

Donald F. Carey
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Licensed in
Idaho & Wyoming

Carey Law

The Experience You Want. The Results You Need.

Law Office of
Carey Law, PLLC
477 Shoup Ave Suite 203
Idaho Falls, Idaho 83402

April 11, 2024

Teton County Board of Commissioners
Teton Planning & Zoning Commission
150 Courthouse Dr., #107
Driggs, Idaho 83422

Re: Jones Lehi, LLC., - "Dorothy Gayle Ranch" Subdivision

Dear Commissioners,

I represent Glenn and Merri Moradian. My clients oppose the granting of the subdivision plat referenced above, to the extent that the road access to the subdivision will cross or run adjacent to their property. It is their position that no public road easement exists, and one cannot be created by fiat.

I am in receipt of a letter sent by Mr. Forest Fischer, dated September 28, 2023, asserting that an access easement for the subdivision already exists across my client's property from W 3000 N. I disagree. The road, W 3000 N is at least one mile south of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho. It is not adjacent or proximate to the proposed subdivision parcel. I suspect what Mr. Fischer is referring to is N 3000 W, which runs north and south along the eastern edge of Section 5.

Mr. Fischer's letter references Instrument number 148957, (copy attached) and he suggests that the proposed subdivision has access from W 3000 N (sic). Instrument number 148957 is a private road access and maintenance agreement entered into between Jared and Linda Nusbaum, and the Kerr Family Trust. The focus of the agreement rests upon the sale of three (3) parcels. It states that the farm road is adequate for one family home on each of the three parcels. It states that "*in the event any more parcels are sold for residential purposes, adequate roadways shown on **Exhibit A** may need to be constructed and utilized for access in lieu of the farm road.*" My clients are unable to find any Exhibit "A" of record in Teton County, attached to Instrument number 148957. In the absence of an Exhibit "A, there is considerable uncertainty with respect to the grant of easement¹.

¹ There is a very real question whether the instrument creates an easement over any *servant* estate, for the benefit of the *dominant* estate, in the first place. An easement is an interest in land and must be in writing to be enforced pursuant to the Statute of Frauds. "Although the writing need not necessarily use specific words to create an express easement, it must be clear from the writing that the parties intended to "establish a servitude" over the land identified." *Sec. Inv'r Fund LLC v. Crumb*, 165 Idaho 280, 286, 443 P.3d 1036, 1042 (2019)(Overruled in part on an attorneys fee question unrelated to the easement issue.)

The chronology of the creation of the various instruments governing access to and across my clients property is important to review. My client bought their ranch in 2006. The only access easement of record was that contained in instrument number 148957, created in 2002. When my clients purchased their ranch it was surveyed, and that survey is filed as instrument number 183377, a copy is attached for your review. In the center of that document is the owner's certification indicating that the easement from the county road, N 3000 W is a 30' easement. The owners certifications state

[T]together with a 30 foot *private road* and utility easement along the northern boundary of the property, and a 60 foot *private road* and utility easement running in a southerly direction through said property. (Italics added for emphasis.)

Dr. Glenn and Merri Moradian purchased their lot in 2006, from Nusbaum. Directing your attention to a Warranty Deed dated August 16, 2021, instrument number 270431, copy attached, the grantor Teter LLP 401(k) sells to Jones Lehi LLC, the subdivision parcel at issue. In the document, identified as "Parcel 2" sets forth the grant of easement. However, Teter LLP 401(k) did not own my client's property in 2021. It should not need to be stated that one cannot grant an easement over property one does not own. Parcel 2 does reference Instrument number 228940, dated July 17, 2013, to describe the general course of the *presumed* easement. But again, the grantor, Wells Fargo did not own my clients property in 2013, when that instrument was created.

Directing your attention to the survey, instrument number 183377, the first observation that can be made is that access to the county road is limited to a *thirty-foot* easement, which I believe is insufficient to allow for the creation of a public road to allow access the proposed subdivision. Although there is ambiguity between the surveyor's descriptive inserts on the survey, the plain language contained in the Owners Certification should control the interpretation. Secondly, the survey clearly identifies the road as a private road. Using a private road for public access is clearly changing the scope of the easement.

The other instruments referencing the presumed easement are instruments number 228940, created in 2013, and instrument number 270431, created in 2021. Because the grantor's in either case did not own my client's property when those two instruments were created, the grantor's, respectively, could not burden my clients property by granting access over my clients property in a manner that exceeded the scope of the easement as it existed when my clients purchased their ranch.

Case law in Idaho prohibits any attempt to expand the scope of any general easement. Here, given the absence of the Exhibit A, in instrument number 148957, we simply don't know, and cannot know what the grantors intent was with respect to expanding the easement for the purpose of developing access to a proposed subdivision. Expanding a private access farm road, granting access to three (3) lots, is fundamentally different than creating a public road for subdivision access. This cannot be allowed, absent some proof by the grantor of that specific reservation. Idaho law is clear:

"The use of an easement claimed under a grant or reservation must be confined strictly to the purposes for which it was granted or reserved, and in compliance with any restrictions imposed by the terms of the instrument. Where the grant or reservation of an easement is general in its terms, use of the easement includes those uses which are incidental or necessary to the reasonable and proper enjoyment of the easement, but is limited to those that ***burden the servient estate as little as possible***. In other words, an easement granted or reserved in general terms, without any limitations as to its use, is one of unlimited reasonable use. It is not restricted to use merely for such purposes of the dominant estate as are reasonably required at the time of the grant or reservation, but the right may be exercised by the dominant owner for those purposes to which that estate may be subsequently devoted. Thus, there may be an increase in the volume and kind of use of such an easement during the course of its enjoyment."(Italics added for emphasis.)

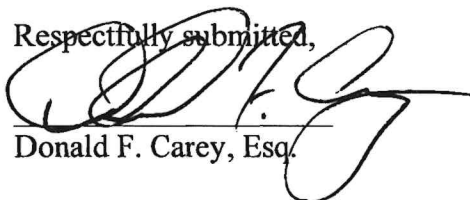
Abbott v. Nampa Sch. Dist. No. 131, 119 Idaho 544, 548, 808 P.2d 1289, 1293 (1991)

"The general rule concerning easements is that the right of an easement holder may not be enlarged and may not encompass more than is necessary to fulfill the easement." *Aizpitarte v. Minear*, 508 P.3d 1260, 1273 (Idaho 2022). Again, without production of the Exhibit A, there can be no determination whether the grantor intended to grant an easement for subdivision purposes, on the proposed location.

The Idaho Supreme Court considered the question whether an easement could be expanded to allow unrestricted public access to a subdivision in the case of *Sommer v. Misty Valley, Ltd. Liab. Co.*, 511 P.3d 833, 839 (Idaho 2021). The court rejected the expansion of the easement for subdivision purposes. The question was whether the deed creating the easement was unambiguous and whether it created an easement for any other property other than the property being conveyed by the deed.

Here, in the absence of Exhibit A to instrument number 148957, there can be no demonstration that the road access is intended to serve the proposed subdivision. In *Shinn v. Bd. of Cty. (In re Variance ZV2011-2)*, 156 Idaho 491, 495-96, 328 P.3d 471, 475-76 (2014), also cited by Mr. Fischer, the Supreme Court held that the Board of Commissioners may not approve a subdivision until the access is certain. Here, that means public access. There is no *certainty* with respect to public access to this subdivision, particularly over and across my client's property. Therefore, the subdivision cannot be approved absent a determination that proper and lawful public access exists. Given my review of the available data, I cannot conclude that the subdivision has any access, much less public access.

Respectfully submitted,



Donald F. Carey, Esq.

DFC/

RECEIVED

JUN 28 2002

TETON CO., ID
CLERK RECORDER

148957

**ROAD ACCESS
AND
MAINTENANCE AGREEMENT**

Instrument # 148957

DRIGGS, TETON, IDAHO

2002-06-28

02:51:43 No. of Pages: 5

Recorded for: FIRST AMERICAN TITLE

NOLAN G. BOYLE

Fee: 15.00

Ex-Officio Recorder Deputy *[Signature]*

Index to: AGREEMENT

407

Agreement entered into this 26th day of June, 2002, between JARED E. NUSBAUM and LINDA S. NUSBAUM, husband and wife, whose current address is P. O. Box 117, Tetonia, Idaho 83452 and the KERR FAMILY TRUST, U/A, dated February 4, 1993, Darin Duane Kerr and Myra Cannon Kerr, Trustees, whose current address is P. O. Box 731, Driggs, Idaho 83422.

RECITALS

WHEREAS, Nusbaums own certain property located in Teton County, Idaho, more particularly described as follows:

The SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Lots 2, 3, 4, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho.

LESS: Beginning at the center of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, and running thence South 89°42'21" East, 1320.15 feet; thence North 00°33'17" West, 717.00 feet; thence South 85°26'23" West, 1323.25 feet; thence South 00°33'17" East, 605.00 feet to the point of beginning.

LESS: A part of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: Commencing at the N $\frac{1}{4}$ corner of said Section 5; thence S 00°06'44" East, 2052.72 feet and thence N 85°24'32" East, 496.32 feet to the true point of beginning; thence N 04°32'15" West, 33.86 feet to a point; thence N 43°02'41" East, 838.58 feet to a point; thence N 70°16'56" East, 263.46 feet to a point; thence S 00°37'46" East, 669.28 feet to a point; thence S 85°24'32" West, 827.73 feet to the point of beginning.

ALSO an irrigation well lot lying in the Southwestern corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: Beginning at an iron pin set by A-W Engineering, P.E./L.S. #2860, the Southwest corner of the NE $\frac{1}{4}$ of said Section 5 and running N 0°30'18" East, 40.0 feet along the West line of the NE $\frac{1}{4}$ of said Section 5; thence East 18 feet; thence South 0°30'18" West, 40.0

148957

feet; thence West 18 feet to the point of beginning.

(See plat map and legal descriptions attached as Schedule A and incorporated herein by reference.)

WHEREAS, Nusbaums are selling parcels 4, 5 and 6 to Kerrs; and

WHEREAS, it is in the mutual interest of the parties to agree on issues regarding roadways, access and maintenance and record the agreement so as to govern not only the rights of the parties but the rights of heirs, issue and assigns who may subsequently own some portion of the above described properties.

AGREEMENT


1. Kerrs are purchasing parcels 4, 5 and 6 and intend to build a home on parcel 4.
There is currently a farm road that connects to the county road and is adequate for the needs of one single family residence for each Nusbaum and Kerr, but in the event any more parcels are sold for residential purposes, adequate roadways shown on Exhibit A may need to be constructed and utilized for access in lieu of the "farm road".
2. Kerr and Nusbaum will share equally in the costs of road maintenance and snow removal while sharing the use of the "farm road".
3. In the event Kerr or Nusbaum sell off any of their parcels and any residences are built thereon, the new roads (as described in Exhibit A) or an adequate portion thereof, may be constructed and then substituted for the farm road as the primary access for Kerr and the owners of other properties.
4. The party electing to build the road will pay 100% of the cost unless otherwise agreed. Thereafter, road maintenance and snow removal costs will be borne on a

effectuate the purposes of this Agreement.

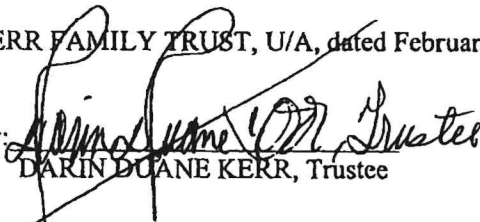
11. Text to Control. The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Agreement exists, the text shall control.
12. Severability. If any provision of this Agreement is declared by any court of competent jurisdiction or any arbitrator to be invalid for any reason, such invalidity shall not affect the remaining provisions, which shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in the Agreement.
13. Counterparts. This Agreement may be executed in counterparts, each of which if executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same Agreement.
14. Attorney Fees. In the event that a dispute arises out of this Agreement, the prevailing party's reasonable attorney fees and costs shall be paid by the non-prevailing party or parties.

DATED and SIGNED this 26th day of June, 2002.


JARED E. NUSBAUM


LINDA S. NUSBAUM

KERR FAMILY TRUST, U/A, dated February 4, 1993

By: 
DARIN DUANE KERR, Trustee

By: 
MYRA CANNON KERR, Trustee

ROAD ACCESS & MAINTENANCE AGREEMENT - 4
170 Kerr/Nusbaum-MAgr

148957

SPECIAL WARRANTY DEED

Alliance Title & Escrow Corp
Order No.: 197148

FOR VALUE RECEIVED

Wells Fargo Bank, N.A.

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Teter, LLP 401(k) Plan fbo Clay Davls

whose current address is

10672 N. Lanes Rd, Fresno, CA 93730

the grantee(s), the following described premises, in Teton County, Idaho, TO WIT:

Tract 1:

Parcel 8: A part of the North Half of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: From the C Quarter corner of said Section 5, thence North 89°33'31" West 1323.96 feet along the South line of the Southeast Quarter Northwest Quarter to the Southwest Corner of said Southeast Quarter Northwest Quarter and thence North 00°01'02" West 667.60 feet further along the West line of the Southeast Quarter Northwest Quarter to the true point of beginning; thence North 00°01'02" West 667.60 feet further along the West line of the Southeast Quarter Northwest Quarter to the Northwest corner of the Southeast Quarter Northwest Quarter of said Section 5; thence South 89°17'00" East 1331.19 feet to a point; thence South 00°09'41" West 662.55 feet to a point; thence North 89°30'00" West 1329.07 feet to the point of beginning.

Parcel 9: A part of the North Half of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: Commencing at the C Quarter corner of said Section 5, the point of beginning, thence North 89°33'31" West 1323.96 feet along the South line of the Southeast Quarter Northwest Quarter to the Southwest corner of the Southeast Quarter Northwest Quarter of said Section 5; thence North 00°01'02" West 667.60 feet along the West line of the Southeast Quarter Northwest Quarter of said Section 5 to a point; thence South 89°30'00" East 1329.07 feet to a point; thence South 00°09'41" West 67.13 feet to an iron pin; thence South 00°27'01" West 599.09 feet to the point of beginning.

Tract 1A:


Together with an easement for ingress, egress and utilities across the following described easement, said easement being 60 feet wide and lying Westerly and Southerly of the following described line: Beginning at the Center Quarter corner of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, the point of beginning; thence North 00°27'01" West 599.09 feet; thence North 00°09'41" West 729.68 feet; thence North 00°46'00" West 662.20 feet; thence North 01°01'26" West 861.16 feet; thence South 89°52'09" East 2644.94 feet more or less to the point of ending.

GRANTOR, for itself and its successors in interest, does by these presents expressly limit the covenants of this deed to those herein expressed, and excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomever lawfully claiming or to claim by, through or under Grantor and not otherwise, Grantor will forever warrant and defend such described Property, subject to the matters described on Schedule 1 attached hereto.

Dorothy Bayle
- 401(k) Plan fbo Clay Davls
ranch

Dated: 7/26/2013

Wells Fargo Bank, N.A.

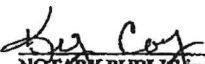

Delores L. Pomerinke, Officer

STATE OF Colorado)

) ss.

COUNTY OF Denver)

I certify that I know or have satisfactory evidence that Delores L. Pomerinke is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as an officer of Wells Fargo Bank, National Association, to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

Dated this 26 day of July, 2013
NOTARY PUBLIC in and for the State of ColoradoResiding at: 1700 LincolnMy Commission expires: 07-26-2015 12/28/2015

SCHEDULE 1

This conveyance is made and accepted subject to all restrictions, reservations, covenants, and exceptions appearing of record in the Official Public Records of Real Property (and related and predecessor real property records) of the County in which the Property is located, to the extent such matters are applicable to the Property, including without limitation: all restrictions, reservations, covenants, and exceptions listed in the commitment for title insurance issued in connection with this Deed.

This conveyance is also made and accepted subject to the following, but only to the extent that they are still in effect and affect the Property: (1) existing deed restrictions and restrictive covenants affecting the Property; (2) discrepancies, conflicts and shortages in area or boundary lines, or any encroachments or any overlapping of improvements; (3) taxes for the current year and subsequent years and subsequent assessments for prior years due to change in land usage or ownership; (4) existing building and zoning restrictions and ordinances; (5) easements or roads, easements visible upon the ground, easements of record; (6) liens created or assumed as security for the purchase price; (7) rights or privileges of public service companies and utility easements of record or common to any platted subdivision of which the Property is a part; (8) reservations or other exceptions of record or known to the Grantee; (9) the terms and provisions of any declaration, by-laws and rules and regulations of any condominium regime or homeowner's association pertaining to the Property, as amended, including the platted easements and assessments set out therein; (10) the terms of any ground rent, ground lease or similar agreements, if any; (11) any matters that would be reflected on a current survey of the Property; (12) any other liens, encumbrances, easements, covenants or restrictions of record or known to the Grantee; (13) rights of parties in possession; (14) any and all other restrictions and zoning laws, regulations and ordinances of municipal and/or other governmental authorities.

Grantee and its agents having completed a full inspection of the Property and any improvements located thereon, there is no warranty, express or implied, made or given by Grantor except as to title as herein given and limited; the Property is conveyed "AS-IS," "WHERE IS," and no warranty or representation of any kind, express or implied, is made as to the condition of the Property, whether improvements or fixtures, sub-soil conditions, or natural or man-made conditions on or under the Property or otherwise; GRANTEE DOES HEREBY WAIVE, AND GRANTOR DOES HEREBY DISCLAIM, ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER WITH RESPECT TO THE PROPERTY, including by way of description but not limitation, those of CONDITION, CHARACTERISTICS, MERCHANTABILITY, TENANT ABILITY, HABITABILITY, SUITABILITY, and FITNESS FOR A PARTICULAR PURPOSE OR USE, and Grantee releases Grantor from any claim, cause of action or other assertion of right with regard thereto.

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
81 North Main Street/P.O. Box 42
Driggs, ID 83422

Instrument # 270431

TETON COUNTY, IDAHO
08-16-2021 15:03:00 No. of Pages: 3
Recorded for: FIRST AMERICAN TITLE - DRIGGS
KIM KEELEY Fee: \$15.00
Ex-Officio Recorder Deputy, Kim Keeley
Index to: DEED, WARRANTY

Complete
Easement wording
omitted on this
submitted document

Jones Lehi LLC
Parcel # RP05N45E054640

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 994348-T (jw)

Date: August 03, 2021

For Value Received, **Teter LLP 401(k) Plan FBO Clay Davis**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Jones Lehi LLC, a Utah limited liability company, as to an undivided 73.59% interest and Dorothy R. and Harry V. Jones Family LLC, a Utah limited liability company, as to an undivided 26.41% interest**, hereinafter called the Grantee, whose current address is **PO Box 401, Paradise, UT 84328**, the following described premises, situated in **Teton County, Idaho**, to-wit:

Parcel 1:

Township 5 North, Range 45 E.B.M., Teton County, Idaho

Section 5: SE $\frac{1}{4}$ NW $\frac{1}{4}$, being further described as:

Commencing at the C $\frac{1}{4}$ corner of said Section 5;

thence N. 89°40'05" W. 1320.61 feet to the Southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 5;

thence N. 00°03'22" E. 1333.77 feet to the Northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 5;

thence S. 89°49'48" E. 1318.30 feet to the Northeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 5;

thence S. 00°02'32" E. 1337.51 feet to the Point of Beginning.

Parcel 2:

*** Survey Easement thru Silver Dollar Unit #1
238514
shaded
by
Teter**
Together with and subject to a 60 foot wide road and utility easement running along the following general bearing of the road centerline that is described in Instrument No. 228940: Beginning at the C $\frac{1}{4}$ corner of said Section 5, Township 5 North, Range 45 E.B.M., Teton County, Idaho, and running North 2822 feet along the center of the existing road; thence East 2645 feet along the existing road to County Road N 3000 W.

Together with any and all appurtenant water rights.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations,

Date: 08/03/2021

Warranty Deed
- continued

File No.: 994348-T (jw)

restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

NOT A LEGAL COPY

Date: 08/03/2021

Warranty Deed
- continued

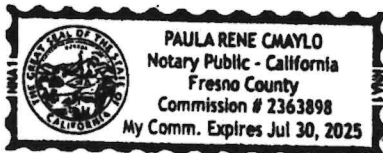
File No.: 994348-T (JP)

Teter LLP 401(k) Plan FBO Clay Davis

By: Caitlin Muradian
 Name: Caitlin Muradian
 Title: Trustee

STATE OF CALIFORNIA)
) ss.
 COUNTY OF FRESNO)

On this August 5, 2021, before me, a Notary Public in and for said State, personally appeared Caitlin Muradian, known or identified to me, to be the Trustee, of Teter LLP 401(k) Plan FBO Clay Davis of the Corporation that executed the instrument or the person who executed the instrument on behalf of said Corporation, and acknowledged to me that such Corporation executed the same.



Paula Rene Cmaylo
 Notary Public of CALIFORNIA
 Residing at:
 Commission Expires:

Re: Dorothy Gale Subdivision review at the Feb.13,2024 meeting

I am an adjoining landowner to this proposed subdivision. This subdivision affects my entire western boundary and my farming during the summer months.

I am not anti-development. I have been a contractor for the last 35years and have made my living in construction.

My list of concerns:

1. There is not adequate access for this subdivision. Access to this parcel is across 4 different landowner's property, just to reach a county road. This access is very contested and large subdivision. Also, there is a deed restriction stating one home per 10 acres of each piece sold when the entire area was first subdivided.
2. This proposed dense subdivision is surrounded by large parcels of land, the smallest being 24 acres. There is farming and livestock owners in this surrounding land to the subdivision.
3. The proposed subdivision currently has 2 irrigation center pivots located on the northeast corner of the property. These are used to grow crops during the summer. No one from the developing team has contacted us about the irrigation. If the irrigation is shut down, then there will be 275 acres with no water for crops.
4. With the way the 40 acre piece is being divided and the road running down the middle, will it be possible for the landowners to sell the land and build homes on the other side of the access road??

Thank you for your time.

Sincerely,

Brent Petersen and Patty Petersen

To: Teton County, ID Planning and Zoning Committee and the Board of County Commissioners

From: Helen McGahee and Neal McGahee, Tetonia, ID

Re: Dorthey Gayle Subdivision development application

Date: 02/01/2024

I am writing to challenge the Dorthey Gayle developers to produce legal documentation that they indeed have an easement for their proposed Tetonia, ID subdivision development to a county road. Specifically, I want to see an easement for their proposed development that crosses W 5000 N from N 3250 W to public road N 3000 W.

Helen McGahee

Helen McGahee

2/1/2024

Date



Mitzi Van Arsdell <mvanarsdell@co.teton.id.us>

Fwd: Sackett Ranch proposed development easement

Jade Krueger <jkrueger@co.teton.id.us>

Tue, Mar 14, 2023 at 5:52 PM

To: Mitzi Van Arsdell <mvanarsdell@co.teton.id.us>

For the folder.

----- Forwarded message -----

From: **marc brilliant** <brilliant.marc@gmail.com>

Date: Tue, Mar 14, 2023 at 5:50 PM

Subject: Re: Sackett Ranch proposed development easement

To: Glenn Moradian <moradiang@gmail.com>, Jade Krueger <jkrueger@co.teton.id.us>

Dear Jade,

I spoke with Glenn earlier in regards to his email, and he apprised me of the situation in regards to any claims Sackett makes to their access via 4850. I am in complete agreement with Glenn's assertion rejecting those claims along with his proof; nor will I give Sackett permission to use my portion of 4850 since it is a private road. Thanks.

Sincerely,
Marc

On Tue, Mar 14, 2023 at 5:28 PM Jade Krueger <jkrueger@co.teton.id.us> wrote:

Thanks Glenn. I will put this in the file (I believe it now has a new name - Dorthy Gale). I would recommend you also share this with the owner/applicant.

Thank you,
Jade

On Tue, Mar 14, 2023 at 5:16 PM Glenn Moradian <moradiang@gmail.com> wrote:

Jade, please see our attached letter. Thank you.
Glenn Moradian



Jade Krueger, AICP

Pronouns: She/her/hers

Planning Administrator

Teton County Planning Department

(208) 354-2593 ext. 200

jkrueger@co.teton.id.us

150 Courthouse Drive
Driggs, Idaho 83422



The Planning Department hours are M-Thurs 9-3:00 p.m.; Fridays 9-12:00 p.m.

Sent from Gmail Mobile
[Quoted text hidden]

September 28, 2023

Teton County Planning & Zoning Commission
150 Courthouse Dr # 107
Driggs, ID 83422
pz@co.teton.id.us

RE: Jones Lehi, LLC - "Dorothy Gayle Ranch" Subdivision.

Dear Commissioners,

My name is W. Forrest Fischer, and I am an attorney with Moulton Law Office in Driggs. Applicant Jones Lehi, LLC, retained this firm and asked that we communicate with you concerning its pending subdivision application for parcel number RP05N45E054650 (the "Property") - i.e. the *Dorothy Gayle Ranch Subdivision*. Specifically, our client requested that we write you on its behalf concerning its subdivision application and access to its Property. My client requested that we address the access issue, given that certain third parties have indicated that they plan to object to my client's application at the upcoming hearing by attacking the Property's easement rights. However, as outlined below, these arguments are entirely without merit. Moreover, Idaho law is clear that the legality or legitimacy of easements is not a matter for P&Z or the County Commissioners to decide.

Getting right to the point, the Idaho Supreme Court has expressly held that a county "Board has **no authority to adjudicate easements.**" *Hawkins v. Bonneville Cnty. Bd. of Comm's*, 151 Idaho 228, 234, 254 P.3d 1224, 1230 (2011) (emphasis added). Stated another way, neither you nor the County Commissioners have the authority to determine the legal sufficiency of the easements providing access to the Property. Nevertheless, the County may approve the land use application conditioned upon judicial resolution of an access issue, but only if "access to the land is **not certain.**" *Shinn v. Bd. of Cnty. (In re Variance ZV2011-2)*, 156 Idaho 491, 496, 328 P.3d 471, 476 (2014) (emphasis added). However, the County cannot refuse or otherwise table a subdivision application for an issue wholly related to the legality of access.

Here, there is no question that the Property has access from W 3000 N. Numerous recorded documents evidence access easements burdening the parcels between W 3000 N and the Property. Most importantly, access to the Property is described within that certain Road Access and Maintenance Agreement recorded on June 28, 2022, as instrument number 148957, records of Teton County, Idaho (the "Agreement"). Attached hereto as **Appendix A** is a copy of this Agreement. The easement described within the Agreement can further be found within the following conveyances recorded in Teton County: Warranty Deed, Inst. # 148956, Special Warranty Deed, Inst. # 153177, and Warranty Deed, Inst. # 169399.



Post Office Box 631
60 East Wallace Avenue
Driggs, Idaho 83422

MOULTON LAW OFFICE

Telephone 208.354.2345
Fax 208.354.2346

seanmoulton@tetonvalleylaw.com wfischer@tetonvalleylaw.com


Of course, there are more recorded documents that evidence the Property's easement rights to access W 3000 N over the parcels to the north and northeast. However, listing each of these documents is unnecessary, given the clear conveyances made within the Agreement referenced above.

Given the foregoing, **no good faith arguments could be put forth by third parties seeking to challenge access to the Property.** In other words, access to the Property *is certain*. To hold otherwise would likely be challenged as arbitrary and capricious.

My client respectfully requests that you consider this letter and make it part of your overall meeting packet to be considered at the upcoming hearing on my client's application. While parties may attempt to challenge the Property's access rights at the hearing, such challenges must be brought in the district court, not a P&Z hearing. As a result, P&Z should ensure that it stays within the confines of its purview as outlined in the abovementioned case citations. Finally, we further request that you not require a legal determination of access as a condition of approval, as the easement is "certain."

If you have any questions concerning this matter, please contact me at (208) 354-2345 or via email at wfischer@tetonvalleylaw.com. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Forrest Fischer". The signature is written in a cursive, slightly stylized font. The first name "Forrest" is written with a large, prominent "F" and the last name "Fischer" follows in a similar style.

W. Forrest Fischer
MOULTON LAW OFFICE

APPENDIX A

RECEIVED

JUN 28 2002

TETON CO., ID
CLERK RECORDER

148957

**ROAD ACCESS
AND
MAINTENANCE AGREEMENT**

Instrument # 148957

DRIGGS, TETON, IDAHO

2002-06-28

02:51:43 No. of Pages: 5

Recorded for : FIRST AMERICAN TITLE

NOLAN G. BOYLE

Fee: 15.00

Ex-Officio Recorder Deputy *[Signature]*

Index to: AGREEMENT

Agreement entered into this 26th day of June, 2002, between JARED E. NUSBAUM and LINDA S. NUSBAUM, husband and wife, whose current address is P. O. Box 117, Tetonia, Idaho 83452 and the KERR FAMILY TRUST, U/A, dated February 4, 1993, Darin Duane Kerr and Myra Cannon Kerr, Trustees, whose current address is P. O. Box 731, Driggs, Idaho 83422.

RECITALS

WHEREAS, Nusbaums own certain property located in Teton County, Idaho, more particularly described as follows:

The SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Lots 2, 3, 4, and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho.

LESS: Beginning at the center of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, and running thence South 89°42'21" East, 1320.15 feet; thence North 00°33'17" West, 717.00 feet; thence South 85°26'23" West, 1323.25 feet; thence South 00°33'17" East, 605.00 feet to the point of beginning.

LESS: A part of the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: Commencing at the N $\frac{1}{4}$ corner of said Section 5; thence S 00°06'44" East, 2052.72 feet and thence N 85°24'32" East, 496.32 feet to the true point of beginning; thence N 04°32'15" West, 33.86 feet to a point; thence N 43°02'41" East, 838.58 feet to a point; thence N 70°16'56" East, 263.46 feet to a point; thence S 00°37'46" East, 669.28 feet to a point; thence S 85°24'32" West, 827.73 feet to the point of beginning.

ALSO an irrigation well lot lying in the Southwestern corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as: Beginning at an iron pin set by A-W Engineering, P.E./L.S. #2860, the Southwest corner of the NE $\frac{1}{4}$ of said Section 5 and running N 0°30'18" East, 40.0 feet along the West line of the NE $\frac{1}{4}$ of said Section 5; thence East 18 feet; thence South 0°30'18" West, 40.0

148957

feet; thence West 18 feet to the point of beginning.

(See plat map and legal descriptions attached as Schedule A and incorporated herein by reference.)

WHEREAS, Nusbaums are selling parcels 4, 5 and 6 to Kerrs; and

WHEREAS, it is in the mutual interest of the parties to agree on issues regarding roadways, access and maintenance and record the agreement so as to govern not only the rights of the parties but the rights of heirs, issue and assigns who may subsequently own some portion of the above described properties.

AGREEMENT

1. Kerrs are purchasing parcels 4, 5 and 6 and intend to build a home on parcel 4.
There is currently a farm road that connects to the county road and is adequate for the needs of one single family residence for each Nusbaum and Kerr, but in the event any more parcels are sold for residential purposes, adequate roadways shown on Exhibit A may need to be constructed and utilized for access in lieu of the "farm road".
2. Kerr and Nusbaum will share equally in the costs of road maintenance and snow removal while sharing the use of the "farm road".
3. In the event Kerr or Nusbaum sell off any of their parcels and any residences are built thereon, the new roads (as described in Exhibit A) or an adequate portion thereof, may be constructed and then substituted for the farm road as the primary access for Kerr and the owners of other properties.
4. The party electing to build the road will pay 100% of the cost unless otherwise agreed. Thereafter, road maintenance and snow removal costs will be borne on a

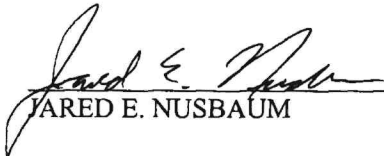
per residence served basis. Private lanes or roads not shown on Exhibit A are not intended to be regulated by this Agreement.

5. Nothing in this Agreement is intended to limit development rights. Any owner shall have the privilege of developing their property consistent with the then current subdivision and zoning regulations of the county.
6. Underground utilities may be located within the easements described in Exhibit A. Additionally, the parties acknowledge the existence of in-place irrigation systems and acknowledge the rights of each in those systems together with water rights appurtenant to the respective properties.
7. Governing Law. This Agreement shall be governed by the laws of the State of Idaho and shall be construed in accordance therewith.
8. Waiver. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision, or as a continuing waiver of that term or provision.
9. Amendment. This Agreement may be amended, altered or revoked at any time, in whole or in part, by a written instrument setting forth such changes, signed by all of the parties hereto.
10. Binding Effect and Entire Agreement. This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns, and embodies the entire agreement and understanding between the parties with regard to the subject matter thereof. The parties agree to do any and all things necessary to

effectuate the purposes of this Agreement.

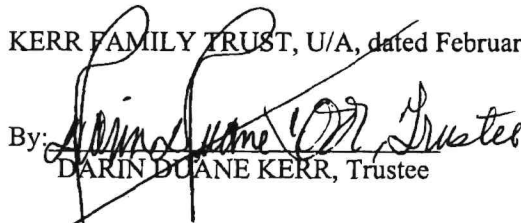
11. Text to Control. The headings of articles and sections are included solely for convenience of reference. If any conflict between any heading and the text of this Agreement exists, the text shall control.
12. Severability. If any provision of this Agreement is declared by any court of competent jurisdiction or any arbitrator to be invalid for any reason, such invalidity shall not affect the remaining provisions, which shall be fully severable, and this Agreement shall be construed and enforced as if such invalid provisions never had been inserted in the Agreement.
13. Counterparts. This Agreement may be executed in counterparts, each of which if executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same Agreement.
14. Attorney Fees. In the event that a dispute arises out of this Agreement, the prevailing party's reasonable attorney fees and costs shall be paid by the non-prevailing party or parties.

DATED and SIGNED this 26th day of June, 2002.


JARED E. NUSBAUM


LINDA S. NUSBAUM

KERR FAMILY TRUST, U/A, dated February 4, 1993

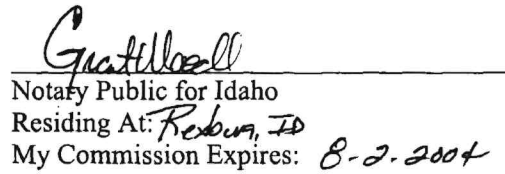
By: 
DARIN DUANE KERR, Trustee

By: 
MYRA CANNON KERR, Trustee

ROAD ACCESS & MAINTENANCE AGREEMENT - 4
170 Kerr/Nusbaum-MAgr

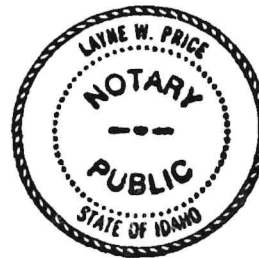
148957

On this 27th day of June, in the year of 2002, before me, a Notary Public, personally appeared **JARED E. NUSBAUM and LINDA S. NUSBAUM**, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



On this 26th day of June, in the year 2002, before me, a Notary Public in and for said State, personally appeared before me **DARIN DUANE KERR and MYRA CANNON KERR**, who, being by me first duly sworn, declared that they are the Trustees of the KERR FAMILY TRUST, that they signed the foregoing document as Trustees of the entity, and that the statements therein contained are true.

Notary Public for Idaho
Residing at: ~~Idaho~~
My Commission Expires: 12-01-06



To: Teton County, ID P&Z Committee and the County Board of Commissioners

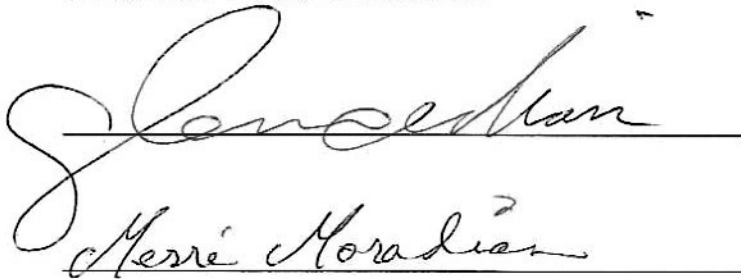
From: Glenn and Merri Moradian, Tetonia, ID 83452


Re: Jones Lehi, LLC Sackett Ranch proposed development

Date: March 14, 2023

We are writing to inform the county that the Sackett Ranch proposed development does not have an access across our private road, W 4850 N. This road is listed as their access to W 3000 N in their current application to the county. Their representation is inaccurate. We have no intention of granting such access.

The original access to W 3000 N for the Sackett parcel was abandoned via instrument #16940 in 2005. The Sackett Ranch currently has access via the Silver Dollar development to W 4000 N (Packsaddle Rd.) as recorded in instrument #238813.

 3/14/2023

 3-14-2023


To: Teton County, ID Planning and Zoning Committee and Board of County Commissioners

From: Brent Petersen, Tetonia ID 83452

Re: Dorothy Gayle Ranch proposed subdivision application

Date: April 22, 2024

The proposed subdivision application mentioned above should be immediately revoked for materially omitting to the P&Z that they do not have a legal easement across N 5000 W to public road W3000 W. The governing authority for this request is contained in Title 9 Subdivision Regulation, Chapter 3, subtitle 'n', paragraph 1, p. 52 where it is stated..."The Board of County Commissioners may revoke a subdivision or P.U.D. upon failure to comply with the conditions of approval of a final plat or subdivision extension, upon the violation of any of the provisions of the Title, or for misrepresentations or material omissions made to the Planning Commission or to the Board of County Commissioners (amd.9-17-09)."

A handwritten signature in black ink, appearing to read 'Brent Petersen', is written over a horizontal line.

Brent Petersen

Date 4/11/2024