

Village of Green Trails Association, Inc.
May 20, 2023

Dear Owners,

The purpose of this letter is to update you on the resolution of the lawsuit between the Village of Green Trails Association, Inc and the Tpheris Israel Chevra Kadisha Congregation. There was a Stipulation Agreement dated December 22, 1978 stipulating the Congregation's responsibility for maintaining the dam. When MSD ordered the creation of a spillway in 2006, the Congregation hired an engineering firm and paid for the entire project. They said this was a very large expense for such a small congregation.

In 2020, MSD ordered the Association to immediately make repairs to the spillway or face large penalties. The Congregation refused to pay for this latest repair. There are several reasons why they claimed it was not their responsibility. Of course, the trustees thought otherwise, which was the reason for the lawsuit. In spring of 2020 the Association had our attorney begin legal proceedings against the Congregation to recover the money we spent on the repair. The Congregation counter sued.

In order to understand the settlement, a little history is in order. As building started on our individual subdivisions in the late 60's, the Village of Green Trails trustees (made up of developers and builders) granted an easement to the Tpheris Israel Chevra Kadisha Congregation (TICK) Congregation for a roadway from Ladue Rd over the lake dam to their synagogue. The problem was that the roadway was on land that had been legally set aside on the site plan as common ground for the Village of Green Trails subdivisions. The court ruled that subdivision common ground could only be used for subdivision purposes as stated in the plan. Therefore, in 1973, the Congregation's easement was denied.

In 1976, after a couple more years of disagreements, the Congregation asked the court to grant them a "Right of Way of Necessity" claiming they had no road in and out of their property. This was true since there was no road behind their property at that time. (Now the rear of the Synagogue's property opens to the residential subdivision, Brayhill Court, which was legally created with a restriction on such high traffic facilities. The synagogue cannot make a driveway over their lot at 206 Brayhill Ct.) Hence the judge granted TICK a Right of Way of Necessity and ordered the Congregation and the Village of Green Trails trustees to work out a satisfactory arrangement. This became known as the Stipulation agreement of 1978 which gave the Congregation access in exchange for maintenance of the dam and road after an upfront payment of \$6,000. The Spillway's creation was ordered by MSD and the City of Chesterfield in 2006 following many dam failures at the time.

Back to the lawsuit.

Both the Association and the Congregation believed their cases were meritorious. The most obvious reasons are: The Village Association had the 1978 Stipulation Agreement and its requirements. The Congregation had already paid a very large sum to use the dam road. In addition to the upfront payment, they created the Spillway 2006-2008. They also claimed the

Stipulation Agreement was based on having a simple dirt dam, and not the additional spillway which required maintenance.

It is always difficult to predict how a judge will rule. With the high cost of litigation and the prospect of reaching an agreement with the Congregation to address the relationship in the future, both attorneys recommended a settlement. After many hours and more than two years of back-and-forth negotiations we came to an agreement that we think benefits both sides and governs the future relationship more precisely than the documents from the 1970's. It is essentially as we described in our November/December letter of 2022.

The Association was completely reimbursed for the repair of the spillway.

The Association and the Congregation wrote a new Easement for the Congregation to use the roadway. The Association will maintain the road in exchange for monthly payments from the Congregation subject to periodic adjustments for inflation. The Association will be in charge of the maintenance for the lake, dam and spillway, ensuring that it will be done to our satisfaction and with regularity to minimize the possibility of future problems. Both parties benefit from this. The Congregation will not have to worry about handling maintenance as they have no expertise in this area and, as far as we know, they have performed no maintenance activities beyond creating the spillway. With advice from our attorney, the trustees accepted that the Congregation's costs of the original spillway and this current repair, along with the Congregation's ongoing monthly payments, satisfies the financial obligation intended in the original 1978 agreement. The monthly payments from the Congregation will be listed in a reserve account on the balance sheet to monitor the maintenance cost of the dam road. The Congregation also has the responsibility to clear the roadway of snow and ice and ensure their vendors for this are properly insured.

Judge Nancy M. Watkins McLaughlin reviewed the Settlement, vacated all prior agreements and approved this one. The Association received a check for \$92,092 plus another \$1224 that our attorney at Danna McKittrick held in escrow from TICK.

Here is the breakout:

\$89,500	Spillway Reimbursement
3,392	maintenance fees since January 2022 (\$212 x 16 months)
<u>424</u>	deposit for maintenance fees
\$93,316	Total Deposits

The Congregation began paying \$212 monthly in January of 2022 with a 2-month deposit. This amount is subject to increase every 5 years based on the cumulative CPI over that time. The Reserve for Road Maintenance contains \$3,816 through April 2023. (The cost of such maintenance was estimated using professional recommendations.)

Lastly,

The Association had no choice but to make the repairs because the Synagogue's Congregation refused to do so. MSD only deals with the property owners and does not care about obligations

of third parties to make repairs. If another dam or spillway problem arose, the Association would be held responsible for remediation and it would ALWAYS be up to us to try to get reimbursed by the Synagogue. The Congregation could refuse to pay short of a lawsuit which costs thousands in legal fees and stretches out the matter for years. Thus, if anything occurs in the future, the trustees would have to go through the same process and costs and investments of time as we did these last 3+ years. Why put the owners/trustees in that situation. The penalties were \$1,000 per day until remediation was done and would have started about November 2020. A couple of owners indicated they would have not made the repairs and would have pursued the synagogue endlessly, ignoring the fact that all the owners would be on the hook for many thousands in MSD penalties.

Instead, the Association was fully reimbursed for the repairs and the Congregation will be continuously depositing funds with the Association for repairs. If they fail to make payments, the Association has the right to close the roadway.

The Settlement Agreement and the Easement Agreement are referenced in each other. As such they are included as exhibits, each with more exhibits, in each document, and adding to the volume of pages. The trustees will be posting the final versions on our website independent of all the double exhibits.

Sincerely,

Your Trustees,

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