

Various thoughts and experiences.

November 2022

In 2003 the Town of Lyons entered into an inter-governmental agreement with the city of Longmont to process our domestic water. Prior to this agreement when you purchased a tap from the Town Of Lyons the water dedication was included in the purchase price.

It was understood that there were a handful of buildable lots within the city limits that the town was not able to provide town water to because a water line had not yet been installed. When the waterline was installed the property owner would be required to connect to city water. These pre-existing lots were grandfathered and had a right to buy a tap that included water dedication.

I was told that the rationale behind this was that the water shares the town owned belong to all town properties, not just those that had already hooked up to town water. When the Trustees under the Sullivan board discovered that there are a handful of properties that had these rights they decided to pass an emergency ordinance taking these rights away. Lyons Properties LLC (River Bend) has three lots that meet the conditions of being allowed to buy water taps that include water.

We firmly believe this ordinance was aimed at taking these rights away from us. They tried to pass an emergency ordinance which as I understand means that there is no requirement for a public hearing or a waiting period for the ordinance to take affect. This attempt failed as an emergency ordinance. It later passed as a regular ordinance. Ordinance 1055. Approximately one year later under a new board and Mayor Angelo ordinance 1055 was rescinded. This action should restore our rights to purchase one tap each for the three properties owned by Lyons Properties LLC that include water dedication.

Sometime in early 2015 we were approached by town engineer Blankenship about the possibility of running a waterline across our properties. He Indicated the town had two possible routes to go, one down Highway 36 which would be quite expensive, or one across Lyons properties which would save the town a great deal of money. We agreed that we would work with the town. He suggested we consider what compensation we would want for this agreement for this easement. This easement is 20 feet wide and over 900 feet long. That encompasses close to half an acre of land and without question decreases the value of our property. We felt that fair compensation would be water taps for the three properties that the water line crossed. Since these three properties already had the right to purchase taps that included the water dedication the only additional thing the town was providing us with where the taps. This meant that the town had no out-of-pocket expense. We felt this was very fair to the town.

In January 2016 several partners in Lyons properties LLC met with Mayor Sullivan, Trustee Dreistadt, Administrator Simonsen, assistant Town Clerk Vasquez and possibly others. Mayor Sullivan represented that she had the authority from the entire board to negotiate an agreement with us. We agreed that in partial payment for the various

easements we granted the town, the town would give us three taps including water dedication.

Again, we thought this was extremely fair to the town given that we already had the right to buy taps that included the water dedication.

Shortly after the meeting, Betsy and I left for Mexico and I believe Mayor Sullivan and her husband left for Africa. About one week after this meeting, our partner Jerry Moore was contacted and asked to come to Town hall and was told by Trustee Dreistadt and Trustee Kerr that the board was now unwilling to honor the agreement we had negotiating With Mayor Sullivan. Jerry Moore called Betsy and I in Mexico to explain the situation. I advised him to go ahead and sign the Memorandum of Agreement (MOA).

The town has made it quite clear that unless we got this agreement signed very soon that they would require us to quit booking weddings. We book weddings as far out as 18 months in advance and we had already booked many weddings for the coming year. The town was definitely in a position to make life very difficult for us if we didn't give them everything they asked for. And knowing that we had other taps made me believe we could work the details out at a later time. Mayor Sullivan has remained silent on this issue. I asked trustee Dreistadt at a later date why they didn't honor the agreement we had with Mayor Sullivan. He said that she never had the authority from the board she claimed. We have no idea what the real backstory is. The new MOA that we signed with the town says that we can postpone paying for the taps and the water shares until a date in the future. If we ever sell the property either ourselves or the purchaser will be required to pay for the taps and water shares.

Another item in the MOA requires us to dedicate water acceptable to Longmont so that we will have enough water for a 1 inch tap for Wee Casa (the tiny homes on the River Bend property). None of us had any way of knowing how much water the tiny homes would use so the town wanted us to upgrade the tap to a 1 inch which requires Additional water.

During our discussion with the town they made it very clear that these taps that they were differing payment on could only be used for our existing plan. They were saying that if we wanted to add any additional tiny homes or any other development we had to use taps other than the ones they were deferring payment on. It was very possible that a one inch water tap would service more than the 22 tiny homes we currently have, but this additional water could not be used for that. Since we had the rights to 31 taps that we had never yet used this did not seem like a big issue.

I should explain here that the reason we ask for taps in payment for the easements instead of using our 31 existing taps was because The 31 taps we own can only be used on 501 West Main. The town will not let you transfer taps From one property to another. The water line ran through two additional properties that we own that we had not yet purchased taps for.

One other thing that happened that was quite strange was we started getting utility bills that we did not understand. They were quite large and we requested a meeting with Town Administrator Simonsen so that she might explain what these charges were for. We ask that we also have discussion about our water taps at this meeting.

For some reason she could never find time to meet with us. Since we didn't understand the charges we said we would pay the bill once we understood what they were for. This went on for between 12 and 16 months as I remember. Our unpaid bill was approaching \$60,000. And yet the Town Administrator Simonsen would not meet with us. We ultimately learned that a portion of the bill was for our sewer taps. We were told that even though we weren't using any sewer taps we still had to pay a monthly bill. We had never paid any sewer bill because when it was a mobile home park each tenant paid their own sewer bill. It was a shock to us that they were requiring us to pay a utility bill on utilities that they were unable to provide. We learned the people in the confluence were also in the same situation.

However, we believe The reason she wouldn't meet with us is because she had no idea how to deal With the 31 water taps that we own. I'm quite sure we now hold the record for the largest outstanding unpaid utility bill! The bill has been paid. We dedicated the vast majority of those sewer taps back to the town.

When we bought the Riverbend property in 2006, we had a survey that showed that the property line was the middle of the river. We received a warranty deed from the seller and the title company that confirmed we had legal ownership of the property to the middle of the river. We receive bank financing based on this survey and legal description and title policy. After the flood the town had many of their properties surveyed. The town had acquired Meadow Park with a quit claim deed. As you probably know, a quit claim deed only says that the seller is not certain what they own but will transfer all of their rights to the buyer. No warranty. Basically a warranty deed trumps a quit claim deed. However, in order for us to get a zoning change we had to provide the town with a survey. The town made it clear that if we didn't agree with their terms that they would claim what came to be known as the crescent, a sliver of Riverbend that was included in the quit claim deed the town received. There was no way that the town would ever prevail in this argument, but they could stall our legal description long enough to put us out of business. Business friendly?

After we had signed the MOA The town said that they wanted the water shares that we had agreed to dedicate. We asked that we substitute the water from one of our 31 taps that we owned. Again these taps include water dedication. It was during this time that we learned that in 2006, 4 months after we purchased Riverbend, Town Administrator Cinnamon decided that our taps which had been on the books for 33 years and included in the Intergovernmental agreement with Longmont were a mistake. Both myself and the assistant Town Clerk Vasquez did a great deal of research and were totally unable to find any evidence that they were a mistake. We did find a great deal of circumstantial evidence that they were not a mistake. This is when the discussion with the town, especially Mayor Sullivan, became more about that her intentions with the MOA to take all of our tap rights away. We never had this discussion. The only taps we discussed in the MOA were the ones that the town deferred payment on. Basically she was insisting

that in order for us to survive the flood financially we had to be willing to give up all the rights to taps that we owned.

As mentioned in a previous paragraph, we had agreed to dedicate water acceptable to Longmont to upgrade a three-quarter inch tap to a 1 inch tap. Since we attempted to substitute the water from one of our existing 31 taps, and the town continued to claim, without evidence, that our 31 water taps were a mistake, we decided to dedicate water and continue fighting for our rights to the 31 taps under a new board of trustees. The MOA required that we dedicate water acceptable to the city of Longmont. We contacted the city of Longmont water department and they confirmed they would except Macintosh water shares for this purpose. We were unable to find any Macintosh water shares for sale. The town was willing to let us pay cash in lieu of water dedication, but they wanted the value of CBT shares. We paid the town \$70,000 in February, 2020. Again, we decided to take our battle to a different board of trustees.

Earlier this year, Neil Sullivan with Spirit Hound Distillery approach the board about paying cash in lieu for a water upgrade at the distillery. The board voted that they be allowed to pay the value of Macintosh water for their dedication. I have no problem with this decision. I think it was the right decision on the part of the board. But the irony is that it was his wife, Mayor Sullivan, that was leading the charge to take our water rights away and require us to pay for CBT water when Longmont was willing to accept MacIntosh shares.