

History of Dispute with Colorado's Timber Ridge Ranches LLC.

In 1999 the Developer, Colorado's Timber Ridge Ranches, LLC, through its Managing Partner, Joe Machock, began subdividing the 1,100 acre Gomez ranch. At that time a law in Colorado had been enacted called the Colorado Common Ownership Interest Act (CCOIA). That law provides that if a developer subdivides, it has to file a set of Covenants, Conditions and Restrictions ("CC&R's") which would put prospective buyers on notice of certain important issues that might affect them. One provision of CCOIA requires that if the Developer subdivides less than all the land, it has to specifically reserve the right to develop the remaining land and state what development is expected. The purpose is apparent – to allow purchasers to know what will happen with the undeveloped land so that subsequent development will not hurt their property values.

In 2004 the Developer discovered it had a problem. The CC&R's for Timber Ridge did not reserve any further rights to develop the remaining ranch beyond what was already subdivided. Individual property owners became aware of this and objected to what Mr. Machock was planning for Phase V of the subdivision. Property owners were also upset that the amenities which they had been promised when they purchased their lots, including an equestrian center, several miles of finished trails, a clubhouse, and open space, had never been completed. Moreover, Mr. Machock had not and would not make a written binding commitment as to when they would be completed.

The Developer at that time hand picked the Board of Directors of the Home Owners Association (HOA). This Developer-controlled board then prepared Amended CC&R's which provided Mr. Machock with the development rights he needed. They were sent out to all the property owners for approval. Amending CC&R's is a difficult process because it requires 67% approval of all property owners. Some of the property owners opposed the amended CC&R's until the Developer signed a binding agreement to finish specific amenities within an acceptable time frame. The Amended CC&R's were defeated.

In August of 2005, a majority of the HOA Board was, for the first time, elected by the property owners. The Board agreed to negotiate with the Developer. From the first meeting with the Developer the board asked only for 1) a satisfactory agreement as to the amenities to be built consistent with the sales representations of the Developer, 2) a satisfactory time frame for completion of the amenities, and 3) satisfactory guarantees of completion of the amenities in order to avoid years of litigation in the event the developer defaulted.

At the first meeting, Mr. Machock wished to make his completion of his promised amenities conditional on the amendment of the CC&R's. The Board explained that it could not do so, because he and his salesmen had induced over 200 buyers to purchase based upon his promises of amenities and he had an obligation to complete them. The HOA did not cause the CC&R problem and could not control whether the owners would vote to amend. The HOA could not agree to release him from his promises if the

amendments were not approved, but did agree to endorse the amendments if they addressed these important issues.

The negotiations went on for months. The Board's position stayed the same. It would support the amendment of the CC&R's, provided Mr. Machock would sign a satisfactory agreement to complete the promised amenities. Finally in the fall of 2006, the Board and Mr. Machock reached an agreement in principle. The HOA had their lawyer draft a proposed agreement. The problem appeared to be solved.

However, in Oct 2006 Mr. Machock reneged and had his lawyer prepare a draft which again made his completion of the promised amenities contingent on the amendment of the CC&R's. Moreover, someone told the Developer's investors that the HOA Board was acting illegally. The Board received a letter threatening litigation on the grounds that 1) CCOIA had been amended and 2) the HOA Board had a legal obligation to amend the CC&R's to comply with the amended law, and 3) the HOA Board was refusing to do so. None of these allegations are true.

That in a nutshell is our present situation. Approximately one-quarter of the original ranch has not been developed. The value of that land is more than sufficient to complete the amenities and provide a profit to either this developer or some new developer. The Board has seen no justification to give up its greatest leverage – the ability to urge its members to approve a CC&R amendment to help the Developer out with its problem – unless it is provided with a reasonable assurance that the Developer will make good on its promises.