

COUNTRYLANE WOODS II
TIMELINE OF EVENTS
Jan 2003 to present (Oct 2006)

Purpose of this Time Line

The purpose of this informational time line is to provide the lot owners of CLW II with facts that affect each of you and how they relate to the current lawsuit that has been filed on or about Sept 3, 2006. Residents John Osthus, Mike Page, Mary Fitzpatrick and Richard Duff filed the suit.

We, your elected Trustees (Eric Ruegg, Mike Ritchie, Carol Weber, Ted Sundhausen, Cris Finnegan), believe we have acted 1) fairly, 2) in good faith, 3) on the basis of legal counsel, and 4) for the benefit of all the homeowners of the subdivision. In this time line, we show what we have done to protect our subdivision on your behalf (such as forming the not for profit corporation), how we have tried in a respectful manner to respond to the group now suing us, and why we firmly believe this lawsuit is unnecessary and will be found lacking in merit once the Judge has reviewed all the facts.

As you read this you need to know that within the subdivision we have 2 separate and distinct organizations that govern us.

Indentures of CLW II

The first is the Indentures of CLWII, which went into effect when the subdivision started construction in 1974. The indentures establish rules for the subdivision and establish a board of Trustees to carry out the indentures. The lot owners elect Trustees for a 3 year term as spelled out in the indentures. The indentures control about 85% of our regular business such as maintenance of the common grounds and swimming pools.

The indentures were amended in 1986, 2005 and 2006

The Countrylane Woods II Homeowners Association, Inc

The second organization is our not for profit corporation The Countrylane Woods II Homeowner Association. It was established in February 2003 for the protection of all lot owners in the case that we could all be responsible for any liability that occurred on subdivision property in excess of our insurance coverage. It also allows us to file our taxes as a corporation if needed. The Directors govern the corporation. Missouri corporate law and not for profit corporate law also affect us.

The original set of corporate bylaws were passed December 13, 2006. Included in the bylaws is the stipulation that no one can be a director of the not for profit corporation unless he or she is first elected a Trustee of the subdivision.

In the following notes you will see more information on this.

TIMELINE

2/22/03 Corporation Formed

CLWII Homeowners Association was formed for the protection of all lot owners (called shareholders in the corporation). The goal was to protect each of the shareholders in the event of a large claim against the subdivision in excess of our insurance coverage. It also allows us to file our taxes as a corporation if we choose.

Based on the legal advice of our attorney at that time, Marvin Notiff, who specialized in homeowner and condo associations, we used our subdivision indentures as the by laws of our new corporation. (More on this later).

3-05 Indenture Amendment 2 Approved

For over a year the Trustees asked at the regular monthly meetings and via many issues of the newsletter for homeowner input. The only input we received was regarding the parking of trucks in the subdivision.

The highlights of the amendment were the installation of fiscal controls, and an annual budget that would be voted on by those who attended the budget meeting. It also increased the annual assessment from \$250 to \$500 with the restrictions that a) the lot owners approve the budget and b) the amount of the annual increase could not exceed \$25. The amount of the special assessment—if ever needed--was increased from \$50 to \$200. Keep in mind we have never had a special assessment.

In many issues of the newsletter we advised residents to be alert for the new indentures which each resident would receive via the postal service. It was also stated how important it was to give your written approval via the ballot you would be receiving. The ballot was sent to each homeowner with a copy of the new indentures. It was stated that if not enough people voted there was the possibility we would do a door to door campaign.

The procedure for amending the indentures is defined in Sec VI part 7 of the original indenture. It states that the written approval of 1/3 or 166 of the lot owners can amend the document. The attorney verified this process. It was also in accordance with the past practice used by a previous Trustee, Richard Duff—who is now among those suing us--when he had the indentures amended in 1986. To everyone's best memory, it was strictly a door to door drive used then, without anything being sent to every homeowner. So we did more than was done in the past—we conducted both a mailing to everyone and a supplemental door to door campaign to get as many homeowners involved as possible.

The results for amendment 2 were as follows, 100 yes and 89 no by the March 15 return date for the initial mailing. The Trustees then went door, as we stated

might happen in the newsletter. The final result of the door to door campaign plus the mailing was that 176 of you approved the amendment and 98 said no.

The amendment passed and was recorded with St. Louis County.

9-2-05 Special Meeting

The Directors of the corporation—Eric Ruegg, Mike Ritchie, Carol Weber, Ted Sundhausen and Cris Finnegan--received a request in accordance with Missouri corporate law requesting a special meeting. This request requires that at least 5% of the shareholders (that is, the lot owners) request it in writing and they set the agenda (not the directors).

Agenda:

1. Hear a presentation about financial risk from indenture and incorporation errors

It was pointed out that a corporation could not use subdivision indentures as their corporate bylaws. This information was addressed by our attorney and found to be correct, meaning that we had gotten bad legal advice and that the bylaws may not be real property (i.e., subdivision) indentures. So we directors were presented with new information, realized an error had been made, and began moving to correct the situation. More on this later.

2. Learn about Missouri laws.

3. Vote on setting aside the March 2005 indenture amendment.

Directors and Trustees responded to this request by stating that you may not set aside an amendment since there is no provision to do so in the indentures. However there is in the original amendment a procedure in place for amending the document in the future. Therefore, since it is already in the indentures, this is not an item that the special meeting attendees group could vote on. The amendment procedure must be followed.

4. Vote on a resident driven process to examine the incorporation and original indentures.

5. Vote on new legal counsel.

The Directors and Trustees responded that under the indentures, Section 2, Trustees Duties and Powers, Item 8 states that it is the Trustees' responsibility to hire vendors or employ counsel. Therefore, this is not an item that can be voted on by the subdivision or corporation members.

6. Vote on whether to remove any Trustee who does not agree.

The Directors and Trustees responded that the indentures state the procedures for how a Trustee shall be elected and for what period of time. Since this meeting was called of the Corporation, and not of the subdivision, it does not cover any provisions covered in the

Indentures. Remember that the subdivision and its Indentures, and the corporation and its bylaws, are 2 different entities legally. A special meeting such as this could address corporate issues with the Corporate Directors but not the indenture issues with the Trustees.

11-2-05

Correspondence from John Osthus to Countrylane Woods II Homeowners Association.

In this letter he states that the indenture amendment is void and that amendments can not pertain to common ground, and states that if we do not comply to all his demands he will seek legal action in the form of a declaratory judgment immediately

12/1/05

Letter to Residents

We sent this letter to residents clarifying our position on the issues that John Osthus raised in his correspondence of Nov. 2, 2005:

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RAYMOND A. BRUNTRAGER, JR.
(1946-1979)

LEGAL ASSISTANTS:
MICHELE J. GIUNTA
RHONDA L. LAUCK

December 1, 2005

Trustees Countrylane Woods II Eric
Ruegg, Chairman 851 Country
Stone Manchester, Missouri 63021

Dear Eric,

The Trustees of Countrylane Woods who also serve as the Board of Directors of the Countrylane Woods II Homeowners Association Corporation have asked my legal opinion as to several issues that have been addressed by various residents of your community. For the sake of brevity and clarity, I will address each issue separately and to the extent possible will separate the applicable law. Keep in mind that the subdivision is subject to three separate and distinct governing laws. The first application is found in the indenture documents as amended. This contract between homeowners will serve as your primary outline of the rights and privileges relative to your community. You are also subject to Missouri Corporate law and Missouri not-for-profit provisions of Chapter 355 RSMo.

1. **Certain common land remains in the name of North County Realty Development and not in the name of the subdivision.** This situation appears to be an oversight by the developer. No legal action is necessary as long as the development company is still in business. Simply have the North County Realty and Development Company execute a deed conveying this property to the Trustees. After this length of time a quit claim deed will suffice. Do not convey the land to the Corporation.
2. **Is the Indenture amendment valid wherein an election was held and additional signatures are obtained?** The original indenture of 1974 was properly amended in June 2005. The language of the indenture itself governs indenture amendments. In the original document under Article VI, paragraph 7 recorded in Book 6738 on Page 981, the indenture may be amended by a 1/3 written agreement of the lot owners. That threshold was met in the June 2005 amendment and the amendment is properly passed and is now recorded.
3. **What are the rules for an annual meeting?** The Indenture does not mandate an annual meeting, only meeting for the election of trustees when their term expires. Missouri Corporate law does require an annual budget meeting. The trustees set the agenda if they chose to have a meeting pursuant to their powers as trustees. The Board of Directors set the agenda if the meeting is called pursuant to the corporate law. If a meeting is called by the special 5% provision of the non-for-profit statute then that agenda will be called if it does not deal with powers that are reserved to the trustees or the Board of Directors.
4. **Which sets of rules take precedence, the indenture or the corporate powers?** The indenture specifically defines the powers of the trustees. They are enumerated in Section II entitled the Trustees duties and powers. No vote at a special or annual meeting can override or change those duties. Additionally, the powers of the Board of Directors are set out in the bylaws. The bylaws may be changed and amended if a quorum is met and the requisite notice is sent and vote totals are received. Missouri follows the Business Judgment rule regarding corporate business decisions. This rules empowers the decision makers (board of directors.) to exercise reasonable judgment to meet changing circumstances. The Court will uphold the Board of Directors decision if they are rationally based.
5. **How many special meetings may be called by obtaining 5% of the member's signature pursuant to the not-for-profit status.** The statute is silent as to frequency of special meetings called pursuant to Chapter 355. Since there is no statutory prohibition, it appears that a special meeting . pursuant to chapter 355 may be called when the necessary signatures are obtained. This chapter does not alleviate the necessity for a quorum as mandated by the by-laws, nor does it allow a modification of any power that is retained by the trustees under the indenture.
6. **What is meant by the power of amendment clause of Section V, Item 7?** This provision states that the power of amendment shall not apply to areas show as "Common Land" on the various Countrylane Woods II subdivision plats nor to the sections providing for assessment for development and maintenance of common lands. This provision imposes on the trustees the duty to preserve and protect the common land for the lot owners. All property owners have an interest in the common land, thus the common land may not be sold. Additionally, the land may not be abandoned and must be maintained. In order to accommodate this maintenance requirement there needs to be an assessment, which cannot be abrogated. It does not mean that the assessment cannot be changed as that issues is addressed in Article

If the Board has additional questions, please do not hesitate to write or call me with your inquiry.

Very Truly Yours,

Bruntrager & Billings, P.C.



Charles H. Billings

12-13-05

Corporate bylaws filed

As we stated earlier there was more information on the bylaws. We were the victims of bad legal advice by Marvin Notiff. As pointed out to us in the Special Meeting of Sept 2, 2005, subdivision (real property) indentures may not be used as the bylaws of a corporation. We confirmed this with our attorney Chuck Billings.

He stated that since the indentures were set up to be the original bylaws of the corporation but were excluded under State statute that we in fact never had any bylaws. He called it a nullity, which means the bylaws had no legal existence. It was as if they had never happened and we had to start over again with new ones, which is what we did. He advised the directors to establish the original set of bylaws, which we did.

Highlights of the bylaws: provide for an annual meeting, establish quorums, voting procedures, director qualifications and more. The voting procedure provides every resident with a ballot for corporate issues; therefore there is no need for a proxy, which the group suing us has requested. A very important note is that the bylaws also establish the fact that in order to be a Director of the Corporation you must first be elected a Trustee of CLWII.

The Directors approved the bylaws on 12-3-05.

1-26-06

Special Meeting #2

Another special meeting was called and held at Carmen Trails Schools by the same group headed by John Osthus, Mary Fitzpatrick, Richard Duff, Mike Page, and Miles Whitener.

Agenda:

Retain or dismiss Directors vote.

We the Trustees believe this vote to be invalid. The people who were supposedly elected did not conform to the Director requirements provided in the corporate bylaws. They were not elected Trustees and were therefore ineligible to hold the position of Director

Vote on holding an annual corporate meeting.

The bylaws adopted in Dec. 2005 call for an annual meeting to be held every March.

That meeting—the first meeting required under the bylaws--was held in March of 2006 at Barrett’s School, thereby complying with the bylaws.

2-28-06

Meeting with CLW II Attorney

The Trustees / Directors felt a good, fair, and responsible way to settle this issue would be to offer the group of Mr. Osthus and colleagues 2 hours of time with the subdivision attorney, Chuck Billings and a court recorder. The purpose of this meeting was to give the group a one on one discussion with an expert as to how the indentures and Trustees, the corporate bylaws and Directors and the law apply to this situation. It also gave them the time to ask direct questions and have them answered.

The people invited were John Osthus, Mike Page, Miles Whitener, Mary Fitzpatrick and Richard Duff. John had a medical emergency and did not attend; Miles Whitener did not attend.

The overall outcome from the transcript of the meeting was that on some points of the law and the documents this group did not agree with legal counsel.

3-10-06

Letter from Missouri Secretary of State Office

This was a letter that the Osthus group asked the Secretary of State to write on their behalf reporting alleged violations of corporate law to the prosecuting attorneys in Cole County (Jefferson City) and St. Louis County. Neither prosecutor took any action on this subject other than advising the group of their legal options.

Per the information this group received from one of the prosecutors, one of their options was to file for a declaratory judgment. This does not mean that either prosecutor endorsed the idea of filing a lawsuit.

5-17-06

Secretary of State Filings

John Osthus, Mary Fitzpatrick, Mike Page, and Richard Duff filed and signed a “statement of correction for a corporation”.

*They announced themselves as directors, provided the secretary with a copy of their vote and announced the officers as themselves and Miles Whitener.

*They also changed the registered agent from Carol Weber to Richard Duff and declared the new address to be 976 Huntington View.

It is important to note that the Secretary of States’ office will accept any changes to a corporation’s structure or officers as long as someone fills out the form, signs it and returns it to the Secretary of State. According to the Secretary of State’s office, **there is no verification process from the State**. The form states that the undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040. That section is perjury.

When someone states that the Secretary of State “accepted” the changes, this seems to imply approval. Nothing could be further from the truth. “Accept” only means they received

the signed form and posted it on that corporation's filings. It does not mean that the Secretary of State agrees with anything the group claims on those forms!

9-06

Lawsuit

Trustees served with a lawsuit asking for a declaratory judgment. A copy of the suit is a matter of public record and posted on our website.

It also is very interesting to note that the group of John Osthus, Mike Page, Mary Fitzpatrick and Richard Duff, according to any information we have, did not inform anyone else in the subdivision of their actions in May (see above under Secretary of State Filings, May 17, 2006). It is also interesting to note that Miles Whitener is listed as a corporate director with the Secretary of State; however, he is not a participant in the suit.

COMMENTS

In the past 6 years, 8 residents of CLWII, the current trustees along with Margie Davis, Dotie Revie and Cathy Bender have served as trustees and directors. We have volunteered countless hours of our time to make this subdivision a better place to live.

We believe this time line shows that we have been responsible in looking out for the welfare of this subdivision, sought and followed legal advice, listened to residents and corrected actions when we were shown to be in error, and been courteous and generous in our dealings with a group that has been working against us for quite some time, even offering them an extended meeting with the attorney to get legal clarification on their issues.

This lawsuit being uppermost in most people's minds might make it easy to forget what we have accomplished for you. Our accomplishments include resurfacing all 3 pools, resurfacing the tennis courts, tripling the sized of the playground and adding a small child area, a large creek erosion control project, installation of flower beds and sprinkler systems, new baseball facilities and many other improvements. We also oversee the contracts for the swimming pools, the common grounds maintenance, and dangerous tree removal. The trustees have also preformed countless maintenance and installation projects from issuing pool pins to painting the barbecue grills. .

We have conducted and attended monthly meetings for 6 years. That's over 70 meetings for you the homeowner to be informed and give your input about the issues that affect you. We have also produced in excess of 20 newsletters and established a comprehensive website to provide information to those who are unable to attend the meetings.

We also created and passed an indenture amendment that modernized our old indenture and provided for a budget and the possibility of small \$25 assessment increases that will fund our future needs. The maximum annual regular assessment cap was increased to \$500, but only subject to your approval of the annual budget and with a limit of a \$25 increase a year. For the current rate of \$250 the residents of this subdivision are receiving a tremendous value in addition to helping to increase all our property values.

We incorporated the subdivision for the liability protection of all homeowners. It may also award us some tax benefits. The bylaws also provide for a level of fiscal responsibility insuring that the finances of CLWII are properly managed in the future.

An additional amendment governing the exteriors for the cedar terrace homes was also drafted and passed by a committee of homeowners who felt strongly about preserving their property values.

A Last Note

We realize that you can't please everyone. When people bring to your attention things that need to be changed such as the establishment of an annual meeting (even though we had regular monthly meetings) and the conveyance of the title from the builder of our common areas, we have listened to that advice and made the necessary adjustments. The title of the property, per the indentures, was automatically to be conveyed to the trustees 20 years after the original indentures were passed in 1974. Once we were made aware of the problem that the title had not been so conveyed, we started working on it. We now have a letter for the attorney representing the original builder's trust that a quit claim deed will be in our hands shortly, and the whole matter will be resolved.

More than enough money has been spent addressing the concerns of this group, over \$12,700 to date. Enough is enough. If this group continues to pursue this course of action we are forced to defend our position.

We have changed the things we can but just because a small group of people disagrees with our legal opinion or is not happy with certain procedural items, does not mean either those opinions or procedures are wrong.

We feel that we have provided the vast majority of the homeowners with the best possible level of service. The pools and common property have never looked better. Our fiscal health is good. We've shown that we are respectful of and listen to even people who are trying, we believe in invalid and illegal ways, to take over this subdivision. We believe this lawsuit will be settled in our favor, and we believe that as you the homeowners learn facts like these presented in this time line, you too will agree that we deserve your support for how we have handled all these issues and the countless others that come before us, for the benefit of your subdivision. We have done our best.

THANK YOU FOR YOUR SUPPORT

Eric Ruegg, Mike Ritchie, Carol Weber, Ted Sundhausen, Cris Finnegan