

Memorandum

Date: October 21, 2002
To: Board of Supervisors
From: Michael B. Emmons, County Surveyor
Subject: Seiler Appeal (Item D-3 10/22/02)
CC: Alan Seltzer, County Counsel
Pat Elton, Agent for Theresa Seiler



Last September 24th, the Seiler appeal hearing was continued so that we could analyze information that was given to us before the hearing by Patricia Elton (Agent for Theresa Seiler). My staff and I have concluded that the information supplied has no bearing on our decision and therefore we request that your Board uphold our original determination that the parcel in question was created by an illegal division by deed in 1964 and 1970.

Analysis of written testimony (Received at hearing of September 24, 2002)

As will be explained in the hearing on October 22, 2002, the deed in question (Haeckel to Gumb recorded in Book 2071 Page 1334 of Official Records) is not an easement deed but is a grant deed (fee conveyance) which transfers a narrow strip of land in the middle of the Seiler property. This transfer of property totals 0.2 acre and was not exempted from local ordinance at the time of the transfer. Any mention of granted access rights, water rights, or other uses is not applicable to this deed as it transferred the entire fee to the Gumbs.

On page two of the attached testimony submitted the sentence reads "This conveyance is noteworthy for two reasons:". The testimony then asserts that "the Subdivision Map Act Section clearly determines that land conveyed to public utility companies for water line or other utilities was NOT a division of property for purposes of the Act". This statement may be true as the Map Act exists today but it was not true when the transfer in question (Book 122 Deeds Page 75) occurred (1906) and is not the focus of our discussion. It also does not apply because the deed mentioned does not transfer the strip in question as a fee, rather it reserves an easement across the land for water line purposes only.

The testimony continues to say that each deed that followed conveyed land with the exception of the 10' strip (easement only in our opinion and also in the eyes of Mr. Lange who states later in the testimony that "We strongly assert that it was always an easement and right of way, and not a division of land..."). That, then brings us to the conclusion that the grant deed recorded in Book 2071 at Page 1334 of Official Records of the County of Santa Barbara (which is the real question) must have been a "new" division of land as it grants a fee strip to the Gumbs (not a utility company) in 1964. This was the first deed that granted the property as a fee that we are aware of.

There is other testimony speaking about what rights were being gathered; by whom and for what purpose; there is speculation that development was to occur; assertions about implications of upholding our decision; all of which we find to be inconsequential to the question at hand.

We look forward to addressing your Board on October 22, and will be happy to answer any questions you have about this memo or any other aspect of this project at that time.

TESTIMONY
BOARD OF SUPERVISORS
SEPTEMBER 24, 2002
APPEAL OF SURVEYOR DETERMINATION 01-CC-89
FOR ASSESSOR PARCEL NUMBER 153-290-008

UPHOLD THE APPEAL AND GRANT AN UNCONDITIONAL CERTIFICATE OF COMPLIANCE
FOR THE 40 ACRE PARCEL DESCRIBED AND DEPICTED IN EXHIBIT "A".

Madame Chairperson, Members of the Board and Staff, my name is Mark A. Lange, and I am the attorney for the owner Teresa Seiler in the matter before you today. We have appealed the determination by the County Surveyor's office, and are requesting that you uphold our appeal and issue one Unconditional Certificate of Compliance with the Subdivision Map Act and related ordinances, inasmuch as the parcel was a legal conveyance at the time of its creation.

For conveyance APN 153-290-005, the previously submitted deed Haeckel to Gumb, #41550, 2071/ OR/ 1334 and McGilliard to Gumb #40537, 2070 / OR/ 1258, submitted hereto for the record, each refers to the conveyance and riparian rights access. It is our contention that this conveyance merely granted access to riparian rights that were already in existence at the time of the conveyance. Accordingly, it did not subdivide the land at that time, but confirmed access to the grantee, Mr. Gumb as one of several landowners along San Jose Creek, and restricted obstruction, by the grantee (Gumb), of the historical domestic and agricultural water use of other landowners in the area along San Jose Creek. Our contention is further substantiated with the previously submitted Grant Deed from Haeckel to Gumb #41387, 2131 / OR/ 759, which refers to the easement as confined and restricted to the description already granted.

We further contend that the conveyance referenced as APN 153-290-005, which granted the narrow strip of land within the main body of the approximately 40 acre parcel owned now by Ms. Seiler, was a penetration of the main parcel solely for riparian rights access within the narrow strip of land, but did not bisect or render noncontiguous any part of Ms. Seiler's property. Therefore, Ms. Seiler's parcel was over 20 acres and exempt from compliance with the Subdivision Map Act and Ordinance No. 786, as modified through Ordinance 1564. Thus, that conveyance does not create a condition of an illegal subdivision of land on the property owned by Ms. Seiler. An unconditional Certificate of Compliance should therefore be issued.

This parcel was once a part of an original patented conveyance from the Federal Government to the State of California in Indemnity List No. 25, December, 1899.. The map used for that conveyance was U.S. General Land Office Patent Map (Map and Field Notes for three official Plat Maps depicting our parcel was submitted with our supplemental package to the Surveyor's Office. The State of California then conveyed the land by Patent on September 21, 1901, to James W. Miner.

James W. Miner subsequently conveyed the parcel to Pacific Improvement Company on May 31, 1901, as part of a greater parcel. Pacific Improvement Company became the owners of our parcel, along with Ontare Ranch, Hope Ranch and Burton Ranch, and on August 31, 1906, conveyed those lands between the creeks, including San Jose Creek to the Laguna Blanca Water Company, a franchise of the Santa Barbara County Board of Supervisors as a public utility company (Franchise minutes given to the Surveyor's office and included in the chain of title submitted to this body).

The respective lands were conveyed as an appurtenance to Hope, Burton and Ontare Ranch RESERVING to the ranches in between rights to water for domestic and agricultural purposes, and the deed conveyed a ten foot right-of-way for those water purposes from San Jose Creek, across the ranches including our parcel, to existing public roadways, and allowed to be located where practical to supply water to the three developments, and the ranches affected. See previously submitted Book 122 of Deeds beginning on page 75, Grant Deed from Pacific Improvement Company to Laguna Blanca Water Company previously

75, Grant Deed from Pacific Improvement Company to Laguna Blanca Water Company previously submitted in the Chain of Title, with special emphasis on the 10 ft pipeline right-of-way found in paragraph 1 of Page 79, and Paragraph 4 and 6 of Page 80.

This conveyance is noteworthy for two reasons:

The first reason is the Subdivision Map Act Section clearly determines that land conveyed to public utility companies for water line or other utilities was NOT a division of property for purposes of Act.

The second reason is that the conveyance was a blanket right-of-way without specific boundaries, except that it was confined to a ten foot strip of land where practical.

In each deed that followed, all land was conveyed with the exception of this 10 ft. strip of land right-of-way leaving the right-of-way in the ownership of the Laguna Blanca Water Company, until that Company quitclaimed their interest, including all land and water rights, to Ernest Haeckel and Ruth Haeckel (hereinafter "Haeckel") on October 11, 1945. See Record of Deeds, Book 656, Page 362-63.

It is important to note that Haeckel was gathering water rights and waterline rights-of-way from all lands adjacent to San Jose Creek to supply a development called Sky Ranch Estates mentioned on deeds adjacent to this parcel. There was always a reserve withheld which was granted to every owner of the land after Pacific Improvement Co. and that reserve was water rights of way for domestic and agricultural purposes. Haeckel recognized that reserve and accommodated it by easement in mutually agreed upon confined strips of land, between all lands and the San Jose Creek still allowing where practical. A reversion to acreage occurred, and Haeckel then conveyed no more than four parcels in a given year over twenty acres, along with an easement and right-of-way for domestic and agricultural purposes. Haeckel reserved other water rights for adjacent developments, including Sky Ranch Estates.

Moreover, in July, 1962, Haeckel had the entirety of Section 27 surveyed, by U.S. Grant & Sons Surveyors, of Santa Barbara, including the quarter section boundary, where the water line was intersected. That survey map was duly recorded August 9, 1962, in Book 64, Page 5, of the Records of Surveys maintained by the County of Santa Barbara, and within the County Surveyor Records.

Further, the 1957 deed of conveyance from Haeckel to Hyde, Official Records, Book 1447, Page 401, of adjacent land provided for easement rights over a boundary to be determined later, and conveyances substantially the same as the Gumb deed in question. We are the appealing the Surveyor's interpretation of the conveyor's intent. We also note that the Surveyor's Summary does not show you the adjacent area so it makes it appear as a stand alone strip, when in fact it is a part of a continuing right-of-way from the creek to the public highway. The assessor's record recognizing the strip as a separate strip of land can not be used to determine a parcel's existence. It is also noted that the area just below our parcel is in another tax area, and could explain the strip being delineated for tax purposes only.

We strongly assert that it was always an easement and right of way, and not a division of land even after it was granted to Haeckel. The Surveyor's Office cites 1964 deed from Haeckel to Gumb 2071/OR/1334, to describe the narrow strip of land conveyance. **The Title Company report, previously submitted to the Surveyor's Office clearly determines the same referenced deed as an easement.** The Title Report references the other deeds and referring to the Gumb deed as well as easements encumbering this parcel. We have also attached the diversion of water permit granted by the State of California to Haeckel to divert water from San Jose Creek at Section 22 to others. That diversion makes this recognition a water right-of-way, and not a parcel of land. Therefore, there is no division of property as a small strip of land, but rather, a water easement previously reserved as an appurtenance to each respective parcel and as an encumbrance and restriction as it passes through one parcel to the other.

With regard to the forty acre parcel easement, a Record of Survey was cited in the legal description of the quarter quarter section conveyed from Haeckel to Perry in 1975, at record of deeds Book 2563, Page 838, previously submitted to the County, citing the District Land Office Record of Survey, April 5, 1901, the official survey of the quarter sections of land, which was an acceptable record of survey commonly

submitted to the County during that period of time. It was common acceptable practice during the 1960s and 1970s to accept the General Land Office's corner section maps and field notes as legal descriptions of land. It was not uncommon in Santa Barbara County, in that era, to describe parcels in quarter sections, both as legal descriptions, and as tax identifications in mapping. We submitted the field notes to the County Surveyor along with the official maps which should have been sufficient at the time of the original conveyance. The subdivision ordinances in existence at the time did not require a map for conveyances of land twenty acres or more in size. The water rights were reserved to each owner from the original conveyance; Haeckel accommodated the water to each parcel by way of right of way or easement deed. He reserved one long conveyance to himself for purposes of supplying unobstructed, the water to his other development, which he was granted the diversion rights by the State to do so.

Official Plat Map and Field Notes of John K. Harrington, U.S. Deputy Surveyor of the Subdivision lines of Township 5 North Range 28 West, San Bernardino Baseline and Meridian, part of which determines quarter section lines of Section 27, delineates the bearing lines and was the basis of the conveyance from Miner to Pacific Improvement Company and subsequent conveyances. The Thorn Survey, 1904, was not accepted as an official plat per letter from U.S. Surveyor General Land Office 1307937 "E" of 4/27/1936). We have also included the Official Plat Map and Field Notes of Frank F. Flournoy, under contract of 11-13-1899 which confirms the quarter section markers for same Section 27, 5N 28West.

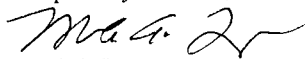
Consider the implications of the Board upholding the Surveyor's Office determination in this matter. The Board will be creating new parcels of land in the ranches between every creek and Ontare, Burton and Hope Ranch. Any strip of land conveyed as a water pipeline, including the City of Santa Barbara through Mission Canyon, could be interpreted as an illegal division of land with this new interpretation of old deeds. We would then have the following appeal: we were granted one thirty acre parcel unconditionally since it is over the 20 acre minimum required at the time of its conveyance, and one conditional certificate of compliance for a little less than ten acres, which would only require a record of survey be recorded on the smaller parcel because it is over five acres. The narrow strip of land is not in our ownership; thus the Board would be violating that parcel along with every other parcel between San Jose Creek and the respective developments. By **denying** the appeal, the Board will **actually be creating** more parcels on our land, and creating a windfall of lots all over Santa Barbara County.

We respectfully request that you modify Staff Recommendation #2 as follows:

UPHOLD THE APPEAL of Teresa Seiler and order the County Surveyor to issue ONE UNCONDITIONAL CERTIFICATE OF COMPLIANCE for APN 153-290-008 as set forth in California Government Code Section 66499.35, excluding APN 153-290-005.

Based on this new information, we respectfully request your determination that Ms. Seiler be issued an Unconditional Certificates of Compliance for her property.

Respectfully submitted,



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