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DEPARTMENT OF
WATER RESOURCES

Tuesday, January 14, 2014

Idaho Department of Water Resources
Gary Spackman, Director
322 East Front Street
Boise, Idaho 83720

RE: Ada County Parcel R3720002850; formerly 370 Highway 16, Eagle, ID 83616 (while it now lacks access to a public road, Ada County proposed a new physical address for the property: 8377 West Shultz Court)

Dear Director:

We respectfully request your written assent to our continued use of our property. Your assent will permit our sale of the property and/or the receipt of rents resulting from continued use of our property by us or others. In its appraisal of our property, the State of Idaho asserted that we will have perpetual use of and perpetual income from a tract of land which is now landlocked by Idaho State's eminent domain confiscation. In its final order, the court reaffirmed that we will have perpetual use of and perpetual income from a tract of land now landlocked by the State. But the State's conclusion—that we will have perpetual use of and perpetual income from a tract of land which is now landlocked by the State—is at odds with the Idaho Transportation Department's Right of Way Manual (200.4.9), overseen by the Federal Highway Administration, which asserts that "When the acquisition of real property, would leave the owner with.....a landlocked tract of land, the acquiring agency shall offer to acquire the.....landlocked tract". Apparently, the State's conclusion is at odds with administrative law in Idaho. We doubt that there is a precedent for a taking in Idaho where the State failed to offer to purchase a tract of land landlocked by the State's confiscation. The State's conclusion—that we will have perpetual use of and income from a tract of land which is now landlocked by the State and which now lacks water (to be replaced, not by city water, but by water from a well)—presumes perpetual assent by at least the following governmental entities: a) Ada County, the current land use authority, b) Ada County Highway District, the county highway authority, c) State of Idaho, Division of Water Resources, the water authority, d) Central District Health, the drinking and wastewater authority, e) Star Joint Fire District, the fire department, and eventually f) Star City and/or Eagle City, the city planning to annex the property in the future and g) Star Water and Sewer, the future utilities provider. The purpose of this correspondence is to solicit your assent for ongoing use of our property by us or a buyer—assent respectfully and prudently requested because of the State's confiscation.

As you consider the State's conclusion—that we will have perpetual use of and perpetual income from a tract of land which is now landlocked by the State's confiscation and now lacks water--please recognize that prior to the State's taking an occupancy certificate was issued in 2010 by Ada County assenting anew to the historical uses of our property. Said uses did not conform to nascent Ada County zoning and use ordinances but significantly predated Ada County zoning and use regulations. Specifically, the property and improvements were planned, designed, built, and used for public assembly (ie. weddings and receptions) from the early 1900s. The Ada County occupancy certificate reauthorized use by up to 252 persons after numerous building inspections and a stipulation noted hereafter.

Before issuing the certificate of occupancy, to avert liability, Ada County corresponded with all interested government entities, including the State of Idaho, so as to assure their assent. At that time, the State of Idaho was working to extend and expand Highway 16 and to complete the acquisition of right-of-way for the Highway by 2011 but had assured property owners in the path of development that they could improve their property as they wished and expect just compensation for any improvements. In preparation for the extension and expansion of Highway 16, the State of Idaho had already completed several acquisitions near the corner of Highway 16 and had already determined it would take access and water from our property. With the State's tacit assent, we restored improvements and continued use of the property until the State of Idaho took possession of access to the property and a well serving the property and improvements. Because of its historical charm, in 2011, Eventective ranked the event hall, by consumer demand, as one of the top five wedding venues in Boise.

Before the State's confiscation, the property had access, water, and non-conforming use as an event hall. As noted, the property and improvements were planned, designed, built, and used for public assembly from the early 1900s; the tract has since been zoned R-1, residential, by Ada County. Also, historically, public access has been from Highway 16 and patrons parked alongside Highway 16. To bring the property into closer conformity with nascent regulations, Ada County stipulated and we agreed that we would park patrons on adjacent property we own and not alongside the highway of access as was the practice historically. Then, the State's confiscation eliminated access to the property and its water supply. The State's appraisal and the court order assumes we will have perpetual use of and income from a public-use property that is only accessible, at a mortgagor's discretion, through other property we own and not via a public road because of the State's confiscation. Moreover, the only water supply to the property was a grandfathered artesian well. The State's appraiser considered it "Extraordinary" to assume replacement of the grandfathered water supply with a new well serving assembly-use property—but the cost of a new well is what the State offered us. In other words, by taking our access and water, the State's confiscation may have compromised the continued non-conforming use of our property while compensating us for only a portion of the perpetual rental income the State assessed.

Presuming your cooperation, the State has passed to us the onus of respectfully requesting your assent. With your written assent to our continued use of our property (or more congruently, to our perpetual continued use of our property), we will anticipate continuing rent receipts by us or by a buyer. Please acknowledge our correspondence and provide your written assent to our continued use of and receipt of rents from our property. If there are stipulations to your assent, would you please document them and provide an estimate of costs to comply with your stipulations—including soft costs and opportunity costs—and who will be responsible for the costs to comply? Also, please consider whether the replacement water from a well will suffice for continued public assembly use (occupancy 252)?

If your interest is prospective, would you please provide a written opinion as to the viability of the property within the constraints of your current comprehensive plan?

If you are unable to assent to continued historical use of the property, we are anxious to discover a use that conforms to your administrative requirements—otherwise we will be unable to sell or use our property as a result of the state's confiscation. In this case, please consider this correspondence an application for any reasonable use and zoning of which you may conceive. To that end, to Ada County,

we have enclosed a fee in the amount of \$275. If your entity/ department requires an application by form, would you please include that with your return correspondence and guidance?

We appreciate your anticipated and timely response. For us to rely exclusively on the primacy of the State's conclusion--that we will have perpetual use of and perpetual income from a tract of land which is now landlocked by the State and which now lacks water (to be replaced, not by city water, but by water from a well)—represents a great deal of risk to us.

We have directed this correspondence to the persons who appear to be principals at the governmental entities listed above. If you think our correspondence ought to be redirected, would you please forward it to your assigns and copy us? If we have omitted an interested governmental entity, would you please so advise us? As necessary, you are welcome to inspect the property with notice if you are willing to traverse the dirt construction road that was the former Highway 16 (our former access)—it is obstructed at Highway 44 by above ground pipes (you may be able to circumvent these legally). The new access to the property to the east and south is incomplete. The property is listed for sale by a real estate agent. Please call us at 801-940-4296 to arrange an inspection. It is our understanding that the court documents are available publically (oral testimony may be sealed?). As necessary, we are willing to forward additional documents and correspondence to establish the status of the property upon request. Thank you in advance for your time and consideration. We await your timely written response.

Respectfully,



Cache and Kristin Miller
whoseman.blogspot.com
privatepropertypreserve.org

Special considerations regarding water:

The subject parcel had a water right which we would like to identify, and if necessary, transfer to or utilize via another well (ie. another well we have on adjacent property or a new well). Would you please identify the water right pertaining to the subject parcel and the water right pertaining to the residence located at 366 Highway 16, Eagle, Idaho. Will replacement water from a new well or existing well suffice for continued public assembly use (occupancy 252)? Thank you for your anticipated written response and guidance.