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Position Paper

Regarding

Access Easement 4353 & 4349 Lennox Drive

Issue: The resident at 4353 Lennox Drive (herein "Lot 412"), claims that the access easement on her property and her neighbors property, 4349 Lennox Drive (herein "Lot 411"), is not a public easement and she wants to close the access.

Meeting: A meeting was held at 4pm in Conference Room #7 to discuss this issue and to draw a consensus. In attendance at the meeting were the following: Brad Klavano ***(Director of Development Services/City Engineer)***, Jason Rasmussen ***(Public Works Director)***, Colby Hill ***(Associate Director of Public Works)***, Ryan Loose ***(Assistant City Attorney)***, Ken Short ***(Senior Engineer)***, Greg Schindler ***(City Planner)***, Don Tingey ***(Director of Strategic Services)***, and David Mann ***(Planner)***.

Facts:

1. At the time of the Plat recordation June 21, 1996 of the Wasatch Meadows South Phase 4 Subdivision a Public Utility and Parkway Access Easement (herein the "Easement") was recorded on Lot 412 (4353 Lennox Drive) and Lot 411 (4349 Lennox Drive). The Easement was recorded at 20 feet (10 on each property) from Lennox Drive to about half of the properties then it widens out to 40 feet wide (20 feet on each property).

2. The Easement runs from Lennox Drive to the Bingham Creek trail system. The portion of the Easement on Lot 412 is used primarily for public utilities while the portion of the Easement on Lot 411 is used primarily for public access to the Bingham Creek trail system (herein "Parkway Access Trail"). The portion used for Parkway Access includes a concrete sidewalk and trail stairs constructed from railroad ties.

3. The Public Improvement Plans for the Wasatch Meadows South Phase 4 shows the Parkway Access Trail with a detail on the plans showing how to construct the stairs using railroad ties.

4. The background section of the City Staff report to Planning Commission for the plat (January 10, 1996), states: "The walkway will allow pedestrian access to the Lennox Drive Park. Also, a 20 foot walkway should be provided from Lennox Drive to the Bingham Creek recreation area either in phase 3 or 4 (two access points).

5. The Parkway Access Trail at this location was constructed within the Easement and with the subdivision improvement for this subdivision in or around 1996.

6. The Parkway Access Trail has been used and maintained by the residents since the access completion around 1996 until today.

7. The resident at Lot 411, where the majority of the Parkway Access Trail as is presently constructed sits, is a longtime resident and is not requesting closure of the access.

8. The resident that wants to close the Parkway Access Trail bought the property about 6 months ago and the Parkway Access Trail was present and active at that time. The resident has also posted a sign that the Parkway Access Trail will be closing and has requested a fence permit blocking the Parkway Access Trail.

8. The City, to date, has not been maintaining this Parkway Access. (Note: this is purely speculation as the City has a document that states that this subdivision was annexed into the Glenmoor Service District. So, it is reasonable to interpret that the Service District maintained this access and when the Service District went away, just like the walk-ways in Glenmoor, the Parkway Access Trail was not maintained.)

Conclusions: 1. This Parkway Access Trail is a public access. While the Plat does not clearly state who the easement is in favor of, it is clear that it is in favor of the City because it is providing access for the public to the "Flood Maintenance Easement, Open Space Right of Way (Parkway), P.U.E. & Drainage Easement that was dedicated to the City for Public Use (see plat for the Bingham Creek Dedication area).

2. As the Easement, including the area for the Parkway Access Trail, is a public access easement in favor of the City, the City is responsible for maintenance of the access. As with any City owned property, including interest in property such as an easement, any claims resulting from accident or injury on the Parkway Access Trail will be evaluated by the City in accordance with applicable laws and statutes.

3. The City will now maintain this Easement for public access.

4. The resident cannot block off this public access easement unless the City Council abandon's the Parkway Access Trail portion of the Easement.

Signed: Brad Klavano

Brad Klavano – Director of Development Services/City Engineer

9/17/14

Date