

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Resolution No. 2014-15 Approving Joint Sewer Line

DATE: July 17, 2014

City Council Goals:

To provide for effective and efficient delivery of City services. (#1)

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)

To maintain and improve infrastructure. (#3)

Purpose:

To formally approve the continued use of a joint sewer line and to ensure appropriate recordation of this approval.

Recommendation:

1. Approve Resolution No. 2014-15, "Granting Approval for a Joint Sewer Line Serving Residences in the 200 Block of Humboldt Road."
2. Direct the City Clerk to file a copy of the approved resolution in each of the address files for the four (4) properties identified in same.
3. Direct the City Clerk to forward the "Joint Sewer Line Agreement" to San Mateo County for recordation, and to file a copy of the recorded agreement in each of the four (4) properties' address files.

Background:

One of the ongoing challenges carried over from the early development of central Brisbane is the issue of joint private sewer lines. These private multi-party lines remain somewhat prevalent in the steeper terrain portions of the City; typically, several homes on the downhill side of a street will come together at a joint line in a private easement traversing a property on the uphill side of the next lower road, and then join the public sewer system in that lower street.

When properly maintained these lines are no more problematic than the City's public system; unfortunately, the lines in many cases are neglected, and when problems do arise that create sanitary sewer overflows there is often a lack of "enthusiasm" and consensus from the serviced parties to contribute financially to the required repairs.

The Municipal Code's prohibition on joint sewer lines, unless formally approved by the Council, seems to understand this difficulty.

The four (4) Humboldt Road parties to the proposed Joint Sewer Line Agreement have all indicated their consent to signing the Agreement and sharing the costs of any required future repairs. This Agreement also gives the City the right to perform the work and back-charge the parties to the Agreement. This agreement language gives the City a significantly enhanced tool to deal with owners who might not be inclined to perform necessary repairs to prevent private sanitary sewer overflows.

Discussion:

The joint sewer line in question runs from 281 to 277 to 275 to 271 Humboldt, and then traverses 110 Sierra Point before joining the public sewer system. The agreement that originally established the sewer easement in 1948 specifically mentioned providing an easement to 281, 277, 275 and 271 Humboldt; however, the legal description of the easement only included 271 and 275 Humboldt (and the non-participating downhill property at 110 Sierra Point, which is burdened by the sewer easement for others, but has its own single lateral connecting to the public sewer). This creates an unusual inconsistency wherein 281 Humboldt is clearly the intended beneficiary of an easement, but one of the properties over which that easement was intended (277 Humboldt) is inconveniently not identified by legal description.

The recommended Agreement does not address this inconsistency. The original sewer easement clearly intended to provide service to 281 Humboldt. That address presently connects its sewer lateral to the line in 277 Humboldt, and both of these property owners are willing signatories to the Agreement. The determination as to whether or not this inconsistency requires the formalization of a prescriptive easement or some other mechanism is left to the desires of the two owners.

The signed Agreement was prepared by the City Attorney for conformance with Municipal Code §13.04.430. The ultimate installation will satisfactorily provide service to the four (4) uphill addresses in the 200 block of Humboldt Road and place no additional burden on the existing easement traversing 110 Sierra Point Road.

Fiscal Impact:


None as a result of the actions recommended herein.

Measure of Success

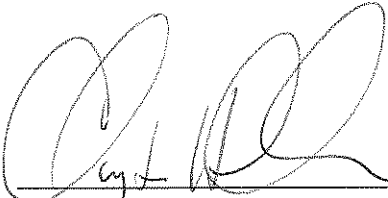
A mechanism by which the city can ensure, and if necessary, enforce, the maintenance of joint sewer lines that will assist in the prevention of sanitary sewer overflows.

Attachments:

- Resolution No. 2014-15
- Joint Sewer Line Agreement



Director of Public Works/City Engineer



City Manager

RESOLUTION NO. 2014-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BRISBANE GRANTING APPROVAL FOR A JOINT SEWER LINE
SERVING RESIDENCES IN THE 200 BLOCK OF HUMBOLDT ROAD**

WHEREAS, conditions are such that the Brisbane Director of Public Works/City Engineer finds the only practical means of connecting certain properties on Humboldt Road to the City's public sewer system using a gravity line is through a joint sewer line; and

WHEREAS, the Director of Public Works/City Engineer recommends the City Council waive the "an easement of not less than five (5) feet in width" requirement found in paragraph 13.04.430.G of the Municipal Code and allow a three (3) feet in width easement for the portion of private joint sewer line providing service to the addresses in the Agreement described below; and

WHEREAS, the parties wishing to use this line have petitioned the Council to find good cause therefore to grant approval for the existing sewer line that runs through the properties of 281, 277 and 275 Humboldt Road, then across the property of 271 Humboldt Road, and then along the southwesterly property line of 110 Sierra Point Road, all in a three feet (3') wide easement as granted by instrument recorded on July 28, 1948 in Book 1555, Page 293, Official Records of San Mateo County, California; and

WHEREAS, the parties petitioning the Council have all agreed to sign a "Joint Sewer Line Agreement" dated _____, 2014, said document being prepared by the Brisbane City Attorney for conformance with Section 13.04.430 of the Municipal Code and to be recorded separately in the Official Records of San Mateo County,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. Pursuant to Section 13.04.430 of the Municipal Code, approval is granted for the joint sewer line described above for the purpose of providing gravity sewer service to the following described parcels:

281 Humboldt Road, Assessor's Parcel Number 007-193-150
277 Humboldt Road, Assessor's Parcel Number 007-193-160
275 Humboldt Road, Assessor's Parcel Number 007-193-170
271 Humboldt Road, Assessor's Parcel Number 007-193-180

W. Clarke Conway, Mayor

I hereby certify that the foregoing Resolution No. 2014-15 was duly and regularly adopted at the regular meeting of the Brisbane City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sheri Marie Spediacci, City Clerk

RECORDING REQUESTED BY:

AFTER RECORDATION MAIL TO:

THIS SPACE FOR RECORDER'S USE

JOINT SEWER LINE AGREEMENT

THIS AGREEMENT, dated _____, 2014, by and between ANNE E PIERSON TR & OBSIDIANA ABRIL TR ("PIERSON & ABRIL"), MARY J ANDERSON ("ANDERSON"), DEBRA A FOSTER TR & BAMERAY A FOSTER TR ("FOSTER"), and CHARLES JOHN SKEER TR ("SKEER"), collectively referred to herein as Owners, is made with reference to the following facts:

A. PIERSON & ABRIL is the owner of the real property located at 271 Humboldt Road, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-193-180 and more particularly described as Parcel 1 in Exhibit "A" attached hereto and made a part hereof.

B. ANDERSON is the owner of the real property located at 275 Humboldt Road, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-193-170, and more particularly described as Parcel 2 in Exhibit "A" attached hereto and made a part hereof.

D. FOSTER is the owner of the real property located at 277 Humboldt Road, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-193-160, and more particularly described as Parcel 3 in Exhibit "A" attached hereto and made a part hereof.

E. SKEER is the owner of the real property located at 281 Humboldt Road, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-193-150, and more particularly described as Parcel 4 in Exhibit "A" attached hereto and made a part hereof.

E. Owners share an existing private sanitary sewer line that runs from 281 Humboldt to 277 Humboldt to 275 Humboldt to 271 Humboldt to 110 Sierra Point (APN

007-193-020, which parcel is not a part of this agreement, but which is encumbered by a sewer easement to the benefit of Owners) as granted by instrument recorded on July 28, 1948, in Book 1555, Page 293, Official Records of San Mateo County, California (the "Sewer Easement"), as described in Exhibit "B" attached hereto and made a part hereof.

F. Owners desire to upgrade the existing joint sanitary sewer line located within the Sewer Easement and have applied to the City of Brisbane ("City") for approval to construct such facility. The upgraded sewer line will remain a private facility, to be owned and maintained by Owners, and will not be dedicated to City.

G. City is willing to approve the proposed upgraded joint sewer line, on condition that the facility is constructed in accordance with plans and specifications approved by City's Director of Public Works/City Engineer, and on the further condition that Owners substantially comply with the requirements of Section 13.04.430 of the Brisbane Municipal Code pertaining to the installation and maintenance of joint sewer lines.

H. Owners desire to enter into this Agreement for the purpose of establishing their respective rights and obligations with regard to the joint sewer line and to implement the requirements of Section 13.04.430 of the Brisbane Municipal Code.

NOW, THEREFORE, the parties agree as follows:

1. The upgraded joint sewer line shall be located entirely within the Sewer Easement, shall be designed in compliance with all applicable building codes, and shall be constructed in accordance with plans and specifications approved in writing by City's Director of Public Works/City Engineer. Prior to the commencement of any work, Owners shall obtain from City all permits and other approvals for the work as may be required by the Brisbane Municipal Code and shall pay all fees and costs relating thereto.

2. City may inspect the work at any time or times during the course of construction. The completed joint sewer line shall not be placed into service until final inspection approval of the facility has been issued by City.

3. All costs of installation, maintenance, repair, and replacement of the joint sewer line shall be shared equally by Owners. In the event of any failure or refusal by any Owner to pay that Owner's share of the cost, the remaining Owners may advance such cost and bring appropriate legal proceedings against the delinquent Owner for collection of the same, plus costs and attorney's fees. In the event the owner of any other property desires to connect to the joint sewer line, and provided the joint sewer line has sufficient capacity to accommodate the additional sewage flow, the connecting owner shall be required to reimburse Owners for a proportionate share of all costs and expenses incurred by Owners to that time for the construction, maintenance and repair of the joint sewer line. The connecting owner shall also be required to become a party to this Agreement and be bound by all of the terms and conditions contained herein.

4. Decisions relating to the installation, maintenance, repair or replacement of the joint sewer line can be made by any three (3) of the four (4) Owners (with multiple owners of the same property being counted as a single Owner). No work shall be performed until a consent to the scope and cost of the work has been obtained from the requisite number of Owners; *provided, however*, in the event emergency repairs to the joint sewer line are needed and all of the Owners cannot be immediately contacted, any one or more of the other Owners may authorize the emergency repair work to be performed and such Owner(s) shall be entitled to collect a proportionate share of the cost from the non-consenting Owner(s).

5. No Owner shall interrupt the continuity of service provided by the joint sewer line in a manner that will cause damage or interfere with use of the sewer line by the other Owners, other than such reasonable interruption as may be necessary for the performance of needed maintenance, repairs or replacements.

6. In the event of any failure by Owners to maintain the joint sewer line in proper operating condition and City determines that the sewer line is in a condition that presents a hazard to the public health or safety, City may give Owners written notice to perform the corrective work and upon the failure by Owners to do so within the time specified in the notice, City may cause such work to be performed and charge each Owner an equal share of all costs and expenses City may incur in connection therewith. Should any Owner fail to pay such charges within fifteen (15) days from the date of billing, City

may bring a civil action against the delinquent Owner for collection of such charges and City may also record a nuisance abatement lien against the delinquent Owner's property and foreclose the same in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

7. The joint sewer line shall be and remain a private facility owned entirely by Owners and will not be offered for dedication to City. Owners acknowledge that City has no responsibility for maintenance or repair of the joint sewer line, nor shall City have any liability for any loss or damage to persons or property resulting from any failure or malfunction of the joint sewer line. Owners shall indemnify, defend and hold City harmless from and against any claim, demand, cost, expense, or liability, including attorney's fees, arising from or related to the ownership or operation of the joint sewer line or the failure by Owners to perform any of their obligations under this Agreement.

8. In the event legal action shall become necessary to enforce or interpret this Agreement, the prevailing party or parties shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

9. This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, Owners have executed this Agreement the day and year first above written.

ANNE E PIERSON TR

OBSIDIANA ABRIL TR

MARY J ANDERSON

DEBRA A FOSTER TR

BAMERAY A FOSTER TR

JOHN SKEER TR

EXHIBIT "A"

PARCEL 1

(APN 007-193-180)

Property of PIERSON & OBSIDIANA

LOTS 50 AND 51, BLOCK 23, AS DESIGNATED ON THE MAP ENTITLED, "AMENDED MAP OF SUBDIVISION NOS. 1, 2 AND 3 OF THE CITY OF VISITACION, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON OCTOBER 14, 1908, IN BOOK 6 OF MAPS AT PAGE 45.

PARCEL 2

(APN 007-193-170)

Property of ANDERSON

LOT 52, BLOCK 23, AS DESIGNATED ON THE MAP ENTITLED, "AMENDED MAP OF SUBDIVISION NOS. 1, 2 AND 3 OF THE CITY OF VISITACION, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON OCTOBER 14, 1908 IN BOOK 6 OF MAPS AT PAGE 45.

PARCEL 2

(APN 007-193-160)

Property of FOSTER

LOT 53 AND THE NORTHERLY 1/2 FRONT AND REAR MEASUREMENTS OF LOT 54, BLOCK 23, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED AMP OF SUBDIVISION NOS. 1, 2 AND 3 OF THE CITY OF VISITACION, CALIFORNIA", FILED FOR RECORD ON OCTOBER 14, 1908, IN BOOK 6 OF MAPS AT PAGE 45, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, CALIFORNIA.

PARCEL 4

(APN 007-193-150)

Property of SKEER

THE SOUTH 1/2 FRONT AND REAR MEASUREMENTS OF LOT 54, AND ALL OF LOTS 55 AND 56, BLOCK 23, AS DESIGNATED ON THE MAP ENTITLED "AMENDED MAP OF SUBDIVISION NOS. 1, 2 & 3 OF CITY OF VISITACION CALIFORNIA", WHICH WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON OCTOBER 14, 1908 IN BOOK 6 OF MAPS AT PAGE 45.

EXHIBIT "B"

SEWER EASEMENT

(Affected APNs: 007-193-180, 007-193-170, 007-193-160, 007-193-150, 007-193-020)

Property of PIERSON & OBSIDIANA, ANDERSON, FOSTER, SKEER, LELIVET & MARKIND

A strip of land, approximately three (3) feet wide, front and rear measurements, along the southwesterly line of Lot 11 in Block 23, City of Visitacion, California and Lots 51 and 52 in Block 23.