

**Bauman – RUE**

**Responses to Jennifer Riley & Thomas Hoole**

1. There is no request for any exception to the building pad as recorded in the recorded lot line revision that governs the property.
2. There does not exist an official recorded view covenant between the property of Hoole/Riley and the Baumans.
3. The proposed home meets all the requirements of the recorded lot line revision including the restrictions of the building pad.
4. Please refer to the enclosed letter from the attorney for the Baumans, Keaton Hille, for his response to the view covenant comment.

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**HANSON BAKER**  
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**Re: Bauman – RUE; Responses to Jennifer Riley/Thomas Hoole**

- There is no enforceable restrictive view covenant. The claimed view covenant referenced by this comment was never recorded. Washington’s recording statutes are intended to provide constructive notice to land possessors who have restrictions burdening their land. See RCW 65.08.070. If a restriction is recorded, any subsequent purchaser is assumed to have constructive notice. Here, because the claimed view covenant was not recorded, nor was it included in the Baumans’ chain of title, the Baumans had no knowledge of the requirements at the time they purchased their property. In the absence of notice, the claimed view covenant is not enforceable.<sup>1</sup>
- The reference to the view covenant in Lot Line Revision SUB01-005 does not change this conclusion. That reference suggests that the claimed view covenant would be subject to an agreement, and provides a location for the recording number of the agreement. The agreement was not included with Lot Line Revision SUB01-005, nor was it actually recorded. As a result, Lot Line Revision SUB01-005 does not provide the requisite notice to make the claimed view covenant binding.
- Before the claimed view covenant can be enforced, the party seeking enforcement, in this case Ms. Riley and Mr. Hoole, must establish its existence and enforceability against subsequent owners.<sup>2</sup> The proper venue for this determination is superior court, which has jurisdiction over disputes concerning real property.<sup>3</sup> Further, a view covenant must be enforced by someone with some right, title, or interest in the subject properties.<sup>4</sup> Ms. Riley and Mr. Hoole cannot rely on the City to enforce this claimed view covenant. Unless and until Ms. Riley and Mr. Hoole successfully resolve this in superior court, they have no

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<sup>1</sup> E.g., Dickson v. Kates, 132 Wn. App. 724, 737, 133 P.3d 498 (2006).

<sup>2</sup> E.g., Nw. Properties Brokers Network, Inc. v. Early Dawn Estates Homeowner's Ass'n, 173 Wn. App. 778, 800–01, 295 P.3d 314 (2013).

<sup>3</sup> RCW 2.08.010.

<sup>4</sup> Lakewood Racquet Club, Inc. v. Jensen, 156 Wn. App. 215, 228, 232 P.3d 1147 (2010).

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right or authority to object to construction on the Bauman property that may violate the claimed view covenant.

- The claimed view covenant, even if enforceable, does not limit the Baumans' right to construct their home within the claimed view corridor. In fact, the claimed view covenant is limited to restrictions on vegetation, and specifically excludes construction:

3. Construction. Grantors reserve the right to construct a building on 5928 77th Avenue SE that may obstruct, limit, or impede Grantees view across the View Corridor, provided that such construction shall be in compliance with all applicable laws and regulations, including without limitation the provisions of the Mercer Island Municipal Code.

- The proposed home construction would comply with the building pad requirements set forth in Lot Line Revision SUB01-005.

Very truly yours,

HANSON BAKER LUDLOW  
DRUMHELLER P.S.



Keaton G. Hille

KGH:hrw