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Kristy Shelton  
Planner III  
1195 Third St., Room 210  
Napa, CA 94559  
(707) 253-4417

Regarding: Ownership of the portions of Tucker Road adjacent to APN 020-262-010

Kristy,

Brian Burke, applicant for planning permits to build a home on his Tucker Acres lot, asked me to look into the ownership of the land under Tucker Road as a result of the County of Napa abandonment/vacation. The ownership of the land under a R.O.W. after an abandonment/vacation is not always a clear decision so I reviewed AV 04-809 dated July 14, 2005 (attached) in which the California State Attorney General offered this opinion as a clarification of this issue.

"...the primary rule to be applied in California continues to be that the intention of the parties governs as to whether the conveyance is of an easement or fee title. No presumption is to be applied if the words of the deed are clear. It is when the language is ambiguous that a statutory presumption controls."

In the case of Tucker Acres the dedication reads "...and accept all roads embraced therein", and in the Owners Statement "...that all roadways shown on said map are dedicated for public use..." Since the language is ambiguous, meeting the conditions to invoke the statutory presumption, I interpret these statements as the granting of a public easement not as a grant of land in fee. Without a clear grant of fee title to the roads in the Tucker Acres Subdivision we are instructed to apply the presumption below in this case of abandonment/vacation.

"With respect to the presumption of section 1105, a fee simple title is presumed "to pass by a grant of real property." However, this is a presumption that affects real property in general; it must yield to more specific presumptions dealing with public roads, where the presumption is that of an easement."

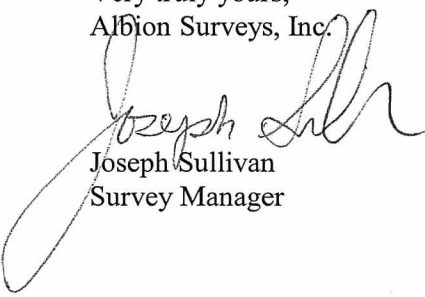
Based on these clarifications by the Attorney General of California it seems clear that the county did not have fee title to land that is Tucker Road so the abandonment/vacation only affected the public's right to utilize the road and that fee ownership of the road lies with the owners of lots in the Tucker Acres subdivision and their title extends to the centerline of the road. Though the individual lot owners have title to the land under Tucker Road it is completely encumbered by the private easement that each of the owners has over the platted roads in the subdivision. The loss of the public right does not extinguish the rights of property owners to utilize the roads within the subdivision. A portion of the California Streets and Highway Code 8352. (a) reads:

"....vacation of a street, highway, or public service easement pursuant to this part does not affect a private easement or other right of a person...."

To summarize it is my opinion that the ownership of the land under Tucker Road belongs to adjoining lot owners and the lot owners have a private easement over the roads shown on the map even if the public easement has been abandoned/vacated.

Please call with any questions you may have.

Very truly yours;  
Albion Surveys, Inc.

  
Joseph Sullivan  
Survey Manager

