



202108190038

08/19/2021 10:48 AM Pages: 1 of 6 Fees: \$208.50
Skagit County Auditor

COVER SHEET FOR RECORDING DOCUMENTS

Return to: Becky Jensen
City of Mount Vernon
910 Cleveland Avenue
Mount Vernon, WA 98273

DOCUMENT: Resolution 1000

GRANTEE: Public

GRANTORS: Tri Pointe Homes

ABBREVIATED LEGAL DESCRIPTION: Tract P2, AKA Park Tract, Skagit Highlands
Division V (Phase 1)

AUDITOR'S FILES NO. 200612210067

COMPLETE LEGAL DESCRIPTION ON PAGE: 2

ASSESSOR'S PARCEL/TAX ID NUMBER: P125578

RESOLUTION NO. 1000

A RESOLUTION by the City of Mount Vernon, Washington, confirming the City's abandonment, through the course of agreements and actions by the City and Quadrant Corporation (Quadrant), of Tract P-2 located in the Skagit Highlands subdivision, which property was dedicated to the public for use as a public park, but has been unavailable for such use and remains unavailable for the foreseeable future due to contamination from methane caused by the use of highly organic fill within Tract P-2 during the development of the Skagit Highlands subdivision.

Whereas, Tract P-2 in the Skagit Highlands subdivision was dedicated to the City for use as a public park in the final plat approved on December 19, 2006;

Whereas, in 2006, when the plat was approved, the generation of methane caused by the decomposition of highly organic fill used in Tract P-2 was not known to the City;

Whereas, after the discovery of methane contamination within Tract P-2, which made the property unusable as a public park, the City accepted Quadrant's public statement that the park had not yet been dedicated to the City and abandoned its interest in Tract P-2; and

Whereas recent assertions by Tri Pointe Homes (Tri Pointe), Quadrant's apparent successor in interest, that the City "owns" Tract P-2 and is responsible for maintenance within the tract necessitate that the City adopt a resolution to formally confirm and clarify that the City abandons any interest the City may have in Tract P-2.

THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS:

1. Under Resolution No. 698 dated January 4, 2006, the city granted preliminary plat approval to Quadrant to develop Skagit Highlands Division V (Phase I) allowing Quadrant to begin work on a housing development within the subdivision.
2. The City Council approved the final Plat of Skagit Highlands Division V (Phase I) on December 19, 2006, which was filed with the county auditor under file number 200612210067 on December 21, 2006.
3. The dedication of Tract P-2 to the public on the final plat does not contain clear language that Quadrant intended or by operation of the dedication in fact transferred a fee interest in the tract to the public. Regarding Tract P-2, the dedication provides:

... we ... further dedicate to the use of the public all of the easements and tracts shown on this plat for all public purposes as indicated thereon, including but not limited to parks, open space, utilities and drainage. . .

4. Note 10 on sheet 2 of the plat provides that "Tracts P-1 and P-2 are park tracts" and that "Tract P-2 is hereby granted and conveyed upon the recording of this plat to the City of Mount Vernon, who shall be responsible for the maintenance of said tract."
5. Tract P2 was assigned parcel number P125578 by the Skagit County Assessor with the following legal description:

(5.9800 ac) TRACT P2, AKA PARK TRACT, SKAGIT HIGHLANDS DIVISION V (PHASE 1), RECORDED UNDER AF#200612210067, BEING A PORTION OF THE SW 1/4 OF SW 1/4 SECTION 14, SE 1/4 AND SW 1/4 OF SE 1/4 SECTION 15, NE 1/4 AND NW 1/4 OF NE 1/4 SECTION 22 AND NW 1/4 OF NW 1/4 SECTION 23, ALL IN TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.
6. Landscapers working for Quadrant within Tract P-2 observed and reported the presence of gas within the tract to Quadrant, which caused Quadrant to retain PES Environmental, Inc. (PES) to survey the area.
7. On April 1, 2009, PES issued a Methane Characterization and Conceptual Mitigation Design Report. In the Background section of its report, PES attributed the presence of methane to work performed when Tract P-2 was excavated and backfilled over a 5-to 6-month period that ended by November 2006:

During site development, Quadrant excavated soil from borrow pits in the areas that later became Park 2 [Tract P-2] and Park 3 to construct stormwater management and retention infrastructure, and to reclaim an abandoned gravel pit within the Skagit Highlands development (Figure 2). The park areas were subsequently backfilled using topsoil obtained from approximately 91 acres of previously graded areas throughout Division 5 and the larger Skagit Highlands development.

... The former borrow pit in Park 2 is estimated to cover approximately 3.5 acres in the southern two thirds of the park as shown on Figure 3. ...

... According to Quadrant, the prior owner of the Skagit Highlands property had logged and cleared many of the parcels prior to Quadrant assuming ownership. As part of the land clearing activities, the previous owner shredded stumps, shrubs, and other debris (i.e., shredded woody material) and incorporated the material into the land surface. This surface material, consisting of organic rich topsoil and shredded woody material was pushed into piles, removed from the Division 5 development area (approximately 71 acres), and used as fill to reclaim the Park 2 borrow pit. According to Quadrant, the topsoil from the 71 acres of Division 5 contained the greatest amount of organic material, ...
8. PES concluded that, "The source of the methane in the parks is believed to be from the decomposition of the organic matter in the topsoil used to reclaim the former borrow pits, which became Park 2 and 3." The use of fill with a high organic content, which is the source of

methane production in the tract and the cause of an ongoing public health hazard, was not disclosed to the City before the final plat was approved.

9. PES' report identifies health and environmental concerns caused by the decomposition of the organic fill, which make the property unsafe for public use, and states, "Based on the methane generation modeling, the mitigation systems may need to be operated or left in place for up to 20 years or longer."

10. Quadrant notified the City, Skagit County Health, and the Washington State Department of Ecology of the ongoing generation of methane within Tract P-2 by early August 2008 and worked with county Health on a mitigation plan.

11. On August 12, 2008, Quadrant mailed a letter to the Skagit Highlands Community regarding the "Skagit Highlands City Park Opening." The letter advised of the discovery of methane and provided, in part:

The P2 Park was scheduled to be dedicated to the City of Mount Vernon and opened for use sometime this summer . . . Until the situation is fully understood and addressed these two parks will remain closed to public access . . . Quadrant intends to dedicate the two park spaces as planned once this issue is addressed.

12. In a letter dated May 20, 2009, Quadrant advised the Skagit Highlands Community that it "will seek permit approval from the City of Mount Vernon to establish underground extraction systems" and that "we . . . anticipate the park turnover may occur by the end of August 2009."

13. Because of the use of inappropriate organic-rich fill, Tract P-2 was not suitable for use as a park as intended at the time the final plat was approved, and it continues to be unusable as a public park. As a result, the City abandoned its interest in Tract P-2, has not mowed or landscaped the property, organized events on the property, contracted for or performed any work on the property, assumed responsibility for security on the property, or interfered with Quadrant or the HOA's interests and activities in Tract P-2.

14. On March 10, 2016, Quadrant and Skagit Highlands Homeowner's Association (HOA) entered into an Easement Agreement in which Quadrant granted the HOA "sole responsibility for the operation, management, and scheduling" of Tract P-2. Specifically, the HOA agreed that it would have responsibility to establish rules and regulations for the Property, scheduling use of the Property and any of its facilities, and charging and collecting fees for use of the Property or its facilities. The HOA also agreed to provide, at its sole expense, all maintenance and repair services for the Property and to modify its liability insurance to include the Property.

15. In a letter dated May 25, 2021, Tri Pointe advised, contrary to the Easement Agreement between Quadrant and the HOA that "the City does in fact own park P-2," that the Skagit Highlands Homeowner's Association (HOA) will cease maintaining the park, and that Tri Pointe does not intend to take over park maintenance. Should Tri Pointe abandon its responsibilities as owner of Tract P-2 and release the HOA from its responsibilities under the 2016 Easement

Agreement, Tract P-2 will likely become a nuisance property in violation of chapter 8.08 MVMC.

16. To clarify that Tri Pointe and the HOA have legal and contractual obligations regarding the maintenance of Tract P-2 and to avoid the scenario of Tract P-2 becoming a nuisance property, the City finds it necessary to formally abandon all interest in Tract P-2.

17. The public's interest in property acquired through a dedication – whether easement or ownership in fee – may be abandoned when the property is no longer needed or suitable for the public's use. See RCW 35.22.280(7) which specifically gives cities of the first class the power to vacate parks.

18. RCW 64.04.175 grants the City, as sole owner of the park easement, authority to unilaterally abandon the dedicated easement. That statute provides:

Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement.

19. Abandonment of the City's park easement will not interfere with the HOA's 2016 Easement Agreement. The 2016 Easement Agreement does not dedicate the property for public uses; is a distinctly separate and mutual agreement between Quadrant and the HOA, which did not involve the City. Further, the HOA's Easement Agreement; was entered into after the City abandoned its interest in Tract P-2; and will survive the City's recording of a resolution that formalizes the City's abandonment of its interest in Tract P-2.

20. Should there be a dispute about whether the City acquired an easement or a fee interest over Tract P-2, the court in *Johnston v. Medina Imp. Club*, 10 Wn.2d 44, 116 P.2d 272, (1941) allows that municipalities may abandon fee interests. The *Johnston* court found that King County's undisputed disclaimer – in an answer to a complaint – of its fee interest in the property involved in the litigation was sufficient for the court to find abandonment by King County and to dismiss the county from the litigation.

21. In accordance with MVMC 2.95.030, which authorizes the City Council to abandon easements and fee interests in real property, the City Council makes the following specific findings:

- a. Tri Pointe's assertion that the City "owns" Tract P-2 and the HOA's apparent withdrawal from its 2016 Easement Agreement with Quadrant sets the stage for Tract P-2 to become a nuisance property with the potential for injury to the public's health, safety, and well-being;
- b. Abandonment of the City's interest in Tract P-2 is in the City's best interests given the City's past, present and ongoing inability to use the property for the dedicated use; the City's intended abandonment of any interest in the property; the potential for public liability due to the ongoing methane contamination; and the City's present interest in avoiding the consequence of Tract P-2 becoming a nuisance property;

- c. Abandonment of the property (affirmed and made formal in a Resolution passed by the City Council) means the City's interest in Tract P-2 reverts to Quadrant or to Tri Pointe depending on any agreements between it and Quadrant, and is not a gift or loan of credit to either entity;
- d. Tract P-2, which has never been opened as a public park and is not desirable for use as a public park is surplus to the needs of the City;
- e. Tract P-2 was not acquired for public utility purposes and is not being transferred to another governmental unit; and
- f. A formal appraisal is not necessary in this instance where ownership of the park easement, which the City has long considered as abandoned, will revert to Quadrant or Tri Pointe.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MOUNT VERNON:

1. That the City does not own Tract P-2;
2. That the City hereby abandons any and all interest it may have in Tract P-2, which interest was dedicated without disclosure of the presence of existing hazardous materials, was dedicated for public use in the Plat of Skagit Highlands Division V (Phase 1), was filed with the Skagit County Auditor on December 21, 2006, under file number 200612210067 and is described in the legal description provided in the findings above; and
3. That Quadrant, Tri Pointe, and/or the HOA have obligations regarding Tract P-2 as owner of a fee interest in the tract or under the 2016 Easement Agreement between Quadrant and should act to avoid the prospect of Tract P-2 becoming a nuisance property.

A copy of this resolution shall be filed with the Skagit County Auditor and distributed to the Skagit County Assessor, Quadrant, Tri Pointe, and the HOA.

Adopted at a regular meeting of the City Council of the City of Mount Vernon, Washington, held on August 11, 2021.

By


Jill Boudreau, Mayor

Attest:



Becky Jensen, City Clerk

Approved as to form:



Kevin Rogerson, City Attorney