked that the board consider a return date of 30 days after the ballots are mailed considering that non-profit corporation guidelines allow for a 30 day return deadline in contrast to TMVOA bylaws, which requests 20 days. Ms. Fanos stated that TMVOA could use either deadline and explained that if the documents do not provide a number of days for notice, the notice can be no less than 10 days and no more 30 days. TMVOA's documents state that the notice can be no less than 20 days and no more than 50 days. Director Sweet asked what the return date would be at 30 days. Ms. Fanos stated that it would be April 12th if TMVOA sent the ballots out Friday 3/13/09. Director Sweet stated that he would like TMVOA to maintain the return deadline of 4/2/09 per the petition and reminded the board that he was looking for a second to his motion as it stood. Director Greenspan confirmed that 4/2/09 is the date in the petition and SECONDED the motion. Director Zemke commented that Director Sweet had also added secret ballot to the motion. He said that he has a problem with the election being held by secret ballot and added that there is no provision in the TMVOA bylaws or articles for requiring elections to be held by secret ballot. He said that he would move that the motion be amended to remove this requirement. Director Sweet clarified that this is a sensitive issue and that for many, many years, the ballots were not secret and there was an ongoing scenario in which people would be tracking vote totals and making calls and a lot of shenanigans. He added that when he became board president, TMVOA made the switch to CIOA and to secret ballots to be more honest and effective. He said that he believes it is a process that should be followed. Ms. Fanos clarified the legal facts on this issue – both the non-profit statute and CIOA apply to TMVOA. Section 38-33.3-310 which specifically apply to TMVOA as a pre-CIOA community; sections 1 and 2: have been designated as applying to TMVOA, states that at the discretion of the board or upon a request of 20% of unit owners at a meeting or represented by proxy, a vote on any manner affecting the common interest of community shall be allowed to be held as secret ballot. The Board has the ability to designate this vote to be a secret ballot. Director Zemke expressed some question with regards to the fact that at some points TMVOA follows CIOA and at other times TMVOA follows the Non-Profit act. Ms. Fanos explained that both statutes apply to TMVOA and you have to look at each interest to see which act applies. Looking at CIOA, there are references back to the Non-Profit code. She further explained that not all of CIOA rules apply, but that where CIOA speaks, CIOA controls. Director Zemke stated that CIOA also requires election procedures to be in TMVOA's bylaws and TMVOA does not have these procedures in their bylaws. Ms. Fanos stated that when the governing documents were formed, the bylaws stated that the election procedures would be those that are called out in the Articles of Incorporation. Director Greenspan asked Ms. Fanos to explain the secret ballot. Ms. Fanos explained that we could only release the results of the total votes, but not how people voted. Ms. Fanos further explained that the ballot shall be counted by a neutral third party or committee of volunteers and the chairman, Nelson, has the ability to appoint this third party. She further requested that TMVOA's independent auditors be named as this independent third party for the purpose of opening and counting ballots. Director Greenspan commented that under no uncertain terms does he want anyone to read his ballot unless it is a secret ballot, referring to the principle of democracy. President Sharp commented that he had previously thought all elections were secret ballot. Ms. Fanos clarified that all director elections are subject to secret ballot, since January of 2006 per CIOA, but other matters could be designated as secret ballot or not at the choice of the Board. She added that TMVOA has had another election since January 2006 for amendments to the Articles which was done by secret ballot in 2007. President Sharp then asked if there was any further discussion. Residential Member Matt Skinner said in follow up to Director Sweet's comments on unethical practices in the past and that TMVOA needs to make sure the ballots are secure. Director Greenspan asked if the neutral party would set up a secure system for processing ballots. Ms. Fanos stated that TMVOA staff would establish procedures and ask them to come

to the TMVOA offices to count the ballots. Director Zemke asked what the cost of the third party would be. Ms. Neer explained that TMVOA staff did not have a cost estimate yet. Residential Member Richard Child explained that having been involved in a contentious election in the past, he would expect nothing less than a secure, secret ballot process. He went on to explain that there was no animosity in the response he got while soliciting petition signatures from all classes. He explained that people see this as a natural process in the life cycle of TMVOA and a true example of establishing a level playing field in which representation is key in the management and decision making process of TMVOA. He closed by stating that he really supports and requests that the Board be supportive of a secret ballot. When working on the petition, he would have gotten a couple more hundred signatures from people who did not feel uncomfortable supporting this openly. Residential Member Matt Skinner stated that the secret ballot is a good process and also that TMVOA needs to see the totals at the end as Stephanie had mentioned. He also stated that he did not feel that the Board currently represents full time working residential members, since both residential board members are either absent most of the time, or second homeowners. Director Greenspan agreed with the secret ballot and also stressed the importance that the votes are not opened and tallied daily. Ms. Fanos explained that the ballots would be collected each day and at the end of the day they would be put into a locked file cabinet. No results would be disclosed to anyone, including anyone who had or had not voted. Director Volponi agreed that the secret ballot is important because there have been questions back and forth where people are not comfortable voting. He said that he likes the idea of keeping the TMVOA staff out of opening and tallying votes and suggested the need for a process to get the ballots to the independent auditors without receiving them at TMVOA offices. Member Jeffrey Fasolo asked whether the vote of the commercial bracket is based upon square footage. Ms. Fanos explained that the commercial class vote is determined by square footage and that the Articles call out how that square footage is measured. The calculation of the number of commercial votes is 1 vote / 250 square feet. Mr. Fasolo further asked if members could get a list of how the commercial class voting currently breaks out. Ms. Fanos stated that members can get a list of the names, addresses and votes of each member and that there is a form on the website to request this information. Director Zemke requested that the number of responses per class required for a quorum be added to the notice. Steve Treacy, the Lodge at Mountain Village concierge then asked how the TSG veto works. Ms. Fanos explained that in order to amend the Articles of Incorporation, a majority of all classes – meaning 2 of the 3 A, B, C classes needs to vote in favor of the amendment, and then Class D, TSG, has to vote in favor of the amendment as well. President Sharp asked if there was any further comment. With no further comment, the Board proceeded with a vote of the motion with a secret ballot, with the record date of 3/10/09 and a return date of 4/2/09. The motion passed unanimously. Director Sweet then asked if the Board makes a recommendation to the members of how to vote, or if the board remains neutral. Ms. Fanos stated that if the Board were sending the amendments to a vote, there would be a requirement for them to make a recommendation, but since this special election is by TMVOA members, there is no such requirement. Director Zemke stated that his only further problem was that he would recommend requiring the additional residential seat be filled by a full time resident. Ms. Fanos explained that since the amendments were drafted and approved as such, the board cannot amend that the ballot language.

3) Meeting was unanimously adjourned at 1:36 pm.