

MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number: 81611

City Council Meeting Date October 21, 2008

Agenda Item No. S-10.11-CC

Recorded Vote 7 Ayes, 1 Absent - Brooks

Draft submitted in agenda packet, original never received

Council amended legislation at the meeting

Responsible Contact Information

Department CEDA

Contact Person/Ext. Ray Derania x4780

Notes (if any)

Introduced By

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved For Form And Legality

2008 OCT -2 PM 3:38

DRAFT

Councilmember

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION SUMMARILY VACATING AN EXISTING SANITARY SEWER EASEMENT TO DAVID W. NAYLOR TO FACILITATE CONSTRUCTION OF A NEW DWELLING AT 1195 DRURY ROAD

WHEREAS, David W. Naylor, as Permittee and owner of a vacant lot identified as no. 13 on the original subdivision map, and described in a grant deed, recorded August 16, 2007, series no. 2007303266, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048H-7651-031-02, and identified by the City of Oakland as 1195 Drury Road and more particularly described in *Exhibit A* attached hereto, has made an application (PPE 08060) to the Council of the City of Oakland to vacate summarily an existing public service easement, which is five (5) feet wide and approximately sixty-three (63) feet long, that traverses said property at its mid-point to facilitate the construction of a new residence (CDV 07282); and

WHEREAS, said easement was dedicated by Evalee Harrison and accepted by the City of Oakland through a grand deed, recorded November 1, 1979, by the Alameda County Recorder, series no. 79-221733, and more particularly delineated in *Exhibit B* and *Exhibit C* attached hereto; and

WHEREAS, said easement was dedicated for the purpose of extending an existing sanitary sewer main at some future undetermined date from the westerly adjoining vacant Lot 12, identified as APN 048H-7651-032-01 and as 1189 Drury Road, solely to serve a future residence to be constructed on said vacant Lot 13; and

WHEREAS, the City Engineer of the City of Oakland has determined that said easement has not been used for the purpose for which it was dedicated and will not be needed for such purpose; and

WHEREAS, the Building Official of the City of Oakland has determined that effluent from a proposed new residence on said vacant Lot 13 to be constructed by the Permittee can be directly conveyed by gravitational force in a privately maintained sanitary sewer lateral and wholly within the boundaries of Lot 13 to an existing publicly maintained sanitary sewer main located within the Drury Road public right-of-way; 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 of 1970 ("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 Section 15332 (Class 32: infill projects) and Section 15301 (minor alteration to existing structure) of the California Code of Regulations this project is categorically exempted from the provisions of the California Environmental Quality Act; now, therefore, be it

RESOLVED: That the City Council hereby finds and determines that the proposed summary vacation of said public service easement does comply with the California Environmental Quality Act; and be it

FURTHER RESOLVED: That said vacation, as conditioned herein, of said public service easement, as delineated in *Exhibit B* and *Exhibit C*, to David W. Naylor is hereby granted; and be it

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

1. the Permittee (David W. Naylor) shall be responsible for properly abandoning, with required permits, existing sanitary sewer improvements within said easement and for properly constructing, with required permits, all sanitary sewer improvements within said Lot 13 and the Drury Road public right-of-way as necessary to serve the proposed new 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 the proposed new 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 13; 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 Attorney, 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, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Exhibit A

Lands of David W. Naylor, as described in a Grant Deed, recorded August 16, 2007, series no. 2007303266, by the Alameda County Clerk-Recorder

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Being a portion of Lot 13, in Block J, as said lot and block are shown on the Map of "Claremont Knolls Extension", filed January 15, 1926, in Map Book 5, Page 44, Alameda County Records, and more particularly described as follows:

Beginning at the northeasterly corner of Lot 13, also being the northwesterly corner of Lot 14 as said Lots are shown on the Map hereinabove described and running thence along the boundary line common to said Lots 13 and 14, south $8^{\circ} 50' 55''$ east 147.90 feet to the intersection thereof with the northerly line of Drury Road as said road is shown on the hereinabove described map; running thence westerly along said northerly line of Drury Road along the arc of a curve concave northwesterly with the radius of 310 feet an arc distance of 25 feet to a point; thence continuing along the northerly line of said Drury Road, south $77^{\circ} 20'$ west 30 feet to the intersection thereof with the boundary line common to Lots 12 and 13, as shown on the hereinabove described Map; running thence along said common boundary line north $12^{\circ} 15' 45''$ west 27.50 feet to a point; thence leaving said boundary line and running north $32^{\circ} 10'$ east 23.74 feet to a point; running thence north $7^{\circ} 20'$ west 38.51 feet to a point in the northerly boundary line of said Lot 13, distant thereon north $82^{\circ} 40'$ east 20.00 feet from the northwesterly corner of said Lot; running thence along said northerly boundary line, north $82^{\circ} 40'$ east 44.00 feet to the point of beginning.

APN: 048H-7651-031-02

Exhibit B

Delineation of sewer easement accepted by the City of Oakland in 1979 through Deed 79-221733

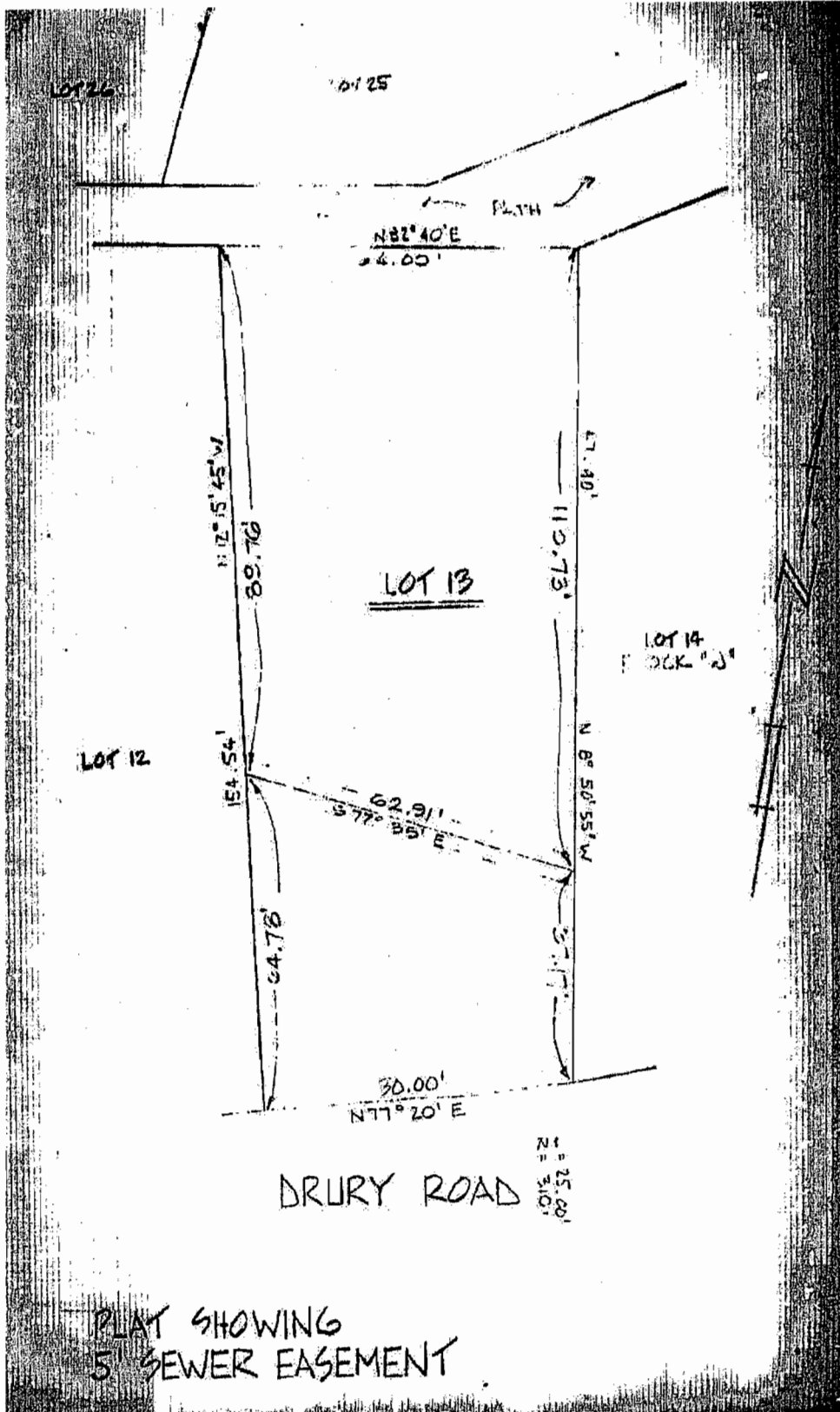


Exhibit C

Location Of The Existing Public Service Easement

