

ORIGINAL

Decision No. 89623 ' NOV 9 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Dennis R. Allen,
Complainant,

vs.

Tahoe Keys Water Company
Owners Assoc.,
Defendant.

Case No. 10560
(Filed May 8, 1978)

Dennis R. Allen, for himself, complainant.
John W. Driscoll, Attorney at Law, for
Tahoe Keys Water Company Owners
Association, defendant.

O P I N I O N

Complainant Dennis R. Allen (complainant) requests that defendant Tahoe Keys Water Company Owners Association (defendant), a public utility water company,^{1/} be ordered to remove a fire hydrant which allegedly interferes with complainant's access to his garage driveway. A hearing was held before Administrative Law Judge Pilling at South Lake Tahoe on August 21, 1978.

Complainant purchased Lot 5, Tahoe Keys Tract No. 2 (2160 Venice Drive) in the Tahoe Keys subdivision of the city of South Lake Tahoe in August 1976 and received a permit from the city to build a one-story residence there in 1977. The building plan on which the permit was based showed the right turn angle into the garage driveway to be slightly in excess of 90 degrees. When building of the residence commenced in October 1977, complainant soon found that the plans contained an error in the relationship between a corner boundary marker of complainant's property and the curb-side location of the subject fire hydrant in front of complainant's

^{1/} In addition to supplying water to its members, defendant also supplies water for compensation to the United States Forest Service, the city of South Lake Tahoe, South Tahoe Public Utility District, Tahoe Keys Marina, Inc., Beach and Harbor Association, and Cove Townhouse No. 1. See Decision No. 87368.

property. The fire hydrant had been installed by defendant's predecessor company prior to 1976 and was in plain sight. To lay the driveway according to the plan would mean that the fire hydrant would obstruct the entrance to the driveway. Therefore, the driveway was constructed to barely miss the fire hydrant, but in so doing necessarily increased the right turn angle into the driveway to approximately 125 degrees.

The city refused to approve the position of the relocated garage driveway for safety reasons and also forbade complainant to allow anyone to occupy the house until the driveway was relocated to the position as originally planned. The city also required complainant to make a \$1,000 deposit with the city to be pledged against the removal of the fire hydrant. Complainant contends that the planned position of the driveway is the only feasible access to the garage because of the lot and street configuration and because a lagoon bridge abutment effectively prohibits driveway access at any other location. He also contends that the commonly accepted practice in the city is to place fire hydrants and other aboveground portions of undergrounded utilities at street corners or at lot corners so as to interfere as little as possible with the use of the lot. The fire hydrant in question is not located at either a lot corner or at a street corner. Complainant contends that removal of the hydrant is not his choice but a forced act by a governmental body, namely, the city of South Lake Tahoe. For these reasons, complainant contends the expense of the removal of the fire hydrant should be borne by the utility defendant whose predecessor company placed it.

The defendant showed that the fire hydrant is located in a valid and existing utility right-of-way and that the hydrant was placed there prior to 1976. It showed that at least in some cases within the subdivision the practice of placing exposed portions of undergrounded utilities at street corners or lot corners was not followed. It estimated that the cost of removing the fire hydrant and capping the connection would amount to approximately \$1,000, plus another \$500 to \$1,000 for relocating the hydrant. Defendant

contends that it has no liability for the removal of the hydrant, but will remove the hydrant and cap the connection if the expense of the work is borne by complainant.

Under the circumstances of this case it is equitable that complainant be required to pay only one-half the actual cost of the work not to exceed \$500.

Findings

1. The fire hydrant had been installed before complainant bought the property.

2. The fire hydrant is located in plain sight in a valid and existing utility right-of-way.

3. The fire hydrant was not located at either a lot corner or at a street corner in accordance with the usual practice.

4. The location of the fire hydrant is such that complainant is prevented from constructing his driveway to meet the city's building requirements.

5. The cost of removal of the fire hydrant and the capping of the connection is estimated to be \$1,000.

6. Complainant wants the defendant to pay for the removal of the fire hydrant and the capping of the connection, and defendant has refused to do so.

7. The Commission's General Order No. 103, Section VIII, paragraph 3, requires that fire hydrants be located as designated by the agency responsible for their use for fire fighting purposes.

8. Special Condition 3 of Schedule No. 5 of defendant's tariff on file with the Commission provides that "Relocation of any hydrant shall be at the expense of the party requesting relocation."

9. Under the circumstances of this case complainant is entitled to have the defendant remove the fire hydrant and cap the connection upon the payment to the defendant of one-half of the actual cost of such removal and capping, but in no event more than \$500.

Conclusion

Defendant should be ordered to remove the fire hydrant and cap the connection upon the payment to it by complainant of a deposit of \$500 to cover one-half the actual cost of such removal and capping, but in no event more than \$500.

O R D E R

IT IS ORDERED that:

1. Upon the payment of the sum of \$500 as a deposit by complainant, Dennis R. Allen, to defendant, Tahoe Keys Water Company Owners Association, within thirty days after the effective date of this order, Tahoe Keys Water Company Owners Association shall promptly proceed to remove the fire hydrant from complainant's Lot 5, Tahoe Keys Tract No. 2 (2160 Venice Drive) in the Tahoe Keys subdivision of the city of South Lake Tahoe and cap the connection.

2. Within thirty days after the completion of the removal of the fire hydrant and the recapping of the connection Tahoe Keys Water Company Owners Association shall file a report of the actual cost of such work with this Commission.

3. In the event one-half the actual cost of the removal of the fire hydrant and the capping of the connection is less than \$500, Tahoe Keys Water Company Owners Association shall promptly refund the difference between \$500 and one-half the actual cost of the work to complainant, Dennis R. Allen, and shall apply the balance of such deposit to its cost of performing the work.

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

Dated at San Francisco, California, this 9th day of NOVEMBER, 1978.

Robert Batimuel
 President
William Symons
Deborah L. Johnson
Arthur J. Smith
Clare J. DeRoch
 Commissioners