



MEMORANDUM
PUBLIC WORKS AND FACILITIES
ENGINEERING DIVISION
County of Placer

TO: Board of Supervisors

DATE: September 27, 2016

FROM: Ken Grehm, Director of Public Works and Facilities
By: Peter Kraatz, Assistant Director of Public Works

SUBJECT: Engineering / Bay Street Easement Abandonment/ Rivera Property / Carnelian Bay

ACTION REQUESTED

1. Conduct a public hearing to consider abandoning a portion of Bay Street in Carnelian Bay.
2. Confirm the County's appraisal value of \$88.00/square foot is the fair market value of the Bay Street easement area proposed for abandonment or determine a different value as appropriate.
3. Adopt a Resolution abandoning the portion of Bay Street described in the attached exhibits, subject to the findings set forth herein, with recordation contingent upon the owners paying, in full, the fair market value as established by the Board.

BACKGROUND

Ronald and Stephanie Tahayo-Rivera, Trustees of the Ronald E. Rivera and Stephanie Tamayo-Rivera Revocable Trust ("Trust"), the owner of 5230 North Lake Boulevard in Carnelian Bay, have requested an abandonment of 1,440 ± square feet of the County's Bay Street easement. The Trust purchased a single-family residence at this location in 2014. The house is located on North Lake Blvd. and backs to Lake Tahoe. Between the high water mark of the lake and the Rivera's rear property line is an unimproved road easement identified as Bay Street on the Carnelian Bay on Lake Tahoe subdivision map, filed for record in 1908 in Book C of Maps, Page 14, and accepted by the County through a resolution in 1951. Bay Street is considered a County road easement carrying the rights for vehicular traffic, utilities and non-motorized public uses providing access to Lake Tahoe. County Code Section 2.116.040 states the "applicants shall pay the fair market value of the property proposed to be abandoned."

Department of Public Works and Facilities (DPWF) staff has had numerous discussions with the attorney for the Trust on the issue of valuation of the portion of the County's easement proposed for abandonment. Originally the Trust requested abandonment of 1,081 ± square feet of Bay Street but has since increased the square footage to a request for abandonment of 1,440 ± square feet of Bay Street. The discussion on appraised values has reached an impasse and as a result, the Trust's representative has requested this issue be set before the Board of Supervisors to have the Board determine the fair market value of the easement rights for the 1,440 ± of Bay Street for which the Trust requests abandonment.

The Trust's representative submitted an appraisal of the easement rights requested for abandonment. The appraised value of the land was \$137 per square foot, and the appraiser considered the easement to be 10% of that land value to conclude the fair market value to be \$14,800 (\$13.70/square foot) for the easement rights to be abandoned, which was for the original request of 1,081 sq.ft. Applying this value to the increased area of 1,440 sq.ft. would indicate a value of \$19,728. DPWF rejected this appraisal. DPWF commissioned its own appraisal, and the land value conclusion was similar at \$147 per square foot. DPWF's appraiser applied 60% of that value to conclude \$95,000 (\$88/square foot) for the easement rights to be abandoned. With the increased area of 1,440 sq.ft, the indicated value of DPWF's appraisal is \$127,000.

Both appraisers came to a similar "fee simple" land value of \$147/ sq.ft. and \$137/sq.ft., respectively. The County's appraiser applied a rate of 60% of the fee simple value since the road easement does not comprise 100% of the rights in the land. A road easement typically severely limits a property owner's ability to utilize the easement area for any other use. The County typically has paid 80-100% for 3

roadway easements from private property owners. Some lesser easements such as utility easements and multi-purpose easements have gone as low as 25-60% of "fee value". DPWF has utilized its appraiser for a considerable period of time and finds his value conclusions well supported. As to comparable easement acquisition valuations, the County paid \$145.83 per sq. ft. for a non-exclusive drainage easement on the Common Area lot of the Brockway Shores Condominium Complex in 2015.

The Trust's appraiser determined a value of 10% of the fee simple value for the easement requested to be abandoned. DPWF staff is not familiar with any roadway easement being sold or transferred for 10% of the fee simple value. The Trust's appraiser provides reasoning for a value less than 100%, but provides no specific example of a comparable roadway easement being purchased or abandoned for 10% of fee value

It is DPWF's position that the \$88/SF land value is reasonable and represents the fair market value of the Bay Street easement area proposed for abandonment. The percentage of fee value (60%) used by the County's appraiser is more consistent with the 60-100% of fee value typically paid by the County for similar easements.

DPWF staff requested the Planning Commission determine whether the request is consistent with the County's General Plan. Pursuant to Government Code section 65402(a): ".....no street shall be vacated or abandoned....if the adopted general plan or part thereof applies thereto, until the location, purpose and extent of Such street vacation or abandonment....[has] been submitted to and reported upon by the planning agency as to conformity with said adopted general plan or part thereof." On June 9, 2016, the Planning Commission considered the abandonment request for the purposes of determining whether the same was consistent with the County's General Plan. The Commission concluded it was, provided the County "receives fair recompense for the portion abandoned".

Due to the fact that no agreement could be reached on the appraised value of the abandonment area, staff has brought the valuation issue forward for your consideration at the request of the property owner, in addition to their request for abandonment.

ENVIRONMENTAL IMPACT

This action is categorically exempt from the provisions of CEQA Section 15061(b)(3), no potential to cause significant environmental impact.

FISCAL IMPACT

DPWF is requesting your Board establish the fair market value based on DPWF's appraisal. The determination of fair market value will likely impact the valuation received on this and future abandonments of publicly owned easements, particularly at Lake Tahoe.

ATTACHMENTS

Resolution with Exhibits
Attachment A
Location Map
Basile August 8, 2016 letter

Proposed Abandonment Appraisal on file with Clerk of the Board

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**Before the Board of Supervisors
County of Placer, State of California**

In the matter of: A Resolution Abandoning a
portion of Bay Street – Carnelian Bay.

Resolution No.: _____

The following Resolution was duly passed by the Board of Supervisors of the County of
Placer at a regular meeting held _____, by the following
vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board

WHEREAS, a public road easement, Bay Street, was created on the Map of Carnelian Bay on Lake Tahoe, and filed for record in Book C of Maps at Page 14; and

WHEREAS, it has been determined that the portion of the public road easement, Bay Street, as described on Exhibit "A" and as shown on Exhibit "B", is no longer necessary for present or prospective public use; and

WHEREAS, summary vacation of the easement is permissible pursuant to Chapter 4 of Part 3, Division 9 of the Streets and Highways Code, commencing with Section 8330.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Placer County that from and after the date this Resolution is recorded, the portion of the public road easement, Bay Street, as described and shown on the attached exhibits, shall be vacated and abandoned, and shall thereafter not constitute an easement for its intended purpose; and

BE IT FURTHER RESOLVED by the Board of Supervisors of Placer County that the above described easement, as described and shown on the attached exhibits, is not useful as a nonmotorized transportation facility.

The Resolution shall not be recorded until the Department of Public Works and Facilities receives fair market value, as determined by the Board of Supervisors, for the rights to be vacated herein. The applicant shall have six (6) months from approval to pay the determined market value or this resolution for abandonment shall expire and this resolution is rendered null and void.

Exhibit A & B

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EXHIBIT "A"
A PORTION OF BAY STREET
ABANDONMENT PARCEL
DESCRIPTION

Being a portion of Bay Street, as shown on that certain map of Carnelian Bay on Lake Tahoe filed in Book C, of Maps at page 14, Official Records of Placer County, California; also being a portion of Parcel Two as described in the Quitclaim Deed to the Ronald E. Rivera, & Stephanie Tamayo-Rivera Revocable Trust (2009), recorded in Document No. 2014-0067099, Official Records of Placer County, California: the said parcels being located in Section 22, Township 16 North, Range 17 East, M.D.B. & M., and more particularly described as follows:

Beginning at the northwest corner of parcel two of said Rivera Trust Quitclaim Deed; thence easterly, along the North line of said Parcel Two, North 89°52'28" East, 75.08 feet, to the northeast corner of said Parcel Two; thence, along the East line of said Parcel Two, South 00°07'32" East, 22.61 feet to a point coincident with the northeast corner of a sanitary sewer easement described in the easement agreement, between Delaney and North Tahoe Public Utility District in Document no. 2009-0108022, O.R.P.C.; thence leaving said East line, along the North line of said sanitary sewer easement, North 84°53'08" West, 75.44 feet, to a point on the West line of said Parcel Two; thence, along the West line of Said Parcel Two, North 00°20'32" West, 15.73 feet, more or less to the point of beginning.

Above described parcel contains 1,440 square feet, more or less.

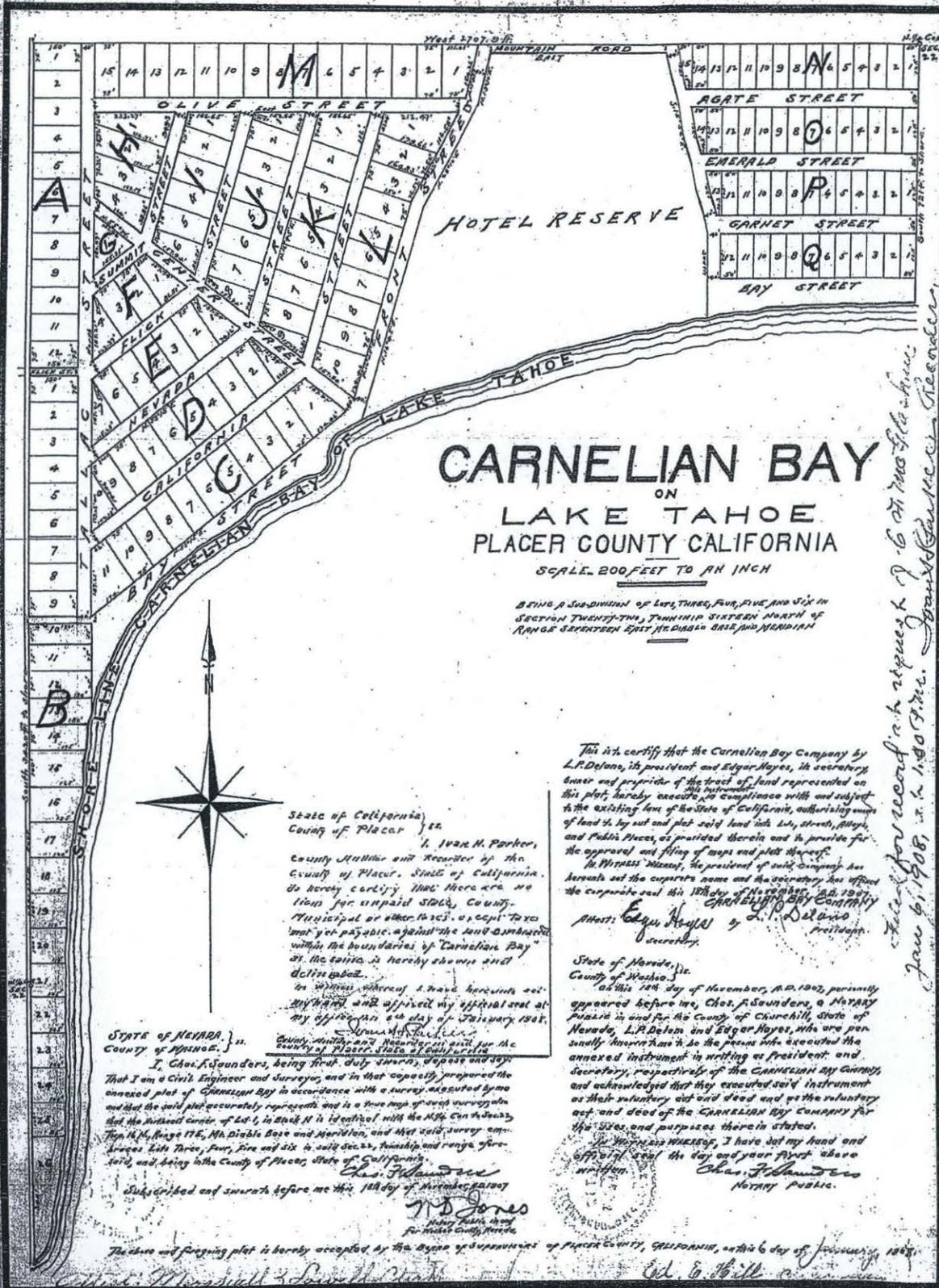
Note:

- 1) The Basis of Bearings for this description is based on The Record of Survey No. 3036, Filed in Book 20, of Surveys at page 140, Official Records of Placer County.



8/17/16

C/ 14



CARNELIAN BAY
ON
LAKE TAHOE
PLACER COUNTY CALIFORNIA
SCALE 200 FEET TO AN INCH

BEING A SUBDIVISION OF LOTS THREE, FOUR, FIVE AND SIX IN SECTION TWENTY-TWO, TOWNSHIP SEVENTEEN NORTH OF RANGE SEVENTEEN WEST, MERIDIAN ONE AND TWO WEST



State of California)
County of Placer) ss
I, Ivan M. Parker,
County Auditor and Recorder by the
County of Placer, State of California,
do hereby certify that there are no
liens for unpaid State, County,
Municipal or other taxes, or taxes
not yet payable, against the land described
within the boundaries of Carnelian Bay
as the same is hereby shown and
declared.

STATE OF NEVADA)
County of WYANDOT) ss
I, Chas. F. Saunders, being first duly sworn, depose and say
that I am a Civil Engineer and Surveyor, and in that capacity prepared the
annexed plat of Carnelian Bay in accordance with a survey executed by me
and that the said plat accurately represents and is a true map of said survey and
that the western corner of Lot 1, in Block N is identical with the N 1/4 Cor. of the
Twp. 17 N, Range 17 E, M. D. Base and Meridian, and that said survey com-
prises Lots Three, Four, Five and Six in said Sec. 22, Township and Range afore-
said, and being in the County of Placer, State of California.

This do certify that the Carnelian Bay Company by
L. P. DeLeon, its president and Edgar Hayes, its secretary,
owner and proprietor of the tract of land represented on
this plat, hereby execute, in compliance with and subject
to the existing law of the State of California, authorizing annex
of land to, by set and plat said land into Lots, streets, alleys,
and Public Places, as provided therein and to provide for
the approval and filing of maps and plat thereof.
In Witness Whereof, the president of said Company has
hereunto set the corporate name and the secretary has affixed
the corporate seal this 13th day of November, A.D. 1907.
CARNELIAN BAY COMPANY

Witness:
Edgar Hayes, Secretary
L. P. DeLeon, President

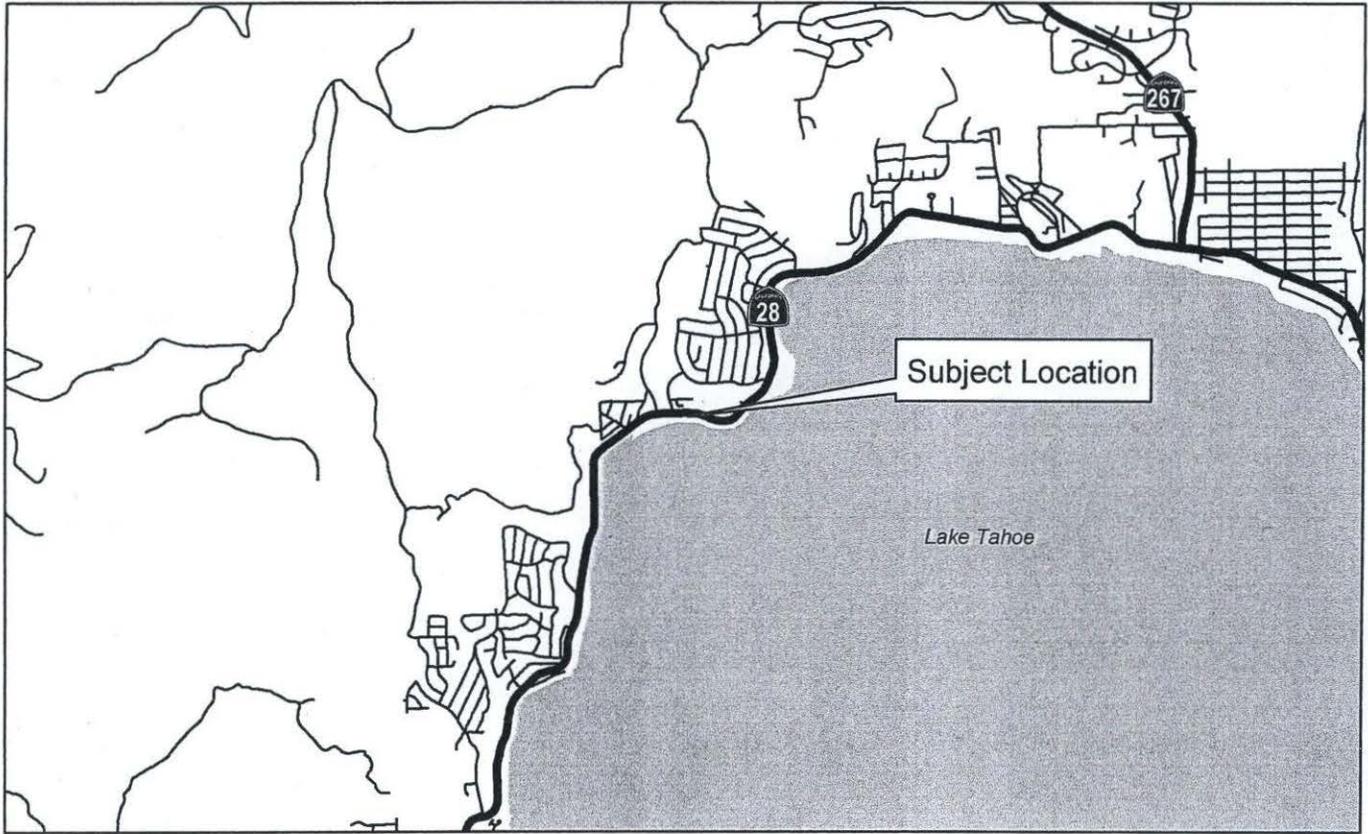
State of Nevada, ss.
County of Washoe, ss.
As this 13th day of November, A.D. 1907, personally
appeared before me, Chas. F. Saunders, a Notary
Public in and for the County of Churchill, State of
Nevada, L. P. DeLeon and Edgar Hayes, who are per-
sonally known to me to be the persons who executed the
annexed instrument in writing as president and
secretary, respectively, of the Carnelian Bay Company,
and acknowledged that they executed said instrument
as their voluntary act and deed and as the voluntary
act and deed of the Carnelian Bay Company for
the uses and purposes therein stated.

In presence of me, I have set my hand and
affixed the seal of the day and year first above
written.
Chas. F. Saunders
Notary Public.

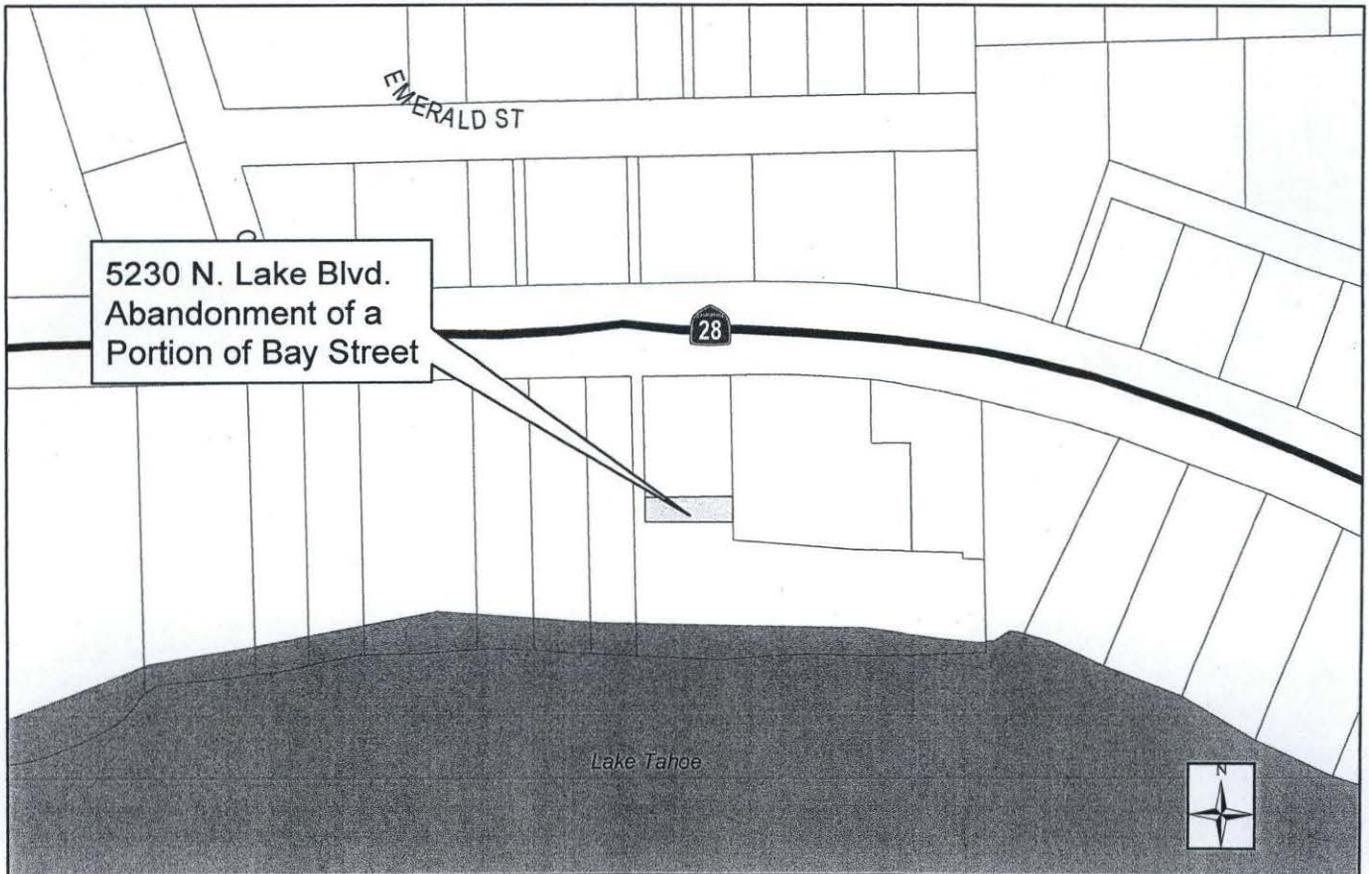
Subscribed and sworn to before me this 13th day of November, 1907
N. D. Jones
Notary Public, Washoe
The above and foregoing plat is hereby accepted by the Board of Supervisors of Placer County, California, on this 6 day of January, 1908.
Ed. E. Hill
Chairman

Filed for record in request of C. H. Moore & Co. Jan 6, 1908, at 1:40 P.M. Frank G. Carter, Recorder

Location Map



Vicinity Map



Louis A. Basile
Kelley R. Carroll*†
Peter H. Cuttitta*
Steven C. Gross*
Brian C. Hanley*
James L. Porter, Jr.*
James E. Simon



Ravn R. Whittington*

Stephen C. Lieberman,
Of Counsel
Dennis W. De Cuir, A Law
Corporation, *Of Counsel*

* Also licensed in Nevada

† *Certified Specialist in Estate
Planning, Trust & Probate Law*

August 8, 2016

Placer County Board of Supervisors
Jack Duran
Robert Weygandt
Jim Holmes
Kirk Uhler
Jennifer Montgomery
175 Fulweiller Avenue
Auburn, CA 95603

Re: Ronald E. Rivera and Stephanie Tamayo Rivera – Revocable Trust (2009)
(the “Riveras”)
Request to Abandon a Portion of Bay Street (“the Request”)

Ladies and Gentlemen:

The Riveras seek abandonment of a portion of Bay Street and, a “paper street” which is adjacent to their property located at 5230 North Lake Boulevard. The Riveras are successors-in-interest to Valdean Kouretas who initially commenced an application for abandonment of a portion of Bay Street in 2012. By agreement, the Riveras and Placer County agreed that the Riveras would be allowed to succeed to the Kouretas’ application for abandonment.

The initial application for abandonment included an area of approximately 1,081 square feet. Most recently, the Riveras determined that they would like to increase the area to be abandoned to include the area which lies to the south of the boundary of their Lot 6 to the northern boundary of the NTPUD easement. The area to be abandoned consists of approximately 1,440 square feet. The legal description of the area to be abandoned as well as a plot map showing the actual area are attached hereto, marked respectively, Exhibits “A” and “B”, and are incorporated herein by reference.

Incident to their request, the Riveras and the County have reached agreement on everything with the exception of the price to be paid per square foot of the area to be abandoned. The Riveras have offered to pay the sum of \$17.70 per square foot of the area to be abandoned, whereas the County has proposed the sum of \$44.00.

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FACTUAL BACKGROUND

The genesis of Bay Street lies in the filing of a 1908 Subdivision Map for Carnelian Bay. The subdivider identified Bay Street as one of several streets within the subdivision, but did not dedicate to the public any of the streets and roadways contained therein. In 1951, the Placer County Board of Supervisors adopted a resolution which, inter alia, purported to "accept as public roads all of the streets, roadways, lanes, avenues, parks and other public property delineated on all of the maps, plots and other subdivision plans in the entire Lake Tahoe area".¹ Notwithstanding the aforementioned resolution the County has not, since 1908 or 1951, taken any action whatsoever to develop Bay Street as public property. Instead, Bay Street has languished in its original condition consisting of a rocky terrain of cobble and large rocks located in and near the shore zone of Lake Tahoe that is seldom used by anyone other than the upland owners of the property such as the Riveras.

In 1996 the Riveras' predecessors-in-interest, as well as several property owners to the east and west of the Riveras' property, obtained a judgment quieting title to their property to the low water mark of Lake Tahoe. Accordingly, the Riveras and all of those property owners and their successors-in-interest have since owned their properties to low water.

In 2012, the Riveras' current neighbors, the Putnams, and their predecessors-in-interest, the Freemans, applied to the County for an abandonment of a portion of Bay Street from their most southerly property line to the North Tahoe Public Utility District sewer easement. Incident to that abandonment process, the County commissioned Johnson-Perkins & Associates, Inc. (hereafter, "Johnson-Perkins") to perform an appraisal for the portion of Bay Street to be abandoned. In 2012 the Johnson-Perkins' appraisal was calculated out at \$65.74 to \$73.00 per square foot. The appraised value per square foot was so outlandish that the County elected to not utilize it. Instead, the County negotiated with the Freemans and the Putnams and subsequently arrived at a square foot price. The square foot price was based upon comparable appraisals in the Lake Tahoe and greater Lake Tahoe basin, and the parties arrived at an agreed upon price per square foot of \$17.70. The Freeman/Putnam application for abandonment was approved by the Board of Supervisors, and the Board issued its resolution abandoning a portion of Bay Street between the southerly boundary of the Freeman and Putnam parcels to the southerly boundary of the North Tahoe Public Utility District sewer easement for an agreed upon price of \$17.70 per square foot.

The Riveras' property and the Putnam properties are virtually identical with respect to all aspects of Bay Street. Both are lakefront parcels; both have the same rocky terrain beach, both are encumbered by the North Lake Tahoe Public Utility District sewer easement; both are subjected to the County's claim in Bay Street; both lie between California Conservancy property to the west and the end of Bay Street to the east. Practically speaking, there are no differences between the Putnam and Freeman properties. Additionally, the area sought to be abandoned by

¹ The filing of the 1908 Subdivision Map did not contain a "dedication" of the streets and roadways identified thereon. Hence, there never was an offer of dedication nor an acceptance thereof in the classic sense.

the Riveras coincides with the area that was abandoned in favor of the Putnams, i.e., that strip of Bay Street which lies between the southerly border of their lots and the northerly border of the North Lake Tahoe Public Utility District easement.

**- APPRAISALS FOR ABANDONMENT OF A
PORTION OF BAY STREET ON THE RIVERAS' PROPERTY**

When Kouretas commenced the application to abandon a portion of Bay Street, she obtained an appraisal from William J. Schilling, a certified general appraiser and certified general real estate appraiser licensed by both the State of California and the State of Nevada. Mr. Schilling concluded that the fair market value of Bay Street was \$8.00 per square foot. Pursuant to Mr. Schilling's appraisal, Kouretas began negotiations with the County to arrive at an agreed upon value per square foot. Kouretas and the County were unable to reach a consensus on that value. Subsequently, Kouretas sold the property to the Riveras who continued negotiations with the County to arrive an agreed upon square foot value. Unable to reach agreement on a square foot value, the Riveras retained the services of Monte Short, MAI, SRA Commercial & Forensic Appraiser, an appraiser on the County's list of acceptable appraisers and who is well recognized by the County as competent and well qualified. The County once again sought out the services of Johnson/Perkins/Griffin, successors to Johnson-Perkins & Associates, Inc. (hereafter, "Johnson/Perkins/Griffin") to appraise the Riveras' property. Relevant portions of each of the Schilling and Johnson/Perkins/Griffin and the entirety of the Short appraisals are attached hereto and marked, respectively, as Exhibits "C", "D" and "E", and incorporated herein by this reference. The results of the aforementioned appraisals are as follows:

1. Schilling appraisal: \$8.00 per square foot;
2. Short appraisal: \$13.69 per square foot;
3. Johnson/Perkins/Griffin appraisal: \$87.88 per square foot.

Clearly, the Schilling and Short appraisals, on the one hand, and the Johnson/Perkins/Griffin appraisal on the other hand, are at substantial odds with one another. Given this disparity, the Riveras requested that Mr. Short analyze the Johnson/Perkins/Griffin appraisal. Mr. Short performed that analysis and the reasons for the disparity became quite clear. Mr. Short has prepared an "Appraisal Review" of the Johnson/Perkins/Griffin appraisal concluding that it is both unreliable and not credible for a number of reasons. A copy of Mr. Short's July 15, 2016 letter concerning his appraisal reviews and his appraisal analysis is attached hereto, marked Exhibit "F", and incorporated herein by this reference.

Mr. Short's comparison of the appraisal, as well as a thorough review of the Johnson/Perkins/Griffin appraisal clearly shows why the Johnson/Perkins/Griffin appraisal is unreliable. In his Appraisal Review, Mr. Short sets forth his analysis and conclusions of the Johnson/Perkins/Griffin appraisal:

1. The sources of information for "similar transactions", i.e., comparables, were not similar at all. They were not based upon comparables as that term is used in the appraisal industry. Instead, they are based upon "very broad hearsay comments that are not verified or substantiated with any actual market transactions".

2. The hearsay transactional references alluded to involve entirely different property types with completely different easement characteristics. For example, the transactions referenced dealt with utility easements, overhead power lines, high voltage transmission lines, fiber optic cables and natural gas pipelines. None of these transactions bear any similarity to the Riveras' request to abandon a portion of Bay Street. To the contrary, they all deal with the acquisition of an easement which results in interest in the landowner's property which results in the landowner's inability to use a portion of its property.

3. The Riveras' Request is different than the situation in which property is being acquired by the County for easement purposes, which is the case in the hearsay transactional references cited by Johnson/Perkins/Griffin. To the contrary, the County is abandoning only a portion of Bay Street and, notwithstanding such partial abandonment, the remainder of Bay Street will continue to be used for whatever purposes it has been used in the past.²

Whereas the Johnson/Perkins/Griffin appraisal contains only hearsay transactional references, the Short appraisal contains actual comparables of similar transactions handled throughout Placer County not only by the County but also by other governmental entities. The Short appraisal thoroughly discusses the existing comparables and how they apply to establish market value with respect to the portion of Bay Street to be abandoned herein. Nowhere in any of the actual comparables does the square footage value of Bay Street reach the levels of market value as concluded by either the Johnson-Perkins or the Johnson/Perkins/Griffin appraisal.

FAIR MARKET VALUE

The Riveras submit that the most existing comparable to be utilized in connection with this matter is that of the 2012 abandonment of a portion of Bay Street adjacent to the Putnam property, the Riveras' next door neighbor. The Putnams and the County reached agreement as to the fair market value of the property to be abandoned at \$17.70 per square foot. The Riveras submit, that given the virtually identical transaction that occurred in 2012, coupled with all the available comparables documented by Mr. Short, that the fair market value of the Bay Street property, on a square foot basis, is somewhere between \$8.00 per square foot, as reported in the Schilling appraisal, and \$13.69 per square foot, as reported in the Short appraisal. Nevertheless, in order to resolve this matter, the Riveras are willing to pay \$17.70 per square foot, the same amount as paid by the Putnams. Hence, the total amount that should be paid by the Riveras to the County for the easement is \$25,488.00. In essence, the Riveras have offered to pay an

² Parenthetically, it should be noted, the use of Bay Street in front of the Riveras' and Putnams' property is virtually null. As noted, there is no history of public use of the property other than an occasional passer-by. Importantly, in the 108 year history, there have never been any public improvements whatsoever located on or associated with Bay Street.

amount greater than the indicated fair market value of the portion of Bay Street that is being abandoned.

CONCLUSION

For all of the reasons set forth above, the Riveras submit that the Board of Supervisors issue a resolution that the County abandon a portion of Bay Street as set forth in the Request for the sum of \$25,488.00 to be paid by the Riveras to the County.

Very truly yours,

PORTER SIMON
Professional Corporation



LOUIS A. BASILE
Basile@portersimon.com

LAB/mw
Enclosure

cc: Karin Schwab (via email)
Ken Grehm (via mail)
John Weber (via email)
Leah Kaufman (via email)
Client (via email)

