

Introduced By

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OFFICE OF THE CITY CLERK
OAKLAND

Approved For Form And Legality

2010 APR 29 PM 7:42


City Attorney

Councilmember

OAKLAND CITY COUNCIL

RESOLUTION No. 82744 C.M.S.

RESOLUTION SUMMARILY VACATING AN UNUSED SANITARY SEWER EASEMENT LOCATED AT 5520 MASONIC AVENUE TO THE PROPERTY OWNERS, JOSHUA HANNA AND DENISE YAMAMOTO

WHEREAS, Joshua Hanna and Denise Yamamoto, owners of a property described in a grant deed, recorded August 13, 2009, series no. 2009267547, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as APN 048B-7165-017-00, and identified by the City of Oakland as 5520 Masonic Avenue and Lot 11 and more particularly described in *Exhibit A* attached hereto, has made an application (PPE 10054) to the City Engineer of the City of Oakland for a summary vacation of an unused public service easement which serves said parcel; and

WHEREAS, said parcel was originally subdivided by the Realty Syndicate Company as Lot 11 in Block C, on the map "Country Club Acres", recorded June 21, 1921, in book 7 of maps, on pages 88 and 89, as set forth in *Exhibit B* attached hereto; and

WHEREAS, said public service easement on said parcel was dedicated on said map and accepted by the City Clerk of the City of Oakland through Resolution No. 22202 N.S., approved June 17, 1921, as set forth in *Exhibits C* and *D* attached hereto; and

WHEREAS, the City Engineer, in consultation with the Public Works Agency of the City of Oakland, has determined that said easement has not been used for any purpose by the City or prior property owners during the intervening eighty-nine (89) years and is not needed for any associated future public purpose; and

WHEREAS, the Council of the City of Oakland previously vacated another portion of said unused easement in 1974 on the westerly adjoining parcel (APN 048B-7165-016-00) located at 5534 Masonic Avenue, as set forth in Ordinance No. 8955 C.M.S.; and

WHEREAS, said parcel is currently zoned as R30, One Family Residential, and is improved with an existing single family dwelling, which was constructed circa 1926; and

WHEREAS, said owners have made an application (PMW 10001) to the Planning Director of the City of Oakland to adjust the rear property boundary (lot line) separating said parcel from their northerly adjoining parcel located at 5840 Heron Drive (APN 048B-7165-005-00) by approximately fifty (50), which will have the effect of decreasing the land area of said parcel and increasing the land area of the owners' northerly adjoining parcel by equal amounts; and

WHEREAS, said adjustment of the rear lot line is necessary to accommodate the proposed construction of a secondary dwelling in the rear of the northerly adjoining parcel; and

WHEREAS, the Building Official has determined that the existing location of said unused easement is detrimental to the positioning of the proposed secondary dwelling; and

WHEREAS, the juxtaposition of said easement and said proposed secondary dwelling is delineated in *Exhibit E* 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 and described in *Exhibits B, C, and D*, on said parcel to the property owners, Joshua Hanna and Denise Yamamoto, is hereby granted; and be it

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

1. the Permittee (Joshua Hanna and Denise Yamamoto) 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 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 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, MAY 18 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

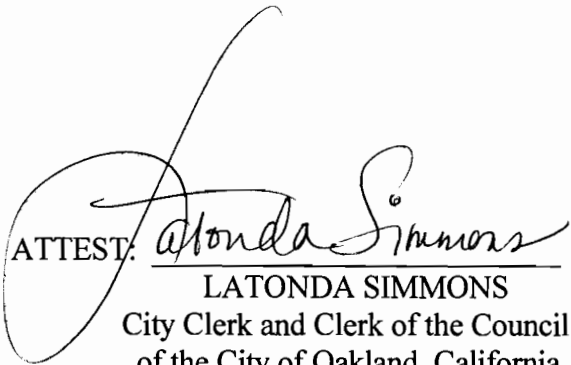
ATTEST: 
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Exhibit A

Lands of Joshua D. Hannah & Denise Y. Yamamoto, as described in a Grant Deed, recorded August 13, 2009, series no. 2009267547, by the Alameda County Clerk-Recorder

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

Lot 11, Block C, "Map of Country Club Acres", filed June 21, 1981, in Book 7 of Maps, Page 88, Alameda County Records.

APN: 048B-7165-017

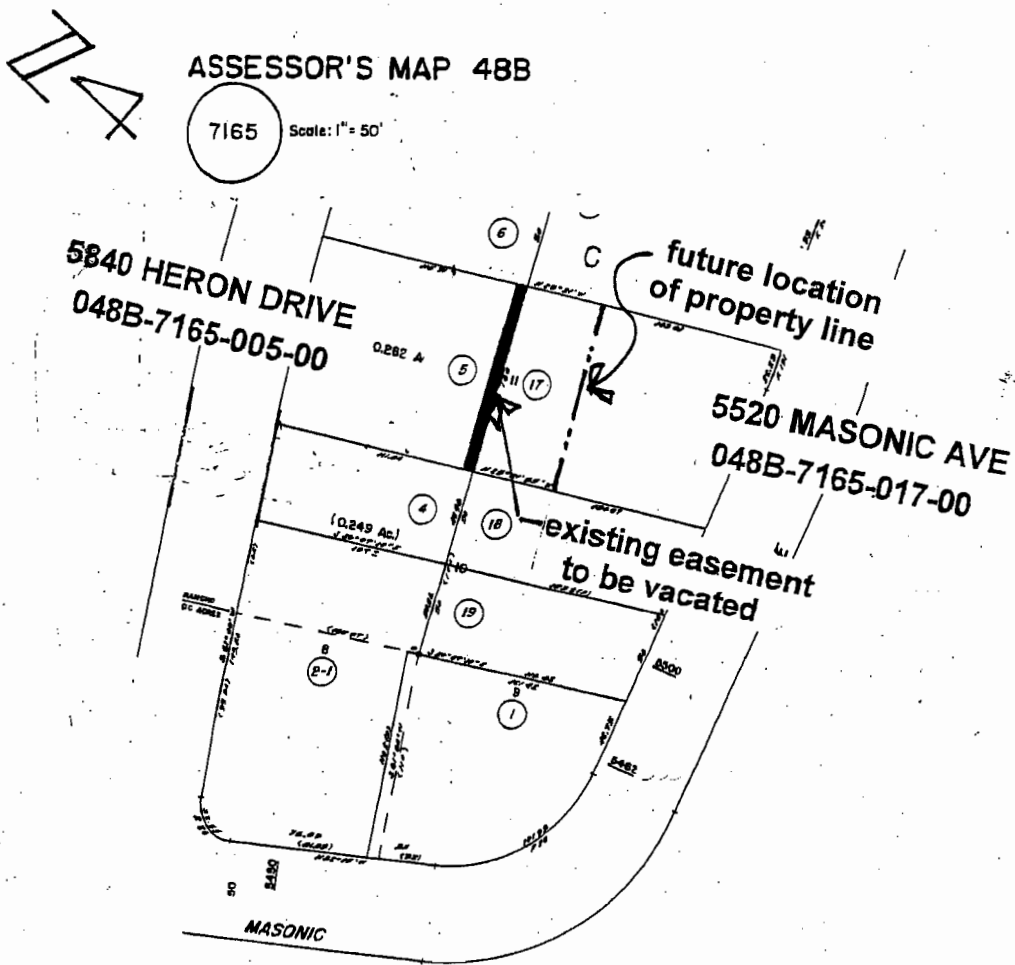


Exhibit B

Delineation of public service easement accepted by the City of Oakland in 1921 through Tract Map entitled Country Club Acres, Recorded June 21, 1921, Book 7, Pages 88 and 89



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

Exhibit C

Section of Tract Map entitled Country Club Acres, Recorded June 21, 1921, Book 7, Pages 88 and 89

one highway offered thereby to said City, or offers of dedicated reserves shown thereon.

made within of California.

COUNTRY CLUB ACRES is a subdivision into lots, portions of No. 25, as said plat is laid down, delineated and so designated upon that certain map in filed Map of the Ranches of Vincennes & Domingo Ranches, containing 16,370.63 Acres, surveyed by Julius Keller-Semper, etc., filed January 2nd, 1917 in the office of the County Recorder of said County of Alameda, and a portion of that certain plat, as said plat is laid down, delineated and so designated upon that certain map entitled "Map of the United States of America as partitioned by a Decree of the Superior Court of March 2nd, 1875, etc.", filed October 5th, 1875 in the office of the County Recorder of said County of Alameda, State of California.

County Auditor of the County of Alameda, hereby certify that I have examined all the tax rolls in my office and to which I have access, relating to the within described tract of land, for the purpose of ascertaining whether there exist any liens upon said tract of land for unpaid State and County taxes, except taxes not yet payable, and I do hereby certify that after a careful examination of the tax rolls of Alameda County, in my office and in my possession, I have been unable to find any liens upon said tract of land or any portion thereof for unpaid State or County taxes, except taxes for the year 1921-1922, which are a lien upon said property, but not yet payable.

I hereby certify that the subdivision shown on this map is made from my own survey of the ground, and that the requirements of the nature and in the affairs shown on the map.

STATE OF CALIFORNIA, County of Alameda, I, the undersigned, County Clerk of the County of Alameda, State of California, and Ex-Officio Clerk of the Board of Supervisors of said County of Alameda, hereby certify that the REALTY SWINDLE COMPANY, a corporation, the owner of the land shown within the above map has filed with the Supervisors of the County of Alameda, State of California, an approved bond in the amount of \$2000.00, conditioned for the payment of all taxes which are now a lien upon said land or any part thereof, but not yet payable.

COUNTRY CLUB ACRES, OAKLAND, ALAMEDA COUNTY, CALIFORNIA.

Oakland, California, June 7, 1921.

J.H. Hommedieu & Company, Civil & Landscape Engineers.

Scale: 1 inch = 100 feet.

FILED JUNE 21, 1921 BK 7 P. 88 189

A more legible copy is available for viewing at the Office of the City Engineer, City of Oakland,

Exhibit D

Description Of The Existing Public Service Easement From Tract Map entitled Country Club Acres, Recorded June 21, 1921, Book 7, Pages 88 and 89

And the undersigned, REALTY SYNDICATE COMPANY, a corporation, hereby dedicates to the City of Oakland, a municipal corporation, its successors and assigns forever, the right to construct and maintain a sewer or sewers, and the right to permit to construct and maintain gas pipes and water pipes, poles and pole lines, underground conduits and manholes, and the appurtenances thereof, and on said poles and pole lines, and in and through said conduits, to carry, conduct and use telephone and telegraph wires and cables, and wires and cables of all kinds used for conveying and supplying electric current of all kinds and for all purposes, upon, in, and under those strips of land shown upon said map within the corporate limits of said City of Oakland, marked "RESERVE 5 FEET WIDE" and colored green thereon and embraced within the red lines upon said map, and the right to enter upon, or permit to enter upon said strips of land, for the purpose of constructing, maintaining, reconstructing, or repairing said sewer or sewers, for the purpose of constructing, erecting, stringing, maintaining, reconstructing or repairing said gas pipes and water pipes, poles, pole-lines, conduits and manholes, with their appurtenances, and said wires and cables. Excepting, however, that any of said strips of land used for sewer purposes shall not be used for any of the other purposes stipulated in this certificate, except gas pipes and water pipes.

IN WITNESS WHEREOF, the undersigned, REALTY SYNDICATE COMPANY, a corporation, has caused its corporate name to be hereunto subscribed by its 2nd Vice-President and attested by its Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed on the 2nd day of June, A.D. 1921.

REALTY SYNDICATE COMPANY,

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

