

Legal Issues Effecting the Use of the Waterford Estates Trail and Options for Cure



**A CITY OF HAUSER PRESENTATION BY
ART MACOMBER, CITY ATTORNEY
OCTOBER 15, 2011**

Timeline of Events



- **12/31/01: Trail 35% completed, total projected cost \$43,076.**
- **4/16/02: Tracts B & C conveyed to City of Hauser (Instr. #1728568)**
- **4/18/02: Waterford Estates Plat recorded (Instr. #1728841)**
- **1/22/03: Trail Easement Deed recorded (Instr. #1776980)**
- **4/15/03: Six City of Hauser quitclaim deeds created for trail**
- **3/2011: City of Hauser quitclaim deeds for trail recorded**
- **About 7/24/11: Trail fenced off by Waterford Estates HOA**

Potential Legal Issues



- Insurance: Property owners, HOA, City, trail owner
- Deeds: Who, what, when, where, recorded or not?
 - Idaho statutes and case law regarding interpretation, priority
- Trail ownership: How to clear up title to land and trail?
- Developer liability: Waterford Estates v. trail/lot owners?
- Adverse possession: Idaho Code § 5-203, et seq.

Grant & Dedication Documents



- 4/18/02: Order of Decision, Kootenai County BOCC
- 4/18/02: Waterford Estates Plat (Instr. #1728841)
- 6/3/02: Subdivision Agreement (Hauser, Koot. Co., & Dev.)
- 1/22/03: Trail Easement Deed (Instr. #1776980)
- 3/15/11: Various deeds to City of Hauser (same language)
- Other documents, see separate .PDF list

Order of Decision, Koot. Co. BOCC



- BOCC Conditions of Approval #7.30: “In lieu of the community trail being constructed adjacent to W. Hauser Lake Road, the final plat shall depict the 10-foot wide, paved community trail as being located adjacent to the easternmost lot lines. The community trail shall connect to W. Hauser Lake Road north of Lot 16 and south of Lots 2 and 3. Applicant shall also be responsible for posting the allowed use of the trail that access to the adjacent wetland is restricted.”

Waterford Estates Plat (Instr. #1728841)



- Book I, Page 346A, Plat Map: On western border of Tract C: “15 foot wide trail and utility easement.”
- Book I, Page 346A, Plat Map: On western border of Lot 1: “20 foot wide trail and utility easement.”
- Book I, Page 346C, Owners Certificate: “Tract B and Tract C (Wetlands) to the City of Hauser. . . . Granting the easements as shown hereon and any other such easement as may be of record or in view.”

Subdivision Agreement

(between the City of Hauser, Kootenai Co., & Developer)



- ¶ B: “Subdivision lots must be provided with improvements included in the application . . . including but not limited to . . . [the] path system.”
- ¶ 5: “. . . [Due to Hauser City Code requiring it only accept completed improvements] the City cannot accept the uncompleted improvements, except the trail located within the lands donated to the City.”

Trail Easement Deed (Instr. #1776980)



In pertinent part:

- “The grantees to this easement are the owners of the lots located in the subdivision, known as Waterford Estates and the public in general (collectively referred to as the ‘Grantee’). The mailing address for the Grantee shall be the Waterford Estates Property Owners, Inc., whose address is [Atty Wetzel’s old office on Kathleen Ave in CdA].”
- “This access easement is also made, conveyed and granted for the use and benefit of the general public.”
- “By accepting and recording this easement, Grantee agrees and acknowledges that any improvement and maintenance of the easement shall be the sole responsibility and cost of Grantee.”

Six Deeds to the City of Hauser

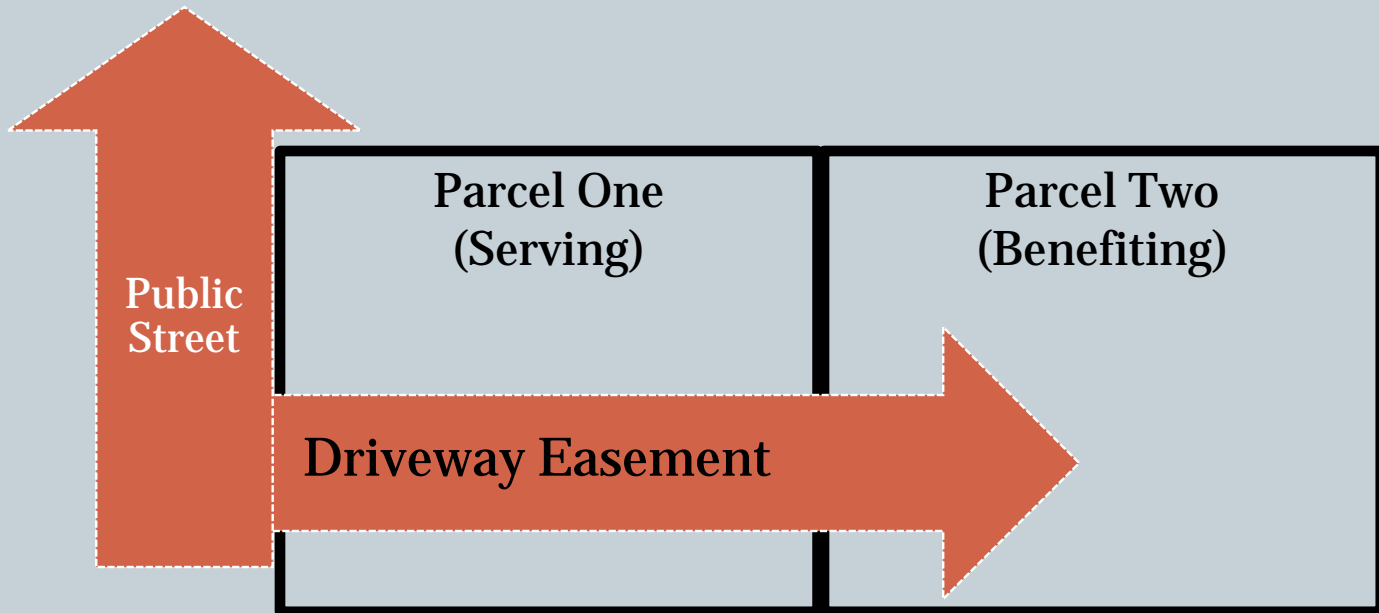


- The six deeds to the City of Hauser appear as grants of property in fee simple, and not simply grants of easement across the land of another parcel owner.
- Specific language: Grantor “do[es] hereby remise, release, and forever quitclaim, unto the City of Hauser, whose address is [address] as Grantee, and to Grantee’s heirs and assigns forever, a portion of Lot 14, Block 1, Waterford Estates according to the plat . . . Together with all tenements, hereditaments and appurtenances thereto belonging, and all after-acquired title and interest to said property above described.”
- The legal description begins: a parcel of land in a portion of lot 14, block 1, [etc.] described as follows . . .”

Idaho Easements 101: Two Types



- In Idaho, easements “appurtenant” work like this:



- Easements “in gross” are for the benefit of a particular person or entity, and do not have to be attached (“appurtenant”) to a neighboring parcel.

Idaho Easements 101 - continued



- A benefiting easement owner is responsible for maintenance of the easement, and the serving parcel has no duty to maintain the easement. *Walker v. Boozer*, 140 Idaho 451, 455 (2004).
- At Waterford Estates, the HOA appears to be the benefiting owner throughout all the documents, while it was envisioned in both the plat and the six City deeds that the City be the serving landowner in fee simple, whether that land was on Tract C or across some Lots.

What Type of Easements at the Trail?



- On the Plat: The HOA likely has an easement “appurtenant” or “in gross” on the City’s property (Tract C).
- In subsequent deeds: The City owns strips of lands across certain Lots, and the HOA has an easement over those strips: may be “in gross” or “appurtenant.”
- This is difficult to determine without 1) an attorney taking testimony of 2) a licensed surveyor so that a 3) judge can give a final ruling. This is called a Declaratory Judgment.
- City’s Perspective: Avoid a lawsuit, work with neighbors to find a solution! Save money, work at getting along to fix the problem.

Potential Legal Issues – What is Likely



- Insurance: Property owners, HOA, City, trail owner
- Deeds: Who, what, when, where, recorded or not?
 - Idaho statutes and case law regarding interpretation, priority
- Trail ownership: How to clear up title to land and trail?
- Developer liability: Waterford Estates v. trail/lot owners? **No.**
- Adverse possession: Idaho Code § 5-203, et seq. **No.**

Insurance



- Lot owner: **Check with your insurer.** If trail is City property in fee simple, with an easement for the HOA, then the HOA is the benefiting party, and the HOA's insurance would apply to liability claims first, then the City as underlying landowner. The individual lot owner would then have no liability, or distant (third place) liability if any.
- This does not mean a lot owner does not get sued, it just means that if sued they would likely be found non-liaible, unless they had altered the trail to a user's detriment – for example, by creating a hazard on the trail.

Trail ownership: How to clear up title?



- Lawsuit:
 - 3-4 day trial = \$35,000 to \$50,000, without expert witnesses
 - 3-4 day trial with experts = \$60,000 plus
- Neighborhood solution: \$5,000 to \$10,000 max.
 - Attorney meetings, document preparation for all Lots: leave the trail in its current location. (Cost for a single party, with many it goes up!)
- Abandon existing trail, construct new trail on Tract C: \$50,000 to \$80,000, depending on Army Corps of Engineers requirements for install and maintenance.

QUESTIONS?



**Thank you for coming and
getting involved in your
community!**