YOUR EASEMENT IS SAFE!

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Last week, the Court of Appeal in Sacramento determined that an easement cannot be taken from a homeowner simply because it is no longer used or no longer necessary (*Cottonwood Duplexes, LLC v. Barlow*).

This case arose from a dispute between a homeowner, Mr. Barlow, and an adjacent developer in Cottonwood, California (just south of Redding in Shasta County). The homeowner purchased his property, which included a 60-foot wide access and utility easement (wide enough for a four-lane road) across two adjacent parcels owned by a developer. It appears that the original easement was intended to serve the entire development. During the course of development in the area, access was provided to the Barlow property by new public streets in other locations. Also, all utilities eventually were provided from the public street adjacent to Barlow's property. Therefore, the 60 foot easement was no longer necessary.

When the original developer processed the subdivision map in Shasta County, five lots were created within the adjacent subdivision which were affected by the easement. On the subdivision map, Shasta County placed a note stating that no building could take place on those five lots until the easement was removed from the lots. Several of Mr. Barlow's neighbors also had rights to the easement, but either surrendered their rights or reduced the size of the easement to 12 feet so that the developer could build homes on the five lots. Mr. Barlow refused and the developer brought this lawsuit.

The developer argued that, because access and utilities were now granted from public streets, the easement was no longer necessary for Mr. Barlow and, even if it was, a 12 to 15 foot easement would be satisfactory. Everyone agreed that a four lane wide road was not necessary to serve Mr. Barlow's property, nor was the utility easement any longer necessary.

The trial court, in an attempt to balance the equities, did not remove the access easement in its entirety, but reduced it to 32 feet, which was apparently the reduction in size that was necessary to permit the developer to construct homes on the five lots. The court further

removed in its entirety, the utility easement because it was no longer necessary. Mr. Barlow appealed.

The Court of Appeal determined that there is no authority under California law for the extinguishment of a landowner's easement rights because they are not being used or are no longer necessary (see the *Scruby* distinction below). The court indicated that if Barlow had intended to abandon the easement, the result might have been different. However, the court found that in this case, there is no evidence Barlow intended to abandon any part of the easement originally granted to him.

There is an important distinction in this case between the extinguishment of an easement and the limitation of its use. The developer probably would have been successful, based on a 1995 case entitled *Scruby v. Vintage Grapevine*, to limit Barlow's use of the easement to 15 feet or so, enough for a single lane driveway in and out of his property, since there was no need for a 60 foot wide easement for access and utilities to a single family home. However, in this case, in order to develop the five remaining lots, the developer apparently needed the easement removed from title on at least 28 feet of the property. The Court of Appeal said "no," there is no right in California to remove a recorded easement or any portion thereof.

In this case, Mr. Barlow was successful in completely overturning the trial court decision and he was awarded his costs on appeal.