

MUTUAL HEIGHTS BODY CORPORATE
SS 326/2005

MINUTES OF THE NINTH ANNUAL GENERAL MEETING OF MEMBERS OF THE
MUTUAL HEIGHTS BODY CORPORATE HELD ON MONDAY 22ND
SEPTEMBER 2014 AT 18:00 IN THE FRESCO HALL, 8TH FLOOR, MUTUAL
HEIGHTS, 14 DARLING STREET, CAPE TOWN

PRESENT: Fifty two members present or represented by
proxy and scheduled in the attendance
register.

CHAIRMAN: Professor Andy Bytheway

IN ATTENDANCE: Charles Keefer (CK), Paulo Goncalves (PG)
and Clinton Riddin (CR) representing the
Managing Agents, Property Exponents

FORMALITIES

1. NOTICE / QUORUM

Due notice having been circulated and a quorum being present
the meeting was declared duly constituted and proceeded to
business.

2. APOLOGIES

Owners who were not able to attend the meeting and who had
provided a proxy were thanked and their apologies noted.

In addition the following apology was noted.
712 & 911 – Donia Kamstra

3. MINUTES OF PREVIOUS MEETING

Minutes of the eighth annual general meeting held on 10th June 2013 having been circulated, were taken as read and accepted as an accurate record of proceedings at that meeting.

RESOLVED, that the minutes tabled be approved and the Chairman be authorised to sign them, which he then did.

STATUTORY BUSINESS

5.1 PRESENTATION OF THE AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED 28th FEBRUARY 2014.

On request of the Chairman and on behalf of the finance trustee, Simon Hudson, the managing agent tabled the audited financial statements for the period 1st March 2012 to 28th February 2013. CR then led members through the salient points of the reports.

Starting with the auditors' report, the following was highlighted:

- The approval of the financial statements was the responsibility of trustees. Trustees had approved the statements and both trustees and the auditors had signed them. Members were at liberty to question and debate.
- There were no qualifications to the financial reports.

CR continued and referred members to the statement of financial position (Balance sheet) and commented on the following:

- Cash reserves were depleted to cover the cost of legal fees. These totalled R956 269 for the year.
- Cash balance at year end totalled R846 472. Liabilities (note 4) totalled R1 237 643 which resulted in the body corporate having a negative contingency fund of R140 401.

CR then went through the detailed income statement which reflects the body corporate expenditure.

- The body corporate ran at a loss of R1 215 080 which was largely due to the legal fees of R956 269 as well as damp ingress repairs of R713 608.
- The balance of expenditure was in line with inflation.

Members were then invited to comment on and ask questions as – there were none.

5.2 APPOINTMENT OF THE AUDITOR

Members briefly discussed the appointment of an auditor and were in agreement that the current auditors be retained.

RESOLVED, that Cecil Kilpin is appointed auditors for the ensuing financial year.

6. Trustees Annual Report – (Chairman)

The Chairman then tabled into the record the ninth annual report of trustees for consideration and discussion:

The Mutual Heights Body Corporate

Ninth annual report from the Chairman of the Trustees: September 2014

This report concerns the management of the building and the activities of your trustees for the period July 2013 to August 2014.

During this year there have been ongoing ad hoc meetings with lawyers and contractors dealing with the damp problems, as well as meetings of the Trustees. The pace of work on the damp problems and the litigation continues to increase. As usual, the first meeting of trustees was immediately after the 2012 AGM, at which I was re-appointed chairperson. We then continued to meet as needed. However I was away for most of April, May and June 2014, and with the agreement of the other trustees Jared Lamb kindly agreed to stand in for me for that time.

Composition of the Trustees

In the period of this report, your trustees have included:

- *Andrew Bytheway (Chairman)*
- *Simon Hudson*
- *Jared Lamb*
- *Mark Mallin*
- *Jonas Thulin*

I would like to express my sincere appreciation of the time and effort that trustees have put in this year, for everybody's benefit. Our thanks go to Dion Williamson, who stood down after some years of helpful and active service as a trustee.

Financial matters

This year the increasing cost of utilities and services caught up with us, and the increase in levies was more in line with inflation than previously, when we had successfully contained costs relative to inflation. As always, Charles Keefer and his team continue to do a great job, quietly and in the background, and we are very fortunate to have such capable people helping us keep things under control. However, the cost of damp works and legal procedures accumulated to the point that a special levy became necessary and – given reasonable

circumstances and careful budgeting – the funds that it makes available should see us through the next stage of resolving these problems, Trustees are resolute that we will see this claim taken to a proper conclusion, and in the meantime we have been able to deal with several cases of urgent work that were individually assessed and approved for payment from our reserve funds, according to the procedures we agreed at the AGM last year. At the same time, certain owners have stepped forward to fund specific work within the scope of their own section, on the understanding that when we achieve a conclusion to our claim they will be reimbursed accordingly, in proportion with the level of the settlement. We continue to face testing times ahead as we continue these efforts.

I have previously been able to reassure you that our levies are, in fact, no more than (or a little less than) the average, for comparable sectional title buildings in or near the CBD; according to my analysis of 15 buildings for which we have data, our levies (R21.70 per square metre) are now a fraction over the average (R21.57 per square metre). There are seven buildings that have lower levies than ours, and seven that have higher levies than ours, so I think we must accept the fact that we are doing well, given the additional costs that arise from a heritage building and the particular difficulties that we face at this time.

The building

Damp penetration

As was the case last year, we continue to undertake essential work that preserves the integrity of the building and deals with unacceptable damp in the most affected units. However, "routine" work (based on our expert advisers' assessments of the best sequence for the work) has been very limited this year. One unexpected and disastrous incident was of course the burst pipe high in the tower, which not only devastated the interiors of the upper rooms of the building but caused some R1m of damage to the front lifts. Damp is coming at us from all directions! Happily, our insurances have covered most of these costs, but the inconveniences for all of us, and the stresses and strains on the management team, have been considerable. We can now put that behind us.

The scope of the problem

During the year there have been inspections of the building by our own experts, and by experts nominated by the defendants, and the sum of difficulty that we have inherited from the developers, Old Mutual, has extended. The perusal of the many documents that we now have from discovery makes clear that there were extant problems with the storm water pipes taking rain water from the roof and the balconies, that run through the structure of the building; we were not previously aware of this but it has become horribly apparent in one or two cases that we are now dealing with. Further, as the months have passed it has become clear that the vertical steel mullions that secure our windows to the exterior brick and granite walls have been corroding behind the paint, and the cosmetic covers that are affixed to those that were (presumably) showing corrosion during the conversation project. This is extremely worrying, because inadequate steel in the structure might compromise the structure of the building to an unknown extent.

In order to find out more, we have undertaken an exploratory investigation of one window that displayed the corrosion particularly clearly (there was a rust hole right through one of the mullions, and water cascaded from the vertical flashing when it was removed, even though there had been no rain for several days!). This has clarified the extent to which the steel mullions are "structural" (we find that there are differences between the side and central mullions) and it has helped the contractor to make reliable estimates of the full cost of removing and completely refurbishing windows on a one-at-a-time basis. I hope at the meeting to report on this in more detail.

But to summarise, let me put some figures before you:

- *The level of the claim made 1,680 days ago (as at the date of the AGM this year) was **R40m**. This was based on expert review of the work that we then knew was needed, and some investigation of the specific problems with the granite sealing outside, and the window glazing, beading and fixings inside.*
- *The convention in law (and noted in our claim) is that the level of a claim increases by 15% per annum while the legal processes progress. After 1,680 days, that raises the level of our*

claim has therefore risen to R79,211,227.81. Let's call that **R80m** – the potential cost to defendants (if we succeed) has doubled in the time that they have prevaricated.

- Further, we have discovered additional work that must be done, not known nor evident at the time of transfers and owner occupation, that will be of a similar order of magnitude to the original claim. (As I explain above, we are working to establish these costs as I write this report). Hence, we (and the defendants) should start thinking of **R100m** as the general level of the claim that we will be arguing for in court.

Legal process

The momentum in the legal process achieved during the previous period was maintained, but then went into "pause" mode as the experts (ours and the defendants) went away to draft their reports about the extent and origins of our problems. The second defendants (Murray and Roberts), having "joined" the principal contractors (Rigging Corporation), who shortly afterwards became bankrupt, have now "joined" the main engineering consulting company (KFD Wilkinson) and this has delayed things by at least six months. The legal process still revolves around three questions:

Prescription – did we leave it too late to make a claim? (South African law only allows three years)

Merit – do we actually have a proper claim that will stand examination in court?

Quantum – how much should we be awarded, if the above matters are found in our favour?

These issues will only be resolved when we get to court, or when all parties agree to arbitration (which has been discussed but is not yet agreed). Our senior counsel advises that should we win the arguments about prescription, then it should be downhill all the way from there, but then they are continually encouraging – for reasons that we have to accept! As I have said, your Trustees are resolute, and we will continue to keep you informed.

Community

Communications

I circulated newsletters in July, November, January and February. The web site is still updated sporadically: <http://www.mutualheights.net>, and the scamming problems continue to be reported there. Many prospective tenants have contacted me, or the management office, to make sure that they are dealing bona fide owners. Some who did not have lost substantial sums of money, and it seems that this is a "service" that we must continue to provide.

Safety, Security & Services

You may have noticed that the security contract was put out to tender, and we have changed the security company that we use. So far as I am aware, it has gone smoothly and there have been no complaints that I know of. Let us please make every effort to know the security team that looks after us – please make them aware that they are looking after one of the best communities in Cape Town, and that we appreciate what they do. Do **please** let me or the management office know if you have any concern or comment about services. As I continually point out to anyone who will listen, if we do not know about a problem they we cannot do anything about it. And we cannot be at all places at all times ...

Norms and standards for behaviour in the building

Avoidable noise, for example loud conversations at night and slamming doors, has been problematic for some residents. I was referred to web sites wherein other communities display the standards that they expect from those living in shared-title buildings, and I have taken the liberty of preparing a sort of "mashup" (that's a geek term!) of what I found. With acknowledgements to the original authors, mostly unknown, I present the result here below for your consideration.

Final words

I thanked my fellow trustees at the start, let me now thank Charles Keefer and his staff once again for their excellent work. On your behalf, I extend our collective thanks to the whole management team.

*With warm regards,
on behalf of the Trustees,*

A handwritten signature in black ink that reads "Andy Bytheway". The signature is written in a cursive style and is followed by a horizontal line that extends to the right.

*(Professor) Andy Bytheway,
Chairman of the Trustees, Mutual Heights, Cape Town.
info@mutualheights.net
<http://www.mutualheights.net>*

Check out "Mutual Building" on Wikipedia: http://en.wikipedia.org/wiki/Mutual_Building

How to be a good neighbour in Mutual Heights

People living in Mutual Heights come from many different backgrounds, some down-sizing from houses in the suburbs, some coming to stay from overseas, and some living the city life flitting from one building and one apartment to another. Living in such close proximity can be difficult when people fail to recognise their responsibilities, perhaps because they are used to running around in a freehold suburban property with a garden, or they are coming from a quite different foreign environment, or they simply come from a place with different norms and standards of behaviour. Perhaps they come from a loud apartment block where people have always behaved badly.

Problems can be avoided with a little attention to etiquette, and here we offer a few tips on living in close proximity with your neighbours in Mutual Heights¹.

- 1 Be friendly towards others in the community. You don't necessarily need to know them, but a simple hello or greeting goes a long way. Our community is not so large that it is impossible to know names, faces, and who-owns-that-car-parking-place-downstairs (or across the bridge). Having friendly relationships makes it easier to acknowledge and sort out problems, and to deal with questions or concerns. Get to know the property management team in the office, and the security staff, cleaners and others. Remember that the web site provides some contact information for people you might need to be in touch with. Letting other people know who you are is the first step towards a more rewarding relationship.*
- 2 Be quiet when entering and exiting the lifts and your apartment. Avoid clattering up and down stairs, especially in the quiet hours between 10pm and 7am - some people work strange hours and need to sleep. Keep your noise at whisper-level in the common areas. Loud laughter and conversations while people are relaxing or sleeping are a real nuisance. Don't leave doors to slam uncontrolledly. We have some difficult old doors and old closing devices - take care not to let them slam closed, especially when the wind is howling through the building as it sometimes does. Children are not often seen in the building, but when they are they can be extremely noisy and have been known to run around screaming. By all means let them run around, but they must understand that they have to be considerate of others.*
- 3 Be conscious of the noise level inside your apartment. Why not walk around your apartment in slippers or soft shoes? Boots and high heels on parquet floors make a real impact, not only on the floor but on the people below as well. If a neighbour asks you to keep the noise down, don't argue, try to negotiate a solution based on what you actually do have to do, how you do it, and when you must do it. Vacuuming and washing machines should be run when you know neighbours are out, or at work, and never at night. Noise and vibration goes right through our steel and concrete structure.*
- 4 Think about where you put things when setting up your apartment, for example your sound system and speakers should preferably not be affixed to common walls. Then, turn the volume down on your radios, televisions, gaming stations and music system or use headphones. For the sake of your adjacent neighbours, you should move them away from those specific walls.*
- 5 Have proper etiquette when using our shared facilities such as the gym and the car parking. Always respect the community's rules about common areas and facilities. Respect all parking spaces (they are much smaller than many of us are used to!), make sure your vehicle is completely within the designated area, and don't double park. Explain to your guests what they can and cannot do when visiting the building, for example tell them about nearby city street parking and the Grand Parade. Other users have the right to report parking violations to the management office and the clamp will be used without hesitation. Just because a person never uses their space, it is never appropriate to assume that you can use it without asking.*
- 6 We do not seem to have many elderly occupants, but when you find them offer your positive assistance if it seems to be necessary. If you see disadvantaged residents in the parking, with groceries for example, why not ask them if they need help? You might just make their day with a moment of kindness. Remember that there is a trolley somewhere that the security staff should be able to provide in these circumstances.*

¹ This text was prompted by similar guidelines to be found on the web - our thanks and acknowledgements to the several anonymous original authors!

- 7 *Remember that this is a NO SMOKING building in all the common areas. Although smoking is allowed inside your apartment, make sure that it is completely ventilated with the outside windows and vents open (unless the wind is coming in on your side!) Discard cigarette butts properly in your own rubbish, do NOT fling them out onto the street or the people below. Also, remember that you need PERMISSION to have pets: they must be small, and outside the apartment they must be on a leash.*
- 8 *Use the dustbins with care and consideration. This is one of the primary causes of noise nuisance for those living near them, even though they are mostly tucked out of the way in the stair wells. If you're moving in, with a lot of boxes, or if you have a lot of empty bottles (now, why might that be?) and used newspapers (do you remember what a "newspaper" is?) use the recycling facilities in the parking area on the ground floor. Be sure to securely close your garbage bags before disposal in the bins.*
- 9 *Think carefully when you have guests. Reckless behaviour and disputes with guests are the owner's responsibility and complaints about behaviour will be followed up. When holding a party it is a good idea to give your neighbours due notice about any potential noise; if you think the neighbours would enjoy themselves, and might be good company, consider inviting them in. If you are faced with unreasonable behaviour and an argument, it is better to try and drop the topic by making peace: give yourself and the others space by suggesting to deal with the problem in the cool light of morning. It may feel urgent, but usually it's not. Experts recommend that you choose your battles with neighbours and others wisely, because continued fighting with others is almost always a lose-lose situation.*
- 10 *Finally, live the golden rule: treat others as you'd like to be treated yourself!*

The chairman then elaborated on matters around the legal challenge and the impact on members. He spent time detailing progress on the whole matter since members last met in 2013. Using slide presentation he provided scenario planning variations on cost implications to members. This was done in an effort to give members some idea of what might happen dependant on differing levels of success with the claim made on the developer, and included for a situation where no success was to be had with the legal challenge. The presentations included graph on levy rates per square meter at Mutual relative to comparable schemes and how this might be affected by special levies to provide for remedial works to damp ingress. The chairman included comment on the work load this posed to trustees and highlighted trustees resolve to proceed with the action.

Members were invited to comment on the matter and debate any aspect they felt necessary. There was some general discussion on the report of the trustees and subsequent elaboration by the chairman but no objection to the process reported on.

7. PROPOSED INCOME AND EXPENDITURE BUDGET FOR THE YEAR 1ST MARCH 2014 TO 28TH FEBRUARY 2015

CR then tabled the proposed income and expenditure budget on behalf of the finance trustee, Simon Hudson for the year 1st March 2014 to 28th February 2015. Members were referred to the proposed budget that had been circulated with the annual

general meeting pack and which was displayed on the screen in front of the meeting. He elaborated as follows:

- Trustees have to approve a budget before the start of the financial year, this budget was implemented on 1st March 2014 so members were already paying the increased levies. Unless amendments were made to the budget before the meeting, nothing would change.
- Trustees carefully considered the requirements of the operating budget and were very mindful of pressures exerted on members because of the legal matter and damp ingress issues. Where at all possible, increases had been curtailed and trimmed. Apart from municipal service charges, increases had been restricted to inflationary increases.
- CR highlighted pleasing levels of income for the body corporate from film shoots, but this income was not predictable so is not allowed for in the budget. Discussion was then invited from members on the budget. There were no questions on the budget. On proposal of the chairman for approval of the budget, members agreed.

RESOLVED, to adopt the income and expenditure budget (reflecting a 9% increase), as tabled for the financial year 1st March 2014 to 28th February 2015.

8. SCHEDULE OF INSURANCE REPLACEMENT VALUES

The managing agent tabled the schedule of insurance replacement values and referred members to the schedule included in the annual general meeting pack circulated to all owners. The basis of the make up and apportionment of the total sum insured across all 177 sections was explained.

CK reported that 5 insurers were asked to quote on renewal and only CIA had provided terms for cover. This situation was most probably related to the level of cover required and the claims loss ratio for the building, which presently stood at 537%. Fortunately, despite this the body corporate insurance brokers, AddSure had managed to secure very good renewal terms with the existing insurers, CIA.

The importance of this agenda item was stressed and members told that it required careful consideration to ensure the replacement sum reflected was adequate. CK gave some background relating to when last the buildings were professionally valued for insurance purposes and escalation and inflation increased applied to that figure on renewal. Members

were in agreement that this should adequately cover the replacement costs for the building.

RESOLVED, to approve the schedule of insurance replacement values as tabled.

9.1 DETERMINATION OF THE NUMBER OF TRUSTEES FOR THE YEAR 2014/2015

Member's agreed to set the number of trustees at 5.

9.2 ELECTION OF TRUSTEES FOR THE YEAR 2014/2015

The chairman reported that all five trustees currently serving had offered themselves for re-election. He thanked all for their assistance and input. He also extended a vote of thanks to Jared Lamb who had stood in as chairman during his absence on extended overseas leave.

RESOLVED: that the number of trustees is set at five and the following be and are hereby appointed trustees for the ensuing financial year:

- Professor Andrew Bytheway
- Simon Hudson
- Jared Lamb
- Mark Mallin
- Jonas Thulin

10. DECLARATION OF THE DOMICILIUM CITANDI ET EXECUTANDI OF THE BODY CORPORATE

The meeting agreed that the domicilium citandi et executandi of the body corporate remain unchanged.

RESOLVED that the domicilium citandi et executandi of the Body Corporate be:

MUTUAL HEIGHTS BODY CORPORATE

C/o Property Exponents

Mezzanine "B"

Mutual Building

14 Darling Street

Cape Town

8001

PO Box 1858

Cape Town

8000

11. DIRECTIONS OR RESTRICTIONS IN TERMS OF SECTION 39(i) OF THE ACT

Members agreed to retain the directive approved at the 2013 annual general meeting relative to damp ingress:

Special instructions to Trustees concerning remedial works arising from the ingress of damp

The Mutual Heights community recognises that there are periodic and distributed problems with damp ingress to our building. The community further agrees that the ingress arises in three principal ways:

11. Where there is inadequate caulking between the blocks of the exterior granite cladding, there can be penetration through the structure of the wall that affects internal plaster and decoration.
12. Where external flashing between the granite cladding and the window frames has failed, there can be penetration at the junction of the wall and the window.
13. Where the glazing of the window has failed, or where the geometry of a window has been distorted, there can be ingress of rain through the window, principally as a result of the wind associated with rain.

Other kinds of ingress, not specifically related to the walls, the windows are not identified at this stage but are not excluded from future consideration.

The Mutual Heights community supports their trustees efforts to deal with the damp ingress in a systemic, progressive and logical way that balances the interests of all owners and residents (as described in newsletters, at annual general meetings and in the minutes of trustees meetings), but recognises that there may be specific instances where damp ingress is so egregious that special steps must be taken to deal with those specific instances, where they present an immediate risk to the structure of the building or the habitability of a section.

The following rules will apply in these cases:

1. A schedule of such specific instances that might affect the structure of the building or the habitability of a section will be maintained.
2. Problems solely within the structure of the windows (Case 3 above) are excluded from this schedule of work.
3. Such specific instances will be prioritised in a rational and defensible way.
4. In establishing priorities, reference will be made to the 2008 and 2012 damp surveys in order to assess the problem in its context and to relate it to potential or actual problems in adjoining sections.

5. As has been done in the 2008 and 2012 surveys, problems will be prioritised first on the basis of risk to health and habitability.
6. Additionally, problems will be prioritised according to the risk to the structure of the building.
7. The level and extent of any financial risks to owners are specifically excluded from the prioritisation.
8. Owners must make arrangements for access to their section in order that the problem can be inspected.
9. The assessment of risks will be undertaken by a panel of three people chosen from the Trustees, and having no personal interest in the section at risk.
10. Each year, in time for the Annual General Meeting, an independent panel of two experts (one expert in waterproofing and one expert in the built environment) will review the schedule and report to the AGM and suggest changes or adjustments that are needed.
11. Work will be undertaken on an as-possible basis, according to the prioritised schedule and within the limits of the maintenance reserve that is available for that purpose.
12. Owners of problematic sections will have the opportunity to contribute to the cost of remedial works, and this contribution will be taken into account in the prioritisation of the work, according to the percentage of the total cost represented by the contribution that is made.
13. Should the claim for the cost of works that is outstanding (with the developer Old Mutual Properties, Murray and Roberts, and the Rigging Corporation) be successful, then contributions from owners will be reimbursed according to the level of the award that is made relative to the actual cost of the works.
14. No special levies will be applied for scheduled priority work until the final outcome of the claim against the developer and contractors is concluded, at which time it is understood that such special levies might be the only means to finance the work.
15. These rules may only be changed by a majority vote at an Annual General Meeting.

RESOLVED: that trustees are directed to maintain a list of priority remedial work with the advice of independent experts and taking into consideration the requests received from individual members.

RESOLVED: further that protocol for this remedial work is based upon the draft document presented to this meeting and approved.

12. GENERAL DISCUSSION

The chairman then opened the floor to general discussion.

No items of a general nature were raised for discussion.

The Chairman then thanked all present for their attendance and invited all to join trustees for refreshments.

There being no further business to discuss, the meeting was then dissolved at 19:38

Ref: CK/PG 22/09/2014