

October 27, 2022

Re: Conditional Use Permit for Rossi Property

Malheur County  
Planning and Zoning Board  
Vale, OR, 97918

Dear Planning and Zoning Board

We are writing to address (and hopefully help clarify) concerns expressed in a recent letter from Jeff and Diana Burkhardt. Ever since our parents' untimely deaths last November, we have had open, honest, and regular contact with Jeff Burkhardt regarding all of our parents' assets (including the property in question and its associated easement across his land).

Consequently, we were a bit taken aback by his letter of opposition. Over the past year, Jeff has reminded us frequently how fond he was of our parents. He has offered many times to help us work through this difficult process. He has even offered to purchase the Rossi property to add to his holdings. He and his son even graciously helped with irrigation for a couple of months to keep last summer's extreme heat from further damaging our parent's estate. This was a wonderful, neighborly generosity for which they refused any payment that we offered. For this we are very grateful!

As for the concerns now expressed, we can only assume that there is some misunderstanding that has somehow escaped our attention. The remainder of this letter will attempt to address these concerns.

Please indulge us a brief background of the events leading to the establishment of the easement, and then we will address the specific issues expressed in the Burkhardt's letter, dated Oct 23, 2022:

1. In 1980 - 81, Corey Rossi successfully petitioned Malheur County to separate 5.75 acres from an existing 35.75 acre property (Rossi Ranch). The new 5.75 acre parcel has since been referred to as Parcel 300. The remaining 30 acre parcel has since been referred to as Parcel 400. (Figure 1)
2. The original Conditional Use Permit for Parcel 300 was requested of (and received from) Malheur County in 1981 for the express purpose of developing a home site. An easement was established along the eastern boundary of Parcel 400 to provide access to Parcel 300.
3. A water well was then developed by Harry Schaffer (Pioneer Water Development, Inc.). He did a rudimentary bailer test that yielded 8 gallons per minute. He deemed this to be adequate for a household and a small yard and stated that new wells typically produce better as they are pumped over time.
4. Following the well drilling, the issuance of a Conditional Use Permit, and Idaho Power bringing electricity to the property, Corey Rossi hired an engineer to draft a set of house plans. Corey then began excavation to determine the characteristics of the soil for a septic system. Unfortunately, this process was brought to an abrupt halt by the tragic death of our youngest sister and shortly thereafter an unfortunate break up of Corey's marriage.
5. The property then sat for many years, as we had both moved out of state.

6. In the ensuing years, the Haines family purchased the property to the east of the Rossi Ranch from Richard Smith (who had built the crossing at the Owyhee canal). The Haines' then constructed a new driveway to a new home they built a couple hundred yards north and east of the Rossi Ranch's NE corner. The home later sold to the Hargrave family. See Figure 2. (Note: This is the home now occupied by Jeff Burkhardt's son and his family)
7. The Rossi family was always supportive of their neighbors to their eastern border (First Richard Smith, then the Haines, then the Hargraves, and lastly the Burkhardts) and to our knowledge no one in our family ever attempted to prohibit them from establishing a new home, nor from utilizing their own water well, even though it was in close proximity to our well, which was drilled first. (Note: When Richard Smith saw that Harry Schaffer had found water on our place, he had Harry move a few hundred yards up to his place and drill another well just a few days after ours).
8. Our dad routinely provided handyman, snowplow services, etc. to Nora Haines, and later Marie Hargrave (both of whom were widowed). In years past, Corey has also been in their home assisting our dad with routine repairs on their behalf.
9. In 2010, Corey sold Parcel 300 back to Dale Rossi. Dale soon realized that the existing access (through Parcel 400 to Parcel 300) was not ideal due to the way the driveway would need to enter Hillcrest Drive. Without significant modification, its access would enter blindly below the crest of a large rise in Hillcrest Drive.
10. Consequently, Dale reached an agreement with Marie Hargrave to provide a much safer access to Parcel 300 by granting an easement utilizing a portion of Marie's driveway to get up to and across the Owyhee Irrigation canal. See Figure 3.
11. This easement was drawn up by Butler and Looney Law Offices and granted by Marie Hargrave with the express purpose of providing legal access to the Parcel 300.
12. The Hargrave property was subsequently purchased by the Burkhardt family several years ago, and to our knowledge this is the first time there has been ever been any controversy surrounding the Parcel 300 easement.

For the remainder of our response, please refer to the satellite photograph of the easement referred to as Figures 2 and 3. The following is an item-by-item response to the concerns voiced in Burkhardt's letter.

1. Livestock and Farm Operations
  - a. As you can clearly see from Figures 2 and 3, the easement does not pass through any land used for grazing cattle. In fact, the vast majority of the easement tracks right along the driveway that the Burkhardts (and the Haines and Hargraves before them) use every day to access their home up on the hill. This same two track road has been a common, unfenced and ungated access from Hillcrest Drive to the Owyhee canal for at least 50 years that we are aware of.

- b. The only gate associated with the easement is the gate in the fence that separates the Rossi and Burkhardt properties immediately adjacent to the north side of the canal. No other gate currently exists, nor is any other gate necessary. The entire area immediately adjacent to the easement has been a haystack yard and implement storage area that has been wide open and unfenced to Hillcrest Drive for many decades.
  - c. There is no “corral across the road/easement from an active pasture”. Any such structure would block Burkhardt’s access to their own driveway.
  - d. The easement turns left (to the west) into Rossi’s property thus completely avoiding the “entrance gate” described. In other words, the easement never passes through Burkhardts entrance gate.
  - e. The need for farming equipment and livestock transportation vehicles to temporarily obstruct a driveway, or even a state or county road, is a common occurrence in livestock country and likely always will be.
  - f. As we mentioned earlier, farm equipment and/or livestock feed has always been stored in the area adjacent to the west of the easement/driveway, without ever interfering with travel on the historic driveway/two-track road.
  - g. We have no response to item “g” as we are not sure what is meant by this comment.
  - h. Again no new road is being proposed. As illustrated in Figure 3, the easement (by design) tracks along the historic Haines and Hargrave driveway, then veers hard to the left after it crosses the canal.
2. Fire Safety
- a. Again, no one is proposing a new road on Burkhardt’s property. We simply plan to use the existing easement that was created for the express purpose of accessing Parcel 300.
  - b. The same argument can be made for Burkhardt’s home on the hill above Parcel 300. Their well log is very consistent with ours. Thus their water production is likely very similar to ours.
3. Well Water Issue
- a. With all due respect, this is a very speculative analysis. Most lenders require 3-5 gallons per minute of potable water before requiring potable water storage tanks. With such tanks, the gpm can even be lower.
  - b. This comment is very speculative.
  - c. This comment is also very speculative.

In closing, we would again like to thank Malheur County for their consideration of our request. We would also again like to thank Jeff and Derek Burkhardt for their generosity, and we sincerely hope this letter will help dismiss any misunderstanding of our purpose, as well as the intent and purpose of the Hargrave easement.

Sincerely,

Shale Ann Cluff and Corey Rossi

Co-personal Representatives of the Dale Arlen Rossi Estate

Figure 1.

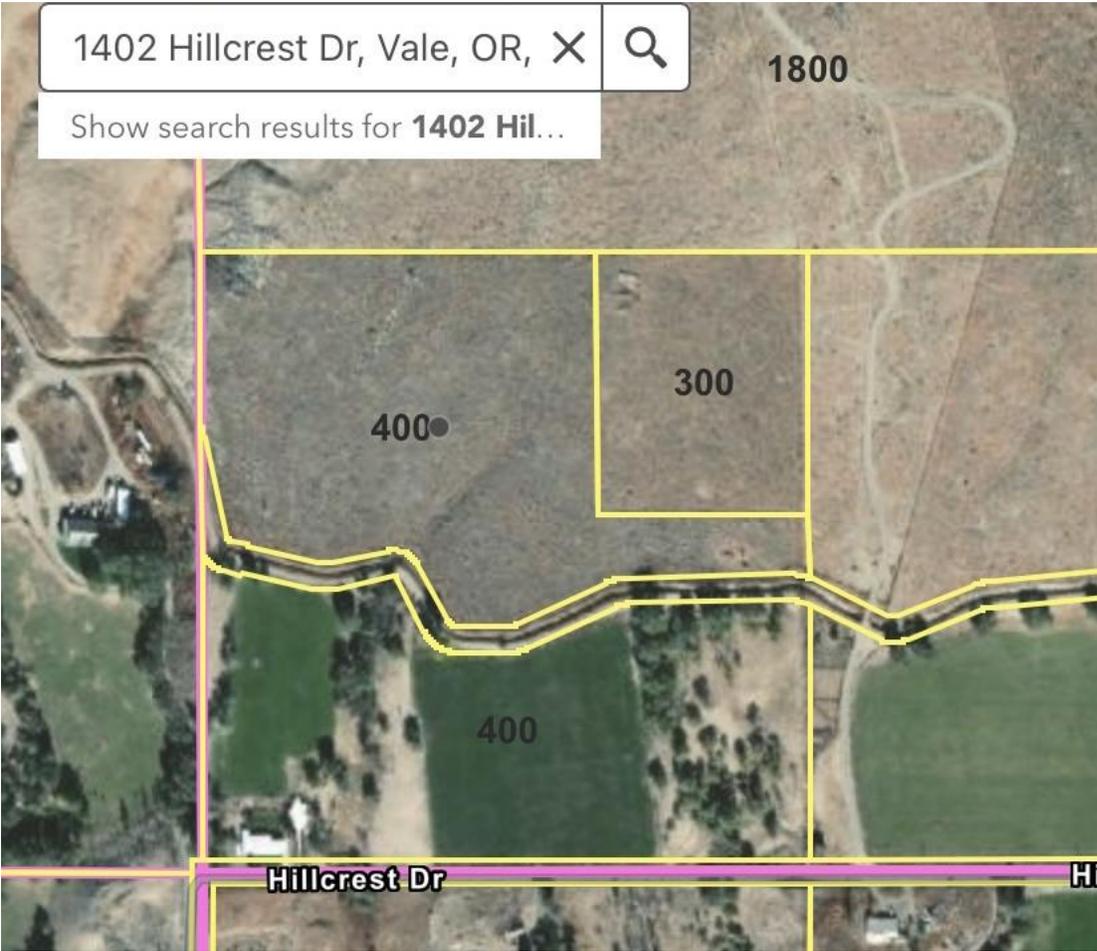


Figure 2.

Burkhardt's existing driveway and home site



Figure 3.

Hargrave easement overlay

