

DISCOVERY BAY HILLGROVE VILLAGE OWNERS' COMMITTEE

Minutes of Meeting No 10 2018-2019

held on 11 November 2020 at 8:00pm

at Conference Room No 2, Discovery Bay Office Centre

Present:

Mr Edwin Rainbow	(ER)	Chairperson
Ms Janice Fung	(JF)	Vice Chairperson
Ms Alice Li	(AL)	Member
Mr Edmund Fan	(EF)	Member
Mr John Antweilier	(JA)	Member
Ms Lo Yuk Shan Connie	(CL)	Member
Mr Nigel JH Reid	(NR)	Member
Ms Nikki Wepener	(NW)	Member
Mr G H Koo	(GH)	Manager – Estate, City Management (CM) (Secretary)

Absent with Apologies:

Mr Chung Kwok Wah	(CKW)	Member
Mr Edwin Tam	(ET)	Member
Fine Faith Limited	(FFL)	Member
Ms Kimberly Keng	(KK)	Member
Mr Martyn Keen	(MK)	Member
Mr Michael McGuire	(MM)	Member
Mr Yiu Leslie Sheun Lai	(LY)	Member

In Attendance

Nil

1. Confirmation of previous meeting minutes

The draft of meeting minutes of Village Owners' Committee (VOC) Meeting No 9 of 8 October 2020 was tabled and circulated for review before the meeting. The Committee would further review the draft and give the comment after the meeting.

G.H. Apologized for not bringing the two outstanding minutes along to the meeting noting that the minute from 4th June 2020 had been altered according to the Chairman's amendment and that this had been distributed to members for final approval. NR and JA agreed [signed later by the Chairman]

The minute for the meeting of 11th October had not been distributed. GH said that he was awaiting the summary of the COC meeting of 7th October 2020, which the Chairman had agreed to write as there were important items from the COC and no time to report at this meeting. ER confirmed that the said summary had been distributed to CM and the VOC about two days after the VOC meetings. Members noted that both G.H and assistant RW were not often seen at Hillgrove and that they appeared to be overstretched. It was well known and confirmed that the CM estate staff responsible for Hillgrove were also called to look after the two new developments near the golf course. GH said that the new budget would normalize the situation

2. Matters arising

2.1 Report on actions on golf cart parking

G.H. Confirmed that the parking control problem persisted that had been discussed over several past VOC Meetings and that they had not come up with a solid solution nor a decision on how to regulate parking in Hillgrove Village area. He recalled some of the Committee's suggestions offered over many meetings that support CM to manage the misuse of Hillgrove Village as parking for golf carts unconnected with Hillgrove in any way.

According to records over the last three to four years, the number of Hillgrove owners who owned a golf cart reduced from 17 to 13 a year ago. With the original (and still existing) capacity of 21 parking spaces, CM should be able to manage the situation such that legitimate Hillgrove owners could always find a place. GH pointed out the difficulty in defining the owners/carts having the right to park and giving them a priority. CM estimated that 26 golf cart parking places would be needed to solve the problem arising from insufficient parking available in the surrounding area at peak times.

Members reminded CM that insufficient parking overall was a problem for the Manager, not a Hillgrove VOC problem

CM would continue the observation and record of the golf cart parking pattern on a daily basis and review and attempt to find a workable solution.

Members were unsatisfied and expressed their disappointment that CM provided no solutions or even introduced effective deterrents such as easily identifiable "Hillgrove golf carts" using stickers in combination with wheel clamping.



3. Report on Financial Status

3.1 Legal Actions for Recovery of Interest over Long Overdue Debt

Before the discussion on the subject, the Chair requested he read the following statement into the minutes and it was agreed adding that the minute may be important in the future and as a reminder to members before the vote was taken.

Quote: "The legal opinion [mentioned in the resolution] was provided by CAROL WONG, BARRISTER AT LAW paid for out of our pocket by the Chairman with help from members at a cost of \$18,000.

Let me remind the committee that CM has had since 2003 to deal with this matter and apparently it would be going on unknown to us to this day had Nigel not noticed a hole in the accounts at the end of 2015.

This VOC reads the PDMC as asking for compound interest to be applied. As long as we have no reason to change that view we cannot simply walk away from our decision.

CM, on the other hand, has the freedom to walk away from their current position if it in the best legal interests of the owners they represent. The DMC does not allow the manager to do anything other than to manage properly. Their view of "properly" can be tested in court as was the case brought about successfully by the Parkridge Chairman."

The Chair invited comment from CM, so that this could be considered before voting on the resolution and asked G.H, for the record, to confirm to the Committee the capacity in which he would be speaking?

G.H replied that he was acting as Manager of the Village and Secretary for the meeting. NR signaled that in the note VOC Paper [T1789/20] he had signed off as Senior Manager – Estate

The Chair, pointed out that this question was necessary to be clear on this, since, in an earlier SCT case it became evident that he had been acting as a messenger for his senior management. GH confirmed that Senior Manager-Estate would be appropriate.

CM responded that this was company policy to centralize and handle all legal cases through the Group's in-house counsel for better arrangement and opined that the legal cases could be through this arrangement handled professionally. The Chair reiterated that the legal advice from Messrs Carol Wong on late payment interest calculation obtained years ago



should be adopted in Hillgrove related cases related to debt recovery.

CM recapped on the cessation of Messrs Chung and Kwan to initiate the legal proceedings against the default owner(s). After drafting the first demand letter with late payment interest computed on the basis of simple interest thereby deviating from the compound basis according to the VOC understanding of the DMC, Messrs Chung and Kwan prepared a legal advice that indicated that simple interest should be adopted in this case. Eventually, Messrs. Chung and Kwan had declined the instruction and ceased to represent CM to proceed further.

In these circumstances, CM invited competitive quotes from five (5) law firms to continue the legal actions. [The VOC Paper **VOC T1789/20** had been issued by CM to the Committee before the meeting and forms part of this minute AS APPENDIX 2].

The VOC did not agree with the CM recommendation in T1789/20 for the appointment of Messrs. Benny Kong & Tsai based on the lowest bid for the various stages of the proceedings referred to in the above paper and a discussion ensued—

The VOC noted that CM's Paper stated that the quotations had come through *the Group's legal department*. . NR reminded GH that he had asked to see the responses and quotes from lawyers approached because we only had GH's summary analysis table and ER had asked to see the brief and other documents sent to the solicitor firms. [Nothing was available at the meeting and the requests were reiterated].

Referring to the resolution published in the agenda forming part of this minute of the meeting [APPENDIX 1], some Members noted that a discrepancy appeared in the Chinese translation of the respective resolution (based on the original English) such that the Chinese wording omitted the word “compounded” for the way the interest claimed should be computed. CM admitted that this was a typo and the Committee corrected the Chinese version of the resolution. The wording of the resolution was amended for clarity of its attention:

The Resolution:

*“Village Owners' Committee (VOC) Members vote to release the necessary funds from the Hillgrove Reserve Fund to cover the eventual legal costs **of a legal firm acceptable to the VOC**, needed to recover a substantial debt from a single Hillgrove Village owner. The matter relates to an accumulation of unpaid management fees, renovation charges, and outstanding interest, which is to be evaluated and claimed in Court according to the Principal Deed of Mutual Covenant, SECTION 4 – MANAGEMENT OF THE CITY, Sub Section E, Clause 2, under which the interest claimed will be compounded according to the unanimous decision of the Hillgrove VOC, and a legal opinion from a barrister-at-law sought by the VOC Chairman*

Revised resolution in Trad Chinese.

村業主委員會 (VOC) 成員投票決定從康慧台儲備基金中撥出必要的資金，以支付追討一個康慧台單位業主欠債的法律費用，而該負責律師行需獲 VOC 授權。此事涉及未付的管理費，裝修費和利息，將根據《互助原則》第4條（城市管理）E 部份第2項在法院進行評估和索償。根據該條款，利息會以複息計算，並將根據康慧台 VOC 的一致決定及參考 VOC 主席尋求的法律意見。

Amendment Proposed (JA)

Amendment Seconded (NR)

and the final wording for the resolution was approved unanimously

ER reminded the committee that this legal action was not about winning or losing. What we are supporting is full and proper consideration of the interpretation for Hillgrove Owners and Discovery Bay. NR added that an opinion on simple vs compound was now unnecessary as the court would decide that. Members agreed.

[Members offered views on the four legal forms based on online research before and during the meeting]

Three members had a favorable opinion of Kennedys, at least one [NR], said he had used them extensively in his professional capacity. There were no adverse comments. It was not evident from the VOC Paper that Kennedy's would be more expensive than others. Furthermore, this firm has a fine reputation to maintain and therefore inspired confidence. It was considered pointless attaching importance to small and uncertain cost differentials, given that, in the end the debtor that would have to repay the legal costs. Members: Quotes: We will get it back -Cost irrelevant - We want an attorney that best represents the Village

NR and EF noted that although Kennedy's were perceived [by CM] as the highest rates, Kennedys hourly grade rates were in line with the rates used for taxing bills.

Various comments about the other 3 bidding firms were raised by different members –

The Committee supported NR, who opined that "lower than Kennedys quotes" were actually so wishy washy and that there was no way of telling what they were quoting for, and there was too much reliance on "estimates"

Kennedys was the only firm that gave charge out rates by grade. The following firms provided no idea who the rates related to.

Benny Kong & Tsai

Not known to any member. Specialized in intellectual property services and international business – estimate unclear

Deannie Yew & Associates

Not known to any member. Experience not appropriate – mainly orientated to mainland related business

Jimmie K.S Wong



Not known to any member but research revealed that two lawyers connected to this firm were censured and fined [2013] for dubious actions contravening several principles of the Hong Kong Solicitors' Guide to Professional Conduct.

It was evident that GH, the Senior Manager Estate, was uncomfortable with this decision not to accept the CM recommendation of Benny Kong & Tsai, and this was of considerable concern to members, not least JF [

4. **Any Other Business**

Nil

5. **Date of Annual General Meeting**

The upcoming Annual General Meeting to be held in December tentatively.

As there be no further business, the Meeting was closed at 9:55 pm.



Chairperson

APPENDIX 1

Hillgrove Village Owners' Committee Meeting No 10 (2018-2019) 二零一八至二零一九年度康慧台業主委員會第十次會議議程

Date: 11 November 2020 (Wednesday) 日期：二零二零年十一月十一日 (星期三)
Time: 8:00 pm 時間：晚上八時
Venue: Conference Room 2, G/F, DBOC 地點：愉景灣商務中心地下 2 號會議室

AGENDA 會議議程

1. Confirmation of Previous Meeting Minutes 通過上次會議記錄
2. Matters Arising 續議事項 [15 mins]
 - 2.1 Report on actions on golf cart parking 針對高爾夫球車停放的報告
3. Report on Financial Status 財政狀況報告
 - 3.1 Legal Actions for Recovery of Interest over Long Overdue Debt [15 mins]
追討長期債務利息法律訴訟的安排

Resolution:

“Village Owners' Committee (VOC) Members vote to release the necessary funds from the Hillgrove Reserve Fund to cover the eventual legal costs needed to recover a substantial debt from a single Hillgrove Village owner. The matter relates to an accumulation of unpaid management fees, renovation charges, and outstanding interest, which is to be evaluated and claimed in Court according to the Principal Deed of Mutual Covenant, SECTION 4 – MANAGEMENT OF THE CITY, Sub Section E, Clause 2, under which the interest claimed will be compounded according to the unanimous decision of the Hillgrove VOC, and an arguable case provided by legal counsel sought by the VOC Chairman.”

委員會成員投票決定從康慧台儲備基金中動用資金，以支付追討一個康慧台單位業主的巨額債務所需的最終法律費用。此事涉及未付的管理費，大維修費和未償付的累積利息，將根據主公契，第 4 節- 城市管理，E 小節，第 2 條在法院進行評估和索償。根據此要求，利息將根據康慧台業主委員會的一致決定以及由業主委員會主席提供的法律顧問載有爭議性案件的法律意見。

4. Any Other Business 其他事項 [15 mins max]
5. Date of Annual General Meeting 業主週年大會日期 [10 mins max]

All of you, whether owners or tenants, are welcome to attend this meeting. Please contact our Ricky Kong at 2987 5551 during office hours for seating arrangement.

各業主或租客均歡迎出席上述會議，請於辦公時間致電 2987 5551 鄺小姐以便安排座位。



Issue Date: 04 November 2020

CONFIDENTIAL

Memorandum for the Hillgrove Village Owners' Committee
Appointment of Solicitors for Legal Proceedings to Recover Long-term Debt

Purpose

1. To appoint solicitors to initiate legal proceedings to recover the debt owed by the owners in respect of Flat 7F, Brilliance Court, Hillgrove.

Background

2. Further to the discussions in previous Village Owners' Committee (VOC) Meetings, City Management (CM) should recover the debt of outstanding management fee and renovation contribution since 2003 through legal proceedings, after the respective owners failed to response to CM's numerous demands for settlement. In 2019, Messrs Chung and Kwan was appointed as the solicitors to recover from the subject owners the debts. However, Messrs Chung and Kwan declined the instruction in September this year and discontinued the services after drafting a first demand letter and issued a legal advice about their view on late payment interest calculation method according to the Principle Deed of Mutual Covenant.
3. In these circumstances, CM was to carry out a fresh quotation invitation exercise for the appointment of another solicitors' firm to continue the legal proceedings to recover the debts from the subject owners.

Quotation Summary

4. Through the Group's legal department, five (5) solicitors' firms were invited to quote as set out below.
 - i. Benny Kong and Tsai
 - ii. Deannie Yew and Associates
 - iii. Jimmie K S Wong
 - iv. Kennedys
 - v. Tang Wong and Chow

5. Four (4) of the invitees returned their quotes. Messrs Tang Wong and Chow declined the invitation. The summary of quotes is tabled below.

Item	Law Firms					
	Kennedys	Jimmie K. S. Wong	Tang, Wong & Chow	Benny Kong & Tsai	Deannie Yew & Associates	
1) Prepare and issue a demand letter	Hourly rate in Item 7	HK\$6,000	Declined	-	-	
2) Prepare Memorandum of Charge		HK\$6,000		HK\$6,300	-	
3) Charging Order Proceedings		-		-	HK\$15,000 (estimation only)	
4) District Court actions for Order for Sale (if not contested)		HK\$45,000 (estimation only)		HK\$38,850 (estimation only)	HK\$80,000 (Counsel fee if Court enquires about interest calculation HK\$25,000) (estimation only)	
5) District Court actions for Order for Sale (if contested)		Hourly rate in Item 7		Hourly rate in Item 7	Hourly rate in Item 7	HK\$20,000 (Counsel fee HK\$15,000) (estimation only)
a) Originating Summons						HK\$50,000 (Counsel fee: HK\$40,000) (estimation only)
b) Affirmation in support and Notice to Hear Originating Summons						HK\$80,000 (Counsel fee: HK\$100,000) (for 3-hr hearing) (estimation only)
c) Attending the substantive hearing for argument						
6) Advice on recovery of the debt	HK\$30,000~40,000	N/A		N/A	N/A	
7) Hourly Rate	Partner @ HK\$6,500 Associate @ HK\$3,000 Trainee @ HK\$2,000	HK\$3,860		HK\$2,000	HK\$3,800	

* Unless otherwise indicated, the above quotes are exclusive of disbursements and counsel fees.

Cost Comparison

6. Given that the case could be closed up to the stage of default judgment, Messrs Benny Kong and Tsai would charge HKD45,150, by estimate, including memorandum of charge and District Court actions, which was lower. And, they would also charge a lower hourly rate at HKD2,000 for trials afterward. It was noted that the total legal costs of a case will be increased upon a defence being received, in which case, CM would further provide the estimated legal costs as required.
7. You may note that similar services offered by Messrs Kennedys is subject to hourly rates which are not indicated in Items 1-4. If the hourly rates listed out under Item 7 is referred, it shows that Messrs Kennedys is likely charging a high legal cost for this case.

Action To Take

8. Base on the above, CM is to appoint Messrs Benny Kong and Tsai for the subject case to recover the debt and associated costs, being calculated according to the outstanding records and related legal document against the subject owner and / or the property, in respect of Flat 7F Brilliance Court, Hillgrove. The costs and related expenses will be borne by Hillgrove's Reserve Fund.

For and On Behalf Of
Discovery Bay Services Management Limited
G H Koo
Senior Manager – Estate

9 November 2020

