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ATTORNEYS AT LAW

**Memorandum**

**To:** Mayor Mordo and Honorable City Council **File No.:** 38082.00200  
**From:** City Attorney's Office  
**Meeting Date:** March 27, 2018  
**Re:** Diamond Court

**QUESTION PRESENTED**

Residents of Diamond Court in Los Altos want the City of Los Altos ("City") to take over road maintenance obligations for Diamond Court. Diamond Court has not been formally dedicated as a public road. The memo addresses options for the City to take over the maintenance obligations for Diamond Court, assuming it wishes to do so.

**ANALYSIS**

**A. Factual Background**

Diamond Court is a private road in disrepair located in Lot 4 of the Cyrus Berry Subdivision in Los Altos. Diamond Court first appears on a 1949 Record of Survey, which subdivided Lot 4. While the Record of Survey was approved by Resolution in 1949,<sup>1</sup> there is no record of any formal dedication of Diamond Court nor any record of an acceptance of any purported dedication of Diamond Court. In the 1949 Record of Survey, Diamond Court is shown as being 50' wide on the southerly end, but 40' wide on the northerly end.

Diamond Court is also identified in a 1977 Subdivision Map subdividing three of the lots on Diamond Court. But the 1977 Map does not dedicate the road, or identify whether it is a public or private road.

There are five properties that appear to require Diamond Court for primary access, APN Nos. 189-11-48 (Randolph), 49 (Beges), 50 (Monsees), 51 (Schibler) 52 (Kim) and 71. As discussed below, APN 71 has a Diamond Court address, but has no easement to use Diamond Court.

As noted, Diamond Court was first created by a 1949 Record of Survey, which subdivided portions of Lot 4 of the Berry Tract. On March 7, 1952, fee title to Diamond Court and APN's 48, 49, 50, 51 and 52 were deeded to Robert Diamond. Soon thereafter, Mr. Diamond deeded APN's 48, 49, 50 and 51 to H.A. and Mary Thrush as well as an easement over Diamond Court. But Mr. Diamond retained the fee title to Diamond Court. In November 1952,

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<sup>1</sup> The Resolution approves the alignment and dimensions of the road but does not accept maintenance obligations or act as an acceptance of an offer of dedication.  
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Mr. Diamond granted PG&E an easement over the northeasterly edge of Diamond Court (adjacent to APN's 48 and 49). This had the practical effect of widening Diamond Court to 50' wide on the northerly end (matching the southerly end).

In 1954, Mr. Diamond conveyed APN 52 to Robinson along with an easement to use Diamond Court.

The 1977 Subdivision Map identifies a triangle of land, 7.37' x 3.21', located on the northwesterly edge of APN 71 that is included within the legal description for APN 71 but is also included in the legal description for Diamond Court per the 1949 Record of Survey (the "Triangle"). The Triangle is within the paved roadway. Ownership of fee to the Triangle appears to be vested in APN 71. This Triangle was apparently created by errors made in the drafting of the legal descriptions for deeds to and from Mr. Diamond.

As it stands, fee to Diamond Court remains in Robert Diamond or his heirs. APN's 48, 49, 50, 51 and 52 have a right of way to use Diamond Court (except for the Triangle). Although it has a Diamond Court address, APN 71 has no right of way or other apparent legal right to use Diamond Court. However, APN 71 has fee title to the Triangle.

**B. Quiet Title Action**

**1. 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.

Under the common law, a dedication may be made either expressly or by implication. *Scher v. Burke*, 3 Cal. 5th 136, 141 (2017). A common law dedication is accomplished without satisfying the formalities of any statute. In most cases the court finds that the property has been dedicated by implication as a result of the conduct or acquiescence of the landowner, but it can also occur by an express grant or conveyance. *See Miller & Starr*, 7 Cal. Real Est. § 22:3, Common law dedication defined (4th ed. 2017).

Dedication is a matter of contract that requires evidence of an offer to dedicate by the property owner and an acceptance by the public. *Cherokee Valley Farms, Inc. v. Summerville Elementary Sch. Dist.*, 30 Cal. App. 3d 579, 584, 585 (1973). The underlying principle of common law dedication is estoppel against the property owner in favor of the public, arising out of the owner's failure to object to acts or events that indicate an implied intent to dedicate the property. *Id.* at 585. Whether there has been a dedication of private property is a question of fact. *Id.*

First, to find an implied dedication, an offer must be demonstrated. Since dedication involves a loss of private property for the use by the public without compensation, the



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fundamental requirement for dedication is the clear and unequivocal manifestation of intent by the property owner to dedicate his or her property to a public use. *California Water & Tel. Co. v. Public Utilities Commission*, 51 Cal. 2d 478, 494 (1959). The intent of the owner to offer the property for public use may be express or implied. *Yucaipa Water Co. No. 1 v. Public Utilities Commission*, 54 Cal. 2d 823, 828 (1960).

A deed that describes the property conveyed as being bordered by a named street or highway that is being used as such, may be sufficient evidence of the grantor's intent to offer a dedication of the street or highway to the public. *City of Santa Ana v. Santa Ana Val. Irr. Co.*, 163 Cal. 211, 215–219 (1912). An implied offer to dedicate property to a public purpose can also be evidenced by a deed that reserves a strip of land to the grantor “for road purposes,” where the reserved road is in fact being used by the public at the time of the conveyance. *Id.*

Where the subdivider does not prepare a map, but the streets or other areas to be dedicated are physically laid out on the ground, and lots are purchased by buyers in reasonable reliance that the streets or areas will be available for their use, the court may conclude that there is sufficient evidence to show the seller's intention to dedicate these streets or other areas for public use. *Hays v. Vanek*, 217 Cal. App. 3d 271, 282 (1989). Similarly, when a seller of lots displays a map or plot plan which shows streets between the parcels being sold, and subsequently the streets are used by the public, the subdivider has adequately evidenced his intention to devote the streets and other common areas shown on the map or plot plan to the public. *City of Venice v. Short Line Beach Land Co.*, 180 Cal. 447, 452, 181 P. 658 (1919); see *Hays v. Vanek*, 217 Cal. App. 3d 271, 282 (1989), (“it makes no sense that [the developer] would have created explicit 20-foot lateral easements from the road but relied on easements by necessity to guarantee access to the road itself. In these circumstances, he must have understood and intended the road to be a public way.”).

Finally, an offer to dedicate land may be inferred from the public use of the property for public purposes in the same general manner as an interest in real property is acquired by adverse possession or prescription. *Union Transp. Co. v. Sacramento County*, 42 Cal. 2d 235, 240 (1954). The offer is said to be implied in fact if the public use continues for less than the period of prescription, and the acts or omissions of the owner afford an implication of actual consent to dedication. *Id.*<sup>2</sup>

Second, to find a dedication, an acceptance of the implied dedication must be demonstrated. This can be shown through evidence of public use of the dedicated land. An offer of dedication can be accepted by the public use of the property without any formal action by the governing authorities. *Diamond Match Co. v. Savercool*, 218 Cal. 665, 670, 24 P.2d 783 (1933). In this respect, the type of use necessary to prove an acceptance can be less than the use

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<sup>2</sup> This so-called “implied in-law” dedication would only apply if the prescriptive use had ripened prior to 1972. See Cal. Civ. Code, § 1009(b). Here, this appears likely since Diamond Court was created in 1949 and apparently been continually used since then.



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necessary to show an implied offer of the property owner to dedicate the property. *Union Transp. Co. v. Sacramento County*, 42 Cal. 2d 235, 240–241, 267 P.2d 10 (1954).<sup>3</sup>

Here, there is compelling evidence of an intent to offer Diamond Court for public use. The 1949 Record of Survey evidences an intent to create a public roadway, the deed from Ryan to Diamond identifies the right of way and the deeds from Diamond to Thrush evidence the intent to dedicate Diamond Court for public use. Coupled with the use of Diamond Court by the affected property owners and/or the general public, it seems likely that a court would find that there has been an implied dedication. Moreover, since Mr. Diamond no longer owns any property on Diamond Court except the street itself, it seems unlikely that a court would find that he actually intended to retain ownership of Diamond Court.

Further, since the Diamond Court property owners have likely been using Diamond Court since the 1950's, there is also strong evidence of the acceptance of the implied dedication by the general public.

**2. Standing**

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. But the owners should be named as Plaintiffs in the quiet title and declaratory relief action for Diamond Court.

**3. Time and Cost**

An uncontested quiet title takes around 6 months (service by publication and to schedule a court hearing after service). An uncontested quiet title action would likely be in the \$10,000 to \$15,000 range.

**C. Eminent Domain**

Another potential method would be for the City to take the road by eminent domain. To do so, the City would need to pass a resolution of public necessity containing: (1) a general statement of the public use for which the property is to be taken; (2) a description of the general location and extent of the property to be taken; (3) a declaration that the governing body of the

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<sup>3</sup> Even where an offer and acceptance is demonstrated, it does not follow that maintenance obligations have been accepted by the City or County. *See Hanshaw v. Long Valley Road Ass'n*, 116 Cal.App.4th 471, 479-80 (2004) (a common law dedication does not result in public liability for road maintenance or damages caused by poor maintenance)



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public entity has found and determined that, among other things, the public interest and necessity require the proposed project and the property owner has been offered reasonable compensation. Cal. Code Civ. Proc. § 1245.230; *see* Cal. Gov. Code, § 7267.2.

Further, if it proceeds by eminent domain, then the City would be required to pay Mr. Diamond or his heirs fair market value for the loss of the fee title to the road. The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller (under no particular or urgent necessity for so doing), and a buyer, being ready, willing and able to buy, but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. Cal. Code Civ. Proc., § 1263.320(a). Generally, just compensation is evidenced by an appraisal. If the condemning party wishes to take possession prior to judgment, the likely compensation must be deposited with the court after the Complaint is filed and prior to taking possession. *See* Cal. Code Civ. Proc. §§ 1255.010 & 1255.410.

Upon adoption of the resolution of necessity, the City can file an action for eminent domain. The complaint in eminent domain must allege compliance with the statutory mandates of the resolution of necessity and compliance with other statutory procedures. *See* Cal. Code Civ. Proc. § 1250.310.

While it is likely that the City would ultimately prevail in an eminent domain action against Diamond to take Diamond Court, the procedure is cumbersome and requires payment of compensation to the property owner.

**CONCLUSIONS**

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.<sup>4</sup> They may also be hesitant to claim ownership of a street in the middle of a subdivision that likely has minimal value. Once the property owners obtain a judgment for dedication, then the City or County could thereafter accept the maintenance obligations for the road.

Alternatively, the City could obtain Diamond Court through eminent domain. But this process is generally more cumbersome and requires the payment of compensation to the owner or his heirs.

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<sup>4</sup> It seems likely that Mr. Diamond is deceased. The quiet title statutes permit a party to name unknown successors and assigns of a deceased property owner, and to obtain a judgment against the unknown successors and assigns. Cal Code Civ. Proc. § 762.030. The unknown heirs are typically served by publication, and the judgment obtained through a default prove up hearing under Code of Civil Procedure section 764.010.