

August 19, 2023`

Tolomato Owners – An Update on Issues

Good News

Tolomato Owners need information and need to be kept up to date on various issues, and events. The newsletter and updates have their place, but in the current environment, owners are likely overwhelmed with negative news, and as much as we would like not to be branded, we may be seen as complainers.

In the next few days, we will announce a new system designed for and to be used by Tolomato Owners. It is participatory. You can read, you can participate in discussion, and you can tailor the information to your own tastes. Look for the announcement.

Please Don't Vote, or Vote No, on the Proposed Amendment to the Tolomato Island Declaration of Covenants to Combine Lots

Last Sunday, the Board of Directors, sent out a misleading email asking all owners to vote on the flawed Amendment to Combine lots.

The email's dismissive opening implies the Board is working in response to the desires of a "few" members. That is not the case. In fact, with the exception of a single ARB member, we have heard nothing but support for the option of combining lots. However, there is little owner support for the flawed and ambiguous amendment put forth by the Board of Directors, which among other things:

- Improperly casts in concrete, inflexible setbacks.
- Gives the Board of Directors power over lots they were not destined to receive in the original Covenants.
- Limits owner's ability, without Board approval, to reverse their combining of lots, for example to promote a sale of the individual properties.
- Forbids owners of more than 2 lots to combine lots.

We know of no requirement to have a quorum for this type of voting. The By-laws require a presence of 10% of the Class A (current owner's) votes in person or by proxy to conduct business at meetings, for example the annual meeting where members vote on the election of directors. (Section 2.11). If that is not the case, we would ask the Board of Director to specify the exact reference(s).

The Board has mishandled this issue. It sent a single ballot, regardless of the number of lots owned, by US Mail. The ballot sounded good** but did not reflect the actual amendment. When called to task, the Board sent the proposed amendment by email to an incomplete list of owners. They have in conversation talked against the building of McMansions (implying combining lots would encourage them). In truth, we have lots that are because of setbacks, the marsh and drainage issues, unbuildable unless they are combined, regardless of the size of the home. Combining lots provides another avenue for the sale of unbuildable lots. They have

leaked they have received 80 votes. The number of votes in favor must be north of 175 to pass the flawed amendment.

The language of any amendment should be “clear and unambiguous”. This amendment is not. The recipients of the votes and administrators of the voting process need to treat the completed ballots with proper safeguards and confidentiality, and they are required to be impartial in regard to any vote’s merits.

Update:

As reported, a highly qualified legal POA attorney has provided the Board with a detailed opinion outlining precisely how an owner can combine their lots for building a home under the current covenants. The Architectural Review Board has rejected a preliminary review of a home, stating “At this time, the TIPOA Covenants do not permit the building of homes across lot lines.”

Litigation is now in the wings. The Board’s attorney has been notified that an owner intends to file suit in Superior Court, should the matter not be quickly resolved. The Board’s attorney (and we would assume the TIPOA Board of Directors) has been provided the case law, upholding the owner’s right to combine lots. The Board’s attorney has said it is though the Board of Director’s decision to continue with an amendment. If the highly unlikely result of litigation is that an amendment is required, the wise people of Tolomato will put forth language that is clear, unambiguous and will meet the tests of time.

This is a vote on an amendment. You may abstain, or vote directly via the ballot, as you please. If you issued a proxy, allowing someone else to vote on your behalf, please know that you have the right to rescind or change your proxy. According to the By-laws, the last dated and signed proxy will be the one considered.

Please know there is no need for proxies in this vote.

** In “discussion” today with another owner, the President of the Board concluded: “The purpose of the current vote is not a "yes" or "no" on whether two lots can be combined and a home built across the previous center border. It is a vote on whether to approve a change to our Declaration of Covenants, which would potentially permit the combining of 2 lots, etc.” Is that what you thought you were voting on?

Late and Not assured Financial Reports....WTH?

Some members and a director have been asking for the June 30, 2023, financial reports. They were published on Tolomato.org on August 17. We have a Treasurer, an Assistant Treasurer, and a paid CPA, yet we can’t get timely financial reports.

You may note in this edition of the reports (they don’t follow the same format) it includes the statement “These financial statements have not been audited or reviewed, and no CPA expresses an opinion or a conclusion nor provides any assurance on them.”

It sounds like the TIPOA is making the case for our suggested full Audit.

More Litigation?

The Architectural Review Board has issued without notice or summary, a new set of Architectural Guidelines. They were posted on Tolomato.org July 12th. Within a few days of allegations of discrimination and failure to manage drainage issues the Guidelines now include a new section:

“X. LIABILITY The Association, the Board, or the ARB shall not be held liable for soil conditions, drainage, or other general site work; The Association, the Board, or the ARB is not liable to any Owner for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, and specifications, whether or not defective;”

Apparently the “non-discrimination” language was removed. The only way we know to protect the organization or those in power from claims of discrimination is “don’t do it”. Further we would guess it would be hard to disavow a drainage problem that has been overtly blessed.

Follow-up on Board Response to Owner’s Letter

A group of Tolomato Owners respectfully presented a letter to the TIPOA Board at the June meeting asking for the Board’s consideration regarding the need for Open Communications, Committee Protocols and Procedures, an Audit (the books have never been audited), a Master Plan (which has not been updated in over 20 years etc.).

To our knowledge the Board did not meet to consider the issues but put forth an owner’s opinion for a large segment (not all) of the community to agree or take issue with. That is unfair, and divisive. It was not the Board’s opinion.

The owners signing the original letter are not advocating for a golf course, or changing the character of our community, they are advocating that the powers that be consider growth and meeting both current and future needs.

Developments like Tolomato Island fail, not because of pine straw needing replacement, but because of major systemic problems such as lack of storm water drainage, inadequate water supply, or failure of septic systems. While all those systems may be a responsibility of others, effective leaders and owners must tirelessly advocate for meaningful standards, plans, and appropriate upgrades.

We can appreciate that the Board may not be comfortable developing a master plan, however there are Tolomato owners with experience in planning, commercial and residential development, engineering, financing etc., and could provide that expertise for the good of the community.

Questions for us all - Editorial

In what 20+ year old corporation that burns through \$200,000 per year, which has never had an audit, would the Board of Directors be adamantly opposed to an audit?

In what growing development where the majority of owners has never seen its master plan, would the Board of Directors be adamantly opposed to developing one?

In what organization would the word of a single attorney and perhaps a single officer be taken as absolute, without discussion, in light of a growing body of evidence to the contrary.

What signal does it send when volunteers or owners simply wanting to build, must hire an attorney, because of Board of Director's actions.

Lastly, why would the officers of a company work to divide their owners? What useful purpose does it serve?

Thanks for your attention.

PS We appreciate the input of several owners and are grateful for the opportunity to use this email system.