

LAW OFFICES
TESLER & SANDMANN

PETER B. SANDMANN

PAULINE H. TESLER
CERTIFIED FAMILY LAW SPECIALIST
STATE BAR OF CALIFORNIA

MEMORANDUM

**TO: Gary Friedman, President
Muir Beach Community Services District**

FROM: Peter B. Sandmann

DATE: November 11, 2016

SUBJECT: 341 Sunset Way

.....

You have asked me to issue an opinion about the status of Sunset Way in the area adjoining the property at 341 Sunset Way in Muir Beach. This issue has arisen as a result of improvements made by the owners of 341 Sunset Way in a portion of the area designated on the original subdivision map, dated 1923, as a private right-of-way named Sunset Way.

The subdivision map was created at the behest of the then owner of the property being subdivided, Antonio Nunes Bello, who specifically stated on the map itself, with respect to the designated right-of-way, the following:

[N]one of the roads, alleys, streets or highways shown thereon are intended for public use, but that each and all of the roads, alleys, turning places and other areas delineated on said map are hereby granted as private ways appurtenant to said lots for all of the purposes of ingress or egress thereto or therefrom for which a private right of way is usually and ordinarily given.”

The Marin County Board of Supervisors approved the 1923 subdivision map, finding that “none of the streets, lanes, roads or alleys shown thereon having been offered for dedication for public use”

It appears from the record that whereas the lots shown on the subdivision map have subsequently been conveyed to various owners over the intervening years, the private right-of-way has never been conveyed, and the record title thereto presumably remains in the name of the heirs of Antonio Nunes Bello.

If this were the state of affairs remaining at this time, it would be safe to say that Sunset Way remains a private right-of-way with the lot owners each having an easement over the right-of-way for access to their respective properties. If that were the situation, however, then under

MEMORANDUM

**TO: Gary Friedman, President
Muir Beach Community Services District**

FROM: Peter B. Sandmann

DATE: November 11, 2016

SUBJECT: 341 Sunset Way

Civil Code Section 845, the owners of the adjoining lots would have had and would still have the obligation to pay for its maintenance.

Civil Code Section 845(a): “The owner of any easement in the nature of a private right-of-way, or of any land to which any such easement is attached, shall maintain it in repair.”

However, in the intervening years, the Muir Beach Community Services District was created and at some point it began expending money to maintain Sunset Way (while adjoining property owners also continued to do maintenance and improvements in the right-of-way as well). Budget limitations have limited the ability of the CSD to perform maintenance activities, and as a result, the CSD explicitly adopted a policy to the effect that the obligation to maintain the roads would be shared with the property owners who used them. Thus, in 1982, the following policy was drafted:

“[F]inancial responsibility for road maintenance and improvements is limited by the availability of funds. Because of its limited resources, it is the policy of the CSD that general tax revenues shall be only used for the minor work necessary to keep the roads safe for the passage of emergency vehicles, with priority for the use of these limited funds given to those with the heaviest community use.

Residents who wish improvements beyond such minor repair, or live on the roads not heavily used by the community, may join with other residents adjoining their road to cooperatively finance and undertake the improvements, with advice and supervision of the MBCSD if desired, but no funding.”

The adoption of this policy coupled with the fact that Sunset Way was never dedicated to public use by the original developer means that whereas the courts might otherwise have found that Sunset Way as delineated on the original subdivision map had been dedicated to public ownership, here we have neither an offer by its owner to dedicate the entirety of Sunset Way to public use, nor an unequivocal acceptance of its dedication to such use by a public entity. Nevertheless, it is evident that there have been many years of public use of Sunset Way, as well as maintenance activities on portions of the right-of-way by the CSD, a public agency. For this reason, under applicable authorities, it cannot be said that Sunset Way is clearly one or the other: a public street or an entirely private right-of-way.

What can be said is that Sunset Way is clearly established in the subdivision map as an easement for access by the owners of properties that adjoin the right-of-way, and to that extent, it must remain open for such use. Encroachments into the right-of-way that interfere with access by owners of properties would be properly enjoined by a court. This would presumably include the right of adjoining property owners and/or the CSD to make necessary and appropriate improvements, such as drainage and underground utility services that are for the purpose of protecting the right-of-way and adjoining properties and of providing fire and other services to them. (The question has been raised whether the owners of adjoining properties gained

MEMORANDUM

**TO: Gary Friedman, President
Muir Beach Community Services District**

FROM: Peter B. Sandmann

DATE: November 11, 2016

SUBJECT: 341 Sunset Way

ownership of Sunset Way to the middle of the right-of-way by virtue of their deeds, which is normally the case if their deeds reference the subdivision lot numbers as shown on the subdivision map; the deed to 341 Sunset Way does reference those lot numbers. For purposes of this discussion, however, that question does not necessarily need to be resolved. Whether the adjoining properties hold ownership to the middle of Sunset Way, or not, the fact remains that the entirety of the right-of-way has never been conveyed to the CSD, and it is either still owned in fee by the heirs of the original developer, or it is owned by the adjoining property owners, but either way, it was designated as an easement, and each property owner has a sufficiently broad easement over Sunset Way for the purposes here described.)

If, in addition to a private easement, Sunset Way could be considered a public right-of-way it must be through prescriptive use by the public. (Use by the owners of adjoining properties would not result in prescriptive rights since no such use could be considered adverse, which is required to gain prescriptive rights.) Such public use could include maintenance activities by the CSD. However, prescriptive rights are normally gained only over that area in which the public use has been shown. See, e.g., Robas v. Allison. 146 Cal.App.2d 716 (1956). Where, as here, there was neither an offer of dedication nor an unequivocal exercise of dominion by the CSD over the entirety of Sunset Way, the area over which the public would have gained an interest would normally be limited to the use that had been put to the right-of-way by the public, including by the CSD. (In her letter dated Dec. 5, 2000, Deputy County Counsel Jennifer Waldron impliedly drew the same conclusion: because the CSD has patched and re-paved portions of Sunset Way, “the District would have a prescriptive right to the paved portion of Sunset Way.”) Thus, any encroachment that interfered with that right could be proscribed.

Under Section 61100 of the Government Code, the CSD has the power to “(d) Provide fire protection services, rescue services, hazardous material emergency response services, and ambulance services in the same manner as a fire protection district” The CSD is also authorized to “(l) Acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works.” According to a LAFCO report about the CSD, “residents authorized the District to expand its service powers to include roads and recreation in 1969 as allowed under the agency’s principal act. Roads services to date have involved maintaining a limited number of non-County maintained roadways and pedestrian easements within the District’s jurisdictional boundary. Funding for road services is provided from property taxes.”

The CSD’s responsibility for road maintenance has been repeatedly acknowledged and formalized since the time of the 1969 Ordinance referred to by the LAFCO report. For example, in “1978 the Board unanimously endorsed the Muir Beach Master Plan which designates responsibility for road maintenance to the CSD,” according to the Report of the Roads, Easements & Drainage Committee of the CSD dated July 22, 1980 which extensively described the scope and future responsibilities of the CSD with respect to non-county roads.

MEMORANDUM

**TO: Gary Friedman, President
Muir Beach Community Services District**

FROM: Peter B. Sandmann

DATE: November 11, 2016

SUBJECT: 341 Sunset Way

As originally subdivided, the majority of Sunset Way was 30 feet wide, but broadened to 40 feet in width for the last approximately 400 feet of the right-of-way. At the end of the right-of-way a square area 60 feet on each side was designated, presumably to provide an area in which traffic could turn around. (Continuing beyond the turn-around area is a narrow “lane” which is apparently rarely used and does not lead to any private residences.) The property at 341 Sunset Way is adjacent to two sides of the turn-around area. The dimensions of Sunset Way as shown on the subdivision map are not reflected on the ground. The paved area of Sunset Way is much narrower than 30 feet and meanders within the designated area. The adjoining properties along the length of Sunset Way encroach into the right-of-way in various ways, with trees or other vegetation, parking areas and the like. Although a width of 30 feet should be sufficient for two vehicles to pass one another, there are few areas along the length of Sunset Way that provide such opportunity. Likewise, the property at 341 Sunset Way encroaches into the turn-around area with, among other things, a fence, trees, and drainage.

In my opinion, because Sunset Way is owned either by the adjoining property owners, or by the heirs of the original developer rather than by the CSD, and because historic use of Sunset Way as a right-of-way has been limited to an area much narrower than the width designated on the subdivision map, the CSD does not have the power or authority to require that those properties that have encroached onto Sunset Way must remove those encroachments simply because the subdivision map designates the area as a right-of-way. If the CSD seeks to have an encroachment removed, it must be to serve some legitimate purpose of the CSD consistent with its mandate, which includes maintenance of existing roads and fire protection, among other responsibilities. Thus, if the CSD sought to repave Sunset Way, and/or to widen it in places so that vehicles could pass safely, or if the CSD concluded that fire protection could not be achieved successfully without widening Sunset Way somewhat – as long as such widening was done within the area designated as right-of-way on the subdivision map – in my opinion the CSD would have the power and authority to perform such work. This would include creating an area at the end of Sunset Way in which fire and emergency vehicles could turn around safely.

With respect specifically to 341 Sunset Way, in my opinion, the CSD has no standing to require the property owners to remove or alter the fence or other encroachments into the right-of-way simply because those improvements encroach into the area designated as such on the subdivision map. However, if the CSD develops plans to improve the area at the end of Sunset Way in order to provide sufficient space for fire and emergency vehicles to turn around, and if those plans, as actually implemented, result in the need to remove some of the improvements that encroach into the right-of-way area, it is my opinion that the CSD has the power and authority to conduct such work. Presumably, any such work would have to be accomplished without endangering or causing damage to the remaining improvements that are in the right-of-way, or are on private property and that are not encroaching into the right-of-way, such as any private residence or other structures. Thus, for those improvements that do encroach into the right-of-way, any removal or alteration of those improvements would need to be done at the expense of the CSD and be limited to those necessary to accomplish the legitimate work that the CSD is authorized by its mandate to perform.

In reaching these conclusions, I have reviewed the following, in addition to visiting the site:

1. Block 8 - Bello Beach Unit 1 Final Map, 5 Maps 17, filed February 6, 1923.
2. Official Ballot, Special District Election, Muir Beach CSD, November 4, 1969.
3. CSD Ordinance No. 7, dated August 20, 1975.
4. Report of the Roads, Easements and Drainage Committee, CSD, dated July 22, 1980.
5. Proposed CSD Road Maintenance Policy, dated February 15, 1982.
6. Roads Committee Preliminary Report, Muir Beach CSD, dated March 21, 1984.
7. McGuire and Hester, bid for work on Sunset Way, etc., dated July 9, 1984.
8. Memorandum to Muir Beach CSD, from Judith Yamamoto, re maintenance of easements, dated May 18, 1988.
9. Report of work on roads and easements, November 21, 1990.
10. Letter from Deputy County Counsel Jennifer Waldron to Donovan Macfarlane, General Manager, CSD, dated December 5, 2000.
11. Topographical survey of area of 341 Sunset Way, showing paved area, drainage culverts and fencing, date approx. 2002.
12. Grant Deed, APN 199-251-48, dated October 12, 2012.
13. Record of Survey, Lands of Lotriet and Lampert, dated March, 2013.
14. Letter from Linda Carruthers, PLS, to Linda Lotriet and Peter Lambert, re Ownership of the Roads within Map of Bello Beach Subdivision No. One, dated October 27, 2014.
15. Email string between Bill Hansell, CSD Directors, and County Counsel dated August, 2016 re 341 Sunset Way.
16. Email from Bill Hansell with legal research dated August 17, 2016.
17. Letter of Opinion from Neil Sorensen, dated August 18, 2016.
18. Letter from Linda Lotriet and Peter Lambert received by email dated October 28, 2016.

19. Assessor's Map, portions of Sunset Way, with overlay of paved section in area of 341 Sunset Way.

20. Map of Muir Beach Community Service [sic] District.

21. Muir Beach Community Services District, Water Service Study, LAFCO, undated, see: http://lafco.marin.org/PDF/special-studies/AgencyProfile_MBCSD_12-11-14.pdf.

22. Sections of the California Government Code, the California Vehicle Code, and relevant decisions of the California Supreme Court and the California Court of Appeal.