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August 14, 2021

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*VIA EMAIL ONLY (dave@vsbllp.com & nancylvoss@gmail.com)*

RE: June Lake Property

Dear Dave and Nancy:

This letter sets forth my initial comments regarding the nature, extent, and scope of the easement providing limited access rights in favor of Barbara Miller. My comments here are limited to my review of the sole easement document provided to date which is labeled ROAD RIGHT-OF-WAY EASEMENT and is Attachment 3 to the Mono County Planning Commission Agenda Packet and is at page 54 of the Packet (using .pdf pagination). Understanding that time is an issue for you, since your appeal hearing before the Mono County Board of Supervisors for your transient occupancy permit is set for August 17, I am issuing this preliminary comment letter directly to you based on that document which will be reviewed as part of the hearing. A formal title report and physical inspection of the property by me will be helpful for providing further comment.

Said document shows the following recording information with the Mono County Recorder - May 24, 1971, Instrument #3771; Volume 123, Pages 164-165 (the "Easement"). For our purposes here, I am assuming we have the operative text and you have asked me to assume that the benefitted property owner is Barbara Miller. The Miller parcel is adjacent to your parcel and is located at 214 Skyline Road.

I am also assuming for our purposes here that your property is the Servient Tenement (the burdened parcel), and Miller's property is the Dominant Tenement (the benefitted parcel). You then would be the successors to the original Grantors, and Miller would be the successor the original Grantees.

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The Easement reads as an easement appurtenant, meaning it runs with the lands of the Servient Tenement and the Dominant Tenement. It also reads as being non-exclusive to the Dominant Tenement. This conclusion is based on the absence of any language making it exclusive. It is therefore presumed to be non-exclusive. An easement is nonexclusive unless it has been made exclusive by the express terms of the instrument creating it. (See generally, *City of Pasadena v. California-Michigan Land & Water Co.*, (1941) 17 Cal.2d 576.) I see nothing in the Easement to find it being exclusive to Miller.

The Easement area is stated to be 14 feet wide, subject to minor adjustments stated in the Easement. The stated purpose (or use) is “to give access to the Grantees’ parcels of land”. This is in essence an easement for ingress and egress to and from the Miller parcel. There are reserved rights stated in your favor. The most relevant item related to the issues here is “the right to cross and recross the easement at any point ***and for any purpose in such a manner as will not materially interfere with the Grantees’ use of the road and the right to use the existing road for all proper and lawful purposes to serve Grantor’s property.*** (emphasis added)”

The foregoing language is clearly in your favor. This comports with a long-standing principle of easement law. You as the servient tenement can make any use of the easement area that does not interfere unreasonably with the easement right of the dominant tenement. (*City of Pasadena v. California-Michigan Land & Water Co.*, *supra* (1941) 17 Cal.2d at p. 579.) The road (your driveway as distinguished from Skyline Drive itself) is 14 feet wide, at a minimum. In my opinion you could park cars on, at, or near the roadway, so long as Miller has enough remaining width to reasonably access her property with a vehicle for ingress and egress. This road is then treated the same as a 14 foot wide public road. People park on similar roads all the time.

You informed me of several verbal objections stated by Miller including her belief that you cannot park cars in front of the garage. Unless she can establish a use by you or your guests which unreasonably interfere with her express or legally implied or given use rights, then you should prevail. “The rights of an easement owner are restrictive, and the rights of the owner of the servient tenement are residual. Thus, the easement owner possesses only those rights of enjoyment established by its creation, and all other rights and uses of the property remain with the owner of the servient tenement. (6 Miller & Starr, *Law of Cal. Real Estate* § 15:63 (4th ed.)) In this case, Ms. Miller has only one specific, limited right; to wit, to access her parcel across the driveway. That right does not prohibit you to park cars adjacent to that access nor any other lawful use of your land, as you have all such reserved rights as noted above.

As we have discussed, once I have a formal title report and survey, I will be prepared to take legal action on your behalf, if that becomes necessary to enforce your rights and to make full use of your property, subject to the access rights of Ms. Miller. Your rights of enforcement are all as presented here and as the underlying fee owner of the easement area.

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Please contact me to discuss your review of this letter and to address any questions you have.

Very truly yours,

*David S. Baumwohl /s/*

DAVID S. BAUMWOHL

DB:s