



City Council Staff Report

DATE: November 19, 2008 UNFINISHED BUSINESS

SUBJECT: ACCEPTANCE OF GRANT DEED FROM THE SUZANNE D. PARISH REAL ESTATE TRUST FOR 17.07 ACRES OF LAND TO BE PRESERVED AS OPEN SPACE AND APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN GRANTOR AND CITY FOR THE LOT SPLIT OF PARCEL APN 510-270-003.

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY:

RECOMMENDATION:

1. Approve Agreement No. _____, "Authorizing the City Clerk to accept the Grand Deed from the Suzanne D. Parish Real Estate Trust for 17.07 acres in the Araby Cove and Araby Wash area for the purpose of preserving the land as natural open space and approving a memorandum of understanding (MOU) between the Grantor and City for the split of parcel APN 510-270-003."
2. Authorize the City Manager or his designee to execute all the necessary documents.

BACKGROUND:

Staff began discussion in August 2005 by a private party regarding a potential gift to the City of open space land in the Araby Cove area. The resident was interested in purchasing a small group of historic rock structures consisting of a small house, horse barn, and pool/outdoor recreation area from the current owner, the Suzanne D. Parish Real Estate Trust. As part of the private buyer's negotiation with Ms. Parish, it became clear that Ms. Parish desired to preserve the rock houses mentioned above as well as the undeveloped land surrounding it. Staff proposed that the Suzanne D. Parish Real Estate Trust grant the undeveloped acreage to the City of Palm Springs; as part of that overall transaction, the Trust would then make a separate deal with the private buyer to

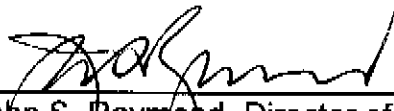
sell her the rock house, other structures and adjacent land, in a newly created parcel with an area of approximately 3 acres. On November 2, 2005, Council accepted the gift to the City of Palm Springs of approximately 17 acres of land from the Suzanne D. Parish Real Estate Trust for the purpose of preserving the land as natural open space. Since that time, staff has been working with the Trust and a private buyer to reach an agreement for the mechanism by which the Trust will grant the City a portion of the property (17.07 acres) and sell the remainder (2.97 acres) to a private buyer.

The gift to the City consists of parcels 510-210-003, 510-210-017 and a portion of 510-270-003. The remainder portion of parcel 510-270-003 will be sold by the Trust to the private buyer. The private buyer has obtained a professional survey of the property including legal description of the separated parcels, (see attachment 1 Legal Description and Boundary Exhibit).

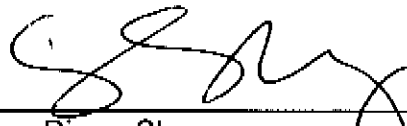
This action approves the Acceptance of the Grant Deed by the City, which is one of the documents necessary to close the escrow. In addition, a Memorandum of Understanding (MOU) between the Trust (Grantor) and City (see attachment 3 – MOU), addresses a number of issues including:

- (a) it fixes the zoning boundary between the O-5 (open space) and R-1-A (residential) zoning at the new property line that will divide the Parcel (APN 510-270-003), so that the Rock House property remains in residential zoning and the land received by the City remains in open space zoning;
- (b) it declares that the stable on the property is an actual stable, which will come as close to “grandfathering” the equestrian nature of the property as possible, since the practical application of grandfathering would have been long gone through disuse;
- (c) it advises the property owner that the parcel is subject to the Hillside Development provisions of the City – this is not a new condition but it will be made clear, including a higher level of architectural scrutiny for any new structures there; likewise, it would also advise that any subdivision of the remaining property would be subject to the Subdivision Map Act, including the requirement to provide demonstrated access to sewer and water; and,
- (d) it recognizes that the access to the property has been legally established across the Levy Road , as well as the Lineau and Petty properties, by the Appellate Court opinion. Since the document contains the legal description of those properties as Restricted Parcels, the document can be recorded against all of the affected properties. That way in the future parties will have clear documentation to prove access.

By acceptance of the Grant Deed and the MOU, staff can issue a Certificate of Compliance on the newly created parcel prior to closing escrow and the Trust can sell the remainder 2.97 acre parcel to the private buyer.



John S. Raymond, Director of
Community & Economic Development



Diana Shay
Redevelopment Coordinator



DAVID H. READY
Executive Director



Tom Wilson
Assistant City Manager

Attachments:

1. Legal Description and Boundary Exhibit
2. Acceptance of Grant Deed
3. Memorandum of Understanding between City and Suzanne D. Parish Trust

Attachment 1

Legal Description and Boundary Exhibit

Legal Description

PARCEL A

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA, THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH $50^{\circ}17'05''$ WEST A DISTANCE OF 44.04 FEET TO A POINT LYING AT THE EXISTING TOE OF SLOPE;

THENCE NORTHWESTERLY ALONG THE EXISTING TOE OF SLOPE THROUGH THE FOLLOWING COURSES:

THENCE NORTH $81^{\circ}17'10''$ WEST A DISTANCE OF 37.95 FEET;
THENCE NORTH $59^{\circ}04'13''$ WEST A DISTANCE OF 22.80 FEET;
THENCE NORTH $75^{\circ}06'28''$ WEST A DISTANCE OF 44.18 FEET;
THENCE NORTH $62^{\circ}23'01''$ WEST A DISTANCE OF 55.63 FEET;
THENCE NORTH $28^{\circ}49'51''$ WEST A DISTANCE OF 29.78 FEET;
THENCE NORTH $11^{\circ}03'10''$ WEST A DISTANCE OF 28.29 FEET;
THENCE NORTH $31^{\circ}34'43''$ WEST A DISTANCE OF 59.01 FEET;
THENCE NORTH $70^{\circ}48'18''$ WEST A DISTANCE OF 104.68 FEET;
THENCE SOUTH $22^{\circ}41'33''$ WEST A DISTANCE OF 14.05 FEET;
THENCE LEAVING SAID TOE OF SLOPE SOUTH $79^{\circ}42'00''$ WEST A DISTANCE OF 20.91 FEET TO A POINT LYING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO E.K. DAVALL BY DEED RECORDED APRIL 22, 1935 IN BOOK 228 PAGE 442 O.R.;

THENCE SOUTH $04^{\circ}24'48''$ EAST ALONG SAID EASTERLY LINE A DISTANCE OF 278.64 FEET TO AN ANGLE POINT IN SAID LINE;

THENCE SOUTH $00^{\circ}00'55''$ WEST A DISTANCE OF 144.23 FEET;

THENCE SOUTH $85^{\circ}48'59''$ EAST A DISTANCE OF 338.67 FEET;

THENCE NORTH $00^{\circ}09'59''$ WEST A DISTANCE OF 242.16 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 116798 SQUARE FEET, MORE OR LESS.

Legal Description (cont'd)

PARCEL B

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA, THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET;

THENCE NORTH $0^{\circ}17'05''$ WEST A DISTANCE OF 44.04 FEET TO A POINT LYING AT THE EXISTING TOE OF SLOPE AND THE TRUE POINT OF BEGINNING;

THENCE NORTHWESTERLY ALONG THE EXISTING TOE OF SLOPE THROUGH THE FOLLOWING COURSES:

THENCE NORTH $81^{\circ}17'10''$ WEST A DISTANCE OF 37.95 FEET;
THENCE NORTH $9^{\circ}04'13''$ WEST A DISTANCE OF 22.80 FEET;
THENCE NORTH $75^{\circ}06'28''$ WEST A DISTANCE OF 44.18 FEET;
THENCE NORTH $62^{\circ}23'01''$ WEST A DISTANCE OF 55.63 FEET;
THENCE NORTH $28^{\circ}49'51''$ WEST A DISTANCE OF 29.78 FEET;
THENCE NORTH $11^{\circ}03'10''$ WEST A DISTANCE OF 28.29 FEET;
THENCE NORTH $31^{\circ}34'43''$ WEST A DISTANCE OF 59.01 FEET;
THENCE NORTH $70^{\circ}48'18''$ WEST A DISTANCE OF 104.68 FEET;
THENCE SOUTH $22^{\circ}41'33''$ WEST A DISTANCE OF 14.05 FEET;
THENCE LEAVING SAID TOE OF SLOPE SOUTH $79^{\circ}42'00''$ WEST A DISTANCE OF 20.91 FEET TO A POINT LYING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO E.K. DAVALL BY DEED RECORDED APRIL 22, 1935 IN BOOK 228 PAGE 442 O.R.;

THENCE NORTH $4^{\circ}24'49''$ WEST ALONG SAID EASTERLY LINE A DISTANCE OF 73.41 FEET;

THENCE NORTH $85^{\circ}35'12''$ EAST A DISTANCE OF 27.27 FEET;

THENCE SOUTH $50^{\circ}17'05''$ EAST A DISTANCE OF 393.98 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 12693 SQUARE FEET, MORE OR LESS.

Legal Description (cont'd)

PARCEL C

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA; THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET;

THENCE SOUTH $00^{\circ}09'59''$ EAST A DISTANCE OF 242.16 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $00^{\circ}09'59''$ EAST A DISTANCE OF 699.34 FEET TO A POINT LYING ON THE SOUTH LINE OF SAID SECTION 25;

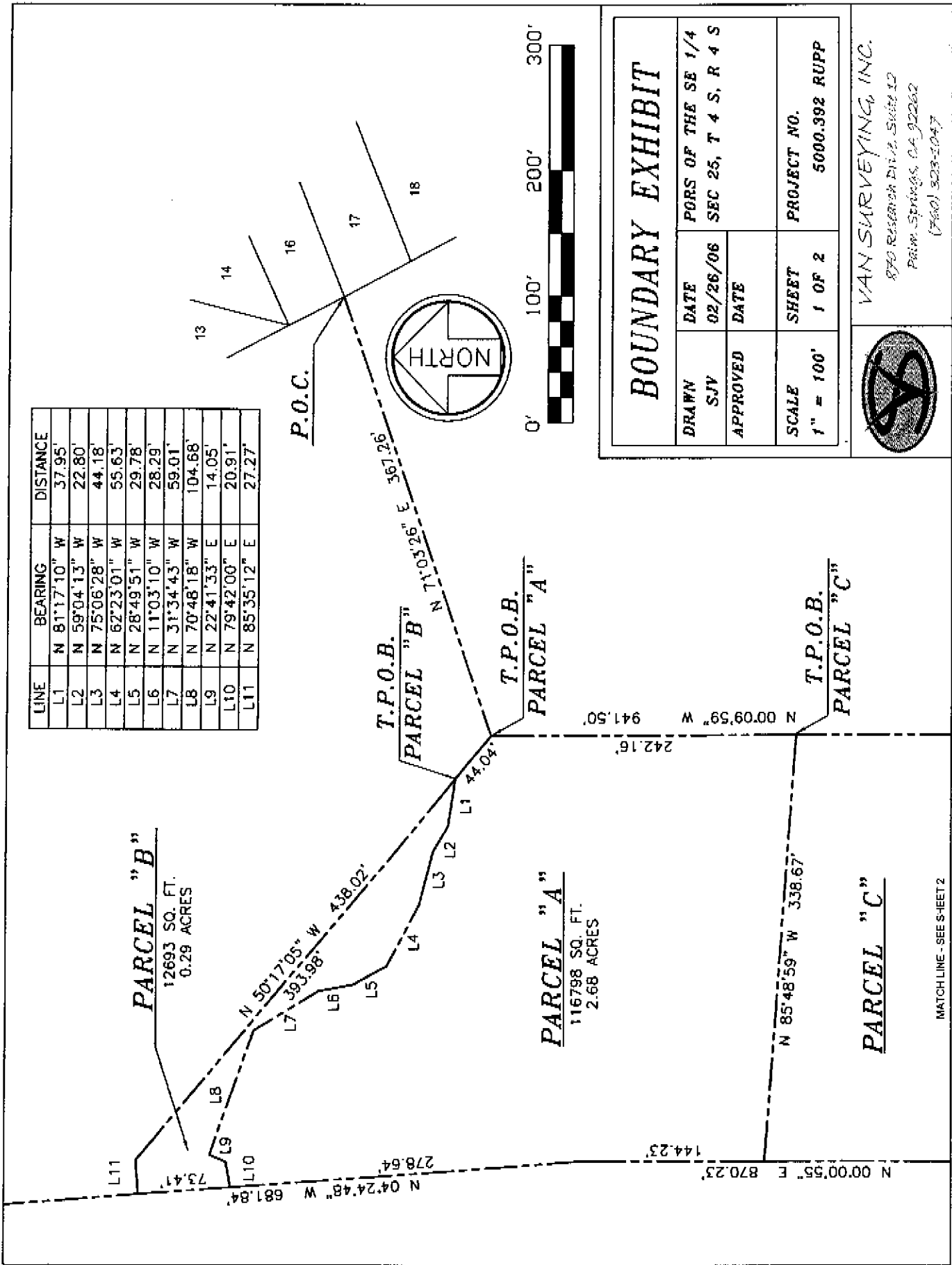
THENCE SOUTH $89^{\circ}40'08''$ WEST ALONG SAID SOUTH LINE OF SECTION 25 A DISTANCE OF 340.00 FEET;

THENCE NORTH $00^{\circ}00'55''$ EAST A DISTANCE OF 726.00 FEET;

THENCE SOUTH $85^{\circ}48'59''$ EAST A DISTANCE OF 338.67 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 241501 SQUARE FEET, MORE OR LESS.

Boundary Exhibit (part 1)



BOUNDARY EXHIBIT

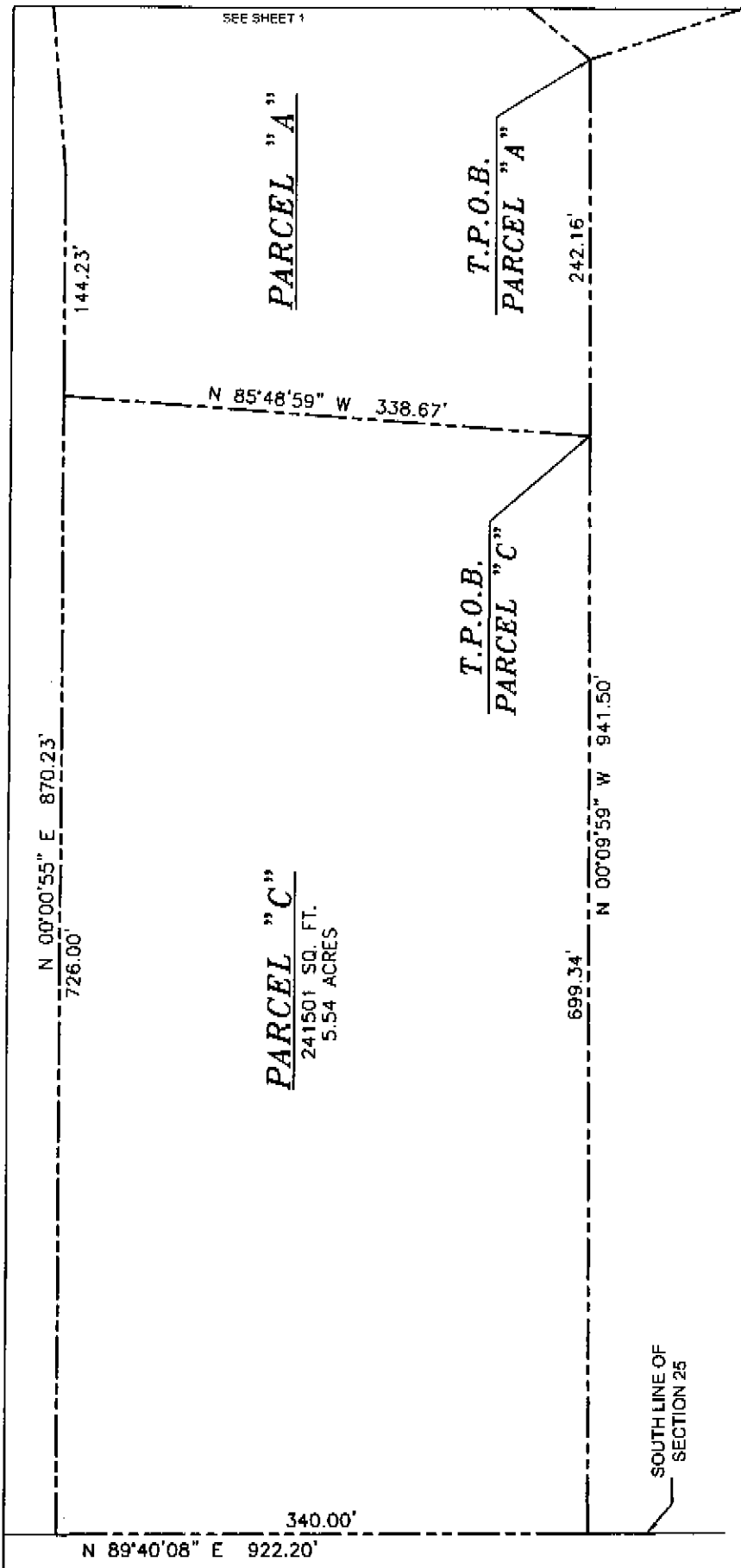
DRAWN SJY	DATE 02/26/06	PORTS OF THE SE 1/4 SEC 25, T 4 S, R 4 S
	DATE	
APPROVED	SHEET 1 OF 2	PROJECT NO. 5000.392 RUPP
SCALE 1" = 100'		

VAN SURVEYING, INC.
870 Research Drive, Suite 10
Palm Springs, CA 92262
(760) 323-1047



MATCH LINE - SEE SHEET 2

Boundary Exhibit (part 2)



BOUNDARY EXHIBIT			
DRAWN SVJ	DATE 02/26/06	PORS OF THE SE 1/4 SEC 25, T 4 S, R 4 S	
APPROVED	DATE	SHEET 2 OF 2	PROJECT NO. 5000.392 RUPP
SCALE 1" = 100'			

VAN SURVEYING, INC.
870 Research Drive, Suite 12
Palmdale, CA 93262
(760) 323-1047



Attachment 2
Certificate of Acceptance

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by

GRANT DEED

Real property in the City of Palm Springs, County of Riverside, State of California,
as described:

**Land described in Exhibit "A" and shown on Exhibit "B"
APN: 510-270-003**

dated: _____

from,

Suzanne D. Parish Real Estate Trust

Grantor, to the City of Palm Springs, a municipal corporation and charter city,
grantee, is hereby accepted by the City Clerk of said City, by the order of the City
Council of the City of Palm Springs, on the _____ day of _____, 200__,
and the Grantee consents to recordation thereof by the City Clerk, its duly
authorized officer.

Dated at Palm Springs, California, this _____ day of _____, 200__

JAMES THOMPSON
City Clerk

Exhibit A
Legal Description

Exhibit "A" - Legal Description

PARCEL A

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA, THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH $50^{\circ}17'05''$ WEST A DISTANCE OF 44.04 FEET TO A POINT LYING AT THE EXISTING TOE OF SLOPE;

THENCE NORTHWESTERLY ALONG THE EXISTING TOE OF SLOPE THROUGH THE FOLLOWING COURSES:

THENCE NORTH $81^{\circ}17'10''$ WEST A DISTANCE OF 37.95 FEET;
THENCE NORTH $59^{\circ}04'13''$ WEST A DISTANCE OF 22.80 FEET;
THENCE NORTH $75^{\circ}06'28''$ WEST A DISTANCE OF 44.18 FEET;
THENCE NORTH $62^{\circ}23'01''$ WEST A DISTANCE OF 55.63 FEET;
THENCE NORTH $28^{\circ}49'51''$ WEST A DISTANCE OF 29.78 FEET;
THENCE NORTH $11^{\circ}03'10''$ WEST A DISTANCE OF 28.29 FEET;
THENCE NORTH $31^{\circ}34'43''$ WEST A DISTANCE OF 59.01 FEET;
THENCE NORTH $70^{\circ}48'18''$ WEST A DISTANCE OF 104.68 FEET;
THENCE SOUTH $22^{\circ}41'33''$ WEST A DISTANCE OF 14.05 FEET;
THENCE LEAVING SAID TOE OF SLOPE SOUTH $79^{\circ}42'00''$ WEST A DISTANCE OF 20.91 FEET TO A POINT LYING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO E.K. DAVALL BY DEED RECORDED APRIL 22, 1935 IN BOOK 228 PAGE 442 O.R.;

THENCE SOUTH $04^{\circ}24'48''$ EAST ALONG SAID EASTERLY LINE A DISTANCE OF 278.64 FEET TO AN ANGLE POINT IN SAID LINE;

THENCE SOUTH $00^{\circ}00'55''$ WEST A DISTANCE OF 144.23 FEET;

THENCE SOUTH $85^{\circ}48'59''$ EAST A DISTANCE OF 338.67 FEET;

THENCE NORTH $00^{\circ}09'59''$ WEST A DISTANCE OF 242.16 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 116798 SQUARE FEET, MORE OR LESS.

Exhibit "A" - Legal Description (cont'd)

PARCEL B

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA, THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET;

THENCE NORTH $0^{\circ}17'05''$ WEST A DISTANCE OF 44.04 FEET TO A POINT LYING AT THE EXISTING TOE OF SLOPE AND THE TRUE POINT OF BEGINNING;

THENCE NORTHWESTERLY ALONG THE EXISTING TOE OF SLOPE THROUGH THE FOLLOWING COURSES:

THENCE NORTH $81^{\circ}17'10''$ WEST A DISTANCE OF 37.95 FEET;
THENCE NORTH $9^{\circ}04'13''$ WEST A DISTANCE OF 22.80 FEET;
THENCE NORTH $75^{\circ}06'28''$ WEST A DISTANCE OF 44.18 FEET;
THENCE NORTH $62^{\circ}23'01''$ WEST A DISTANCE OF 55.63 FEET;
THENCE NORTH $28^{\circ}49'51''$ WEST A DISTANCE OF 29.78 FEET;
THENCE NORTH $11^{\circ}03'10''$ WEST A DISTANCE OF 28.29 FEET;
THENCE NORTH $31^{\circ}34'43''$ WEST A DISTANCE OF 59.01 FEET;
THENCE NORTH $70^{\circ}48'18''$ WEST A DISTANCE OF 104.68 FEET;
THENCE SOUTH $22^{\circ}41'33''$ WEST A DISTANCE OF 14.05 FEET;
THENCE LEAVING SAID TOE OF SLOPE SOUTH $79^{\circ}42'00''$ WEST A DISTANCE OF 20.91 FEET TO A POINT LYING ON THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO E.K. DAVALL BY DEED RECORDED APRIL 22, 1935 IN BOOK 228 PAGE 442 O.R.;

THENCE NORTH $4^{\circ}24'49''$ WEST ALONG SAID EASTERLY LINE A DISTANCE OF 73.41 FEET;

THENCE NORTH $85^{\circ}35'12''$ EAST A DISTANCE OF 27.27 FEET;

THENCE SOUTH $50^{\circ}17'05''$ EAST A DISTANCE OF 393.98 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 12693 SQUARE FEET, MORE OR LESS.

Exhibit "A" Legal Description (cont'd)

PARCEL C

BEING THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF LOT 17, BLOCK F, OF THE ARABY TRACT, AS SHOWN BY MAP ON FILE IN BOOK 13, PAGES 61 AND 62 OF MAPS, RECORDED OF RIVERSIDE COUNTY, CALIFORNIA; THENCE SOUTH $71^{\circ}03'26''$ WEST A DISTANCE OF 367.26 FEET;

THENCE SOUTH $00^{\circ}09'59''$ EAST A DISTANCE OF 242.16 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $00^{\circ}09'59''$ EAST A DISTANCE OF 699.34 FEET TO A POINT LYING ON THE SOUTH LINE OF SAID SECTION 25;

THENCE SOUTH $89^{\circ}40'08''$ WEST ALONG SAID SOUTH LINE OF SECTION 25 A DISTANCE OF 340.00 FEET;

THENCE NORTH $00^{\circ}00'55''$ EAST A DISTANCE OF 726.00 FEET;

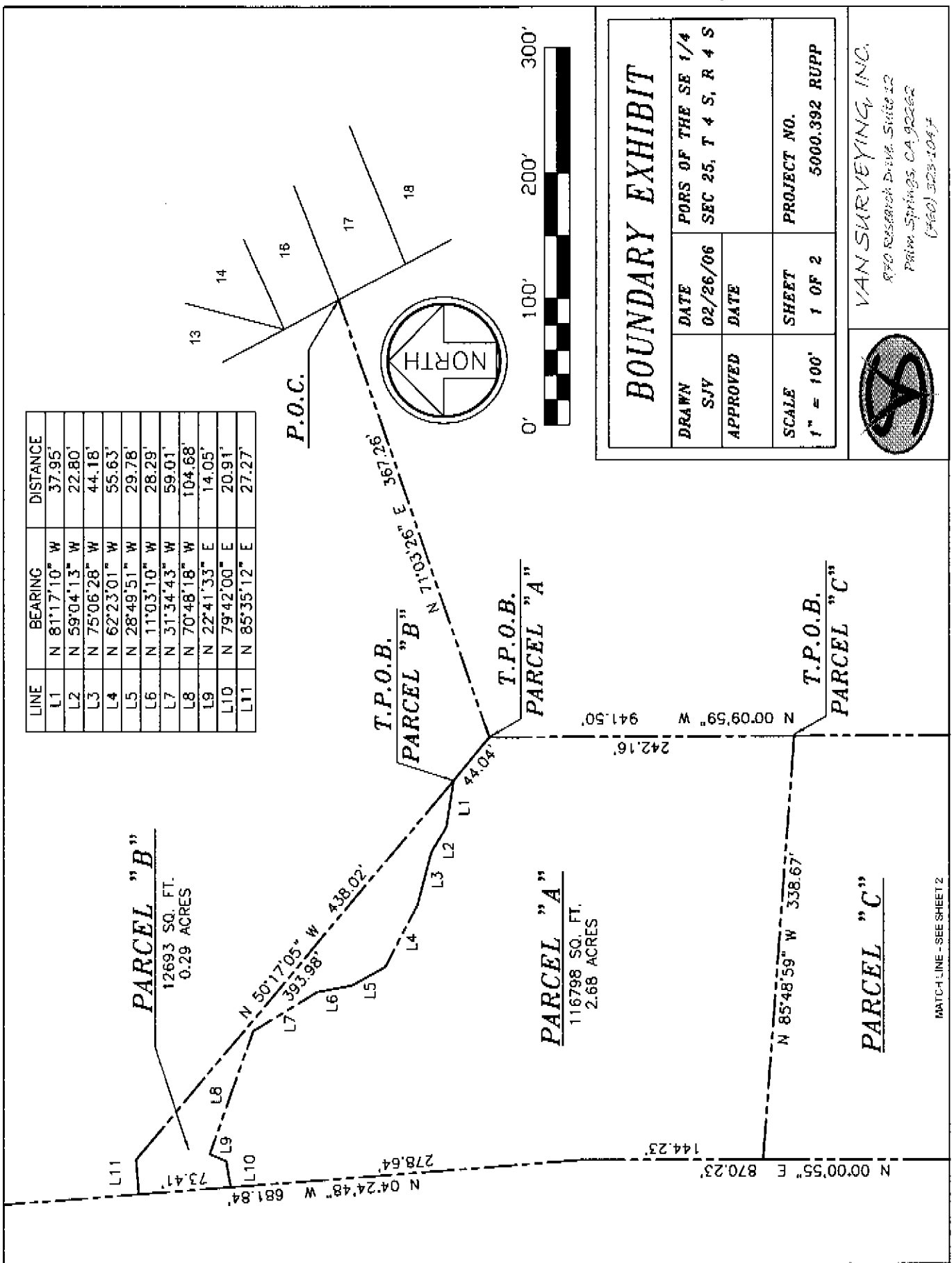
THENCE SOUTH $85^{\circ}48'59''$ EAST A DISTANCE OF 338.67 FEET TO THE TRUE POINT OF BEGINNING.

COMPRISING 241501 SQUARE FEET, MORE OR LESS.

Exhibit B

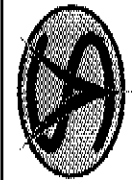
Boundary Exhibit (2 pages)

Exhibit "B" - Boundary Survey (part 1)



BOUNDARY EXHIBIT

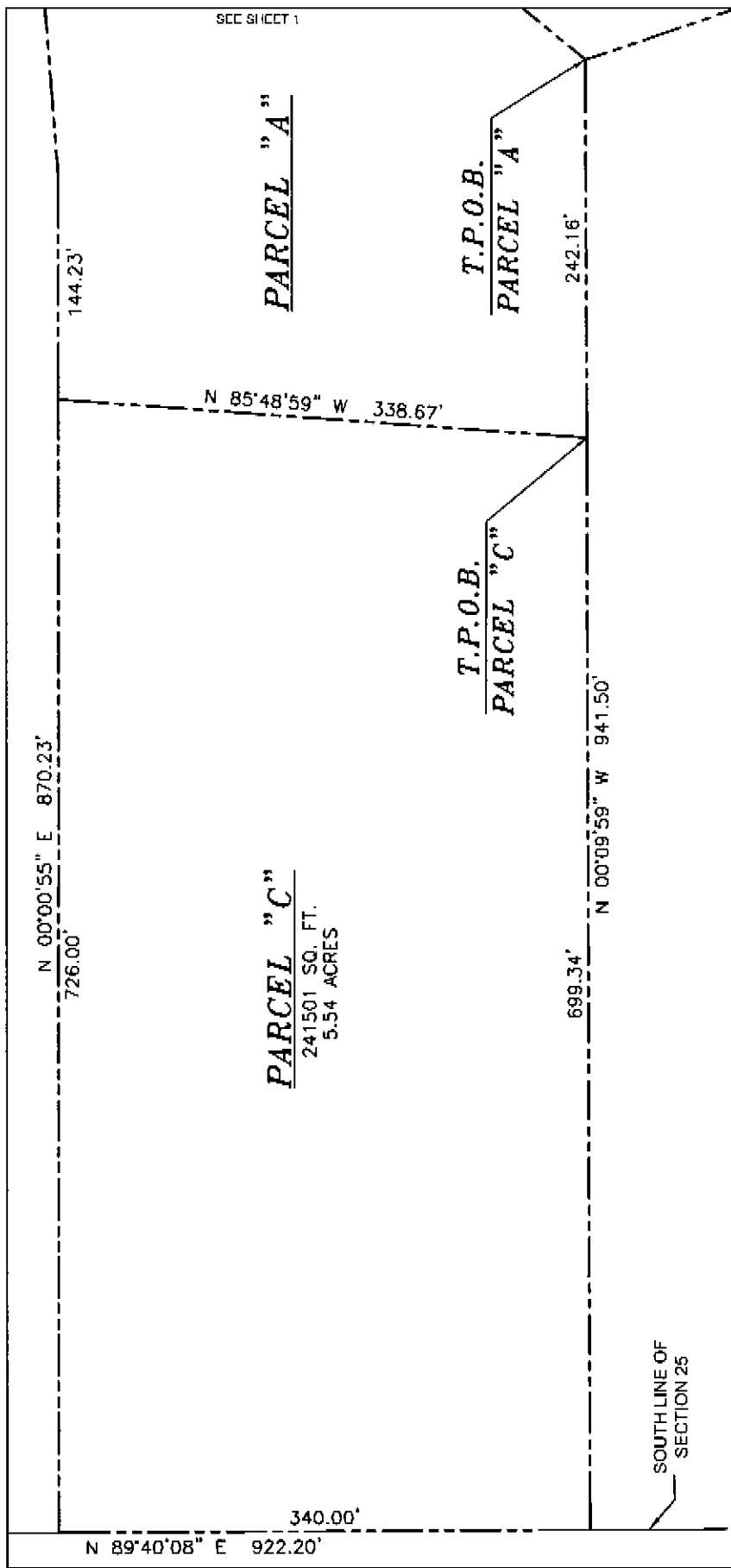
DRAWN SJV	DATE 02/26/06	PORS OF THE SE 1/4 SEC 25, T 4 S, R 4 S
APPROVED	DATE	
SCALE 1" = 100'	SHEET 1 OF 2	PROJECT NO. 5000.392 RUPP



VAN SURVEYING, INC.
 870 Research Drive, Suite 12
 Palm Springs, CA 92262
 (760) 323-1047

MATCHLINE - SEE SHEET 2

Exhibit "B" - Boundary Survey (part 2)

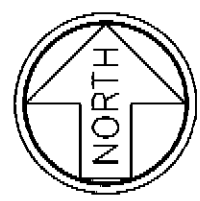


BOUNDARY EXHIBIT

DRAWN SJV	DATE 02/26/06	PORS OF THE SE 1/4 SEC 25, T 4 S, R 4 S
APPROVED	DATE	
SCALE 1" = 100'	SHEET 2 OF 2	PROJECT NO. 5000.392 RUPP



VAN SURVEYING, INC.
 270 Research Drive, Suite 12
 Palm Springs, CA 92262
 (760) 323-1047



Attachment 3

Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
between
SUZANNE D. PARISH REAL ESTATE TRUST
and
CITY OF PALM SPRINGS, a California Charter City
for the
SUBDIVISION OF PARCEL APN 510-270-003

The SUZANNE D. PARISH REAL ESTATE TRUST hereinafter called "TRUST"
and the CITY OF PALM SPRINGS a California Municipal Corporation,
hereinafter called "CITY", agree as follows:

RECITALS

- A. WHEREAS, the TRUST desires to donate 17.07 acres of land consisting of APN 510-210-003, 510-210-017 and a portion of 510-270-003 for the purpose of preserving the land as natural open space; and
- B. WHEREAS, the CITY desires accepting 17.07 acres of land in the Araby Cove and Araby Wash area for the purpose of preserving the land as natural open space; and
- C. WHEREAS, the TRUST desires to subdivide a portion of parcel with APN 510-270-003 (Rock House Property) for the purpose of selling that portion to a private buyer to preserve a small group of historic rock structures consisting of a small house, horse barn and pool/outdoor recreation area with the remainder of the parcel to be donated to the City.

NOW, THEREFORE, the TRUST and THE CITY mutually agree to the following:

1. The zoning of the existing parcel 510-270-003 (8.51 acres total) is R-1-A and the zoning of the subdivided parcel would maintain the Rock House property (2.97 acres) in residential zoning (R-1-A) while rezoning the land received by the City (5.54 acres) as open space zoning (O-5).
2. The Rock House property includes horse stables and was historically used for horses defining the equestrian nature of the property although this use has not been active for many years and the official zoning of the property is not and has never been for horse use.
3. The Rock House property is subject to the Hillside Development provisions of the City, requiring a higher level of architectural scrutiny for any new structures there.
4. Any subdivision of the Rock House property would be subject to the Subdivision Map Act, and would be required to demonstrate access to sewer and water.
5. Access to the property has been legally established across the Levy Road, as well as the Lineau and Petty properties, by the Appellate Court opinion filed by the Superior Court of California County of Riverside on August 10, 1999. (ref. Attachment 1 – Appellate Court Opinion)
6. The CITY shall accept the donation of 5.54 acres via Grant Deed from the TRUST to be rezoned O-5 Open Space and by doing so

allow the 2.97 acre remainder parcel to be kept or sold by the TRUST under its present R-1-A zoning. The City shall issue a Certificate of Compliance on the newly created 2.97 acre parcel to facilitate the sale of the parcel by the TRUST to a private buyer prior to closing escrow.

7. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement
on _____.

"TRUST"

SUZANNE D. PARISH
REAL ESTATE TRUST

Trustee

APPROVED AS TO FORM:

Attorney for Trust

"CITY"

THE CITY OF PALM SPRINGS,
a California Charter City

David H. Ready, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

Attachment 1
Appellate Court Opinion



18011 Skypark Circle, Suite 1, Irvine, California 92614
(949) 851-ASAP (2227) (949) 474-2993 Fax

Bill To: MCDERMOTT, WILL & EMERY, LLP
18191 Von Karman #400
Irvine, CA 92612
(949) 851-0633

1-125434

DELIVERY/COURT FILING FORM

Date: 2/26/08
File Matter #: 32589-010
Case Name: Arthur et al v. Levy
Case #: EO26130
Court: CA Appellate Ct / 4th District
Ordered By: Christy McNeil Dr. 2
Phone #: (949) 57-6010

Pick-up (Destination) CA Appellate Court
Address 4th District; Div. 2
2389 Twelfth Street
City Riverside
State, Zip CA 92501
Phone # (951) 248-0200
Contact Name

- TYPE OF SERVICE**
- ASAP Exclusive
 - Priority
 - Rush
 - Regular
 - Next Day
- RETURN CONFORMED COPIES**
- Same Day
 - Next Day
- # of Pieces _____
Weight _____

Name of Document(s):
See docket attached for requested documents.

- ADVANCE FEES**
- Attached
 - Do Not Advance
 - Please Advance
- FOR:**
- Filing Fees
 - Copies
 - Faxing
 - Other

LAST DATE TO FILE:
Last Date to File:

SPECIAL INSTRUCTIONS:

Please obtain indicated documents & return copies to Christy McNeil @ McDermott Will & Emery.
Thx!

Call Upon Completion
 Yes No

Terms of Payment: Net 30 Days. Past due accounts are subject to a 1% charge per month (12% annually).
Liability Conditions: Liability for loss or damage to items is limited to \$250.00. Carrier assumes no responsibility to make deliveries at a given time or for consequential damages. Every effort is made for quick service but a reasonable amount of time must be allowed. Checks for CODs are at shippers risk.

Recipient _____ Date _____

Advance Fee: \$ _____ Wait/Research Time: _____ Driver: _____

BILLING COPY

CALIFORNIA APPELLATE COURTS

Case Information

- Case Info
- Case Report
- Case History
- Case Calendar
- Case History
- Case History

4th Appellate District Division 2

Change court

Court data last updated: 02/26/2008 03:05 PM

Case Summary Docket Scheduled Actions Briefs
Disposition Parties and Attorneys Trial Court

Docket (Register of Actions)

Michael Arthur et al. v. David Levy
Case Number E026130

*ASAP -
Please see
pgs. 5, 6*



Date	Description	Notes
11/24/1999	Notice of appeal lodged/received.	Dtd Sep 9, 1999; David Levy.
11/29/1999	Letter to counsel - 10 days to file docketing statement	
12/06/1999	Received document entitled:	dktg stmt
12/06/1999	To court.	dktg stmt w/file folder
12/07/1999	Docketing statement filed.	
12/10/1999	Received document entitled:	clk's cert for relief from default for failure to correctly process appeal
12/10/1999	To court.	clk's cert w/file folder
12/16/1999	Order filed.	ct has considered clk's cert rec'd 12/10/99 & req for relief from default is grnt; applt is grntd an extrn to serve/file ntc of designation of record w/clk of sup ct w/in 10 days (see order)
12/17/1999	Notice to reporter to prepare transcript.	dtd 12/17/99; csr Campbell
01/13/2000	Notice of record completion received.	clk's dtd 1/12/00
03/21/2000	Returned document for non-conformance.	C-2 & R-1; clk's cert re certification of record not completed
03/23/2000	Returned document for non-conformance.	C-2 & R-1; no signature on clk's cert
03/31/2000	Record on appeal filed.	C-2 & R-1
04/14/2000	Requested - extension of time	Attorney: Pro per Party: Levy, David
04/20/2000	Granted - extension of time.	Attorney: Pro per (no further extns...) Party: Levy, David
05/31/2000	Motion/application to augment record filed.	by applt w/extn to file AOB
06/05/2000	Motion to dismiss filed (after record).	by respondents.
06/06/2000	To court.	Mtn to dismiss by respondents.
		applt's mtn to augment/extn req (blc)

08/27/2001	To court.	applt's amended page 3 to req for extn to file AOB
08/29/2001	Received document entitled:	applt's addendum to req for extn to file AOB
08/29/2001	To court.	applt's addendum to req for extn...
11/13/2001	Filed document entitled:	2nd amended stip for reversal by applt
11/13/2001	To court.	applt's second amended stipulation for reversal
11/16/2001	Filed document entitled:	applt's second amended stip for reversal filed 11/13/01
11/16/2001	To court.	applt's second amended stip for reversal
09/12/2002	Order filed.	after thorough study of hte record & consideration of the stips to reverse the sup ct judgment; the ct has determined that the proposed reversal would not be an appropriate resolution of the case & the ct denies the second amended stip for reversal; ct accepts the case into its settlement program; persons necessary to complete settlement are Michael Arthur, Robert L. Nahodil, David M. Levy, Ronald N. Kilgore & John Wessman; parties are directed to file w/clk w/in 20 days, letters adding to, deleting form, or otherwise correcting this list of names & addressed; any change must be accompanied by a short explanation; in the same ltr, parties are directed to state one or more phone number at which each party may be reach by the settlement coordinator during normal business hours to arrange a date for the initial settlement conf to be held at this court; clk directed to mail a copy of this order to each person listed above at address accompanying the person's name (see order) cc: settlement coordinator
09/30/2002	Filed:	Appellant's letter pur crt's order filed Sept 12th. (Ltr w/attchmnts forwarded onto digit clk.)
10/02/2002	Filed letter from:	atty Selzer Ealy Hemphill & Blasdel dtd 10/1/02 re their client John Wessman was not a party in the underlying action...
10/02/2002	To court.	file folder w/ltr from appit Levy & ltr from attys Selzer et al.
03/13/2003	Opinion filed.	
03/19/2003	Motion filed.	by applt for correction of page 13 of opinion filed 3/13/03
		applt's mtn to correct page 13 of

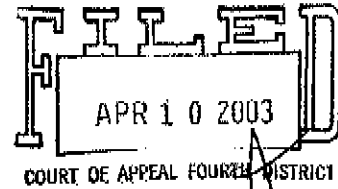
03/19/2003	To court.	opinion
03/21/2003	Filed document entitled:	appls amendmt to mtn for correction of pg 13 of opinion filed 3/13/03
03/21/2003	To court.	applt's amendment to mtn to correct...
03/24/2003	Filed document entitled:	2nd amendment to mtn for correction of p. 13 of opinion filed 3/13/03
03/25/2003	To court.	2nd amendmt to mtn for correction
04/10/2003	Order on motion filed.	ct denies applt's mtn for correction filed 3/19/03 & amendments filed 3/21/03 & 3/24/03
04/28/2003	Note:	copy of docket sent to Levy this date per his req
05/05/2003	Received copy of Supreme Court filing.	appl for release from default (supreme crt)
05/05/2003	Service copy of petition for review received.	applt
05/06/2003	Received copy of Supreme Court filing.	errata to pet for review
05/06/2003	Received letter from:	applt (not dated) req'ing copy of pg 13 of opinion & court's mailing list
05/06/2003	Note:	copy of page 13 of opinion & court's mailing list sent to applt per his written req
05/14/2003	Telephone conversation with:	w/Natalie of Suprm ct & she verified that applt's mtn for relief from default filed w/therm 5/5/03 w/petition for review was denied on 5/7/03, there will be no order; S115615
05/14/2003	Motion filed.	by applt for reconsideration of court's order filed 4/10/03 or in alternative to recall remittitur (if issued)
05/14/2003	To court.	applt's mtn for reconsideration of ct's order dtd 4/10/03
05/19/2003	Order filed.	ct denies applt's mtn filed 5/14/03 for reconsideration of ct's order filed 4/10/03
05/19/2003	Remittitur issued.	
05/19/2003	Case complete.	
09/08/2005	Record in off-site storage.	List 1, Box 53, SRC 0017281

[Click here to request automatic e-mail notifications about this case.](#)

© 2007 Judicial Council of California

ORIGINAL

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO



MICHAEL ARTHUR et al.,
Plaintiffs, Cross-Defendants and
Respondents,

v.

DAVID M. LEVY,
Defendant, Cross-Complainant and
Appellant.

E026130

(Super.Ct.No. INC9357)

The County of Riverside

THE COURT

The court DENIES appellant's motion for correction filed March 19, 2003, with the amendments filed March 21 and 24, 2003. The record supports the statements in the opinion respecting the route and dimensions of the prescriptive easement.

A handwritten signature in cursive script, appearing to read "G. J. Gant".

Acting P.J.

cc: See attached list

MAILING LIST FOR CASE: E026130

Superior Court Clerk
Riverside County
P. O. Box 431 - Appeals
Riverside, CA 92502

-
Selzer, Ealy, Hemphill & Blasdell, LLP
Diane C. Blasel
777 E. Tahquitz Canyon Way, Suite 328
Palm Springs, CA 92262

-
David Levy
2550 Araby Drive
Palm Springs, CA 92264

-
Michael Arthur
A&N Development
437 South Bristol Avenue
Los Angeles, CA 90049

-
Robert L. Nahodil
c/o White Water Trout Co.
SR1; Box 549
Whitewater, CA 92282

-
Ronald Kilgore
c/o Greenleaf Trust
490 W. South Street
Kalamazoo, MI 49007 4621

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

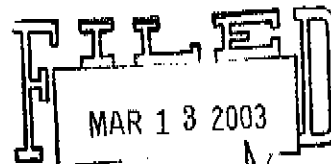
MICHAEL ARTHUR et al.,

Plaintiffs and Respondents,

v.

DAVID M. LEVY,

Defendant and Appellant.



E026130

(Super.Ct.No. INC009357)

OPINION

APPEAL from the Superior Court of Riverside County. Charles E. Stafford,
Judge. Affirmed with modifications.

David M. Levy, in pro. per., for Defendant and Appellant.

Michael Arthur and Robert Nahodil, in pro. pcr., for Plaintiffs and Respondents.

Defendant David M. Levy appeals from a judgment quieting title in plaintiffs
Michael Arthur and Robert Nahodil to a 50-foot-wide road easement located in the
outskirts of Palm Springs, running from the Arthur-Nahodil property southeast across the
Levy property. In the 50-foot-wide easement is Old Araby Road, a roughly paved road

about 10 to 15 feet wide, which continues beyond defendant's property through adjoining lots to a city street now known as Araby Drive but originally called Tamarist Avenue.

The property can best be described by reference to the assessor's map attached. Plaintiffs owned lot 3 at the time the judgment was rendered, an 8.2 acre lot shown as parcel number 510-270-003 on the assessor's map. Their access to that lot is principally over Old Araby Road, which, in addition to running within the adjudicated 50-foot easement also runs within a 25-foot-wide, 800-foot-long strip of land known as lot 12, parcel 510-270-012, on the assessor's map. The plaintiffs have admitted that defendant owns lot 12.

Additionally, defendant owns three lots adjacent to lot 12: lot 4, parcel 510-270-004, lot 13, parcel 510-270-013, and an undivided one-third interest in lot 6, parcel 510-270-006. The owner of the other two-thirds interest in lot 6 has not been joined in this action and is therefore not bound by this opinion.

The parties have submitted two stipulations to reverse the trial court's judgment. We accept the stipulations as "confessions of error" and reverse the judgment, modifying it to correct several errors: (1) the easement is only prescriptive and is not created by express agreement, implication, or necessity; (2) the easement is not unlimited or of unspecified character, but is only for purposes of ingress and egress to and from plaintiffs' land; and (3) the easement is not 25 or 50 feet, but is the width of the narrow paved road used by plaintiffs and their tenants and agents.

THE FACTS

A bank originally owned all of plaintiffs' and defendant's land. The bank sold defendant's land (lots 4, 6, 12, and 13) and kept plaintiffs' land (lot 3). In 1929 and 1930 the new owner of defendant's land built a circle drive just beyond the east boundary of lot 3. The northern half of the circle drive lies in lot 12, and the southern half of the circle lies in lot 6. He also built three stone houses on lots 4, 6, and 13 where they bordered on the circle drive. The circle drive was connected to a public road to the north (then Stagecoach Road, now Palo Verde Drive) by a dirt road that first ran west into and through plaintiffs' lot 3, which was still owned by the bank.

In the early 1930's the owner of lot 4 and the owners of lots 6 and 13, gained access to their property by traveling from the north and west across lot 3. Later in the 1930's Edgerly, who owned lots 6 and 13, agreed with Martin, who had acquired lot 3, to stop crossing lot 3 to gain access to her properties and instead to construct and use what would be called Old Araby Road. Subsequent to its construction, various deeds and deed reservations were executed that the trial court construed to apply to Old Araby Road, but in fact they did not describe or apply to the property actually used by the parties. Since the 1930's, Araby Road has been used by the people living on lots 3, 4, 6, and 13 to gain access to the properties.

When the parties to this proceeding purchased their lots in the late 1970's defendant lived in a house on lot 4 and plaintiffs owned a house on lot 3 that they leased

to a variety of tenants. The tenants gained access to the houses using the road now in dispute. Defendant contends that any right to use the road as access to lot 3 ceased after 1989 because plaintiffs' house was not occupied consistently and the road was not consistently used.

DISCUSSION

The judgment declares the existence of a nonexclusive, unlimited easement in favor of the plaintiffs' lot 3 in a 50-foot-wide strip of land. From the above history we can now discern the correct and incorrect aspects of the judgment.

First, paragraph 1 of the judgment is correct on the fundamental point that there is a nonexclusive easement appurtenant to plaintiffs' lot 3 over land concededly owned by defendant (lot 12) and in land in which defendant owns an interest (lot 6). However, the trial court erred respecting the ways in which the easement was created, the purpose of the easement, and the easement's width.

The distinctions in the four types of easement are important because both the rights and the extent of the easement depend on the way in which the easement was created. Easements are created in essentially four ways: expressly, by implication, by necessity, or by prescription.¹ The trial court found that each of these theories applied in this case;

¹ See 6 Miller & Starr, California Real Estate (3d ed. 2000) Easements, section 15:13, pages 56-58 (generally), section 15:14, pages 58-61 (express grant or reservation), section 15:19, pages 77-79 (implied grant or reservation), section 15:27, pages 97-102 (necessity), section 15:29, pages 105-108 (prescription) (hereinafter Miller & Starr).

however, based on the documents and evidence presented at trial and judicially noticed on appeal, we find that the only easement appurtenant to lot 3 is prescriptive.

1. *Express Easement*

An express easement may be created by contract without words of conveyance, even though a grant or reservation in a deed is more common.² A document creates an easement when it manifests an intent by one landowner to give another the right to use his or her land.³ The grant of an easement is construed in the same manner as any contract.⁴ The interpretation of a contract depends first on the plain meaning of its language from which the parties' intent is best inferred; however, if the language is ambiguous, extrinsic evidence may be used to determine a meaning to which the contract's language is reasonably susceptible.⁵

² See, e.g., *Knoch v. Haizlip* (1912) 163 Cal. 146, 149, 151-153; *Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 35 (whether lease created easement) (hereinafter *Golden West*).

³ *Rice v. Capitol Trailer Sales of Redding* (1966) 244 Cal.App.2d 690, 692-693 (easement created in trust deed encumbering the dominant tenement at time trustor also owned the servient tenement).

⁴ Civil Code section 1066; Miller & Starr, *supra*, section 15:16, page 62.

⁵ *City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 246; *Golden West, supra*, 25 Cal.App.4th at page 21; Miller & Starr, *supra*, section 15:16, pages 62-65.

An appellate court independently reviews the agreement and extrinsic evidence, even if that evidence could be interpreted in different ways; however, if the resolution of the credibility of conflicting evidence determines the interpretation, the trial court's interpretation must be upheld if it is reasonable.⁶

Although the court found, and the parties agree, that the 1933 Martin-Edgerly agreement created a road easement in favor of Martin's lot 3, neither the unconflicting extrinsic evidence nor the document itself (reproduced in pertinent part with italics added) supports that construction:

"WIHEREAS, Perle Wheeler Martin, who is buying 8.3 acres of land [lot 3] . . . through which Helen A. Edgerly has a right of way for road purposes, [¶] AND WHEREAS, Mrs. Martin *desires the relinquishment of said right of way and abandonment of said road.* [¶] NOW, THEREFORE, it is agreed to build a new road to serve Mrs. Edgerly's property and the Hopi houses owned respectively by Mrs. Edgerly [the two on future lots 6 and 13] and Mrs. Martin [the one on lot 4], located on acreage deeded to Mrs. Edgerly and recorded June 6, 1932, . . . [¶] Said road to connect with the South end of Tamarist Avnuc, Araby Tract. The contract for which has been let to the

⁶ *Golden West, supra*, 25 Cal.App.4th at page 22; Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2000) paragraph 8:64 et seq., page 8-26 et seq.

V.P. Hunt Company of Redlands for the sum of \$1,000.00, [¶] In consideration therefore, Mrs. Martin hereby agrees to advance to Mrs. Edgerly her proportion of the cost of said road in the sum of \$333.00. [¶] Mrs. Edgerly agrees to the abandonment of said road across the 8.3 acres aforesaid, to become [e]ffective upon the completion of the new road connection with the South end of Tamarist Avenue. [¶] Helen A. Edgerly further agrees to reimburse and pay to Mrs. Martin, together with interest at the rate of 7% per annum, until so paid, the sum of \$333.00, said money to be paid out of the proceeds of the first sale of property now owned by Helen A. Edgerly [¶] Perlc Wheeler Martin is hereby authorized to pay to H. W. Otis, said sum of \$333.00 upon completion of said road”

Thus, Martin’s only intent expressed in the document itself is to prevent Edgerly from using lot 3, to which Martin acquired title the following month, as access from Stagecoach Road to Edgerly’s property, the future lots 6, 12 and 13 now owned in whole or part by defendant. This construction is supported by the testimony of one of plaintiffs’ witnesses, realtor Robert Fey: “But the document you say speaks to itself that Mrs. Martin wanted some privacy and offered to build the road . . . so that she would . . . not have her neighbors going through [her property].” This construction was also supported by the testimony of defendant’s title expert, who testified that the agreement implied only that the easement over lot 3 was being terminated. No extrinsic evidence contradicts this conclusion.

We conclude the 1933 Martin-Edgerly agreement did not create an express easement for access to lot 3.

2. *Implied Easement*

Implied easements arise only when: (1) a landowner uses his or her land in a way that is (a) obvious or known and (b) apparently permanent; (2) the landowner then conveys part of the land to someone else; and (3) the reasonable use and benefit of the conveyed part reasonably requires that the un conveyed part be used in the same way it was used by the original owner.⁷

In this case, the use at issue is Old Araby Road; plaintiffs must contend that the conveyed part that would benefit is lot 3, and the burdened, un conveyed part would have to be lot 12 and a small part of lot 6 where the southern portion of the circle drive runs; the only landowner who owned both the conveyed and un conveyed parts was the bank, and it was the bank that conveyed the land (lot 3) to plaintiffs' first predecessor, Martin; however, the bank never used Old Araby Road, which was first built and used by Edgerly. We do not have an implied easement here for several reasons. First, when the bank owned both plaintiffs' and defendant's land, the Old Araby Road had not been constructed, much less used by the bank. Second, the land to be benefited by the implied

⁷ Civil Code section 1104; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 141.

easement (Martin's lot 3) was not conveyed to its new owner (Martin) by the owner (Edgerly) of the land to be burdened (Edgerly's undivided 12½ acres), because Martin acquired lot 3 from the bank, not from Edgerly. Thus, the trial court erred in finding Old Araby Road to be the subject of an implied easement.

3. *Easement by Necessity*

Easements by necessity occur only when a landowner: (1) conveys part of his or her land and (2) the conveyed land is landlocked completely by the landowner's remaining land alone or together with the land of others.⁸ The standard is no longer one of strict necessity, but of reasonable necessity for the beneficial use of the land.⁹

Evidence was presented that the access over plaintiffs' Smokewood Avenue lot was restricted, at the time of trial, by the City of Palm Springs to only a fair weather road. Nevertheless, once again, we have no easement because of the common ownership requirement. Lot 3 was not landlocked *when it was conveyed by the bank*, the only landowner of both the plaintiffs' and defendant's property. When the bank conveyed lot 3 to R. Lee Miller, he had access to Stagecoach Road over the old dirt road on lot 3.

⁸ *Moore v. Walsh* (1995) 38 Cal.App.4th 1046, 1049.

⁹ *Leonard v. Haydon* (1980) 110 Cal.App.3d 263, 268, 270, 273 (no necessity where alternative means of access available at reasonable cost).

4.. *Prescriptive Easement*

The issue here is not whether plaintiffs had established a prescriptive easement, because defendant conceded that plaintiffs had acquired a prescriptive easement by 1989. The issues are the extent of plaintiffs' prescriptive rights and whether plaintiffs abandoned them.

The extent of a prescriptive easement is determined by the extent of the use.¹⁰ Respecting the abandonment of prescriptive easements, physical interruption of an established adverse use does not affect the prescriptive rights unless the adverse user ceases using the easement for the five-year prescriptive period.¹¹ Gates that can be opened and closed at will, or to which an adverse user has a key, do not physically interrupt the adverse use.¹² Posting a sign does not affect a vested prescriptive right.¹³

¹⁰ *O'Banion v. Borba* (1948) 32 Cal.2d 145, 155.

¹¹ Civil Code section 811, subdivision 4; *Zimmer v. Dykstra* (1974) 39 Cal.App.3d 422, 434, 435; Miller & Starr, *supra*, section 15:33, page 121.

¹² *O'Banion v. Borba, supra*, 32 Cal.2d at page 154; *Silveira v. Smith* (1926) 198 Cal. 510, 519; Miller & Starr, *supra*, section 15:33, pages 120-121.

¹³ *Harrison v. Bouris* (1956) 139 Cal.App.2d 170, 171-172, 175 (sign said that permission to pass was revocable at any time); Miller & Starr, *supra*, section 15:36, page 132.

We must affirm the trial court's determinations on the issues of extent and abandonment if substantial evidence supports them.¹⁴

Defendant's claims of abandonment were countered at trial with documents and testimony that, although there were some periods of nonoccupancy, the Old Araby Road access was used by one of the plaintiffs several times, their real estate agent 25 to 30 times, and their general contractor three or four times during the period of alleged abandonment. Plaintiffs consistently demanded access whenever the prescriptive easement was temporarily blocked by a woodpile or locked gate. Defendant acceded to these demands making no sustained effort to block plaintiffs' access. The gates, signs, and recorded consents did not imply nonuse or abandonment and otherwise had no effect on plaintiffs' vested prescriptive rights. The plaintiffs' case provided substantial evidence that plaintiffs did not abandon their prescriptive easement over Old Araby Road to the plaintiffs' gate. We conclude that substantial evidence supports the trial court's finding of a prescriptive easement as of the time of trial.

However, the only easement being prescriptive, its extent is limited by its use, which was only of the paved road, circle drive, and short road to plaintiffs' gate—not a 50-foot- or even a 25-foot-wide easement. Also, the use was only to access plaintiffs' lot 3—not to access any other lot. The trial court's judgment is defective in these respects, and

¹⁴ *Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 571.

must be modified to limit the prescriptive easement to the scope of its actual use—only along Old Araby Road itself, around the circle drive, and to the plaintiffs' gate, and only to access lot 3.

Returning to the judgment, with these holdings we can now modify the judgment in detail.

Paragraph 1 requires amendment as to the kind and description of the easement. However, based on the fundamental point that the plaintiffs do have a prescriptive easement, in paragraph 3 the judgment correctly enjoins defendant from interfering with plaintiffs' use of the easement. In paragraph 2 the judgment also adjudicates the cross-complaint against defendant and in favor of plaintiffs, which again follows from the existence of the easement. The defendant does not contest this adjudication, and it remains justified under the modifications we will make to paragraph 1. In paragraph 4 the judgment awards costs to plaintiffs, who remain the prevailing parties under the judgment as we will modify it. Thus, we will preserve paragraphs 2, 3, and 4 of the judgment.

DISPOSITION

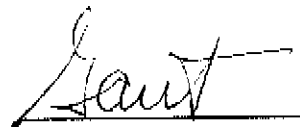
Only paragraph 1 of the judgment is modified to delete the legal description and to read as follows:

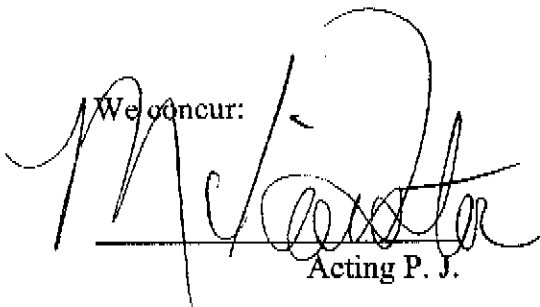
"1. Judgment rendered on the complaint in favor of plaintiffs Robert Nahodil and Michael Arthur and against defendant David Levy, as well as all persons unknown,

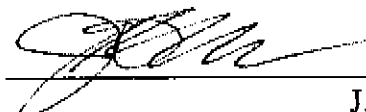
claiming any legal or equitable right, title, estate, lien, or interest adverse to plaintiffs in the nonexclusive prescriptive easement to serve plaintiffs' lot 3 (APN 510-270-003). The prescriptive easement is only for rights of ingress and egress only to lot 3. The prescriptive easement runs along the Old Araby Road from the southeast end of defendant's lot 12 (APN 510-270-012), bounded by lot 3 on the west, lots 4 (APN 510-270-004) and 13 (APN 510-270-013) on the north and northeast, lot 6 (APN 510-270-006) on the south and southwest, and on the east lot 7 (APN 510-270-007) and the adjacent lot to the south. The prescriptive easement continues to the northwest entirely within lot 12 on the Old Araby Road, to the small circle drive at the northwest end of the Old Araby Road, around the south side of the small circle drive just across the north boundary of lot 6 and around the north side of the small circle drive within lot 12, and along the short road within lot 12 between the circle drive and the plaintiffs' gate on the boundary between plaintiffs' lot 3 and defendant's lot 12. Not included in the prescriptive easement here adjudicated is the portion of the Old Araby Road lying to the southeast and east of the southeast end of lot 12 and connecting with the south end of Araby Drive. Currently the Old Araby Road, circle drive, and short road from the circle drive to lot 3, are roughly paved, and the easement as it has been used is the width of the pavement. Thus, the prescriptive easement varies in width between 9½ feet and 18½ feet with most of the easement varying between 11 and 16 feet wide."

As modified, the judgment is affirmed. Each party shall bear their own costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS


_____ J.

We concur:

_____ Acting P. J.


_____ J.

32

476704

000051

PALM CANYON WASH
TRA 01-003
4.78 ± Ac

POR GOVT LOT 3

4.90 ± Ac

510-210-004
5.78 ± Ac

510-210-003

5.75 Ac

510-210-017

510-270-002

510-270-004

POR GOVT LOT 6

3.33 Ac ±

18.88 ± Ac

510-270-013

510-270-003

8.20 ± Ac

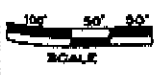
0.57 Ac ±

510-270-012



8.64 ± Ac

510-270-006



SHE. 3

APPROXIMATE LINES BY GPS



Consider It Done!
8001 Sycamore Circle, Suite 1, Irvine, California 92614
(949) 851-ASAP (2777) (949) 476-2993 Fax



TO: MCDERMOTT, WILL & EMERY, LLP
18191 Von Karman #800
Irvine, CA 92612
(949) 851-0633

1-125433

2826306

DELIVERY/COURT FILING FORM

Date: 2/26/08
File Matter #: 32589.010
Case Name: ARTHUR V. LUY
Case #: INC 009357
Court: Superior Ct. of Riverside / Indio Civil
Ordered By: Christy McKel
Phone #: (949) 457 6010 Ext.

Pick-up/Destination: Superior Court of Riverside
Address: 46-200 Oasis Street Indio
City: Indio
State, Zip: CA 92201
Phone #: (760) 863-8209
Contact Name:

TYPE OF SERVICE
 ASAP Exclusive
 Priority
 Rush
 Regular
 Next Day

RETURN CONFORMED COPIES
 Same Day
 Next Day

of Pieces: _____
Weight: _____

Name of Document(s):
See docket attached to fax for requested documents.

ADVANCE FEES
 Attached
 Do Not Advance
 Please Advance
FOR:
 Filing Fees
 Copies
 Faxing
 Other

LAST DATE TO FILE:
Last Date to File:

SPECIAL INSTRUCTIONS:
Please obtain indicated documents + return copies to Christy McKel @ McDermott Will & Emery. Thanks!

Call Upon Completion
 Yes No

Terms of Payment: Net 30 Days. Fees due accounts are subject to a 1% charge per month (12% annually).
Liability Conditions: Liability for loss or damage to items is limited to \$250.00. Carrier assumes no responsibility to make deliveries at a given time or for consequential damages. Every effort is made for quick service but a reasonable amount of time must be allowed. Checks for CODs are at shipper's risk.

Recipient: _____ Date: 3-17-08

Advance Fee: \$ _____
Wait/Research Time: 1:45
Driver: Jeff F. 203
BILLING COPY



Home Complaints/Parties **Actions** Minutes Pending Hearings Case Report Images

Open Access

Case INC009357 - MICHAEL ARTHUR VS. DAVID M LEVY

View Case Date

Viewed	Date	Action Text	Disposition	Image
N	08/13/1999	PROOF OF SERVICE OF JUDGMENT AFTER TRIAL/STATEMENT OF DECISION, HALL & BAILEY, 08/12/99, SERVED ON SERVED FILED (NON-COMPLAINT)	Not Applicable	
N	08/10/1999	JUDGMENT (ENTIRE ACTION) FILED; HONORABLE CES.,	Not Applicable	
N	08/10/1999	STATEMENT OF DECISION FILED BY MICHAEL ARTHUR HONORABLE	Not Applicable	
N	08/03/1999	MEMO OF COSTS AND DISBURSEMENTS, SUMMARY FILED BY MICHAEL ARTHUR, ROBERT L NAHODIL ***USE A/C MCS PVIOLA***	Not Applicable	
	07/13/1999	EXHIBITS LIST (JOINT),	Not Applicable	N/A
	07/13/1999 9:30 AM DEPT. 2F	COURT TRIAL (TRAILING); ESTIMATE 3, 07/12/99, 09:30, 2F, DAYS - Minutes	Judgment Entered	
	07/13/1999	COURT REPORTER FEE IN THE AMOUNT OF \$84.00, COUNSEL FOR DEFENDANT, 07/13/99, PAID BY FOR	Not Applicable	
	07/13/1999	COURT REPORTER FEE IN THE AMOUNT OF \$84.00, COUNSEL FOR PLAINTIFF, 07/13/99, PAID BY FOR	Not Applicable	
	07/12/1999	COURT REPORTER FEE IN THE AMOUNT OF \$168.00, PLAINTIFF, 07/12/99, PAID BY FOR	Not Applicable	
	07/12/1999	TRIAL BRIEF FILED BY MICHAEL ARTHUR, ROBERT L NAHODIL	Not Applicable	N/A
	07/12/1999	TRIAL BRIEF FILED BY DAVID M LEVY	Not Applicable	N/A
	07/12/1999	STATEMENT SEPARATE STATEMENT OF UNDISPUTED FACTS, 0003, FILED BY	Not Applicable	N/A
	07/12/1999	PLAINTIFF WITNESS LIST	Not Applicable	N/A
	07/12/1999	EXHIBITS LIST BY PLAINTIFFS,	Not Applicable	N/A
	07/12/1999	COURT REPORTER FEE IN THE AMOUNT OF \$168.00, DAVID M LEVY (DEFT), 07/12/99, PAID BY FOR	Not Applicable	
	07/12/1999 9:30 AM DEPT. 2F	COURT TRIAL (TRAILING); ESTIMATE 3, 07/12/99, 09:30, 2F, DAYS - Minutes	Granted	
	06/28/1999 9:00 AM DEPT. 2F	JURY TRIAL - Minutes	Completed	
	04/26/1999 8:30 AM DEPT. 2F	STATUS CONFERENCE - Minutes	Completed	
	04/19/1999 8:30 AM DEPT. 2F	STATUS CONFERENCE	Vacated	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF RICK M. STEIN
Rick M. Stein, Esq.
State Bar No.: 044652
400 South Farrell Drive
Suite B-203
Palm Springs, California 92262
Telephone: (760)325-5990; Facsimile: (760)325-6265

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 10 1999

L. MICKELSON

JWS

MAR 14 2008

ATTORNEY FOR Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MICHAEL ARTHUR and ROBERT NAHODIL,
Plaintiffs,

v.

DAVID LEVY, an individual; all persons
unknown, claiming any legal or equitable
right, title, estate, lien, or interest in the
property described in the complaint adverse
to plaintiffs' easement; and DOES 1 through
50, inclusive,
Defendants.

Case No.: INC 009357

STATEMENT OF DECISION

(California Rules of Court
232(c) and 520)

[Proposed]

DAVID M. LEVY,
Cross-Complainant,

v.

MICHAEL ARTHUR; ROBERT L. NAHODIL,
et al.,
Cross-Defendants.

7351.ART

Statement of Decision

1 The above entitled case came on regularly for trial on Tuesday, July 12,
2 1999, and continued through the morning of Wednesday, July 13, 1999, in Dept. 2F of
3 the above-entitled court, the Honorable Charles E. Stafford, Jr., Judge presiding, a jury
4 having been expressly waived by both parties. Rick M. Stein, Esq. appeared as counsel
5 for plaintiffs/cross-defendants Arthur and Nahodil, and John L. Bailey, Esq. appeared for
6 defendant/cross-complainant Levy.

7 Oral and documentary evidence was introduced on behalf of the respective
8 parties and the cause was argued and submitted for decision. The court, having
9 considered the evidence and heard the arguments of counsel and being fully advised,
10 issues the following Statement of Decision:

11 1. Easement. With regard to the issue whether plaintiffs established
12 their right to an easement over the Old Araby Road which abuts Levy's property, the
13 court finds, based upon the totality of the evidence, that plaintiffs have overwhelmingly
14 established the existence of the easement as an express easement, easement by
15 prescription, easement by implication, and easement by necessity. The court based its
16 decision of the following facts:

17 a. The area in question, off Araby Road in South Palm Springs,
18 consists of a hillside area, lightly inhabited.

19 b. Exhibit 101 shows that Perle Wheeler Martin and Hellen A.
20 Edgerly, predecessors in interest to the properties owned by plaintiffs and defendant,
21 respectively, entered into an agreement, and exchanged monetary consideration, on
22 March 24, 1933, with the intent to jointly develop a road (now known as the "Old Araby
23 Road") and that each party would have a non-exclusive easement to use the road once it
24 was completed. By recording the Agreement, the parties intended the easement to run
25 with the land parcels in question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c. The road was completed and became known as the Old Araby Road. The Old Araby Road abuts property owned by plaintiffs and defendant, and it passes through a large portion of property owned by Levy, servient tenement. (See Civil Code § 803.)

d. The benefits and burdens of the 1933 agreement operated as servitudes burdening the property owned by Levy, a successor in interest to Hellen A. Edgerly. (See Civil Code §806.)

e. The Deed from George Moore to David Levy which granted Levy title to Parcels 4, 12 and 13 clearly indicates in the legal description the property is subject to a "perpetual easement and right of way for road purposes over a strip of land 50.00 feet in width lying 25.00 feet on each side of the following described center line" (See Exhibits 103 and 122 and others.) Levy's expert witness testified the center line lines in the middle of the Old Araby Road.

f. Thereafter, the Old Araby Road was used by the original parties to Exhibit 101 as well as their successors in interest, including plaintiffs and defendant.

g. The intent of the original owners, Perle Martin Wheeler and Hellen A. Edgerly, was to provide access to Parcel 3, depicted on Exhibit 102, a parcel now owed by plaintiffs.

h. Plaintiffs purchased their parcels in 1978, and Levy purchased his parcels in 1977 and 1978.

i. Between 1978 and 1989, plaintiffs had tenants on their property who used the Old Araby Road for ingress and egress. Between approximately 1989 and 1996, plaintiffs' property was vacant, because Levy had made numerous complaints to plaintiffs concerning activities of their tenants on plaintiffs' property, Parcel 3. In 1996, Levy introduced plaintiffs to a tenant who rented the property on Parcel 3 from plaintiffs.

1 j. At least once, Levy placed a lock on his gate to prevent
2 vagrants from passing over the Old Araby Road; however, on April 5, 1991, Levy gave a
3 key to the lock to Bob Fey who Levy knew was a real estate broker representing
4 plaintiffs in their attempt to sell their property. (Exhibit 6)

5 k. The use of the Old Araby Road by plaintiffs and their tenants
6 between 1978 and the present was open, notorious and continuous for a period
7 exceeding five years, indeed, from 1978 to the present.

8 2. Abandonment. Did plaintiffs abandon the easement? The court
9 based its decision on the following facts:

10 a. Plaintiffs did not abandon the easement. Indeed, on January 6,
11 1997, Robert Nahodil wrote Levy to tell him that "we will not relinquish our rights of
12 access and egress on Araby Drive" (See also Exhibits 126-129 recorded December
13 31, 1997.)

14 b. Robert Fey testified that up to the present, he used the Old
15 Araby Road to show plaintiffs' property to prospective purchasers. (See Exhibit 2, the
16 notice posted by Fey on Levy's fence.)

17 3. Easement of Necessity. Easement by necessity? The court based
18 its decision on the following facts:

19 a. The dominant and servient tenements were at one time under
20 common ownership and the easement created. (See Exhibits 121, 122, 123, 124.)

21 b. There exists a strict necessity for the easement as plaintiffs'
22 land is land-locked and, other than the Old Araby Road, there is not an all weather road
23 which services plaintiffs' property. The road across plaintiffs' parcel on Smokewood was
24 disapproved by the City of Palm Springs in or about 1985.

25 4. Taxes on Easement. Who was required to pay taxes on the
26 easement? The court based its decision on the following facts:

1 a. When Perle Wheeler Martin and Hellen A. Edgerly transferred
2 their properties (Exhibit 101), the subsequent owners took the properties burdened and
3 benefitted by the easement which had been created in 1933.

4 b. Based upon the evidence before the court, George Moore had no
5 power to convey the easement to David Levy on December 6, 1979 (as purported in
6 Exhibit 104), as he did not own it. Exhibit 103, dated months earlier in February 1979,
7 shows that Levy took title to his property burdened by a perpetual easement. (A
8 servitude thereon cannot be held by the owner of the servient tenement. Civil Code
9 §805.)

10 c. Levy claims he paid taxes on the easement (about \$5 a year), yet
11 he also contends no easement existed. If Levy thought the easement existed, he would
12 have forwarded the tax bills to the owner of the dominant tenement, something he did not
13 do.

14 b. Presumably, if plaintiffs had known about a tax bill on the
15 easement, as owners of the easement they would have paid the tax bill. Plaintiffs would
16 have paid the tax bill on the easement if they had known about it.

17 c. The only reason the tax assessor sent a tax bill to Levy was as
18 a result of the purported conveyance from George Moore to Levy recorded February 28,
19 1979. (Exhibit 103.) The sending of the tax bill does not evidence Levy's ownership of
20 the easement.

21 5. Levy Cross-Complaint. Is Levy entitled to interfere with plaintiffs'
22 use of the Old Araby Road and does Levy's cross-complaint have any merit? The court
23 based its decision on the following facts:

24 a. As owner of the servient tenement, Levy was not permitted to
25 interfere with use by owners of the dominant tenement.

1 Rptr. 359 (1970), "title by prescription," "The elements to establish prescriptive
2 easement are ... open and notorious use or possession that is continuous and
3 uninterrupted, hostile to the true owner, and under a claim of right. ... Such use for the
4 five year statutory period ... confers a title by prescription." (at p. 686.) Another case
5 has noted, "... [C]ontinuous use of an easement over a long period of time without the
6 landowner's interference is presumptive evidence of its [prescriptive easement]
7 existence and in the absence of evidence of mere permissive use it will be sufficient to
8 sustain a judgment." Warsaw v. Chicago Metallic Ceiling, Inc., 35 Cal.3d 564, 571-72,
9 199 Cal. Rptr. 773 (1984.) [Brackets added.]

10 Easements by implication will arise and be given effect when an easement
11 has been given effect by the prior owners of the property, a situation which occurred
12 here when the easement was created in 1933. The intention of Perle Wheeler Martin
13 and Hellen A. Edgerly to create an easement (in Exhibit 101), and the recordation of the
14 Agreement, creating the easement, leads the court to the conclusion that later owners of
15 the respective properties of Martin and Edgerly are burdened and benefitted by the
16 easement. (Civil Code §1104).

17 Elements necessary to establish an "adverse use" are "(a) open and
18 notorious use; (b) continuous and uninterrupted use; (c) hostile to the true owner; and
19 (d) under a claim of right." Zimmer, supra. at p. 430. In general, "adverse" use is that
20 made under a claim of right without the permission of the landowner. Kaler v. Brown,
21 101 Cal. App.2d 716, 720 (1951).

22 In California, "open and notorious" use merely means a use that notifies
23 the owner of the property (Levy in this case) that a use inconsistent with his rights is
24 being made. (See Kerr Land & Timber Co. v. Emmerson, 268 Cal. App.2d 628, 634, 74
25 Cal. Rptr. 307 (1969); McCarty v. Walton, 212 Cal. App.2d 39, 44, 27 Cal. Rptr. 792
26 (1963).) "Continuous and uninterrupted" use may be satisfied when, as here, there are
27

1 periods of time, even extended periods of time, between the specific acts of use by the
2 claimant. (See Strong v. Baldwin, 154 Cal. 150, 162 (1908); Zimmer v. Dykstra, supra.)

3 Based on the record as a whole, it is crystal clear that plaintiffs have used
4 the Old Araby Road in an open, notorious and continuous fashion for many more than
5 the five years necessary to establish an easement by prescription. Plaintiffs bought the
6 property with the belief the Old Araby Road would serve their purposes. Robert Fey
7 tried to sell the plaintiffs' property believing the Old Araby Road was available as a year-
8 round road to and from it. Levy, who lives on the Road, knew of the use and did nothing
9 to stop it, except for blocking the road on occasion, until 1996, years after the
10 easement's existence had already been well established.

11 Even though Levy paid taxes on the easement, plaintiffs had no notice of
12 the fact. Moreover, the easement should not have been separately taxed as George
13 Moore had no power to convey the easement to Levy. (See Civil Code §805.) IN
14 any event, the tax assessor picked up the transfer from Moore to Levy. Until Levy
15 asked them to pay, plaintiffs were absolved from paying taxes on the easement because
16 they did not know it was separately taxed.

17 18 Easement by Necessity

19 A third and independent basis for establishing the easement in question
20 arises out of the fact it was jointly developed by the prior owners when the properties
21 were owned, respectively, by Perle Martin Wheeler and Hellen A. Edgerly. By
22 developing the Old Araby Road to serve both properties, it is obvious the prior owners
23 contemplated construction of the Old Araby Road to service both properties.

24 Generally, an "easement by necessity" arises when ownership of land is
25 divided in such a way as to create a landlocked parcel. Two elements must exist before
26 a court will enforce an easement by necessity: (1) there must be "strict necessity for the

1 easement; and (2) the dominant and servient tenements must have been under common
2 ownership when the land was divided and the easement created. Reese v. Borghi, 216
3 Cal. App.3d 324, 332-333, 30 Cal. Rptr. 868 (1963).

4 In the case at bar, the express easement in question was created in 1933,
5 when the predecessors in interest to the properties now owned by plaintiffs and by Levy,
6 Perte Wheeler Martin and Hellen A. Ederly, jointly agreed to construct the Old Araby
7 Road to provide ingress and egress to the properties. The properties had been divided
8 at or about that time and, just prior to the parties owning the properties, the properties
9 were owned by the same person, Security First National Bank, and later, R. Lee Miller.
10 When plaintiffs and Levy purchased their properties, the benefits and burdens of the
11 easement passed with the respective titles. (See discussion in Lichty v. Sickels, 149
12 Cal. App.3d 696, 700-01, 197 Cal. Rptr. 137 (1983).) An easement of necessity is
13 appurtenant to the land and it "... must be presumed to continue until some fact found by
14 the court shows that the right no longer exists ... The way, having been created by the
15 necessity for its use, cannot be extinguished so long as the necessity exists." (Lichty at
16 p. 701.)

17 Judgment is hereby ordered to be entered as follows:

18 1. Judgment on the complaint in favor of plaintiffs Robert Nahodil and
19 Michael Arthur and against defendant David Levy, as well as all persons unknown,
20 claiming any legal or equitable right, title, estate, lien, or interest in the property adverse
21 to plaintiffs in the non-exclusive easement to service Parcel 3 described as follows:

22 "A strip of land 50.00 feet in width lying 25.00 feet on
23 each side of the following described center line:

24 All that portion of the Southeast quarter of Section 25,
25 Township 4 South, Range 4 East, San Bernardino
Meridian, as shown by United States Government
Survey, and more particularly described as follows:

26 Beginning at the most Westerly corner of Lot 17 in
27 Block "F" of Araby Tract, as shown by Map on file in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Book 13 Pages 61 and 62 of Maps, records of Riverside County, California; thence South 71°22'20" West, a distance of 367.26 feet; thence South 00°01'00" West, a distance of 222.81 feet to the true point of beginning of said center line to be described; thence South 83°33'00" East, a distance of 60.76 feet; thence North 59°18'00" East, a distance of 62.47 feet; thence North 87°57'00" East, a distance of 19.93 feet; thence south 54°32'00" East, a distance of 59.66 feet; thence South 26°23'00" East, a distance of 152.33 feet; thence South 63°28'00" East, a distance of 235.41 feet; thence south 48°28'00" East, a distance of 234.19 feet to a point that bears South 00°13'00" East, a distance of 137.47 feet from the Southwesterly corner of Lot 26 in Block "F" of said Araby Tract.

The side lines of said Easement are to be prolonged or shortened to terminate in the side lines of that certain parcel of land, as conveyed to Hellen A. Edgerly, by deed recorded June 7, 1932 in Book 78 Page 398 of Official Records of Riverside County, California."

- 2. Cross-complainant Levy take nothing by his cross-complaint.
- 3. Costs of suit are awarded to plaintiffs as prevailing parties.
- 4. Levy, his servants, agents, attorneys, and those acting in concert

with him are enjoined from any conduct which will interfere with plaintiffs' use of the easement.

August
Dated: July 10, 1999

Charles E. Stafford, Jr.
Charles E. Stafford, Jr.
Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT:

John L. Bailey
Attorney for Levy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE, STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 400 South Farrell Drive, Suite B-203, Palm Springs, California.

On August 3, 1999, I served the foregoing document(s) described as:

STATEMENT OF DECISION [Proposed]

on the interested party(ies) in this action as follows:

John L. Bailey, Esq.
Therese Bailey-Nelson, Esq.
Hall & Bailey
6761 Brockton Avenue
Riverside, CA 92506

(BY MAIL) In a sealed envelope addressed as set forth above. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepared at Palm Springs, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the addressee.

(BY FACSIMILE SERVICE) The above mentioned document(s) was/were transmitted by facsimile transmission and the transmission was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 3, 1999, at Palm Springs, California.


Tina Weintraub

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW OFFICES OF RICK M. STEIN
Rick M. Stein, Esq.
State Bar No.: 044652
400 South Farrell Drive
Suite B-203
Palm Springs, California 92262
Telephone: (760)325-5990; Facsimile: (760)325-6265

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

AUG 10 1999

L. MICKELSON

65
MAR 05 2008

ATTORNEY FOR Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MICHAEL ARTHUR and ROBERT NAHODIL,

Plaintiffs,

v.

DAVID LEVY, an individual; all persons
unknown, claiming any legal or equitable
right, title, estate, lien, or interest in the
property described in the complaint adverse
to plaintiffs' easement; and DOES 1 through
50, inclusive,

Defendants.

DAVID M. LEVY,

Cross-Complainant,

v.

MICHAEL ARTHUR; ROBERT L. NAHODIL,
et al.,

Cross-Defendants.

Case No.: INC 009357

JUDGMENT AFTER TRIAL BY
COURT

7354.ART

Judgment After Trial by Court

1 THIS ACTION came on regularly for trial on Tuesday, July 12, 1999, and
2 continued through the morning of Wednesday, July 13, 1999, in Dept. 2F of the above-
3 entitled court, the Honorable Charles E. Stafford, Jr., Judge presiding, a jury having
4 been expressly waived by both parties. Rick M. Stein, Esq. appeared as counsel for
5 plaintiffs/cross-defendants Arthur and Nahodil, and John L. Bailey, Esq. appeared for
6 defendant/cross-complainant Levy.

7 Oral and documentary evidence was introduced on behalf of the respective
8 parties and, after argument, the cause having been submitted for decision,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that,

10 1. Judgment rendered on the complaint in favor of plaintiffs Robert
11 Nahodil and Michael Arthur and against defendant David Levy, as well as all persons
12 unknown, claiming any legal or equitable right, title, estate, lien, or interest in the
13 property adverse to plaintiffs in the non-exclusive easement to serve Parcel 3 described
14 as follows:

15 "A strip of land 50.00 feet in width lying 25.00 feet on
16 each side of the following described center line:

17 All that portion of the Southeast quarter of Section 25,
18 Township 4 South, Range 4 East, San Bernardino
19 Meridian, as shown by United States Government
20 Survey, and more particularly described as follows:

21 Beginning at the most Westerly corner of Lot 17 in
22 Block "F" of Araby Tract, as shown by Map on file in
23 Book 13 Pages 61 and 62 of Maps, records of
24 Riverside County, California; thence South 71°22'20"
25 West, a distance of 367.26 feet; thence South
26 00°01'00" West, a distance of 222.81 feet to the true
27 point of beginning of said center line to be described;
28 thence South 83°33'00" East, a distance of 60.76 feet;
thence North 59°18'00" East, a distance of 62.47 feet;
thence North 87°57'00" East, a distance of 19.93 feet;
thence south 54°32'00" East, a distance of 59.66 feet;
thence South 26°23'00" East, a distance of 152.33
feet; thence South 63°28'00" East, a distance of
235.41 feet; thence south 48°28'00" East, a distance
of 234.19 feet to a point that bears South 00°13'00"
East, a distance of 137.47 feet from the Southwesterly

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

corner of Lot 26 in Block "F" of said Araby Tract.

The side lines of said Easement are to be prolonged or shortened to terminate in the side lines of that certain parcel of land, as conveyed to Hellen A. Edgerly, by deed recorded June 7, 1932 in Book 78 Page 398 of Official Records of Riverside County, California."

- 2. Cross-complainant Levy take nothing by his cross-complaint.
- 3. Levy, his servants, agents, attorneys, and those acting in concert with him are enjoined from any conduct which will interfere with plaintiffs' use of the easement.
- 4. Costs of suit awarded to plaintiffs.

Dated: ^{August} July 10, 1999


Charles E. Stafford, Jr.
Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT:

John L. Bailey
Attorney for Levy

1 PROOF OF SERVICE, STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

2 I am employed in the County of Riverside, State of California. I am over the age of 18 and
3 not a party to the within action; my business address is 400 South Farrell Drive, Suite B-203, Palm
Springs, California.

4 On August 3, 1999, I served the foregoing document(s) described as:

5 JUDGMENT AFTER TRIAL BY COURT [Proposed]

6 on the interested party(ies) in this action as follows:

7 John L. Bailey, Esq.
8 Therese Bailey-Nelson, Esq.
9 Hall & Bailey
6761 Brockton Avenue
Riverside, CA 92506

10 (BY MAIL) In a sealed envelope addressed as set forth above. I am "readily familiar" with the
11 firm's practice of collection and processing correspondence for mailing. Under that practice it
12 would be deposited with U.S. postal service on that same day with postage thereon fully prepared
13 at Palm Springs, California in the ordinary course of business. I am aware that on motion of the
party served, service is presumed invalid if postal cancellation date or postage meter date is more
than one day after date of deposit for mailing in affidavit.

14 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the addressee.

15 (BY FACSIMILE SERVICE) The above mentioned document(s) was/were transmitted by
16 facsimile transmission and the transmission was reported as complete and without error.

17 (STATE) I declare under penalty of perjury under the laws of the State of California that the above
18 is true and correct.

19 Executed on August 3, 1999, at Palm Springs, California.

20
21 
22 Tina Weintraub