

Decision No. 85662

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CONTINENTAL MULTI-HOMES)
 INC., a Corporation for a Finding and)
 Order that Certain Real Property is)
 not within the Service Area of Suburban)
 Water Systems or, in the Alternative,)
 that if said Real Property is Within)
 the Service Area of Suburban Water)
 Systems, that it be Excluded)
 Therefrom.)

Application No. 54900
 (Filed May 17, 1974)

George W. Wakefield, Attorney at Law, for Continental
 Multi-Homes, Inc., applicant.
Clayson, Stark, Rothrock & Mann, by George G. Grover,
 Attorney at Law, for Suburban Water Systems, protestant.
Joel H. Lubin, for the Commission staff.

O P I N I O N

This is an application by Continental Multi-Homes, Inc. (Continental) seeking a determination that a parcel of real property, of approximately 9.63 acres, is not within the service area of Suburban Water Systems (Suburban). Alternatively, if the property is found to be within Suburban's service area, Continental seeks an order decertificating it.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on April 8, 1975. It was submitted subject to the receipt of transcript which was filed on June 3, 1975.

The material issues presented in this proceeding are: (1) Is the real property here under consideration within Suburban's service area? (2) If the real property is found to be within Suburban's service area, should it be decertificated?

Continental owns two adjacent parcels of real property in West Covina. They are designated as Parcels 1 and 2 on Parcel Map No. 3460 recorded in the office of the Los Angeles County Recorder.^{1/} Parcel 1 contains 9.24 acres. Continental built a multiple family apartment complex on Parcel 1. Water service in Parcel 1 is provided by the city of West Covina. Parcel 2 is the subject matter of this litigation. In planning for the development of Parcel 2, Continental became aware of Suburban's claim that the parcel is within Suburban's service area. This proceeding ensued.

In 1946, San Jose Hills Water Company (San Jose), which was subsequently acquired by Suburban, filed Application No. 27231, which sought authority to extend its service area. In Decision No. 38858, the Commission granted the application. The order authorized "San Jose Hills Water Company to acquire, construct, maintain and operate a public utility water system in the area described in the foregoing opinion." (D.38858, p.5.) The body of the opinion states that:

"Said area [the previously certificated area], plus the additional area in which applicant now asks permission to construct, maintain and operate a public utility water system, is shown on the map filed in this proceeding as Exhibit 'A'. The boundary of the entire service area is described as follows:

"Beginning at the intersection of Hudson Avenue and Valley Boulevard; thence Northwesterly along Valley Boulevard to Orange Avenue; thence Northeasterly along Orange Avenue to the dividing line between Lots 407 and 391 (Between Temple and Elliott Avenues in E. J. Baldwin's Fifth Subdivision); thence Southeasterly and Northeasterly along Lot Lines 391, 384, 372 and 364 to a point midway between Francisquito and Fairgrove Avenues; thence Southeasterly along an imaginary line to a point approximately one-fourth of one

^{1/} Book 41, page 86.

block beyond Sunset Avenue; thence Northeasterly along an imaginary line paralleling Sunset Avenue, and commencing in Lot 362 and bisecting Lots 134, 135, 136 and 137 to a point in the center of Lot 137; thence Southeasterly along an imaginary line to the dividing line between Lots 137 and 148; thence Northeasterly along Lot Lines 137, 138, 139, 140, 141, 142 and 143 to Walnut Creek Wash; thence Easterly along said Wash to a point approximately 300 feet East of Lark Ellen Avenue; thence Southerly along an imaginary line paralleling Lark Ellen Avenue to Francisquito Avenue; thence Westerly along Francisquito Avenue, to its intersection with Covina-Pass Road; thence Southerly and Southeasterly along Covina-Pass Road to Amar Road; thence Easterly to a point approximately 300 feet along an imaginary line constituting a prolongation of Amar Road; thence Southeasterly along an imaginary line paralleling Amar Road for a distance of approximately 3060 feet; thence Westerly and Northwesterly along an imaginary line commencing approximately 3060 feet Southeast of Amar Road and ending approximately 720 feet South of said Road at Del Valle Street; thence along an imaginary line approximately 720 feet South of Amar Road to Glendora Avenue; thence Southerly along Glendora Avenue to Hudson Avenue; thence Southwesterly along Hudson Avenue to a point of beginning." (D.38858, p. 2.)

The map filed as Exhibit A in Application No. 27231 includes Parcel 2. However, the metes and bounds description is erroneous because it cannot be laid out the way it is described. The deficiency is in the area encompassing Parcel 2.

Continental contends that the Commission adopted a metes and bounds description rather than the map designated as Exhibit A, and by that adoption indicates that it intended to exclude Parcel 2 from the description. Continental also argues that maps utilized by Suburban in other proceedings indicate that Parcel 2 is not included within Suburban's authorized service area.

In considering Continental's contentions we are concerned with interpreting Decision No. 38858. The rules dealing with interpreting deeds, by analogy, are helpful to this consideration. They provide that: "In the construction of boundaries, the intention of the parties is the controlling consideration." (Machado v Title Guarantee & T. Co. (1940) 15 C 2d 180, 186.) Another applicable rule is that: "A false term in a description will be rejected when necessary to effectuate the intent of the parties." (Farnham v Huston (1919) 39 CA 687,692.)

A careful reading of Decision No. 38858 indicates that the metes and bounds description was intended to describe the area shown on the map filed as Exhibit A. This finding and conclusion is fortified by the following facts: (1) The erroneous description was taken verbatim from Exhibit 2 in Application No. 27231. That exhibit was introduced in evidence by San Jose, which was also the proponent of Exhibit A. (2) There is no discussion in the opinion nor any evidence in the record in Application No. 27231 that there was any dispute over including in the certificate the area encompassing Parcel 2.

The primary error in the metes and bounds description is in the language which reads:

"...a prolongation of Amar Road; thence Southeasterly along an imaginary line paralleling Amar Road for a distance of approximately 3060 feet; thence Westerly and Northwesterly along an imaginary line commencing approximately 3060 feet Southeast of Amar Road and ending approximately 720 feet South of said Road at Del Valle Street...."

The problem with this portion of the description is that Amar Road heads in an easterly direction and it is not possible to establish the call southeasterly along the road which runs easterly. In addition, the 3,060 feet mentioned in the description is not adequate.

A Commission staff utilities engineer testified that he was able to reconstruct the metes and bounds description so that it corresponded with Exhibit A. He substituted for the erroneous calls in the metes and bounds description the sequential call on Exhibit A^{2/} and found that, with this substitution, the metes and bounds description was almost identical to Exhibit A.

The record indicates that Suburban, in rate proceedings subsequent to Decision No. 38858, filed maps showing pressure zones and major facilities. Parcel 2 is not included in those maps. Continental contends that this indicates that Suburban did not consider it part of its authorized service area from which it should be inferred that Parcel 2 was not included in the metes and bounds description. We do not consider this point to be significant. The maps were filed in rate cases in which the specific boundaries of Suburban's service area were not at issue. Furthermore, "In Sierra Water Co., 57 Cal. P.U.C. 186, the Commission held that: 'The mere filing of a so-called "tariff service area map" is not conclusively determinative of the territory within which such utility may be entitled to serve.'" (Antelope Valley Water Co. (1972) 73 CPUC 485, 490.)

In the light of the foregoing authorities and facts we find that Parcel 2 is within Suburban's authorized service area.

^{2/} He substituted Pass and Covina Road for Amar Road and 3,600 feet for 3,060 feet.

We next turn to Continental's contention that if Parcel 2 is within Suburban's authorized service area, that area should be decertificated. For the reasons hereafter set forth, the Commission does not believe that the point should be determined at this time.

The record indicates that the Commission has restricted Suburban from extending its service area under Public Utilities Code Section 1001 without prior Commission authorization. Thus, if Parcel 2 is decertificated and Continental, or a subsequent developer, desires service from Suburban, it would be required to initiate a certificate proceeding in order to obtain authority to provide service.

The director of property management for Calmark Asset Management, which manages all of Continental's rental units, testified that Continental was not sure whether it would sell Parcel 2 or develop it itself. He also indicated that if Continental developed the property, he did not know whether it desired water service from Suburban or the city of West Covina.

Suburban and West Covina serve territory and have distribution facilities immediately adjacent to Parcel 2. Since there is no current plan for developing Parcel 2 before the Commission, we are of the opinion that it would be premature to pass upon the question of decertification because we would be dealing with questions of public interest in a vacuum.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Continental owns two adjacent parcels of real property in West Covina. They are designated as Parcels 1 and 2 on Parcel Map No. 3460 recorded in the office of the Los Angeles County Recorder at Book 41, page 86. Parcel 1 contains 9.24 acres. Continental built a multiple family apartment complex on Parcel 1. Water service in Parcel 1 is provided by the city of West Covina. Parcel 2 contains 9.63 acres.

2. In 1946, San Jose Hills Water Company, which was subsequently acquired by Suburban, filed Application No. 27231, which sought authority to extend its service area. In Decision No. 38858, the Commission granted the application. The order authorized "San Jose Hills Water Company to acquire, construct, maintain, and operate a public utility water system in the area described in the foregoing opinion." (D.38858, p. 5.) The body of the opinion states that:

"Said area [the previously certificated area], plus the additional area in which applicant now asks permission to construct, maintain and operate a public utility water system, is shown on the map filed in this proceeding as Exhibit 'A'. The boundary of the entire service area is described as follows:

"Beginning at the intersection of Hudson Avenue and Valley Boulevard; thence Northwesterly along Valley Boulevard to Orange Avenue; thence Northeasterly along Orange Avenue to the dividing line between Lots 407 and 391 (Between Temple and Elliott Avenues in E. J. Baldwin's Fifth Subdivision); thence Southeasterly and Northeasterly along Lot Lines 391, 384, 372 and 364 to a point midway between Francisquito and Fairgrove Avenues; thence Southeasterly along an imaginary line to a point approximately one-fourth of one block beyond Sunset Avenue; thence Northeasterly along an imaginary line paralleling Sunset Avenue, and commencing in Lot 362 and bisecting Lots 134, 135, 136 and 137 to a point in the center of Lot 137; thence Southeasterly along an imaginary line to the dividing line between Lots 137, and 148; thence Northeasterly along Lot Lines 137, 138, 139, 140, 141, 142, and 143 to Walnut Creek Wash; thence Easterly along said Wash to a point approximately 300 feet East of Lark Ellen Avenue; thence Southerly along an imaginary line paralleling Lark Ellen Avenue to Francisquito Avenue; thence Westerly along Francisquito Avenue, to its intersection with Covina-Pass Road;

thence Southerly and Southeasterly along Covina-Pass Road to Amar Road; thence Easterly to a point approximately 300 feet along an imaginary line constituting a prolongation of Amar Road; thence Southeasterly along an imaginary line paralleling Amar Road for a distance of approximately 3060 feet; thence Westerly and Northwesterly along an imaginary line commencing approximately 3060 feet Southeast of Amar Road and ending approximately 720 feet South of said Road at Del Valle Street; thence along an imaginary line approximately 720 feet South of Amar Road to Glendora Avenue; thence Southerly along Glendora Avenue to Hudson Avenue; thence Southwesterly along Hudson Avenue to a point of beginning." (D.38858, p. 2.)

3. The map filed as Exhibit A in Application No. 27231 includes Parcel 2. However, the metes and bounds description is erroneous because it cannot be laid out the way it is described. The deficiency is in the area encompassing Parcel 2. The primary error in the metes and bounds description is in the language which reads:

"...a prolongation of Amar Road; thence Southeasterly along an imaginary line paralleling Amar Road for a distance of approximately 3060 feet; thence Westerly and Northwesterly along an imaginary line commencing approximately 3060 feet Southeast of Amar Road and ending approximately 720 feet South of said Road at Del Valle Street...."

The problem with this portion of the description is that Amar Road heads in an easterly direction and it is not possible to establish the call southeasterly along the road which runs easterly. In addition, the 3,060 feet mentioned in the description is not adequate.

4. If Pass and Covina Road is substituted for the erroneous call of Amar Road and 3,600 feet is substituted for 3,060 feet in the metes and bounds description, said description corresponds to the area shown on Exhibit A in Application No. 27231.

5. The erroneous metes and bounds description in Decision No. 38858 was taken verbatim from Exhibit 2 in Application No. 27231. That exhibit was introduced in evidence by San Jose, which was also the proponent of Exhibit A.

6. There is no discussion in Decision No. 38858 nor any evidence in the record in Application No. 27231 that there was any dispute over including in the certificate the area encompassing Parcel 2.

7. The metes and bounds description in Decision No. 38858 was intended to encompass the area shown on the map in Exhibit A.

8. Maps filed by Suburban in rate proceedings subsequent to Decision No. 38858, which did not include Parcel 2, are of little significance to the issues raised herein because Suburban's authorized service area was not an issue in those proceedings.

9. Parcel 2 is a portion of Suburban's authorized service area.

10. The Commission has restricted Suburban from extending its service area under Public Utilities Code Section 1001 without prior Commission authorization. If Parcel 2 is decertificated and Continental, or a subsequent developer, desires service from Suburban, it would be required to initiate a certificate proceeding in order to obtain authority to provide service.

11. Continental is not sure whether it intends to sell or itself develop Parcel 2.

12. If Continental develops Parcel 2 it is uncertain whether it would desire water service from Suburban or West Covina.

13. Suburban and West Covina serve territory and have distribution facilities immediately adjacent to Parcel 2.

14. Since there is no current plan for developing Parcel 2 before the Commission, it would be premature to pass upon the question of decertification.

Conclusions of Law

1. Parcel 2 is within Suburban's authorized service area.
2. It is premature to consider the question of whether Parcel 2 should be removed from Suburban's authorized service area.

O R D E R

IT IS ORDERED that:

1. Decision No. 38858 is construed to reflect that Parcel 2 on Parcel Map No. 3460, recorded in the office of the Los Angeles County Recorder at Book 41, page 86, is part of the authorized service area of Suburban Water Systems.

2. The request of Continental Multi-Homes, Inc. to have Parcel 2 removed from Suburban's authorized service area is denied without prejudice.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 13th day of APRIL, 1976. ✓

President
William L. Garrison Jr.

Thomas L. Shugart

Robert R. Berman
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.