

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2013 AUG 29 AM 10:18

Approved as to Form and Legality


Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 84623 C.M.S.

SUMMARY VACATION OF AN UNUSED PORTION OF AN EXISTING PUBLIC SERVICE EASEMENT LOCATED AT 25 DUNCAN WAY TO BRIAN L. MELL AND MARY JANE MELL

WHEREAS, Brian L. Mell and Mary Jane Mell ("Owners"), owners of real property known as 25 Duncan Way and described in a Grant Deed, recorded May 29, 1986, Series No. 86-124339, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048G-7403-011-00, and more particularly described as in *Exhibit A* attached hereto and incorporated herein, have filed an application (permit no. PPE13051) to the City Engineer of the City of Oakland to vacate a portion of an existing public service easement; and

WHEREAS, said Owners intend to file an application with the Building Official of the City of Oakland to construct a garage for their single family dwelling; and

WHEREAS, the proximity of said easement to said dwelling is such that the proposed garage would encroach into the existing public service easement; and

WHEREAS, said easement was dedicated through the Map of Glenwood, filed November 10, 1920, Book 7, Page 75, of the Alameda County Records; and

WHEREAS, said easement was dedicated for the purpose of all public utilities; and

WHEREAS, the limits of the portion of the public service easement proposed for vacation are delineated diagrammatically and described textually in *Exhibits B and C* attached hereto and incorporated herein; and

WHEREAS, the City Engineer has determined that the portion of the public service easement proposed for vacation has never been used for the purposes for which it was dedicated more than ninety (90) years ago; and

WHEREAS, the City Engineer has also determined that there are no public utilities within the portion of the public service easement proposed for vacation, and that such easement is no longer needed by the City and the utility companies for future infrastructure improvements; and

WHEREAS, pursuant to the California Streets and Highways Code, sections 8333 and 8334.5, the legislative body of a local agency may summarily vacate a public service easement when the easement has not been used for the purpose for which it was dedicated for five (5) consecutive years immediately preceding the proposed vacation and there are no public utilities within the existing easement; and

WHEREAS, each as a separate and independent basis, this action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15332 (infill projects), 15301 (minor alterations), 15183 (projects consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the environment); now, therefore, be it

RESOLVED: That the City Council has reviewed all relevant documents relating to the summary vacation of a portion of the existing public service easement that is the subject of this resolution; and be it

FURTHER RESOLVED: That the summary vacation of a portion of the public service easement to the Owners, as delineated in *Exhibit B* and as conditioned herein, is hereby granted; and be it

FURTHER RESOLVED: That said vacation is hereby conditioned by the following special requirements:

1. the Owners (Brian L. Mell and Mary Jane Mell), by the acceptance of this realignment of the existing public service easement and the offers of dedication of abutting public service easements, agree and promise to indemnify, defend, and hold harmless the City of Oakland and its officials, officers, agents, employees, representatives and volunteers, to the maximum extent permitted by law, from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever arising out of or caused by the vacation of said public service easement and regardless of responsibility for negligence; and
2. the Owners acknowledge that the City of Oakland makes no representations or warranties as to the conditions beneath the existing public service easement; and that by accepting this vacation, the Owners agree that they will use the easement area in the future at their own risk, and are responsible for their activities and the activities of their workmen operating within the vacated area and for their own safety and the safety of any of their personnel; and
3. the Owners acknowledge that the City of Oakland is unaware of the existence of any hazardous substances beneath the easement areas, and hereby waive and fully release and forever discharge the City of Oakland and its officials, officers, directors, employees, agents, representatives and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the vacated area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and

4. the Owners further acknowledge that they understand and agree that they hereby expressly waive all rights and benefits which they now have or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and
5. the Owners recognize that by waiving the provisions of Civil Code Section 1542, they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decision to request said vacation, regardless of whether Owner's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
6. the hereinabove conditions shall be binding upon the Owners and their successors, heirs, and assigns, and upon the successive owners of said property; and be it

FURTHER RESOLVED: That the City Clerk of the City of Oakland is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

SEP 17 2013

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, ~~REID~~, SCHAAF and PRESIDENT KERNIGHAN - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST

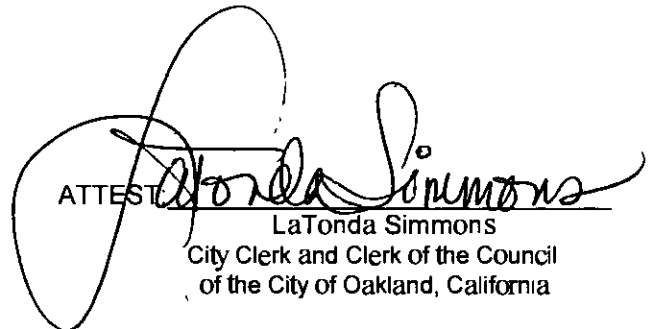

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Description of the Private Property Encumbered by the Easement

Address 25 Duncan Way

Parcel no. 048G-7403-011-00

Deed no. 86-124339

Recorded May 29, 1986

EXHIBIT A

Legal Description

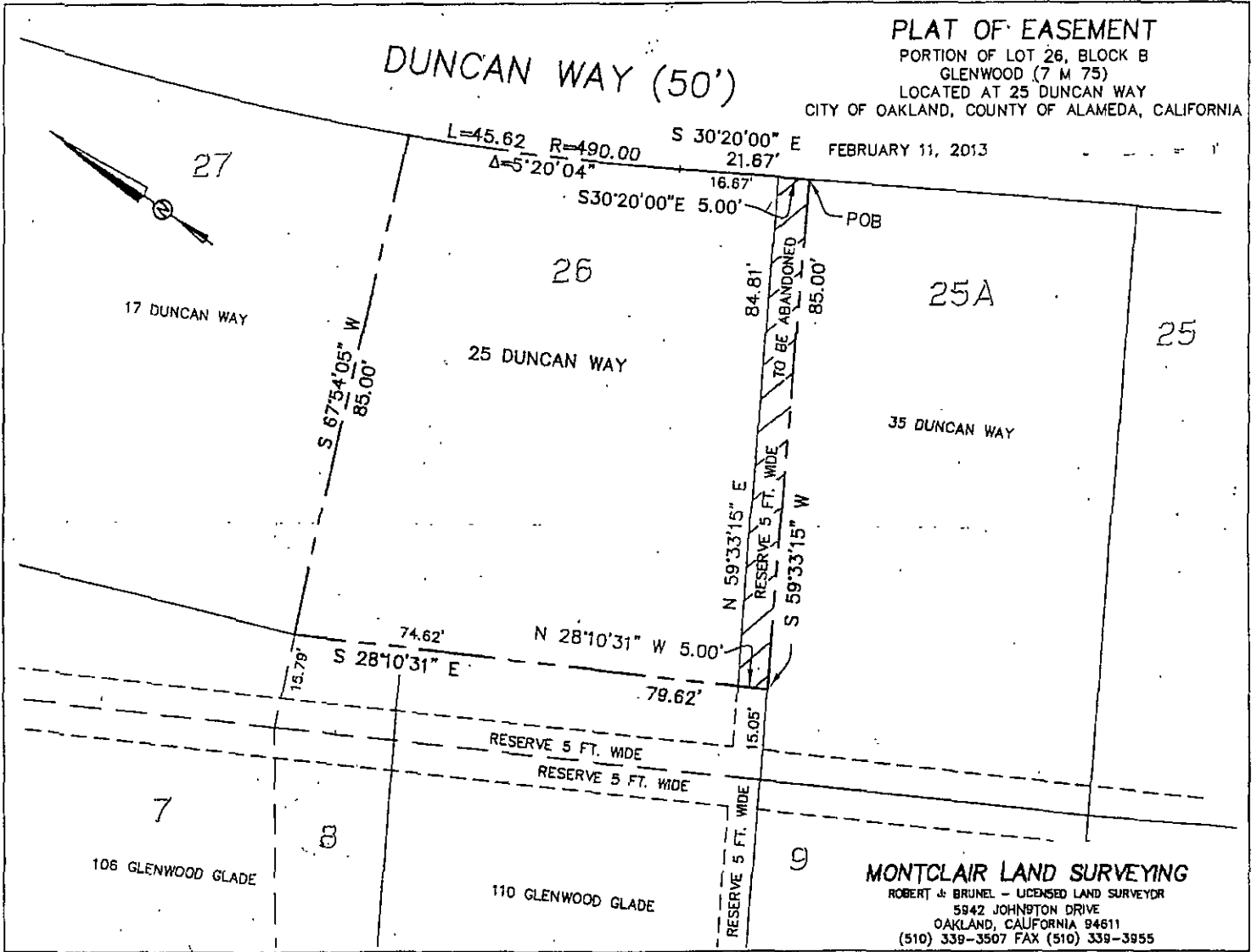
SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS: A PORTION OF LOT 26, BLOCK "B", GLENWOOD, FILED NOVEMBER 10, 1920, MAP BOOK 7, PAGE 75, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF DDNCAN WAY WITH THE LINE DIVIDING LOTS 26 AND 27, BLOCK "B", AS SAID WAY, LOTS AND BLOCK ARE SHOWN ON THE MAP HEREIN REFERRED TO; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE DIVIDING LOTS 26 AND 27, 95 FEET; THENCE SOUTHEASTERLY IN A DIRECT LINE TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 26, DISTANT THEREON 85 FEET SOUTHWESTERLY FROM THE INTERSECTION THEREOF WITH THE SAID SOUTHWESTERLY LINE OF DDNCAN WAY; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF LOT 26, 85 FEET TO THE AFORESAID SOUTH-WESTERLY LINE OF DDNCAN WAY; AND THENCE NORTHWESTERLY ALONG SAID LAST NAMED LINE 67.29 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Graphic Delineation of the Portion of the Public Service Easement Proposed for Vacation

Address 25 Duncan Way

Parcel no. 048G-7403-011-00



Not to scale

A more legible copy is available at the
 Office of the City Engineer
 250 Frank Ogawa Plaza - 2nd floor
 Oakland, CA 94612

EXHIBIT C

Description of the Portion of the Public Service Easement Proposed For vacation

Address 25 Duncan Way

Parcel no. 048G-7403-011-00

MONTCLAIR LAND SURVEYING

5942 Johnston Drive
Oakland, CA 94611
(510) 339-3507 Fax (510) 339-3955

February 11, 2013

Legal Description for that portion of the Reserve 5 Ft. Wide at 25 Duncan Way in Oakland to be Abandoned

That parcel of land in the City of Oakland, County of Alameda, State of California, described as follows:

A portion of Lot Numbered 26, in Block Lettered "B", as said lot and block are laid down, delineated and so designated upon Sheet No. 1 of that certain map entitled "GLENWOOD, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", Filed November 10, 1920, in Book 7 at Page 75, in the office of the County Recorder of said County of Alameda, described as follows:

Beginning at the point of intersection of the southeasterly boundary line of Lot Numbered 26, in Block "B", with the northeasterly line of Duncan Way as shown on said map entitled "GLENWOOD, OAKLAND, ALAMEDA COUNTY, CALIFORNIA", thence along said southeasterly line of Lot 26, South 59° 33' 15" West 85.00 feet; thence leaving said southeasterly line North 28° 10' 31" West 5.00 feet to the northwesterly line of the "Reserve 5ft. wide" as shown on said map; thence along said line North 59° 33' 15" East 84.81 feet to the northeasterly line of Duncan Way; thence along said line South 30° 20' 00" East 5.00 feet to the Point of Beginning.

Containing 425 square feet more or less.

APN: 48G-7403-11.



2-11-2013