



DISCOVERY BAY HILLGROVE VILLAGE OWNERS' COMMITTEE

Minutes of Meeting No 11 2016-2017

held on 15 March 2018, 8:00 pm at Conference Room No 4

Discovery Bay Office Centre

Present:

Mr Edwin Rainbow	(ER)	Chairperson
Ms Janice Fung	(JF)	Vice Chairperson
Ms Alice Li	(AL)	Member
Mr Chung Kwok Wah	(CKW)	Member
Mr Edmund Fan	(EF)	Member
Mr Edwin Tam	(ET)	Member
Fine Faith Limited	(FFL)	Member
Mr Martyn Keen	(MK)	Member
Mr Michael McGuire	(MM)	Member
Ms Nikki Wepener	(NW)	Member
Mr G H Koo	(GH)	Manager – Estate, City Management (CM)
Ms Ricky Kong	(RK)	Officer – Estate, CM

Absent with Apologies:

Ms Cheng Mei Yu	(CMY)	Member
Mr John Antweiler	(JA)	Member
Ms Lo Yuk Shan Connie	(CL)	Member
Ms Kimberly Keng	(KK)	Member
Mr Nigel JH Reid	(NR)	Member

In Attendance

Nil

1. Confirmation of Previous Meeting Minutes and Recording of Meeting

The Chair asked if the members present would approve of an independent audio recording of the meeting to facilitate verification of the minute. The CM audio recording to be kept as the official recording and archived for future reference. Members agreed unanimously

The draft of Village Owners' Committee (VOC) Meeting minutes of Meeting No 10 of 18 January 2018 was tabled. While the draft was just disseminated to the Committee, Members might send comment and feedback after the Meeting for CM's consolidation.

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2. Report on Financial Status

CM advised that as at 28 February 2018, there was a surplus of about HKD87,000 recorded against a budgeted deficit of HKD73,000. The status was healthy.

3. City Management Report on Village Matters

3.1 Major Water Leakage

Four (4) positions of pipe leakages were spotted at high level of different blocks. After discussions, it was agreed that local repairs would be carried out to these locations. Since scaffolding would be erected outside specific flats for repairs, respective occupants would be contacted for access. The cost of scaffolding was referred to the term contract, while repairs would be done by Works team.

3.2 Parking and Security Control

Members commented that the parking situation in front of the Village was in a disorderly manner where both golf cart and vehicle spaces were occupied by commuters or contractors who were not Hillgrove residents nor visitors, due to lack of parking around Pier area. CM was urged to exert tight control on the use of these spaces. In principle, Hillgrove parking spaces should be reserved to Hillgrove resident, its visitors and vendors. CM would display notices reminding the drivers to observe this rule and warning would be given to non-Hillgrove-related vehicles. A larger sign in at least A3 size would be displayed at entrance area reminding the drivers that the parking spaces were reserved for Hillgrove residents, their visitors and contractors working in the Village. It was also suggested that a wheel clamp device was placed in management office as a deterrent against offenders. Security checkpoint at entrance area during morning peak from 07.30 to 09.30 hours on weekdays was to be set up for better monitoring. This exercise would be implemented in next week, subject to more stringent control to be in place after review.

3.3 Safety of Children Playground

Members pointed out that the existing walking beside children playground towards Discovery Bay Road was dangerous while children could run directly into the main road. Although a temporary barrier was placed at the egress, children might run over the hedges. To reduce the risk, a thicker hedge, similar to the lawn area next to the temporary bus stops, surrounding the whole playground with an opening facing the residential block was proposed. CM would work out the details and lead time shortly.

4. Matters Arising

4.1 Resolution of Actions against Long Outstanding Debt

CM mentioned that it was the duty of manager under deeds of mutual covenant (DMC) to take actions against default owners for debts. CM would institute legal

actions against the owner with long outstanding debt (management fee and renovation contribution). Instruction to solicitors would be prepared.

Members, in particular, JF, were disappointed that the Small Claim's Tribunal had, two days earlier, decided in favour of CM's decision to obstruct the reimbursement of the Chairman's out of pocket expense in seeking legal advice, sought in the interests of the VOC and owners.

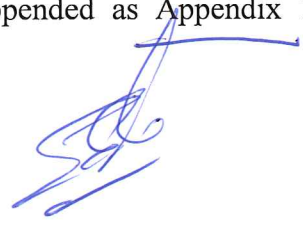
ER reminded Members that nothing was lost since what was important was the legal advice sought on the how interest should be charged, compound or simple, was still available to the owners. A lengthy discussion took place in which ER said there was still a possibility he would ask the Court to review the decision. ER called the meeting to order and invited GH to comment on the Long Outstanding Debt.

GH drew conclusions from the Small Claims Tribunal Decision, believing that it gave the Manager all the rights to go ahead with the recovery of the debt. MK agreed, but asked if this confirmed that the Manager has the right to charge compound interest, or simple interest? GH wanted to refer back to what he had said at a previous meeting, which was that CM's solicitors advised on that. He went on to add that they intended to charge interest and CM only provided the solicitors with the amount owed "the principal" and then asked the solicitors to provide guidance according to the DMC so that CM could calculate the interest. MK and ER believed that the DMC said compound interest and this was strongly supported by the Committee. MK added that on a rough calculation if simple interest was recovered instead of compound interest all owners have to pay extra towards the renovation. He wanted CM to know that if they were not going to follow the DMC he would personally take CM to the Small Claims Tribunal to recover HKD900, and suggested that all owners followed.

A discussion took place on CM power of veto confirmed by the Tribunal decision. ER mentioned that they had the power, but they should abuse the power. MK agreed. They should not use it because they work for us.

ER had concern for the effect of the Statute of Limitations on the settlement and asked GH what the effect was likely to be? GH replied that CM was still checking on this adding that it was complicated because usually for the "deep contracts" it was 12 years and the fact that a Memorandum of Charge had been put into the Lands Department could make the difference. ER hoped it would be 12 years and not 6 years. MM reminded members that this had been a long time ago and for a very small amount at that point.

[Post meeting note: A note close to verbatim is appended as Appendix 1 for reference.]



5. Progress of Consultancy Service

5.1 Tender Interview Analysis Report

During the Renovation Working Meeting this evening, the consultants Messrs Ho and Partners (HPA) presented a table summary on the result of tender interview. Four (4) tenderers of the lowest bids attended the interview. It was noted that the total contract sums were subject to alternative working programmes offered by the tenderers.

5.2 Review of Scope of Work

The scope of work was divided into three (3) sections: essential, improvement and private items (of which the unit rates were quoted and became a direct contract with individual owners if agreed). After reviewing the breakdown of the items, the work related to back of house would be moved to improvement items. HPA was then requested for conducting an exercise of best offers through which the tenderers were asked to re-evaluate their quotes under a revised scope of work.

HPA would revise the programme and an owners' meeting was expected in September to resolve the decision of renovation project. Site work would commence in October after the rainy season, tentatively.

6. Matters of City Owners' Committee (COC) Meeting

The discussion would be moved to next meeting.

7. Community Events

Date	Event	Venue
30 and 31 March	Easter Egg Hunt	Tai Pak Bay and Piazza

8. Any Other Business

Nil

9. Date of Next Meeting

The next meeting to be confirmed

The meeting was adjourned at 10:40 pm.


Chairperson

Appendix 1 – Item 4.1 Long Outstanding Debt (close to verbatim)

Appendix to Minutes Hillgrove VOC Meeting 15th March 2018

4.1 Long Outstanding Debt (close to verbatim)

ER We have to move on.

JF We didn't win?

ER We cannot really lose -we have the legal advice but I had to pay for it.

(General hubbub 2 min – during which ER spoke of the possibility of asking the Court for a Review after considering the written Reasons for Decision from the Court).

ER On the big issue *the compound interest*, that still stands.

*(GH reverted to the previous item about non-Hillgrove owners parking golf carts at Hillgrove, for clarification. Other members joined in).
(ER brought Meeting to order)*

ER OK. Number 4 - [Item 4= Long Outstanding Debt] I think I will let GH comment on that.

GH Recently we had a Court case and then the content of the judgment mentioned ----

ER Wait a minute You mean Midvale?

GH No, No, No.

MK He is talking about yours.

ER You are talking about ours?

MK but that is nothing to do with ours - that is not the Long Outstanding Debt.

GH I mean the Small Claim Court. So we will deal with the Long Outstanding Debt first OK and then we will get back to the Small Claim later..... So, I attended the announcement of the judgement at the Small Claims Tribunal and if I remember correctly there was one statement made by the judge about the provision of the DMC ask the Manager to chase the outstanding debts. I believe that it means that the Manager has all the rights to do it. OK. So we decided to go ahead.

MK So the Manager has the right to chase. Sorry. Wait a minute I want to clear this for myself - so the Manager has the right to chase the debt I agree the Manager has the right to chase after the debt. No problem

MK The second question I have is "Does the Manager have the right to charge compound interest or simple interest?"

GH Well I will refer to the previous discussion the meeting our solicitors advise us, to guide us, on that. We just issue them the amount owed for that many years.

MK So you are not charging [any] interest?

GH No, No, No We send the instruction to the solicitors OK and tell them that the owners want ten years Management fee.

MK That's fine. I am not asking that. GH. This is the principal, OK? and then let the solicitors come back to us to tell us what is the guidance, according to the DMC, so we can calculate the interest.

MK Which says compound?

GH -- in this exercise.

MK Which is compound because it does say *compound* in the DMC.

GH No.

MK It does.

ER It does.

MK I believe it does.

ER It does.

ER We have an argument. Even the judge, the adjudicator, in the Small Claim shut FK out. He said *'look, come on, you have an argument'*.

MK Yep! He did.

ER FK in his cross-examination [of me] asked me "Do you support the compound interest" or words to that effect. I barely got my mouth open but I said exactly what the judge said before the adjudicator said [to FK] Ugh! *He does not have to answer that you [ER] have your legal advice.*

MK Yes.

ER So you [CM] are in deep trouble if you don't [charge compound interest] because you are as exposed as we were. We could have been challenged for not going after compound interest. Unfortunately, nobody thought about for all these years. When this committee thought about it and every member of this committee read and agreed that it [the DMC] says *compound interest* - we should go after it. You cannot get out of it then. Anybody could have said *Aah!! We will settle for simple interest because we are feeling good today, and you like the guy* or, even in your letter [GH] to the guy [the debtor], you were entertaining, or he was trying to negotiate, a smaller amount than even simple interest. And, by the way, 1.5% [compound] is about what a credit card is. Why should we give them an incentive, and I am talking about compound interest now, and why should we give a delinquent owner better [terms]. Simple interest is even better than a credit card. Why should we give a delinquent owner years and years free ride, basically?

MK I have one extra question to add on to this because I think it will become relevant when this comes to our renovation. This money sitting here now is. roughly if I just do a calculation off the top of my head: *{Shortened} If we do simple interest everyone [all Hillgrove owners] has to pay about 900 HKD each extra. If we do compound interest each owner has to pay 600 HKD extra.*

MK If we don't get compound everyone

NW --- Suffers !!

MK Suffers - and for 900 dollars (speaking to GH), for the sake of, I will take you back to the Small Claims Court over it. [To GH] Go tell your management because I will [do it]- because if you are not going to claim according to what the DMC says, you are putting me out of pocket. And even if it costs me an extra? [to ER]

ER 70 bucks

MK And on that point, because we sat there [the VOC] and voted and we agreed what you should do it, I will stand up to my thing that I said at the time: *there's half your money back. Agreed, Done.*

ER. No, No.

MK That's half but if anybody else wants to put in you can give me some back. {Martin Keen hands the Chairman a bundle of 500HKD notes}. Agreed. Done.

ER No, No. I am a man of my word and thank you very much.

ER I am embarrassed.

MK Well don't be embarrassed because we sat there and we said we should do it

MK We will share it if more people want to come forward.

ER Let me just say that Edmund has said he will do the same thing before he went out.

MK You keep it for now and when the collection comes through, we will will re-share it out.

ER Well thanks Martin. I hope...

MM What is the outcome?

MM We don't even know the costs?

ER They [CM] were magnanimous enough not to ask for costs.

MM But what about?

MK we lost

ER You can't lose. We still have the - we paid 18,000 [HKD] for a legal advice. The problem was that after that meeting I had an inkling that I had seen,

GH Anyway, we have already written to the Small Claims Tribunal to get the verdict. Somewhere in the DMC, that the Chairman can claim out of pocket expenses So I went that route.

MM Yes

ER So I paid myself. I did not ask you guys at the time, although it was offered.

NW Yes

ER So I paid and I expected it to be paid from the Reserve Fund.

{NW joined by other members confirmed that they remembered clearly.}

ER because we did all the resolutions, but then GH said "it [resolution for the cost of legal advice from the Reserve fund] probably does not count at the VOC, so you had better take it to the COC". So we went to the COC. So I did. Do you remember? And then we had a vote in COC about getting the legal advice, not about the small claim -- about getting the legal advice.

ER [to GH] in fact it was good you did take us to the COC. On that particular night, every single village, every single village present, voted in favour of our resolution.

MK bar one.

ER Except for Midvale - that is the Chairman - that is normal - and City Management and HKR against. City Management should at least have done the right thing and abstained in that case. The judgment - I will get you the judgment. I will send you the judgment in due course. In fact, I will send you all the documents that we used. You would cry that we lost because, if you read the story, we deserved to win and if you saw the effort that went into it, we deserved to win. In the Court [not this guy GH]- the contempt that FK had for owners in general, not me in particular, but owners in general was so obvious. They had no ...

MK We were sitting there laughing at what FK was coming up with and even the judge, in the end, turned round to me - and whats-his-name, sat next to me?

ER Allan.

MK Allan. ... and he turned round to us and said "*you really need to stop laughing*". That's how funny it was. It was farcical.

ER (Agreed. Laughing). Some things were ridiculous.

ER That's why I wish some of you could have made some of the hearings

NW You did all this whole thing to help with this situation for the village, therefore we all agreed the money should come from the reserve fund...

ER But, it is not only that: If we didn't protect ourselves, anybody could have said: Hey!! You accepted simple interest and it should have been compound interest? It is 200,000 or more Hong Kong dollars. They could have taken us to Court

MM Why can't we just tell the Court the lump sum that is outstanding plus interest and leave them to decide. The Court will decide.

ER That is what Edmund was saying. Read the verbatim of the meeting. I think mainly Edmund and yourself ...Read it. The thing that you have to focus on here is ... What FK, for Hong Kong Resorts and City Management - I put them together since they voted together - What they/what he managed to convince the Court/the judge, was that they [CM] had the power to not pay the out of pocket expense because they the judge got [understood] the resolutions and he got FK to agree that the [VOC]

resolutions stood, even though they were never minuted or signed. He [FK] even used in the argument that the resolutions were not signed so they are invalid. They actually used that. They had the audacity to use that. But in the end, I did not need to call you guys as witnesses because I did not need witnesses because the judge had agreement that the resolutions stood. They [CM] got through on other things, which is that they have the power, in this case - It is quite complex - not to pay it. They also had the power to agree but they did not use it. That is the point they had the power to agree. They don't have to be against us. They lost nothing. They had nothing to lose. But they still did it.

NW But it should still come out of the fund

MK But it is not going to. Job done. Move on.

ER I would like to put all this in the minutes.

MK put it all in the minutes.

ER [to GH] Please put it all in the minutes,.

MM So we can say that a VOC resolution has no meaning?

MK Basically, at the end of the day, what I took off the back of that is that we can sit here and agree on anything we want and CM have the power to veto whatever we do.

ER They have the power, yes, but they should not use it. It is an abuse of power.

MK They should not use it because they work for us.

ER Especially [in this case] as they lose nothing.

GH Anyway, we have already written to the Small Claims Tribunal to get the verdict.

ER Yes. I could have done that myself, but since you are doing it I will let you photocopy it..... I don't think anyone has stomach for anything else [tonight]?

NW Please excuse me I have to leave.

MK I think we are all done

NW [asked to leave]

MM But what is actually happening now to recover this debt?.

MK As they said, they [CM] are going to recover the debt, but at the end of the day, if they sit there and at the end of the day charge simple interest, this means that we as owners will be we out of pocket, then we will, one by one, take them to the Small Claims Court.

MM Why can't they just claim and plus interest to be decided by the Court? Why do we have to specify the amount of interest?

ER We are not specifying the interest.

MK They [CM] are going to specify the amount of interest on whatever they can claim back. Let them get on with it. If they don't claim compound interest, we can then take them to the Small Claims Court. "GH" It will be your decision how you do it?

GH Until then this is the outcome if we don't charge usually the Court will not calculate the interest for you, they ask you to provide the figures.

MK Sure

GH But anyway we will send it back to the solicitors and them to give us the guideline to see how we should calculate the interest.

ER Yes, but you don't even need to do that. Just take the compound interest and send it to the solicitors and let the guy defend himself We can give you the figure.

MK Why can't we just let him argue that he does not have to pay compound but he needs to pay simple?

ER In the verbatim minutes, it said *"you are nodding your head"* "GH" *You agree?* and you said *"NO"*. [but] you said you *"UNDERSTAND"*.

GH I said I UNDERSTAND

ER So you do UNDERSTAND.

MK We can agree that it is in the interest of the owners to get compound interest. [to GH] I think you can agree that one? It is in the interests of the owners to get compound interest? Because it means that the owners, as all of us here now - the owners - will pay a smaller amount, although it only a smaller amount, we will all pay a smaller amount going forward.

MM But if there is not a case precedent that it is not simple or compound then we have no choice but to go for the compound, otherwise, people will say why didn't you go for the compound.

MK That is the whole point.

GH Of course compound is better for the income but that is not according to the DMC.

ER The DMC? Come on?

(Complete and noisy disagreement with GH from members)

ER I paid 18,000 to get that argument. There is no way that it is anything but compound. You have an arguable case.

GH I will go to the accounts department to get the list of the interest calculation breakdown for you OK?

MM So at the end of the day we go back to Court

ER Do you have any idea from your legal department for - and I hope this is a no-brainer - for the effect of the Statute of Limitations on the settlement because we are going to lose years and years ...?

GH We are still checking on this point.

ER What? It can't be that difficult?

GH It is complicated because usually for the "deep contracts" it is 12 years. For tax matters it is seven years OK

MM It will be a big lawsuit if that is the case.

ER So it is 12 not 6 [years]?

GH We have put in a Memorandum of Charge in the Lands Office and this can change the story. Our in-house counsel is looking at this.

ER OK that changes the story.

MM That was a long time ago, for a very small amount at that point.

MK What you have to ask here is because they [CM] didn't do anything and we might lose, 6 or 8 years worth of money, we should take them back to the Small Claims Court for the money they did not get us.

ER No this won't be a small amount of money.

MK I know it won't, but you know what I mean?

GH This is our duty if we get charged we get charged.

ER The adjudicator kind of indicated that if we cannot win on this one [The out of pocket expense] then we probably would on this one [lost rental income]. It is negligence, basically.

MK Are we done?

ER We are done.

***** End *****