

MINUTES OF THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



9.17

During the oral communication section of the agenda for Tuesday, May 25, 2010, Robert Mabee read his statement into the record.

**ATTACHMENTS FILED WITH
CLERK OF THE BOARD**

**AGENDA NO.
9.17**

MAY-25-2010*

I HAVE 4 DOCUMENTS FOR THE BOARD TODAY - DOCUMENT NO 1 - A 2 PAGE LETTER FROM DIRECTOR OF TRANSPORTATION JUAN PEREZ - WHO STATES BY HIS DEFINITION SECTION 941 OF THE STREETS AND HIGHWAY CODE A COUNTY HIGHWAY IS ONE THAT HAS BEEN ACCEPTED INTO THE MAINTAINED SYSTEM AND THAT IF THE PUBLIC ROAD IS NOT MAINTAINED HE HAS NO AUTHORITY TO REMOVE THE ENCROACHMENTS BLOCKING THE PUBLIC ROAD AND THAT COUNTY ORDINANCE 499 OUR ENCROACHMENT PERMIT ORDINANCE ONLY APPLIES TO ONLY COUNTY MAINTAINED ROADS - DOCUMENT 2 COUNTY ORDINANCE - 499 PAGE ONE STATES CLEARLY NO PERSON - DISTRICT OR PUBLIC AGENCY CAN WORK IN A PUBLIC ROAD WITHOUT A PERMIT - NO EXCEPTIONS. NOW MR PEREZ IS EITHER IGNORANT OF OUR ORDINANCE 499 OR HE IS A LIAR COVERING UP FOR FLOOD CONTROL OR SUPERVISOR STONE. DOCUMENT NO 3 - CERTIFICATE OF ACCEPTANCE - PRINTED ON THE FACE OF THE EASEMENT IT BECAME A PUBLIC ROAD REGARDLESS OF WHETHER IT WAS ACCEPTED INTO THE COUNTY MAINTAINED SYSTEM OF ROADS - SURCLY COUNTY COUNSEL HAS ADVISED PEREZ THAT THE TERM COUNTY HIGHWAY IS GENERIC FOR PUBLIC ROAD OR PUBLIC ST - ETC - DOCUMENT NO 4 - A BRIEF FILED WITH THE 4TH DISTRICT COURT OF APPEALS - OUT - 25-1991 BY COUNTY COUNSEL ATTORNEYS IN CASE 187104 - PAGE 3-2 EXPLAINS IN DETAIL WHY COUNTY HIGHWAY IS A GENERIC TERM FOR A PUBLIC RIGHT OF WAY PAGE - 5 - PARAGRAPH - 3 - IN THE BRIEF COUNTY ATTORNEYS TELLS THE APPEALS COURT THAT THEY HAVE CONSTRUCTED A NEW UNOBSTRUCTED 40' ROAD TO TAKE THE PLACE OF A PRIVATE EASEMENT - THE SAME PUBLIC ROAD THAT PEREZ NOW STATES IN HIS LETTER THAT THE COUNTY DID NOT HAVE FULL OWNERSHIP AT THE TIME OF RECORDING - IS DIRECTOR PEREZ INCOMPETENT OR A LIAR - HAS COUNTY COUNSEL GIVEN PEREZ BAD ADVICE - I BELIEVE THAT PEREZ IS MERELY INCOMPETENT - PAMALA WALLS HAS A DUTY TO MAINTAIN THE ETHICS OF THE STATE BAR AND EXPOSE THIS FRAUD - COUNTY COUNSEL HAS HELD PRIVATE PROPERTY HOSTAGE FOR YEARS AND HAS NEVER TAKEN RESPONSIBILITY FOR A MISTAKE IT TRIED TO COVER UP WITH DECEIT AND FRAUD. ALL THIS TO COVER UP FOR A LIAR LIKE SUPERVISOR STONE

ROBERT MABEE
3086 MIBUEL ST
RIVERSIDE - 92506
951-788-4858



COUNTY OF RIVERSIDE

TRANSPORTATION AND LAND MANAGEMENT AGENCY

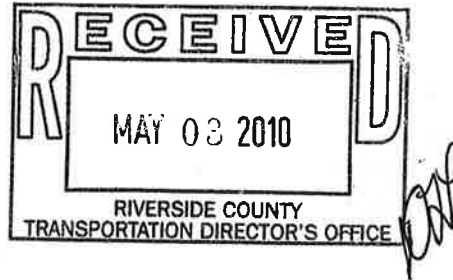


Juan C. Perez, P.E., T.E.
Director of Transportation

Transportation Department

April 29, 2010

Mr. Robert Mabee
3086 Miguel St.
Riverside, CA 92506



Dear Mr. Mabee,

We met on December 14, 2009 and February 3, 2010 to discuss your various concerns regarding Bautista Canyon Channel and Flood Control's involvement with the channel and levee and the public road right-of-way adjacent to it. As county maintained roads fall under the authority of the Transportation Department, I am limiting this letter to the issues you raised that are related to the road right-of-way, which is actually an easement for public use. I have reviewed copies of numerous letters and documents that you brought to our meeting. I have also reviewed a letter dated April 8, 2010 from Lake Hemet Municipal Water District (LHMWD), at your request, and a letter dated March 17, 2010 from Mr. Livingston of the County's Risk Management Division.

Firstly, you indicated that you want the Transportation Department to enforce the removal of all encroachments within the road right-of-way along the section from Fairview Avenue to the southerly limit of the easement under the authority of Section 1480.5 of the Streets and Highways code which states "*The road commissioner may immediately remove, or by notice may require the removal of, any of the following encroachments: (a) An encroachment which obstructs or prevents the use of a county highway by the public.*" By definition under Section 941 of the Streets and Highways code, of which a copy was provided to you at the meeting, a *county highway* is one that has been accepted into the county maintained road system. Since the road in question has not been accepted into the county maintained road system, and is therefore not a county highway, the Transportation Department has no authority to enforce the removal of encroachments within the right-of-way. This has been explained in more detail in the letter from Mr. Livingston. I should also note that Ordinance 499, our Encroachment Permit Ordinance, also only applies to county highways.

Secondly, you indicated that the 40' wide road easement that Flood Control granted to the County by instrument number 127298, recorded May 12, 1988, is inferior to the prior 15' wide private easements as it does not provide adequate access to the properties. The 40' easement is essentially adjacent to the 15' private easements and follows essentially the same alignment providing access to the properties.

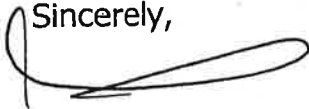
Mr. Robert Mabee
April 29, 2010
Page 2 of 2

Although as stated above the easement is not a county highway subject to the Department's jurisdiction, as a courtesy I conducted a field review of the easement on March 8, 2010. The dirt easement is quite drivable for a good distance southeast of Fairview. Although there is a LHMWD facility that creates a narrowing of the usable area for a few feet, there is sufficient room for a vehicle to go around it. It appears that there is hardly any traffic to speak of using this easement; in the hour or so that I was there I witnessed one other vehicle using a portion of it. As was stated in the letter from LHMWD and in previous documents that you have provided, LHMWD's use and rights to their facilities go back over 100 years and predate the creation of easements for public access. The Transportation Department has not received any complaints from any of the adjacent property owners concerning access to their properties that I am aware of.

Lastly, you indicated that the intersection of the road easement and Fairview Avenue does not comply with the requirements of Riverside County Ordinance 460. Ordinance 460 governs the subdivision of land and does not apply in this situation since the road easement was not created through the subdivision process.

In summary, the road easement in question is not part of the county maintained road system and therefore, the Transportation Department does not have the authority to have obstructions removed or expend gas tax dollars on the operation or maintenance of the road. This concludes our review of this issue.

Sincerely,



Juan C. Perez
Director of Transportation

Cc: Tom Wagoner, LHMWD
Steve Thomas, Riverside County Flood Control District
Ken Teich, County Surveyor
Kent Livingston, Risk Management

AN ORDINANCE OF THE COUNTY OF RIVERSIDE,
AMENDING ORDINANCE NO. 499 RELATING TO
ENCROACHMENTS IN COUNTY HIGHWAYS.

The Board of Supervisors of the County of Riverside, State of California, do ordain as follows:

Section 1. GENERAL. Subject to the control of the Board of Supervisors, there is hereby delegated to the County Road Commissioner the administration of the use of County highways for excavations and encroachments, the maintenance, planting and removal of trees, and the issuance, modification and revocation of permits for such uses.

Section 2. ENCROACHMENTS AND EXCAVATIONS. No person, including firm, corporation, public district, public agency or political subdivision, shall make any excavation in, or construct, install or maintain any improvement, structure or encroachment in, on, over or under, any County highway or the right of way thereof without first obtaining from the County Road Commissioner a permit therefor, or maintain the same without such permit or in violation of the terms or conditions thereof. Such a permit shall be issued by the County Road Commissioner only upon written application therefor, and payment of the required fee or fees. Such permit shall be issued only if the applicant is a public utility holding a current franchise from the County of Riverside, or a public district or public utility or public service agency having lawful authority to use the right of way or highway for the purpose specified, or the owner of an easement for such purpose within the highway right of way, or if the Road Commissioner is satisfied that the use proposed is in the public interest and that there will be no substantial injury to the highway or impairment of its use as the result thereof, and that the use is reasonably necessary for the performance of the functions of the applicant. Every such permit shall be revocable and the uses and installations thereunder shall be subordinate to any prior right of the County to use the right of way for public road purposes. Every such permit shall be conditional upon the right of the County to require the permittee to relocate or remove the structure or encroachment at the permittee's expense for the benefit of the County or to relocate the structure or encroachment at the permittee's expense, where in the opinion of the County Road Commissioner such action is reasonable necessary to avoid a crossing conflict, for the benefit of any public district, public agency or political subdivision, or of any other person or agency having a right to use the County highway for the purpose proposed; but the acceptance of a permit shall not be deemed a waiver by the permittee of any contractual or statutory right against any party for reimbursement of the expense of such removal or relocation. Every such permit shall be subject to such conditions as the County Road Commissioner determines are necessary to assure the safety of the traveling public and the restoration of the surface of the highway and the foundations thereof, and of the portions outside the traveled roadway. The County Road Commissioner may require such surety bond or deposit of money as in his judgement may be necessary to secure performance of the conditions of the permit and the replacement or restoration of the surface and the subsurface of the highway and the right of way, and any survey

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS CERTIFIED TO BE A FULL TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE AND OF
RECORD IN MY OFFICE.

Dated: 9-9-90

GERALD A. MALONEY
Clerk of the Board of Supervisors
County of Riverside, California
By: *[Signature]*

By the Certificate of Acceptance printed on the face of the Easement grant and signed by the Riverside County Road Commissioner, the easement was accepted for the purpose of vesting title in the County of Riverside on behalf of the public for public road and utility purposes. At that point, it became a public road regardless of whether it was accepted into the county-maintained system of roads.

"A dedication may be defined as devotion of land to public use (e.g. public streets . . .) by an unequivocal act of the fee owner

The "Certificate of Acceptance" on the Easement instrument reads as follows:

**"CERTIFICATE OF ACCEPTANCE
(Government Code Section 27281)**

THIS IS TO CERTIFY that the interest in real property conveyed to the County of Riverside, State of California, by the within instrument, is hereby accepted for the purpose of vesting title in the County of Riverside by the undersigned on behalf of the Board of Supervisors pursuant to the authority conveyed by Resolution No. 86-194 of the Board of Supervisors adopted May 13, 1986 and the grantee consents to the recordation thereof by its duly authorized officer.

This certificate of acceptance does not constitute acceptance of any road into the county maintained system pursuant to Section 941 of the Street & Highways Code."

manifesting an intent that the land shall be accepted and used for the public purpose. [Citation.]" (1 Ogden's Revised California Real Property Law (1974) § 4.10, p. 125.)

"When streets have been offered for dedication and there has been an acceptance of the offer[,] they are public streets subject to public control as to their opening, continued use or closure . . . Brick v. Cazaux, 9 Cal.2d 549 (1937)." (47 Ops.Cal.Atty Gen. 191, 194 (1966).)

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

ROBERT D. MABEE and
MARTHA A. MABEE,

Plaintiffs and Appellants,

vs.

COUNTY OF RIVERSIDE AND RIVERSIDE
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT,

Defendant and Respondent.

Appeal from the Riverside County Superior Court
Honorable Ronald T. Deissler, Judge

INTRODUCTION

Plaintiffs Robert D. Mabee and Martha A. Mabee allege to be at all relevant times owners of a certain easement for ingress and egress. The easement was created pursuant to deed and expressly made subordinate to the rights of the grantor defendant Riverside County Flood Control and Water Conservation District (the

COUNTY OF RIVERSIDE AND
RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
RESPONDENTS BRIEF
OCT-25-1991

CASE No 187104

"District"), to "construct, maintain and operate Bautista Creek Channel." The deed further expressly provides that when a "public highway or street" is extended to the property, the easement "shall cease and determine."

In 1986, pursuant to its right and obligation to maintain and operate Bautista Creek Channel (the "Channel"), the District developed a plan to secure the Channel against mounting incidences of unauthorized trespass and vandalism. The plan focused on the construction of a new road that would provide plaintiffs with an alternate, unobstructed access to their land and allow the Channel to be fenced off. Construction of the new road necessitated the use of machinery, the grading of soil, the installation of culverts and the erection of a fence. The District completed the new road and in May 1988, dedicated it to defendant County of Riverside (the "County") for "public road" purposes.

Plaintiffs brought the instant action for inverse condemnation, alleging that by such construction, defendants "substantially destroyed" their easement, "making portions of it unpassable" and preventing access. Following a full trial on the merits, the trial court entered judgment in favor of defendants. The court denied plaintiffs' motion for new trial. For the following reasons, the judgment and ruling must be affirmed.

1. The trial court found that plaintiffs' easement was extinguished in May 1988 when the District dedeed the new road it had constructed to the County of Riverside for "public road" purposes. Plaintiffs refer to the basis of this finding as the "public highway or road" defense. The thrust of plaintiffs' appeal is that this defense constitutes "new matter" that was not raised by defendants in the pleadings and that the trial court erred by allowing defendants to rely upon this defense. There

contentions are patently without merit. In order to state a cause of action for inverse condemnation, plaintiffs must plead and prove ownership of an allegedly infringed property right. Because ownership is an essential element of plaintiffs' cause of action, the absence of this element is not "new matter" and need not be pleaded specifically as an affirmative defense. Moreover, even if lack of ownership were "new matter," it would be adequately raised by pleading the affirmative defense of failure to state a cause of action. Because defendants specifically denied plaintiffs' alleged ownership of the easement at all times alleged and pled the affirmative defense of failure to state a cause of action, the trial court did not err in allowing defendants to rely on the "public highway or road" defense.

2. The trial court's interpretation of the new road constructed by the District and dedicated to the County for "public road" purposes as a "public highway or street" that extinguished plaintiffs' easement pursuant to the express terms of the easement deed was entirely reasonable and proper. It was reasonable for the court to give the words "highway" and "street" their ordinary meaning--that of a public thoroughfare. It was also reasonable for the court to find that acceptance by the County pursuant to Government Code section 27281 of the dedication of the new road for "public road" purposes was sufficient to create a "public" road as contemplated by the easement deed.

3. Plaintiffs' easement rights were expressly subordinate to the District's right to maintain and operate the Channel. Pursuant to this right, the District constructed a new road that would enable it to secure the Channel. Any alleged interference with plaintiffs' easement was reasonable, unsubstantial and necessitated by the actual construction of the new road. Moreover, plaintiffs were able to access

their property throughout the construction process. Thus, the trial court correctly found that plaintiffs' easement was not substantially impaired prior to its extinguishment in May 1988.

4. The trial court properly denied plaintiffs' motion for new trial on the grounds of newly discovered evidence because (a) plaintiffs' notice of intention to move for new trial was untimely, (b) plaintiffs failed to timely file a memorandum of points and authorities and supporting affidavits, and (c) plaintiffs wholly failed to show that the purported "newly discovered" evidence could not have been, with reasonable diligence, discovered and produced at trial and that such "evidence" was in any way material or likely to alter the result.

For these reasons, which we now discuss in detail, the judgment in favor of defendants and the trial court's order denying plaintiffs' motion for new trial should be affirmed.

STATEMENT OF FACTS

Plaintiffs allege, as a result of acquiring certain real property, to be successors in interest to an access easement, originally granted by the Riverside County Flood Control and Water Conservation District (the "District") to Raymond Deichsel, Jr. and Lola H. Deichsel (the "Deichsel Easement") pursuant to deed dated August 9, 1965 (the "Deed"). (CT 6-7; RT 4-7.)

The Deed expressly provides, in pertinent part:

"This easement is subordinate to the rights of the District to construct, maintain and operate Bautista Creek Channel. If at any time a public

highway or street shall be extended to the described lands in Section 22 lying easterly of Bautista Creek Channel, this easement shall cease and determine." (CT 7.)

The Deichsel Easement came into being because the District, in order to construct the Bautista Creek Channel, acquired a right-of-way which affected adjoining parcels. (RT 105.) The Deichsel property was one such affected parcel. (Ibid.) Rather than pay severance damages, the District agreed to grant the Deischels a private, non-exclusive access easement along 15 feet immediately adjacent to the Channel up to Deischels' property line. (Ibid.) The access easement went partially over a paved maintenance road. (Ibid.) It is this easement to which plaintiffs claim to be successors in interest. (RT 4-7.)

It was the District's responsibility to operate and maintain Bautista Creek Channel. (RT 102.) In 1985 and 1986, problems the District had been experiencing with vandalism and trespassing in the Channel began to multiply. (RT 106.) In response to these problems, the District developed a plan to provide to the Deischels and/or their successors in interest alternative, unobstructed access away from the maintenance road so that the Channel could be fenced out to secure it from unauthorized access and trespass. (RT 107.) The plan was to construct a new road 21 feet from the edge of the Channel. A fence would then be placed between the new road and the maintenance road to secure the Channel from unauthorized access. (RT

108.)

Pursuant to its plan, the District began construction of the new road in 1986. (RT 70.) As part of the construction process, the District put culverts^{1/} under the new road so that fill would not block the drainage. (RT 109.) Construction equipment was used to place fill to build the grades over the dikes in the culverts. (RT 73.) The culverts faced toward the Channel and directed flow into it. (RT 71, 96.) The culverts were covered with soil and did not extend onto the paved maintenance road. (RT 72, 111, 200.)

The District built a ramp outside the existing easement to enable the Deischel successors to easily traverse onto their property. (RT 114.) A grade change was made at the south end. All the work the district did on the south end was on the District's right-of-way. (RT 116.) No part of it was on the original Deischel easement (ibid.) A barbed wire fence was placed 21 feet out from the edge of the Channel. (RT 109-110.) The District left openings approximately 20-25 feet wide in the fence where property owners were located so they could drive through. (RT 78, 120, 198, 207.)

Between September 1987 and the end of 1988, the District did additional construction on the new road. (RT 84.) During the first phase, the District took out the culverts and the fill material that had been placed. (RT 84-85.) During the second phase, the District cut back part of the dikes, constructed concrete aprons, removed the barbed wire fence and put in a chain link fence. (RT 85.) The new road extends from Fairview avenue to plaintiffs' property. (RT 56-60.)

In May 1988, the District dedicated the new road to the County of Riverside for "public road" purposes. (RT 69, 95, 234; CT 116-117). From the beginning of

1/ A "culvert" is a big round pipe for drainage. (RT 22.)

construction in 1986 to May 1988, the 15 foot paved maintenance road was open at all times from Fairview Avenue to the point where the Deischel easement turned away from the paved maintenance road to go into the Deischel property. (RT 113, 117, 121.)

STATEMENT OF THE CASE

On July 11, 1988, plaintiffs filed the operative First Amended Complaint, Riverside Superior Court Case No. 187104, for inverse condemnation. (CT 1-13) Defendants County of Riverside and Riverside County Flood Control and Water Conservation District filed their answers, respectively, on July 27, 1988 and October 9, 1990. (See Plaintiffs' Application to Augment Record on Appeal, dated July 5, 1991, certified copies of defendants' answers attached thereto, and Order dated July 26, 1991, granting application.)

The liability phase of the case was bifurcated from the damages phase and came on regularly for trial before the Honorable Ronald T. Deissler on October 11, 1990. Following a full trial on the merits, on October 15, 1990, the trial court made the following findings:

1. Plaintiffs had a nonexclusive easement, as successors in interest by virtue of their acquisition of the land the easement runs through;
2. Plaintiffs' easement was extinguished by deeding of the public right of way as evidenced by the deed to the County and by virtue of the terms of the Easement Deed;



I, Stephen M. Kelly, Clerk of the Court of
Appeal, Fourth Appellate District, State of California
do hereby Certify that the preceding and annexed is

a true and correct copy of Respondents Brief
as shown by the records of my office.

WITNESS my hand and the seal of the Court this

20th day of September A.D. 1976.

STEPHEN M. KELLY, CLERK

By Helmut J. Brodberg
Deputy Clerk

**Riverside County Board of Supervisors
Request to Speak**

Submit request to Clerk of Board (right of podium),
Speakers are entitled to three (3) minutes, subject
Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Robert Mabele

Address: 3086 Mibuel St
(only if follow-up mail response requested)

City: Riverside **Zip:** 92506

Phone #: 788-4858

Date: 5-25-10 **Agenda #** Oval Comm.

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:
 Support Oppose Neutral
ORAL COMMUNICATIONS

Note: If you are here for an agenda item that is filed
for "Appeal", please state separately your position on
the appeal below:

Support Oppose Neutral

I give my 3 minutes to: _____