

Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 SEP 24 PM 3:02

Approved For Form And Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 8 2 3 2 0 C.M.S.

RESOLUTION SUMMARILY VACATING AN UNUSED SANITARY SEWER EASEMENT LOCATED AT 4348 FRUITVALE AVENUE TO THE PROPERTY OWNERS, SIMON AND RENEE YU

WHEREAS, Simon and Renee Yu, owners of a property described in a grant deed, recorded October 10, 2003, Series No. 2003594047, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 029A-1311-001-00, and identified by the City of Oakland as 4348 Fruitvale Avenue and more particularly described in *Exhibit A* attached hereto, has made applications (PPE 09060) to the City Engineer of the City of Oakland for a summary vacation of an unused sanitary sewer easement which serves said parcel; and

WHEREAS, said parcel was originally subdivided as northerly adjoining Lot 26 in Block 11, by the map Fruitvale Garden Farms, filed with the Alameda County Recorder on October 6, 1922, in book 3 of maps, on pages 41 and 42; and

WHEREAS, said parcel is currently vacant and is zoned as R30 for future construction of a single family dwelling; and

WHEREAS, said owners were granted a minor Conditional Use Permit (CDV 04192) in October 2006 to constructed a shared access facility (common driveway) to serve said parcel and the southerly adjoining Lot 27 on the Fruitvale Garden Farms subdivision map (parcel no. 029A-1311-021-00), and design review for a single family dwelling, and a minor variance for a reduced rear yard setback; and

WHEREAS, said parcel was also determined in September 2004 not to have an existing creek within the property boundaries (CDET 04020); and

WHEREAS, said public service easement was acquired without cost by the City Oakland for sanitary sewer lines from Harry L. and Peggy C. Cadwalader through a grant deed, recorded March 14, 1962, series no. AT 33926, by the Alameda County Clerk-Recorder, and more particularly described in *Exhibits B1* and *B2* attached hereto; and

WHEREAS, said easement was originally dedicated to assure that a future private sanitary sewer lateral serving a future residence on said vacant Lot 26 could access the public sanitary sewer main located in Fruitvale Avenue by crossing said vacant Lot 27; and

WHEREAS, the City Engineer has determined that said easement has not been used for any purpose by the City of Oakland or prior property owners during the intervening forty-seven (47) years and is not needed for any associated future public purpose; and

WHEREAS, the Building Official of the City of Oakland has determined that effluent from a future residence constructed on either of said vacant lots can be directly conveyed by gravitational force in a privately maintained sanitary sewer lateral wholly within the boundaries of each of the vacant lots to said existing Fruitvale sewer main; and

WHEREAS, the Building Official has further determined that the existing location of said easement is detrimental to the positioning of future residences on said parcels; and

WHEREAS, the limit of said easement is delineated in *Exhibits B1* and *B2* attached hereto; 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 not less than five (5) consecutive years immediately preceding the proposed vacation and does not have publicly maintained utilities with it; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guideline Section 15332 (Class 32: Infill Projects) and Section 15303 (new construction or conversion of small structures) this project is categorically exempt from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That said vacation, as conditioned herein, of said public service easement, as delineated in *Exhibits B1* and *B2*, on said vacant Lot 26 to the property owners, Simon and Renee Yu, is hereby granted; and be it

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

1. the Permittee (Simon and Renee Yu) shall be responsible for properly constructing, with required permits, all necessary sanitary sewer lateral improvements within said Lot 26 and the Fruitvale Avenue public right-of-way as necessary to serve a future residence; and
2. the Permittee shall be responsible for removing, replacing, and relocating, with required permits, all existing public utilities as necessary to facilitate the installation of said sanitary sewer improvements for a future residence; and
3. the Permittee agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all

claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the vacation of said public service easement; regardless of responsibility for negligence; and

4. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions within said public service easement; and that the Permittee agrees that he will use the vacated area at his own risk, and is responsible for his activities and the activities of with all other permittees or workmen operating within the vacated area and for his own safety and the safety of any of his personnel; and
5. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the vacated area, and hereby waives and fully releases and forever discharges the City of Oakland and its officials, officers, employees, representatives, agents, 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
6. the Permittee further acknowledges that he understands and agrees that he hereby expressly waives all rights and benefits which he now has 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
7. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, he will not be able to make any claims for damages that may exist, and to which, if known, would materially affect his decision to request said vacation, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
8. the hereinabove conditions shall be binding upon the Permittee and his successors, heirs, and assigns, and upon the successive owners of said Lot 26; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Engineer and the Building Official of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth; 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.

IN COUNCIL, OAKLAND, CALIFORNIA, OCT 6 2009, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - ~~BROOKS~~, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER - 7

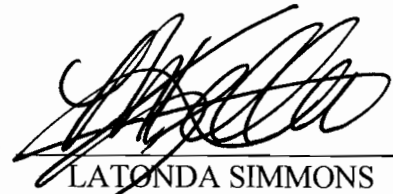
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brooks - 1

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Lands of Simon and Renee Yu, as described in a Grant Deed, recorded October 07, 2003, series no. 2003594047, by the Alameda County Clerk-Recorder

All that certain real property situate in the County of Alameda, State of California, described as follows:

(City of Oakland)

PARCEL ONE:

Lot 27, Block 11, as said Lot and Block are shown upon that certain map entitled, "Fruitvale Garden Farms, Oakland," filed October 6, 1922, Map Book 3, Pages 41 and 42, Alameda County Records.

Assessor's Parcel No. 029A-1311-021

PARCEL TWO:

Lots 26, Block 11, as said Lots and Block are shown upon that certain Map entitled, "Fruitvale Garden Farms, Oakland, filed October 6, 1922 Map Book 3, Pages 41 and 42, Alameda County Records.

Assessor's Parcel No. 029A-1311-001

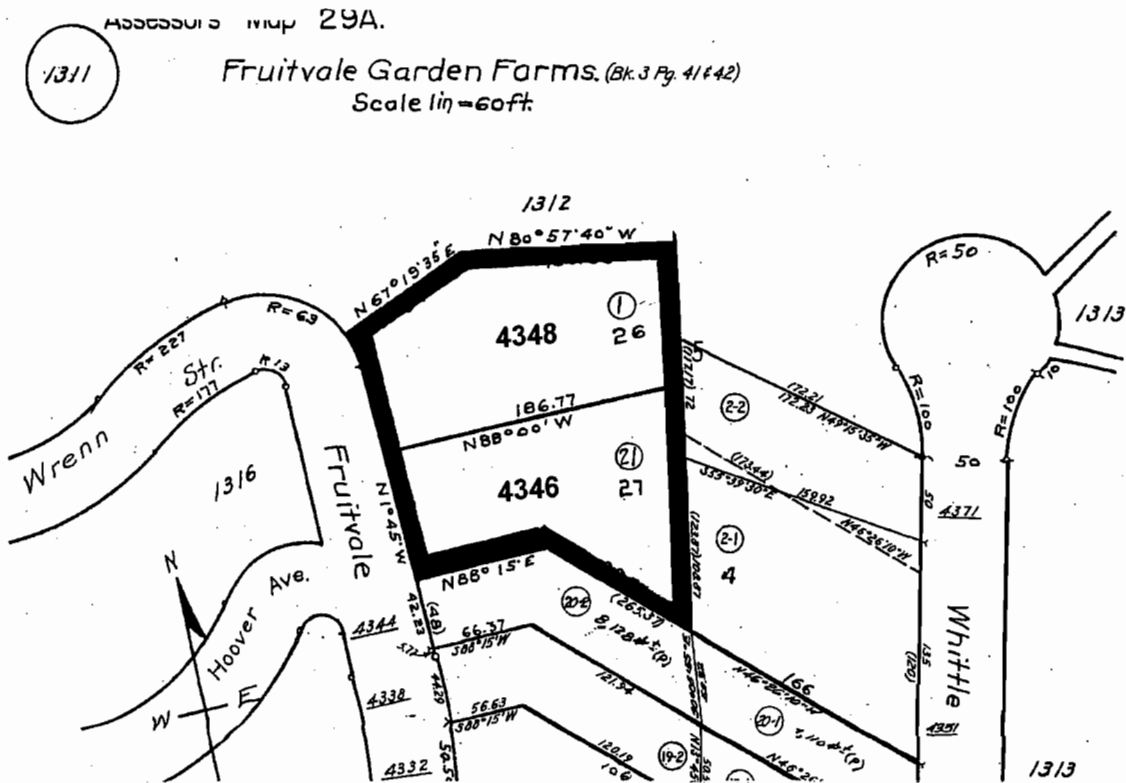


Exhibit B1

Delineation of sewer easement accepted by the City of Oakland in 1962 through Series AT 33926 (by reference)

D-7446-62

10504

EASEMENT AND RIGHT OF WAY

THIS INDENTURE, made and entered into this 22nd day of September, A.D. Nineteen Hundred and Sixty One (1961) by and between HARRY L. CADWALADER and PEGGY C. CADWALADER, his wife,

the party of the first part, and the City of Oakland, a municipal corporation, the party of the second part.

WITNESSETH: That the said party of the first part, do hereby grant unto the said party of the second part an easement and right of way to establish, construct and maintain for all time public sanitary sewer lines to, through and along the certain piece and strip of land, situate, lying and being in the City of Oakland,

portion of Lot 27, Block 11, as depicted on the map entitled, "Fruitvale Garden Tract", which map was filed in the office of the Recorder of the County of Alameda, State of California on October 6, 1922 in Book 3 of Maps at Pages 41 and 42 described as follows:

A strip of land 5 feet in width, containing 0.0245 acres, more or less, described as follows:

Beginning at the southwest corner of Lot 27; thence from said point of beginning north 1° 45' west, 5.00 feet along the west line of said Lot 27; thence north 88° 15' east, 73.32 feet along a line which is parallel to and 5 feet northwesterly, measured at right angles, to the south line of said Lot 27; thence north 2° 00' east, 115.32 feet; thence south 88° 00' east, 5.00 feet; thence south 2° 00' west, 120.00 feet to a point on the extension of the said south line of Lot 27; thence south 14.00 feet along said extension of the said south line of Lot 27; thence south 88° 15' west, 80.00 feet along said south line of said Lot 27 to the point of beginning.

A more legible copy is available for viewing at the Office of the City Engineer, City of Oakland 250 Frank H. Ogawa Plaza 2nd floor.

THIS GRANT is made by the party of the first part under the full understanding and condition that the party of the second part has the right to remove all trees that interfere with the purpose for which said easement is granted.

TO HAVE AND TO HOLD unto the said party of the second part for the sole object and purpose of constructing and maintaining thereon public sanitary sewer lines and for no other purpose; and should said real property herein described be at any time used for any other purpose by said party of the first part, the easement and right of way for the purpose of constructing and maintaining public sanitary sewer lines, the title to said easement and right of way, granted and conveyed shall immediately lapse and become null and void and said easement and right of way shall immediately revert to said party of the first part, their heirs, successors and assigns.

IN WITNESS WHEREOF the said party of the first part have hereunto set their hand the day and year first above written.

HARRY L. CADWALADER
PEGGY C. CADWALADER

For Use of Recorder Only

Recorded March 14, 1962
Series no. AT 33926
(Alameda Co. Records)
Res. No. 008
City Clk. File No. D-7446-62

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Exhibit B2

Location Of The Existing Public Service Easement

