



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: DAL PROPERTIES

DATE: May 25, 2010

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute a quitclaim deed to an abandoned access road across APN No. 660-02-013 to DAL Properties, Inc. in accordance with the provisions of a stipulated judgment approved by the City Council.

OUTCOME

Approval of this action will allow the City to adhere to the provisions of the stipulated judgment resulting from litigation involving the disposition of an abandoned access road.

BACKGROUND

On January 9, 2007, the City Council approved a Planned Development Rezoning of a large parcel located in District 8 adjacent to San Felipe Road. The rezoning allowed the subdivision of one existing large 18 acre parcel (zoned A-Agricultural) into twenty-two (22) lots for future development of 22 single family homes.

Just north of the property is an unpaved 25' wide road that has, for years, provided access to those living north of the site ("Access Road"). This road was in the name of the heirs of WG and HJ Knowles, who died in 1916 and 1946, respectively.

The developer of the site, DAL Properties, LLC, owned by Mark Lazzarini, has started the process of obtaining a development permit for the site. The west side of the development, as currently proposed, is dependent on DAL's ability to develop at least the first 268 feet of the Access Road. DAL also wants control of the remainder of the access road for a future subdivision that DAL hopes to be able to secure in order to develop the middle portion of the property just northeast of Misery Creek.

Because DAL does not have title to the Access Road, DAL, along with several of the adjacent property owners filed a "Quiet Title" lawsuit against the City, the heirs of the Knowles, and other adjacent property owners who did not agree to be plaintiffs in the

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case. Through this process, DAL had hoped to have the Access Road deemed "abandoned for public use," and thus in legal possession of the City.

Pursuant to authority granted by the Council in closed session, the City and DAL negotiated the terms of a Stipulated Judgment, which was filed on April 27, 2009. Rather than simply having the property deemed "abandoned for public use," the parties agreed to a process in which DAL would gain the control it needed over the abandoned site, while limiting the City's liability exposure. Under the terms of the Stipulated Judgment, the City obtained possession of the Access Road through an abandonment theory, but will then transfer its ownership interest to DAL. Concurrently, DAL would make an irrevocable offer of dedication for a roadway easement back to the City. The City would then be able to incorporate the Access Road into the development of the site, and have the ability to take back as much of the Access Road as needed for City street purposes once any streets are improved to City standards.

In order for the City to implement the transfer of the property to DAL, it is necessary to authorize a City official to execute the quitclaim deed so that it may be filed with the County Recorder.

PUBLIC OUTREACH/INTEREST

This memorandum and the quitclaim deed have been posted on the City's website for the June 8, 2010 agenda.

COORDINATION

This item has been coordinated with the Planning Department and the Department of Public Works.

CEQA

Mitigated Negative Declaration, File No. PDC09-007.

RICHARD DOYLE
City Attorney

By 
Robert Fabela
Senior Deputy City Attorney

For questions please contact Richard Doyle, City Attorney at (408) 535-1900.