1)

======== Start of Answer #1 (1799 words) ========

It appears that Grubby Grandson (GG) is in need of an easement in order to have access to his newly inherited property. An easement is a non-possessory interest in the use of land. An a appurtenant easement is tied to the land, not the rights of an individual. With an appurtenant easement, there is a dominant tenement or property, which is benefitted by the easement, and a serviant tenement, which is burdened by the easement. An appurtenant easement is transferred with the title of the property and stays with the land, not the land-owner.

GG's first step is to determine whether an express easement by grant already exists. As there is a carriage path running from the road, through his neighbor's property and directly to his property, there is a good chance that one exists. An express easement by grant will be in writing, typically on the deed to the property, and will generally include the scope and purpose of the easement. GG should be aware that occasionally any mention of an easement might be inadvertently left off of a deed as the property is transferred from owner to owner, so he will want to do a thorough title search looking at past deeds, and the deeds to the neighboring properties, to ensure he does not miss an existing easement.

If an express easement exists, GG will need to determine the scope of the easement, and whether or not it has been terminated. With an express easement, the scope is limited by the grant, however, any reasonable use necessary to meet the purpose of the easement is generally implied. For example, with a road easement, the courts will allow utility lines and piping to be run up the easement. Here, Lower Neighbor (LN) might argue that bringing automobiles and construction equipment up a carriage path is outside the scope of the easement. However, if the easement was granted prior to a time when automobiles were common use, and the easement is for a right-of-way, the court will likely allow the easement to include automobiles as they will account for reasonable changes with the passage of time. LN might have a stronger argument if the easement was created more recently, which automobiles were common place, and

strictly limited the path to horse-drawn carriage use. LN could argue that GG was over-burdening the easement with his motored vehicles. The court will look at the increased burden in considering whether to grant and injunction or a surcharge. The court may limit the scope strictly to carriages as provided for or terminate the easement if it finds GG has seriously over-taxed the easement. However this is rare, and court generally will allow reasonable use. In this day in age, vehicles on a right-of-way, for ingress and egress will be considered reasonable.

LN might also argue that the easement was terminated due to the lack of use, even if it once existed. It has been "decades". However, mere lack of use is not enough, on its own, to terminate an easement. For abandonment to terminate an easement, the dominant tenement holder must doing something by physical act, that clearly demonstrates an intent to cancel the easement and never use it again. An oral promise or declaration is not enough. An example of this would be if the carriage path was completely destroyed, or a wall was built at the property line barring further travel. These acts would indicate an intent to abandon the easement. However, the facts state that there is still a carriage path in existence, and there is no mention that there is anything blocking use of path, other than the fact that GG does not own to lower property. Short of additional evidence, this argument will fail.

LN may also attempt to argue that the easement has terminated due to estoppel. If LN reasonably relied on an oral promise, for example, that the easement was extinguished, and built a home in the middle of the carriage path, the court will find he detrimentally relied on that promise and will not reinstate the easement. Finally, if an express easement did exist, but LN blocked or used the easement, continuously, openly and notoriously, for the statutory period (5-10 years), the easement could have been extinguished by the prescriptive use of the serviant property owner. See below for more on prescriptive easements.

Even if an express easement grant does not exist, or was terminated, GG is not out of options. There may be an implied easement. An implied easement is created by

operation of law and generally applies to landlocked parcels such as the one in this case. An implied easement is based on the theory that no grantor would intentionally create a landlocked parcel, as they have almost no value.

Depending on the facts of the case, GG may be able to get an easement based on prior use or reservation. If GG's grandmother, or previous owner of land, also once owned the lower neighbor's property (unity of title), but then then sold the lower portion, this rule would apply. If the grantor of neighbor's property use the path prior to the severance of title, and then continued to use the carriage path after the severance of the title, this would create a reservation by implication, and GG's property could continue to use the easement as long as it is reasonable necessary. Here the land is otherwise blocked from the public road by private property so there is necessity. If an express easement does not exist, there is likely unity of title, as why else would there be a carriage path running through both properties unless the properties used to be connected. There is an implication that if the land was sold and the carriage path was visible and in use, the new land-owners had notice of the existence of the easement. Here, the carriage path is still visible. It is described as "clearly has not been used for decades," so LN might argue that he did not have notice when he bought the property based on the condition of the path. However, the mere existence, even if run down, should cause the reasonable landowner to know that it was used and there may be an easement. It is not clear if GG's grandmother had additional houses on the property, or if it was undeveloped and she used it for camping, or whether or not she regularly used the land at all. If she did regularly use the path until 15-20 years ago, perhaps because she could no longer travel there due to her age, and LN knew of this, that is likely considered continuous enough to qualify as an easement based on prior use.

If LN or previous owners of that land used to own the both properties then GG could attempt to get an easement by necessity. This does not require prior use and is again premised on the idea that a grantor would not sell land with no way to enter the property. Therefore, an easement is implied by operation of law. For an easement by necessity, there must be unity of title, severance of title, and necessity. GG might run

into a problem if LN's land was never connected to GG's land, but was connected to one of his other neighbors instead. In that case the easement by necessity would then run through which ever land had unity of title. Also, if the state originally gave GG's land to the federal government and then sold the rest to private owners, land-locking only that land, GG is out of luck and should invest in a helicopter.

Assuming that is not the case, based on the existence of the carriage path through both properties, GG can probably get an easement by necessity. However, GG would not get to chose where the easement will run and it may not be on via the carriage path. The court will consider the burden to the serviant land and place the easement in a reasonable location. This may, or may not be convenient for GG. Additionally, if the necessity ends for some reason, such as GG's property gaining access to the main road somehow, it will not matter if GG spent money creating a nice driveway, or if the new access is less convenient. The easement will be extinguished.

Another option for GG to consider is a prescriptive easement. However, this may not be ideal as it opens GG to liability for trespassing. A prescriptive easement is the cousin of adverse possession. The elements are similar, except the possessor is gaining use of the land, not possession. Here, GG would start using the carriage path as his driveway and see if LN stops him. If GG is able to use the driveway without permission (or with hostility) openly and notoriously, continuously, and uninterrupted for the statutory period (5-10 years), the prescriptive easement will be created and he will be able to continue to use that driveway as his right-of-way. For the use to be uninterrupted, GG would need to be actually prevented from using the easement. This would need to be more than a no trespassing sign or threat to sue. It should also be noted, that should GG attempt to create a prescriptive easement, and then LN gives him permission to use the carriage path, an easement will not be formed. This will create a mere license, which will allow GG to use the path, but will be that permission will be subject to termination by LN. Additionally, certain situations create a presumption of permission, the most relevant of those being that when the land is wilderness, there is a presumption of permission. The facts don't say whether LN's land is developed or not, but if not, this

could be an issue.

GG's best option is an express easement by grant. If an express easement by grant does not already exist, it may be in his best interest to approach LN and make him an offer to purchase an easement. LN may be open to this, especially if the carriage path is out of the way, or unused. additionally, he may want to approach other neighbor's with access to the main road, in case LN decline's the offer. While the carriage path may be nice, GG will need access to his property, and it may be simpler that way. The express easement will increase GG's property value substantially, and he will save money in the legal fees that will be required to gain and maintain the implied easement, and will not be risking liability by way of the prescriptive easement. The money will be worth it for the simplicity and will be returned to him based on the increase in value to his property.

======== End of Answer #1 ========

2)

======== Start of Answer #2 (2036 words) ========

To: Attorney

From: Associate

Re: Client - Inflatable Trump Sign

Date: 4/21/16

I was asked to research whether Client has any recourse against Neighbor who has erected a 100-foot Donald Trump sign on his property, interfering with her use and enjoyment of the land and creating a negative externality in that she has no control over the sign, and it is likely effecting the value of her property in a negative way. I believe she does have recourse.

Sonoma County Municipal Code Article 84:

Article 84 is Sonoma County's sign ordinance. The ordinance lists it purpose as protecting property values, promoting sound sign usage, discouraging excessive or

abusive sign usage, keeping Sonoma county beautiful, preventing hazards to motorists, and for the general health safety and wellbeing of the community. The ordinance is created through zoning, which is the inherent power of the State to regulate land use so long as the regulations are reasonable and promote the health safety and wellbeing of the community. The 10th Amendment of the United States Constitution grants the State this "police power" and the State then grants that power to the local governments through an enabling statute. Based on the similar language it is clear Sonoma County is invoking that right.

Political Signs

Sonoma County allows for political signs in residential neighborhoods, however, there are strict limitations. There is a limit of two signs per parcel, that can be no larger that 16 square feet in a single family residential district (R1) or 32-feet in any other zoning district. The signs may be single-sided, double sided, or "wing type". Inflatable signs are not mentioned in this section, but we can assume the size limit at least would apply. Additionally, the sign may not be more the four feet above the fence line, and in any case not more than seven feet from the ground.

Additionally there is a duration limitation that is relevant based on Client's complaint the sign has been up for "months" in that the sign may only be posted from 90 days before the election until 20 days after the elections.

Commercial Signs

Commercial signs are also regulated, particularly if on a scenic highway (which contains much of unincorporated Sonoma County). Outdoor advertising signs must only be erected if a use permit has been obtain, and there are strict size limits (6-10 ft.) and location limits. The advertising must be connected to a business on that property. It is unclear if an online store would qualify, but probably not as the sign wouldn't be directing someone to a location where they might want to stop in an buy the product. Furthermore, the content is limited to the name and information about the business. If not on a scenic highway, the allowance are a little more lenient, however, there are still

limitations. We will want to ask client where she lives, and how she is zone, and whether she is on a "scenic highway/"

Application to Neighbors Giant Trump Sign.

Neighbor is claiming this is a political sign, not a commercial advertising sign as client suggests. His sign clearly falls outside what is allowed by statue. His sign is 100 feet tall. A monstrosity, and in violation of both the political sign ordinance, as it is more that 7 feet from the ground, and probably the outdoor advertising ordinance. There is no mention of the name of his business being on the sign (and it probably isn't as he is claiming it is for political purposes), and the size is again far large than allowed regardless of what typ of sign it is. He may also be in violation of the duration requirement, in that the primary election is on June 7th. This means the sign should have been erected no earlier than March 7th. The neighbor's use of the term "months" is vague and we may want to get more information on this, though it is not highly relevant as the sin clearly violates every other regulation in place. Client may report her neighbor to the county where a hearing will be held to determine whether the sign will be removed either by the neighbor, or the county is he fails to follow through.

Neighbor's Arguments

There are some arguments Neighbor might make should the county insist he remove his sign. These are Constitutionally arguments where the neighbor will attack the validity of the ordinance.

Substantive Due Process

Neighbor might argue that if the County's ordinance requires him to remove his sign, a regulatory taking has occurred. Under the 5th and 14th Amendments of the United States Constitution, the government cannot violate a person's liberty, life, or justice without due process of law. Here, Neighbor will argue that he is losing the use of his land to the government and that that is a taking. He will argue that he is subject to just compensation for the sign and loss of property use as a result. However, so long as the regulation is rationally related to a legitimate government purpose, and furthers that

goal, his argument will fail. Here, importantly, the County is claiming that the ordinance prevents hazards to motorists, promotes county ascetics, and secures property values. These are all legitimate government purposes. The restrictions are rationally related to that purpose in that large signs block traffic or distract drivers, and if left up for too long can effect property values and the "look" of the community. If the regulation meets the rational relationship furthered by the regulation test, the court will not even get to whether there was a taking. However, even if the court did get to that point, there was no taking in that it is unlikely that the ability to post a 100-foot Trump sign was a significant reason he purchased the land. This is just not a substantial loss. He can still erect a sign, just not that one. This argument will likely fail.

Freedom of Speech

This is the argument that we should pay attention to, as it might have some teeth. The 1st Amendment of the United States Constitution protects our freedom of speech. This applies to all means of expression or communication, not just verbal words. Sonoma County's ordinance does infringe on Neighbor's speech in that it is limiting how he can express himself. Depending on the type of speech being exercised, and the type of limitation, different rules will apply as to whether the offending ordinance will be enforceable.

Generally, sign ordinances should be content neutral. Once a limitation is placed on particular content, the is higher scrutiny. If the ordinance is a mere time, place, and manner restriction, the regulation need only be reasonably related to a substantial government purpose and narrowly tailored to meet that goal. Once content discrimination comes in, strict scrutiny will apply. This is particularly true of political speech which is perhaps the most protected type of speech.

Neighbor will argue that as there is a separate ordinance that applies specifically to political signs, the regulation is based on content. The County might argue time, place and manner, in that signs are still allowed, just by alternate means than Neighbor is applying. With a time place and manner restriction, if alternate means are available,

the restriction is probably acceptable so long as it promotes a government interest.

However, the court will probably find the political sign regulation to be content limitation based on the fact that the regulations for political signs are different than from other sign regulations, and in some ways, much more restrictive. The county will need to meet the strict scrutiny standard. Here, there is a compelling government interest in the safety of passing motorists. Safety of its citizens is almost always a compelling government interest. The size of a sign goes directly to the safety and whether it will be hazardous or not. Furthermore, under Sonoma County's ordinance, political signs may be larger than many non-political signs, so there is already some leniency in the statute. The size regulation is probably enforceable. However, I am concerned about the duration limitation. Whether the sign is up for a day, or a month, it doesn't change the safety of the sign. This regulation likely goes towards property values and community aesthetics. Many courts have found regulations such as these unconstitutional when directed at political speech as the look of the community is not compelling enough to keep someone from using their own land to freely express themselves. This is particularly true in today's society where, for the presidential election at least, campaigning may begin more than a year before the election and 90 days is significantly restricting the ability to campaign for your chosen candidate effectively.

However, just because a portion of the ordinance violates the protection of free speech, this does not mean that the law is void or stricken in its entirety. It only means that that portion is not enforceable. Here, Neighbor's sign violates some many other regulations that withstand constitutional scrutiny, that his sign as is will not be maintained regardless of whether the duration limitation is enforceable.

I want to briefly address commercial speech, as Client believes that the Neighbor is not promoting his political views, but his online store. Commercial speech is subject to less scrutiny than political speech. Generally, the law must, again, be rationally related to a substantial government purpose, must be directed towards that purpose, and must be narrowly tailored. Here, based on the reasons above, the commercial speech will not

be protected. The restrictions on outdoor advertising sign are rational, and the government has a substantial interest in the safety of its citizens, and the limitations are sufficiently narrow to promote that purpose. Adequate signage to promote your store is still perfectly allowable, just not the 100-foot inflatable doll.

Use Variance

As a minor side note, there is a slight possibility that Neighbor has applied for a use variance for his sign, which means the county would allow it to remain. This would mean he applied to the County to use his property outside of the zoning regulations. However, this is highly unlikely as a public hearing would have been held, and it requires a substantial need for the variance which is simply not present here. However, we should ask client about this, and whether she is aware of any hearing on the matter.

Nuisance

If, for some reason, the County refuses to enforce the ordinance, or Neighbor is successful in the above arguments, Client still has recourse through a nuisance action. Generally, a landowner is allowed to use their land as they see fit. However, a landowner may not unreasonably and substantially interfere with a neighbors use and enjoyment of their own land. A nuisance action does not require Neighbor to set foot on Client's land, so long as a reasonable member of the community would be materially effected by the unreasonable use, there will be a nuisance. Here, apparently other neighbors are also complaining meaning a reasonable member of the community would be annoyed as well. The question then becomes whether Neighbor's use is reasonable. Here a 100 foot sign can almost never be reasonable in a residential neighborhood -- which I am assuming this is, though we should check on the nature of the neighborhood, and how must the sign interferes with her life. We should get information regarding the specific effect of the statute on her property. Is it casting a huge shadow over her land, killing her grass? Does the motor inflating the sign create a loud noise that prevents her from ever relaxing? Is it such an eye-sore that she can't enjoy the view out her windows? All of these things might be considered a nuisance. Additionally, in a nuisance per se action, the nuisance is established simply by

Neighbor's violation of the sign ordinance. So if, for some reason the county won't enforce the action, the court's may grant an injunction and require neighbor to take the sign down as well.

Conclusion

As you can see, Client appears to be in good shape to get rid of the neighborhood eye-sore. Let me know if you wish for me to look into anything else.

======== End of Answer #2 ========
END OF EXAM