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File 1988-0034

Project Name: 2415 Apricot Court – Easement Vacation-Utility-Leo/Joyce Little

P r e s e n t	S c a n n e d	<p>A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the in some instances, not all entries designated to be scanned by the department are present in the file. There are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been provided.</p> <p>Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a quick guide for the contents of each file.</p> <p>Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.</p>			
X	X	Table of Contents			
X	X	Review Sheet Summary			
X		Application form			
X		Review Sheets			
		Receipts for fees paid for anything			
		*Submittal checklist			
X	X	*General project report			
		Reduced copy of final plans or drawings			
X		Reduction of assessor's map.			
		Evidence of title, deeds, easements			
X	X	*Mailing list to adjacent property owners			
		Public notice cards			
		Record of certified mail			
X		Legal description			
		Appraisal of raw land			
		Reduction of any maps – final copy			
		*Final reports for drainage and soils (geotechnical reports)			
		Other bound or non-bound reports			
		Traffic studies			
X	X	*Petitioner's response to comments			
		*Staff Reports			
		*Planning Commission staff report and exhibits			
		*City Council staff report and exhibits			
		*Summary sheet of final conditions			
		*Letters and correspondence dated after the date of final approval (pertaining to change in conditions or expiration date)			
<b><u>DOCUMENTS SPECIFIC TO THIS DEVELOPMENT FILE:</u></b>					
X	X	Action Sheet	X	Letter from Robert E. Colony to Planning re: feels home is an asset to the neighborhood – 9/28/88	
X		Review Summary	X	10 Opposition letters – 1 rescinded	
X	X	Review Sheet Summary	X	X	Development Summary – 10/6/88
X		Development Application – 8/26/88	X	X	Planning Commission Minutes - ** - 9/26/88
X	X	Ordinance No. 2411 - **	X		Letter from R. John Schroeder to City Council re: observations favorable as a realtor in the Grand Valley – 10/20/88
X	X	City Council Minutes - ** - 10/4/88, 10/19/88, 11/16/88	X		Memo from Dan Wilson to Karl Metzner re: response to complaint from Dean Lindholm, through Gil Stone, D.A.'s Office – 12/20/88
X	X	Letter from Kirk Rider, Young & Hockensmith, Atty at Law, to Dan Wilson re: protest of the Council's decision – 11/4/88			Letter from Harry A. Tucker Jr., Atty at Law to Dan Wilson re: requesting council to postpone decision-11/2/88
X	X	List of events for Little Garage			
X	X	Planning Clearance - ** - 8/25/87			
X		Appraisal Record			
X		Public Notice Posting – 10/11/88			
X		Deed of Trust			
X	X	Site Plan			
X	X	Ordinance No. 2411 - **			

Leo and Joyce Little  
2415 Apricot Court  
Grand Junction, CO 81506

August 29, 1988

Grand Junction Planning Department  
550 White Avenue - Room 60  
Grand Junction, CO 81501

Subject: Application for Utility Easement Vacation

History

1. On August 25, 1987 we submitted an application with a sketch to the Planning Department which showed the location of our proposed addition and indicated all pertinent set backs on our odd-sized 5-sided lot. The planning clearance was issued by the Planning Department on August 25, 1987.
2. On August 25, 1987 the Colorado Department of Health made a radiation survey and approved our lot for additional construction.
3. Based on advice of a local contractor, due to the potential instability of the mancos shale under our lot, we hired a professional engineer to design the foundation for the new addition. Design was completed on October 15, 1987.
4. On October 25, 1987, the Spring Valley Architect Committee reviewed the drawing of the proposed addition and signed off for their approval.
5. Also due to our odd-sized lot, Mr. Tex Tolman (one of the contractors with whom we were negotiating) had Mr. Howard Hetherington of the City Building Department come to our residence to again approve the proposed addition. Stakes and ropes were set out to clearly mark the proposed addition. Mr. Hetherington noted the odd-shaped lot but said it was ok to construct the addition as laid out and signed acceptance on the drawing October 28, 1987. Mr. Hetherington was also the city inspector who signed off approval of the foundation forms and the foundation after the concrete placement.
6. On October 29, 1987, we submitted drawings of the proposed addition and applied for a building permit. Upon payment of a \$212.00 fee the building permit was issued on October 29, 1987.
7. After all permits and approvals were cleared, contracts were let with the following for construction:
  - a. Hartman Construction - Carpentry
  - b. Puckett & Son Concrete - Foundation & Driveway

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- c. Bill's Plumbing - Plumbing & Cooling
- d. Wesley Electric - Electrical

Joyce and I did all finish work ourselves.

8. The main structure was built by December 1987. All major work was finished by April 1988.
9. On August 9, 1988, we received a letter from the City Planning Department stating there was a possible violation on the location of our addition. I immediately contacted Linda Weitzel of the Planning Department. An appointment was made for Linda Weitzel and Mike Sutherland of the City Planning Department to visit our property on August 22, 1988.
10. On August 22, 1988 we reviewed our records of our approvals and designs with Ms. Weitzel and Mr. Sutherland and the property was then walked. Based on their review, they then informed us that we would need to apply for a Utility Easement Vacation and a Variance Request.
11. We met with Linda Weitzel and Mike Sutherland on August 25, 1988 and received their guidance on how to prepare the requests. Therefore, we are submitting this application for vacation of utility easement.

Request - Project Narrative

It is requested that a vacation for utility easement be granted for 2415 Apricot Court, Grand Junction, Colorado. The above history clearly shows the addition was constructed with the owners, Leo and Joyce Little, having obtained all required approvals and permits for construction.

- o The addition does not land-lock any parcels of land.
- o The addition does not restrict any access to any parcel of land.
- o The addition has no adverse impacts on the health, safety, and/or welfare of the community.
- o The addition does not conflict with plans and policies and the addition was approved by the Spring Valley Owners Association Architect Committee prior to construction.
- o The addition does not have any positive or negative benefits to the City except for the positive benefit of increased tax revenues due to the higher evaluation of the property.

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This application for Utility Easement Vacation is respectfully submitted by Leo and Joyce Little, owners of residence at 2415 Apricot Court, Grand Junction, Colorado 81506.

  
Leo E. Little

  
Joyce M. Little

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No. 2945-014-35-003 David W. & Deborah J. Beck 2320 Wintergreen Drive Grand Junction, CO 81506	No. 2945-014-35-013 Walter F. & Joyce M. Maulis 5132 Quaker Street Golden, CO 80403	No. 2945-014-20-018 James G. & Rebecca M. Wood 2421 Wintergreen Dr. Grand Junction, CO 81506
No. 2945-014-35-004 Timme C & Margaret F. Wild 2410 Wintergreen Dr. Grand Junction, CO 81506	No. 2945-014-35-014 Francis D. & Ruth L. Johnson 2315 Ridge Drive Grand Junction, CO 81506	No. 2945-014-20-017 David G. & Judy C. Ousley 2511 Wintergreen Dr. Grand Junction, CO 81506
No. 2945-014-35-005 Steven C. Hall & Darlene M. Depinho 2420 Wintergreen Dr. Grand Junction, CO 81506	No. 2945-014-35-019 Ivan W. & Glenn E. Jehle 902 W HWY 50 Gunnison, CO 81230	No. 2945-014-20-016 Bill E. & Joanne Ferguson 3215 Beechwood Street Grand Junction, CO 81506
No. 2945-014-006 James G. Lander 2510 Wintergreen Drive Grand Junction, CO 81506	No. 2945-014-35-024 Michael L. McCarty 2319 Apricot Court Grand Junction, CO 81506	No. 2945-014-23-011 M. B. & Shawna Higginbotham 3310 Beechwood Street Grand Junction, CO 81506
No. 2945-014-35-007 Charles H. & Joanna L. Dewey 2520 Wintergreen Dr. Grand Junction, CO 81506	No. 2945-014-35-023 Aaron D. & Beth J. Long 2405 Apricot Ct. Grand Junction, CO 81506	No. 2945-014-23-012 John Terry & Ruth Ellen Leever 3320 Beechwood St. Grand Junction, CO 81506
No. 2945-014-35-008 Dean M. & Karola R. Lindholm 3325 Beechwood Street Grand Junction, CO 81506	No. 2945-014-35-022 Leo E. & Joyce M. 2415 Apricot Court Grand Junction, CO 81506	No. 2945-014-23-013 Tedford M. & Beverly A. Hendrickson 3330 Beechwood Street Grand Junction, CO 81506
No. 2945-014-35-028 Leonard N. & E. Doris Cassady 3405 Beechwood Street Grand Junction, CO 81506	No. 2945-014-35-021 Jose A. & Deborah E. Cattin 2420 Apricot Ct. Grand Junction, CO 81506	No. 2945-014-23-014 Carl & Juanita Pinson 3410 Beechwood Street Grand Junction, CO 81506
No. 2945-014-35-027 Ernest P. & Julie A. Locke 3415 Beechwood Street Grand Junction, CO 81506	No. 2945-014-35-020 Dwight E. & Jessie D. Ryland 2410 Apricot Ct. Grand Junction, CO 81506	No. 2945-014-23-015 Marcus D. & Helen R. Douglas 3420 Beechwood Grand Junction, CO 81506
No. 2945-014-35-011 Robert F. & Sally A. Potter 3425 Beechwood Street Grand Junction, CO 81506	No. 2945-014-20-020 Wm. O. & Jacque K. Gaskill 2321 Wintergreen Dr. Grand Junction, CO 81506	
No. 2945-014-35-012 Stephen E. & Carol F. Hurd 2425 Ridge Drive Grand Junction, CO 81506	No. 2945-014-20-019 William S. Jr. & Nancy A. Lewis 2411 Wintergreen Dr. Grand Junction, CO 81506	

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DATES FOR LITTLE GARAGE  
2415 Apricot Court

3-09-88 Received complaint.  
3-22-88 First inspection, Karl Metzner & Linda Weitzel. Could see garage from the front of house but could not determine any setback violation.  
7-08-88 After several attempts to connect, Kathy Fortner & Linda Weitzel were able to look at the rear yard of 2415 Apricot Court. Visually, the garage appeared to be closer than the 25 feet required rearyard setback.  
7-12-88 Received another complaint from another individual.  
8-08-88 Notice of Violation sent.  
8-23-88 Site check made by Mike Sutherland & Linda Weitzel. Talked with the Littles about the setback problem and did some measuring.

Application was submitted for vacation of utility easement for the October 4, 1988 Public Hearing. From the time of submittal, the first of October until the Hearing, there were several phone calls of inquiry regarding the vacation of utility easement. The Little's had planned to submit a variance for the setback, but withdrew the submittal before it had been processed.

# REVIEW SHEET SUMMARY

FILE NO. 34-88 TITLE/HEADING Utility Easement Vacation DUE DATE 9/20/88

ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Petitioner: Leo and Joyce Little

Location: 2415 Apricot Court

PETITIONER ADDRESS 2415 Apricot Court

ENGINEER n/a

DATE REC.            AGENCY            COMMENTS

NOTE: WRITTEN RESPONSE BY THE PETITIONER TO THE REVIEW COMMENTS IS REQUIRED A MINIMUM OF 48 HOURS PRIOR TO THE FIRST SCHEDULED PUBLIC HEARING.

9/20/88	Public Works	No objections.
9/20/88	Development Dept.	The narrative does not specify the width of the requested vacation. Due to the fact that the building encroaches less than five (5) feet into the easement, it is recommended that only five (5) feet of the existing utility easement be vacated. As long as none of the utility companies nor City Utilities have objections to this vacation, our office has no objections.
9/9/88	Mtn. Bell	I suggest that proposed easement vacation be changed to a reduced 5 foot easement which would clear garage addition and still allow easement continuity with adjoining lots.
9/9/88	Building Dept.	Information contained in item 5. of the History is not totally correct. Mr. Hetherington did not approve the location of the building addition. He directed Mr. Tolman to contact the City Planning Department to give final approval. No objections or comments.
9/16/88	Public Service gas and elec:	No objections or comments.

*Handwritten:*  
Approved  
9/22/88  
[Signature]



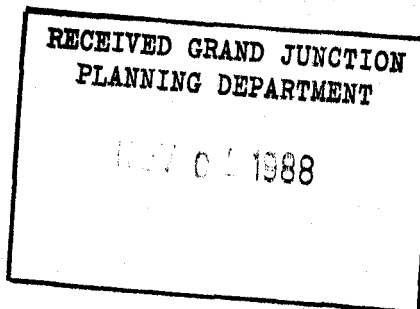
HARRY A. TUCKER JR.

Attorney at Law

634 MAIN STREET, SUITE 1  
GRAND JUNCTION, COLORADO 81501  
TELEPHONE (303) 243-9294

November 2, 1988

Mr. Dan Wilson  
City Attorney  
Grand Junction City Hall  
250 N. 5th Street  
Grand Junction, CO 81501



Re: Little - Vacation of Easement

Dear Dan:

I am enclosing three letters from the three members of the Spring Valley Architectural Committee. Also enclosed is page 5 of the transcript of the Planning Commission Hearing.

You will note that Mr. Little testified that Joyce (his wife) had the Architect Committee come over and walk the property. All members of the Architect Committee state that this was not the case.

Further, Mr. Tolman, the original contractor, had a discussion with Mr. Little and advised him that there was a setback problem. This apparently had something to do with Mr. Tolman not getting the contract, but Mr. Tolman told Mr. Little, when he was advised he would not get the contract that there was a problem and that he needed to get together with Mr. Heatherington before he went any farther. We are getting a letter from Mr. Tolman for clarification of exactly what was said.

You are also aware that Mr. Heatherington claims to have discussed possible setback requirements with Mrs. Little, who assured him those had already been worked out with the Planning Commission.

I think a good case can be made for the fact that Little's knew what they were doing, and just did not care. I am very concerned about the easement vacation. The City will be left with 5½ feet of easement at that location. This is not wide enough to drive through. Next, the City will be wanting to condemn part of the Cassidy property to be able to use the easement.

So far as we are aware, no member of the City Council has come to look at the property.

For all of the above reasons, I feel that it would be in everyone's best interests if the council decision were postponed. I also concur with a declaratory judgment action by the City on the issue of whether or not the City is estopped from denying an easement vacation or citing Little's with a violation.

From my client's point of view, we would welcome that action. That would provide them with an opportunity to develop what they believe was a hoodwinking of the City, the Subdivision and themselves. If they can prove that, there should be no estopple.

Sincerely,

A handwritten signature in cursive script, appearing to read 'H. A. Tucker, Jr.', written in dark ink.

HARRY A. TUCKER, JR.

cc: Lenard Cassidy

Nov. 1, 1988

To whom it may concern,

I, Fred Smith, a member of the Sprems Valley Board of Directors and a member of the Architectural Committee did not even perform a site visit to the property at 2415 APRICOT COURT. A site visit is usually not necessary as all set back, easement and other backing requirements have always been the responsibility of the building inspectors to see that they are entered.

Sincerely,

~~Fred Smith~~

To whom it may concern, I Michael Johnson, was not in attendance and have never been on or walked the property located at 2415 APRICOT COURT.

DATE 10-30-88

Michael Johnson

October 30, 1988  
2119 Hawthorne  
Grand Junction, Colo. 81506

To Whom It May Concern:

I was the head of the Spring Valley Home Owners' Association Architectural Committee during 1986 and 1987. Concerning the approval of plans submitted by Leo and Joyce Little for an addition to their home at 2415 Apricot Court, I did review the plans in my home and after I stamped the plans I did deliver the plans to the Little's home. I recall giving the plans to Mr. Little in his driveway and we conversed about things in general. I thanked him for submitting his plans and advised him to be sure and get a building permit from the city. I did not walk the area of the addition with him nor did I make any measurements or walk off any dimensions concerning the addition. The Association covenants do not provide the Architectural Committee with any authority regarding set backs of buildings.

  
\_\_\_\_\_  
Dennis M. Kirtland

meeting. Joyce and I purchased the house in August of 1986. The house had been built in 1981, but it had been empty for about a year and a half, due to a foreclosure on that home. The residence was in quite a disarray, the backyard was in waist-high weeds, the swimming pool in the backyard was almost a cesspool. But, fortunately, our neighbors on Apricot Court on either side of the property had kept the front lawn watered, fertilized, and mowed during the time the house was vacant, so the front was in very good shape.

The house had great potential, and over the last two years, Joyce and I have been continuously improving and landscaping our home, since we planned for this to be our permanent residence here in Grand Junction, after 17 years moving around the United States. In August of 1987, over a year ago, we received our planning clearance from the City, with the stipulation that the Spring Valley Homeowners Association Architectural Committee approve our addition. Joyce had the Architect Committee come over to our house, walk the property, review the plans, review the plot plan, and received written approval from the Spring Valley Architect Committee on October 25, 1987--about a year ago.

On October 29, 1987 we received from the City our building permit, #028971, which allowed our addition and our modifications to the property. After all our permits were obtained, the contractor did all the modifications and additions to the property. Joyce and I did all the finish work ourselves, which was quite a job. The main structure was completed in December of 1987, about 10 months ago, and all the major inside work was done by April of 1987. At no time during any of this period did we receive any comments from any neighbors about the addition.

On August the 9th, 1988, we received a letter from the City Planning Department informing us of a possible violation on the location of the addition on our property. What I'd like to do at this time is present, for your review, a letter from the City, the City's notice of violation. I'll give you a couple minutes to read the letter. (Recorder's note: The letter presented to board members was not the notice of violation, but the letter written by City Attorney, Dan Wilson, which determined the notice of violation of setbacks only as rescinded. It did not make a judgement on the question of easement encroachment, however.)

Okay, therefore, we are really here tonight just to apply for the utility vacation of easement, in order to clear up this issue. The area of encroachment is shown on the site plan, and I could mark it up there (Mike pointed out this area on the site plan). The area is approximately 7 square feet, where this corner of the property, this little corner right there is 7 square feet (indicated site plan) has gone onto the easement. Thank you.



# development summary



File # 34-88 Name Little's Easement Vac. Date 10/6/88

PROJECT LOCATION: 2415 Apricot Court

PROJECT DESCRIPTION: A request to vacate 5 feet of a 10 foot utility easement along the rear property line. A garage was constructed which encroaches into the easement.

## REVIEW SUMMARY (Major Concerns)

POLICIES COMPLIANCE	YES NO *		TECHNICAL REQUIREMENTS	SATISFIED NOT SATISFIED *	
	YES	NO		SATISFIED	NOT SATISFIED
Complies with adopted policies		X	Streets/Rights Of Way	X	
Complies with adopted criteria	X		Water/Sewer	X	
Meets guidelines of Comprehensive Plan		n/a	Irrigation/Drainage	X	
			Landscaping/Screening	X	
			Other: _____		

\* See explanation below

The garage was constructed within the rearyard setback. The owners got a planning clearance, but the site plan sketched out was not the same as the one provided for the Building Department. Owners claim that the Building Inspector looked at the setbacks and gave them the O.K. to construct.

**STATUS & RECOMMENDATIONS:** Planning staff originally directed the owners to apply for both easement vacation and setback variance (to Board of Adjustments), but Dan Wilson determined we had no grounds to require a variance.

There is considerable opposition to this by neighbors, so it should be scheduled for a full hearing.

### Planning Commission Action

Planning Commission recommended approval of the easement vacation by a vote of 4-1.