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May 13, 2024

**MEMORANDUM**

The issue at hand derives from the Easement Deed recorded October 21, 1958, at Book 4207, Page 488, Santa Clara County Records, in which there was established for the common benefit of the lots described in such Deed a nonexclusive easement for the purposes of ingress and egress and for the installation and maintenance of public utilities. Among the lots both benefited and burdened by such Deed are Assessor's Parcel Numbers 139, 29 and 119, among others (all as referenced in Assessor's Parcel Map 558-08). Such properties are hereafter referenced by such numbers.

At issue is the right of Beck (119) to construct a waterline within the easement boundaries from the service connection of San Jose Water Company at the public highway, through 139 and 29, for domestic water service. Dougherty (29) objects on the ground that the underground facilities for the water connection will be installed and owned by the dominant tenant property owners (who are not "public utilities") rather than by San Jose Water Company.

The analysis begins with the law governing interpretation of easement grants. "The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired." (Civil Code, § 806.) " '[T]he rules applicable to the construction of deeds generally apply with full force and effect to instruments conveying easements or other similar rights or privileges.' [Citations.]" (Laux v. Freed (1960) 53 Cal.2d 512, 522-523.) "With deeds as any other contracts, '[t]he primary object of all interpretation is to ascertain and carry out the intention of the parties. [Citations.] All the rules of interpretation must be considered, and each given its proper weight, where necessary, in order to arrive at the true effect of the instrument. [Citation.]" (Burnett v. Piercy (1906) 149 Cal. 178, 189 [86 P. 603]; Civil Code, § 1066; see Civil Code, § 1635 et seq.; Code Civ. Proc., § 1856 et seq.) (City of Manhattan Beach v. Superior Court (1996) 13 Cal.4th 232, 238.). That the easement is to be appurtenant to each of the affected parcels is made clear from the plain language of the Deed: "Said easement shall be appurtenant to each and every lot and parcel of land adjacent to the hereafter described easement and each and every such a lot and parcel shall respectively be the dominant and servient estate with respect to each and every other lot and parcel along the course thereof to the end that said easement shall be used and enjoyed in common by said owner's and their successors."

"Public utility easements" as an element of land use vary widely based upon their statutory origin and degree of regulation. On the one hand are those created by subdividers and mapped on the subdivision map by grants to the city, county or public

utility entity. Such easements are obviously necessary to provide utility services to newly-created lots. By making such grants for the general public benefit, there is no contemplation of individual ownership rights being conveyed to the purchasers/owners of the individual lots. In *County of Sacramento v. Pacific Gas & Elec. Co.* (1987) 193 Cal.App.3d 300, the Court distinguished the role of PG&E as the public provider of utility services within the easement areas from its role as an entity member of the public intended to be served by such services. Thus the ownership roles, responsibilities and benefits conferred within the realm of public utility easements can be complex and confusing.

In the present case, however, such complexities do not exist. 119 is clearly a dominant tenement with respect to the other affected properties, with such easement rights appurtenant to and owned by the successors to the original Easement Deed. The function of the easement is to facilitate the delivery of public utility products and services to the subject parcel. In some instances, such as the delivery of electrical service via overhead lines, the facilities will be constructed, installed and maintained by a public utility company up to the point of connection at the site of ultimate use. With respect to other utilities, however, the connection point may be remote. The allocation of responsibility for delivery of water by San Jose Water Company is detailed as follows:

“San Jose Water Responsibility – SJW is responsible for the pipes that bring water from the water main located under the street, all the way to the meter outlet coupling. This includes:

- Connection to the water main in the street
- Service line from the main to the inlet side shutoff valve (curb stop or angle stop)
- The water meter, water meter box and the outlet side coupling

“Customer Responsibility – Customers are responsible for everything from the connection of their service line to SJW’s coupling. This includes but is not limited to:

- Customer’s service line from the meter to the house
- House valve
- All plumbing fixtures both inside and outside the house”

Based upon the SJWC will-serve covenant (“... General Metered Service for the Property may be obtained from the San Jose Water Company by a service connection provided on Old Santa Cruz Highway in front of 22091 Old Santa Cruz Highway (APN 558-08-139)”, it is clear that the customer responsibility, “for everything from the connection of their service line to SJW’s coupling”, is more extensive than the typical run from the curbside meter to the connection at the house, but such is merely a matter of degree not of definition. Nevertheless, based upon the extension of regulatory control over the manner of construction of the owner-install facilities (“...Owner will, if necessary, install, maintain and repair, on property where permission has been granted, a private service line to the Property and that Owner will provide, maintain and repair cross-connection and/or backflow prevention devices as required by the San Jose Water Company...”.) It is clear that such facilities as will be installed through the easement corridor will, by definition, be a function of the public utility.