

WHLA Easement History

As of May 12, 2009

Shortly after taking office in May of 2007 the newly elected President (Tom Cook) contacted the outgoing President (John Laude) to have the Association records turned over to him. At that time he also asked to have the keys to the locks on the gates between Wildwood Highlands and Sugarloaf. The request was refused.

On July 21, 2007, the board was made aware of a so called agreement between one of the landowners whose property had an access easement across it and the WHLA (Exhibit 1). Neither the original nor a copy of this agreement had been turned over to the incoming board.

On July 26, 2007, Tom Cook and then Vice President David Brown made an inspection of the entrances to and exits from the four access easements (Exhibit 2). Subsequent to the inspection there were several conversations with landowners concerning the easements and a presentation of the facts was made at the annual meeting in May of 2008.

The board considered the topic of the easements on many occasions during this period and finally formulated a policy at their June 8, 2008, meeting (Exhibit 3).

On June 26, 2008, the board wrote (Exhibit 4) to all of the affected landowners inviting them to attend the next scheduled board meeting to discuss the issue. None attended.

On July 24, 2008, Tom Cook wrote to the developer of the subdivision (David Wolfswinkle) to ask about the history of the community well and to ask what the purpose was in creating the four access easements (Exhibit 5). His reply is shown in Exhibit 6.

Shortly after this the board authorized Tom Cook to consult an attorney concerning the legality of the access easements as it had been claimed that, since they were only shown on the original subdivision plat and not separately defined and filed with the county clerk, they were illegal. After many months of discussion, Tom sent attorney Ron Shortes an email outlining eight points that he would like an opinion on (Exhibit 7).

Mr. Shortes responded on May 5, 2009, with a four-page memo to the Wildwood Highlands Landowners (Exhibit 8).

SUMMARY OF MR. SHORTES' MEMO

1. Are the access easements legal? Yes.
2. Is the purpose for the easements to allow Wildwood and Wildwood Highlands property owners to cross the affected lots into Sugarloaf in case of emergency? Yes.
3. Is the agreement between the owners of Lot 77 and Mr. Laude binding on the WHLA? No.

4. What would the liability be to landowners, WHLA, and Mr. Laude if the access easements remained blocked during an emergency and as a result there was serious injury or death? Significant.
5. Who owns the gates, chains, and locks that now block access to/from Sugarloaf on two of the easements? WHLA.
6. Does the Association have the right or duty to maintain the roads on the easements? Yes.

EXHIBIT 1

AGREEMENT

Page 1

I, Stan Kopman, Randy Kopman

owner or reputed owners of Lot 77 Wildwood Highlands Subdivision Phase II, do agree to allow passage of any and all emergency vehicles, Eg: Ambulances, Fire trucks, Fire Dept. personnel, EMS personnel, Sheriff Dept. personnel and State Police, between Wildwood Highlands and Sugarloaf Subdivision. This includes the property owners of lot 77 or any member of his/her family if they own property in Sugarloaf Subdivision.

I, Randy Kopman & Stan Kopman owners of lot 77 designate John W. Laude' or Beverly D. Laude' the keeper of the keys of this gate and the authority to assign keys to responsible individuals. The designated keeper of the keys can be anyone trusted by the landowner and does not have to be a WHLA Board Member.

Keys to this gate, with identification tags, have been installed on the key chains in all Datil Fire trucks, Datil Rescue, Pie Town Ambulance, and Quemado Ambulance

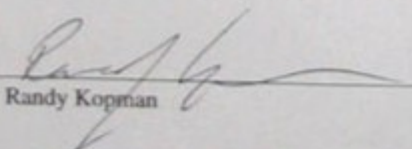
This passage will be identified as a two track road located on Lot 77 along side of Lot 78 going west into Sugarloaf Subdivision. This route may not be passable due to inclement weather; proper judgement must be used. The property owner or WHLA will not be held liable for any personal injury or damage to any vehicle while using this route with or without permission.

This agreement gives emergency passage for any and all emergencies including fire, medical & inclement weather for property owners and guests in Wildwood Highlands and Sugarloaf Subdivision. Any individual requesting passage through this gate must have permission from the property owner after consulting with WHLA Board of Directors.

This two track road shall not be used at any time as a short cut through Sugarloaf Subdivision or Wildwood Highlands Subdivision. WHLA Board of Directors will aggressively help the Landowner in pursuing any and all trespassers who violate this agreement.

WHLA will be responsible for all costs in replacement of locks (if necessary), replacement of gate and posts and hardware due to vandalism. WHLA will be responsible (after consultation with the property owner) for maintaining this two track road in an acceptable condition for emergency vehicles.

This agreement shall be indefinite. Any change to this agreement must be negotiated between the reputed owners of lot 77 and Wildwood Highlands Subdivision Board of Directors and signed by both parties.


Randy Kopman



Stan Kopman

EXHIBIT 2

ACCESS EASEMENT INSPECTION

On July 26, 2007, David Brown and I inspected the four access easements between Wildwood Highlands and Sugarloaf Mountain subdivisions. We first inspected the entrances to these easements from the Wildwood Highlands side along Highlands Trail and Western View Drive and then we inspected the exits from these easements along the border between the two subdivisions.

FINDINGS:

1. All easements are 50 feet wide centered on the common property line between two lots, 25 feet on each lot.
2. Without exception a track for vehicular traffic has been cut along the length of each easement but the track, except for some meandering, is located on only one of the two lots.
3. The vehicular track on the easement between lots 52 and 53 is gated and locked at the Highland Trail entrance. At the Sugarloaf /Wildwood Highlands line there is no barrier. However, approximately 25 feet along the right-of-way into Sugarloaf there is a locked cable stretched between two posts with a wire mesh hanging from it. The vehicular track traversing this easement starts and ends on lot 53. Charles R. Henn owns this lot. Charles Pickering and Marilyn Poppino own Lot 52.
4. The vehicular track on the easement between lots 55 and 56 is open with no barrier to access at the Highland Trail entrance. At the Sugarloaf /Wildwood Highlands line there is an unlocked cable stretched between two post. However, 10 to 15 feet beyond this cable on the Highlands side there is a berm composed of rock, dirt, and tree limbs that completely blocks access from the Sugarloaf side. The vehicular track traversing this easement starts and ends on lot 55. Rudolfo C., Rudolfo A., and Alicia Saucedo own this lot. Mark Kueller owns lot 56.
5. The vehicular track on the easement between lots 57 and 73 is gated without a lock at the Highland Trail end. At the Sugarloaf /Wildwood Highlands line there is a gate locked with two pad locks such that unlocking either would allow the gate to be opened. The vehicular track traversing this easement starts and ends on lot 57. Alma and Mike McCarty own this lot. Chad Morrow owns lot 73.
6. The vehicular track on the easement between lots 77 and 78 has an unlocked cable stretched between two posts at the Western View Drive entrance. At the Sugarloaf /Wildwood Highlands line there is a gate locked with two pad locks such that unlocking either would allow the gate to be opened. The vehicular track traversing this easement starts and ends on lot 77. Randy and Edith Kopman and Stan and Trina Kopman own this lot. Rosa and George Crimarco own lot 78.
7. At the Sugarloaf entrances to all four vehicular tracks there is a small sign reading "Wildwood Highlands Private Road Emergency Use Only."

Tom Cook

EXHIBIT 3

MINUTES, 8 June 2008 MEETING

WHLA BOARD of DIRECTORS

DATIL, NM

The WHLA BoD met on Sunday 8 June 2008 at the Cook residence at 4 PM MDT. Members Cook, Kell, Shepherd, Brown and Schaefer were present. Guests were Association members Ruth Cook, Melinda Kell, and Jonille Shepherd. Guests for the last few minutes of the meeting were Association member Betty Schaefer and her guest, Judy Newton. We conducted business as follows:

·Secretary Schaefer read the minutes of the 18 May 2008 BoD meeting. Same were approved as read.

·As Old Business we discussed the issue of the existing four easements affecting eight properties with boundaries common to Sugarloaf Subdivision (to the west and/or north of the Highlands). Member John Kell proposed, at our last meeting, an approach to resolve the issue. After substantial further discussion we unanimously approved the proposal. In brief, 2 distinct actions are proposed:

-Reciprocal Agreement

There exists an easement (on the Sugarloaf Plat) in which the owner of Sugarloaf rights-of-way (i.e. the Sugarloaf Landowners' Association) grants emergency access to those rights-of-way to Wildwood Highlands landowners and their guests.

Missing is a reciprocal easement in which the owner of Wildwood Highlands rights-of-way (i.e. the WHLA) grants emergency access to those rights-of-way to Sugarloaf landowners and guests.

To resolve, the BoD proposes to generate the missing reciprocal easement.

-Easements on the Wildwood Highlands Plat

There also exist (on the Wildwood Highlands Plat) 4 easements, burdening 8 lots.

These easements connect Sugarloaf rights-of-way with Wildwood Highlands rights-of-way.

The beneficiary of these easements is not explicitly noted on the plat.

To try to resolve, the BoD proposes to formally request that each of the affected landowners grant emergency access to the easements on their lots to Sugarloaf and Wildwood Highlands landowners and their guests.

EXHIBIT 4

Wildwood Highlands Landowners' Association, Inc.

PO Box 87, Datil, New Mexico 87821

June 26, 2008

Wildwood Highlands Landowner

PO Box xxx

Datil NM 87821

Re: Board of Directors plan concerning access easements

Dear _____,

The board has agreed on a plan of action concerning the access easements shown on the Phase 2 plat of Wildwood Highlands. Enclosed is a copy of the minutes of the most recent board meeting that outlines the plan.

Draft copies of the proposed easement language will be presented to the board at their next meeting on August 24. I invite you to attend this meeting to voice your comments on this plan and the proposed easement language.

I have heard it said on more than one occasion that the board has some sort of agenda regarding these easements. Other than trying to formalize what we think almost everybody already agrees on, we have no other agenda. We do not want or intend to do anything more than what was originally intended by the developers of the subdivision. We believe that the original intention was to have a means of emergency (only) ingress/egress to Sugarloaf by the owners of Wildwood and Wildwood Highlands lots and their guests. We don't believe that it was ever intended that the easements were to be used for general traffic between Sugarloaf and Wildwood Highlands. If that were the case, they would have been platted as rights-of-way instead of access easements.

For the Board of Directors,

Tom Cook, President

EXHIBIT 5

Wildwood Highlands Landowners' Association, Inc.

PO Box 87, Datil, New Mexico 87821

July 24, 2008

Mr. David Wolfswinkle

Southwest Properties, Inc.

3850 East Baseline Rd., Suite 123

Mesa AZ 85206

Dear Mr. Wolfswinkle:

Last year I took over as president of WHLA. I inherited two problems that I hope you can help me with. They are 1) the well that we shared with Wildwood Landowners' Association, and 2) the four 50-foot wide access and utility easements that join Wildwood Highlands to the Sugarloaf subdivision.

As you probably know by now, the Agua Fria well is out of service and deemed to be unrepairable. We are exploring the possibility of digging a new well to supply both subdivisions but we do not know the history of the old well. It appears that it is well number 02S.10W.31.313 as listed in "Ground-Water Resources of Catron County, New Mexico", U.S. Geological Survey, Water Resources Investigations Report 96-4258. This listing gives the date of construction as June 26, 1980. My questions are: 1) was this well dug under a permit from the State Engineer, 2) are there water rights associated with the well, and 3) if so, who owns the rights and how much water has been appropriated for what use(s)?

As to the access easements, they have become a severe burden for me. I believe that they were created to give the Wildwood Highlands (and Wildwood) landowners a means of ingress/egress to Sugarloaf in case of emergency such as fire and flood. The majority of the landowners who are burdened by these easements (spurred on by a former WHLA president) do not recognize the validity of the easements and insist that they have the right to block access to these easements as they see fit. Can you tell me why these four easements were created and what was the intended purpose for them?

I know that this is an imposition but the problems are severe enough that I must get help somewhere and I'm hoping that you will not mind being the one to furnish it.

Sincerely,

Thomas A. Cook, President

Wildwood Landowners' Association, Inc.

EXHIBIT 6

SONEMEX MARKETING, L.L.C. ▲▼▲▼▲▼▲▼▲▼▲▼▲▼▲▼

3850 E. BASELINE ROAD, STE. 123 • MESA, ARIZONA 85206 • Telephone (480) 969-8000 • Fax (480) 539-7321

August 11, 2008

Thomas Cook
Wildwood Highlands LOA
PO Box 87
Datil, NM 87821

Dear Mr. Cook,

Upon receipt of your letter, I spoke to Dick Wellborn who was the landowner and co-developer of Wildwood Highlands. He told me the well was drilled some time in the 1930's which means it was not permitted as far as he knew. At the time the well was drilled that land belonged to the US Forest Service. It was later traded to private. Because the well was not permitted there are possibly no water rights associated with the well. You should confirm that with the State Engineers office in Albuquerque, New Mexico.

The easements, which are valid as they were created when the subdivision plat was first recorded, were placed there for two reasons. First, for access to lands owned by Dick Wellborn which are now the Sugarloaf subdivision and secondly, they were for emergency access for both Wildwood Highlands and Wildwood in the event that the main access road was closed. The easements were there when the people bought their lots. They cannot be blocked as they are emergency access for some and primary access for other landowners. Anyone who blocks these easements could have substantial liability if there was an emergency and they blocked access with no other way out.

Your former President was completely wrong about the access easements and unfortunately has created a lot of additional headaches for a lot of people. If you are still uncertain about this, please contact a real estate attorney and he can better explain how access easements are created and how they work.

I hope this answers your questions. You can call me if you have any more questions at 480-969-8000.

Sincerely,



David Wolfswinkel
Manager

c.c. Dick Wellborn.

EXHIBIT 7

Copy of email sent to Mr. Shortes on March 15, 2009

Ron,

My conversation with someone in your office this week convinced me that I have not been specific enough in explaining what we want so here goes. We would like to have a letter, addressed to the board that answers as many of the following questions that you feel that you can express an opinion on.

1. Are the access and utility easements as shown on the plat of the subdivision that was filed with the county clerk valid, legal access easements even though no separate easement agreements were filed?
2. Is there a dominant tenement associated with these easements? If so, who is the dominant tenement? If not, who are the beneficiaries of the easements?
3. Given that a) the easements are shown on the Sugarloaf Mountain Subdivision plat, and b) there is language on that plat granting access to Sugarloaf rights-of-way in case of emergency to Wildwood and Wildwood Highlands property owners, can we infer that the purpose for the easements is to allow access to Wildwood and Wildwood Highlands property owners to cross these lots into Sugarloaf in case of emergency?
4. Given that there is no evidence that the WHLA board ever considered or voted to accept the "Agreement" between John Laude and the owners of Lot 77, is this agreement in any way binding on the WHLA? (Laude did not give the current board the original, or any copy, of the agreement and there are no minutes of any board meetings during Laude's tenure).
5. What, if any, might the liability be to a) the landowners' whose property is burdened by the easements, b) John Laude, and/or c) the WHLA; if, because of barriers to access, there is a serious injury or death in an emergency?
6. Who owns the gates, chains, and locks that were paid for by the WHLA and installed by then members of the WHLA board and the property owners across two of the easements? That is, did ownership somehow pass to the lot owners even though the materials were bought and paid for by the association?
7. Does the association have the right and/or duty to maintain the roads on these easements (regardless of what Laude's agreement says)?
8. Even though, in each case, the "road" that traverses the easements is situated only on one of the two lots concerned, does the lot owner on whose land there is not a road, have any liability or responsibility to remove any barrier to access?

Just as soon as we get a response from you we will start a dialog with the landowners to either join them in managing the easements or trying to disassociate the board from management and control of them.

Tom

EXHIBIT 8

Memo to Wildwood Highlands Landowners Regarding Escape Routes or Emergency Easements designated on the Plat Maps for Wildwood Highlands Subdivision

The Wildwood Highlands Landowners' Association (WHLA) has asked me to review this situation and give a legal opinion in this Memo regarding the status of the easements designated in the Wildwood Highlands Subdivision plat maps. These easements are designated to provide emergency access, or to provide escape routes for landowners in the event of catastrophic fire or other disaster blocking the main access road.

In my legal opinion, the WHLA cannot afford the legal expenses of litigation that would be required in order to obtain a Court Order in this case without substantially raising the fees or assessments to all landowners.

Therefore, if individual landowners are unwilling to voluntarily remove blockages, gates, chains, locks or berms from these designated easements in order to allow unimpeded vehicular access along these designated access easements **for emergency purposes**, it will be necessary for the WHLA to shift any potential liability for damages for any problems associated with blockage of the designated emergency access easements by an individual landowner onto the landowner or landowners who are actually blocking those designated easements.

The basic important and overwhelming issue is that, if a landowner blocks an emergency easement road designated on the plat maps of the Subdivision--either with a gate, berm or any other barrier, someone may be seriously injured or killed by being denied access to that designated easement road. Those easements are intended to provide escape routes to landowners in the event of catastrophic fire or other disaster, and are also intended to allow access to emergency vehicles and personnel needed in a medical emergency so that they may reach a victim of an accident or medical emergency in a minimum of time to provide necessary treatment or aid.

If you, or any other landowner, blocks access to a designated easement road across your property, you may be held liable for damages suffered by another person. Anyone who may be injured, or the family of anyone who was killed, because a landowner had blocked possible escape routes or exits in the case of a fire or other disaster, would most likely sue the landowner responsible for blocking that access easement for an enormous amount of money.

Likewise, anyone who may be injured, or the family of an individual who died, because a landowner had blocked emergency access easements needed by fire, medical or other emergency personnel as shown on the plats for the subdivision, would most likely sue the landowner responsible for blocking that easement road for an enormous amount of money.

Such a lawsuit would be based upon the fact that the designated access or escape route easement had been wrongfully and illegally blocked by a landowner. Under New Mexico law, the wrongful and illegal actions by a landowner in blocking the easement road would be the direct wrongful and illegal cause of another person's serious injury or death, and the landowner could be legally liable for damages.

The WHLA has asked me to try to make everyone aware of the potential problem caused by improper blockage of the designated emergency access easements. If this situation is not corrected **immediately** by removal of any obstruction placed by a landowner along the

emergency access easements, and someone is seriously injured or killed as a result of the emergency access easement being blocked, the fault and liability for damages will clearly lie solely upon the **individual landowner** responsible for blocking the emergency access easement road, and will not lie with the WHLA itself.

Attached is a list of specific issues which the WHLA sent to my office for legal opinion and the preparation of this Memo to you, the individual landowners in the Wildwood Highlands Subdivision.

In regard to Issue #1, it seems clear that the access easements (or egresses for purposes of emergency access or escape) shown on the Plat Maps for this Subdivision (on file with the Office of the Catron County Clerk) were basically promises made by the developer of the Subdivision to the Catron County Commission, and therefore these routes as shown **have legal validity**.

These emergency access easements are also promises essentially made by the developer of the subdivision to anyone purchasing property in the subdivision, including you as an individual landowner, that such emergency accesses would be available as escape routes in the event of catastrophic fire or to permit access by emergency vehicles in the case of fire or medical emergency.

In regard to Issue #2 and #3, it seems clear that it was intended in the promise made to the County Commission, as well as to individual landowners, that anyone needing the benefit of these easements, especially in an emergency such as a catastrophic fire or other disaster or emergency, would be allowed to access those easement roads.

In regard to Issue #4, it is my understanding that WHLA can find no written documented evidence to prove that the WHLA Board accepted any agreement between John Laude and the owners of Lot 77. Without the validity of such an agreement being established, it would not seem to bind the WHLA.

In regard to Issue #5, of course I am not a fortune-teller and I cannot promise the outcome of any lawsuit resulting from someone being seriously injured or killed because an escape route or access was blocked. It does seem clear to me that in such an extreme situation, there probably would be expensive and unpleasant lawsuits being filed against anyone who was blocking an exit. Those individuals would have to defend themselves against the claim by the injured party (or family of someone who was killed) because a designated exit or access road was blocked. This defense would be needed regardless of whether or not the individual landowners ultimately would be found liable or not.

In my mind, if I were the landowner involved, the risk of having to defend against such a lawsuit would not be justified. Of course, that risk is ultimately up to any landowner as to how much exposure to liability the landowner is willing to accept.

In regard to Issue #6, it would seem to me that the best course of action for the WHLA to take would be to ask the people involved to allow the WHLA to remove the WHLA's gates, chains and locks from the emergency escape routes since the WHLA does not want to be liable for any injury or death which might occur because the exits from the Subdivision are being blocked by those gates, chains and locks.

However, I would certainly not recommend that WHLA become involved in any kind of physical altercation with a landowner, or become involved in any other situation which could create a disturbance of the peace.

If the landowners involved refuse to allow representatives of the WHLA to remove the WHLA property, WHLA representatives should withdraw at that point. However, the landowner's refusal to allow removal of WHLA property should be clearly documented by the representatives of WHLA attempting to remove the gates, locks and chains.

Another letter should then be sent to the landowner involved **by certified mail** to confirm for the record the fact that the individual landowner had refused to allow the WHLA to remove WHLA property, consisting of gates, chains and locks installed on the designated escape routes from the Subdivision.

The letter should also clearly explain to the landowner that, by refusing to allow WHLA to remove gates, chains and locks belonging to the WHLA from the landowner's property, the **individual landowner** would then be legally assuming any and all liability for any injury or death caused by the presence of those gates, chains and locks along the emergency escape route from the subdivision. The continued presence of the gates, chains and locks along those routes could deny an individual the ability to escape from a catastrophic fire or other disaster. The continued presence of the gates, chains and locks along those routes could also prevent an individual from receiving needed emergency medical help.

In any of those situations, the individual landowner would then be liable to be sued for damages caused by injury, serious injury or death caused by the presence of those gates, chains and locks on the emergency access routes.

As to Item #7, I think that the Association has the right, and possibly the duty, to maintain the roads on these designated easements--at least on a very basic level--to keep them in a condition so that vehicles can traverse those easement roads to allow people to escape from a fire or other danger, or so that an ambulance could come in along those easement roads to reach an individual needing emergency medical assistance.

As to what happens when an escape route passes outside of actual Subdivision property onto someone else's property, it is not clear, and I would not recommend that the WHLA trespass onto someone else's land without that landowner's specific permission.

Perhaps another letter may be necessary to the private landowner outside the Subdivision, but with property along the existing designated escape routes, to discuss the situation and explain that the exits **do exist** on County records and that, if the WHLA does not maintain and preserve those exit routes, the private landowner would then be assuming the liability from WHLA for any injury, serious injury or death caused by lack of maintenance on those designated escape routes.

As to #8, it is my understanding that the easements are designated along the property line between lots at a width of 50 feet, with the easement "on paper" extending 25 feet onto each lot. However, it is also my understanding that the easement roads (or two-wheel tracks) "follow the contours of the land" and so may be located more on one lot than the other, depending on terrain.

If the easement road, following the terrain, passes more onto one side of the property line between lots than the other, I do not believe that the owner of the lot bypassed by the easement road (due to terrain) has any right to trespass over onto the adjoining lot where the road is actually located to remove any barrier to access. Therefore, the owner of the lot which was bypassed by the easement road, due to the road following existing terrain, should not have any responsibility or liability to remove any barrier to vehicular access on an easement road which

actually crosses an adjacent lot which he does not own.

However, if the owner of the bypassed lot intentionally moved the road onto the adjacent lot without a terrain issue being involved, but just because he "didn't want the easement road on his property", then that owner could be held responsible to relocate the easement road back onto the designated route extending 25 feet onto his lot. If the road were to be relocated back onto that owner's lot, he could then be liable afterward to remove any barrier to vehicular access on his own lot along the designated easement.

Respectfully,

ELECTRONIACALLY SIGNED

Ron Shortes, Attorney at Law