

JUN 2, 1982

What would be pursued in the quiet title action would be a request for a court determination that the alley, where it was actually constructed, was in fact the true alley. The City will be claiming an prescriptive easement for the public over the alley that was actually constructed. This is pursuant to Civil Code Section 1009(3) (d) which reads to wit:

"Where a governmental entity is using private lands by an expenditure of public funds on visible improvements on or across such lands or on the cleaning or maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvement, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use."

Again, it is to be noted that the survey of 1939 shows that the alley was constructed 10 feet north in its present location, so obviously, the five-year period has long passed.

A copy of a map showing the Hutchins Street Alley as it was originally deeded to the City and as it was actually constructed was presented for Council's perusal. It was noted that the Hutchins Street Alley as deeded to the City, lies south of where the alley was actually constructed. It is to be noted that the City obtained a grant deed from the Hutchins family on October 16, 1908 for the alley, and a survey dated October 1939 shows that the alley was not constructed within the right-of-way, but approximately 10 feet north of the originally deeded alley.

Also addressing Council on the matter were:

- a) Mr. Don Campbell, 412 West Walnut Street, Lodi
- b) Mr. Justis Brand, 408 West Walnut Street, Lodi
- c) Mr. Maurice Ray, Jr. 801 South Fairmont Avenue, Lodi

A lengthy discussion followed with questions being directed to Staff and to those persons who had given testimony.

On motion of Councilman Pinkerton, Murphy second, Council deferred action on this matter to the regular Council meeting of June 16, 1982, and added to the agenda for the Special Meeting of Monday, June 7, 1982 at 7:30 a.m., an on-site inspection of the Hutchins Street alley site.



# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## COUNCIL COMMUNICATION

**TO:** City Council  
**FROM:** City Manager  
**DATE:** May 28, 1982  
**SUBJECT:** Hutchins Street Alley Review - Background Data

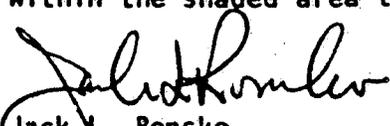
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In addition to the attached information given to the City Council earlier by the City Attorney, the following information is also pertinent to this agenda item.

Exhibit A shows the property ownership in the area. The parcel in red is the portion actually deeded to the City for alley purposes by the Hutchins in the early 1900's. The heavy black line generally shows the 20-foot occupied alley. The existing curb returns at the alley are also shown. The map was prepared from field information by Baumbach & Piazza, Civil Engineers.

Exhibit B is a copy of a map submitted to Mr. Campbell showing our latest attempt to resolve the alley location with Mr. Campbell. Based on the Council's previous action, it is felt that this proposal provides advantages to both Campbell and Ray properties and is the best solution. The limits of the new 25' alley under this proposal are painted in the field.

Exhibit C is a map prepared by this office showing the conditions under which Mr. Campbell would be willing to sign a deed for any property within the shaded area to which he holds title.

  
Jack L. Ronsko  
Public Works Director

Attachments

JLR:GER:dms

cc: City Attorney

APPROVED:

HENRY A. GLAVES, City Manager

FILE NO.

MEMORANDUM

To: Honorable Mayor and Council Members  
From: City Attorney  
Re: Hutchins Street Alley Quiet Title Action  
Date: May 5, 1982

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Attached hereto for your consideration is a copy of a map showing the Hutchins Street Alley as it was originally deeded to the City and as it was actually constructed. You will note that the Hutchins Street Alley as deeded to the City, lies south of where the alley was actually constructed. It is to be noted that the City obtained a grant deed from the Hutchins family on October 16, 1908 for the alley, and a survey dated October 1939 shows that the alley was not constructed within the right-of-way, but approximately 10 feet north of the originally-deeded alley.

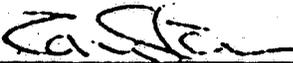
In approximately September 1978, Maurice Ray purchased the lot on the south side of the alley from the Lodi Unified School District and in January 1979, the City Council filed notice of intent to abandon the alley at Mr. Ray's behest. Mr. Ray intended to build an office building on his parcel. In February of 1979, the abandonment was denied by the Council because of Mr. Campbell's objections. In March 1979, Mr. Ray offered to rent a portion of the alley and the Council authorized a quiet title suit to obtain the property on the north side of the alley. Said quiet title action was to be paid for by Mr. Ray. Attached hereto are copies of the Council Minutes of March 21, 1979. Since March of 1979, the City Public Works Department and the City Attorney's office have attempted to work out an agreement between the property owners on the north side of the alley for the deeding of the alley as it was constructed. Unfortunately, the City has reached somewhat of an impasse and at this time is interested in direction from the Council as to the pursuing of the quiet title action.

What would be pursued in the quiet title action would be a request for a court determination that the alley, where it

was actually constructed, was in fact the true alley. The City will be claiming an prescriptive easement for the public over the alley that was actually constructed. This is pursuant to Civil Code Section 1009(3)(d) which reads to wit:

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Again, it is to be noted that the survey of 1939 shows that the alley was constructed 10 feet north in its present location, so obviously, the five-year period has long passed. If you have any questions regarding this matter, please feel free to call upon me.

  
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RONALD M. STEIN  
CITY ATTORNEY

RMS:vc

attachments