

From: James Thompson <jrt@millerandlaw.com>
Sent: Wednesday, June 16, 2021 10:39 AM
To: Ryan Howser <RyanHowser@elpasoco.com>
Cc: 'jamesrwiss@aol.com' <jamesrwiss@aol.com>; Jean Gilbo <jean@homkor.com>;
ElenaKrebs@el Paso.com; Jennifer Duettra <jdd@millerandlaw.com>
Subject: T-Bone Construction, Inc. (SF-20-022)
Importance: High

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Hi Ryan,

This email follows the voice mail message I left for you a little while ago. My client, IDGAS, LLC, the owner of Lot 2 (Filing 7), only yesterday received the Notice of the hearing scheduled for tomorrow. I have a few questions regarding the application and the hearing, including whether I should plan to appear in person or remotely. Would you please give me a call today at your very earliest opportunity? Please call me on my cell: 303.319.5509, as I am working remotely.

Please note that **my client objects to approval** of the application as it appears to eliminate the only practical access to the rear of my client's property, which has existed since the shopping center was developed 20+ years ago. Moreover, under the recorded Easements and Declarations, the proposed subdivision can be completed without the consent of the Major Owners; namely, my client and Safeway. I understand that Safeway previously denied T-Bone's request and that T-Bone submitted the current application in an attempt to circumvent the recorded Easements and Declarations governing the development and use of the shopping center.

Accordingly, the proposed subdivision should be denied, as it fails to meet at least two of the approval criteria outlined in Section 7.2.3.A of the El Paso County Land Development Code (2019):

- Vacation of the recorded plat will not vacate road rights-of-way or access easements needed to access other property (the proposed "Tract A" does not appear to provide adequate substitute access); and
- Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the vacation of the plat has been resolved.

Moreover, we are unable to determine whether the proposal impacts existing sidewalks and postal boxes. Having only just received Notice of this application, we have not yet had a chance to look into whether other approval criteria are met or not and my client reserves the right to raise additional objections to approval.

I look forward to speaking with you soon.

Thank you.

Sincerely,

Jim

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Hi Ryan,

Thank you for returning my call and for your time on the phone earlier. I have a call scheduled with my client later this afternoon (3pm) and will update you by email concerning the objection following the call.

I do want to point out something regarding the recorded easements for the Shopping Center. In that regard the Declaration of Easements With Covenants and Restrictions Affecting Land, recorded 4/22/1999 at reception number 099062123 and subsequent recorded amendments thereto (the "Declarations") establish that the subject access road is part of the common area to which all Owners, like my client, have an Easement. In that regard, please see the Declarations at Sections 2.1.1, 3.2.1, and 7.1. Modification requires the consent of all Major Owners (my client and Safeway). See the Declarations at Sections 13.2.1 and 13.3.1.

Additionally, granting the subdivision request is contrary to the Declarations as it serves to change the layout of the Shopping Center. Please see the Declarations at Section 13.3.

While I understand that this application for subdivision approval only at this time and will not presently impact the subject access road and that it is not the Planning Commissions job to enforce the Declarations, I wanted to make sure that the Planning Commission is aware that a valid easement does exist with respect to the existing access road across the T-Bone property to the rear of my client's property, as well as the issue regarding modifying the payout of the Shopping Center. Accordingly, any approval should be conditioned upon compliance with the Declarations pursuant to the approval criteria outlined in Section 7.2.3.A of the El Paso County Land Development Code (2019):

- Where the lots or parcels are subject to any CC&Rs or other restrictions, that any potential conflict with the CC&Rs or other restrictions resulting from the vacation of the plat has been resolved.

I will update you further following the call with my client later this afternoon.

Thank you for your time, consideration and professional courtesy.

Sincerely,

Jim

James R. Thompson, Esq.
Of Counsel
Miller & Law, P.C.
1900 West Littleton Blvd.
Littleton, CO 80120
Direct: 720.616.7070
Office: 303.722.6500
Fax: 303.722.9270
Email: jrt@millerandlaw.com

