

Dear Corn Hill Owners,

The Board of Trustees is writing to update you on the status of the conflict with our northern neighbors (Steven and Nancy "Nessa" Lear) and their placement of about 20 boulders in our parking easement. This easement was granted in 1980 for the purpose of parking for Corn Hill Cottages and is clearly documented in the deed for the land at the time it was sold by Diane LaFrance (a copy of the deed is on the Corn Hill Owners' website). As we described in our message to owners on March 15th, this encroachment on our easement removed two or more parking spaces in the "upper" parking area on Corn Hill Road and posed a potential safety hazard to people getting in and out of cars, as well as creating the potential for damage to cars parking near the boulders.

Over the past four years, during which time the Lears complained that cars parked on the easement complicated their exiting the driveway from their house to the road, we have attempted to negotiate with them to address these concerns, without success. Last November, the Lears placed the offending boulders to prevent parking near their driveway. At the time, we tried to communicate directly with them, but their answer was to "let the lawyers handle it". With that response, we realized they expected to deal with this in a lawsuit.

The Board sought legal counsel from both within the talent pool of our owner group and eventually from a regional/local law firm with expertise in condominium rights and land law (Moriarty, Troyer and Malloy LLC). We considered several courses of action, including (1) do nothing and look for other parking on our property, (2) apply "self remedy" by removing the boulders ourselves at our cost, and (3) pursue legal action to have the boulders removed. Given that it is unlikely that we could identify additional parking on our property, and also because we felt strongly that it was necessary to defend our legal right to use the easement for parking, the majority of the Trustees felt that option 1 was untenable. In investigating our insurance coverage, we understood that if we were to choose option 2, our insurance would likely cover our defense legal costs over \$10,000 should CHCCA be sued for that action, an outcome most felt was very likely. However, the Trustees felt at the time that moving the boulders ourselves not only would incur costs from both lawyers and contractors, but also that this action would escalate an already worsening relationship with a neighbor and lead to future conflicts and costs. In addition, there would be no guarantee that the Lears would not respond to our actions to remove the boulders with placement of other and even more permanent impediments to our parking, such as concrete barriers or the like. We therefore decided, by majority vote, to pursue option 3.

In early January, our lawyer sent a letter to the Lears asking them to remove the boulders by April 1. The response was over a month in coming, and even that was vague. On the advice of counsel, we then filed a preliminary injunction for immediate removal of the boulders. This filing was not successful, as the judge was not convinced of immediate and irreparable harm to CHCCA; however, he did urge both parties to seek a settlement prior to a trial date, which he set for mid-

June. Also on the advice of counsel, we did not communicate outside the Trustee group our thoughts, concerns and possible alternatives, as we were told that communication would have become "discoverable" and potentially jeopardize our position in resolving the conflict in CHCCA's favor. We were further advised by counsel to not pursue "self remedy" while potential litigation was in process.

At this juncture the legal costs were approximately \$6,800. The Board voted to continue with litigation under the reasoning that the boulders staying and loss of the parking was not acceptable; that ceasing litigation would expose CHCCA to at least \$10,000 in out-of-pocket legal costs and several thousand dollars of contractor costs for the self remedy option, before the insurance coverage would apply; that self remedy would further exacerbate a bad relationship with our neighbors; and, given a favorable impression from the judge during the preliminary injunction hearing of the merits of our position, that pursuing this process would have a reasonable chance of bringing about a negotiated settlement. Based on a cost estimate provided by counsel, it would cost approximately \$10,000 to \$13,000 more to reach a settlement.

Through our counsel, CHCCA commissioned a land survey of our easement, as the property documents did not have definitive or clear dimensions of the easement. This survey both conclusively verified the extent of the easement and confirmed that the vast majority of the boulders were well within that easement. A revised version of the survey, which originally included the boulders present at the time the survey was done, will be filed with the Town at a later date.

At this point, depositions by both sides were taken, mostly by each side filing responses to written requests for information by the other side, but also through in-person (zoom) meetings.

The judge and counsel for both parties visited the parking area on Friday June 3rd. Two CHCCA representatives and the defendant, Nancy Lear, were also in attendance but were not allowed to say anything. We understand that, after that visit, the Lear's counsel heard the Judge's impression that the plaintiffs would prevail at trial and the defendants would be ordered to immediately remove the boulders, and therefore that a settlement should be seriously considered. Shortly after that visit, CHCCA received a proposal from the Lears that required delineation of their driveway with "pavers" (low profiles bricks or stones) and providing an exit flare where the drive meets the paved road and specified that most of the boulders would be removed. It also proposed a new parking spot at the far north end of the parking area. CHCCA countered that proposal by accepting the removal of the specified boulders and the use of pavers to delineate the drive and exit flare, but rejected the proposal for a new parking spot because it would have been partially blocked by the existing power pole there and may have required a revision to the legal easement. We offered a counter proposal that the full extent of the easement south of the drive be cleared and paved with

shells so that four cars could pull farther forward, both improving the parking available to CHCCA and the visibility for the Lears entering and leaving their drive from Corn Hill Road.

The Lears rejected the counter proposal, and after an additional series of counter-proposals from the two parties, finally agreed upon a settlement. This occurred literally hours before the scheduled trial was set to begin. We are pleased to report that the settlement is now final and we have canceled the trial date. The offending boulders are to be removed no later than July 1 at the Lear's expense, and the settlement specifies that the Lears will not introduce any other obstacles or impediments to our easement. Failure by the Lears to remove the boulders by the specified date will result in their being held in contempt of court.

This process has incurred substantial legal costs, and we feel obligated to provide an accounting as well as an assessment on the impact to our budget to all CHCCA owners. The costs are summarized below:

EXPENDITURES

- Survey: \$3000 (this was done to support our case but is an asset to us, so we feel it should be separated from the rest of fees associated with the legal situation). The final version of the survey will be posted on the CHCCA website in the near future.
- Legal fees: At present we do not have a final figure, but costs should be around \$25,000-28,000.

CHCCA BUDGET IMPACT

So far, we have tapped into the \$9,901 that had been collected for obtaining an assessment of our electrical system, as the owner leading this effort suggested that the fund could be used to cover legal costs because the project is stalled. We also used \$4,469 originally earmarked for special projects that were deemed non-essential, and recently received a generous contribution of \$5,000 from the Wrights (owners of #12) to put toward covering our legal costs. The remaining funds will come from ongoing cash flow (projected at \$5,270 for 2022) and then from our reserves, which at the end of the last fiscal year were at \$34,599. The amount covered from sources other than the reserves is just short of \$25,000; therefore, the amount we may have to take from reserves is roughly \$5,000-\$7,000.

In general we have tried to keep our reserves at around \$50,000, and we had been attempting, through increases in condo fees, etc., to build them back up from the \$34,599 available at the end of the last fiscal year. Obviously, the legal fees we have incurred will further negatively impact the reserves so that they amount to less than \$30,000. However, it should be noted that over the past 10-12 years, we have twice reduced the reserves to a level comparable to or less than what it will be after paying our legal fees, most recently due to an emergency expenditure of \$25K to repair the beach stairs coupled with an unexpected \$10K overage in the cost of the outdoor shower.

In each case, the reserves were gradually built back up by the excess funds at the end of each fiscal year (usually between \$3,000 and \$8,000) and not by imposing a special assessment. A complete assessment of our budget and funds will be available at the Owners' Meeting in October, where we can, if desired, take additional action to replenish the reserves immediately. All of this will be discussed and voted on at the October meeting.

As a final note, the Trustees would like to emphasize that we engaged in long and repeated (and often painful) discussions at every juncture in order to determine how best to proceed, continually considering the costs and benefits of each decision. There was never a clear, best move when costs were weighed against all other considerations; but although we did not always have unanimous consensus, be assured that all of us tried to act in the best interest of CHCCA at all times, and that in the end, we feel that the outcome is the best we could have hoped for.

We are available to talk individually and/or collectively with you about this settlement and how it was achieved. Please reach out as suits your needs.

Sincerely,

CHCCA Board of Trustees:
Laurie Hutcheson/Dan Losen
Nancy Ide
Judith Pachter
Susan Rothstein
Liz Tavares
Toby Wright

ADDENDUM 10/6/2022

Following the letter sent last July, we obtained more information about the expenditure of funds to cover the attorneys' fees and want to provide an update for completeness.

The final bill for the attorneys far exceeded the amount we had been assuming as a rule of thumb during the litigation process, eventually totaling \$51,813.40. Therefore, after our initial \$5324.50 payment, we still owed \$46,488.90, as the approximately \$25,000 noted in the original letter as earmarked for paying the attorneys' fees (\$9,901 assessment, \$4,469 non-essential special projects, \$5,000 contribution, and \$5,270 ongoing cash flow) was never actually paid out and remained in reserves as of the end of fiscal year 2022. Therefore, minus the earmarked funds, we need to cover \$20,000 of attorneys' fees from our reserves.

Fortunately, we were able to negotiate with the attorneys to pay the full outstanding amount of \$46,488.90 in installments, interest-free, over a four-year period. Therefore, we need to take \$11,622 from reserves in each of the next four years to repay the debt. The good news is that at the beginning of this coming fiscal year, we have \$52,481 in reserves (with the inclusion of the \$25,000 earmarked for attorneys' fees), and project that at the end of 2023, even after paying the installment on the attorneys' fees, we will still have about \$44,000 in reserves.

Note that in fiscal year 2022 we also paid \$3,000 for a survey in support of our claim against the Lears, which showed not only that we have a legal easement but also that the easement is in fact more extensive than we had previously thought. Although the impetus for the survey was the Lears' complaint, the survey is an Association asset that can serve us well to have on hand in the future.

In hindsight, the majority of the Trustees feel that we took appropriate steps along the way, given that we were feeling our way throughout the deliberation process; and that it was ultimately not only worthwhile, but necessary, to protect our legal access to our easement and avoid diminishing CHCCA land. As previously stated, at all times the interests of the CHCCA were tantamount in our deliberations.

As before, we are all willing to discuss any aspect of the situation that you may have questions about, so do not hesitate to contact any Trustee for clarification.

Sincerely,

CHCCA Board of Trustees:

Laurie Hutcheson

Nancy Ide

Judith Pachter

Susan Rothstein

Liz Tavares

Toby Wright