



DISCUSSION ITEMS

Agenda Item # 8

AGENDA REPORT SUMMARY

Meeting Date: March 27, 2018

Subject: Diamond Court

Prepared by: Christopher Lamm, Engineering Services Manager

Reviewed by: Susanna Chan, Public Works Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Memorandum from consulting City Surveyor regarding history in creation of Diamond Court

Initiated by:

Diamond Court Residents, assisted by City staff

Previous Council Consideration:

October 10, 2017

Fiscal Impact:

\$100,000 and ongoing street maintenance

Environmental Review:

Not applicable at this time

Policy Questions for Council Consideration:

- Should the City consider adding Diamond Court to the City's public street network?
- Should the City consider partnering with homeowners in sharing costs on reconstruction costs?

Summary:

- Diamond Court is a private street off Berry Avenue with no current ownership
- Residents of Diamond Court are requesting to partner with the City on reconstruction of the poor condition street and for the City to take on maintenance responsibilities

Staff Recommendation:

Authorize the City Manager to enter into an agreement with residents of Diamond Court to share the cost to reconstruct Diamond Court and ultimately accept maintenance responsibility as public right of way.



Subject: Diamond Court

Purpose

Diamond Court is a private street off Berry Avenue. The homeowners along Diamond Court have requested assistance and are willing to partner with the City on the reconstruction of Diamond Court if the City will take on maintenance responsibility as a City owned and maintained street.

Background

There are 41 private streets located within the City limits. Private streets are streets that have either never been offered or accepted by the City as public right of way. Many are separate parcels within planned developments or are parcels with definitive ownership to an adjacent parcel.

Diamond Court is a small street (roughly 50' wide by 466' long) off Berry Avenue. The court has been listed as a private street since the City's incorporation. After conducting research with our City Surveyor and a local title company it has been confirmed that the court is still owned by private entity, Robert H. Diamond. Mr. Diamond was the original owner of the adjacent parcels, which before City incorporation were developed into single family homes along Diamond Court. Mr. Diamond to the best of our knowledge no longer exists and the homeowners have not been able to contact any next of kin about transfer of ownership.

Diamond Court is a unique situation amongst the City's private streets list in that it is still owned by the underlying developer and not by any adjacent parcel or separate home owner's association. Diamond Court itself is in very poor condition due to over 60 years of neglect necessitating full reconstruction at an estimated cost of \$200,000. The homeowners have requested the City to take on the maintenance responsibility of Diamond Court as a regular City street.

There are utilities (storm, sewer, water, gas, and overhead electric) in Diamond Court and garbage collection is performed. Under California easement law the City currently has no requirement to perform street maintenance on Diamond Court. The homeowners along Diamond Court have requested assistance and are willing to partner with the City on the reconstruction of Diamond Court if the City will take on maintenance responsibility as a City owned and maintained street. The homeowners are willing to participate in a 50 percent cost share for the reconstruction of the street if the City is willing to claim ownership of Diamond Court as public right of way and perform regular street maintenance.

Engineering staff have prepared a cost estimate for the repair and reconstruction of Diamond Court. It is expected to cost approximately \$200,000 to bring Diamond Court up to current City standards for a residential street.

The inclusion of Diamond Court would add 0.17 lane miles to the existing 227 lane miles managed by the City, or an increase of 0.075%. This would constitute an approximately \$1,500 per year increase for ongoing maintenance to the City's \$2M pavement management program.



Subject: Diamond Court

Diamond Court was discussed at the October 24, 2017 Council meeting with the following two items requested to be brought for further discussion:

1. Provide additional history in the determination of how Diamond Court was created;
2. Legal options, costs, and timeline for acquiring Diamond Court

Discussion/Analysis

Creation of Diamond Court

Further information on the determination of how Diamond Court was created can be found in the November 22nd memo (attachment 1) from consultant City Surveyor, Mark Helton PE, PLS. Diamond Court was created via a Record of Survey in 1949 establishing the limits of Diamond Court's, however, this action did not offer the land for dedication as public right of way. Subsequent creation and sales of lots fronting the land known to be Diamond Court denote its existence as a street, but do not specify public or private ownership.

Legal Options / Costs

- Eminent Domain - The City would need to adopt a resolution of necessity after which state laws would be followed including appraising and fairly compensating any heirs (or depositing the compensation with the Court while the heirs are sought). This is not the process that the City staff or City Attorney recommend.
- Quiet Title Action w/ Implied Dedication – There has never been a formal dedication of Diamond Court to the public or any acceptance of a dedication by the City. Nonetheless, there has likely been an implied dedication of Diamond Court.

While it is likely that a court would conclude that there has been an implied dedication, it is not clear that the City has standing to directly assert the claim. There appears no published authority holding that a City (or even a County) has the ability to compel an adjudication that Diamond Court has been dedicated to the public. Accordingly, it is recommended that any action seeking an implied dedication at least join the affected owners as Plaintiffs. The City could seek declaratory relief in conjunction with the owners, stating its intent to accept maintenance obligations for the road. The owners would be named as Plaintiffs in the quiet title and declaratory relief action for Diamond Court.

If the City wishes to take over maintenance obligations for Diamond Court, then the owners should bring an action for quiet title and declaratory relief against Robert Diamond and his successors arguing that Diamond Court was impliedly dedicated for public use. Prior maps and deeds support this theory. Further, the lawsuit may be unchallenged since Robert Diamond's successors may be difficult to locate and serve. Once the property owners obtain a judgment for dedication, then the City could thereafter accept the maintenance obligations for the road.



Subject: Diamond Court

It is expected that a quiet title action with Implied Dedication would take approximately six (6) months to complete at a cost of \$15K-\$20K pending due diligence requirement required by the court. Staff suggests that this expense be borne by the homeowners.

Options

- 1) Authorize the City Manager to enter into an agreement with residents of Diamond Court to perform a quiet title action with implied dedication (at the expense of the residents), reconstruct Diamond Court with 50% of the cost paid by the City, and ultimately accept maintenance responsibility as public right of way

Advantages: The street will be repaired to City standards and the roadway can be added to the City's street maintenance list for regular maintenance. Poor conditions which pose safety concerns for pedestrians and cyclists who use Diamond Court will be remediated. This option would be the quickest solution to the issue be presented to the City by the residents of Diamond Court. The City would not expend any of its resources until after the street is deemed public

Disadvantages: While ongoing maintenance of the street will minimally add to the City's overall pavement management program, initial capital costs of approximately \$100,000 to reconstruct Diamond Court are not currently budgeted

- 2) Require full repair of the street before consideration of acceptance of public right of way. Similar to annexation requirements, the City could require full reconstruction of Diamond Court to current City standards as a condition of acceptance

Advantages: The street will be repaired to City standards and the roadway can be added to the City's street maintenance list for regular maintenance. Poor conditions which pose safety concerns for pedestrians and cyclists who use Diamond Court will be remediated. The City would not incur capital costs associated with the repair and reconstruction of Diamond Court

Disadvantages: Excessive costs for repair and reconstruction may prohibit the homeowners from agreeing to this option

- 3) Do not consider acceptance of Diamond Court as public right of way. The homeowners along Diamond Court could be required to repair Diamond Court on their own and seek legal opinions on their options for the creation of a home owner's association (HOA) and ultimately claiming of ownership of Diamond Court as a private street to be managed by the HOA.



Subject: Diamond Court

Advantages: The City would not incur capital costs associated with the repair and reconstruction of Diamond Court and would not incur ongoing maintenance responsibilities and costs.

Disadvantages: Excessive costs for repair and reconstruction may prohibit the homeowners from considering this option.

Recommendation

The staff recommends Option 1.

November 22, 2017

San Jose - Oakdale - Auburn

Christopher Lamm
City Engineer
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Subject: Job # 03119 - Diamond Court, Los Altos

Dear Chris:

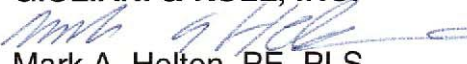
This letter is in response to your request that we try to determine how and who approved Diamond Court.

It appears to me that Diamond Court came into existence through a Record of Survey which established the future Diamond Court, (said right of way being shown merely as a right of way), which was prepared in 1949, for George and Margaret McPheeters. This was done before most of the lots along Diamond Court came into existence. This seemed to established Diamond Court's alignment, at least un-officially. (It should be noted that current Records of Survey are reviewed and approved by the County Surveyor, not for dividing land, but to document the locations of property lines, right of way lines, and sometimes easement lines. However, back in 1949, I believe that this map was approved as a "de-facto" subdivision map, as the County Board of Supervisors passed a Resolution approving this map, but there was never any dedication for the right of way, nor did the County accept such a dedication. So it is my opinion that this "Right-of-Way" was merely a private road at this point.)

Mr. Robert H. Diamond then acquired a good amount of the land along this access Right of Way in 1952, and subsequently sold the lots to various parties, with a notation that the lots were served via this access right of way, (later to be called Diamond Court). Mr. Diamond appears to never have sold the actual access right of way, now called Diamond Court, which is why we, (including Old Republic Title Company), believe he still owns this land.

There was never a subdivision map that we can find, (which showed Diamond Court), which actually was approved by any entity, (County or City), until 1977, (when the City of Los Altos approved a Parcel Map for three lots on the East side of Diamond Court). And even this map showed Diamond Court as being an already established street. (This map did not state whether Diamond Court was a Private or Public Street, but merely showed that it was in existence.).

If you have any questions or comments regarding this matter, please do not hesitate to contact our office.

Sincerely,
GIULIANI & KULL, INC.

Mark A. Helton, PE, PLS
Consulting City Surveyor for the
City of Los Altos, California

