

September 15, 2016

Mayor Bieter and Boise City Council
City of Boise Planning and Development Services

Re: Ben's Crow Inn Application (CAR-16-00002, PUD16-00005, SUB-000006)

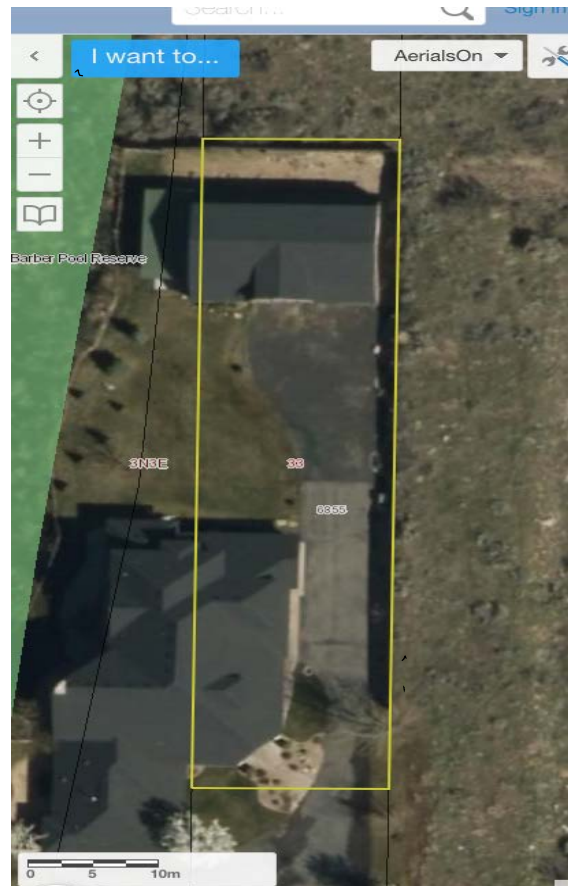
Dear Mayor Bieter and Council Members:

We are writing in response to the letter submitted to the City Council by Ms. Nelson, attorney for DevCo Development. We would like to show that we did respond to Ms. Nelson about DevCo's offer, that we clearly own more than 0.18 inch of land behind Ben's Crow Inn, that DevCo's survey has changed depending on DevCo's needs, that there is not prescriptive easement across our property, and Mr. Conger has not provided a public benefit with the changes to his subdivision plan.

Ms. Nelson, an attorney for DevCo, contacted us in July, 2016. Ms. Nelson called and explained that DevCo has now determined we actually own 0.18 of an inch of property, explaining it was so small we couldn't close this property without trespassing. They offered to purchase the "small" piece of property from us, give us first rights to the lot in front of our home that would be fenced off from our existing property and sell us back a small piece of our driveway we currently own. She also mentioned that they would prevail in a law suit against us claiming a prescriptive easement so we should accept their offer.

After the first phone conversation and subsequent email with Ms. Nelson it was clear DevCo was not interested in working with us or our neighbors to truly meet the intent of providing the public amenity of Greenbelt access as requested by Boise City Council. After this phone call we emailed Ms. Nelson on August 10th and explained that Brant was working on the Pioneer Fire and wasn't immediately available and that prior to any more discussions we would like to have a mediator involved. We felt that it would be best to have a mediator so that there was an unbiased participant to facilitate the discussions to help all parties come to a decision. We made it quite clear in our letter in response to the request for mediation that we were not interested in the offer presented by Ms. Nelson and did not want any further discussions without a mediator. Mr. Conger said no to mediation so there were no further discussions between us and the attorney DevCo hired to contact us.

We have come across many concerns with the multiple surveys that have been submitted for this development. Sawtooth LLC submitted a second survey to Boise Planning and Zoning. If you look at the views of our three lots prior to this survey and after you will see our property lines have changed substantially.



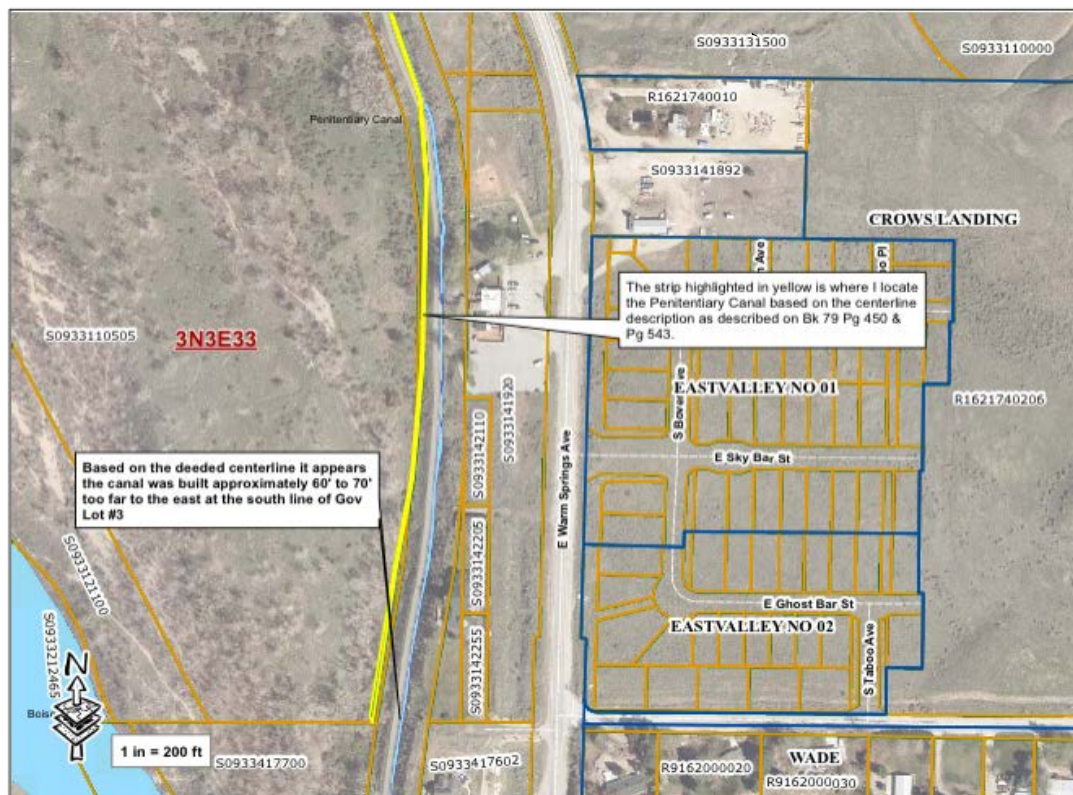


When we inquired about these property boundary changes with the County Assessor we were told it was what the staked pins on the ground showed that determined ownership not the plan views. We believed this to be true until the last survey changes submitted by DevCo on August 24, 2016. This most recent survey contradicted two previous surveys DevCo commissioned. The survey now showed that we own less than an inch of land between Ben's Crow's Inn and the Penitentiary Canal, this also differed from the staked boundary lines prior to this survey. Sawtooth changed the original survey and now displayed a 50 foot right of way from the Center of the Penitentiary Canal that runs the length of our property. With the 50 feet right of way this would leave approximately 0.18 inch of land between the Penitentiary Canal property and Ben's Crow Inn. After meeting with our Title Company and the Ada County Assessor's office we found the property deeded for the canal is indeed 100 feet wide, but the canal was not actually built in the center of the strip of land purchased. In one section the canal is 60-70 feet off of centerline of the canal property boundary, please see the map below from Don Watts, Senior Land Records Analyst for the Ada County Assessor's Office. Our deed states we own the land east of the Penitentiary Canal. We are now working through our Title Company and the Title Insurance to clearly designate the exact ownership location. It is clear from DevCo first two surveys, the stakes on the ground and our preliminary survey work that our private property is clearly not 0.18 of an inch wide.



Don Watts
Senior Land Records Analyst

Ada County Assessor's Office
190 E. Front St., Boise, ID 83702
(208) 287-7267
dwatts@adaweb.net



We have been in contact with the Boise Control Project and are fully aware that they have a 25 foot easement from the centerline east of the Penitentiary Canal, please see letter below. This easement still does not make our property less than an inch wide. It makes it approximately 25 feet wide, matching the area that what was shown on DevCo's original survey.

Boise Project- Board of Control
2465 Overland Rd.
Boise, Idaho 83705

12 September 2016

Krista Petersen
6833 E. Warm Springs Ave.
Boise, Idaho 83716

RE: Easement of Penitentiary Canal
6833 E. Warm Springs Ave.
Penitentiary Canal
Sec. 33, T3N, R3E, B.M.

Krista Petersen:

The United States' Penitentiary Lateral lies within the boundary of the above-mentioned location. The easement for this lateral is held in the name of the United States through the Bureau of Reclamation under the authority of the Act of August 30, 1890. (26 Stat. 391; 43 U.S.C. 945)

The Boise Project Board of Control is contracted to operate and maintain this lateral. We assert this federal easement 25 east and 30 feet west of the lateral's centerline. Whereas this area is for the operation and maintenance of our facility, no activity should hinder our ability to do so.

The United States Government owns part of the Penitentiary Lateral in fee at different locations. The property that is held in fee appears to be the same width as the Act of August 30, 1890 easement.

Whereas these easements are for the operation and maintenance of our facility, no activity should hinder our ability to do so. The Boise Project does not approve landscaping (other than grass) within its easements, as this will certainly increase our cost of maintenance.

The construction of any roadway crossings must be conducted only during the non-irrigation season when the lateral is dewatered. In any case no work shall take place within the easement before the proper crossing agreements have been secured through the Bureau of Reclamation and the Boise Project Board of Control.

Utilities, which plan to cross irrigation facilities in order to service this development, must do so only in accordance with the master policies now held between the Bureau of Reclamation and each utility. In any case no work shall take place within the easement before the proper crossing agreements have been secured through both the Bureau of Reclamation and the Boise Project Board of Control.

Storm Drainage and/or Street Runoff must be retained on site.

If you have any further questions or comments regarding this matter, please do not hesitate to contact me at (208) 344-1141.

Sincerely,

Bob Carter

Bob Carter
Assistant Project Manager, BPBC

bdc/bc
cc: Clint McCormick, Watermaster, Div; 2 BPBC
File

DevCo has already had to make a 5.64 foot change on our property boundaries at our fence line. Now they are changing the survey again. If you look at Sawtooth's initial survey submitted in February 2016 it is clearly marked with our name and clearly shows that our property is wider than 1 inch. If they are now saying that this area is less than an inch wide then their whole survey would have to be incorrect.

At the July 12, 2016 hearing Boise City Council tabled DevCo's pending applications due to a clear lack of public amenities as proposed. In the August 25, 2016 revised Boise Planning and Zoning Memorandum page 4, under Recommended Conditions of Approval K. "public access to the Boise Greenbelt" is recommended. Insuring public access to the Greenbelt requires crossing our private property, this property does not have a prescriptive easement. The width of this property is 25 feet at the current location of the path that we have allowed the public to use.

When we first moved into our home in June of 2013 Mr. Hamilton had a friendly discussion with Brant about the continued use of the path. At that time Brant told him that we would not close the path and that his customers could continue to use it to access his restaurant. Mr. Hamilton has always acknowledged that we owned the land and has never claimed an easement prior. We have even had discussions in the past about a land swap, the land behind his property for land in front of our home. When we discovered that Mr. Hamilton was selling the property to DevCo Development for a neighborhood we gave him a letter that revoked his permission to use the path upon sell of the property.

Brant Petersen
Krista Petersen
6883 E. Warm Springs
Boise, Idaho 83716

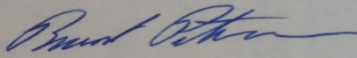
To: Clavis Ben Hamilton
6916 Pet Haven Lane
Boise, Idaho 83716

CC: Ben's Crow Inn
3644 E Warm Springs Ave,
Boise, Idaho 83716
Attn: Mr. Hamilton

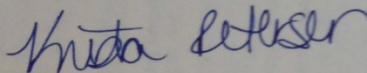
Dear Mr. Hamilton,

We understand that you have accepted a tentative offer on the Ben's Crow Inn restaurant and surrounding property. We write to revoke the permissive agreement verbally granted to Clavis Hamilton for Ben's Crow Inn restaurant patrons to access the restaurant across our private property, please see attached map for path location. This agreement will be revoked upon the closing of the Ben's Crow Inn Restaurant.

Sincerely,

 April 8, 2016

Brant Petersen

 April 11, 2016

Krista Petersen

If you read through DevCo's initial application submitted in February it acknowledges that the path runs through private property in multiple places, nowhere does it claim a prescriptive easement.

the operation of an existing system)

- Principle GDP-N.1: Connectivity. A continuous network of pedestrian and bicycle connections is needed through and between the city's neighborhoods. (connection added / continued to the existing greenbelt system – Note: our proposed pathway does stub to an existing pathway that is located on private property before connecting to the greenbelt system.)

22/10 | P0010-00003



Continued - Amenities

3. Section 11-07-06 5.B.d. Public Access to Public Open Space: Boise River Greenbelt
 - o We are proposing a public pathway city that will go from the Warms Springs Road sidewalk through our neighborhood and connect to an existing pathway that connects to the Boise River Green Belt System. Note: The BCI pathway stub connects to an existing pathway that is located on private property (for approximately 30') before connecting to the greenbelt system.)

Hughes v Fisher (Idaho, 2006) describes what constitutes a prescriptive easement in Idaho.

In order to establish an easement by prescription, a claimant must prove by clear and convincing evidence use of the subject property that is (1) open and notorious, (2) continuous and uninterrupted, (3) adverse and under a claim of right, (4) with the actual or imputed knowledge of the owner of the servient tenement (5) for the statutory period of five years. A prescriptive right cannot be granted if the use of the servient tenement was by permission of its owner, because the use, by definition, was not adverse to the rights of the owner. Indeed, the rule is well established that no use can be considered adverse or ripen into a prescriptive right unless it constitutes an actual invasion of or infringement on the rights of the owner. *Hughes v. Fisher*, 129 P.3d 1223 (Idaho, 2006).

We do agree the trail meets one of the five requirements. It has been open and notorious. It was never adverse, Mr. Hamilton never claimed a right to the land, and we had given him permission to use our land. It was not an invasion or infringement on our rights because we knew the public was crossing our property. It has not been open continuously for five years. This April Jim Conger and/or Mr. Hamilton placed a chain link fence across the path and closed it. This action stopped public use. Only when Jim Conger and/or Mr. Hamilton faced increasing public scrutiny and Ben's Crow Inn was losing business did they cut a hole in the chain link fence to open the path back up. This fence the owner constructed obviously interrupted continuous public access.

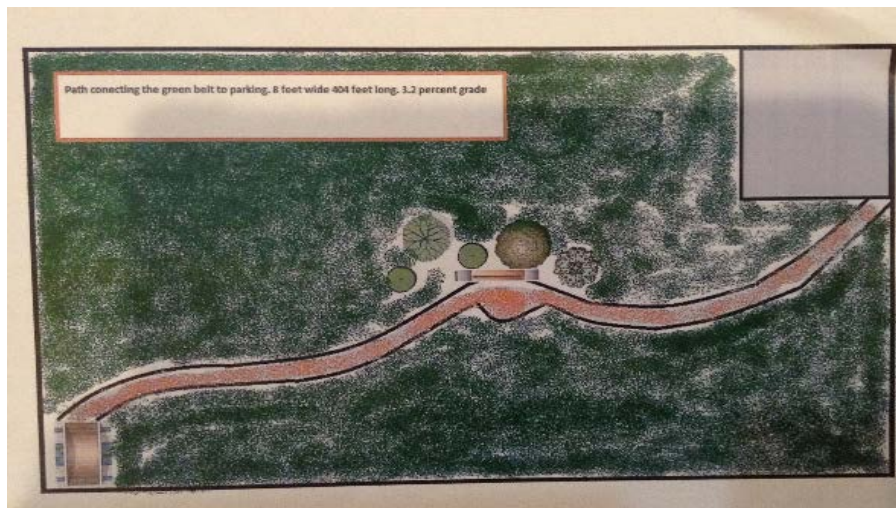
FRIDAY, APRIL 15TH 2016



(Twitter via @Ada_County)

Throughout this process no one has ever asked us, as neighbors, what we think would be best for this property? We understand development on this property is going to happen. We are not against this property being developed. What we would like to see is a developer purchase this unique property that takes into consideration the neighbors and residence of Barber Valley. This is the last commercial piece of property that remains in this area. The neighbors and us would like to see a multi-use area, commercial property with larger home lots that reflect the character of the existing neighborhood. The homes that are located along the Barber Pool area are custom homes on larger lots, the smallest lot being ours at 3.2 acres. No one wants to see a 700 foot solid row of 21 concrete homes.

Again we are willing to meet with a developer, if the developer is Mr. Conger then we request a mediator. We are still willing to discuss a land swap, as long as an accurate survey is completed. We are willing to trade our private property behind Ben's Crows Inn for the land in front of our home. After an accurate survey is completed we could exchange land, square foot for square foot. Then both parties involved could discuss a parking lot with a path that led to the Greenbelt. There is an area just north of our barn that has an existing favorable 4% slope to the Greenbelt that would be perfect for an ADA compliant path. We have drafted a preliminary design of what the path could look like with a bench and viewing area half way down the path.



At the last Boise City Council hearing it was stated several times that no one should tell Mr. Hamilton what he could or could not do with his land. We are simply asking for the same consideration, we own the land and do not want a developer threatening us or telling us what we can do on our private land. What we are asking for is a developer who is willing to meet with neighbors that are directly impacted. We would like a development to reflect the character of the existing homes and provide true public amenities. We would like a developer who has purchased commercial property to keep it commercial. Jim Conger has proven he is not this developer. He is not willing to meeting with us, our neighbors, and is not willing to consider viable public amenities as the Boise City Council requested for the PUD development.

Thank you,

Brant and Krista Petersen