

February 12, 2022

Meeting Recap with Miller & Chase regarding Gold Rush Road; Division 8 Lot 25 and 29.

Meeting took place using Zoom on February 8, 2022 at 1:30 pm. Present: Andy Chase, Jeff Click, Todd Besaw, Kirk & Stacey Johnson, with Drew Sawchuk joining the meeting at a later time.

To prepare Andy for the meeting additional information and maps were sent to him in advance of the meeting (thank you Todd for the useful maps). At one point in the meeting, said maps were emailed to all participants so everyone present could be using them for discussion.

In the interest of resolving the present issue, the following is a summary of what was discussed regarding the issue of Lot 29 (The Coffmans) and Lot 25 (Michael Ryan). There were other discussions and questions regarding the HOA and ACC control, liabilities and legal parameters for our easements/roads. A more detailed report will be written for the HOA archives.

Please recall that at controversy is that the existing apparent culdesac that is positioned some approximately 100' beyond the end Gold Rush Ridge Road of what the official recorded plat maps show, going into Lot 25.

Summary:

There are 3 main issues regarding the HOA easement portion called Gold Rush Ridge Road (easement), and the existing driveway/culdesac on Lot 25 (culdesac).

1. Whether the HOA *has* to, or *wants* to, claim legal right of the culdesac as it currently exists, through “prescriptive easement”.
2. Whether the HOA legally *has* to create a turn-around or hammerhead at the end of HOA easement of Gold Rush Ridge Road.
3. Whether HOA legally ‘owes’ Lot 29 property access by claiming the existing culdesac through “adverse possession”, or ‘owes’ Lot 29 a turn around at the end of the HOA easement.

1. There was much discussion regarding this. Does the HOA “need” a functional culdesac, does the HOA use the culdesac? Does it benefit the HOA beyond a few Lot owners to justify the expense? Is it in the best interest of the HOA to spend HOA funds on legal procedures to legally claim the existing culdesac through “prescriptive easement”? These are considerations the Board needs to address in their decision whether to move forward to legally claim Lot 25’s existing culdasac. In a prior meeting with Andy he had stated it would most likely cost the HOA \$3,000 to *start* the process of claiming the culdesac. Depending on Lot 25’s response, the case could cost up to \$15,000, maybe more. In this meeting Andy stated that if the HOA moved forward with prescriptive easement, and the HOA succeeded, the HOA would have to compensate the owner of Lot 25 for legal fees involved and also equitably compensate the Lot Owner for ongoing use of the claimed easement. In other words according to attorney advice it appears the HOA *might* have a successful legal path to claim the easement – and for a cost – but that the HOA is not duty-bound to act on this option.

2. The official HOA plat map shows easement for a 120 foot diameter turn-around at the end of the Gold Rush Ridge Road easement. Currently there is no turn around at this plat-recorded position; rather as stated there is a smaller diameter turn-around approximately 100' further into Lot 25, beyond the end of the actual recorded easement position. This is not the only end-of-road on the Ranch that

does not have a turn around. The HOA/Board could decide that a turn around is needed, for road maintenance and/or other official purposes, and allocate funds to construct it *at the platted position*; according to attorney advice the HOA has the right to do this without affected Lot Owners' permission as long as the new turn-around was placed where the surveyed plat map indicates. A Board decided turn around does not need to be a full 120 foot diameter, as shown at the end of other Ranch roads. The HOA/Board could also decide to punch in a hammerhead instead, at less cost. The benefit of either is giving a place to turn around for all Lot Owners' use and for maintenance and emergency vehicles. It would also create a place to pile snow during plowing. The HOA/Board could also decide that nothing needs to be done at this time. As a funding alternative, an additional special assessment vote could be put to the membership (again) to repair that area and adding a hammerhead or turn around with the costs involved.

3. "Some board members are of the impression that a purchase of Lot 29 was by the current owner believing that the current approximately 100' end of Gold Rush Ridge Road and culdesac (which is on to Lot 25, beyond the end of what the plat map shows as Gold Rush Ridge Road) was part of HOA easement, providing a preferable access to the Lot from this disputed section. Andy was asked if based on this the owner has the legal right to force the HOA to claim the culdsac? Andy stated that any buyer is required to ensure they conduct a survey or do research to validate their belief prior to purchase. Andy stated that the HOA does not owe any lot owner this additional access (which would be acquired through prescriptive easement)."

Some HOA members are of the belief that the Lot 29 owner would be satisfied with a turn around or hammerhead at the correct end of the platted HOA easement (Gold Rush Ridge Road). Andy stated that the owner could sue the HOA to force this, but he would most likely lose because the road was like it is when he purchased and it's been that way for over 20 years."

Bottom lines:

- If the HOA/Board sees benefit for the HOA to claim the culdesac on Lot 25, then a law suit could proceed. It is not clear that the HOA would win such a case.
- If the HOA/Board sees benefit to construct a turn around or hammerhead at the end of the actual platted Gold Rush Ridge Road then it can happen.
- The HOA does not owe Lot 29 any duty of performance in the current disputed situation outlined above.
- The HOA has a legal requirement to maintain easements and access to Lots as shown on the actual plat maps. To expand those for one individual Lot Owner is not within the HOA authority. If the HOA has a justifiable reason to incur the cost to construct a turn-around, ie. for a plow, then that's fine. But to do this because one land owner asks or demands can arguably get the HOA in trouble with other owners for spending money on something that other owners don't benefit from.

Note: Kirk researched with the State of Washington and Okanogan County whether the HOA is required to have turn arounds at the end of our roads for EMS (emergency medical service) vehicles. He discovered that the HOA is private roads within private property and under 20 acre 'exempt segregation', which has no EMS access requirements. However, Andy indicated that potential state

requirements for fire fighting vehicle access is a different subject and he gave us a few contact names with the DNR to be able research this further to see if DNR has some legal requirements for the end of our roads. We will be following that up.

February 15, 2022

Additional information: Contact was made with DNR General Manager for district “West Upland”. This is the DNR district that Nine Mile Ranch is located in.

The Manager stated that, off the cuff, he believed that the DNR has no legal requirements for private roads. He said that all of the DNR truck drivers are trained to pay attention to the area around roads while driving...planning ahead for turning around their trucks. He wanted to confirm what he believed and stated he would provide us with an RCW if there was a legal requirement.

After contacting his boss, and then taking our question to the top office in Olympia, he confirmed that the DNR has no legal requirements for private roads, like Nine Mile Ranch, to have turn arounds.

Additional Note from the 2/08/22 Meeting with Legal Counsel, Andy Chase.

ACC: Andy validated that the CCRs do indeed allow for the ACC to look at every potential violation and conclude different outcomes of enforcement of whether and how to enforce, based on a potential variety of legitimate reasons. In other words, differing enforcement decisions by the ACC can be based on variables in different circumstances.

With regards to determining what the HOA’s rights and duties over easement are, the HOA has a legal duty to enforce and have jurisdiction over what is on the plat maps.

The HOA has the right to add turn arounds as long as it’s within the easements on the plat maps. The ACC has the duty to make sure all access on plat maps are protected, not blocked, etc.

Question: CCRs clearly state “60 foot easements”. The plat maps show 120 foot turn arounds (not mentioned in CCRs): does the HOA have legal right to construct 120 foot turn around given that they are not mentioned in the CCRs? Answer is “yes” based on the plat map. The plat maps rule over the CCRs. HOA *can* improve easements within the plat map. HOA has duty to maintain easements.