



TIMBER COVE HOMES ASSOCIATION NEWSLETTER

APRIL 2021

To Our Members and Neighbors,

Good News to Share!

Spring has arrived and 2021 is well underway, with promising signs of relief from the grim conditions we've all been coping with for the past year. Even though Timber Cove is relatively isolated, our families have not been spared from the COVID 19 pandemic and its many negative impacts. We hope you and yours are well, and that we all will gradually begin restoring more normal rhythms of life and contacts as the year progresses.

[Update: WARNING! Sorry, not good news, but urgent: a large mountain lion has very recently been seen prowling within Timber Cove. Please take appropriate precautions; small children and pets are particularly endangered.]

The pandemic caused the Association to suspend in-person meetings, and although we have tried to adapt by relying on ZOOM and telephonic meetings, we know many members have not been able to participate. Unquestionably, more pressing concerns have preoccupied all of us over recent months. Given those circumstances, we hope this Newsletter will serve to update our membership on "The State of the Association".

We're pleased that we can report Good News for our small corner of the universe. We are happy to state that after several very difficult years, TCHA is on the mend and doing well. More explanation follows below. That favorable assessment is also reflected in our active local real estate market and healthy property values. We are especially happy to welcome a number of new members, who have joined us over the past year or so.

The problems we faced

Amidst our relief at the improvement in our circumstances, it is important to recall how much we've had to overcome over the past few years, and not to lose sight of the lessons painfully learned. The first members of the current TCHA Board were elected in September 2017. We were immediately confronted with serious problems, which continued to worsen. Financial reserves had been severely depleted largely because of questionable decisions by prior Boards. After Unit 1, which comprised about 20% of TCHA at the time, seceded in 2015, the TCHA Board, without membership approval and despite apparent conflicts of interest, transferred \$38,000 in Association road reserve funds to Unit 1, and additionally spent \$22,000 on road repairs in Unit 1, seriously impairing the financial condition of the Association that remained. They spent another \$30,000 on legal fees and an indemnification payment because of an altercation between their road manager and a Director, resulting in felony charges against the road manager which were later dismissed. They spent funds on a quixotic gambit to impose "trails" across member lots, while neglecting to fund, maintain or repair essential interior roads, leading their own road manager to resign because of their inaction. We also discovered that the prior Board had failed to file required annual statements and tax returns for several years, which resulted in

nearly \$10,000 in back taxes and IRS penalties, as well as a year-long suspension by the California Secretary of State (May 2016-July 2017).

In June 2017, Carmen McKay, the Office Manager hired by our predecessors, resigned after only four months, publicly accusing the prior Board of malfeasance. In 2018 McKay sued the Association, prior Board members Tim McKusick, Susan Moulton and Sue Ellen McCann, and Trails Committee chair, Hannah Clayborn, after she discovered that prior Board members or their associates had unlawfully and repeatedly accessed her private email account for several weeks **AFTER** she had left her job. They downloaded hundreds of personal conversations from McKay's Gmail account even after they were warned by the HOA attorney that such unconsented intrusions and misuse of her private electronic communications could lead to civil or criminal liability, and then they allowed her private communications to be circulated across the community. Defense of her lawsuit should have been covered by our liability insurance, but our insurers denied coverage because the same Directors failed to provide accurate and timely claim notice, meaning we had to draw down member funds to pay for our legal defense.

A substantial number of TCHA members were understandably distressed by this pattern of persistent mismanagement and began to develop and circulate proposals to dissolve the Association and terminate the CC&Rs, aiming to replace TCHA with a contractual road maintenance system. Because of the progress described below, those dissolution proposals have since been withdrawn.

Cleaning up the mess and setting things right

We are relieved to be able to report that over the past three years, the Board has made excellent progress in resolving the problems we inherited; the Association has returned to solvency, is in legal compliance and enjoys healthy and sustainable organizational good standing.

Beginning in fall 2017, the newly elected Board knuckled down and set about trying to stanch the losses and remedy the errors. John Gray, our Treasurer, commenced methodically to restore our financial health. He worked with accountants to bring our tax filings up to date and to pay the penalties before the IRS levied even worse sanctions they had threatened. An overdue professional financial audit was completed. Most importantly, John began a system of detailed monthly financial reporting that fully and transparently accounted for all monies received and spent. An overdue expert Road Reserve Study was finally completed. The Board also approved a 20% annual dues increase, an overdue adjustment required to keep pace with the substantial cost of living increase that accrued during many years without any corresponding revenue update.

Because our treasury had been drastically depleted, in 2018 we were also compelled to levy a special onetime emergency assessment to restore Road Reserve Funds and to pay for our legal defense of the ex-manager's lawsuit, as well as to retain special legal counsel to persuade our insurers to reverse their denial of coverage for that claim. Fortunately, those attorney efforts succeeded, and the insurers began to cover our continuing litigation costs and ultimately to fund settlement of the ex-manager's lawsuit. Unfortunately, our total legal costs prior to the insurers stepping in totaled about \$150,000. The costs could have increased by an additional \$250,000 if we had not been able to get the insurers on board.

The Board also discovered that the Association had been operating without legally valid Bylaws for more than a decade. Working with our Legal Counsel, we developed new Bylaws to conform to current California law and our CC&Rs. We included custom protections to assure that essential Timber Cove

functions such as road maintenance and design oversight are reliably performed and to curb future Board mismanagement or misuse of funds. We also implemented a code of conduct, conflict of interest policy, and a calendar of required legal filings and notices, to facilitate good governance in the future. We are grateful that our members approved those Bylaws by an overwhelming margin in 2019 and they are functioning as intended.

The condition of TCHA in 2021 is sound and we are operating in good order

As the prior summary indicates, our finances have been stabilized, the road reserves have been substantially restored, and further progress is expected this year. We are current with taxes and our bank balance is healthy. We have approved a realistic budget for the coming year, and as the current dues invoices indicate, we are holding the line on dues, without an increase.

One significant indicator of our restored organizational and financial health can be seen in the historical pattern of our annual insurance costs. For many years TCHA was able to provide required HOA insurance protection with annual premium costs in the \$5000-\$6000 range. Then, beginning in 2016, the series of claims, lawsuits, a false 2017 insurance application and big insurance payouts referenced above ruined our claims record and caused our annual premiums to skyrocket to nearly \$30,000 a year in 2019. We were concerned that our ugly claims history might render it impossible to procure continued insurance protection for the Association.

Thankfully, our insurance situation has now dramatically improved. In December 2020 we were able to procure good renewal coverage with a respected national insurer, State Farm, for a total premium of only \$2,600, drastically reducing annual insurance cost by approximately \$25,000 or 90%. The insurer highlighted two key factors that favorably impacted our new rates. First, we settled the McKay lawsuit, and have not had a new claim for three years. Second, they cited the new Bylaws, code of conduct, and conflict of interest rules as evidence that we have instituted important measures to foster and sustain good management practices; they now are more confident that TCHA has rectified historical shortcomings and is operating soundly.

Our plans for the remainder of 2021 are to keep our recovery steadily on track. Consistent with the Bylaws, we are focusing on roads, design and construction oversight, environmental protection, and fire abatement as our key priorities. This year we can finally resume meaningful repair and maintenance work on interior roads for the first time in 4 or 5 years. In compliance with the new Bylaws, we do not plan to pursue any major new initiatives, or costly investments beyond the agreed budget, without first securing full membership approval. We also hope to improve membership informational resources and support with your input.

We continue to believe the primary mission of the Board is to protect the exceptional beauty and peacefulness of our community in line with the CC&Rs and Bylaws, to manage the Association's affairs competently, transparently and cost effectively, and to uphold those common interests which are widely shared by our diverse membership, not just the views of a vocal few.

Fire Abatement

Catastrophic wildfire is a serious perennial concern for Timber Cove, since our remote, densely wooded area is deemed a high fire risk by State and County officials. We had a very close call last year, barely

escaping the Meyers Fire, and we owe thanks to our hardworking volunteer Fire Department and local contractors who went all out to prevent an aggressive fire from reaching our neighborhoods.

Over the last two years, Sonoma County has implemented a much more comprehensive and effective fire abatement program, FireSafe Sonoma, which has been applied to Timber Cove. That program was introduced in depth with a lengthy live presentation at the TCHA Annual Meeting in 2019. The County has partnered with the Timber Cove Volunteer Fire Department (TCVFD) locally to implement, oversee, and enforce the program in the area including our subdivision. The program includes public information messaging, a system of professional property inspections and reporting to identify and prioritize fire risks and to require timely remedial work by the property owners, with enforcement for non-compliance. Pandemic constraints and dealing with the Walbridge/Meyers Fire limited the program last year, but it should be revving up again this year. Its beneficial impacts are already noticeable along Timber Cove Road and some interior roads, where property owners have made significant investments to remove dead and dying trees, clear brush, and clean up other debris.

The TCHA Board will collaborate with the County and TCVFD in reminding our members about dangers and best practices, by helping to circulate important reminders and advisories, and/or inviting the Department and FireSafe Sonoma to join an online meeting to provide guidance and answer questions.

For now, we'd like briefly to address two particular fire abatement concerns.

1. As the pandemic eases, and we gradually resume sharing our properties with friends, families, or short-term renters, it is absolutely critical to diligently carry out our own critical responsibilities to ensure good fire abatement practices:

- Clear brush and ladder fuels. Dispose or safely relocate any accumulation of flammable materials stored near your home or on decking.
- Always take special care with open flames or any other potential source of ignition, including burn piles (**the Burn Season ends April 30, and planned burns require permits, advanced notice and careful monitoring**) fire pits, outdoor grills, cigarettes, and other smoking items, etc.
- Make sure your guests are fully informed about fire risks and required precautions. Last year visitors who were apparently ignorant or inattentive to the risks were setting off fireworks during the dry season, which is obviously totally prohibited and extremely dangerous.

2. Regarding specific fire abatement advice, especially about safe actions to prepare for and respond to actual fire emergencies, we urge you to heed only bulletins, instructions, and advice from authorized, official experts, including TCVFD, FireSafe Sonoma, CalFire, and the Sheriff's Department. They are the only authoritative and reliable sources of information about emergency conditions, safe evacuation routes, etc. Recent unauthorized posts by local residents on social media have recommended using the so-called interior "trail" routes for evacuation----that is NOT the advice of fire officials and could prove very dangerous under fire conditions. Those routes are largely undeveloped, traverse arduous steep densely wooded terrain, and were never designed for fire evacuation.

Notwithstanding good intentions, multiple unofficial sources of inconsistent, potentially misguided messaging can lead to dangerous confusion in the case of an emergency. So, please, do not follow the advice of social media commentators, only heed official County and Fire Department advisories.

Beware of Disinformation

As many have noted, a handful of contentious local residents, some of whom once served on previous Boards, regularly use Yammer and a trails advocacy website to spread messaging on social media which is often misleading, dishonest, or defamatory. They are single-mindedly devoted to asserting their claimed rights to walk across private residential Timber Cove lots over alleged “private trail easements”. In 2018 the trails advocates filed a lawsuit asking a court to confirm their trail claims and seeking to punish the property owners who resisted their intrusions onto their lots with a demand for a million dollars in damages, plus punitive damages. (Further comments about the dispute and the pending lawsuit are attached below as Exhibit A). The Board has recently been informed that new or potential property owners and/or realtors are apparently being provided misleading information about “trail rights” by these same advocates, so we feel it necessary to set the record straight, again.

To be clear, after careful investigation, we concluded that there are NO private recreational trail easements across the lots of property owners in Timber Cove Subdivision Unit 2 and there never have been. The 1965 Subdivision Map which created Timber Cove Unit 2 shows proposed private lot lines, along with interior roads, and public utility easements, which were created and dedicated to the County for **PUBLIC** use (there is no reference to any private use of those easements). The utility easement routes shown also carry additional co-labeling with the words “pedestrian and equestrian easements”. On the face of the Map submitted for final approval and filing, the subdividers set forth a formal statement explicitly dedicating **public** access rights to the County for the roads, utility easements and pedestrian easements they depicted on the Map. **However, when the County issued final approval of the Map, although they expressly accepted the road and utility easements, they unequivocally rejected the pedestrian and equestrian easements, in a clear, unqualified statement by the County Clerk, shown on the Map which was approved and filed.**

There is no language on that Subdivision Map, nor any other document, that creates or even mentions PRIVATE trail easements for Timber Cove Homes Association, its members, or anyone else. NONE. In 2018 and 2019 this Board posted lengthy, well documented memos on our website comprehensively analyzing the misguided trails claims as well as the lawsuit filed by the trail claimants. We concluded not only that the County rejected the irrevocable offer of **public** pedestrian/equestrian easements shown on the Map in 1965, but that there is absolutely no evidence to show the Association and/or its members were ever granted **private** trail rights. Not only do the claimed “private trail rights” not exist, we believe opening trails across private residential lots in Timber Cove would actually cause serious harm to the community and diminish property values.

Timber Cove is not like The Sea Ranch, where a system of professionally designed recreational trails were part of the original plan and were carefully located on specially set-aside commonly owned property, not on private residential lots. Their trails are fully funded by the HOA, improved, maintained, and regularly patrolled by HOA security. Timber Cove is nothing like that. There is no commonly owned property in Timber Cove, and the subdividers’ legal filings with the State made very clear they had no intention to create commonly owned open spaces or recreational amenities.

Because no private trails were ever intended or created by the original subdividers, naturally there are also no rules of use on the subdivision map or in the CC&R’s or any other document which would be necessary to manage trail use to protect resident privacy and avoid nuisance, and also no provisions for maintenance, safety or security, no crime and fire prevention protections, and no funding provided to pay for all these functions. If your lot is among the 60 or so potentially burdened by the claimed trail

easements, if trail use was imposed across those easements, that means you would be unprotected from strangers walking or riding horseback across your property at any hour of the day, and exposed to heightened risks of fire, vandalism, burglary, as well as possible personal injury lawsuits that totally unregulated, un-policed “private trail access” could bring. And if you dared to challenge such intrusions, you might wind up becoming a defendant in the next million-dollar lawsuit to “enforce trail rights”.

As the original Sales Brochure indicates, Timber Cove was intended to be a residential neighborhood, not a recreational park nor an open rural nature reserve where uninvited ramblings and gatherings would not disturb private property owners. The claimed trails do not comprise a discrete, carefully designed system of recreational pathways located on land commonly owned, they are re-labeled utility easements over unimproved woodland terrain that comprises part of a homeowner’s front or back yard.

Please don’t be misled. Private trail rights across private residential lots do not exist in Timber Cove and do not belong here. Fortunately, there are lovely parks nearby at Fort Ross, Stillwater Cove and Salt Point for your enjoyment.

Conclusion

It is important to recognize the progress we have made together over the past four years to enable all owners to securely enjoy our homes in this setting of inspiring natural beauty while respecting the rights of our neighbors to do the same, without friction or conflict. To reconnect with the positive spirit that animated the creation of Timber Cove, we encourage you to review the original Timber Cove Sales Brochure from the 1960’s, posted on our website. What comes across clearly is the reverence for, and dedication to preserve, the unique natural beauty of our location which inspired creation of our subdivision. The Timber Cove plan and associated covenants and conditions were expressly intended to create residential homesites assuring privacy and solitude for their owners’ direct, undisturbed communion with the forest and sea, with homes designed and sited so as to harmonize with the unspoiled natural surroundings in a neighbor-friendly way. For all that’s changed in the world over the past 60 years, we feel that guidance is still relevant and essential to protect and enjoy this very special place.

The Board of Directors, Timber Cove Homes Association

Resources:

Resident Sonoma County Deputy Sheriff, Jeremy Lyle

24-hour dispatch: 707.565.2121

Residence: 707.847.3316

Email: jeremy.lyle@sonoma-county.org

Timber Cove Fire Department

30800 Seaview Rd, Jenner, CA 95450

Phone: 707.847.3299

FireSafe Sonoma General Inquiry

Email: Firesafesonomastaff@gmail.com

Phone: 707. 676.4600

Sonoma County Coast Municipal Advisory Council Link

<https://sonomacounty.ca.gov/Coastal-Municipal-Advisory-Council/Calendar/>

EXHIBIT A

Perspective on the impact of the “Trails Lawsuit” on the Timber Cove Community

The advocates of private trail rights, including members and affiliates of the prior Boards involved with the problematic legacy described in our April Newsletter, have aggressively pressed trails claims in Timber Cove since 2014. In 2018, eight trails advocates filed a lawsuit in Sonoma County Superior Court against three Timber Cove property owners, seeking to assert private trail easement rights and demanding more than a million dollars in damages against the property owners for refusing to allow them to cross their residential lots. The original plaintiffs were Hannah Clayborn (former TCHA trails committee chair), John Howland (former Water Board Treasurer), Tim McKusick (former TCHA President and a local realtor), Tom and Claudia Giacinto (Tom was a former TCHA President), Susan Moulton (former TCHA Secretary), Kris Kilgore (current TCCWD Director), and Lorrie Uribe (former TCCWD Director). Uribe and Kilgore later withdrew from the lawsuit.

The Plaintiffs and trails advocates led by Ms. Clayborn frequently circulate social media commentary and updates about their claims and their lawsuit which are contentious, inaccurate, and misleading. It’s impossible to keep up with the endless barrage of attacks and disinformation. However, we do think it worthwhile to try to cut through the misleading clamor, to help our members better understand what this controversial litigation is actually about:

In 2014 Timber Cove property owners Anne Vernon and John Rea (“Vernon”) planned to build a small house/artist studio on their lot on Timber Cove Road. The 1965 Subdivision Map showed a public pedestrian/equestrian easement crossing the middle of their designated building envelope a few feet from the proposed house. The County had rejected such easements when they were originally created and dedicated for public use by the Subdivider in 1965. However, County officials cautioned Vernon that the easement dedication to the County remained legally “irrevocable”, and the County still retained the right to reverse their rejection at some future date. Therefore, those officials recommended that it would be prudent for Vernon to petition the County to formally vacate their residual easement rights under the irrevocable offer, before proceeding to build. She proceeded to do so. It’s important to note that Vernon was only addressing about 250 feet of pedestrian easement that crossed her building site, she made no claims whatsoever about the remaining six miles of supposed “pedestrian/equestrian easements” elsewhere in Timber Cove, shown on the Unit 2 Map.

Trails advocates who controlled the TCHA Board at the time, opposed the owners’ plan. Seeking to avoid a dispute, Vernon offered to create a compromise alternative pathway across a portion of her property away from the proposed home site, which still offered a panoramic ocean view. Although the Board had agreed to requests from other owners to move claimed trail easements, they rejected Vernon’s request and compromise offer. Vernon proposed impartial mediation to help reach an amicable resolution, but the Board refused. The trail advocates formally opposed her petition to vacate the County’s rights across her lot. Before the hearing, the County also proposed mediation of the opposing positions; Vernon agreed, but again the Board did not. After months of receiving and considering public comment and a full day public hearing process, in which the trails advocates vigorously pressed their views, in June 2016 the Sonoma County Board of Supervisors unanimously voted to grant Vernon’s petition to vacate the “trail easement” across her lot.

In connection with that review process, County legal and planning staff also explained that the original 1965 pedestrian/equestrian easement offer had only created potential **public** pedestrian and equestrian use rights and did not create any **private** trail rights. Thus their decision did not affect the possible existence of such private rights. However, **it is important to note that the County officials went on to state that staff research of County records had not revealed any evidence of such private trail easement rights in Timber Cove, although there might be other relevant documents granting such rights which they had not found. No such documents have since come to light.**

The trails advocates and their associates on the HOA Board continued to attack Ms. Vernon and press their claims. During the summer of 2017, Vernon made another attempt to facilitate negotiation of a fair compromise with her trails adversaries on the Board. Vernon and Rea hosted a public site inspection of the problematic easement route on their lot, and displayed the compromise pathway they were offering. The inspection was attended by numerous neighbors, including the trails advocates as well as the HOA Attorney then representing the Board. The HOA attorney supported the compromise effort, but the prior Board, dominated by the trail advocates who later sued Vernon, rejected those efforts, just as they had all the prior attempts at an amicable resolution. (Incidentally, our new Bylaws, which were approved in 2019 AFTER the trails lawsuit was filed, now **require** good faith mediation before a lawsuit can be filed).

The day of the Annual Meeting and Board Election in 2017, the outgoing Board voted to reject Vernon's latest proposed compromise. Later that same day, the slate of TCHA Director candidates who rejected the compromise were defeated in the Annual Election. After the new Board took office, we thoroughly reviewed relevant documents, history, legal opinions from all sides, and issued our detailed findings and conclusions that no private trail easements were ever created in Timber Cove Unit 2 (and therefore no compromise was needed).

Bottom line, the plaintiffs' lawsuit was totally unnecessary, not just because the private trail easements claimed by plaintiffs do not exist, but because for years their primary target, defendant Vernon, repeatedly offered to compromise or mediate their claims in order to avoid the grief and expense of litigation, offers which the trail advocates repeatedly rejected.

To further penetrate the smokescreen of disinformation from trails advocates on social media, here are a couple other key points they obscure:

1. The specific object of the trails litigation is not literally "community trail rights", it only asserts the **private rights of the named plaintiffs** to hike or ride across the properties of the named defendants and their claim for more than a million dollars. Early in the litigation, the judge ruled that other Timber Cove residents cannot be legally bound by any judgment in the case because they are not parties to the lawsuit. That means funds solicited as tax deductible charitable contributions to the Timber Cove Foundation "for trails in Timber Cove" are actually being used to finance the **private lawsuit** of a very small, but very aggressive bunch of private parties seeking rights and money damages to benefit themselves, not the community.

2. Moreover, it appears that plaintiffs' claimed right to use alleged private trail easements across defendants' lots for their own recreation is not actually their primary goal, it is merely incidental. **The main thrust of plaintiffs' lawsuit is their demand for one million dollars in damages, PLUS PUNITIVE DAMAGES, simply because the defendants dared to tell plaintiffs not to enter their lots.**

Especially considering the defendants' repeated good faith efforts to offer a compromise or to mediate, this huge monetary claim seems way over the top, an obvious attempt to bully, frighten and financially bleed the defendants. Think about it for a moment: Even if the trails proponents sincerely believed the trails could be a community asset, why does that justify them demanding a million dollars plus punitive damages against a neighbor who only wanted to build a home on her lot and repeatedly tried to find a way to accommodate their demands? Plaintiffs' punitive damages claim is not a contribution to the community, it seems more like poisoning the well.

Their disproportionate damages claim suggests that the primary aim of the lawsuit is not to gain access for hikes, it's actually to enrich the plaintiffs while causing maximum financial and emotional pain to the defendants (and perhaps also to send a threatening warning to anyone else in our community who opposes the plaintiffs' agenda).

The way the plaintiffs are litigating their case reinforces this disturbing observation. Recently, several of the plaintiffs have dropped their claims seeking private trail access from the lawsuit, because they have sold their property in Unit 2 and can no longer claim any rights to use the trails as TCHA members. But although they have dropped the trail rights portion of their lawsuit, they are nevertheless sticking with their million-dollar damages claims. Apparently, attacking defendants with a huge, punishing demand for damages is still good motivation for those plaintiffs to continue to litigate even though they can no longer even claim trail rights. That's their departing salute to Timber Cove.

That stance may suit the plaintiffs, but it ill suits our community. Plaintiffs' punitive million dollar damages claim does not benefit Timber Cove in any way. It disturbs many of our members as unconscionable, vindictive and wrong.