Re: CT Condominium objection to connecting Six Range Condominium project to Mill Creek Drive

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Matt,

Thank you for your very informative message, especially about the Mill Creek issue (big sigh of relief).  The Board has considered all of the other matters discussed in your message, and asked me to convey our response, as follows:

1.     Your research on the subject of easements over CT’s property to Mill Creek and Hanley is consistent with what we have found – no recorded easements (and no unrecorded ones, either, according to Mr. LeClair).

2.     If I understand you to be asking whether CT Condominium is interested in granting an easement to extend Mill Creek into the Six Range development, the answer is unequivocally NO.

3.     Although you did not ask the question directly, our position on access to Hanley (at the point shown on your site plan) is the same.  There is no easement in existence, and we do not see any benefit to CT Condominium in granting Six Range an easement over CT property for that connection.

4.     We understand you to be asking whether CT Condominium is interested in a pedestrian/bike path connecting the CT community to the Six Range development (on the north side of the Palisade Drive units).    Because the size and location of this pathway was not spelled out in your message, we ask that you be more specific as to what you have in mind.  We would probably not be interested in a pathway connecting directly to the Mill Creek stub (as opposed to one connecting to the current pathway between Ferguson and the Mill Creek units).   We also want to know what you have in mind on responsibility for maintenance of this pathway.

5.     We understand that the City requires installation of a sidewalk on the western edge of your property, connecting our walking path to Babcock, and that you are asking us if we would prefer that the sidewalk be installed on the eastern edge of Hanley (on CT Condominium property), for the “convenience” of CT residents walking to Babcock.  While respecting your intention to make Hanley more pedestrian-friendly, we do NOT agree with installation of the sidewalk on our property, because it would then become CT Condominium’s maintenance & liability responsibility.

6.     You go on to state that “[t]he board had expressed willingness to surrender [the] pond [at the corner of Hanley & Babcock]” to allow your development to tie into that pond.  We’re not sure where you got that impression, but no Board member has ever agreed to the use by your project of that retention pond to meet the requirements of your project.  Respectfully, we can NOT agree to your use of that pond, because it was designed (and is needed) to meet the stormwater requirements of the CT Condominium community.

7.     Finally, you asked what we would prefer for the height of an earth berm you propose to install to block light (and potentially sound) from the parking area on the southern edge of your property from the rear of the CT units on Palisade Drive.  The only way to answer your question is that the berm (or any suitable alternative such as a fence or wall) should be high enough to block the headlights of any vehicle that might use that parking area.  Also, please let us know exactly what you have in mind for a berm (how will it be landscaped, how much encroachment on CT property, who will be responsible for maintenance and liability, etc.).  Also, if you installed a fence or wall as an alternative to a berm, what type of material would be used?

Happy Thanksgiving to you, as well.  We look forward to your reply, and determining whether we can work together on these items, but we wanted to set the record straight on some points on which there seems to be misunderstanding.

Mickey

On Thu, Nov 18, 2021 at 6:19 PM Paine, Matt <[matt@painegroup.com](mailto:matt@painegroup.com)> wrote:

Mickey et al.,

Yesterday 11/17, we had a meeting with Bozeman city planners and engineers to discuss our initial application. For those of you not familiar with the city review process, most applications go through three or four reviews before final approval is granted.

The comments on our first review revolved mostly around little things we expected, the facade, and of course resolution of all the access concerns.

Most of the time was spent on the last point as there is a bit of confusion all around. As you can imagine, development in the Bozeman of the 1980's and 1990's was done loose and fast and so we ended up with a few issues here:

1. Mill Creek was always planned by the city to connect to Babcock.
2. Hanley was accidentally built onto my lot for a little stretch.
3. The stormwater storage system requirements of the city were completely different then, than they are now.

For better or worse, when Mr. LeClair completed all the land development, he recorded no public use easements on Hanley and Mill Creek despite being required to do so. Somehow that slipped through the cracks until now. We made the city aware of our research and after battling us, realized they could not enforce a road connection between Mill Creek and the Six Range Development. The planners, rather upset, asked if we'd grant an easement there now so that when the area gets redeveloped in 75 years or whenever, the road can get connected then. I am ok with that as I think we are probably looking at skyscrapers then, long after we're gone, and connectivity will be important. There is no point however, in me doing that legal unless your association also wishes to grant that public use easement. The point on which we agreed with the city was that at least some connectivity for pedestrians and bicycles between the two properties would be beneficial to the neighborhood. I am quite certain that once residents on your streets have lived with Six Range for a while, they might actually enjoy walking up there for a Sunday morning coffee or some Tuesday evening Sushi. Not having to walk over a berm in the middle of winter to do so might be good for them. Let me know if you want to meet sometime if that is something you agree with and I'll work with you guys to create some path/walkway there.

The Hanley situation is a bit more complicated.

First, the parking spots have been removed. That was my oversight, I should have caught the architect adding that. Again, I'm sorry.

I had discussed two things with the board before regarding Hanley. One, the sidewalk we have to install along the western boundary of our project: This is a code provision we can't get around. Thinking functionally though, we realized that no one would use it. Realizing there will probably be people walking/riding up and down Hanley with increased vehicular traffic, they will just dodge traffic as I assume they won't walk through a bunch of grass onto our development to use that sidewalk. I offered to build and maintain a sidewalk on the east side of Hanley as that seems safer and more useful.

Two, this sidewalk location would then necessitate us tying into the stormwater pond on the SE corner of Hanley and Babcock. The board had expressed willingness to surrender that pond in whatever fashion necessary as it currently is a maintenance and legal liability. I felt that I didn't need to take ownership of it as it would increase the site review time (boundary adjustments can take a while) as well as increase our property taxes. Back then we thought easements existed. Fast forward to yesterday, we discussed how to accomplish the goals with the sidewalk and stormpond with the city and they were not sure. There are some obscure code provisions that may or may not allow this to happen, with or without a public use easement. They are having an internal meeting (soon I hope) with the planning director, development director, and city attorney to figure out what to do. I'm not 100% sure how that will play out but I am guessing one of two ways: We could get permission to build the sidewalk along Hanley and then use the pond as planned. This would likely come either through a public use easement (if the HOA is still amenable to that) or a boundary adjustment (I am open to that as long as it works with our timeline). The other option of course is to build the sidewalk a good bit east of Hanley and save us all some trouble.

I will let you know as soon as I get an update. I would love to hear how the HOA feels currently regarding that issue and what your preferences are.

In other news, we don't have our fill report yet, which gives us the math on how much extra dirt we have or need and where final grade height will be, but are trying to predict how high of a berm we can build along the southern edge. Do you guys have a prefered height? We aren't sure but as you know, the higher you go the more it spills out laterally. We think that once we get beyond three to four feet, the width of the berm would require it to encroach onto HOA land. Again, I don't care much personally as higher is obviously more expensive for me, but I want to make sure to honor my commitment. Let me know your thoughts on berm height and, if necessary, some spill over onto your land would be agreeable to accomplish your desired height.

We are hoping to resubmit with our revision next week or worst case, the week after. If you have feedback before next Wednesday specific to the Hanley situation that would be great. Everything else is not urgent.

Let me know if any of you want to walk the site before the snow settles in!  
  
Thanks and Happy Thanksgiving everyone!

Matt