

MEMORANDUM

TO: Mayor and Councilmembers
FROM: Greg Stepanicich, Town Attorney
DATE: November 30, 2011
SUBJECT: Status of Circle and Park Drives

I was requested to review whether Circle Drive and a portion of Park Drive in the Town of Ross are private or public streets (the “subject streets”). The Town Council last considered this question at its meeting of October 14, 2010 in response to letter from residents living on these streets asking that the Council determine that these streets are public. Town Attorney Hadden Roth gave his opinion that Streets and Highways Code Section 1806 provides that the acceptance of a street into the Town’s street system must be by formal resolution adopted by the Town Council. Public Works Director Mel Jarjoura advised the Council that staff is not aware of any Town Council resolutions accepting either Circle Drive or Park Drive as part of the Town street system. In fact, on May 1, 1915, the Town Council denied a request to accept the streets in the Fernhill Park subdivision.

On July 22, 2011, Stephanie Smith Stein submitted to the Town Council a number of historical documents which she believed supported the residents request that the subject streets be treated as part of the Town street system. I have reviewed these documents and other documents in the Town’s files. I agree with former Town Attorney Roth’s opinion regarding the requirement of Streets and Highways Code Section 1806 that local streets can only be accepted into the Town street system for maintenance by resolution. Prior to the adoption of Section 1806 in 1957, however, a street could become a public street based on the actions of the Town in treating the street as part of its public street system.

On October 21, 1926, the Town Council adopted Resolution No. 47 which ordered the pavement of Circle Drive and a portion of Park Drive pursuant to an assessment district established under the Improvement Act of 1911 (Streets and Highways Code Section 5100 et seq.). The benefited property owners were assessed the cost of the street improvements. Except for certain limited circumstances not applicable here, the Improvement Act of 1911 can only be used to improve public streets. Although the Council refused to accept the subject streets as public streets in 1915, the Town’s use of the Improvement Act of 1911 to improve the streets in 1926 made the streets public and part of the Town street system. Although Resolution No. 47 did not expressly state that the subject streets were being accepted into the Town street system, state law required these streets to be public if their improvement was financed by an assessment district. Subsequent acts of the Town since 1926 are consistent with this conclusion. For

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example, in a letter dated September 1, 1977, the Town Engineer Roy Hoffman provided the Town Attorney Robert Elliot a list of the private roads in the Town that did not include the subject streets. Further in four building inspection reports regarding Circle Drive properties issued between 1994 and 2007, Circle Drive was identified as a Town maintained street.

I asked Elise Semonian to review the Town's files to determine whether assessment districts were used to fund the improvement of other streets in the Town. Her review concluded that all of the additional assessment districts identified in the Town's files involved streets that clearly are part of the Town public street system such as Shady Lane, Laurel Grove and the lower part of Chestnut.

My conclusion regarding the status of Circle Drive and a portion of Park Drive is based on the special circumstance that these streets were paved in 1926 pursuant to the Improvement Act of 1911 which required these streets to be public. This conclusion is limited strictly to these streets.