



GRIFFITH & CUMMINGS PC  
ATTORNEYS AT LAW

January 12, 2022

Jeffrey Driggers  
Rabb Law Firm

Sent via email to: [jdriggers@therabblawfirm.com](mailto:jdriggers@therabblawfirm.com)

RE: December 10, 2021 letter regarding Vertex Holdings, LLC and Mr. Paine

Dear Jeffrey:

First let me apologize for the late response. The end of the year is always incredibly busy and I am just now catching up on the various issues that were not end of the year business matters. My client, CT Condominium, has met and discussed your letter and proposed easement. The Board was surprised to see the easement attached as they were unaware of any negotiations regarding the easement. From their point of view, you have raised potential trespassing issues, which they asked me to look into for them. They also knew that your client wanted an easement, but the Board had not discussed whether it would be feasible to grant that to your client, or whether the community would support such a grant.

Regarding the potential trespass of Hanley Avenue, Hanley was put in place by the original developer around 2004. It has existed in that place since that time, including when the developer transferred Lot 2B, which is the CT Condominium land (CC Tract), to the Association. Since that time, the Association and its members have used it openly, notoriously, exclusively, adversely, continuously and uninterrupted for over five years. Therefore, they clearly have a prescriptive easement for the very small portion of Hanley that is on the Six Range Tract. The same is true for the pipe. Also, the discharge from the pipe goes directly into the Bozeman storm water drainage system, not your client's land.

Regarding the 60-foot easement that is referenced in Doc. No 2223784 (CC Plat), it is not ambiguous at all. You simply need to look at COS 1874. The existing 60' wide access and utility easement per COS 1874, to be amended, obviously does not exist, and 1874 has nothing to do with either the CC Tract or the Six Range Tract of land. Therefore, no easement was established pursuant to *Blazer v. Wall*. Also, if there was some sort of typo regarding the COS,



there is not an easement as the easement language on the plat states that the 60-foot-wide easement is to be abandoned, and there was never an easement filed establishing it. Vertex's own deed references the fact that the supposed easement is to be abandoned, if it existed at all.

You have inferred that the Board may have the ability to simply grant an easement without the vote of the Condominium Owners. I do not believe that is correct. While under the non-profit act a Board has the right to act on behalf of the Association with regards to Association powers, and one of the powers is to grant easements, those powers are limited by the Declaration and Bylaws of the Association. In this case, the Bylaw's statement of board powers is much more limited than the Non-Profit Act's statement and does not include the right to grant an easement over the General Limited Common Elements of the Association, which is owned by all of the owners. While I agree that you could read the Bylaws to grant the Board such power, it is not specifically delineated and would need the Board to rely on the general power to do what is necessary for the Association. Therefore, the safest route for the Association would be to amend the Covenants to either grant the Board this power, or to amend to show the existence of the easement, should the Board decide to put this issue to a vote of the membership.

Therefore, the Board is unable to sign the easement agreement. I am happy to discuss this further and answer any questions that you might have for me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alanah Griffith". The signature is fluid and cursive, with a large, stylized initial "A" and "G".

Alanah Griffith