



COUNTY OF SONOMA PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Rosa, CA 95403
(707) 565-1900 FAX (707) 565-1103

To: Timber Cove Residents

Re: Right-of-way Vacation of Trail Easements

Discussion:

As many of you are aware, on October 7, 2014, the Sonoma County Permit and Resource Management Department received an application to vacate the irrevocable offer of dedication of trail easements through the Lands of Vernon and the Lands of Drake. Having received several visits, phone calls and numerous e-mails regarding the matter, this discussion is intended to help you understand the County's interpretation of the trail easements and the matter for consideration before the County at this time.

The trail easement in question was offered for dedication on the face of the subdivision map known as Timber Cove Properties, Inc Unit #2, Tract 340 (filed as Book 103 of Maps at Page 11, Official Records of Sonoma County). The easement is shown on sheet 15 of the map within Block 6 of the aforementioned subdivision. The Owner's Certificate shown on sheet 1 of Tract 340 states "We also offer to dedicate to public use all public utilities easements, Drainage easements, Pedestrian Easements, Equestrian Easements and Anchor easements." This language means that the owner of the subdivision did offer the trail easements for dedication to the **public** for use as a public trail. The Board of Supervisors, however, rejected the offer of dedication.

The Tax Bonds and Map Certificate states "...said Board of Supervisors has accepted, in behalf of the public, ...and other parcels of land herein offered for dedication for public use in conformity with the terms of the offer of dedication, except that the dedication of the following was rejected: Drainage easements; pedestrian easements and Equestrian easements." This means that the public rejected (did not accept) the offer of dedication of the public trail easements. Thus, the public trail was never created.

When an offer of dedication is made and then rejected, state law converts the offer to an irrevocable offer of dedication. The irrevocable offer remains open until it is either accepted or vacated (abandoned) by formal action of the public entity (in our case, the Board of Supervisors).

The trail easements at issue here were offered to the public but rejected, making them irrevocable offers of dedication. That offer to the public could not create a private easement (i.e. rights in members of the Timber Cove Home Owners' Association). Moreover, there is no evidence on the face of the subdivision map that the subdivider offered to dedicate a private trail easement over any of the parcels in question. Nor has anyone provided other evidence to the County demonstrating that such private trail easements were ever created.

A copy of a deed and CC&R's referencing the easements was provided to the County and has been reviewed by both the County Surveyor and County Counsel. The interpretation from the County Surveyor and County Counsel is that the deed and CC&R's both reference the subdivision map (Tract 340) which showed the trails, the offer to dedicate the trails to the public, and the Board of Supervisors' formal rejection of that offer. There was no indication on the documents presented that private easements were independently created. However, private rights MAY exist through other documents not provided to the County, or by other means such as prescriptive rights created through use. A land

use or real estate attorney should be consulted to help you determine whether private trail easements were created.

The action that the County has been requested to review is a right-of-way vacation or abandonment of the irrevocable offer of dedication of certain trail easements through the Lands of Drake and the Lands of Vernon. In exchange for vacating or abandoning the loop portion of the trail easement, the property owners have agreed to dedicate another irrevocable offer for a portion that would follow a property line and connect portions of the trail recreating a shortened loop. The County will only be removing **WHATEVER** interest the **public** MAY have in the existing easements (by our interpretation, the irrevocable offer of dedication). The removal of the public's interest will not affect any private rights (if they exist). Again, a land use/real estate attorney should be consulted to determine if any private rights exist.

Barbara C. Zimmerman
Attorney at Law

137-A Stony Circle, Ste. 500
Santa Rosa, CA 95401

January 7, 2015

VIA ELECTRONIC AND U.S. MAIL

Board of Directors
Timber Cove Homes Association
22150 Amanita Circle
Jenner, CA 95450

RE: Trail easements.

Dear Board Members:

As requested, I have spoken with Mr. Pitman in the Sonoma County Counsel's Office. I am in agreement with the County's position on the vacation of the trail easement showing on the subdivision map.

First, it is important to understand that the County's rights in trail easement is the right of the public to use an easement. This public right is separate and distinct from any private easement rights that the Association may hold. It is the difference between the general public having rights to use the trail and the right of only Association members to use the trail. Anything the County does in regards to their public easement rights does not affect any private easement rights that may exist.

It is the County's position that the subdivision map created a right for the County to accept dedication of the easement for public trail use. It is Mr. Pitman's understanding that the County never accepted dedication of the trail easement - although he is verifying that dedication was not done recently. If the County did not accept dedication of the trail easement then there is no public easement on the lot (the general public cannot use the trail); but the County retains the right to accept dedication and create the public easement in the future. Whether or not the County accepts dedication or vacates the easement shown on the map only determines the public's use of the trail and does not create or defeat any private easement rights the Association may hold.

To grant an easement there must be a recorded document that clearly shows the intent to grant an easement in an identified area of land to a specified person. While the subdivision map sets out easements, those easements must be expressly granted to the Association by language on the map, language on the deed to the lot, or by language in the declaration of conditions covenants and restrictions ("declarations"). The Timber Cove Unit 2 map does not expressly grant the easements to the Association or anyone else. The deeds to the lots at issue do not grant a pedestrian or equestrian easement to the Association.

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Most of declarations have a clause that expressly states that the easements shown on the map are granted to the Association. Timber Cove Unit 2 Declaration does not contain any language that clearly grants the easements shown on the map to the Association. Clause VIII states:

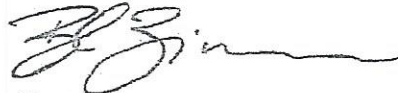
1. Easements, reservations and rights of way shall be reserved on and across said property for erection, construction, and maintenance of:
(d) Easements for pedestrian and equestrian access.

Clause VIII section 1(d) does not clearly grant any easements to the Association. This statement does not identify the location of any easements nor refer to or indicate the easements shown on the map. Further, this language indicates easements for erection, construction and maintenance, but does not grant any easement for use by the members of the Association.

In my opinion, based on review of the subdivision map, the deeds to Unit 2 lots 27 and 28, and the Declaration of Conditions Covenants and Restrictions, the easement on Lots 27 and 28 of Unit 2 have not been properly granted to the Association.

The Association might try claiming easement rights through prescription, but this is difficult and expensive. In my opinion, the better option is to negotiate a new trail and properly document the easement rather than spend \$40,000 to \$50,000 in litigation to try to establish the current easement based on the language of the Declaration or through prescriptive rights.

Very truly yours,



Barbara C. Zimmerman, Esq.

About Barbara C. Zimmerman



Barbara C. Zimmerman

Barbara was admitted to the California Bar in 2000 after graduating magna cum laude from California Western School of Law. Since 2005, Barbara's practice has concentrated on providing general counsel services to common interest developments and mutual water companies. Her practice includes advising boards of directors on the operation and management of homeowners associations and commercial condominium developments, including compliance with the detailed laws governing their operation and with resolving disputes between associations and their members.

Barbara assists mutual water companies with operating their companies in compliance with the law and with handling member problems such as excessive water use and issues related to updating and expanding water resources.

Barbara has experience with real estate transactions, commercial and residential real estate sales, business transactions, commercial contracts and transactions. Personal Data: Born: Stanford, California. Education: University of California, San Diego (B.A., 1985) California Western School of Law (J.D., Magna Cum Laude, 1999) Admitted to Bar: California, 2000 United States District Court, Northern District of California, 2000 United States District Court, Southern District of California, 2004 U.S. Court of Appeals for the Ninth Circuit, 2000 Affiliations: State Bar of California (Member of Business and Real Estate sections) Sonoma County Bar Association (Director 2001 - 2004, 2011-2012) Sonoma County Women-in-Law (Director 2004-2005, 2012-2013) Executive Council of Homeowners (ECHO) California Association of Community Managers (CACM) Special Training: Barbara has taken numerous courses on negotiation strategy, real estate issues, employment law issues, common interest development law, banking law, and commercial code seminars.

Barbara is a member of the Real Estate Section of the California Bar Association and Sonoma County Bar Association. Barbara is a member of the Executive Council of Homeowners (ECHO), including its legal resources panel and both attends ECHO seminars to stay abreast of changes affecting common interest developments and presents programs at the seminars. Barbara is a member of the California Association of Community Managers (CACM) and attends its legal seminars.

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[Click here for directions](#)



DEPARTMENT OF REAL ESTATE
OF THE
STATE OF CALIFORNIA

(916) 739-3631

STANDARD

In the matter of the application of

WILLIAM A. SLATER, III,
And Others

for a Final Subdivision Public Report on

TIMBER COVE PROPERTIES UNIT 2

SONOMA COUNTY, CALIFORNIA

FINAL SUBDIVISION
PUBLIC REPORT

FILE NO.: 007879SF-A06

ISSUED: MARCH 25, 1965

RENEWED & 6TH
AMENDMENT: NOVEMBER 18, 1986

EXPIRES: NOVEMBER 17, 1991

THIS REPORT IS NOT A RECOMMENDATION OR ENDORSEMENT OF THE
SUBDIVISION BUT IS INFORMATIVE ONLY.

BUYER OR LESSEE MUST SIGN THAT HE HAS RECEIVED AND READ THIS REPORT

N A copy of this subdivision public report along with a statement
D advising that a copy of the public report may be obtained from the
T owner, subdivider, or agent at any time, upon oral or written
E request, must be posted in a conspicuous place at any office where
sales or leases or offers to sell or lease lots within the
subdivision are regularly made.
[Reference B&P Code Section 11018.1(b)]

This Report Expires on Date Shown Above. If There Has Been a Material
Change in the Offering, an Amended Public Report Must be Obtained and
Used in Lieu of This Report.

Section 12920 of the California Government Code provides that the
practice of discrimination because of race, color, religion, sex,
marital status, national origin or ancestry in housing accommodations
is against public policy.

Under Section 125.6 of the California Business and Professions Code,
California real estate licensees are subject to disciplinary action by
the Real Estate Commissioner if they make any discrimination,
distinction or restriction in negotiating sale or lease of real
property because of the race, color, sex, religion, ancestry or
national origin of the prospective buyer. If any prospective buyer or
lessee believes that a licensee is guilty of such conduct, he or she
should contact the Department of Real Estate.

Read the entire report on the following pages before contracting to
purchase a lot in this subdivision.

SPECIAL NOTES

1. A CLAIM OF LIEN BY TIMBER COVE HOME ASSOCIATION HAS BEEN FILED AGAINST THE SUBDIVIDER'S INTEREST IN THIS SUBDIVISION. THE SUBDIVIDER STATES THAT NO ESCROWS WILL CLOSE UNTIL THIS AND ANY OTHER LIENS ARE RESOLVED.
2. THIS REPORT WAS FIRST ISSUED ON MARCH 25, 1965, UNDER THE LAWS IN EFFECT AT THAT TIME.
3. THIS FIFTH AMENDMENT AND RENEWAL REPORT COVERS ONLY LOTS AS LISTED UNDER THE SUBSECTION "TITLE."
4. THE DEVELOPER HAS MADE NO PROVISION TO FURNISH ANY COMMUNITY FACILITIES SUCH AS PARKS, PLAYGROUNDS, OPEN SPACES AND AREAS FOR THE GENERAL USE OF OWNERS OR AT ALL, WITH THE EXCEPTION OF THE PRIVATE ROADS, NOR ARE ANY SUCH CONTEMPLATED TO BE FURNISHED BY THE DEVELOPER. THE RIGHT AND POWER RESIDES IN THE ASSOCIATION OF LOT OWNERS TO PROVIDE SUCH FACILITIES AT ITS SOLE COST, IF THE ASSOCIATION SO DESIRES.
5. IF YOU PURCHASE FIVE OR MORE SUBDIVISION INTERESTS (LOTS) FROM THE SUBDIVIDER, HE/SHE IS REQUIRED TO NOTIFY THE REAL ESTATE COMMISSIONER OF THE SALE. IF YOU INTEND TO SELL YOUR INTERESTS OR LEASE THEM FOR MORE THAN ONE YEAR, YOU ARE REQUIRED TO OBTAIN AN AMENDED SUBDIVISION PUBLIC REPORT BEFORE YOU CAN OFFER THEM FOR SALE OR LEASE.
6. THE SOMOMA COUNTY PLANNING DEPARTMENT ADVISES:

"BUILDOUT OF THE TIMBER COVE SUBDIVISION WAS RECOGNIZED BY THE SONOMA COUNTY COASTAL PLAN, IF WATER CONNECTIONS ARE AVAILABLE. SONOMA COUNTY WILL ISSUE 100 WATER CONNECTIONS BASED ON A COURT ORDER, ALTHOUGH THE TIMBER COVE WATER SYSTEM DOES NOT MEET CURRENT STANDARDS. SINCE THE COASTAL PLAN WAS ADOPTED, THE PRIVATE WATER COMPANY HAS BEEN REPLACED BY THE NEW TIMBER COVE WATER DISTRICT, WHICH IS CURRENTLY PURSUING AN UPGRADE OF THE WATER SYSTEM TO MEET CURRENT STANDARDS AND INCREASE WATER SUPPLY.

IN ORDER TO BUILD EACH SINGLE-FAMILY DWELLING, A WATER PERMIT MUST BE OBTAINED FROM THE SONOMA COUNTY PLANNING DEPARTMENT. MOST LOTS CAN OBTAIN A COASTAL PERMIT WITHOUT A PUBLIC HEARING BUT A PUBLIC HEARING IS REQUIRED FOR ALL PARCELS WEST OF HIGHWAY ONE WHERE A 16-FOOT HEIGHT LIMIT IS ALSO A REQUIREMENT.

IN SUMMARY, AS LONG AS HEIGHT LIMITS AND SETBACK REQUIREMENTS ARE MET AND WATER CONNECTIONS ARE AVAILABLE, THERE SHOULD BE LITTLE DIFFICULTY BY INDIVIDUAL LOT OWNERS IN OBTAINING COASTAL PERMITS AND BUILDING PERMITS."
7. GEOLOGIC CONDITIONS: THE UNIFORM BUILDING CODE, CHAPTER 70, PROVIDES FOR LOCAL BUILDING OFFICIALS TO EXERCISE PREVENTIVE MEASURES DURING GRADING TO ELIMINATE OR MINIMIZE DAMAGE FROM GEOLOGIC HAZARDS SUCH AS LANDSLIDES, FAULT MOVEMENTS, EARTHQUAKE

SPECIAL NOTES: (Continued)

SHAKING, RAPID EROSION OR SUBSIDENCE. THIS SUBDIVISION IS LOCATED IN AN AREA WHERE SOME OF THESE HAZARDS MAY EXIST. SOME CALIFORNIA COUNTIES AND CITIES HAVE ADOPTED ORDINANCES THAT MAY OR MAY NOT BE AS EFFECTIVE IN THE CONTROL OF GRADING AND SITE PREPARATION.

PURCHASERS MAY DISCUSS WITH THE DEVELOPER, THE DEVELOPER'S ENGINEER, THE ENGINEERING GEOLOGIST AND THE LOCAL BUILDING OFFICIALS TO DETERMINE IF THE ABOVE-MENTIONED HAZARDS HAVE BEEN CONSIDERED AND IF THERE HAS BEEN ADEQUATE COMPLIANCE WITH CHAPTER 70 OR AN EQUIVALENT OR MORE STRINGENT GRADING ORDINANCE DURING THE CONSTRUCTION OF THIS SUBDIVISION.

LOCATION AND SIZE: East of North Coast Highway #1, approximately 2.8 miles north of Fort Ross. Approximately 450 acres divided into 224 lots or parcels.

TITLE: A title report shows title, among other things, to be subject to:

Reservations of mineral, oil and gas rights without right of surface entry. Easements affecting certain lots for utility, drainage, roadway, pedestrian, right-of-way and other purposes. These easements as they affect individual lots may be determined by an examination of title report and recorded map of the subdivision.

Title is vested as follows:

"Philip A. Trowbridge and Joyce T. Trowbridge, as joint tenants, as to Tract One, Lots 5 and 18 in Block 1 and Lots 19 and 49 in Block 6.

Philip A. Trowbridge and Joyce A. Trowbridge, husband and wife, as joint tenants, as to Tract Two, Lot 19 in Block 1 and Lot 15 in Block 5.

Richard Clements, Jr., a married man, as his separate property, as to Tract Three, Lots 6, 31 and 35 in Block 1, Lots 25, 26, 30 and 32 in Block 2, Lot 4 in Block 3 and Lots 13, 16, 34, 35, 61, 62 and 65 in Block 6.

Richard Clements, Jr., and Nineve Castro Clements, his wife, as to Tract Four, Lot 2 in Block 2.

Richard Clements, a married man, as his separate property, as to an undivided one-half interest, and C.R.E. Smith, a married man, as community property, as to an undivided one-half interest, as to Tract Five, Lots 7, 28 and 34 in Block 1, and Lots 17 and 32 in Block 6.