4/12/2022

To:  Planning Commission, Town of Boulder

Re:  Fogel/Fuller Subdivision Application

We are writing to offer our comments on the Fogel/Fuller subdivision proposal.

1. There is an existing Access and Utility Easement, initiated by Fogel/Fuller in 2018, and agreed upon by both parties; recorded June 8, 2018.  The agreement provides for a 30 foot wide access and utility easement lying 15 feel to the north of the common property line (Fogel property) and 15 feet to the south of the common property line (Kelly property)

2.  As specified in the existing Access and Utility Easement we agreed to pay and did pay 1/3 of the cost of the road down to the Fogel/Fuller barn. The 1/3 cost calculus was  based on the fact that the road served two of the Fogel/Fuller properties and our single property.

3.  Without consulting us and unknown to us until recently when we had our land surveyed for our home construction, Fogel/Fuller did not follow the roadway plan described in the easement, and built the road on his property, though still within the easement boundaries.   He did however run his utilities down our side of the easement.

4.  The existing Easement specifies in Section 1C that the easement that is granted to the Kelly Parcel, and the Fuller/Fogel parcel is for one dwelling on each parcel.

5.  Fogel/Fuller makes no mention at all of the existing easement in his narrative or Road Maintenance agreement.  In fact, “he does not think it necessary to include the the Kelly’s in the road maintenance agreement because the road is 100% on his land.”  We disagree— the road is within the shared easement, we paid for our share of the road, and the road is still legally covered by the existing 2018 Easement.

6.  Fogel/Fuller recently submitted a copy of a maintenance agreement as part of the subdivision application. He did not approach us with his plans, nor in his application is there any acknowledgement of the need for a modification to the original Access and Utility Easement.

7.  Because the Fogel/Fuller subdivision plans violate the terms of the existing Access and Utility Easement, we respectfully request that the Planning Commission delay approval of the subdivision application until there is a mutually agreed upon modification to the existing Access and Utility Easement.

Thank you for your consideration.

 Susan and Jay Kelly 1949 S Lower Boulder Road

 Attachment:  Access and Utility Easement and Termination of Prior Easement