

TOWN OF SAN ANSELMO
STAFF REPORT
September 19, 2012

October 9, 2012
For the Meeting of ~~September 25, 2012~~

TO: Town Council

FROM: Sean Condry, Public Works Director
Megan Acevedo, Deputy Town Attorney

SUBJECT: Resolution of Intent to Abandon a Portion of a Public Right-of-Way
Adjacent to 39 Madera Avenue in San Anselmo

RECOMMENDATION:

Staff recommends that the Council consider adopting the Resolution of Intent to Abandon a portion of the right-of-way adjacent to 39 Madera Avenue in San Anselmo.

BACKGROUND:

Legal Framework

State law provides the exclusive method by which a street or public right-of-way¹, can be abandoned.² The Public Streets, Highways, and Service Easements Vacation Law spells out the requisite procedures. (Sts. & Hy. Code §§ 8300-8363.)

To initiate this process, the Town Council adopts a Resolution of Intent to Abandon a street, which sets a date for a public hearing on the abandonment. (Str. & Hy. Code § 8320.) Information contained in the Resolution of Intent to Abandon, including the hearing time and date, is posted along the street to be vacated and published in the newspaper for at least two weeks prior to the hearing. (Sts. & Hy. Code §§ 8322, 8323.) Before the hearing, the Planning

¹ Under state law, "Street" and "highway" include all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway. (Str. & H. Code § 8308.)

² *Zack's, Inc. v. City of Sausalito* (2008) 165 Cal. App. 4th 1163, 1186, see also, *County of San Diego v. California Water & Tel. Co.*, (1947) 30 Cal. 2d 817, 823.

Department must make a finding that the proposed abandonment conforms to the Town's General Plan. (Gov. Code § 65402.)

At the hearing, the Town Council takes evidence presented by interested persons. (Sts. & Hy. Code § 8324.) If the Council finds that the street proposed to be vacated is unnecessary for present or prospective public use, it may adopt a resolution vacating the street. (*Id.*) The abandonment must be in the public interest.³

The Council can provide that the vacation will occur only after conditions are met and/or it may reserve from the vacation a right to maintain and operate existing or future utility facilities. (Sts. & Hy. Code §§ 8324, 8340.) If the Council approves the proposed abandonment, it will adopt a resolution of vacation that is recorded with the County. (Sts. & Hy. Code § 8324(b).) If the Town vacates a right-of-way in which it owns only an easement, rather than title to the underlying property, title to the property previously subjected to the easement reverts to the owner of the underlying fee. (Cal. Sts. & Hy Code § 8351.)

Property History

Beginning in 2011 the property owners ("Applicants") of 39 Madera Avenue sought to correct an eccentric lot line, which passed through their living room and front stairway, putting their home in the public right-of-way (See Attachment 1 Photo). The legal description of the portion of that right-of-way currently being considered for abandonment is attached as Attachment 2 ("Street Segment").

The Applicants, have requested the Town abandon the Street Segment, which is part of the public right-of-way (See Attachment 3). The Street Segment is approximately 72' long and ranges in width from about 4' to 15.5' for a total area of 615 square feet. As stated above the home and the front staircase sit over the south property line so the abandonment would put the Applicants home within their property line and accommodate additional parking. The additional parking would also allow the Applicants to convert their garage to living space.

The portion of the Street Segment fronts 39 Madera Avenue (APN 006-116-23) and is to the rear of a parcel on 41 and 47 Crooked Avenue (APN 006-116-20). The Street Segment is out of the path of travel for vehicles and is used as a parking space in front of the Applicants' home. In addition, if the Street Segment is abandoned, the public right-of-way would still meet the minimum standard of 20' wide; however it would be physically approximately 27.5' wide because the lower portion of the parcel at 41 and 47 Crooked Avenue is currently part of the public right-of-way.

³ *People ex rel. Webb v. San Rafael* (1928) 95 Cal. App. 733, 738-739 (finding that a city can abandon a street in the interest of the safety, convenience and good of the general public, even if a private property owner may benefit from the abandonment).

Utilities have not been identified but all utilities will be notified if the Town proceeds with the Resolution of Intent to Abandon and any utility easements will be maintained.

DISCUSSION:

The Applicants have worked with Town staff and provided all necessary documentation, including the legal description of the Street Segment and the site plan attached as Attachment 4.

The Street Segment appears to be unnecessary for present or prospective public use as a path of travel, but is and can be used as a parking area. If this portion of the street is abandoned any future use as a public parking space would be lost.

The Applicants have suggested that abandoning this Street Segment is in the public interest for the following reasons:

1. The roadway widens significantly at this location in front of their house, such that the proposed abandonment would still provide a remaining roadway wide enough for a fire truck to pass through. The remaining roadway (after the proposed vacation) would be as wide or wider than the roadway that both enters and exits from this area. The public use would not be affected or negatively impacted in any way.
2. This is non-buildable land so could not be used by the Town for any building purposes.
3. The Street Segment is already defined as a non-maintained road by the Town.
4. The Town owns a portion of the inside of the Applicants' living room. In the event of fire, earthquake, or other damage, the insurance entanglements of rebuilding, compensation, and payment would take up substantial time from Town staff and legal advisors and exact a financial cost from the Town.

The liability issue is more than theoretical. Several people have fallen on the Applicants' front steps. Last year, the Applicants' friend slipped during rainy weather and fell, striking her head. She was seen in the emergency department at Marin General and a CT scan was ordered. She will release these medical records if required.

In short, the Applicants assert that because the steps and living room are located on Town-owned land and the construction of the home in this location was approved by the Town, the Town could bear legal liability for occurrences in these areas.

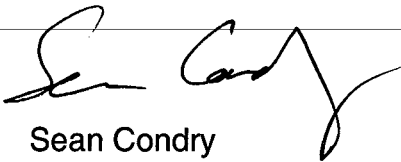
5. This abandonment would not change the basic footprint of the house and would simply provide an additional parking space.

The Applicants further state that the burden of defining the benefit to the Town of abandoning a right-of-way does not appear tightly defined and leaves room for application in the face of unique circumstances such as theirs. The Applicants also note that their immediate neighbors (Peter & Linda Hoch; Tom & Roberta Robinson) are in support of this abandonment and have offered to write letters to this effect. There is no negative impact on any neighbor and no change in the present reality of traffic or parking in this area.

Conclusion

Staff respectfully requests that the Town Council consider adopting the proposed Resolution of Intent to Abandon the Street Segment and set a public hearing for October 23, 2012 as outlined in the resolution.

Respectfully submitted,



Sean Condry
Public Works Director

Megan Acevedo
Deputy Town Attorney

- Attachment 1 – Site Photo
- Attachment 2 – Legal Description
- Attachment 3 - Application Letter for Street Abandonment
- Attachment 4 – Site Plan
- Attachment 5 - Resolution



Google earth



EXHIBIT "A"

DESCRIPTION

All that certain real property in the City of San Anselmo, County of Marin, State of California, described as follows:

A portion of Madera Avenue, as shown on that certain map entitled, "Amended Map of Sequoia Park," filed for record June 22, 1912, in Volume 4 of Maps, at Page 21, Marin County Records;

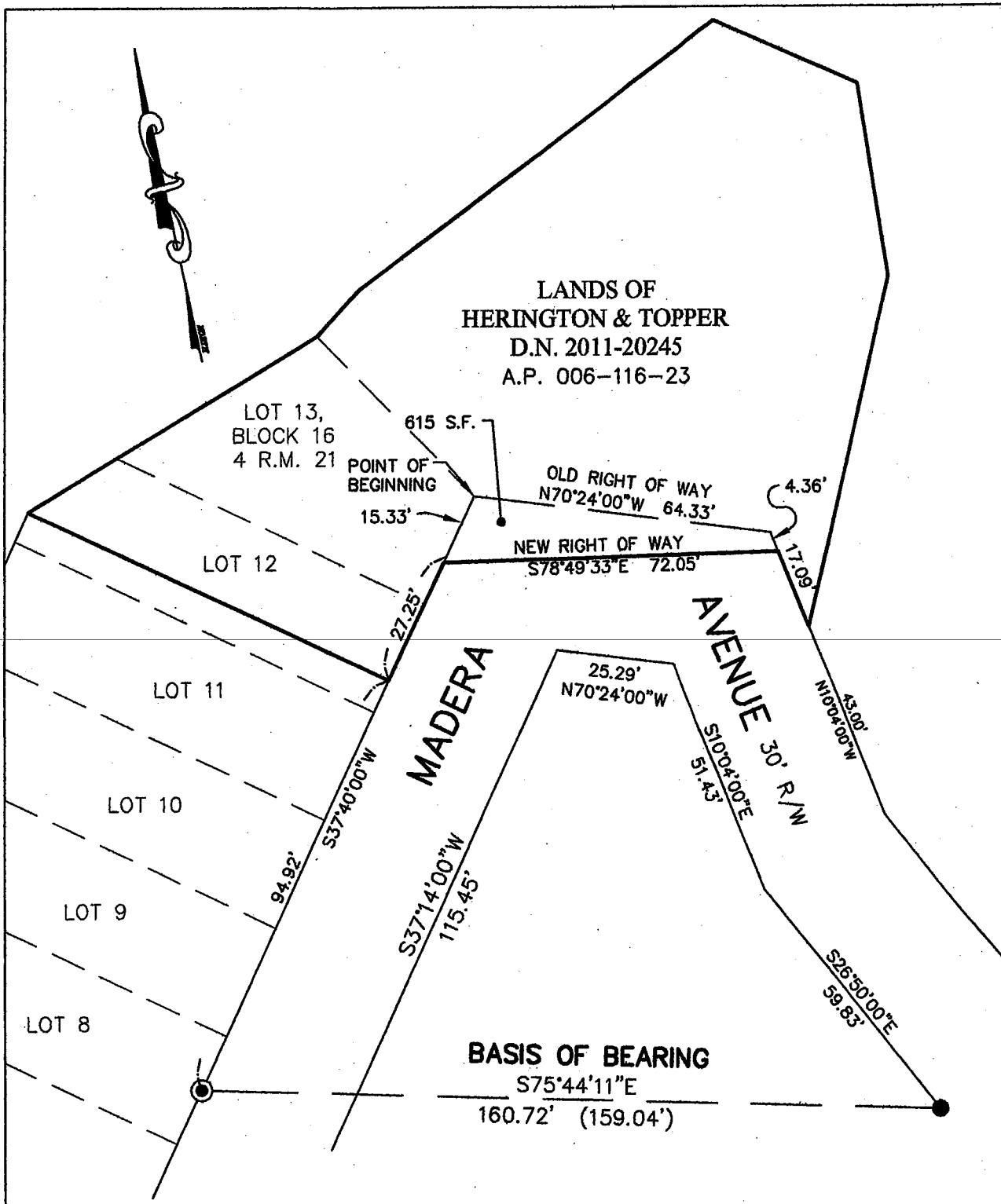
Beginning at an angle point in the northwesterly line of Madera Avenue, as shown upon said map, said angle point being the easterly corner of Lot 13, Block 16, as shown on said map, said point also being the intersection of the two courses North 70°24'00" West and South 37°40'00" West;

1. Thence along the northwesterly line of Madera Avenue South 37°40'00" West 15.33 feet;
2. Thence leaving said line South 79°00'46" East 72.05 feet to a point on the northeasterly line of Madera Avenue;
3. Thence along said line North 10°04'00" West 4.36 feet;
4. Thence North 70°24'00" West 64.33 feet to the Point of Beginning.

This description was prepared by:

Lawrence P. Doyle
P.L.S. 4694
Exp. 9/30/13

LANDS OF
HERINGTON & TOPPER
D.N. 2011-20245
A.P. 006-116-23



LEGEND

- ⊙ FOUND CONCRETE MONUMENT
- FOUND 3/4" PIPE



EXHIBIT 'B' MADERA AVENUE SAN ANSELMO MARIN COUNTY CALIFORNIA		
SCALE: 1" = 30'	DATE: 09/13/12	DRAWN BY:
LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER 100 HELENS LANE MILL VALLEY CA 94941 (415-388-9585)		SHEET 2 OF 2 DRAWING NO. 227-11

30 July 2012

Dear Sean:

I am writing to request that the town abandon a portion of the right of way totaling approximately 600 square feet, extending approximately 10 feet out from the front part of our home at 39 Madera Avenue . Here are the circumstances that, I believe, warrant this action:

Brief History and Context

In early 2011, we sought to correct an eccentric lot line that defined the town as owning a portion of our inside living room and the entire stairway leading to the front door entry, thereby removing the town from any potential liability or insurance entanglement involving our home.

We had a number of meetings with the town Public Works and Planning Departments to review options about land transfer in order to correct the aberrant lot line. The Ross Valley Fire Department had also reviewed the project, including the proposed land transfer, and had no problem with this action since the remaining roadway would still be of sufficient size to accommodate their vehicles.

After exploring a number of options, it became clear that the best way to move forward with this redress would be for the town to abandon a segment of non-buildable right-of-way in front of our house.

Points to Consider

My understanding of the Town Deputy Attorney's conclusion is that the town council may vote to abandon or vacate the above portion of the easement or right of way if

- 1) it is "unnecessary for present or prospective public use" and
- 2) that "a vacation is in the public interest."

I believe that both these conditions are met.

Regarding the first point:

1. The roadway widens significantly at this location in front of our house, such that the proposed abandonment would still provide remaining roadway wide enough for even a fire truck to pass through. The remaining roadway (after the vacation) would be as wide or wider

than the roadway that both enters and exits from this area. The public use would not be affected or negatively impacted in any way.

2. This is non-buildable land so could not be used by the town for any building purposes.

3. The roadway in question is already defined as a non-maintained road by the town.

Regarding the second point:

4. The town owns a portion of the inside of our living room. In the event of fire, earthquake, or other damage, the insurance entanglements alone of rebuilding, compensation, and payment would take up substantial time from town officers and legal advisors and exact a financial cost from the town budget.

5. The liability issue is more than theoretical. Several people have fallen on our front steps. Last year, a friend slipped during rainy weather and fell, striking her head. She was seen in the emergency department at Marin General and a CT scan was ordered. She will release these medical records if required.

In short, the steps (and living room) are located on town-owned land and the construction was approved by the town, so the town would surely bear legal liability for occurrences in these areas.

Further points to consider:

6. This action would not change the basic footprint of the house and would simply provide an additional parking space.

7. The burden of defining the benefit to the town of abandoning a right of way does not appear tightly defined and leaves room for application in the face of unique circumstances such as ours.

8. Our immediate neighbors (Peter & Linda Hoch; Tom & Roberta Robinson) are in support of this project and have offered to write letters to this effect. There is no negative impact on any neighbor and no change in the present reality of traffic or parking in this area.

Summary

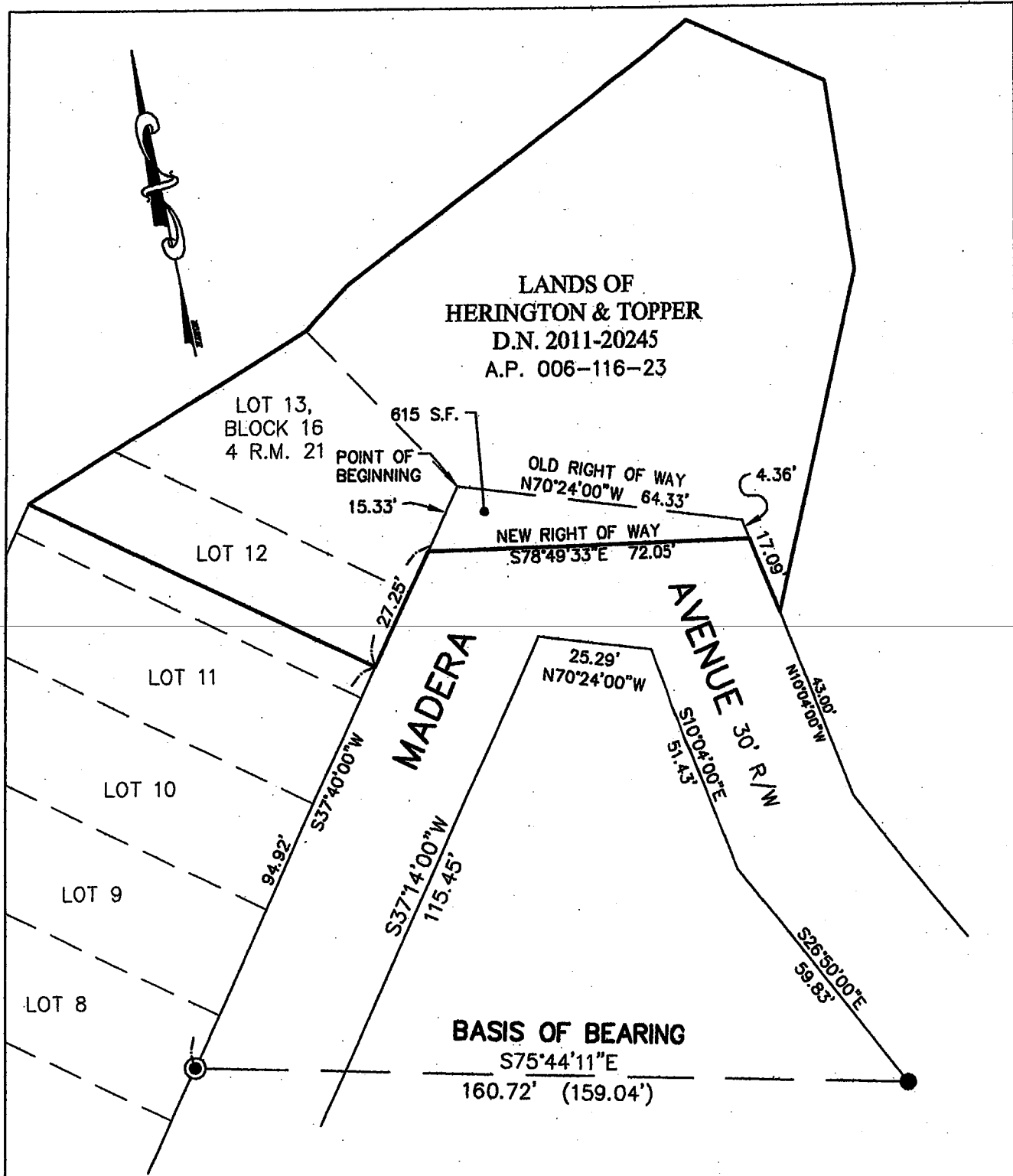
The main issue has to do with abandonment of a non-buildable portion of town-owned right-of-way in order to 1) correct an eccentric lot line and reduce town liability and also 2) provide space for an additional parking space on our property.

For these reasons I am requesting vacation of the land in front of our home as outlined on the architectural drawings in your possession and ask your support and guidance in this process.

Thank you.

Tom Herington
39 Madera Ave
San Anselmo, CA 94960
415-531-9988

LANDS OF
HERINGTON & TOPPER
D.N. 2011-20245
A.P. 006-116-23

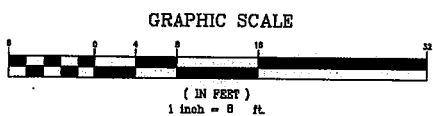
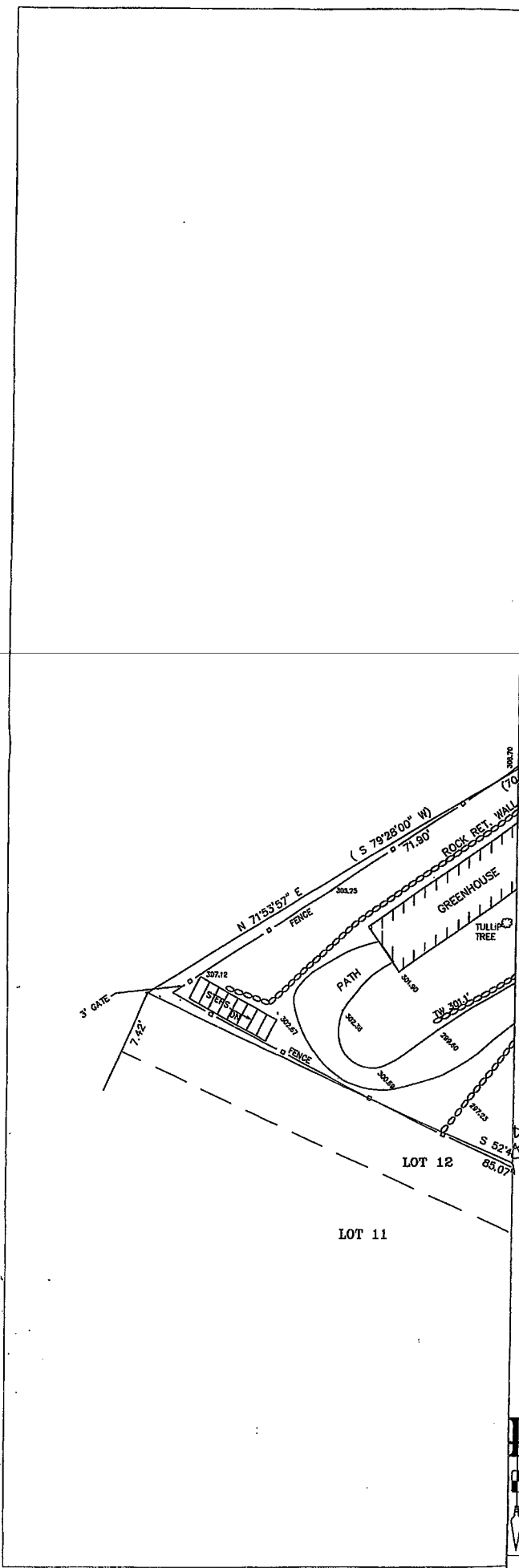


LEGEND

- ⊙ FOUND CONCRETE MONUMENT
- FOUND 3/4" PIPE



EXHIBIT 'B' MADERA AVENUE SAN ANSELMO MARIN COUNTY CALIFORNIA		
SCALE: 1" = 30'	LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER 100 HELENS LANE MILL VALLEY CA 94941 (415-388-9585)	DRAWN BY:
DATE: 09/13/12		SHEET 2 OF 2
		DRAWING NO. 227-11



- LEGEND**
- TREE (AS INDICATED)
 - TOP OF WALL ELEVATION
 - CONCRETE
 - GRADE BREAK
 - FENCE LINE
 - EDGE OF PAVEMENT
 - RECORD DATA
 - TOP OF CUT ELEVATION
 - WOOD DECK

RECEIVED
JUL 31 2012

TOWN OF SAN ANSELMO
PLANNING BLDG PUBLIC WORKS

- NOTES**
1. ONLY SIGNIFICANT TREES SHOWN
 2. LOT MAY BE SUBJECT TO EASEMENTS NOT SHOWN
 3. DATUM IS PER SAN RAFAEL QUADRANGLE MAP
 4. BASIS OF BEARING IS S 75°44'11" E BETWEEN FOUND CONCRETE MONUMENT WITH TAG R.E. 3230 AND FOUND 3/4" PIPE.
 5. DEED RECORDED AS D.N. 94-026011

ABANDONMENT
ARY TOPFER
ANSELMO, CA

© 1996 THIS DRAWING IS THE PROPERTY OF LAWRENCE P. DOYLE LAND SURVEYOR CIVIL ENGINEER AND MAY NOT BE DUPLICATED OR USED WITHOUT PERMISSION	TOPOGRAPHIC SURVEY 39 MADERA AVE. A.P.N. 6-116-23		SAN ANSELMO MRIN COUNTY CALIFORNIA
	SCALE: 1"=8' DATE: 2/27/96	LAWRENCE P. DOYLE LAND SURVEYOR/CIVIL ENGINEER P.O. BOX 1609 MILL VALLEY, CA 94942 (415) 388-9585	
			DRAWN BY: AJC SHEET 1 OF 1
			DRAWING NO. 227-96

ATTACHMENT #4

RESOLUTION NO. ____

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
DECLARING ITS INTENT TO ABANDON A PORTION OF A RIGHT-OF-WAY
ADJACENT TO 39 MADERA AVENUE**

WHEREAS, the portion of the public right-of-way adjacent to 39 Madera Avenue in the Town of San Anselmo and described in Exhibit 1 is part of a public street (“Subject Right-of-Way”)

WHEREAS, the Town Council of the Town of San Anselmo finds that the portion of the Subject Right-of-Way is not presently needed for any public use and no public use will be required in the future;

WHEREAS, the Town desires to abandon the portion of the Subject Right-of-Way pursuant to Streets and Highways Code section 8300, *et seq.*;

NOW, THEREFORE, BE IT RESOLVED that

1. Pursuant to the provisions of Section 8300 *et seq.* of the California Streets and Highways Code, the Town Council declares its intention to abandon and vacate the portion of the Subject Right-of-Way described in Exhibit 1.
2. Reference is made to the attached site map at Exhibit 2, which delineates the area to be vacated.
3. The Town will reserve easements for existing utilities satisfactory to the owners thereof.
4. A public hearing for all persons interested in the proposed vacation will take place at the Town Council meeting on Tuesday, October 23, 2012, at 7:00 p.m. in the Town Council Chambers located at 525 San Anselmo Avenue, San Anselmo.
5. Notice of the hearing on the proposed vacation will be published in the manner prescribed by law (Cal. Sts. & Hy. Code § 8322); and
6. Notice of the proposed vacation stating the time and place set for the public hearing, will be posted in the manner prescribed by law (Cal. Sts. & Hy. Code § 8323).

The foregoing Resolution was adopted at the regular meeting of the San Anselmo Town Council held on September 25, 2012, by the following vote:

AYES:
NOES:
ABSENT:

Tom McInerney, Mayor

Attest:

Town Clerk