

Construction Defects Lawsuit

Dear Arbor Roses Homeowners,

On January 21, 2011 a construction defects lawsuit was filed against West Hills Development (the builder of the Arbor Roses subdivision) seeking \$8.12 million in damages. The filing of this lawsuit was unanimously approved by the five directors of the Arbor Roses HOA. The purpose of this letter is to inform you of the reasoning behind our decision. The next monthly HOA meeting at 6:30PM on Tuesday February 15th, 2011 will provide homeowners an opportunity to learn more and discuss the lawsuit with the principal firms representing the interests of the HOA.

Affected Homes

This lawsuit directly affects all of the attached homes (rowhomes) in Arbor Roses, because the HOA bears responsibility for the maintenance of the building envelope. The building envelope consists of several protective layers and devices that protect each building from the effects of weather, most notably water. Detached homes (Cottage, Chateau, and Terrace homes) are not directly affected because the individual homeowners are responsible for the maintenance of their homes.

Because the same developer built the attached and detached homes in Arbor Roses, all homeowners are advised to discuss with their realtor and/or attorney the potential impact this lawsuit may have on the current or future sale of their home. Neither the Arbor Roses HOA, Northwest Community Management, nor the attorney representing the HOA, can advise you in this matter.

A support group of individual homeowners is forming to address construction defects issues for detached (Cottage, Chateau, and Terrace) homes, and there will be additional information about this group at the next HOA meeting; the HOA has no authority over this group and is only providing information about the group for your benefit.

Alleged Defects

The construction defects alleged in the lawsuit pertain to the building envelope of attached rowhomes. The defects were discovered during intrusive investigations conducted in 2007 and 2010. A summary of the 2010 investigations conducted by the engineering firm Morrison-Hershfield was handed-out at the annual homeowners meeting last November, and it is also posted on the Arbor Roses website; you are encouraged to review it:

http://www.arborroseshoa.org/documents/bldg_envelope_asmt_summary.pdf

Why the Lawsuit was Filed

In the past, several discussions between the Arbor Roses HOA board of directors and West Hills Development were held, and the process for reaching a settlement requires approval from the various insurance companies that represent West Hills and their subcontractors. During the same time, several other HOA's filed claims against West Hills; as those claims progressed through the legal system a global mediation group was formed with the goal of resolving the claims before a court trial. Within the past few weeks, a narrow window of opportunity for Arbor Roses HOA to join into the global mediation group opened. In addition, Vial-Fotheringham LLC and Morrison-Hershfield are already representing other plaintiffs in the global mediation. By law, the only way we could enter the mediation effort was if we filed a lawsuit. The Arbor Roses HOA board of directors determined it was in the best interests of the HOA to pursue this opportunity because it was the fastest path to resolution with the greatest likelihood of success.

How Much Will this Cost ?

Vial-Fotheringham LLC, the law firm representing the HOA, has taken this case on a contingency basis, therefore the up-front costs to the HOA are expected to be minimal, regardless if we win or lose as long as we abide by the terms of contingency agreement. We believe the largest expense is for intrusive investigations, which have already been performed and documented as part of the HOA's ongoing maintenance plan. If additional inspections of rowhomes are required, the HOA would fund this thru the rowhome budget.

What if the Lawsuit was not Filed ?

During the past two years, the HOA did not succeed in it's efforts to reach an out-of-court settlement with West Hills. There is a growing risk of passing a statute-of-limitations deadline, and/or depletion of insurance funds from other lawsuits if we don't take action now. Even if the HOA eventually decided to file a lawsuit, there would be substantially more delays navigating the legal system compared to the global mediation effort we have joined. If, for whatever reason, there is no recovery, the repair costs assessed to each rowhome owner could reach into the tens-of-thousands of dollars.

Next Steps

The global mediation has a major working session scheduled for early February; we expect that an update on that effort will be presented at the next homeowners meeting. Beyond that, it is difficult to predict when we will reach a final resolution, or what the outcome will be. Representatives from Vial-Fotheringham and Morrison-Hershfield will be at the February 15th meeting to provide details and answer your questions. Please plan on attending.

In Conclusion

This is, by far, the biggest challenge we have ever faced at Arbor Roses. We have very knowledgeable and experienced legal, engineering, and management teams working for us; I am confident that we have taken every possible action to resolve this as quickly and painlessly as possible, with a high likelihood of success. From all of us on the Arbor Roses board of directors, thank you for your continuing support and we look forward to keeping our community as one of the best places to live in Hillsboro.

Greg Ebert, President
Arbor Roses Homeowners Association