



OFFICE OF THE CITY MANAGER

TO: City Council DATE: December 5, 2005
FROM: Cynthia Kurtz, City Manager
SUBJECT: PROPOSED VACATION OF A PORTION OF MADIA STREET

The following represents staff's response to questions raised by the City Council during their consideration of the subject project.

1. Do all the departments impacted support the proposed vacation?

The Police Department, Fire Department, and the Department of Transportation all provided written memorandums supporting the proposed vacation.

2. What is the benefit to the community of the proposed vacation?

The value of the easement is estimated at less than \$1000 because the City does not have underlying fee title, only the right to place a road over the property owned by others. The City placed a condition of the proposed vacation requiring the installation of a cul-de-sac. The construction of a 25 foot radius cul-de-sac will improve turning movements for residents, delivery trucks, refuse collection vehicles, street sweepers, and emergency vehicles. The configuration requires the applicant to grant an easement to the City for street purposes for a portion of the cul-de-sac. The estimated cost to the applicant for construction of the cul-de-sac, including required work in the proposed vacation area and the processing of the easement for a portion of the cul-de-sac, is approximately \$120,000. In addition, the proposed vacation of a 50-foot-wide street, approximately 150 feet in length, will reduce the cost of street maintenance and repair.

Public street trees will remain with the proposed configuration of the cul-de-sac. This configuration also took into consideration native trees within the area. No native or specimen trees will be impacted and the Tree Protection Ordinance will apply.

3. Are there any public trails leading into the Arroyo from Madia Street?

Our records do not indicate any existing "public" trails leading from the east end of Madia Street down to the Arroyo and Parkview Avenue.

Staff has requested a title company to research the language of the existing easement for Madia Street, determine the underlying fee title to the street and to determine if there are any recorded public trails leading from Madia Street to the Arroyo and Parkview Avenue. It is anticipated that this information will be available by December 5 for the continuation of the Public Hearing for the subject project.

4. What opportunities does the property owner have to construct additions to the existing structures?

There are two separate parcels that gain usable square footage as a result of the proposed vacation:

- 1165 Madia (RS-4 and RS-4-HD)

Expansion

The southern portion of this lot is located in an RS-4 zone and the northern portion is within an RS-4 Hillside Overlay Zone.

The existing home is located within the RS-4 portion of the lot and exceeds the maximum development standards for RS-4. It could not be expanded within that portion of the lot with the current lot configuration. With the additional lot square footage resulting from the street vacation the building could be expanded by only 160 square feet within the RS-4 zone.

If an expansion was proposed in the Hillside Overlay Zone building size would be regulated by floor area ratio for the entire parcel and neighborhood compatibility standards within the Hillside Zone. FAR requirements for the parcel would be calculated based on 30% of the flat area and 25% or less for the hillside areas, depending on the average slope of the hillside area. However, if more than 500 square feet are proposed within the Hillside Zone a hillside development permit would be required, triggering neighborhood compatibility standards. These standards limit the maximum size of the house, regardless of size of lot, to 135% of the median home size within 500 feet of the parcel. With the existing home at 7,360 square feet it is unlikely that an expansion would be able to meet neighborhood compatibility standards.

Second Unit

A second unit could not be constructed in the RS-4 zone because of the existing lot coverage and is prohibited in the Hillside Overlay Zone portion of the lot.

■ 1164 Madia Street (RS-4)

Expansion

On this parcel expansion would be allowed to a maximum of 35% lot coverage and 30% FAR plus 500 square feet. The current home is 3,290 square feet which could be expanded to 6,170 square feet on the current lot configuration. With the addition of the square footage from the street vacation, the home could be expanded to 7,145 square feet.

Second Unit

According to the Zoning Code a second dwelling unit may be constructed on any legal parcel of 15,000 square feet or more in any RS zoning district. Because this parcel exceeds 15,000 square feet a second unit could be built on this parcel with or without the vacation of Madia. The size of the second unit is limited by code to a maximum of 800 square feet.

Additional Conditions:

The following conditions have been added to the proposed vacation in addition to those stated in the November 7, 2005, City Council Agenda Report.

- A) The square footage being added to the lot at 1164 Madia Street not be included in total lot size for the purposes of calculating future buildable area (i.e., lot coverage and FAR).
- B) A fire hydrant that meets the specified fire flow shall be installed in the proposed cul-de-sac.
- C) All landscaping must meet the required fuel modification plan set forth in the California Urban Wildland Interface Code 2000 edition.

In addition to the items above, there are existing utilities within the proposed vacation area. The applicant has been conditioned to provide an easement for full access to these utilities if they are unable to meet the utilities' requirements for abandonment and reconfiguration of their facilities.

A photograph taken from Madia Street looking eastward toward the street end is attached to this memorandum.


 CYNTHIA J. KURTZ
 City Manager

Attachment



RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA ORDERING THE VACATION OF A PORTION OF MADIA STREET FROM APPROXIMATELY 380 FEET EAST OF LINDA VISTA AVENUE TO THE EAST END OF MADIA STREET

WHEREAS, Resolution No. 8516 was adopted by the City Council of the City of Pasadena on October 3, 2005, declaring the intention of the City of Pasadena to vacate a portion of Madia Street from approximately 380 feet east of Linda Vista Avenue to the east end of Madia Street and which said portion of said street shall be referred to in this resolution as Madia Street; and

WHEREAS, Madia Street, from approximately 380 feet east of Linda Vista Avenue to the east end of Madia Street, is approximately 150 feet in length and 50 feet in width; and

WHEREAS, Exhibit "B" on file in the office of the Director of the Department of Public Works identifies in detail the subject street to be vacated; and

WHEREAS, the City Council has approved the finding that there is substantial evidence that the vacation of the subject portion of Madia Street, as described herein and in Resolution No. 8516, will have no significant effect on the environment based on the determination of the City Council that the subject portion of Madia Street is declared to be Categorically Exempt (Class 4) pursuant to the guidelines of the California Quality Act, CEQA Section 15304, and no further environmental review is required and that the vacation proceeding for said street is and will be conducted pursuant to the California Streets and Highways Code Section 83290, et seq.; and

WHEREAS, the City Council finds that the vacation of the subject portion of Madia Street, as described herein and in Resolution No. 8516, is consistent with the

General Plan Mobility Element and is unnecessary for present or prospective public use; and

WHEREAS, The City Council finds that there is a public benefit from the vacation of the subject portion of Madia Street in that it will relieve the public of maintenance responsibility and associated liability.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena:

1. Said Madia Street, as described in Exhibit "A" and shown on Exhibit "B", attached hereto and incorporated herein by reference, is hereby ordered vacated and abandoned, subject to fulfillment of the conditions adopted with the resolution set forth in Exhibit "C", attached hereto and incorporated herein by reference and of the following conditions: (a) the square footage being added to the lot at 1164 Madia Street shall not be included in the total lot size for the purpose of calculating future buildable area; (b) a fire hydrant that meets the specified fire flow shall be installed in the proposed cul-de-sac; (c) all landscaping in the vacated area shall meet the required fuel modification plan set forth in the California Urban Wildlife Code, 2000 edition, and (d) an easement for utilities and access thereto shall be reserved to the City as to any utilities which remain within the vacated area; and

2. It is further ordered that the City Clerk shall cause a certified copy of this resolution to be recorded in the Office of the County Recorder of Los Angeles only after the attached conditions have been satisfied by the applicant, through completion of a Condition Satisfaction Contract.

Adopted at the _____ meeting of the City Council on the _____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JANE L. RODRIGUEZ, CMC
City Clerk

Approved as to form:

 12/1/05

Nicholas G. Rodriguez
Assistant City Attorney

**CITY OF PASADENA
CITY ATTORNEY'S OFFICE**

M E M O R A N D U M

TO: Honorable Mayor and Members of the City Council

FROM: Michele Beal Bagneris, City Attorney *MBB*
Nicholas George Rodriguez, Senior Assistant City Attorney

DATE: December 1, 2005

RE: Proposed Madia Street Vacation

At its meeting of November 7, 2005, the City Council considered the request to vacate a portion of Madia Street and continued the public hearing to December 5, 2005. As a result of the presentation, public testimony and the discussion which followed, the City Council directed the City Attorney's Office to contact the applicant and to set forth possible conditions which the City Council may wish to consider imposing as a part of any street vacation. The conditions discussed include the following:

1. a permanent restriction against building in the area that is being vacated. This might be a restriction against any type of structure whatsoever, or a lesser restriction that would allow gazebos, pergola or similar "open" structures.
2. a permanent restriction against gates that would prevent public access to the area that is being vacated.
3. allowing public access to the area that is being vacated, and
4. providing for reconveyance of the easement to the City, at no cost, on the sale of the adjoining parcels and subdivision (if they are merged).

The response of the applicant to these questions is attached to this memorandum along with a copy of a related letter sent by the applicant to his neighbors and provided by the applicant to this office for transmittal to the Council. If the Council desires to impose any conditions different from those recommended by the City Manager, the Council should continue the matter to allow appropriate revision of the Resolution.

At its consideration of the Proposed Street Vacation of a portion of Madia Street, the City Council asked four (4) questions about the law relating to street vacations, in general, as well as, about the rights of the abutting property owners and of the public with respect to this public street. The City Attorney's Office is responding to those questions, for the public record.

Honorable Mayor and
Members of the City Council

1. For the purpose of finding that a street is "unnecessary for present or prospective public use" for a street vacation, what constitutes a "public use?"

A "public use" is broadly defined as, (A) "street and highway purposes," meaning the right of the public to access a road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or (B) "public service easement," meaning the use for sewers, pipelines, electrical transmission and communication lines, light and air. *California Streets and Highways Code* Sections 8306 and 8308. Consistency with the General Plan must be considered prior to vacating a public use, *California Streets and Highways Code* Section 8313, and any present or prospective public use with respect to General Plan elements or objectives would be considered. The Pasadena Planning Commission offers its recommendation to the City Council on this issue.

The City Council receives the facts or "evidence" presented and makes findings or reaches conclusions as to "public use" based upon that evidence. The fact that there are opposing views on the question does not bind the City Council to a particular decision on the issue of whether there is a present or prospective public use. The City Council is free to make its own determination after hearing evidence from both sides. *Heist v. County of Colusa*, 163 Cal.App.3d 841, 213 Cal.Rptr. 278 (1984).

2. What rights do abutting property owners have to a street vacation if a public street is no longer needed for public purposes?

Abutting property owners do not have a right to street vacation even if a public street is no longer needed for public purposes. The City Council "may" adopt a resolution vacating a street, if certain findings are made. *California Streets and Highways Code*, Section 8324(b). The statute does not require a street vacation; rather, it provides the authority to vacate should the Council determine there is a public benefit. The purpose of vacating any street must be consideration of the public good, not merely the desire to turn the land over to the abutting property owner. *Constantine v. City of Sunnyvale*, 91 Cal.App.2d 278, 204 P.2d 922 (1949).

3. If the proposed portion of Madia street is vacated, would the calculation of lot coverage be changed for zoning setback and related purposes?

Vacation of the City's right of way easement in Madia Street would affect the setbacks, calculation of lot coverage, and floor area ratios for the abutting properties, in that the area vacated would be added to the total area of the lots. The memorandum from the City Manager addresses the respects in which these areas will be affected.

Honorable Mayor and
Members of the City Council

- 4. If the proposed portion of Madia street is vacated, would there be an automatic merger of the adjoining parcels, or would the property owner have a right to a merger, or would the City have the discretion as to whether to approve a parcel merger?**

There would not be an automatic merger of the adjoining parcels and the abandonment of the City's easement would have no effect on the existing property lines. The City's current zoning would preclude merging the two addresses unless one of the existing homes was demolished as only one dwelling unit is permitted per lot. (See Pasadena Municipal Code, Chapter 17.22, Section 17.22.040 and Table 2-3.) If one or both of the residences were demolished, merging the lots would require the filing of a final map or parcel map which has the effect of creating a new subdivision. Government Code Section 66499.20 ½. Merging of these lots could not be accomplished via the lot line adjustment procedure as that procedure is only available to four or fewer lots and a total of seven lots are involved in these two addresses. *Government Code*, Section 66412(d). The resulting lots would also be required to conform to the General Plan and to current zoning. *Government Code*, Section 66451.1.

NGR;jh

Attachment

cc: Cynthia J. Kurtz, City Manager

Rodriguez, Nicholas

From: Pam McKenna [pammckenna@quinnemanuel.com]
Sent: Wednesday, November 30, 2005 11:52 AM
To: rsjenkins@hahnlawyers.com; Rodriguez, Nicholas
Cc: John Quinn
Subject: Madia Street Vacation: 4 Qs and As.DOC

The attached is being sent to you on behalf of John Quinn.

Pam McKenna
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PROPOSED MADIA STREET VACATION

1. A permanent restriction against building in the area that is being vacated. This might be a restriction against any type of structure whatsoever, or a lesser restriction that would allow gazebos, pergola or similar “open” structures.

Answer: This is fine. We want to put in a fountain and some type of viewing space with a balcony at the end, but we don’t contemplate any structures as such. Our goal is to create a garden and benches and to open up the end so there would be marvelous views of the arroyo and the mountains, not to obstruct it with structures.

2. A permanent restriction against gates that would prevent public access to the area that is being vacated.

Answer: These two items (2 and 3) are a problem. We are not really comfortable spending tens of thousands of dollars to create landscaping between the two houses that anyone in the world can use. First there are liability issues. There is a steep fall off, a cliff, really, at the end of the street. Anyone who tried to go down to the arroyo from the end of the property could easily fall and break their neck. And we can’t run the risk of liability for “slip and falls” that might occur in any public space. Second, we don’t want to create a space where members of the public can congregate, picnic, drink beer, etc. This isn’t an idle possibility. We have had kids drinking beer on the other side of our property in the draw that leads down to the arroyo. Third, we want to make this a beautiful garden. We’re concerned that if it’s open to the public, people might come in who don’t respect gardens.

Even many public parks are often gated, and closed at night. We need a gate and we need the ability to lock it. We have told our neighbors on Madia Street that we will give them all keys and we will enter into agreements with them to do so. But we can’t go forward with our proposal if a condition is that it’s open to every member of the public.

We have spent a lot of time speaking with our neighbors regarding the plan. We have made changes to reflect their input. We hope that most, if not all, our neighbors on Madia will now support it.

3. Allowing public access to the area that is being vacated, and

Answer: see (2) above

4. Providing for reconveyance of the easement to the City, at no cost, on the sale of the adjoining parcels and subdivision (if they are merged).

Answer: We’re not sure why the city would need this. The properties would continue to be separate lots, with separate driveways providing separate access off of a new modern cul de sac with a standard radius. It’s not clear to us why the city would need the option of re-installing a street in these circumstances. Having an easement in favor of the City for a street would affect the marketability of the properties without any apparent need, so far as we can tell, on the part of the city.

November 29, 2005

Dear Neighbors:

Our application to the City to vacate Madia Street between the two houses at the end will be heard by the City Council next Monday evening. We have received suggestions from several of you which we believe will make the proposal more attractive to all the residents of Madia Street. We have told the following to several of you, but, in summary, we have modified our plan in response to your feedback as follows:

1. We believe we need to have some control over who enters the property (for liability, among other reasons), but every resident of Madia Street will receive a key which will permit them to access the gardens and viewpoint. We will enter into a written agreement with each of you confirming this.
2. We have deleted certain trees in our proposed landscaping plan to make sure there is a view corridor from the street (the end of the new cul de sac) across the property and out into the arroyo and the mountains beyond.

3. We have made several other changes to address the concerns raised by the Slatterys relating to the use of gravel in the parking area on our property, screening of cars, and certain other changes.
4. We have added shrubbery to the northwest corner of the new cul de sac to shield the Fishers' house from lights from the cars turning around in the cul de sac.

We have always assumed that part of the terms of the approval by the City would be that there would never be any building on the vacated land. We understand that there will become a recorded restriction to this effect on the property.

Some have raised the possibility of moving the cul de sac further east to make it "straight on" rather than tilted to the right (on our property on the south side of the street), as it is in the existing plan. That, actually, had been our original proposal to the City. We were not happy about moving the cul de sac onto the property on the south side. However, the City insisted on the present plan in order to preserve an ash tree at the southeast corner of our driveway on the north side of the street.

A question was raised whether the City would agree that the ash tree could come down if all residents on the street agreed that they would prefer that the cul de sac moved further east. We investigated this and learned the following: An application to remove a tree can be made to something called the Urban Forestry Committee. These applications are rarely granted. The City staff has told us that they are required to oppose all such applications (why, I do not know). If the application were granted, we would be required to pay to the City a substantial amount

based on an arbitrary valuation of the tree and the cost of removal. I am told that this would be at least \$17,000 and might be as much as \$25,000. Even if the committee approved the removal of the tree, the City staff could still oppose the application before the City Council because of the loss of the tree, and the City Council could still deny it on that basis. I understand that there is one City Council member in particular who is very vigilant about protecting trees and would likely vote against it for that reason alone. Because of the delay, the slim likelihood of success and the additional cost, we have decided that it is not worth pursuing this option.

Some people asked about the width of the sidewalk on the plan and whether the sidewalk as planned is too wide. We are told by the City that the specified sidewalk is standard and is no wider than the existing sidewalk. Part of what may have appeared on the plan to be sidewalk is actually a grass border.

Our goal is to create a spectacular viewing area. We will replace the existing asphalt, broken wooden guardrail and oleanders with a viewing platform, a fountain, gardens and benches that can be enjoyed by all residents of Madia Street. We are asking you for your support. We would like to be able to tell the City Council next Monday that all our neighbors on Madia Street are in favor of this project. Please tell us whether we can make that representation on your behalf. If we can--wonderful. If you feel you cannot, but might be able to do so if we make some further changes--let us know what they are. If you simply cannot support the project, and there is nothing that we can do to change your mind--no hard feelings!

One of the good things that has come out of this for Shannon and I is that we have gotten to know all of you a little better. It is amazing how people today can live side-by-side and not know each other.

By the next Fourth of July, we hope we will all be able to enjoy the fireworks from a garden with unobstructed views at the end of the street we all live on.

Very truly yours,

John B. Quinn

JBQ