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Board of Supervisors, County of Santa Barbara
County Administration Building
105 East Anamapu Street - Suite 407
Santa Barbara, California 93101

Re: My right to use the private roads for development of Phase 4, Northhpoint Village.

Gentlemen:

Several years ago, when I first proposed to develop Phase 4 of Northpoint Village with its own separate governing documents, the county's planners expressed some doubt that I could gain access to the private roads without annexation to the existing homeowners association. The question was submitted to County Counsel.

Over an extended period, I conferred and corresponded with the County Council's office on the matter. My position was, and is, that every owner of a lot in the tract has an easement over all of the roads, pursuant to the appellate court's decision in the case of *Danielson v. Sykes* (1910) 157 Cal. 687. That decision states unequivocally that if a map is made part of a deed (that is, the map is referred to in the legal description set forth in the deed) and exhibits streets and alleys, the right to use all of those passageways attaches to each lot sold. I believe that County Counsel now concurs with my position on this particular issue.

Although the *Danielson* case dates back to 1910, Shepard's Citations lists a string of 35 cases dating into the modern era that were decided, at least in part, on the strength of the said rule, which has become woven into the fabric of California law as it pertains to rights in the lands of another.

Case law on this subject is complemented by Sections 845(a), 845(b) and 845(c) of the California Civil Code which state as follows:

"845(a) The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair."

"(b) If the easement is owned by more than one person, or is attached to parcels of land under different ownership, the cost of maintaining it in repair shall be shared by each owner of the easement or the owners of the parcels of land, as the case may be, pursuant to the terms of any agreement entered into by the parties for that purpose. If any owner who is a party to the agreement refuses to perform or fails after demand in writing to pay the owner's proportion of the cost, an action for specific performance or contribution may be brought against that owner in a court of competent jurisdiction by the other owners, either jointly or severally."

"(c) In the absence of an agreement, the cost shall be shared proportionately to the use made of the easement by each owner.

"Any owner of the easement, or any owner of land to which the easement is attached, may apply to any court where the right-of-way is located and that has jurisdiction of the amount in controversy for the appointment of an impartial arbitrator to apportion the cost. The application may be made before, during, or after performance of the maintenance work. If the arbitration award is not accepted by all of the owners, the court may enter a judgment determining the proportionate liability of each owner. The judgment may be enforced as a money judgment by any party against any other party to the action."

The issue seemed to have been settled. The Northpoint Village Homeowners Association (the "Association"), apparently felt secure in the knowledge that, regardless of my right of legal access, the development of Phase 4 would not go forward without provision of a windfall for the Association, because the Planning Commission simply (and arbitrarily) would refuse to issue a building permit, and saw no reason to pursue the question of access to the roads, at that time.

However, after negotiations had completely broken down, the access issue did arise, again. In correspondence with Mr. Zorovich, of Planning and Development, the Association's attorney, Mr. Guenther, states, "The Association has never contended that that Mr. Evans does not have legal access to his property across the private roads owned by the Association." That, of course, is patently untrue. The assertion that I would not have access to the roads was put forth early on, as an absolute bar to my developing Phase 4 without annexing to the existing association. In the next breath, Mr. Guenther contradicts himself by saying, "Rather, the association's contention is that the reference-to-a-map method does not give Mr. Evans the right to build out Phase 4 without annexing into the Association." As a matter of fact, the "reference-to-a-map method has nothing to do with annexing.

Mr. Guenther refers to the case of *Mikels v. Rager 232 Cal. App. 3rd 334 (1991) as "current case law,"* that has somehow superseded or at least modified the principle enunciated in the aforementioned *Danielson* case. Nothing could be further from the truth. The two cases have virtually nothing in common, by way of facts, issues, or the law.

In the *Mikels* case decision, the court conducts a scholarly analysis of the law of easements, in the course of which it indicates that an easement cannot happen accidentally, but must be intentionally created by the grantor. Regarding the necessary intent, the court states as follows:

> "Second, it presupposes an intent on the part of the original grantor, by depicting the road on the map and by referring to the map in the deed, to create an easement, as opposed to depicting the road and referring to the map for purposes of description only or as an aid in identification, this intent being unambiguously shown by the creation and depiction on the map of new streets, as opposed to the depiction on the map of a street already depicted on earlier recorded documents. (Emphasis added.) (Citations omitted.)

So there you have it. The intent necessary to create the easement in question is "unambiguously shown" by the depiction of new streets on the map. (The street in question in that case was Almond Street, which existed before the tract map was created and was included on that map for purposes of identification, only.)

Mr. Guenther has seized upon the "intent" element in the *Mikels* case to hint darkly, and somewhat incoherently, that in addition to the original developer's intent in creating the easement, the intent of his successors,"the County, DRE, and all other agencies involved in the Northpoint Project," should be considered in determining whether or not an easement over the roads attaches to each lot. That is not the law; it is obfuscation.

Respectfully submitted,

Leo M. Evans