



THE RABB

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December 10, 2021

Alanah Griffith
Griffith & Cumming, PC
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SENT VIA:
Regular Mail
Electronic Mail

**RE: Street Cut on Hanley Avenue and Trespass on Paine Property by
Cottonwood Condominiums, Inc.**

Dear Ms. Griffith:

The Rabb Law Firm (the “Firm”) represents Vertex Holdings LLC and its proprietor Matt Paine (collectively “**Paine**”) regarding the property located in Gallatin County, Montana and described as:

Tract A1 of Minor Subdivision No. 338, located in the SW $\frac{1}{4}$ of Section 10, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the Office of the Clerk and Recorder of Gallatin County, Montana (“**Six Range Tract**”).

It is our understanding that your office represents Cottonwood Condominiums, Inc. (“**CC**”) which is the owner of the owner of property located in Gallatin County, Montana and described as:

Lot 2B of Minor Subdivision 365A, located in the SW $\frac{1}{4}$ of Section 10, Township 2 South, Range 5 East, P.M.M., City of Bozeman, Gallatin County, Montana (“**CC Tract**”).

As you are likely aware, representatives of Paine and CC have for several weeks been negotiating the terms of a detailed easement agreement between the Six Range Tract and the CC Tract in order to resolve certain issues for each side. The negotiations between Paine and CC resulted in the draft access and use easement agreement (“**Easement Agreement**”) between the parties regarding the CC Tract and the Six Range Tract. (See attached Easement Agreement). The Easement Agreement sought to memorialize CC’s agreement to grant Paine (and its successors) an easement on, across, and over a miniscule and unused portion of the CC Tract so that Paine could construct a street cut on Hanley Avenue to access Hanley Avenue from the southwest entrance to the newly proposed development on the Six Range Tract.

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As was discussed by the parties representatives, in exchange for the Easement Agreement, Paine was willing to provide certain monetary and nonmonetary consideration to CC. First, Paine was willing to demolish a portion of Slough Creek Drive west of Hanley Avenue and provide the initial landscaping of a portion of the CC Tract, as defined in paragraph 7 of the proposed Easement Agreement. Second, Paine was willing to execute a Waiver Agreement regarding the potential ongoing trespass by CC on the Six Range Tract, which was identified in the proposed Waiver Agreement. (See attached Waiver Agreement).

In addition to the benefits that each side were to receive, the Easement Agreement would also benefit the parties by resolving any potential ambiguities and potential conflicts regarding the 60 foot wide access and utility easement referenced on the Final Plat of Minor Subdivision No. 365A and recorded with the Gallatin County Clerk and Recorder on April 4, 2006 as Document No. 2223784 (“**CC Plat**”). The 60 foot wide access and utility easement referenced on the CC Plat seemingly allows Paine access on, over, and across the larger portion of the CC Tract than the draft Easement Agreement. However, the City of Bozeman has contended that Paine needs a separate easement agreement with the owner of the CC Tract, which resulted in the negotiations between the parties and culminated with the Easement Agreement. Since, CC has now indicated that its Board of Directors cannot expedite the approval of the Easement Agreement, it has become necessary for Paine to seek a resolution of the City’s interpretation and requirements as opposed to waiting for CC to approve the Easement Agreement. However, if the City continues to require a separate easement with the owner of the CC Tract, then Paine hopes that CC will be ready and able to immediately finalize the proposed Easement Agreement.

To that end, Paine has requested that I work with your office to ensure the language in the Easement Agreement and the Waiver Agreement is sufficient for both sides with the goal to expediting the execution of the Easement Agreement if the City continues to require a separate easement agreement with the owner of the CC Tract. It is my understanding that CC is now taking the position that its Board of Directors do not have the authority under the Declaration and Bylaws to execute the Easement Agreement on behalf of its members and that CC will not execute the Easement Agreement unless seventy-five percent (75%) of its members agree to do so through a vote to amend the Declaration. We have reviewed CC’s Declaration and Bylaws and in our opinion it is unnecessary and financially wasteful for CC to go through the onerous process of seeking to amend CC’s Declaration. In our opinion, CC’s Board of Directors have the actual or apparent authority to execute the Easement Agreement on behalf of CC and its members. (*See* Bylaws of the Association of Unit Owners of CC Condominium, Article VIII(O.), (Q.), (R.), (S.), and (V.)). If you concur, then we hope you are able to convince your client that CC’s Board of Directors has the requisite authority to execute the Easement Agreement. We also hope you are able to impart that it is in the best interest of CC and its members to take all the necessary steps, including conducting a vote of its members, to be prepared to immediately execute the Easement Agreement should CC continue to contend that its Board of Directors does not have the authority.

Should Paine later request CC to approve the Easement Agreement and assuming that CC is not able to immediately execute the Easement Agreement, then Paine has instructed my office to

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pursue any and all remedies under law or equity to resolve the continuing trespasses by CC on the Six Range Tract. The trespasses by CC not only include the encroachment by Hanley Avenue onto the far southwest corner of Six Range Tract, but also include the newly discovered trespass by CC on the southeast corner of Six Range Tract. This newly discovered trespass is created by a 30 inch diameter pipe coming from CC's stormpond which cuts across the southeast corner of the Six Range Tract and Paine equates to an illegal dumping on the Six Range Tract. Please be aware, Paine is willing to resolve these trespasses at the time when the parties execute the Easement Agreement. Please also know that Paine will not be willing to wait for an extended period as a result of CC not proactively taking steps in the meantime. As such, Paine is respectfully requesting your client take all necessary steps to be prepared to immediately execute the Easement Agreement, should you client not have a change of opinion regarding its Board of Director's authority to execute the proposed Easement Agreement.

Please discuss with your client, and we are requesting that you let us know CC's position regarding these issues within the next fourteen (14) days. We look forward to hearing back from you by 5:00 P.M. (MST) on Friday, December 24, 2022.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey B. Driggers", written over a horizontal line.

Jeffrey B. Driggers

Enclosures: as stated herein.