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Dear [redacted]

There are two sides to the adverse possession story involving us. We did not expect the story to appear in the media; it began as a dispute over a fence that denied us access to our property, and it was decided in the court. Once it did appear, we thought it would be short-lived. After consulting with friends, we decided to just let it "go away." That decision proved to be wrong. It has not gone away, and we don't expect it to go away for some time. Meanwhile, partly because of our silence, the accounts in the media have not accurately portrayed what occurred or why. We hope that you will read our side of the story and judge our actions for yourself.

This is a personal message from us to you. *We ask you not to release this letter to the media.* There are issues that are still being litigated before the Court here in Boulder, and the Kirlins have stated that they will appeal. As a former judge and former attorney, we believe that we should limit what we say to the media while the case is in litigation.

We moved into our home in 1982. We had purchased our lot from a local developer in 1981. We worked with an architect employed by the developer to design our house. The architect and the developer's construction crew decided where to locate our house on our lot with little input from us. When the house was almost completely finished, the construction crew attached a retaining wall to prevent erosion from the higher ground at the rear of our lot onto the area they had excavated to accommodate our garage. The excavated area extends onto the lot that adjoins ours. At that time and for two years after we moved into our house, that lot and the lot to its west were owned by the developer. The Kirlins bought the two lots in 1984; we did not learn of the sale for some time after it occurred.

The construction crew built the retaining on their own initiative. We appreciated their efforts to prevent erosion and to protect the structural integrity of our house, but we didn't ask them to build it, we didn't know they were going to build it, and we had no input as to its design or location. The retaining wall extends from the west wall of our garage next to the side door, across the boundary line between the lots, and into the adjoining lot by about 7 feet. It's a steep wall, almost vertical, and approximately 5 feet high as it crosses our property.

As a result, we've always walked up the hill created by the developer's excavation and around the retaining wall to get to and from the rear of our property, where we have a patio and small garden areas. We wore one footpath along the top of the hill from the street and another, steeper and closer to the boundary line, as we cleared construction debris and planted trees and shrubs on the west side of our property during the first two years we lived in our house.

For 25 years, we've taken care of the excavated area and used it virtually every day. We've used our footpaths. We've planted and cared for flowers and shrubs on it to make it more attractive. Our neighbors easily saw these from the street (as several testified at trial). We entertained on it and used it for deliveries. We cut the grasses and cleared brush to eliminate a wildfire hazard. We trimmed the trees. We eliminated knapweed, spurge and other invasive weeds from it on our own and at the request of Open Space rangers. And we did all this openly for twenty-five years. We did not do so with any grand scheme of thereafter using "legal trickery" to claim it as our own, but for access, beauty, maintenance and safety--and because the Kirlins simply ignored the property.

The Kirlins never objected to our use of the property, and we never saw the Kirlins on it. In fact, we never met the Kirlins until the eruption of the dispute between us. As he admitted at trial, Mr. Kirlin never inspected the portion of the property we had been using and maintaining, nor did he have any evidence he had done anything to maintain that portion.

After nearly a quarter of a century, in late September 2006, without contacting us first, the Kirlins had surveyors come onto the property to mark the recorded property lines. Again, without contacting us, the Kirlins obtained a permit to build a fence and hired a contractor who began to outline its route with twine. The effects were obvious: the fence would bisect the retaining wall, cut through our garden and landscaping, and deny us access to our patio. Because the Kirlins made no effort to talk with us before the fence was underway, we contacted an attorney.

The next day, the contractor began work on the fence. Our attorney called the Kirlins immediately. He asked Ms. Kirlin to stop the construction so we could work out an agreement under which we would pay them for a non-exclusive right to continue to use the paths and retain a small area where our landscaping and garden extended onto their property. Mrs. Kirlin said she had to talk with her husband, who was returning to Boulder that day from a trip. She refused to tell the contractor to stop work. Our attorney called the Kirlin house again a few hours later, again requesting an arrangement to restore our access to our property. The Kirlins did not return his call, and work on the fence continued.

It was only then that we sought a temporary restraining order to stop fence construction and filed a claim asking the Court to determine whether we had adversely possessed the property and were entitled to either the continued use or the possession of that area. This was no grand conspiracy or sneak attempt to steal land. Had we been plotting for years to take the Kirlins' property through an "obscure law," as some have alleged, we would have done so as soon as we could--in the year 2000, which is when we satisfied the eighteen-year period of continuous and exclusive use required to establish an adverse possession claim. We wouldn't have waited until twenty-five years had passed and the Kirlins started building their fence.

Two months later, we entered into mediation with the Kirlins to try to resolve this dispute. It was the third of the efforts we made to resolve this case without going to trial. The Kirlins demanded that we pay them almost $300,000 for the use of the footpath and the very small encroachments of the landscaping and garden.

In the spring of 2007, we tried again. We offered to pay a fair price for the use of the disputed property. Shortly thereafter, we moved to amend our complaint to present our claim for an easement to use the property to access our patio with greater specificity. The Kirlins successfully argued to deny our motion. On the eve of trial, the Kirlins offered us the use of a narrow, three-foot strip for a temporary period. Because that wouldn't work with the lay of the land, allow us to move gardening and other heavy or bulky equipment to our patio, or provide access to future owners of our home, we proposed a permanent and slightly larger strip, but less than we had been using and maintaining. The Kirlins rejected our proposal and insisted on going to trial. The trial court ruled in our favor, granting us all of the property we had used nearly every day for 25 years. We've enclosed the court's Order with this letter.

Since the trial, the Kirlins and/or the media have made unfounded allegations against us and the judge who tried the case.

1. The Kirlins never intended to build their "dream home" on the adjoining lot. Until Mr. Kirlin told the media that he intended to build his "dream home" on lot 50, the lot adjoining ours, he and Mrs. Kirlin had always maintained (and testified under oath in their depositions and at trial) that they intended to build it on lot 49, the western-most lot of the two lots they own. The Order quotes Ms. Kirlin's testimony: "Ms. Kirlin and her husband walked on and by the property many times but never specifically went to lot 50 to observe anything...because we were always drawn to lot 49 where we would build.'" This makes sense: the western-most portion of their property has one of the most beautiful views in Boulder.

2. We did not take 1/3 of their property. In late 1983, the city of Boulder traded land with the developer of our neighborhood to improve access for maintenance and fire trucks to its open space. As part of this trade, the city took a part of the lot next to us (lot 50), and gave the developer a portion of open space to be attached to the lot to the west of lot 50 (lot 49). (Our lot is lot 51.) We and our neighbors were told that, as a result of this trade, the two lots, later bought by Mr. Kirlin, would be combined into only one buildable lot. We were given plat maps showing that the lots would be combined. City documents memorialize the conditions of the trade.

We later learned that Mr. Kirlin had purchased the two lots that had been combined into one buildable lot. The then director of marketing for the developer of our subdivision has given a sworn statement that Mr. Kirlin knew--when he purchased the lots--that only one house could be built on the combined lot. For nearly all of the time that the Kirlins (or their trust) have owned the land, it has been assessed by Boulder County as a "combined lot," or one buildable lot, rather than two buildable lots. Approximately two months after the inception of the lawsuit, the Kirlins filed new deeds separating the property into two lots, and, a few months after that, Mr. and Mrs. Kirlin built a fence between them. Since the trial, the Kirlins have claimed that we've stripped them of 1/3 of the lot adjoining ours (lot 50), leaving them unable to build on that lot.

The total square footage of the Kirlins' combined lots is 10,129. The Court awarded us approximately 1200 square feet, only 11 percent of the combined lots. Most of the property

awarded to us is on the side of the hill formed by the excavation for our garage. The Kirlins still have the full right and ability to build their "dream home" on the remaining property, as they had always intended.

3. The Kirlins and the media have characterized what we have done as a trespass. But as court documents show, the Kirlins decided to dismiss any such claim voluntarily, long before trial.

4. We did not make our claim of adverse possession to protect our view. Our living room windows face to the northwest. Our views will not be obstructed by the Kirlins' dream home, no matter where they locate it on their two lots.

5. The trial was fair. We retired from the legal world long before the trial. We had never met the trial judge, who was appointed by Governor Owens in the last year or two. All witnesses, including us, testified under oath and penalty of perjury. Highly regarded attorneys represented both sides. We knew that our access to our property would be at risk if we went to trial. We assume the Kirlins understood the risk as well. The Kirlins lost and are, understandably, upset about losing, but they still have legal avenues to pursue that do not involve creating a media frenzy.

We still hope that we can reconcile our differences with the Kirlins and restore peace in our neighborhood and community. We offer these facts in the further hope that you, who have supported us in the past and may be concerned about representations of the dispute in the media, will better understand the reasons for our actions. Property disputes can be difficult to resolve. When Robert Frost wrote, "Good fences make good neighbors," he was speaking ironically.

Sincerely,

Dick McLean

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Edie Stevens

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