

WHAT'S MINE IS MINE, AND WHAT'S YOURS IS MINE, TOO.

AN EXAMPLE OF PRIVILEGE AND ENTITLEMENT

David Chavez and Francis Jankel's Lot Encroachment

El Mirador Subdivision Santa Teresa, NM

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NOTICE TO ASSOCIATION

To the El Mirador Homeowners Association, Inc., please accept this document and its supporting information, incorporated by reference, as my formal allegation of encroachment and violations of lot by David Chavez, Jr., and Francis Charles Jankel, co-owners of the property addressed as 333 Avenida Mirador Santa Teresa, New Mexico, 88008.

Located in the El Mirador subdivision, the lot is part of the Association, and its Owners are subject to our rules and guidelines, including Chavez and Jankel:

[E]ach Person acquiring a Membership in the Association, ...accepts the same subject to all restrictions, ...and shall bind any Person having at any time any interest or estate in said land[.]

Design Guidelines are binding upon all persons who at any time construct, reconstruct, refinish, alter or maintain any improvement upon the Property, or make any change in the natural or existing service, drainage, or plant life thereof.

Declaration § 18 (binding any person having any interest in the land); **Guidelines § 1** (binding upon all persons).

Documenting incidents of wrongdoing, self-dealing, selective enforcement, reckless disregard, etc., committed by Association Directors, Officers, agents, representatives, et al., can only benefit this corporation and its members. Over the past several years I have made an effort to bring such matters to light, only to be met with hostility and apathy, in equal parts.

Introduction

The El Mirador Homeowners Association, Inc. was formed in 1988, claiming that:

This Association is . . . operated exclusively and primarily for the promotion of social welfare and for the purpose of bringing about civic betterments and social improvements to the community as a whole to promote the health, and welfare of the community which benefits conferred shall produce a positive social result.

In reality, the operation of the Association have largely inured benefits to only a few individuals, some of which have dominated the corporation from the very beginning. This notice, and those to follow, seeks to document and raise awareness of these issues.

Articles § III (purpose); **Bylaws Art. I § 3** (purpose of the association).

A Line in the Sand

The common area is a 4+ acre section of land central to the subdivision, comprised of 94 residential lots, 51 of which directly adjoin the common area along each of their lot's rear boundary. 50 of these lots contain constructed houses with perimeter walls; one adjoining lot exists with no rear perimeter wall. These areas are sometimes referred to by segments, i.e., upper, and lower common area. Each segment includes unique features; the

North and South gazebos, putting greens, walking paths, and natural areas which are comprised of desert xeriscape.

Unique to this arrangement is the rear of 333 Avenida Mirador, which borders the lower common area near the North Gazebo. The perimeter wall at the rear is constructed outside of the lot's boundary, encroaching into the common area along its entire length. The irregular design of the rock wall divides the lot in a way that combines a portion of their land with the common area. The area of encroachment is approximately 212 square feet, calculated using photogrammetry techniques.

Other violations of rules and guidelines exist as well.

El Mirador Homeowners Association Common Area, **Exhibit 1**; Encroachment of Common Area - 333 Avenida Mirador, **Exhibit 2**; Doña Ana County Geographic Information System (GIS), **Exhibit 3**.

See **Declaration § 1.20** (lots shall not include common areas); **Declaration § 9.2** (damage to common area by lot owner); **Declaration § 11.5** (lot obstructs enjoyment of common area); **Declaration § 11.11** (lot interferes with enjoyment of common area); **Declaration § 11.14** (no division or subdivision of lot).

See also **Guidelines § 2.2.12 (c)** (walls constructed on lot property lines).

The Chosen Ones

Within the subdivision, Chavez and Jankel have enjoyed a great deal of privilege in comparison to regular members. Chavez has been on the Board since its beginning, as President and later Treasurer. Jankel was 'awarded' a contract by the Association that paid in excess of \$23,000 annually. He was also on the Design Review Committee during the same time frame. This went on for several years, possibly more than a decade.

Neither Chavez nor Jankel have paid Regular Assessments on their lot for at least 16 years. As joint tenants, each is responsible for his share of dues, and for violations of rules or guidelines occurring on their lot.

For more than two decades the rear boundary of their property has been overgrown by heavy brush and trees on the lot and in the common area. The extreme degree and type of vegetative perimeter overflow by Chavez and Jankel has not been allowed for other owners.

Rear Boundary Concealment by Overgrowth, **Exhibit 4**.

A Bone of Contention

In 2018, Henry Trost cleared the rear fence line of Chavez and Jankel while he worked on the irrigation system in the common area. The fence line had been almost completely obscured from view for decades by overgrowth of heavy brush and trees.

It is my understanding that Trost became upset that various members compared his poor performance maintaining the common area to that of Jankel, who previously held the contract. Jankel did relatively little work, preferring to let "things grow wild." Jankel was

more pleasant than Trost, who has a reputation for being a spiteful, vindictive person quick to anger at even the slightest criticism.

After clearing the area of encroachment, Trost then made a number of statements to various members to the effect that Chavez had granted himself an "easement" into the common area. The idiom about "*no honor among thieves*" seems appropriate here.

Trost's desire to advertise wrongdoing by Chavez and Jankel is significant in its hypocrisy. Trost, Chavez and Jankel are all prolific and serial violators of Association rules and guidelines. What's worse, Trost and Jankel have both been on the Design Review Committee for years. Referring to these people as hypocrites is a serious understatement.

Trost's actions angered Jankel a great deal, who, in a fit of sanctimony, made complaint during a meeting of the Association:

Mr. F. Charles Jankel commented that he was very upset with the deforestation of the Common Area behind his residence, leaving his backyard totally exposed.

Trost Exposes Encroachment and Violations, **Exhibit 5**; Minutes, Board of Directors Meeting June 2018, **Exhibit 6**.

Off Limits

Whatever issue existed between Trost and Jankel ultimately resolved in Chavez and Jankel's favor. They immediately began restoring the overgrowth of foliage along their rear fence line. Today it is once again almost completely obscured from view of common area visitors.

Obstructive Overgrowth Restored, **Exhibit 7**.

No Level Playing Field

It is not surprising that Chavez and Jankel feel entitled to a portion of the common area, or that the Board turns a blind eye to their blatant violations.

No level playing field exists within the subdivision; the rules are not enforced reasonably or uniformly. Enforcement outcomes are often directed by Board members.

The Association is in a very bad place right now. The Board complained in February that Association duties were *too onerous* and that they *needed* to hire a management company. They 'abated' Treasurer dues by improperly amending the Declaration, based upon purported events occurring in 2006.

Simultaneous to their 'amendment,' they handed these *onerous duties* of Treasurer over to their management company, negating their stated intent of compensating effort. This demonstrates their true intentions were to forgive 16 years of debt by Chavez and Jankel. Jankel, who never was Treasurer, was always responsible for paying his share of dues. In March those same people manipulated the voting and election process, installing themselves into the same positions they complained of. Their management company counted the votes.

Despite all of this Association activity, they did not communicate anything to members. These are not good faith acts by well-meaning people.

EL MIRADOR COMMON AREA

Approximately 4.2 acres

4,000+ Feet Walking Paths

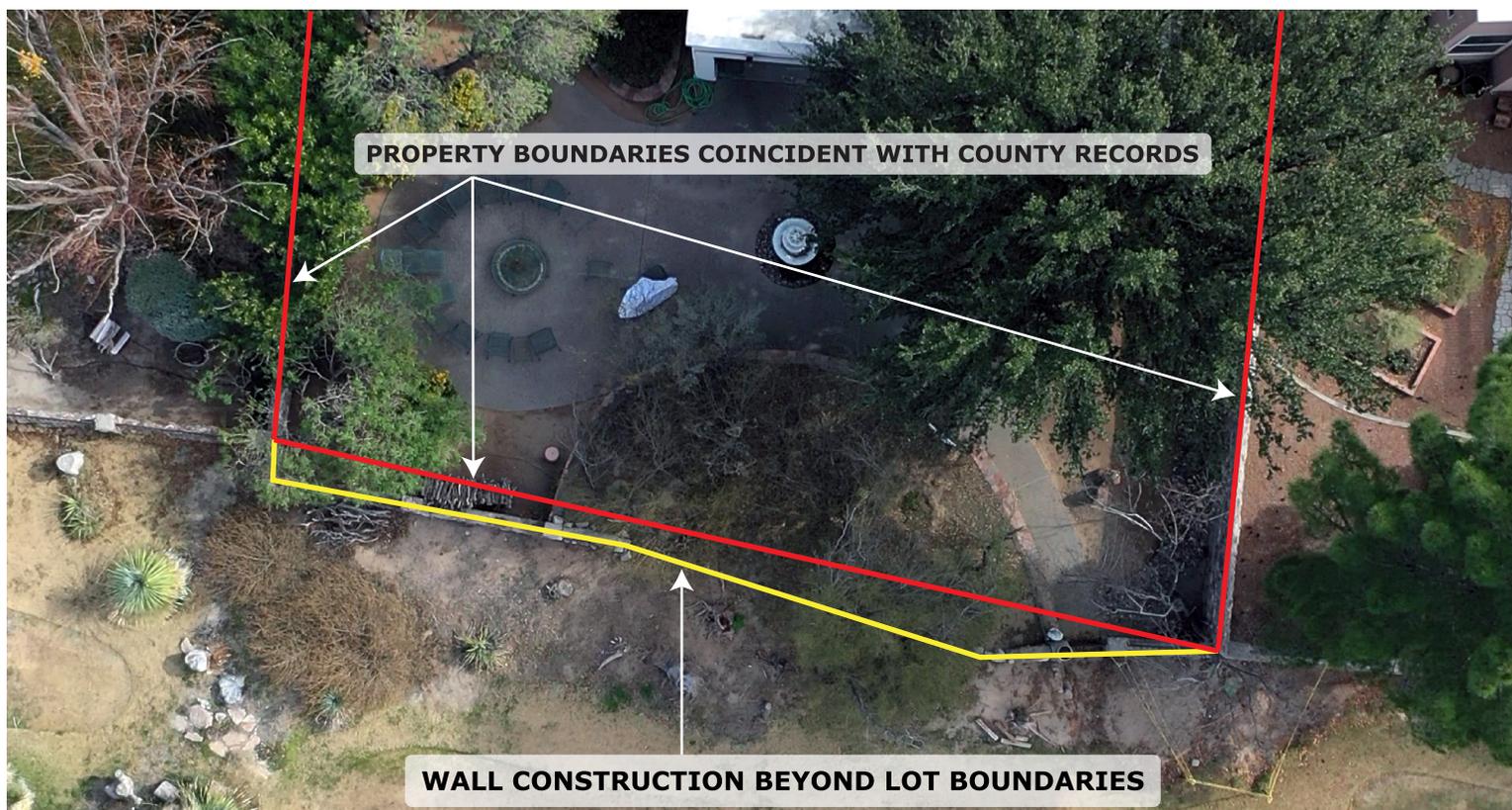
18 Hole Mini-Golf Course

Natural Areas / Desert Xeriscape

51 Lots / 50 Residences Adjoining Common Area



333 AVENIDA MIRADOR REAR PROPERTY ADJACENT TO COMMON AREA



AREA OF TRESPASS IS APPROXIMATELY 212 SQUARE FEET

Account: R1711472 *Mill Levy does not include Special District Rates such as: Lower Rio Grande Flood Levy, Hueco Levy, Mclead Watershed Levy, Caballo Soil and Water Conservation Levy, and La Union Watershed Levy.



AREA OF INTEREST

REAR BOUNDARY CONCEALMENT BY OVERGROWTH

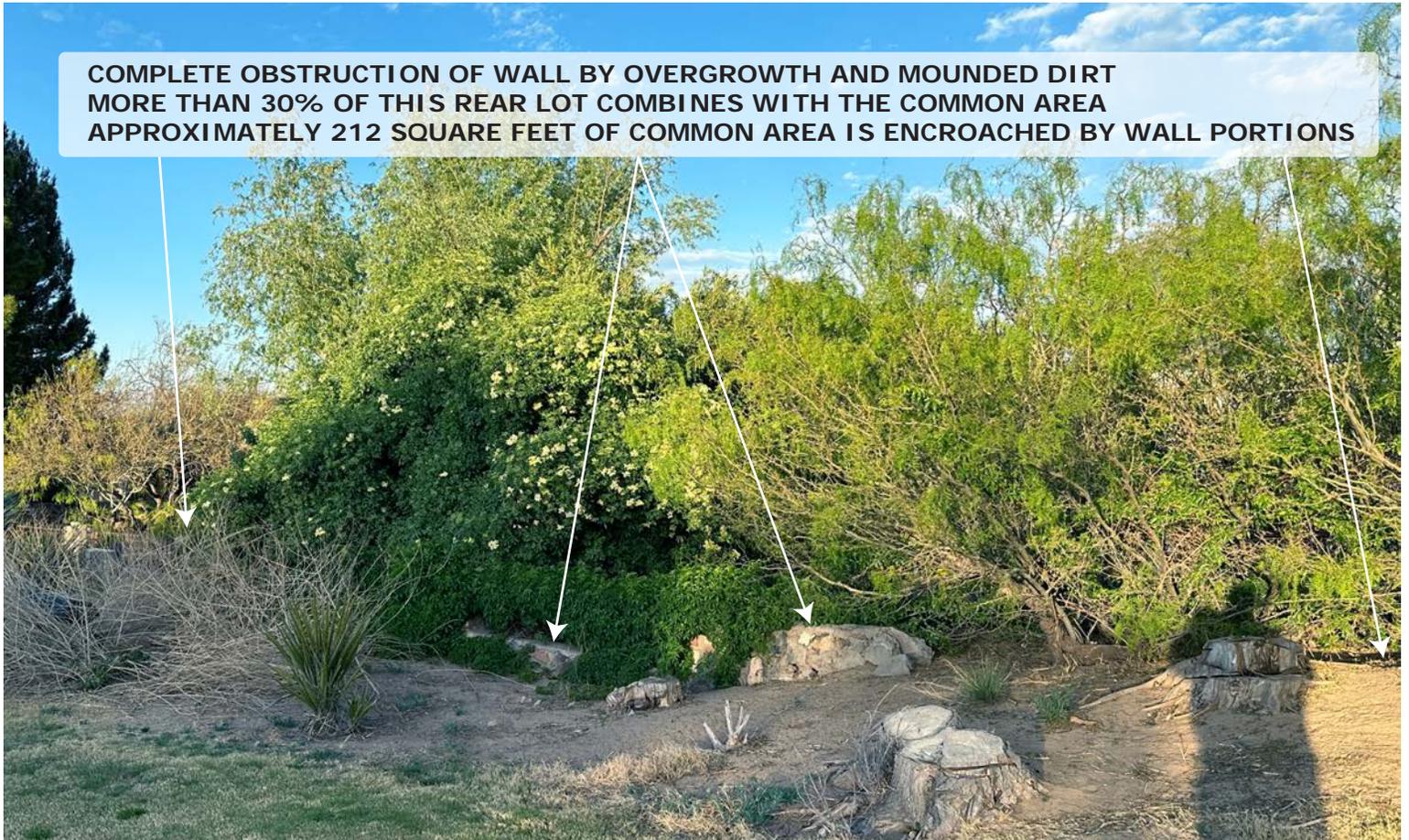
**FOR DECADES CHAVEZ' REAR FENCE LINE HAS BEEN OBSCURED BY OVERGROWTH OF TREES AND HEAVY BRUSH
NO OTHER PROPERTY IN THE SUBDIVISION IS ALLOWED THIS DEGREE OF OVERGROWTH**

AERIAL PHOTO APRIL 2017



COMMON AREA PHOTO APRIL 2023

**COMPLETE OBSTRUCTION OF WALL BY OVERGROWTH AND MOUNDED DIRT
MORE THAN 30% OF THIS REAR LOT COMBINES WITH THE COMMON AREA
APPROXIMATELY 212 SQUARE FEET OF COMMON AREA IS ENCROACHED BY WALL PORTIONS**

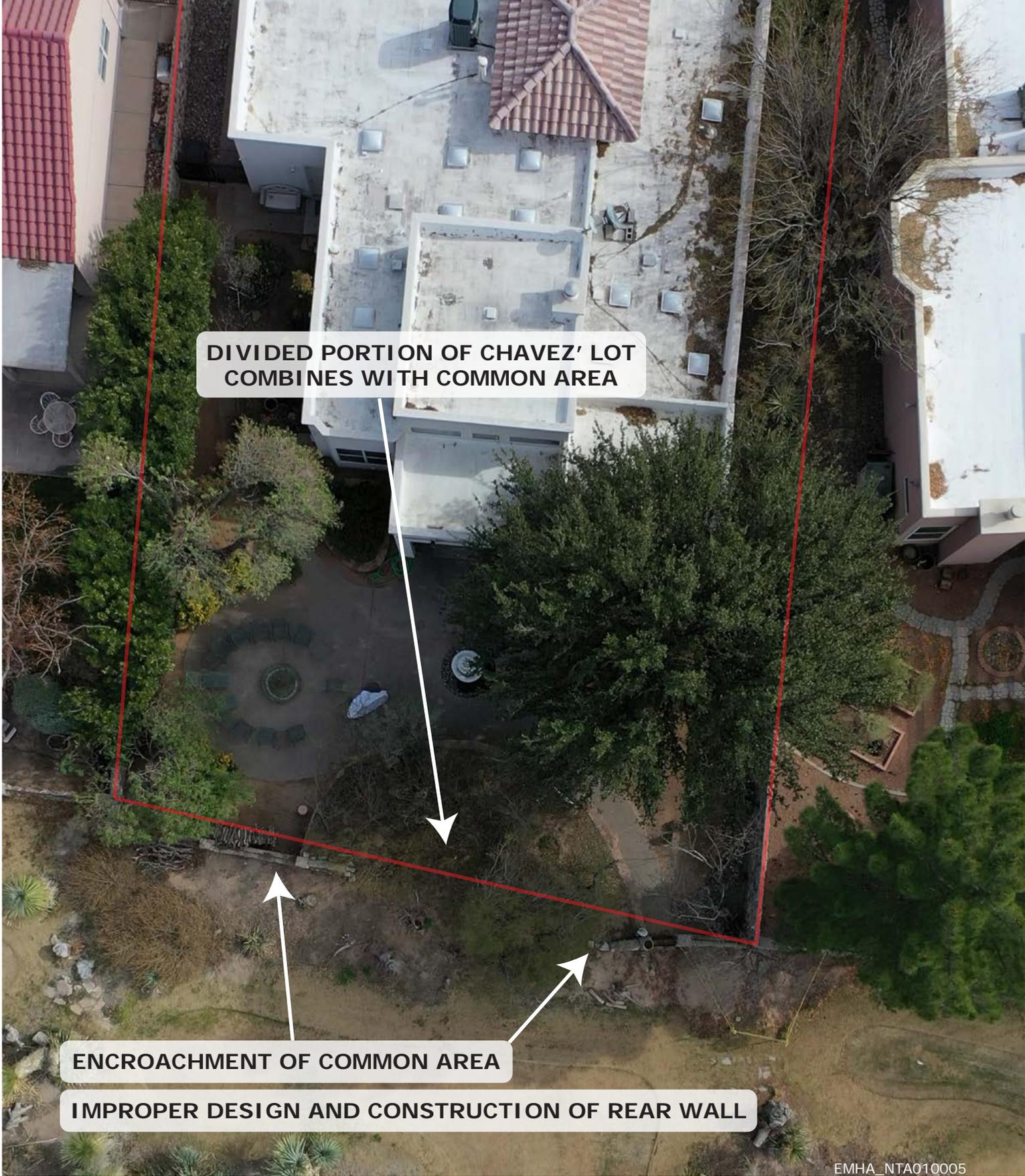


TROST EXPOSES ENCROACHMENT AND VIOLATIONS

IN 2018-2019 HENRY TROST CLEARED SOME OF THE OBSTRUCTIVE OVERGROWTH CONCEALING CHAVEZ AND JANKEL'S ENCROACHMENT INTO COMMON AREA AND THE IMPROPER CONSTRUCTION OF THEIR ROCK WALL.

TROST CHARACTERIZED TO SOME MEMBERS THAT CHAVEZ HAD GRANTED HIMSELF AN EASEMENT.

AERIAL PHOTO NOVEMBER 2019



DIVIDED PORTION OF CHAVEZ' LOT
COMBINES WITH COMMON AREA

ENCROACHMENT OF COMMON AREA

IMPROPER DESIGN AND CONSTRUCTION OF REAR WALL

**EL MIRADOR HOMEOWNER'S ASSOCIATION
BOARD OF DIRECTORS MEETING
- Santa Teresa Fire Station -
June 18, 2018 - Minutes**

Board of Directors President Richard Doyle called meeting to order at 7:06 pm.

Board of Directors in attendance: David Chavez, Jr., Richard Doyle, Isaac Harder, Ventura Pena, John Reich and Joaquin Tadeo. Absent: Linda Corley.

Homeowners in attendance were: Luther Ludwig, F. Charles Jankel, Diane Durham, Maria T. Ruiz and Tim Navrkal.

Minutes of September 19, 2017 were not available. Minutes for Meeting of March 26, 2018 were presented by Secretary/Treasurer David Chavez, Jr. Motion made by John Reich, seconded by Ventura Pena to approve minutes of 3/26/18. Minutes approved unanimously.

Reports/Old Business

Treasurer's Report was given by Secretary/Treasurer David Chavez, Jr. for the five (5) months ending May 31, 2018. Total Income was \$19,994.00; Expenses were \$17,794.03 for a net income of \$2,199.97 for this period. Delinquent Account report was given effective 06/18/18. Three (3) properties have liens on them: Omar Reyes, 236 Avenida Mirador, Amount Due \$6610.86; Rosa Rodriguez, 116 Puesta Mirador, Amount Due \$4262.00; and Elizabeth Quintanilla, 324 Avenida Mirador, Amount Due \$263.34. One account is being monitored for possible lien, Daniel Loya, 317 Avenida Mirador, Amount Due \$412.00. Mr. Chavez informed the Board that CRRUA had approved a rate hike for Bulk, Commercial, Industrial and Institutional Users. Information received from CRRUA indicated that EMHA would be charged at the Institutional Category which would nearly double our water bill. Mr. Chavez further stated that he was working with CRRUA to keep the Category as Residential.

Design Review Committee Report was given by Committee Chair John Reich. Six (6) requests have been received and six (6) have been approved. Copy of EMHA Declaration of Covenants, Conditions and Restrictions were delivered to two (2) Homeowners. (See Attachment A for details)

Neighborhood Watch Report was given by Committee Chair Ventura Pena. He continues monitoring overnight parking on the streets. He also reported that garage doors are being left open at night, which is a problem inviting theft.

Security Cameras Report was given by David Chavez, Jr. and Ventura Pena. They reported that they have not had an opportunity to conduct research into costs and/or solicit bids. Once they get an idea what the cost of a system will be they will report to the Board of Directors. If a decision is made to pursue security cameras, the Board will have to draft a policy to dictate how the cameras will be used and managed. (See Attachment B for details)

Common Area Report was given by Board Chair Richard Doyle, due to the absence of Common Area Chair Linda Corley. He stated that he had gone on a tour of the greens and they are looking good. No update on Master Plan for Common Area was presented.

Website Report was given David Chavez, Jr. and Isaac Harder. They stated that they have not had an opportunity to research this matter.

Review of Covenants Report was given by Joaquin Tadeo, among the recommendations were changes to Article III Directors, Section 1 Number and Qualifications. The changes include increasing the terms from 1 year to 3 years in a staggered manner. Other changes recommended were to the Design Review Guidelines

(Exhibit D) Sections 2.1.2 Parking Spaces, 2.2.17 Solar Panels and 2.2.18 Drones. (See Attachment C for details)

Homes for Sale – There were four (4) homes/properties for sale as of the date of the meeting.

Homes for Rent – Four (4) home were for rent/rented as of the date of the meeting. Mr. Chavez reported that 220 Avenida Mirador has been rented to Corrugated Synergies International LLC a company that is expanding their operation at the Santa Teresa Industrial Park.

Vacant Homes – Three (3) properties were vacant (not for sale or rent) as of the date of the meeting.

New Business

a. Should EMHA pay dues to ST Community Association? EMHA received notice from STCA that we are being charged \$20/month. Discussion was held on whether to pay or not to pay, no one spoke in favor of payment being made. It was mentioned that EMHA Owners voted in 2006 to delete language from the Covenants that required EMHA to join a Master Association. Mr. Tim Navrkal informed the Board that he had received a notice from Mr. Greg Collins with his Santa Teresa Community Association invoice. The notice stated that Mr. Collins had not given STCA authorization to take over the Country Club roads. Motion to not pay Santa Teresa Community Association was made by Joaquin Tadeo, seconded by John Reich. The Board voted unanimously not to pay STCA.

b. Should fireworks be banned from EMHA Common Areas? With unanimous agreement that fireworks pose a fire hazard to the Community a motion was made by John Reich and seconded by Joaquin Tadeo to ban fireworks from El Mirador. The Board voted unanimously to ban fireworks.

c. Violation of DCC&R Section 11.7 Lights – 23 Ocaso Mirador – There was a brief discussion on violation of the aforementioned Covenant by the Homeowner at this address. The Homeowner reported that he had over \$6000 in tools stolen from his garage. The lights he has installed are reflecting unto other Lots and the entire cul-de-sac in violation of the aforementioned Covenant. Mr. Doyle informed the Board that he had referred the matter to the Association's Attorney.

Public Comment/Questions

Mr. F. Charles Jankel commented that he was very upset with the deforestation of the Common Area behind his residence, leaving his backyard totally exposed.

Adjournment – John Reich moved, seconded by Joaquin Tadeo to adjourn the meeting. The Board unanimously approved adjournment. The meeting adjourned at 8:10 pm.

Next Meeting: September 17, 2018

Prepared by
David Chavez, Jr., Secretary/Treasurer

OBSTRUCTIVE OVERGROWTH RESTORED ALONG REAR FENCE LINE

JUNE 2023 VIEW OF OVERGROWTH OBSCURING CHAVEZ AND JANKEL'S REAR PROPERTY



THE ASSOCIATION THREATENS OTHER OWNERS WITH SERIOUS FINES REGARDING TREE LIMBS EXTENDING INTO COMMON AREA



LEFT WALL IS COMPLETELY HIDDEN BY OVERGROWTH