

GABLEHOUSE & EPEL, LLC

Attorneys and Counselors at Law

P.O. BOX 536
TABERNASH, COLORADO 80478

410 SEVENTEENTH STREET
SUITE 1375
DENVER, COLORADO 80202

(Please respond to the Denver address.)

TIMOTHY R. GABLEHOUSE

(303) 572-0050
(800) 818-0050

FAX (303) 572-3037

tgablehouse@gablehouse-epel.com

December 27, 2001

VIA FAX ONLY

Marilyn Nixon, Esq.
Jefferson County Attorney's Office
100 Jefferson County Parkway, Suite
Golden CO 80419-3550

Re: Pinnacle Towers, Inc. - Application for Rezoning and Exemption from Platting
Case Nos. 0001548RZP1 and 0001548EXP1
Access Issues

Dear Ms. Nixon:

Given the various documents and commentary floating around on this issue, we thought it would be useful to examine some of the specific elements of the access question relevant to this application. The current access road crosses property owned by State Parks, Keller Farms LLC, Flatiron Sand and Gravel Company and a variety of parcels in Plainview. We will not examine every inch of this road - this is the obligation of the applicant who has not yet provided a survey or other proof of access. For all of the reasons described below, our analysis of the various deeds and documents still causes us to conclude that PTI does not have legal access to its property.

State Parks Land

The current road crosses State Parks land. There is no easement, access agreement, judgment or any other document that provides this access. There is no enforceable promise to provide an easement or access agreement - in any event we believe such would be unlawful and would likely result in litigation being filed against State Parks.

As the record thoroughly reflects, the current road does not conform to county standards for grade or design. This applies to all segments of the road across State Parks, Keller and Flatiron properties.

Keller Parcel

The existing road alignment is the result of a number of complex dealings. There is a summary of these dealings contained in an agreement dated December 16, 1981, recorded at Reception #82004661, which was apparently intended to resolve a number of outstanding title and access issues and involves both the Keller and Flatiron parcels. (This agreement is not a deed or grant of easement. It is best characterized as a contract and release of claims.)

The agreement is made between Schueller and Front Range Ranching and Mining as buyers of certain property and the Brenner Trust, including the beneficiaries, as the sellers. (Curiously the agreement is only signed by William Schueller on behalf of Front Range rather than individually.) At the time of the agreement Stephen Thomas Brenner as Trustee of the Brenner Trust owns both the current PTI property as well as the portion that will become the Keller Parcel.

Nothing in the agreement creates an easement across what is now the Keller property for the benefit of the property now owned by PTI. At best it can be characterized as creating a permissive access to the portion ultimately owned by PTI, but not then subdivided or owned by Schueller. The language only indicates that the parties accept the road as the road - there is no provision suggesting that realignment is allowed. This is hardly an easement. In any event, the agreement only deals with transfer of the property from Brenner to Front Range, there is no mention of a continuing access right for Schueller.

(It may well be that this access across the Keller property can be perfected via appropriate legal process. That does not, however, turn this mess into a current legal access. Also, the grade and width of the road across the Keller parcel in no way conforms to County standards.)

Flatiron Parcel

In the agreement at Reception #82004661 it is stated that a legal action to gain a right of way of necessity, across what is now the Flatiron property, was commenced by both Schueller and Front Range with judgment entered on October 27, 1981. The agreement indicates that both the road and power line were installed along the line of access approved in the judgment.

The agreement does not accurately reflect the real relationships. The judgment was entered on October 27, 1981 and is recorded at Reception #81078576. By its terms the judgment does create an easement across what is now the Flatiron property for the benefit of what was then the Brenner property. The Brenner property at that point in time was in its unsubdivided form.

The portion of the Brenner property now owned by PTI did not exist as a separate parcel at the date of the judgment. There is a spurious deed at Reception #81016835 dated 2/27/81 purporting to convey the property now owned by PTI to Front Range. It contains no easement or right of access. As that deed was duplicated following the agreement, one assumes that title defects existed which led to the need for the agreement and the new deeds discussed below.

To the extent the agreement suggests that the judgment created an easement for the benefit of Front Range or Schueller it is plainly wrong. The petitioner in the judgment is only listed as Stephen Thomas Brenner as Trustee of the Brenner Trust. The judgment does not mention Schueller or Front Range.

As a result of these defects, it is certain that the judgment did not create an easement for the benefit of the parcel now owned by PTI. As the judgment does not create easements for the benefit of subdivisions of the Brenner parcel it would be necessary for Brenner to expressly convey its rights to the easement. As discussed below, this was not done for the parcel now owned by PTI.

Pursuant to the agreement at Reception #82004661 Stephen Thomas Brenner as trustee does convey both the N and S halves of the N half of the NW quarter, Sec. 1, Twp 2S, Range 71 W to Front Range Ranching and Mining on December 28, 1981. Critically, only the deed to the S half purports to convey the easement created by the October 27, 1981 judgment. (The deed is also defective as it incorrectly refers to Reception # 8107856 as the source of the easement.) Front Range then conveys both of these parcels to Schueller on January 31, 1982. Again, a critical difference in the deeds is that there is no mention of any easement except in the deed to the S half. (The reference indicates that Front Range held the easement created by the judgment at Reception #8107856, which as noted above is clearly not the case besides the fact that the grant is defective due to the incorrect reception number.) PTI now owns the N half for which there is no purported easement in the original deed to Front Range or the deed from Front Range to Schueller.

We find no conveyance of any interest in the October 27, 1981 judgment easement from Brenner to Front Range except as regards the S half and then only if one ignores the incorrect reception number. The judgment was entered to benefit Brenner and it contains no reference whatsoever to Front Range or to

Schueller. We conclude that Front Range did not acquire an interest in the judgment easement by virtue of the December 16, 1981 agreement. Any interest Front Range acquired resulted from the deed for the S half from Brenner to Front Range. Front Range could not transfer an interest it did not hold at the time it deeded the N half to Schueller even if they had used the correct reception number.

(Again, it may be that this access can be perfected via appropriate legal process. Until such an action is successfully pursued, PTI does not have legal access across the Flatiron property.)

Easement at Reception #F0772639

PTI has made much of the easement from Front Range to Schueller dated January 31, 1982 but not recorded until January 6, 1999. There are a number of problems with this document. First, there is no deed, covenant, agreement or document that gave Front Range the easement they purport to convey in this document. The legal description is not the same as the judgment entered in favor of Brenner in December 1981. Further, there is no suggestion that this easement has ever actually been an easement or even a route of access to the PTI property. As best we can tell this easement is a complete fiction.

The defects in this document are made even more interesting by the relationship between Schueller and Front Range. William Schueller incorporated Eldorado Communications as a Colorado corporation on July 30, 1981. On September 4, 1981 Eldorado Communications filed Front Range Ranching and Mining as a trade name with the Colorado Secretary of State. William Schueller has been listed as the president of Eldorado Communications in every annual report filed with the Colorado Secretary of State.

From the Secretary of State's records it would appear that when the easement of January 31, 1982 was executed it contained a number of legal defects. First, Front Range was not a Colorado corporation but the trade name of Eldorado Communications. Second, the deed is signed by the purported president of Front Range - Raymond Hamlin. At this time it does not appear that the president could not have been Raymond Hamlin, but must have been William Schueller. Raymond Hamlin is listed as a director of Eldorado Communications. Third, Front Range owned no interest consistent with the legal description in the easement.

There are certainly other documents, deeds etc. in the mix regarding access. As the later ones are all based more or less on the forgoing documents they inherit their defects. While theoretically several of these documents could form the basis for legal action, they do not on their face prove access. In our view, substantial and complex litigation will be required to settle legal access to the N half parcel now owned by PTI and this may only be successful if trespass across State Parks' land is avoided. Of course, all of this begs the question of whether a road meeting County standards can be constructed once some sort of legal access exists.

Please let me know if you have any questions.

Best regards,



Timothy B. Gablehouse
for Gablehouse & Epel, LLC

TRG/tg

fc. Susan Wood
Jefferson County Planning and Zoning