



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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February 6, 2012
Agenda Item No. 7c (Action)

January 30, 2012

TO: Local Agency Formation Commission

FROM: Jacqueline Gong, Commission Counsel

SUBJECT: Termination of Agreement Involving Oat Hill Subdivision, Unit No. 2
The Commission will consider the termination of its agreement signed and recorded in 1984 involving the Oat Hill Subdivision, Unit No. 2. This agreement represents a covenant tied to approximately 10 acres of now incorporated territory located in the City of American Canyon committing the owner to support the formation of and/or annexation to a special district to provide street sweeping and/or street lighting services.

A. Background

On May 21, 1984, the Local Agency Formation Commission (LAFCO) of Napa County entered into and recorded an agreement with the owners of the Oat Hill Subdivision, Unit No. 2; a subdivision comprising approximately 10 acres of then unincorporated territory located northwest of the intersection of State Highway 29 and Rio Del Mar. The agreement – which represents a covenant running with the territory – commits the owner to support the formation of and/or annexation to a special district to provide street sweeping and/or street lighting services. The agreement was a condition of the County of Napa’s approval of the referenced subdivision given it was collectively assumed that the development of the affected territory, then unincorporated, might necessitate the future need for elevated street lighting and sweeping services.

B. Discussion/Analysis

The incorporation of the City of American Canyon in 1992 included the affected territory. All street lighting and sweeping services contemplated in the 1984 agreement to support the anticipated urban development of the affected territory are provided directly by American Canyon through franchise agreements.

As referenced in the preceding section, the agreement constitutes a covenant running with the affected territory and thereby binds successors in interest, including the present owner, Oat Hill II, LLC. Oat Hill II is requesting LAFCO set aside the covenant in order to proceed with selling the affected territory under clear title. American Canyon and the County of Napa were made aware of this request and did not express any concerns in LAFCO terminating the referenced agreement.

Lewis Chilton, Chair
Councilmember, Town of Yountville

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

Brad Wagenknecht, Vice Chair
County of Napa Supervisor, 1st District

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

C. Alternatives for Commission Action

The following alternative actions are available for the Commission:

Alternative One: Adopt the attached draft resolution determining the formation of and/or annexation of a district or service area is no longer necessitated and terminating the Oat Hill Agreement.

Alternative Two: Continue consideration to a future meeting and provide direction to staff with respect to additional information requests as needed.

Alternative Three: Take no action.

D. Recommendation

It is recommended the Commission take action outlined as Alternative One above.

E. Procedures for Consideration

This item has been agendaized as part of the action calendar. The following procedures are recommended with respect to the Commission's consideration of this item:

- 1) Receive verbal report from staff;
- 2) Invite public testimony (optional); and
- 3) Discuss item and consider action on recommendation.

Respectfully submitted,

Jacqueline M. Gong
Commission Counsel

Attachments:

- 1) Draft Resolution to Terminate the Agreement Regarding Oat Hill Subdivision, Unit No. 2
- 2) Agreement Re: Oat Hill Subdivision, Unit No. 2

RESOLUTION NO. _____

RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

TO

TERMINATE THE AGREEMENT REGARDING OAT HILL SUBDIVISION UNIT NO. 2

WHEREAS, in 1984 Ward Maher, Irene M. Maher, Harold Hess and Bobbie Hess (collectively Owner) proposed to subdivide and develop real property situated at that time in the unincorporated area of Napa County and then generally known as Napa County Assessor's Parcel Number 058-030-037 (this property is hereinafter referred to as "Oat Hill Subdivision Unit No. 2"); and

WHEREAS, the Local Agency Formation Commission of Napa County ("LAFCO") determined that the proposed development of Oat Hill Subdivision Unit No. 2 might necessitate the formation of and/or annexation to a special district to provide street sweeping and/or street lighting services; and

WHEREAS, as a result LAFCO and Owner entered into an agreement involving Oat Hill Subdivision Unit No. 2, dated May 9, 1984, and recorded on May 21, 1984 in Book Volume 1338, page 699 of the Napa County Official Records ("Oat Hill Agreement"; Exhibit "A" attached); and

WHEREAS, pursuant to the Oat Hill Agreement, Owner agreed to support the formation of and/or annexation of Oat Hill Subdivision Unit No. 2 to a special district whenever such formation and/or annexation was determined timely by LAFCO; and

WHEREAS, subsequently at the time of the incorporation of the City of American Canyon, Oat Hill Subdivision Unit No. 2 became situated in the City which provides municipal services, including street sweeping and/or street lighting services within its boundaries; and

WHEREAS, under these circumstances the future formation of and/or annexation to a special district is no longer necessary; and

WHEREAS, the subdivision map for Oat Hill Subdivision Unit No. 2 was filed for recording on May 18, 1984 in Book 14 of Maps at pages 4 and 5 in the office of the County Recorder of Napa County; and

WHEREAS, the Oat Hill Agreement constitutes a covenant running with the Oat Hill Subdivision Unit No. 2 property and binds successors in interest of Owner; and

WHEREAS, Oak Hill II, LLC, is the present successor in interest of Owner and now seeks to set aside the covenant in order to clear title and sell the Oat Hill Subdivision Unit No. 2 property.

Now therefore, the Local Agency Formation Commission of Napa County resolves as follows:

1. The Commission hereby determines there is no longer a need for the future formation of and/or annexation of Oat Hill Subdivision Unit No. 2 to a special district for purposes of street sweeping or street lighting services given the City of American Canyon provides such services to property within its boundaries. Therefore, the Commission further determines that it no longer requires Owner and its successors in interest to support such formation or annexation.

- 2. The Commission hereby agrees to the termination of the agreement involving Oat Hill Subdivision Unit No. 2, dated May 9, 1984, and recorded on May 21, 1984, in Book Volume 1338 page 699 of the Napa County Official Records.

The foregoing was adopted at a regular meeting of the Local Agency Formation Commission of Napa County held on the 6th day of February, 2012 by the following vote:

AYES: Commissioners _____

NOES: Commissioners _____

ABSTAIN: Commissioners _____

ABSENT: Commissioners _____

ATTEST: Keene Simonds
Executive Officer

Recorded by: _____
Kathy Mabry, Commission Secretary

NAPA COUNTY

Vol. 1338 PAGE 699

WHEN RECORDED RETURN TO:

DICKENSON, PEATHAN & FOGARTY
809 Coombs Street
Napa, California 94559

OFFICIAL RECORDS
NAPA COUNTY, CALIF.

MAY 2 1984

AT 2:20 P. M.
ELEANOR E. KIMBROUGH
COUNTY RECORDER

6⁰⁰

AGREEMENT RE:
OAT HILL SUBDIVISION, UNIT NO. 2

THIS CONTRACT is made and entered into this 9th day
of May, 1984, by and between the NAPA COUNTY
LOCAL AGENCY FORMATION COMMISSION, an agency of the STATE OF
CALIFORNIA, hereinafter referred to as "LAFCOM" and WARD
WAHER, IRENE M. WAHER, HAROLD HESS and BOBBIE HESS, hereinafter
referred to as "OWNER".

WHEREAS, OWNER proposes to create Oat Hill Subdivision
Unit No. 2 by subdividing certain real property situated in
Napa County and generally known as Napa County Assessor's
Parcel(s) #58-030-37.

[Handwritten signature]

and,

WHEREAS, the Oat Hill Subdivision, Unit No. 2 and other
development activity in the American Canyon area may necessitate
the formation at some future date of a district or service
area to provide street sweeping and/or street lighting
services; and

WHEREAS, it is LAFCOM'S responsibility to encourage the
provision of necessary community services; and

WHEREAS, LAFCOM has therefore recommended that the
Board of Supervisors of the County of Napa condition approval
of the Oat Hill Subdivision, Unit No. 2 upon OWNER'S execution

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of an agreement with LAFCON to support the formation of and/or annex the proposed subdivision to a district or service area formed for the purpose of providing street sweeping and street lighting services in the American Canyon area;

NOW, THEREFORE, the parties agree as follows:

1. OWNER hereby agrees to support the formation of and/or annex the proposed subdivision to a district or service area formed for the purpose of providing street sweeping and/or street lighting services in the American Canyon area whenever said district formation and/or annexation is deemed timely by LAFCON. LAFCON or any future district may enforce this agreement.

2. OWNER shall reimburse LAFCON for all costs associated with any court action brought to enforce the provisions of this Agreement and OWNER'S obligations herein, including the payment of reasonable attorney's fees and costs and expenses attributed to the staff time and effort spent by plaintiff in seeking and gaining such performance.

3. Upon execution of this Agreement, OWNER shall record it in the Office of the Napa County Recorder and provide LAFCON a copy of the recorded document.

4. This agreement shall constitute a covenant running with the property and its provisions shall bind the heirs, executors, administrators, successors in interest of OWNER in the property as fully as OWNER is bound.

[Handwritten signature]

5a. OWNER shall form the required district or annex the property at his own expense within six (6) months of the date of demand by LAPCOM. If OWNER fails to initiate proceedings within six (6) months, LAPCOM may act as legal representative of OWNER and initiate proceedings for formation or annexation as legal representative of OWNER, OWNER shall reimburse LAPCOM for all costs associated with completing the formation or annexation, including but not limited to all agency fees and staff time. If OWNER fails to pay these costs within thirty (30) days after completion of formation or annexation proceedings, LAPCOM may use any remedy authorized by law to collect them.

[Handwritten signature]

2(a)

5b. If any part, term or provision of this Agreement is held by the court to be unlawful and void, the validity of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

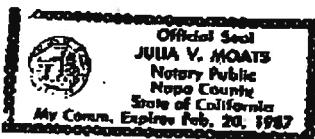
IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate the day and year first above written.

"LAPCOM", an agency of the State of California
BY: James H. Vicker
JAMES H. VICKER, Executive Officer

OWNER:
Ward Maher
WARD MAHER
Irene Maher
IRENE K. MAHER
Harold Hess
HAROLD HESS
Robbie Hess
ROBBIE HESS

STATE OF CALIFORNIA
COUNTY OF NAPA

On this THIRD day of MAY in the year 1984
JULIA V. MOATS, a Notary Public, State of California,
duly commissioned and sworn, personally appeared HAROLD HESS AND ROBBIE J. HESS AND WARD MAHER AND IRENE MAHER
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the _____ County of _____ NAPA on the date set forth above in this certificate.



Julia V. Moats
Notary Public, State of California
My commission expires FEB. 20, 1987

Notary's Form No. 28—Acknowledgment to Notary Public—Individuals (see sec. 1180.)