

CITY OF OAKLAND
Agenda Report

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT -2 PM 3:38

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 14, 2008

RE: **A Report And Two Resolutions Summarily Vacating An Existing Sanitary Sewer Easement Crossing Vacant Lots At 1189 Drury Road and 1195 Drury Road To David W. Naylor To Facilitate Construction Of New Residences**

SUMMARY

Two (2) resolutions have been prepared abandoning (vacating) a sanitary sewer easement to the property owner, David W. Naylor, of two (2) adjoining vacant lots at 1189 and 1195 Drury Road. The easement would be beneath the foundations of two (2) proposed new residences. The easement was originally dedicated thirty (30) years ago to transport effluent from the lots to a sewer main located in Chancellor Place on the northern boundary of the lots. Another sewer main was subsequently constructed in Drury Road on the southern boundary of the lots, and the easement is no longer needed.

FISCAL IMPACT

Staff costs for processing the proposed encroachment permit are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), right-Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30).

PROJECT DESCRIPTION

▪ General

The property owner has received design review approval (CVD 07282, CDV D08200) to build two (2) residences on adjoining vacant lots at 1189 and 1195 Drury Road (APN 048H-7651-032-01 and 048H-7651-031-02). The approval was conditioned on the abandonment (vacation) of an existing sanitary sewer easement (PPE 08060, PPE 08068) which transects both lots at approximately the mid-point of the proposed locations of the building foundations. The easement was dedicated in 1979 to transport effluent from future homes on the two (2) vacant lots to a sewer main located in Chancellor Place, which is on the northern boundary of the lots. Another sewer main was subsequently constructed in Drury Road, which is on the southern boundary of the lots. Consequently, the easement is no longer needed.

▪ Future Vacations

No other easement vacations are proposed by the property owner.

Item No. _____
Public Works Committee
October 14, 2008

KEY ISSUES AND IMPACTS

▪ Summary Vacation

The California Streets and Highways Code sections 8333 and 8334.5 prescribe the process for vacating public rights-of-way and public easements. Dedicated right-of-way which has been accepted by the local jurisdiction but not improved (“paper street”) and dedicated easements which have been accepted but not used for the preceding five (5) years may be abandoned by resolution of the local jurisdiction (“summary” vacation). The vacation process is categorically exempt from the California Environmental Quality Act (CEQA).

▪ Ownership

In general, rights-of-way are abandoned to the abutting property owners without compensation to the jurisdiction. In the absence of contravening documentation, the California Civil Code presumes that the abutters own the underlying fee interest to the center of the right-of-way. Easements differ from rights-of-way in that they convey a right-of-use by the public for specified purposes only (utility, access, etc.). The property owner retains ownership and responsibility for maintenance of the easement and may use the easement for non-conflicting purposes (with an encroachment permit).

SUSTAINABLE OPPORTUNITIES

Economic

The proposed new residences will provide opportunities for professional services and construction related jobs for the Oakland community.

Environmental

Building permits require that contractors comply with City ordinances and regional Best Management Practices for reducing noise, dust, debris disposal, and pollutant runoff.

Social Equity

The proposed new residences will provide home ownership opportunities for Oakland residents.

DISABILITY AND SENIOR CITIZEN ACCESS

Single family residences are not required to conform to State and City requirements for handicapped accessibility.


RECOMMENDATIONS

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolutions approving the easement vacation.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept this report and adopt the proposed resolutions summarily vacating a sanitary sewer easement crossing 1189 and 1195 Drury Road to the property owner, David W. Naylor.

Respectfully submitted,



DAN LINDHEIM

Director

Community and Economic Development Agency

Prepared by:

Raymond M. Derania

Interim City Engineer

Building Services Division

APPROVED FOR FORWARDING TO
THE PUBLIC WORKS COMMITTEE



Office Of The City Administrator

Introduced By

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved For Form And Legality

2008 OCT -2 PM 3: 38

Councilmember

~~DRAFT~~

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

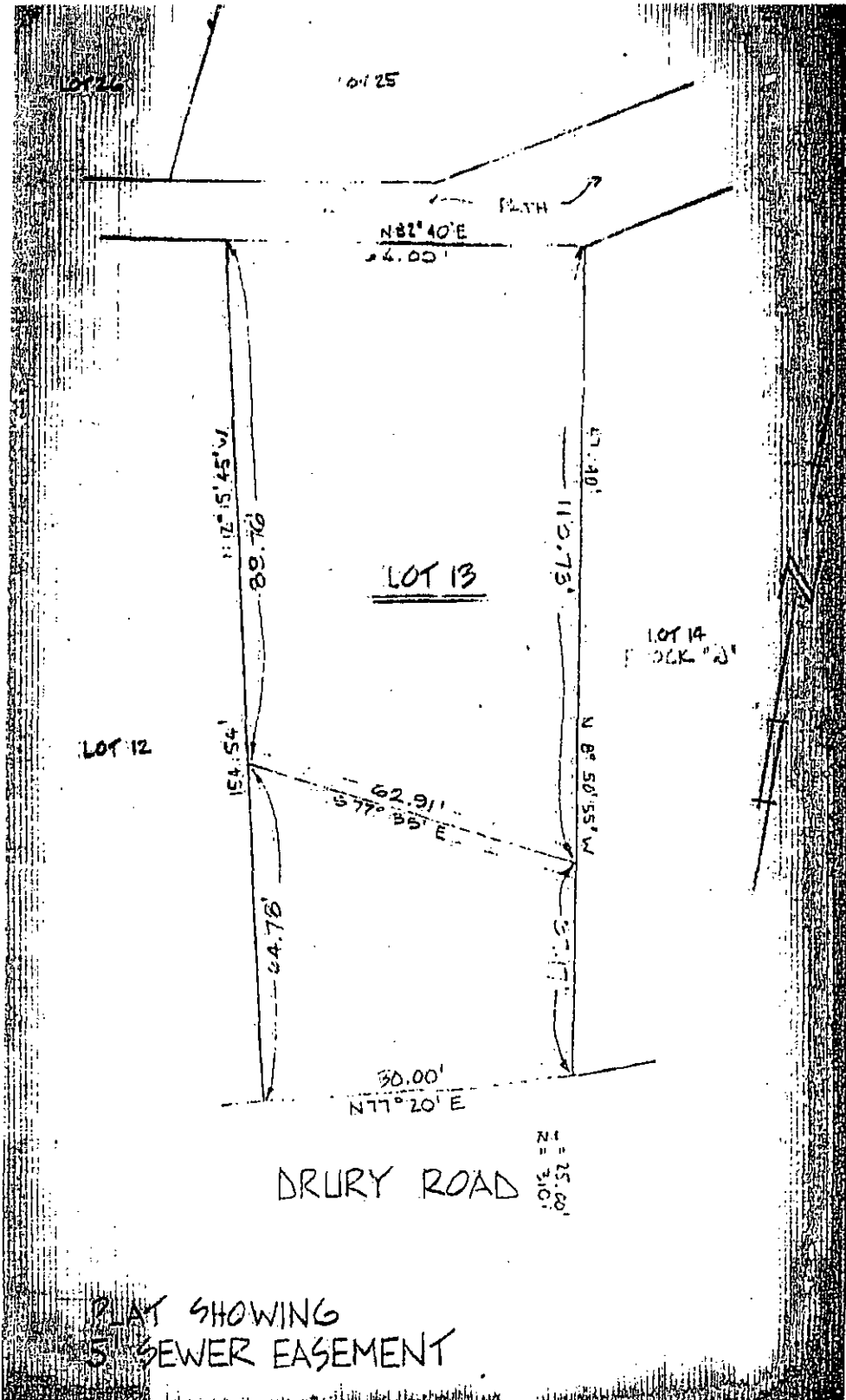
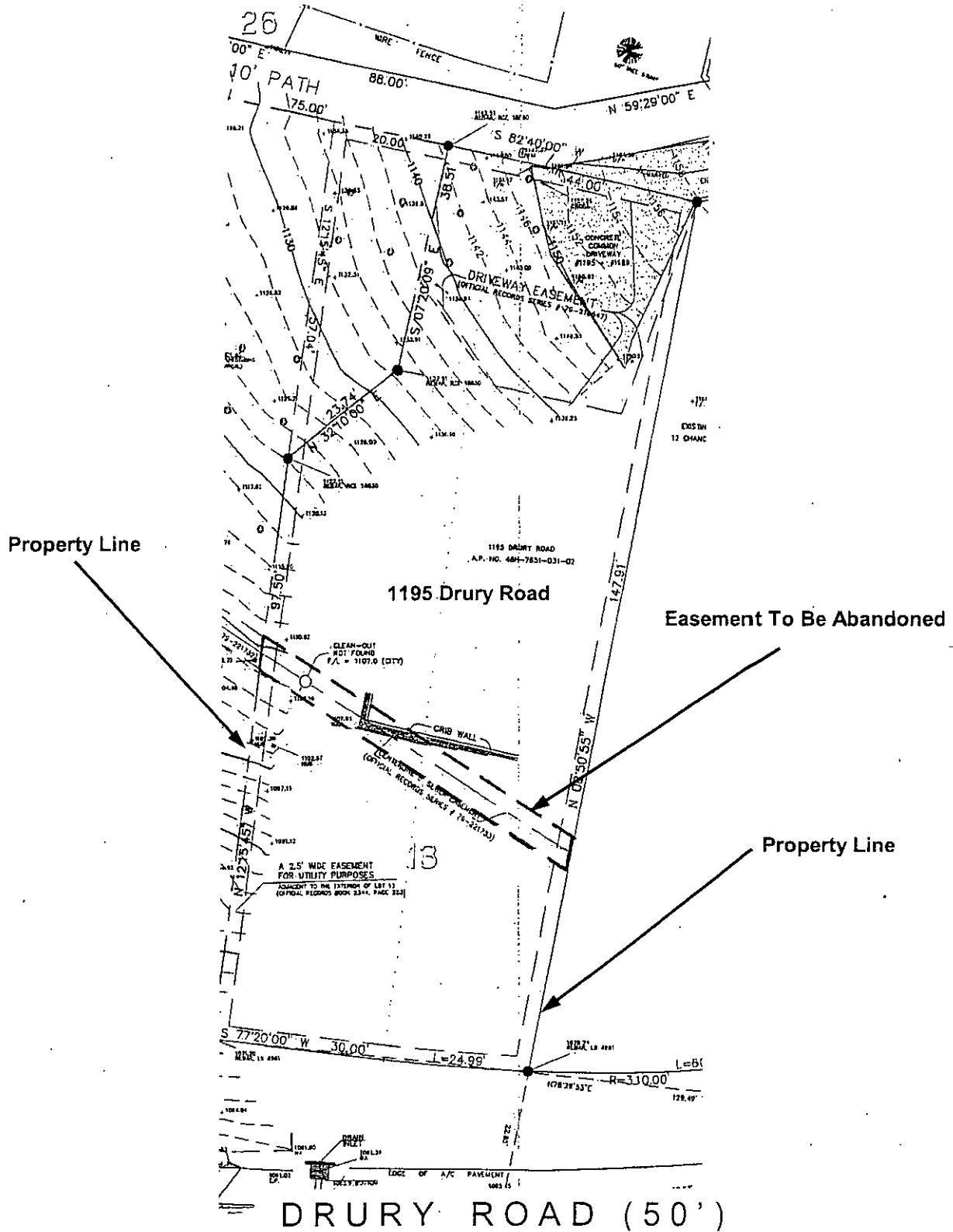


Exhibit C

Location Of The Existing Public Service Easement



Introduced By

Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT -2 PM 3:39

Approved For Form And Legality

DRAFT

City Attorney

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 1189 DRURY ROAD

WHEREAS, David W. Naylor, as Permittee and owner of a vacant lot identified as no. 12 on the original subdivision map, and described in a grant deed, recorded June 27, 2008, series no. 2008200796, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048H-7651-032-01, and identified by the City of Oakland as 1189 Drury Road and more particularly described in *Exhibit A* attached hereto, has made an application (PPE 08068) to the Council of the City of Oakland to vacate summarily an existing public service easement, which is five (5) feet wide and approximately one hundred and sixteen (116) feet long, that traverses said property to facilitate the construction of a new residence (CVD 08200); 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. 79-221732, and more particularly delineated in *Exhibit B* and *Exhibit C* attached hereto; and

WHEREAS, said easement was dedicated for the purpose of constructing a sanitary sewer main across said Lot 12 from the northerly property boundary at Chancellor Place to the easterly adjoining vacant Lot 13, identified as APN 048H-7651-031-02 and as 1195 Drury Road, solely to serve future residences to be constructed on said Lot 12 and 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 12 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 12 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 12 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 12; 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 Alex Dorman, as described in a Grant Deed, recorded June 27, 2008, series no. 2008200796, 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 1:

Lots 12 and 13, Block J, Claremont Knolls Extension, filed January 15, 1926, Map Book 5, Page 44, Alameda County Records.

Excepting therefrom the following described portion thereof;

Being a portion of Lot 13, Block J, Map of "Claremont Knolls Extension", filed January 15, 1926, Map Book 5, Page 44, Alameda County Records, 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 thence along the boundary line common to said Lots 13 and 14 S. $8^{\circ} 50' 55''$ E. 147.90 feet to the intersection thereof with the northerly line of Drury Road as said road is shown on the hereinabove described map; thence westerly along said northerly line of Drury Road along the 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, S. $77^{\circ} 20'$ W. 30 feet to the intersection thereof with the boundary line common to Lots 12 and 13, as shown on the hereinabove described Map; thence along said common boundary line N. $12^{\circ} 15' 45''$ W. 97.50 feet to a point; thence leaving said boundary line and N. $32^{\circ} 10'$ E. 23.74 feet to a point; thence N. $7^{\circ} 20'$ W. 38.51 feet to a point in the northerly boundary line of said Lot 13, distant thereon N. $82^{\circ} 40'$ E. 20.00 feet from the northwesterly corner of said lot; thence along said northerly boundary line, N. $82^{\circ} 40'$ E. 44.00 feet to the point of beginning.

PARCEL 2:

An easement for driveway purposes described as follows:

Beginning at a point on the northern line of the aforementioned Lot 13 distant thereon North $82^{\circ} 40'$ east 20.00 feet from the northwest corner of said lot, thence along the northern line of Lot 13 north $82^{\circ} 40'$ east 44.00 feet to the eastern line of said lot; thence south $0^{\circ} 10'$ west 38.00 feet; thence south $82^{\circ} 40'$ west 22.00 feet; thence north $54^{\circ} 43' 20''$ west 23.15 feet; thence north $70^{\circ} 20'$ west 22.00 feet to the point of beginning.

Exhibit B

Delineation of sewer easement accepted by the City of Oakland in 1979 through Deed 79-221732

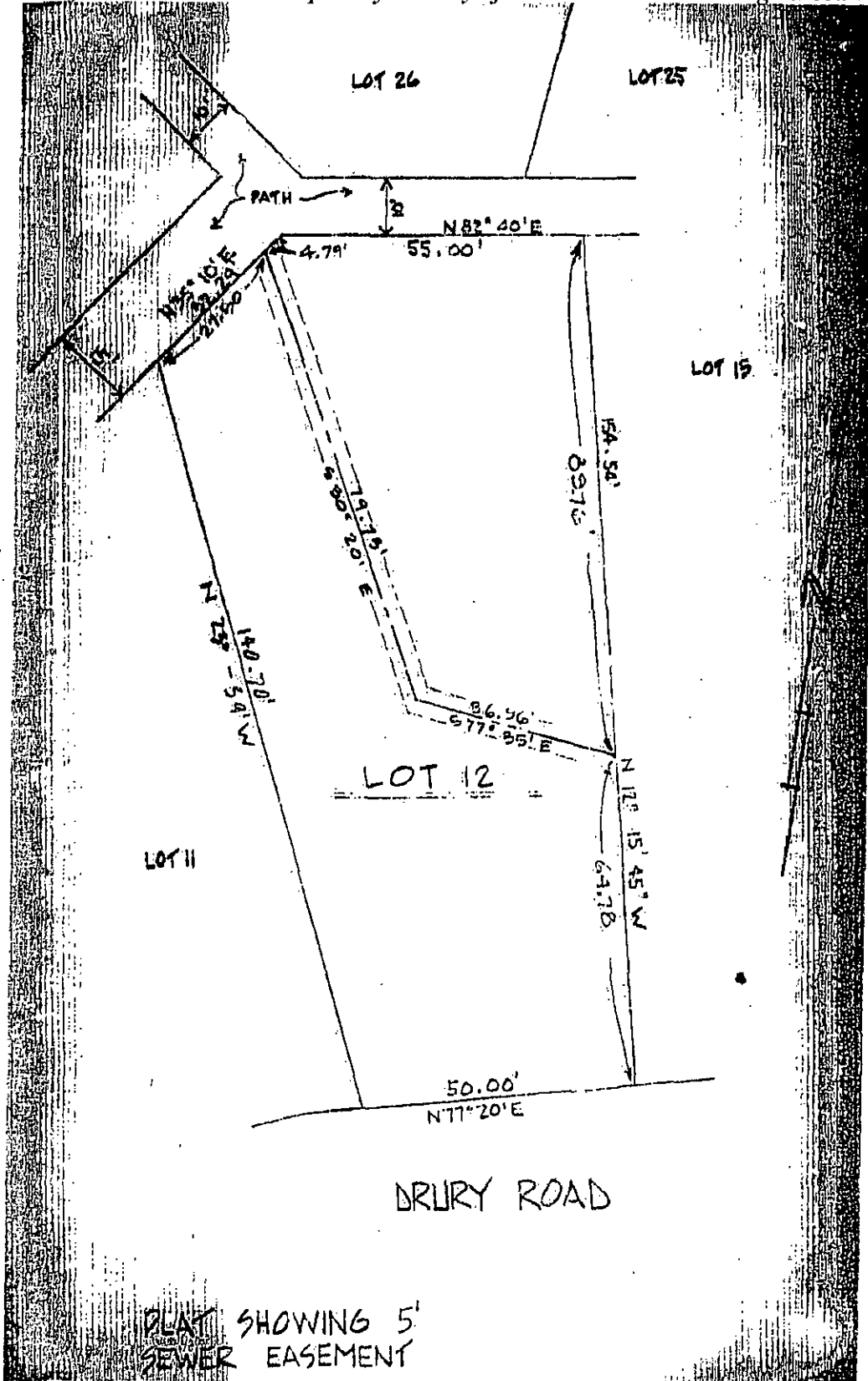


Exhibit C

Location Of The Existing Public Service Easement

