



NEWSLETTER

APRIL 19, 2019

To: Timber Cove Homes Association Members

From: The Board of Directors

Dear friends and neighbors,

We wish to update you all on recent developments in our community which affect all of us.

1. Settlement of claims against TCHA

First, some good news! We are pleased to inform you we have reached a settlement of all claims against the Association in the lawsuit filed against TCHA and other parties by former manager Carmen McKay. In exchange for a cash payment made by our insurers, Ms. McKay has settled and released not only her claims in the lawsuit, but also her retaliation complaint against TCHA that was pending with the State Labor Commission. No Association funds are being used to pay the settlement. The insurers are funding the entire amount.

It is important to note that this settlement only covers McKay's claims against the Association, it does not apply to Ms. McKay's complaint against three prior directors and Hannah Clayborn. Her lawsuit continues against those defendants. With the help of special insurance counsel Mary Derner, the Board was able to obtain insurance defense for the prior directors. However, the insurers refused to cover Ms. Clayborn. We understand her homeowner's insurance is providing her defense. However, Ms. Clayborn has filed a cross-complaint suing the Association to indemnify her from costs she incurs and damages she is found liable for from the McKay lawsuit, on grounds that any wrongful acts which McKay complains of against Clayborn were performed at the direction of Sue Ellen McCann, who was then the Treasurer of the Board.

Ms. Derner was able to convince our insurers to defend the Association from Ms. Clayborn's cross-complaint. Therefore, attorney John Fitzgerald who represented the Association in the McKay lawsuit and negotiated the settlement, will continue to defend us from the Clayborn cross-complaint, at the expense of our insurers.

The Directors thank defense counsel Fitzgerald and special insurance coverage counsel Derner for their excellent service on behalf of the Association. Above all, we thank the members of the Association for funding the special emergency litigation assessment which made this successful outcome possible. The funds you provided enabled us to retain Ms. Derner to reverse the prior denial of insurance coverage, to compel our insurers to assume defense of the Association and its prior directors, and for those insurers to negotiate and fund the settlement, and also to defend the Association against Ms. Clayborn's suit. If you haven't yet paid your share of the special assessment, please do so as soon as possible.

2. Updated Analysis of claimed "trail easements" and the pending lawsuit against certain members of the Association.

In March 2018, the TCHA Board presented our members with a detailed memo analyzing claims that pedestrian and equestrian easements shown on the Timber Cove Unit 2 Subdivision Map of March 1965 created private rights for Association members to walk and ride horseback across the affected portions of more than 60 lots within the subdivision. We carefully reviewed the Map, Unit 2 CC&Rs, Articles of Incorporation, Bylaws, the findings of Sonoma County PRMD staff and County Counsel, the decisions of the Sonoma County Board of Supervisors, official Real Estate Department filings by the Subdivider, information in the original 1960's promotional brochure for potential property buyers, and various attorney opinions pro and con.

As explained at length, we concluded that the only record of a grant of pedestrian and equestrian easements in Timber Cove Unit 2, was a dedication of such easements to the County, for public use. On the same page of the same Map, the County certified that it rejected the public trail easements. There is no language on the filed Map which grants private pedestrian/access easements to the Association or its members, nor is such a private trail easement grant described in any other document. The County permitting and legal staff confirmed that findings in connection with their 2016 hearing of a petition by two TCHA property owners to vacate any residual public rights across their lots created by the original dedication on the 1965 Map. The Supervisors voted unanimously to vacate those rights.

We now feel it necessary to update our prior report on the claimed easement rights to review new information, and especially to inform Association members about a lawsuit filed by seven plaintiffs against the owners of three lots in Unit 2, in which they claim the pedestrian and equestrian easements shown on the Unit 2 subdivision Map create private rights allowing them to cross those properties; the plaintiffs also demand \$1,000,000 in damages, plus punitive damages, because the defendants resisted their attempted intrusion onto their lots. Because claims in the lawsuit potentially impact an additional 60 lots within Timber Cove Unit 2 which have similar easements within their boundaries, we believe it important to comment on the scope, merits, and potential consequences of the lawsuit, not just for the defendant property owners, but for all our members who might be impacted.

We have attached to this Newsletter our Updated Analysis. It is very detailed, exhaustive (and exhausting). We hope you'll look it over, because we've worked hard to penetrate the rhetoric to actually discuss a lot of relevant documentary evidence. (We spent no funds on legal counsel to prepare this analysis).

To summarize the highlights of our Updated Analysis:

The Claimed Easements Do Not Create Private Rights of Access

- a) The only documented grant of pedestrian/equestrian easements in Timber Cove Unit 2 was the dedication to the County for public use, which the County immediately rejected, as shown on the 1965 Subdivision Map.
- b) There is no grant of private pedestrian easement rights shown on the Subdivision Map, or any other document thus far produced.
- c) Sonoma County Permit officials and Legal counsel have confirmed the foregoing conclusions. The County Board of Supervisors formally vacated the irrevocable dedication of public rights across one of the defendants' properties by unanimous vote in 2016.
- d) Attorney opinions provided the Association which address the actual statements on the Subdivision Map confirm that the only documented pedestrian easement rights created were public rights irrevocably dedicated to the County and rejected by the Board of Supervisors in 1965. They affirm that no private trail easements were created.
- e) Official reports filed by the Subdivider with the California Department of Real Estate from 1965-1991 all prominently disclaim any plan or intention to create any recreational amenities or commonly owned spaces in the subdivision except for roads.
- f) The early Timber Cove promotional brochure (attached for your information) makes no mention at all of pedestrian trail easements in the subdivision; on the contrary, it repeatedly highlights the importance of protecting homeowners' privacy and isolation from neighbors.
- g) The pedestrian/equestrian easements shown on the 1965 Map do not represent actual existing trails. They are simply labels, supplemental wording which overlays designated public utility easements on the Map. These re-labeled utility routings intended for buried pipes and overhead wires do not represent a thoughtfully laid out

recreational trail loop. They are disconnected segments and fragments, that do not access recreational features or serve any other discernible function beyond reserving locations for public utilities.

The Recent Easement Lawsuit

- a) Plaintiffs have described their suit as simply a “quiet title action” seeking a judicial determination of their private rights to use the easements to cross defendants’ properties. That is only half the story and masks a much more punitive intention.
- b) Plaintiffs are also seeking the huge sum of one million dollars in damages, PLUS punitive damages against the defendant property owners. The only “sin” of the defendants was trying to protect their privacy from intrusions by strangers attempting to cross their own lots. This enormous sum demanded for damages smells of vindictive overkill, with the apparent aim of intimidating defendants and likeminded property owners in the subdivision to give up good faith efforts to protect their privacy and security.
- c) Plaintiffs included 500 “fictitious defendants”; that is a legal placeholder allowing them to add additional defendants to their suit as they wish. The easement rights they claim affect more than 60 lots in Unit 2. Are you next?
- d) Plaintiffs’ claimed rights to walk or ride horseback across private lots within the subdivision are fundamentally incompatible with the subdividers’ commitment to private, undisturbed enjoyment of our residential lots.
- e) Uncontrolled, unmonitored access by strangers to the interior of the subdivision would pose serious threats not just to privacy and peace of mind, but to security and personal safety. Interior trails access across our lots increases the risk of burglary, vandalism and personal attack; it aggravates our already extreme wildfire risk.
- f) Trails across densely wooded, steep forest slopes and gullies pose safety and liability risks, especially during the rainy season. Neither the Association nor its members are prepared to address those risks.
- g) The Association is not a party to this lawsuit, but we do feel it important for community members to explore its potential impacts and consider how their own interests may be affected.

3. Missing Historical Records

As explained at a recent Board meeting, approximately 15 boxes of historical TCHA records went missing just before the new board took office in September 2017. These records include board minutes, annual meeting proceedings, previous bylaws, etc. If you previously served on the Association Board, please check your files in case you removed files or folders for work at home, or even for security. If you find such files, or have ideas about their whereabouts, please return them ASAP or contact Melany Collett. We have no interest in pointing fingers, we just want to restore our valuable records.

Similarly, we know some of our long-term residents may have saved copies of prior minutes, annual meeting notices, newsletters, and the like. If you have that kind of even partial historical archive, please contact Melany so we can copy your documents to try to fill gaps.

Thank you,
The Board of Directors
Timber Cove Homes Association