

Tydon Oler  
PO Box 630278  
Rockville, UT 84763

DOC # 20210046026

Easements Page 1 of 7  
Gary Christensen Washington County Recorder  
07/06/2021 04:15:34 PM Fee \$ 40.00  
By OLER TYDON



# NOTICE OF TOWN APPROVED EASEMENT AND PRIVATE ROAD ACCESS

Parcel: R-1305-A-7-D

BEGINNING AT THE NORTHEAST CORNER OF SECTION 12, TOWNSHIP 42 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE S00°01'50"W, ALONG THE SECTION LINE, 78.59 FEET; THENCE DEPARTING SAID LINE AND RUNNING N87°06'09"W, 230.52 FEET; THENCE N00°00'00"E, 55.40 FEET TO A POINT LOCATED 2.00 FEET SOUTHERLY AND PERPENDICULAR TO THE SOUTHERLY LINE OF AN EXISTING 15.00 FOOT WIDE ACCESS EASEMENT, DOCUMENT NO. 20090010734, ON FILE IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N76°59'27"W, AND PARALLEL TO SAID LINE, 52.78 FEET TO A POINT LOCATED ON THE SOUTH LINE OF RIVER ROAD (SUTION PLACE). SAID POINT ALSO BEING LOCATED ON THE NORTH LINE OF SAID SECTION 12; THENCE S89°55'51"E, ALONG SAID RIVER ROAD AND ALONG THE SECTION LINE, 281.69 FEET TO THE POINT OF BEGINNING.

On September 9th, 2013 the Rockville Planning Commission approved a residential building permit for Tydom and Brittany Oler with several conditions, of which, condition #2 specifically required the following:

*2) Applicant shall obtain the approval of the Town Council that the easement in question is approved by the Council as a Town approved right-of-way to allow frontage as required by the Town Ordinance, in order to obtain a Building Permit. (per Planning Commission Meeting Minutes dated 09/09/13)*

On December 19th, 2013 at an Appeal Hearing the Rockville Town Council affirmed the Planning Commission's condition as follows:

2. Approve and confirm Condition #2, which states "Applicant shall obtain the approval of the Town Council that the **easement in question** is approved by the Council as a Town-approved right-of-way to allow frontage as required by the Town Ordinances, in order to obtain a Building Permit." This is supported by Chapter 7, Section 4, Lot Standards and Dedicated Frontage, of the Land Use Code of the Town of Rockville, which states "a lot shall have frontage upon a dedicated or publicly-approved street or upon a **private street** or right-of-way approved by the Town before a building permit can be issued." (per Town Council Appeal Hearing Meeting Minutes dated 12/19/13)

Meeting the above CONDITION for the Oler's Building Permit was paramount in the Oler's decision to purchase the easement right-of-way (specifically parcel # R-1305-A-7-D). Furthermore, the Town's (including Town Council and Planning Commission Members; as well as the Mayor and Town Attorney) continuing statements, testimony, and assertions that the road was indeed a private road were instrumental, and heavily relied upon, in the Oler's decision to acquire this private stretch of roadway.

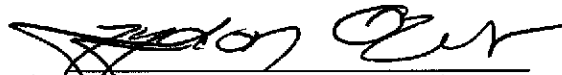
This property is governed by a 2009 RECIPROCAL EASEMENT AGREEMENT FOR ROAD ACCESS, AND COVENANTS AND RESTRICTIONS (DOC ID 20090010734) as referenced by the Rockville Mayor, Town Council and Planning Commission Members throughout the Oler's Building Permit approval process.

The terms of the 2009 Easement Agreement clearly called for the property owner's to recognize the road as a private roadway and further states, "Jordan is authorized to prevent access to others periodically or to take other action to ensure that no public thoroughfare or prescriptive easement is created".

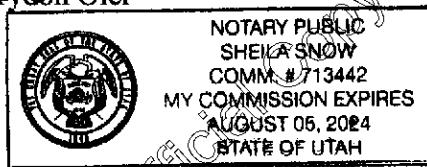
On May 13, 2020 the Rockville Town Council unanimously approved the "EASEMENT as a Town Approved right-of-way" for access to the Oler's property per Rockville Town Mayor Pam Leach. (June 3, 2020; email)

Recorded herewith are several statements, of many, received from the Town of Rockville's Attorney, Mayor, Town Council and Planning Commission; as well as several statements from prior property owner Coby Jordan (and his attorney) which attest to, and affirm, the PRIVATE nature of this access roadway and easement. (EXHIBIT A)


WITNESS, the hand of the Owner of Record, this 6<sup>th</sup> day of July, 2021.

  
\_\_\_\_\_  
Tydon Oler

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )



The foregoing NOTICE OF TOWN APPROVED EASEMENT AND PRIVATE ROAD ACCESS was acknowledged before me this 6 day of July, 2021, by Tydon Oler.

  
\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT # A**

**Coby Jordan** - "I am personally familiar with a dirt road in the town of Rockville, Utah, which parallels the Virgin River on the south for just under a mile. I have lived in Rockville since 1986 and have owned the property on which a portion of the easement at issue in this case is situated since 1994. In approximately 2006, I had a gate constructed at approximately the entry point to the dirt roadway where it starts to pass across my property... in my experience and understanding, the public has not traditionally used the portion of River Road east of the cul-de-sac, which is why I installed the gate at that point. The gate was constructed with the consent of adjacent property owners, as reflected in the Easement Agreement. Consistent with its private nature, I have not had any complaints from members of the public since installing the gate." (Sworn Affidavit to the Court Signed and Notarized by Mr. Jordan on November 24th, 2014)

**Coby Jordan's Attorney - Bryan J. Pattison** - (referencing the 2009 Easement Agreement) In paragraph 4, the parties address such items as keys for each owner to obtain access to the roadway and their properties, and affirmed that the gate and signs serve all of their interests "by minimizing use of the Road by non-Owners." (Id.)

Next, the parties affirmed that the roadway was for personal use only, and was not a public road:

*The Easement is limited to the personal use of the owner or the Owners, and their tenants, invited family members, friends, and other guests, agents, those providing services to them or otherwise doing business with them, successors, assigns, and grantees, for access to the Owners' Properties only. The Easement is not a public roadway and is not open to the general public. Jordan is authorized to prevent access to others periodically or to take other action to ensure that no public thoroughfare or prescriptive easement is created.*

(Easement Agreement ¶ 5.)

(Bryan J. Pattison, Durham Jones & Pinegar, P.C., Attorney for Coby Jordan; October 3rd, 2014)

**Rob Snyder - Rockville Town Planning Commission Chair** - "...even if there has been some historic use, none of it was legal and now the legal access is defined in the easements." (Planning Commission Meeting - July 9th, 2013)

**Rob Snyder - Rockville Town Planning Commission Chair** - "Chair Snyder stated... in reading excerpts from the easement with regard to the Jordan property, it was noted the easement contains the following provisions that shall govern with respect to the road over the Jordan property: "no owner, other than Jordan, shall have any right or authority to improve, widen, or alter the road or easement lying upon the Jordan property without prior access written consent of Jordan... Jordan shall have no duty or obligation to improve, widen, or alter the road and shall incur no liability to any owner or others for failing to do so. In the event an owner believes that maintenance or repairs to the road over the Jordan property are required, the

owner shall inform and consult with Jordan. If Jordan determines, whether or not in response to a determination made by the other owner, that minor maintenance or repairs, not to exceed \$500 in costs, are appropriate, Jordan shall determine who shall supervise and perform such minor maintenance or repairs. Each of the owners whose property is accessed by the road for residential purposes shall provide its equal share of funds as requested by Jordan for such minor maintenance or repairs decided upon by Jordan prior to performance of such maintenance or repairs." (Planning Commission Meeting - July 9th, 2013)

**Rob Snyder - Rockville Town Planning Commission Chair** - "Discussion took place regarding the possibility of approving the building permit contingent upon completion of the items to still be required. Chair Snyder did not see that as a possibility as some of the required items aren't simple in nature and the Planning Commission has had a long-standing policy to not give contingent approvals on applications, especially when the completion of some items may not be guaranteed, in this case the approval of the right-of-way, the engineered road and excavation, and the signature of Coby Jordan." (Planning Commission Meeting - July 9th, 2013)

**Sharon Hatfield - Rockville Town Planning Commissioner** - "Sharon clarified that the approved right-of-way would not be considered a public road, but remains only a private right-of-way for the exclusive use of landowners holding the easements." (Planning Commission Meeting Minutes - July 9th, 2013)

**Sharon Hatfield - Rockville Town Planning Commissioner** - "...as far as the Town has been able to document, the stretch of easements in question is not and has never been, a dedicated public road, but rather a stretch of easements, the intent of which was to provide access for one residence which was constructed prior to the incorporation of the Town and for another property owner tending his agricultural fields and for private utility entities... the Town does have documents showing the easements as recorded and legal since 2009 stating that all the easement holders are owners of the road, with all owners agreeing that the easements are not a public road and are not open to the general public... the easement owners agreed that only one property owner (Mr. Jordan) shall have the authority to improve, widen or alter the road/easement lying upon his property without prior express written consent"... "the Town has documentation from that landowner's (Mr. Jordan) attorney stating the landowner declines to give consent to improve and widen the section of road/easement lying upon his property" (Planning Commission Meeting - September 10, 2013)

**September, 2013 - Planning Commission Meeting Minutes**: Linda Brinkley stated that she has been a Rockville resident for 27 years and has traveled the road a number of times. The only time she has ever used it was to access the owner of a home at the end.

**September, 2013 - Planning Commission Meeting Minutes**: Two letters from Lyle Drake, legal counsel for Coby Jordan, dated September 2 and 10, 2013 were read and are attached and made part of the record.

**September, 2013 - Planning Commission Meeting Minutes:** It seemed to Bob Ford that the Town's legal advice stands and the issue is between private property owners. He hoped the two parties could reach a resolution... Sharon Hatfield stated that the letter of September 10 (*Letter from Lyle Drake* above) referenced that when Mr. Oler purchased his property he automatically purchased the agreements that run with the land.

**Town Council Appeal Hearing - December 19, 2013:**

**Pam Leach** – But RS2477 applies to a road on federally owned land. So the part of the road that is in question here is on private land.

**Russ Gallian** – I think there needs to be a real clarification. The County emphasis is to establish RS2477 roads and that's the case that they're bringing against the BLM to establish that. Hasn't established that in court; I'm not sure it's even in court yet. It has not been adjudicated by any judge. And whether they will be successful in obtaining that, I don't know. All I'm trying to say is this isn't an RS2477 road we're talking about. It leads to the RS2477 road.

**Pam Leach** – You've referenced Craig Call and I've pulled up this public roads and private land document, and I found it online, and in it actually, he says, "County maps -posting a map of county roads at the County Clerk's Office does not create those roads as public roads." So they can be on a map, they can be surveyed, there can be aerials, because they have been there for a long time, they can be used for boundaries and so on for people. But that does not legally, correct, "make them a dedicated or ....."

**Russ Gallian** – It either happens by actual dedication, proclamation (unsure, inaudible), or by a court order.

**Letter from Coby Jordan's Attorney addressed to the Town of Rockville Mayor Dan McGuire dated December 17, 2013:**

Mr. Oler is bound by the easement agreement. The prior land owner, from whom Oler purchased the property, was a signer of the easement agreement. By the specific terms of the easement agreement, any subsequent purchaser of that property is likewise bound by the terms of the easement agreement. The easement specifically states that "the Easement is not a public roadway." (Attorney Lyle R. Drake, Durham Jones & Pinegar, P. C.)

**Rockville Mayor - Dan McGuire** – *"The fact is the access to your property goes across private land."* (Town Council Appeal Hearing - December 19th, 2013)

**Rockville Town Attorney - Russ Gallian** - *"This is not a road that in any way would meet our standards to be a public road as it would be a liability that we frankly would not want. And I think that you would take steps, as you have in the past with other roads, to abandon it, if it ever was."* (Attorney for the Town of Rockville; Appeal Hearing - December 19th, 2013)

**Rockville Town Attorney - Russ Gallian** - *"All the affected property owners agreed that this was a private roadway and would be gated and locked, and this was designated to be a covenant that runs with the land. Accordingly, as we understand it, Mr. Oler, when he purchased*

*the property, purchased it with actual or constructive notice that the roadway had been agreed upon as being private by all local affected owners, and that this was the status of the roadway.*" (Attorney for the Town of Rockville; April 1st, 2016; letter)

**Pam Leach - Rockville Town Mayor** - To the best of our knowledge and understanding, the gate is located on private property on a private easement. (Town Letter from Mayor Pro Tem Pam Leach dated November 15, 2016)

**Barry Sochat - Rockville Town Council Member** - "The current road path was created as an access for the improvements to both the Hall and Grafton Ditch and Rockville Pipeline Companies in the 1980's and 1990's, respectively. Prior to 1976 (cutoff date for RS-2477 claims) access to Mr Olers property took a very different route over the Coby Jordan hillside and behind Joe Motter's property. Portions of that abandoned road bed are still walkable today. I drove that road in 1984." (January 8th, 2018; letter to the Town of Rockville)

NOTE: This access, referenced by Barry Sochat, is further referenced in a recorded survey, recorded by Max Gregoric, dated July, 2013 on parcel R-1305-A-6 (now owned by Chance and Brooke Wright) which shows the configuration and location of the historical access road to the BLM land. (Washington County Recorded Easement RS006103-13).

**Rockville Town Council Meeting - "8/23/2017 - Mayor Pam Leach - ROCKVILLE WAS NOTIFIED THAT THE OLER'S AND MR. JORDAN SETTLED THEIR LITIGATION. MR. JORDAN CONVEYED A CERTAIN PORTION OF HIS PROPERTY TO THE OLER'S. THEREAFTER, MR. JORDAN NO LONGER OWNED ANY PORTION OF THE DIRT TRACK. THE OLER'S ACCEPTED THAT ALL MR. JORDAN'S FORMER OBLIGATIONS UNDER THE RECIPROCAL EASEMENT AGREEMENT ARE NOW BINDING UPON THEM, THEIR SUCCESSORS AND ASSIGNS."** (January 10th, 2018)

**Rockville Town Council Public Hearing and Regular Meeting Minutes- January 10, 2018:**

Mayor Leach: His building permit was approved with conditions, which I read, and I think the major issue everyone can agree was his access, having that, there was an impediment. It is no longer a hang up because he settled his litigation with that private property owner and now has the access, the beginning of his access, belongs to him, he owns it.

**TOWN OF ROCKVILLE - ANSWER TO PETITION FOR DISCONNECTION;** Case No. 180500143/ #9: Defendant (*Town of Rockville*) affirmatively alleges that the township-maintained roadway that services the subject property consists of Bridge Road between State Route 9 and River Road, as well as River Road between Bridge Road and **Plaintiffs' (Tydon & Brittany Oler) private roadway.** Furthermore, **Plaintiffs' private roadway** provides access to at least 6 parcels of land, not including the three owned by Plaintiffs. (05/01/18)

**TOWN OF ROCKVILLE - ANSWER TO PETITION FOR DISCONNECTION; Case No.**

180500143/ #29.c.: The tiny portion of Plaintiffs' access that consists of a claimed RS 2477 roadway is in reality a BLM granted easement, and the issue of RS 2477 status has not been determined by any court.: d. Plaintiffs' "primary access" consists of the Bridge Road off of State Route 9 and the River Road (both Town-maintained Roads) that connects to Plaintiffs' private access. (05/01/18)

**TOWN OF ROCKVILLE - ANSWER TO PETITION FOR DISCONNECTION; Case No.**

180500143/ #38: Plaintiffs' building permit was conditioned on meeting appropriate requirements, as set out herein. Plaintiffs' ability to meet those requirements was delayed because of a property right dispute that arose between Plaintiffs and the owners of property underlying and adjacent to Plaintiffs' private access. (05/01/18)

**In both the DEFENDANT'S MOTION FOR SUMMARY JUDGMENT dated July 25th, 2018 and REPLY MEMORANDUM SUPPORTING DEFENDANT'S MOTION FOR SUMMARY**

**JUDGMENT** the Town, by and through the law firm of Gallian Welker & Beckstrom, L.C., claim "STATEMENT OF UNDISPUTED MATERIAL FACTS" which acknowledged, at length, that the Town recognizes the Plaintiff, Mr. & Mrs. Oler, "took ownership of" and "secured adequate access to their property" to the extent that the Town, "stands ready and willing to issue the requested building permit, now that the Plaintiffs appeared to have satisfied the conditions typical of their application for a building permit."

**TOWN OF ROCKVILLE PUBLIC NOTICE; posted on January 02, 2020 08:20 AM:**

Notice is hereby given that the Rockville Planning Commission will hold a public hearing during their regular meeting on Tuesday, January 14, 2020 at 6:00 pm in the Rockville Town Hall, 43 E. Main, Rockville, Utah to take comments from the public on a proposed zone change allowing for the inclusion of Parcel Numbers R-166-A and R-157-A into the Residential Short Term Rental Overlay Zone (RSTROZ) having the same rights and privileges as the existing parcels within the RSTROZ. These properties are located on a private access off River Road on the east side of Rockville, south of the Virgin River.