

STAFF REPORT
Council Meeting January 22, 2013

TO: Honorable Mayor and Council Members

FROM: Nira Feeley, Deputy City Attorney

DATE: January 22, 2013

RE: California Government Code section 51093 Findings Required for Abandonment of Open Space Easement (El Dorado County APN 028-100-26-100)

RECOMMENDED ACTION:

Make the following findings, pursuant to Government Code section 51093, as set forth herein, in order that the City allow APN 028-100-26-100 to be developed into a residential home, thereby furthering settlement of the lawsuit Vu v. South Lake Tahoe et al. (SC20080281).

The City Council finds that,

1. No public purpose described in Government Code section 51084 will be served by keeping the property, El Dorado County APN 028-100-26-100, as open space.
2. Abandonment of the open space easement is consistent with the City's General Plan Update.
3. The best interests of the City will be served by abandonment the open space easement because:
 - o The property does not have scenic, watershed or wildlife values which cannot otherwise be met through open space preservation of another developable parcel of land in the Lake Tahoe Basin. Furthermore, the open space easement itself does not contain covenants regarding the scenic, watershed, or wildlife benefits of maintaining this parcel as open space.
 - o Abandonment of the open space easement will neither detract from the amenities of living in neighboring urbanized areas nor will it help preserve the rural character of the area, because the Settlement Agreement requires that another developable parcel of land in the Lake Tahoe Basin be preserved as open space.
 - o The public interest will be served by abandoning the open space easement.
4. Abandonment is not inconsistent with the purposes of Chapter 6.6, section 51070 et seq. of the California Government Code.
5. Abandonment is necessary to avoid substantial financial hardship to the landowner due to involuntary factors unique to him.
6. The project is categorically exempt from CEQA under section 15325, and CEQA's common sense exemption.

ISSUE AND DISCUSSION:

I. Background and Litigation Summary

The City Attorney's Office, along with the California Office of the Attorney General and the California Tahoe Conservancy recommend abandonment of an open space easement on a residential parcel in South Lake Tahoe as part of a litigation settlement. While it is recommended that the City Council make the findings as set forth in this recommendation, abandonment of the easement is conditioned upon all other settlement terms being met and satisfied in full.

The City holds the open space easement located on El Dorado County APN 028-100-26-100 (1348 Wildwood Ave., South Lake Tahoe, CA 96150) (the "Property"). The open space easement restricts all development on the parcel. The fee title to this property is held by Thang D. Vu and Jennifer Khuu who purchased the property in 2002.

Paragraph 8 of the open space easement permits the City to abandon the open space easement if it obtains the written consent of the California Tahoe Regional Planning Agency ("CTRPA") or its successor agency (the California Natural Resources Agency ("CNRA")), and if the City makes the following finding: "That no public purpose described in subdivision (b) of Section 61084 of the Government Code will be served any longer by keeping the subject property as open space and that finding is concurred in by the CTRPA or successor agency."

In 2009, Thang D. Vu and Jennifer Khuu initiated a lawsuit against the City and the CNRA. The lawsuit arose from the following events:

- On September 24, 2007, prior City Building Official Ron Ticknor issued Vu a building permit to construct a residence on the Property. Vu commenced construction of a residence on the Property.
- On February 19, 2008, Ticknor wrote to Vu informing him that the Permit had been suspended on the basis of incorrect information having been provided in conjunction with his building permit application and violation of the TRPA permit approval conditions.
- On April 1, 2008, Ticknor wrote a letter to the CNRA requesting that it grant its written consent to abandon the the open space easement as provided in paragraph 8 of the easement. The CNRA denied Ticknor's request.
- On August 29, 2008, Ticknor exercised his discretion and caused the City to revoke the Permit on the grounds that Vu had submitted false, incomplete, and incorrect information in connection with the building permit application. Construction of the residence ceased.

The City prevailed in a demurrer. In 2010, the Plaintiff appealed the Trial Court's ruling to the California Court of Appeals. The Court of Appeal reversed a portion of the Trial Court's ruling and remanded the case to the Trial Court. The case is currently being litigated in the Trial Court. The parties are re-litigating some of the same issues as they were in 2009; nearly four years ago.

II. Settlement Agreement

The City Attorney's Office believes that it is both just and equitable to permit the Plaintiffs to construct their residence in light of the events set forth above. However, this Office also believes that in order to permit such construction, a number of assurances must be met. The City has thus negotiated a tentative settlement with all parties to the lawsuit, including the Plaintiff, the CNRA (represented by the AG's Office) and the California Tahoe Conservancy. The settlement agreement contemplates, amongst a number of other factors, the abandonment of the open space easement on the Property. The agreement also ensures that a net environmental benefit is achieved upon abandonment of the open space easement.

The agreement accomplishes this by requiring that the Plaintiff "retire" a fully developable residential lot within the Lake Tahoe Basin from any and all future development. In sum, the settlement agreement ensures that if the Property becomes developable, another similar residential lot in the Lake Tahoe Basin becomes undevelopable. This ensures that abandonment of the open space easement in no way increases development within the Lake Tahoe Basin and preserves equitable open space.

As described above, the open space easement itself contemplates its own abandonment (in paragraph 8), and the California Government Code has procedures by which a public agency may abandon an open space easement. It is our recommendation that the Council make the findings for abandonment as set forth in the Government Code.

III. Government Code § 51093 Findings

Government Code section 51093 requires that the City Council make the following findings in order to abandon the open space easement located on APN 028-100-26-100. These findings are discussed in further detail below:

1. That no public purpose described in Government Code section 51084 will be served by keeping the land as open space. Section 51084 requires the following findings:
 - a. Maintaining the open space easement is not necessary for compliance and consistency with the City's General Plan Update and abandonment of the easement is consistent with the City's General Plan Update.
 - b. The best interests of the City will be served by abandoning the open space easement and the following reasons support this:
 - i. APN 028-100-26-100 does not have scenic, watershed or wildlife values which cannot otherwise be met through open space preservation of another developable parcel of land in the Lake Tahoe Basin (as required by the Settlement Agreement). Furthermore, the open space easement itself does not contain covenants regarding the scenic, watershed, or wildlife benefits to maintaining this parcel as open space.
 - ii. Abandonment of the open space easement will neither detract from the amenities of living in neighboring urbanized areas nor will it help preserve the rural character of the area, because the neighborhood is a developed, residential neighborhood and the Settlement Agreement requires that another developable parcel of land in the Lake Tahoe Basin be preserved as open space.
 - iii. The public interest will be served by abandoning the open space easement.

2. Abandonment is not inconsistent with the purposes of Chapter 6.6, section 51070 et seq. of the California Government Code, "The Open Space Easement Act of 1974."
3. Abandonment is necessary to avoid substantial financial hardship to the landowner due to factors unique to him.

IV. Explanation of Findings

There is ample support for making the findings required by Government Section 51093. Each finding is discussed in greater detail below.

Finding 1.

No public purpose will be served by keeping the Property as open space for a number of reasons. These reasons include:

Finding 1(a).

Abandonment of the open space easement is consistent with the City's General Plan Update ("GPU") which the Council approved and adopted over a year ago. Specifically, Policy LU-4.3, "Vacant and Underutilized Site Development," of the GPU states that the "City shall encourage appropriate development/redevelopment of parcels that are either vacant or underutilized, surrounded by existing urban development and non-environmentally sensitive in nature." Policy LU-10.3, "Vacant Open Space Parcel Exchange," states that the "City shall work with the CTC and other State and Federal agencies to exchange publicly owned vacant open space parcels in existing residential subdivisions for vacant parcels in other parts of the Lake Tahoe Basin as a means of consolidating open space and developing underused sites in existing neighborhoods." Accordingly, the City's GPU includes policies which *encourage* the development of vacant parcels in developed neighborhoods and the development of underused sites in existing neighborhoods. Furthermore, the property contains no sensitive land capabilities, and the City's policies encourage development of such residential lots.

Finding 1(b).

The best interests of the City will be served by abandoning the open space easement for a number of reasons. Amongst these are the fair and just settlement of a four year long lawsuit which has cost the City and its taxpayers thousands of dollars and will continue to cost the City and its taxpayers. Additionally, the following reasons support abandonment and establish that abandonment is in the best interest of the City:

Finding 1(b)(i).

The easement itself contains no covenants regarding scenic, watershed, or wildlife benefits to maintaining the parcel as open space. In fact, the property contains no sensitive land capabilities and is fully developable under both TRPA's Code of Ordinances and the City Code, including all Building Codes.

Finding 1(b)(ii).

Abandonment of the open space easement will neither detract from the amenities of living in neighboring urbanized areas nor will it help preserve the rural character of the area, because the neighborhood is a developed, residential neighborhood. Furthermore, should there be any concern regarding maintenance of residential lots in open space condition, the Settlement Agreement ensures that such concerns are ameliorated by requiring that the Plaintiffs permanently restore another developable parcel to full open space status.

Finding 1(b)(iii).

The public's interests will be served for the same reasons that the City's interests will be served by abandonment of the open space easement (described more fully above).

Finding 2.

Abandonment is not inconsistent with the purposes of Chapter 6.6, section 51070 et seq. of the California Government Code, "The Open Space Easement Act of 1974," because the Open Space Easement Act was adopted with the intent that counties and cities be able to acquire open-space easements (Gov. Code § 51070) in order to combat what the legislature found as "rapid growth and spread of urban development [which] is encroaching upon, or eliminating open-space lands which are necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use and conservation of natural resources." (Gov. Code § 51071). In other words, Chapter 6.6 was enacted in order to ensure that counties and cities had a means of preserving open space for food production, scenic beauty, and recreational purposes. Abandonment of this open space easement is not inconsistent with these purposes because this particular open space easement exists on a residential lot which provides for no food production or recreational opportunities. Furthermore, any harm to scenic beauty will be directly offset by the requirement to preserve another residential parcel as open space.

Finding 3.

Abandonment is necessary to avoid substantial financial hardship to the landowner because the landowners (plaintiffs) have already incurred significant costs in developing the residence on the Property prior to the City's revocation of their building permit.

FINANCIAL AND/OR POLICY IMPLICATIONS:

The findings set forth herein support the City's GPU policies and goals. The City will continue to incur substantial litigation costs if the findings are not made because the settlement agreement requires abandonment of the open space easement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

An action making the findings set forth herein is not subject to CEQA because the "common sense" CEQA exemption applies. CEQA does not apply to projects where there is "no possibility that the activity in question may have a significant effect on the environment." (14 Cal. Code Regs. § 15061(b)(3)). Here, there is no possibility that abandonment of the open space easement will have a significant effect on the environment because (1) the property contains no sensitive land capabilities and is fully developable under both TRPA's Code of Ordinances and the City Code, including all Building Codes; (2) abandonment of the easement will require the Plaintiffs to permanently restore another developable parcel in the Lake Tahoe Basin to full open space status and the Property does not have scenic, watershed or wildlife values which cannot otherwise be met through open space preservation of another developable parcel of land in the Lake Tahoe Basin (as required by the Settlement Agreement); (3) abandonment of the easement furthers the City's policies under its GPU; (4) The open space easement itself does not contain covenants regarding the scenic, watershed, or wildlife benefits of maintaining this parcel as open space.

Additionally, an action making the findings set forth herein is also exempt from CEQA by Class 25, which includes "transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources." (Cal. Code of Regs., tit., 14, § 15325).

A handwritten signature in black ink, appearing to read 'Nira Feeley', written over a horizontal line.

Nira Feeley
Deputy City Attorney

Attachments:

Open Space Easement (APN 028-100-26-100)

AFTER RECORDING RETURN TO:
EVELYN L. ROBERSON - CITY CLERK
CITY OF SOUTH LAKE TAHOE
P.O. Box 1270
South Lake Tahoe, CA 95705

GRANT OF OPEN-SPACE EASEMENT
WITH COVENANTS

OFFICIAL RECORDS
EL DORADO COUNTY-CALIF.
RECORD REQUESTED BY
CITY OF SO. LAKE TAHOE
SEP 28 1 15 PM 1981

DOROTHY CARR
COUNTY RECORDER

NO FEE

Recitals

WHEREAS,

1. The undersigned, *Mudler*, herein called "Grantor," is the owner of the fee simple estate in and to that certain real property hereinafter called the "subject property," situated in the County of El Dorado, State of California, more particularly described in Exhibit "A" attached hereto.

2. It is the desire of Grantor to grant to the City of South Lake Tahoe, hereinafter called ("City,"), and open-space easement on, upon, over, across, and under said subject property pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1, Division 1, Title 5 of the Government Code, whereby Grantor relinquishes certain rights and enters into certain covenants relative to the subject property all as more particularly set forth below.

3. The purpose of this grant of easement and its acceptance by the City of South Lake Tahoe is to keep the subject property in a natural condition as near as possible and to maintain said property as open-space land, the natural and scenic beauty of which may be enjoyed by the public.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged:

Grant of Open-Space Easement

37767

1. Grantor hereby grants to the City of South Lake Tahoe an open space easement on, upon, over, across, above, and under the subject property and relinquishes to the public in perpetuity the right to construct improvements thereon.

Covenants

2. Grantor covenants and agrees for itself and its successors and assigns that Grantor, its successors or assigns singularly or in combination:

- (a) Shall not erect, construct, place or maintain or permit the erection, construction, placement or maintenance of any improvement, building or structure or other thing whatsoever on the subject property other than such improvements, buildings, structures, or other things existing on said property at the time of the granting of this easement and except for public service facilities installed for the benefit of the subject land or public service facilities installed pursuant to an authorization by the (City) of South Lake Tahoe.
- (b) Shall not use or permit the use of the subject property for any purpose except as open space consistent with the stated purposes, terms, conditions, restrictions and covenants of this easement, with the provisions of Chapter 6.6 (commencing with Section 51070) of Division 1, Part 1, Title 5 of the Government Code and with the findings of the City Council of the City of South Lake Tahoe relative to the subject property pursuant to Government Code Section 51084.
- (c) Shall not use or allow others to use the subject property or any portion thereof as a parking lot, storage area or dump site or otherwise deposit or allow to be deposited on said subject property or any portion thereof temporarily or otherwise anything whatsoever which is not indigenous or natural to said subject property.
- (d) Shall not cover or cause the subject property to be covered in whole or in part with any asphalt, stone, concrete or other material which does not constitute natural cover for the land nor otherwise disturb the natural cover of the land.
- (e) Shall not mine, extract, sever or remove nor permit or cause to be mined, extracted, severed or removed any natural resource found or located on, above or under said subject property or otherwise engage in or permit on the subject property any activity which will or may destroy the unique physical and scenic characteristics of the subject property.
- (f) Shall not divide or subdivide the subject property or otherwise convey (other than under threat of condemnation) a portion of such property less than the whole to one or more parties or convey said property to two or more parties each

of whom acquire title to less than the whole of the subject property.

- (g) Shall not cut, uproot or remove or permit the cutting, uprooting or removal of timber or trees found or located on said subject property except as may be required for fire prevention, thinning, elimination of diseased growth or similar preventive measures or for the harvest of trees in a manner compatible with scenic purposes.
- (h) Shall not cut, uproot or remove, or permit the cutting, uprooting or removal of natural growth found or located on said subject property except as may be required for fire prevention, thinning, elimination of diseased growth or similar preventive measures in a manner compatible with scenic purposes.
- (i) Shall not excavate or grade or permit any excavation or grading to be done or place or allow to be placed any sand, soil, rock, gravel or any material whatsoever on the subject property; provided, however, that Grantor, its successors or assigns may, with the prior written consent and approval of the City of South Lake Tahoe excavate, grade or place sand, soil, rock or gravel or other material on the subject property as is reasonably necessary for the use thereof consistent with the stated purposes, terms, conditions, restrictions and covenants of this easement.
- (j) Shall not operate or permit the operation on the subject property of any motor bike, trail bike, go cart or other motor-driven or motor-powered vehicles except those motor vehicles reasonably necessary for the use and convenience of Grantor and the accomplishment of the purpose for which the subject property is used pursuant to the terms and conditions, restrictions and covenants set forth for subject property.

Right to Prevent Prohibited Use

3. Grantor hereby grants to the City of South Lake Tahoe, its successors and assigns for the terms of this easement the right, but not the obligation to enter upon the subject property for the purpose of removing any building, structure, improvement or other thing whatsoever constructed, erected, placed, stored, deposited or maintained on the subject property contrary to the stated purposes of this easement or to any term, condition, restriction or covenant of this easement or to prevent or prohibit any activity which is contrary to the stated purposes, terms, conditions, restrictions or covenants of this easement or which will or may destroy the unique physical and scenic characteristics of the subject property.

Enforcement

4. The stated purposes, terms, conditions, restrictions and covenants set forth herein and each and all of them may be specifically enforced or enjoined by proceedings in the Superior Court of the State of California.

No Authorization for Public Trespass

5. The granting of this easement and its acceptance by the City of South Lake Tahoe does not authorize and is not to be construed as authorizing the public or any member thereof to trespass upon or use all or any member thereof any tangible rights in or to the subject property or the right to go upon or use or utilize the subject property in any manner whatsoever. It is understood that the purpose of this easement is solely to restrict the uses to which the subject property may be put so that said property may be kept as near as possible in its natural condition.

Reservation of Use by Grantor

6. Grantor reserves the right to use the subject property in any manner consistent with the stated purposes, terms, conditions, restrictions and covenants of this easement and with existing zoning and other laws, rules and regulations of the State of California and the City of South Lake Tahoe their successors or assigns as such laws, rules and regulations may hereafter from time to time be amended.

EL DORADO COUNTY

Condemnation

7. In the event the subject property or some portion thereof during the term of this easement is sought to be condemned for public use, the easement in each and every term, condition, restriction and covenant contained herein shall terminate as of the time of the filing of the complaint in condemnation as to that portion of the subject property sought to be taken for public use only, but shall remain in effect relative to all other portions of said subject property. The Grantor shall be entitled to such compensation for the taking as he would have been entitled had the subject property not been burdened by this easement; provided, however, that each and every stated term, condition, restriction and covenant of this easement shall be observed by Grantor, its successors or assigns, during the pendency of such action and provided further that in the event such action is abandoned prior to the recordation of a final order of condemnation relative to the subject property or some portion thereof or the subject property or some portion thereof is not actually acquired for a public use, said subject property shall, at the time of such abandonment, or at the time it is determined that such property shall not be taken for public use, once again be subject to this easement and to each and every stated purpose, term, condition, restriction and covenant of this easement.

Amendment or Abandonment

8. This easement shall not be rescinded, altered, amended or abandoned in whole or in part as to the property or any portion thereof or as to any term, condition, restriction or covenant of this easement without the prior written consent of the City of South Lake Tahoe and its specifically understood that the City of South Lake Tahoe shall not abandon this easement in any particular without the written consent of the California Tahoe Regional Planning Agency (CTRPA) or any successor agency thereof unless it finds one of the following:

ACCEPTANCE OF OPEN-SPACE EASEMENT WITH COVENANTS

Pursuant to the provisions of Chapter 6.6 of Part 1, Division 1, Title 5 of the Government Code (commencing with Section 51070), CITY OF SOUTH LAKE TAHOE hereby accepts this grant of open-space easement with covenants on this 22nd day of September, 1981. CITY OF SOUTH LAKE TAHOE, By [Signature]

ACKNOWLEDGMENT

State of California }
County of El Dorado } ss.
City of South Lake Tahoe }

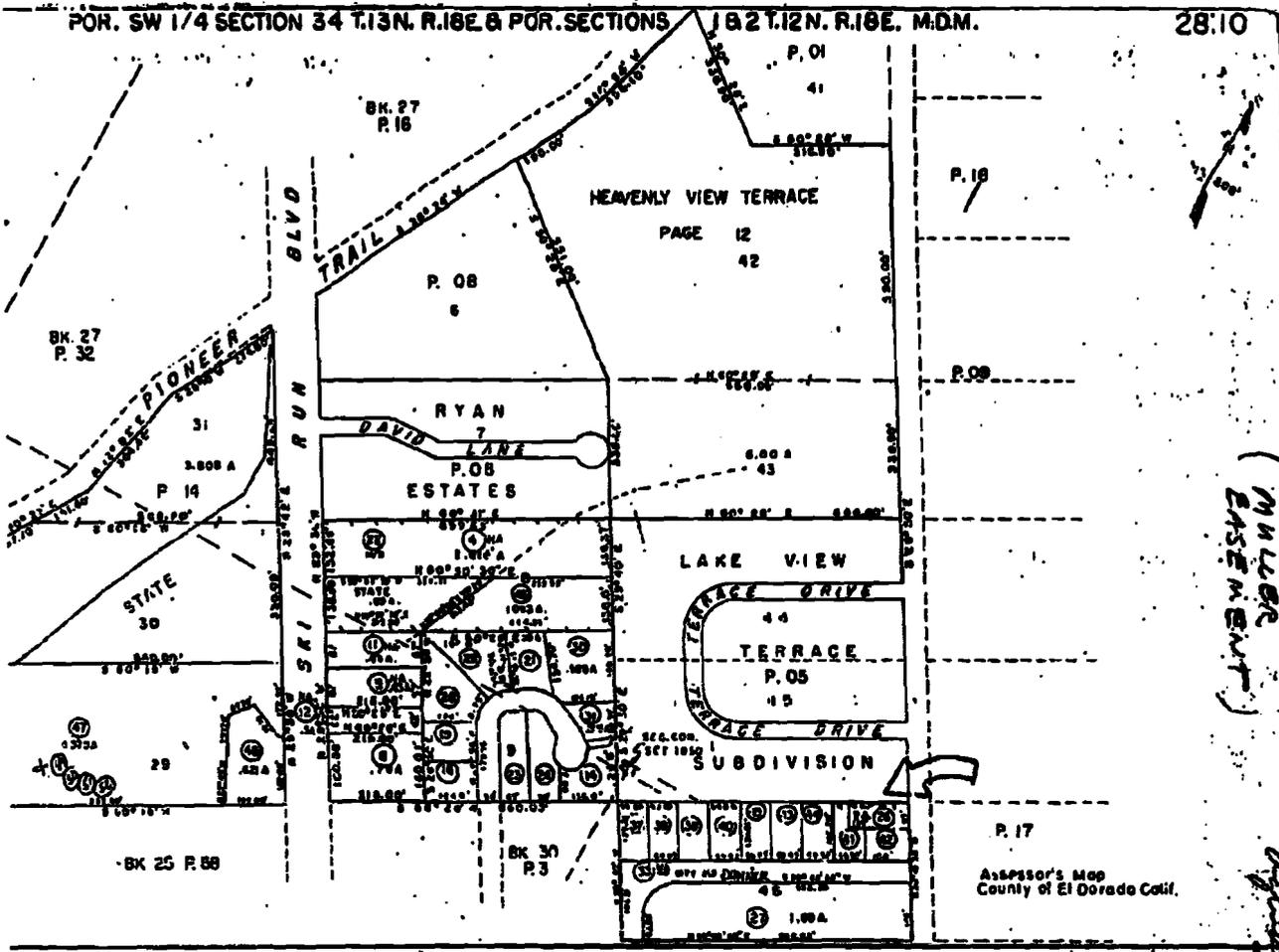
On this 22nd day of September, 1981, before me, City Clerk of the City of South Lake Tahoe, State of California, personally appeared TERRY TRUPP - MAYOR CITY OF SOUTH LAKE TAHOE

known to me to be the person whose IS subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the City of South Lake Tahoe, County of El Dorado the day and year in this certificate first above written.

[Signature]
Evelyn L. Roberson, City Clerk, City of South Lake Tahoe
P.O. Box 1210, So Lake Tahoe, California 95705

CITY SEAL



property situate in the City of South Lake Tahoe, County of El Dorado, State of California, more described as follows:
 the Southwest quarter of Section 34, Township 13 North, Range 18 East, M.D.B.M., described as follows:
 the most Westerly corner of the parcel herein described, a 3/4 inch capped iron pipe, from which the
 ner of Lakeview Terrace Subdivision bears South 60° 35' West, 524.00 feet; thence from point of beginning
 East, 135.00 feet, a similar pipe set on the Southwesterly line of Mountain View Heights Road, thence
 ne South 30° 10' 30" West, 65.00 feet to the point of beginning. According to a survey made by Butler an
 ne 1965.

MOUNTAIN VIEW TERRACE

Original 7-2-65

Susan Alessi

From: Susan Alessi
Sent: Monday, January 28, 2013 12:16 PM
To: 'Mark Smith'
Subject: RE: Wildwood Ave. parcel No. 028-100-26/Council Hearing

Thank you Mr. Smith for your email and letter. The Council will receive a copy of your letter in their February 5th agenda packet which will be provided to them this Thursday, January 31st for Tuesday's meeting.

It will be read into the record and will become a permanent part of the public record.

Sincerely,

Susan Alessi, MMC

City Clerk

City of South Lake Tahoe
1901 Airport Road, Suite 206
South Lake Tahoe, CA 96150
Ph: (530) 542-6004
FAX: (530) 542-7411
salessi@cityofslt.us
www.cityofslt.us



From: Mark Smith [<mailto:Mark@engelmanandsmith.com>]
Sent: Friday, January 25, 2013 1:01 PM
To: Susan Alessi
Subject: Wildwood Ave. parcel No. 028-100-26/Council Hearing

Dear Ms. Alessi.

i am the owner of 1356 Donner Lane which is adjacent to the Wildwood Avenue parcel identified above. It is my understanding that there is a city council hearing involving this property on February 5. Unfortunately, i will not be back in town until February 7 and cannot attend this hearing. Instead, i would appreciate if my letter could be distributed to council members, entered into the record and read at the hearing.

thank you for your kind attention to this matter.

best regards,

--
Mark Smith

Engelman & Smith
Attorneys At Law
1603 Orrington Avenue, Suite 800
Evanston, Il. 60201
847.328.1900 ext. 120
847.328.1928 facsimile
847.877.1755 cell

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January 25, 2013

Dear Members of
the City Council of South Lake Tahoe:

Re: Parcel No. 028-100-26/Wildwood Ave.
•• For Presentation at the City Council Hearing ••

I am an owner of the property at 1356 Donner Lane in South Lake Tahoe. Our family purchased this single family home as a second residence in 2004. We love our home and the area. It is available for rental when we are not there and we have tried over the years to be a both good resident of this city and a good neighbor to our neighbors.

I have attached an aerial photograph (Google Maps) to more easily describe the parcels and the controversy at hand. The Wildwood property, the parcel in question, has a green arrow and my home is the red arrow. The Wildwood parcel borders our home to the northeast. I am concerned over recent activity and new home construction at the Wildwood parcel. This letter is being presented as the perspective of one neighbor who has been swept up in this unfortunate controversy.

When we bought our home, I was advised that the Wildwood parcel was restricted reserve property and that it could not be built upon. I was similarly advised that the parcels directly to the east (towards Wildwood Ave.) and to the south (across Donner Street) were all restricted reserve properties -- never to be built upon. It was important part of our decision to buy that these lands could never be built upon. The price of our home reflected a premium for the inherent site value of having beautiful and permanently unobstructed views on these sides.

So it is with some shock and disbelief that I learned that the Wildwood parcel had been excavated, a foundation poured and framing had begun before I even knew it had begun. The property has stayed in that state for a few years now presumably while appeal processes are being exhausted. Meanwhile, we are left with views of a stalled construction site out of two sides of our home. There isn't a person who has been to our home who doesn't ask what is going on there or doesn't recognize that the Wildwood property represents a legal entanglement in some form or another. It impacts upon the peaceful and quiet enjoyment of our home and of the neighborhood. It impacts upon the value of our property. It impacts upon safety issues with rotting timbers, not to mention those presented by an open construction site. We are in a "lose-lose" situation where we, and each of our neighbors, must explain to any prospective purchaser that the Wildwood parcel represents a lawsuit which will be unresolved for years. Or worse, we must explain that, *in South Lake Tahoe, restricted reserve land can be built upon.*

I understand that the pending hearing is set to entertain comment and then a vote on allowing the Wildwood construction to proceed. I understand that the City may have made a mistake when it issued the initial building permit. I am mindful that mistakes happen. It is, of course, what we do after the mistake is discovered that defines us.

I understand the owners of the Wildwood parcel have a significant investment in the property and in the construction. They were aware, however, or should have been aware that this parcel was restricted and could not be built upon. Any damages they have sustained as a result of their ill conceived plan should be their problem-- not mine, my neighbors or the City's.

The Wildwood site is small with little parking. It increases the density and proximity of homes to each other and the resultant fire hazard. Since there is no parking on Wildwood, the overflow parking likely will be in front of my house or my neighbors houses. The risk of a fire spreading to my home and my neighbor's homes on Wildwood is increased.

To allow construction to proceed here will set a dangerous precedent. If construction can proceed based upon a mistake, it will proceed at another time where reasons may be more compelling (eg. a school, a medical clinic, a fire station). Construction of this home will likely expose the city to further known and perhaps yet unknown problems.

This construction will reduce the open spaces violating the spirit and intent of the grantors of this land and the purposes for which this land was dedicated.

I understand that there may be pressure upon the City to acquiesce and allow this construction proceed. I understand that the City may be tired and does not want to dedicate needed funds to defend this dispute. Allowing this wrongful conduct to continue may be the easier thing to do but it will not correct it. If the wrong here is perpetuated, that wrong will reverberate for years to come. Stopping this construction on Wildwood is the right course for the City and, it is the only course.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Smith', with a long horizontal flourish extending to the right.

Mark Smith
1356 Donner, South Lake Tahoe, CA 96150
847.877.1755

Susan Alessi

From: Susan Alessi
Sent: Monday, January 28, 2013 12:14 PM
To: 'Randall Goethals'
Subject: RE: Wildwood Ave. parcel No. 028-100-26/Council Hearing

Thank you Dr. Goethals for your email and letter. All agenda items are open for public comment (with a few exceptions) This item is not one of the few exceptions and will be open for public comment. The Council will receive a copy of your letter in their February 5th agenda packet which will be provided to them this Thursday, January 31st for Tuesday's meeting.

It will be read into the record and will become a permanent part of the public record.

Sincerely,

Susan Alessi, MMC

City Clerk

City of South Lake Tahoe
1901 Airport Road, Suite 206
South Lake Tahoe, CA 96150
Ph: (530) 542-6004
FAX: (530) 542-7411
salessi@cityofslt.us
www.cityofslt.us



From: Randall Goethals [<mailto:goethals@yahoo.com>]
Sent: Monday, January 28, 2013 10:28 AM
To: Susan Alessi
Subject: Wildwood Ave. parcel No. 028-100-26/Council Hearing

Dear Susan

If the matter of parcel No. 028-100-26 Wildwood Ave. is opened to public comment in an upcoming City Council meeting, could you distribute this letter to the Council members , read it at the hearing, and enter it into the record. Thanks.

Best Regards, Randall Goethals

January 27, 2013

Dear Members of
the City Council of South Lake Tahoe:

We have lived at 3682 Terrace Drive in the City of South Lake Tahoe since 1975. Our home has a view of the disputed Parcel No.028-100-26 on Wildwood Ave. For the past several years, this site has afforded us the ugly sight of a partially framed, weathered structure that is decomposing and is an eyesore in our otherwise attractive neighborhood. The presence of this deteriorating structure is in contrast to the open alpine nature of our low density community. This structure is also a fire hazard and an attractive nuisance to the children in the neighborhood.

While we are not privy to the legal facts pertinent to this case, we are told that the City clearly made a mistake when it issued a building permit for this longstanding neighborhood open space. We do know for certain that our good friend, the late Dr. Chris Mueller, did fully disclose that this property was unbuildable at the time of its sale. In fact at his funeral his children who are now living out of the area were shocked to learn that their previous play area was now a building site.

We will be unable to attend the meeting where this matter is being considered, but we urge you to do the right thing regarding this property which has been a historically and legally attractive open space in our neighborhood. Please enforce the longstanding unbuildable status and have the area cleared of the unsightly debris.

Sincerely

Joyce A. Goethals

Randall M. Goethals M.D.