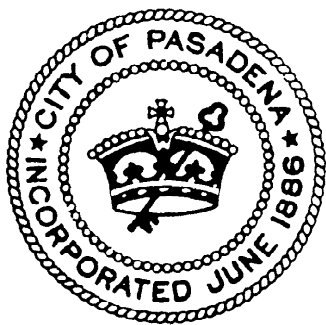


**STAFF REPORT
FROM
JULY 24, 2006
CITY COUNCIL MEETING**



Agenda Report

TO: CITY COUNCIL

Date: July 24, 2006

FROM: CITY MANAGER

SUBJECT: REQUEST FOR CLARIFICATION OF CITY COUNCIL ACTION ON DECEMBER 19, 2005, CONCERNING THE VACATION OF A PORTION OF MADIA STREET FROM APPROXIMATELY 380 FEET EAST OF LINDA VISTA AVENUE TO THE EAST END OF MADIA STREET

RECOMMENDATION

It is recommended that the City Council clarify their action on December 19, 2005, regarding their intent of a specific condition imposed for the requested vacation of a portion of Madia Street. Specifically, did the City Council intend that:

- a. The applicant meets the conditions of the vacation as described in adopted Resolution No. 8550, by recording a covenant running with the land which obligates the applicant to provide specific benefits to each and every property owner on Madia Street east of Linda Vista Avenue and not requiring that those property owners provide written acceptance of the covenant.

OR

- b. The applicant meets the conditions of the vacation as described in the adopted Resolution, only by securing "written consent" of each and every property owner prior to the recordation of such covenant.

BACKGROUND

On December 19, 2005, the City Council received a recommendation from staff to vacate a portion of Madia Street approximately 380 feet east of Linda Vista Avenue to the east end of Madia Street which is adjacent to 1164 and 1165 Madia Street. The property owner of 1165 Madia Street purchased the property across the street located at 1164 Madia Street. Now owning the properties on both sides of the street, and being located at the east end of the street, the property owner had requested the vacation of the subject portion of Madia Street.

As part of the public hearing heard on December 19, 2006, the City Council was presented with a letter from the representative of the property owners along Madia Street east of Linda Vista Avenue (Attachment A). The letter stated that the proposed agenda for the vacation was unacceptable and proposed conditions of approval which they requested to be attached to any City Council action. After discussion, the City Council adopted Resolution No. 8550 with certain conditions, including a condition which required that a covenant ("Covenant"), addressing four key provisions (Exhibit "D" of the Resolution), be recorded granting each Madia Street property owner access to and use of the vacated street. The key provisions require that reasonable usage rules be included in the Covenant.

In February of this year and as stated in the minutes of the December 19, 2005, meeting, communication began between the applicants' representative and the neighbors' representative regarding content of the Covenant and ensuring the inclusion of the key provisions set forth in the adopted resolution for the vacation of the subject portion of Madia Street. Numerous drafts were reviewed based on comments from both the applicants' and the neighbors' representatives with a final draft being presented in mid-April.

Staff has reviewed the final draft of the Covenant, a copy of which is attached hereto, and has found that all four key provisions have been provided for in the Covenant.

1. The Covenant states that it shall run with the land (Covenant Item No. 9) and that the area will be gated and locked with each property owner receiving a key (Covenant Item No. 3).
2. The Covenant provides for indemnity by covenantee of covenantor (Covenant Item No. 6).
3. The Covenant provides for specific usage rules that appear to be reasonable, which includes use of the area from sunrise to sunset Monday through Saturday and when there are fireworks at the Rose Bowl (Covenant Item No. 4).
4. The Covenant specifies that landscaping shall be done in a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street (Covenant Item No. 1).

The applicants have made the case to staff that they have offered to meet the conditions of the adopted Resolution and have been met with resistance by the neighbors in what they believe is an attempt to stop the vacation of Madia Street from proceeding. The applicants' belief is that the City Council's action was not intended as veto power by the neighbors nor was it intended that additional provisions, beyond those adopted in the Resolution, could be added to the Covenant. Through months of negotiation with the neighbors' representative, the applicants believe they have created a Covenant that includes "reasonable usage rules" as required by the Resolution. They have asked staff to find that the conditions of the Resolution have been satisfied and to allow them to record the Covenant granting permanent access in favor of each Madia

Street property owner without having to obtain formal signatures. It is the applicants' position that as a matter of law, such a Covenant can be created by a grantor without the signature of the grantee.

It is staff's request to obtain clarification from the City Council on its intent with regard to condition "(e)" of Resolution No. 8550, which states "applicant shall enter into separate and binding covenants running with the land with each and every property owner with frontage on Madia Street to the east of Linda Vista Avenue with, essentially, all of the key provisions set forth in Exhibit "D", attached hereto and incorporated hereat by this reference, in a form approved by the City Attorney," specifically, if it was the intent of City Council that the neighbors had veto power in that without a "signed" Covenant from each and every property owner, the vacation would not go forward. A copy of Resolution No. 8550, a copy of the minutes from the public hearing on December 19, 2005, and a copy of the final draft of the proposed Covenant are attached hereto (Attachments B, C, and D, respectively).

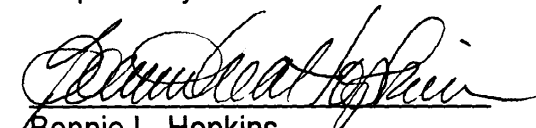
FISCAL IMPACT

All costs for processing the vacation and construction of public improvements are at the applicant's expense. The applicant shall be responsible for all costs associated with the design, review and construction of the new public improvements and costs associated with meeting all the conditions set forth in the street vacation.

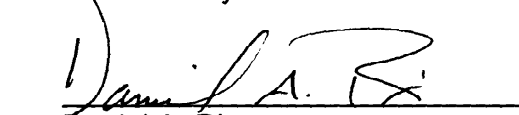
Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

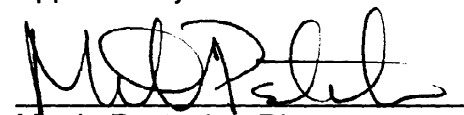
Prepared by:


Bonnie L. Hopkins
Principal Engineer

Reviewed by:


Daniel A. Rix
City Engineer

Approved by:


Martin Pastucha, Director
Department of Public Works

Attachments

ATTACHMENT A

LAW OFFICES OF
ANN HAYES HIGGINBOTHAM
ATTORNEY AT LAW
76 SOUTH GRAND AVENUE
PASADENA, CALIFORNIA 91105

RECEIVED
05 DEC 19 03 24
CITY CLERK
CITY OF PASADENA

Mayor Bogaard and the City Council
Pasadena City Hall
117 E. Colorado Blvd. 6th Floor
Pasadena, Ca. 91105

Re: Madia Street vacation¹

Post-It® Fax Note	7671	Date	12/19/05	# of pages	9
To	BONNIE HOPKINS	From	MARTIN PASTUCKA		
Co./Dept.		Co.			
Phone #		Phone #	744-4233		
Fax #	744-4757	Fax #			

Dear Lady and Gentlemen:

I represent eight families² adversely affected by this proposed street vacation. We have reviewed the latest agenda report dated December 19, 2005 in this matter and find it wholly unacceptable, as nothing is proposed which addresses the very important issues they have raised consistently at each and every public hearing held on this matter. After identifying several legal defects which inhere in these proceedings, we will propose conditions of

¹Please note that this letter has not been delivered to Councilmember Madison, as he has recused himself.

²Mr. Burt Barkelew - 1534 Linda Vista
Susan and Robert Bishop - 1199 Madia
Steve and Wendy Crump - 1200 Madia
John Fisher - 1191 Madia
Dick May - 1518 Linda Vista
Sharon and Craig Miller - 1515 Linda Vista
Chuck and Anne Parcell - 1205 Madia
Joan Smith - 1204 Madia

12/19/05
Item 4.A.

approval which must be attached to any Council action in order for the Council to be able to find that this street vacation is indeed in the public interest.

LEGALLY DEFECTIVE ENVIRONMENTAL CLEARANCE

The Staff has recommended that you find this action categorically exempt from the California Environmental Quality Act on the grounds that this constitutes a minor alteration to land. This totally ignores the important environmental effects which this action will have. The Madia neighbors have told the Planning Commission and the Council repeatedly that there is a prescriptive easement which leads from Madia Street down to the Arroyo which has existed for more than 80 years. If approved as proposed, access to that easement will be destroyed. There are also view impacts. My clients are in the habit of going down to the end of Madia Street and viewing the unobstructed view of the San Gabriel Mountains and the Arroyo which is afforded them by simply standing at the end of the street. Someone has already taken action to block this view by planting oleanders which have grown to a height of five feet.³ Finally, 14 on street parking spaces currently available to the Madia Neighbors will be removed.

³We know that the City of Pasadena did not do this planting, as the City never plants oleanders because they are poisonous. We also know that none of the Madia Neighbors did.

A categorical exemption is not appropriate when there are adverse environmental effects which flow from implementing a project. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Cal. Code of Regulations 15300.2. In this case, vacating this easement will result in the loss of a view, the blocking of an 80 year old prescriptive easement, and the loss of 14 on street parking spaces for the Madia Neighbors. A categorical exemption is totally inappropriate.

The City Council cannot take action without a valid environmental clearance. A mitigated negative declaration is the only legally correct environmental clearance for this project.

NO FINDING OF PUBLIC INTEREST

In light of the obvious defects in the proceedings to date, there is no substantial evidence in the record to support the proposed finding that this vacation of the easement is in the public interest. Indeed, the staff has been struggling with this and has only been able to come up with the specious argument that the trash trucks will no longer have to back down Madia Street. The staff report erroneously includes the dollar amount of the

improvements the Quinns will make in an effort to justify the proposal. The Quinns are required to mitigate the impact of their project, and these conditions of approval are proposed for that purpose. The value of this work cannot be used to support a finding of public benefit.

A. Violation of the Surplus Real Property Ordinance. It is not in the public interest to sell City-owned land for a song. In disposing of surplus land, "unless some extraordinary and overriding public benefit is identified and obtained in consideration of the transaction", the City is required to "seek the highest monetary return, consistent with the interest of city and community needs." (P.M.C. Section 4.02.011).

In order to take advantage of an exemption in the Surplus Real Property Ordinance for de minimus land transactions, the staff erroneously concludes that 8300 square feet of prime residential property in the Linda Vista area of the City with a view of the San Gabriel Mountains and the Arroyo has a fair market value of less than \$1000. This is ludicrous on its face. The Surplus Real Property Ordinance requires that any transaction such as the one at issue "must be consistent with the findings of the [City Council] that an extraordinary and overriding public benefit will be achieved". (P.M.C. Section 4.02.030. No such finding has been made here, nor could it be. The only benefit to

be derived from this proposed transaction is private, and inures to a single landowner.

The analysis used to reach this conclusion is faulty. The fact of the matter is that the Quinns do not now, nor have they ever had the right to use property in the street due to the existence of the easement. They will now have fee title. The value added to their property holdings far exceeds the simple fair market value of the 8300 square feet. A unique private gated compound which exists nowhere else in the City will be created as a result of this transaction.

Unless the Quinns are required to pay the fair market value of the 8300 square feet of land which they will receive at the closing, the finding of public interest is highly suspect.

B. ON STREET PARKING ELIMINATED.

The Madia Street Neighbors now have use of 14 on street parking spaces which are proposed to be removed by this proposal. One for one replacement of such parking spaces must be provided by the applicant in the surface parking lot proposed to be constructed at 1164 Madia Street.

INADEQUATE SAFEGUARDS FOR ACCESS TO THE "QUINN GARDENS"

The staff report merely attaches a summary of the "covenant" which the Quinns will allegedly enter into with the neighbors. Unless and until there is a mutually agreed upon draft document attached to the agenda report, there is no safeguard whatsoever that the access to the end of the street which the neighbors now enjoy will be protected. It is clear that the right given to the neighbors as described in Exhibit D is significantly less than they enjoy now. The proposal is to simply give them a key to the gate but the right would be personal to the owner. That means that eventually through sale or death of the property owner, this right will be extinguished. This is unacceptable.

The correct solution to this is to require the establishment of a Madia Street Homeowners Association, so that the Madia Street neighbors retain their access to this previously public property. This is the only way to assure that the impacts are mitigated sufficiently. There would be covenants, conditions and

"Please note that this also violates an existing City policy against gated compounds, most recently enforced at Madre Villas in East Pasadena, where the following condition of approval was attached to a subdivision approval:

"Entry gates, pilasters or significant architectural elements shall not be erected at the main entrance of the project site to differentiate this project from the surrounding residential neighborhoods."

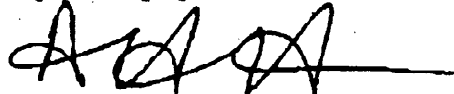
restrictions recorded which would denominate The Quinn Gardens as common property which the Madia Neighbors have the exclusive right to use, and such rights would be a part of the bundle of property rights that one would buy if one purchased one of the homes of the Madia neighbors, just as it is now in the purchase of a condominium. This is the only way to adequately protect the access rights of the Madia neighbors, and unless such a requirement is made a condition of approval to this street vacation, it is not legally possible to make a finding that this street vacation is in the public interest.

AMENDED EXHIBIT D

Attached hereto is an amended Exhibit D which incorporates all of the necessary changes to the approval of this proposal. It has been provided to counsel for the Quinns, Scott Jenkins.

Thank you for your attention to these important issues. We look forward to presenting our case to you at your meeting tonight.

Very truly yours,



Ann Higginbotham, Esq.

Attorney for the Madia Street
Neighbors

cc. Cynthia Kurtz

Nicholas Rodriguez

Clients

EXHIBIT D

The applicant shall create at his expense a homeowners association or equivalent which shall record covenants, conditions and restrictions to the effect that the Madia Street Neighbors [eight families listed] shall have access to Quinn Gardens. Such access shall run with the land and shall not be a mere personal property right. The CC&R's shall provide at a minimum for the following:

1. One for one replacement of the 14 on street parking spaces on Madia Street to be removed as a result of the construction of the cul-de-sac. Such parking shall be provided in the surface parking lot to be constructed as a part of the construction ongoing at 1164 Madia street. The Madia Street Neighbors shall have reasonable access to such parking on the terms and conditions specified in the CC&R's, but in no event shall such access be only upon consent of the Quinns.

2. Restoration of the prescriptive easement area from Madia Street down to the Arroyo at such time as the hillside is restored with funds received from FEMA for storm damage. Keys to any gates which have been constructed as of December 19, 2005 blocking access to such prescriptive easement shall be provided to the members of the Madia Street HOA with reasonable terms and conditions for their use.

3. Liability provisions calling for Madia Street HOA to assume liability for the area known as Quinn Gardens ; and indemnity by any of the Madia Street HOA members for use of the space in violation of any of the terms and conditions specified in the CC&R's.

4. Reasonable usage rules, including without limitation: rules regarding days and hours of usage; group size and number of guests; *reasonable* limitations on use of tobacco, alcohol and food consumption; no firearms, pets littering, amplified sound or unsupervised children, and other reasonable rules to be included in the CC&R's.

5. Entry gates, pilasters or significant architectural elements shall not be erected at the western edge of Quinn Gardens to differentiate this project from the surrounding residential neighborhood. This condition is imposed to comply with the Pasadena Zoning Code, which prohibits gates and fences in a front yard. It is also imposed to comply with existing City policy forbidding the creation of gated compounds in the City.

6. Landscaping shall be done in such a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street.

RESOLUTION NO. 8550

I hereby certify that the foregoing document is a full, true and correct copy of Resolution No. 8550 on file in the office of the City Clerk of the City of Pasadena, Calif.
[Signature]
City Clerk

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 Categorical 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;

WHEREAS, the applicant for said vacation is willing to fulfill certain conditions required by the City and has offered to fulfill certain other conditions requested by adjoining property owners, all at the sole cost and expense of applicant; and

WHEREAS, the City Council finds that there will be the following public benefits as a result of the vacation and fulfillment of the associated conditions, all at no cost to the City: (a) the creation of a cul-de-sac that will provide an adequate and safe turnaround, which does not currently exist, for emergency vehicles, refuse collection vehicles, delivery vehicles and other vehicles; (b) the creation of a continuous sidewalk, which does not currently exist, to replace the dead end sidewalk; (c) a fire hydrant, that does not currently exist, for use in a hillside area, and (d) the public shall be relieved from further maintenance responsibility and associated liability for the vacated area.

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 hereat by this 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 additional conditions: (a) the square footage being added to the lots at 1164 Madia Street and 1165 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; (d) an easement for utilities and access thereto shall be reserved to the City as to any utilities which remain within the vacated area; (e) applicant shall enter into separate and binding covenants running with the land with each and every property owner with frontage on Madia Street to the east of Linda Vista Avenue with, essentially, all of the key provisions set forth in Exhibit "D", attached hereto and incorporated hereat by this reference, in a form approved by the City Attorney, and (f) applicant shall record a covenant satisfactory to the City Attorney providing that no buildings shall be constructed in the vacated area (structures such as a balcony, fountains, and benches are allowed subject to City laws); 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 regular meeting of the City Council on the 19th day of

December, 2005, by the following vote:

AYES: Councilmembers Gordo, Haderlein, Holden, Little, Streater, Tyler, Mayor Bogaard

NOES: None

ABSENT: Vice Mayor Madison

ABSTAIN: None


JANE L. RODRIGUEZ, OMC
City Clerk

Approved as to form:


Michele Beal Bagneris
City Attorney

EXHIBIT "A"
MADIA STREET AND PARKVIEW AVENUE
STREET VACATION

PARCEL A

That portion of Madia Street (50.00 feet wide) adjoining Lots 11, 12 and 13 of Block "T" of Linda Vista Tract in the City of Pasadena, County of Los Angeles, State of California as per map recorded in Book 29, Pages 97 and 98 of Record Maps in the office of the County Recorder of said County, together with those portions of Parkview Avenue as shown on said Linda Vista Tract described as a whole as follows:

COMMENCING at the southwest corner of Lot 9 of Tract Map No. 8185 as per map recorded in Book 108, Page 12 of Maps in the office of the County Recorder of said County, being a point in the north line of Madia Street (50.00 feet wide) as shown on said Tract Map No. 8185;

Thence along the north line of Madia Street, North $89^{\circ}45'00''$ East 331.67 feet to the **TRUE POINT OF BEGINNING**;

Thence continuing along said north line, North $89^{\circ}45'00''$ East 148.33 feet to the southwest corner of that portion of Parkview Avenue vacated by Ordinance 2333 of said City on February 17, 1925;

Thence along the southerly line of said portion of Parkview Avenue described in said Ordinance, and the easterly prolongation of the north line of said Madia Street, North $89^{\circ}45'00''$ East 49.91 feet to the southeast corner of said Ordinance;

Thence along the southwesterly prolongation of the southeasterly line of said portion of Parkview Avenue described in said Ordinance, South $26^{\circ}14'15''$ West 27.93 feet to a point on the centerline of said Madia Street;

Thence along said centerline, South $89^{\circ}45'00''$ West 152.24 feet to the beginning of a non tangent curve concave southwesterly having a radius of 35.00 feet, a radial line to said point bears North $73^{\circ}08'54''$ East;

Thence northeasterly 44.84 feet along said curve through a central angle of $73^{\circ}23'54''$ to the **TRUE POINT OF BEGINNING**;

All as shown on Exhibit "B" attached herewith and made a part hereof.

The above described parcel contains 4,183 square feet (0.096 acres), more or less.

This real property description has been prepared by me,
or under my direction, in conformance with the Professional
Land Surveyors Act.

Bernard J. McNally, P.L.S. 7629
Expires 12/31/06

Date:

**MADIA STREET AND PARKVIEW AVENUE
STREET VACATION**

PARCEL B

That portion of Madia Street (50.00 feet wide) adjoining Lots 10 and 11 of Block "H" of Linda Vista Tract in the City of Pasadena, County of Los Angeles, State of California as per map recorded in Book 29, Pages 97 and 98 of Record Maps in the office of the County Recorder of said County, together with those portions of Parkview Avenue as shown on said Linda Vista Tract described as a whole as follows:

COMMENCING at the southwest corner of Lot 9 of Tract Map No. 8185 as per map recorded in Book 108, Page 12 of Maps in the office of the County Recorder of said County, being a point in the north line of Madia Street (50.00 feet wide) as shown on said Tract Map No. 8185;

Thence along the north line of Madia Street, North 89°45'00" East 365.22 feet;

Thence leaving the north line, South 00°15'00" East to a point on the centerline of said Madia Street, said point being also the **TRUE POINT OF BEGINNING**;

Thence along said centerline, North 89°45'00" East 144.81 to northerly prolongation of the westerly line of that portion of Parkview Avenue vacated per document recorded August 27, 1985 as Instrument No. 85-992561;

Thence along said northerly prolongation, South 00°15'00" East 25.00 feet to the northeast corner of said portion of Parkview Avenue described in said Instrument No. 85-992561;

Thence along the northerly line of said portion of Parkview Avenue described in said Instrument No. 85-992561 and the south line of said Madia Street, South 89°45'00" West 30.00 feet to the northwest corner of said Instrument No. 85-992561;

Thence continuing along the south line of said Madia Street, South 89°45'00" West 116.73 feet to the beginning of a non-tangent curve concave westerly having a radius of 35.00 feet, a radial line to said point bears South 64°52'23" East;

Thence northerly 59.11 feet along said curve through a central angle of 41°58'53" to the **TRUE POINT OF BEGINNING**;

All as shown on Exhibit "B" attached herewith and made a part hereof.

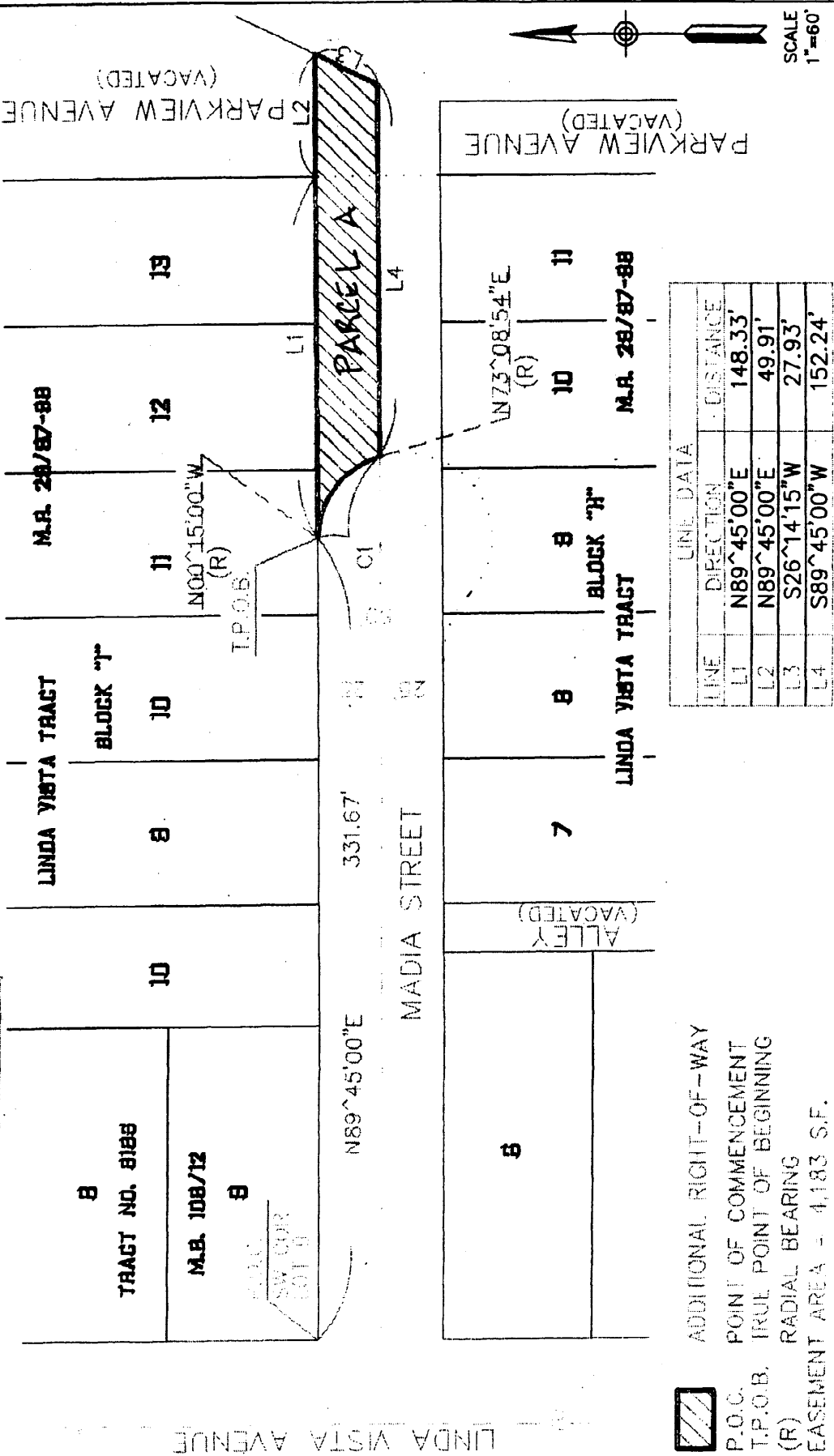
The above described parcel contains 3,605 square feet (0.083 acres), more or less.

This real property description has been prepared by me,
or under my direction, in conformance with the Professional
Land Surveyors Act.

Bernard J. McNally, P.L.S. 7629
Expires 12/31/06

Date: _____

73°23'54"	35.00'	44.84'
-----------	--------	--------



SCALE
1"=60'

LINE	DIRECTION	DISTANCE
L1	N89°45'00"E	148.33'
L2	N89°45'00"E	49.91'
L3	S26°14'15"W	27.93'
L4	S89°45'00"W	152.24'

ADDITIONAL RIGHT-OF-WAY
 POINT OF COMMENCEMENT
 T.P.O.B.
 (R)
 RADIAL BEARING
 EASEMENT AREA = 4,183 S.F.

SHEET NO:	1 OF 1
JOB NO:	SQUIN0001
DRAWN BY:	RXSI
DATE:	08/10/05
SCALE:	1"=60'

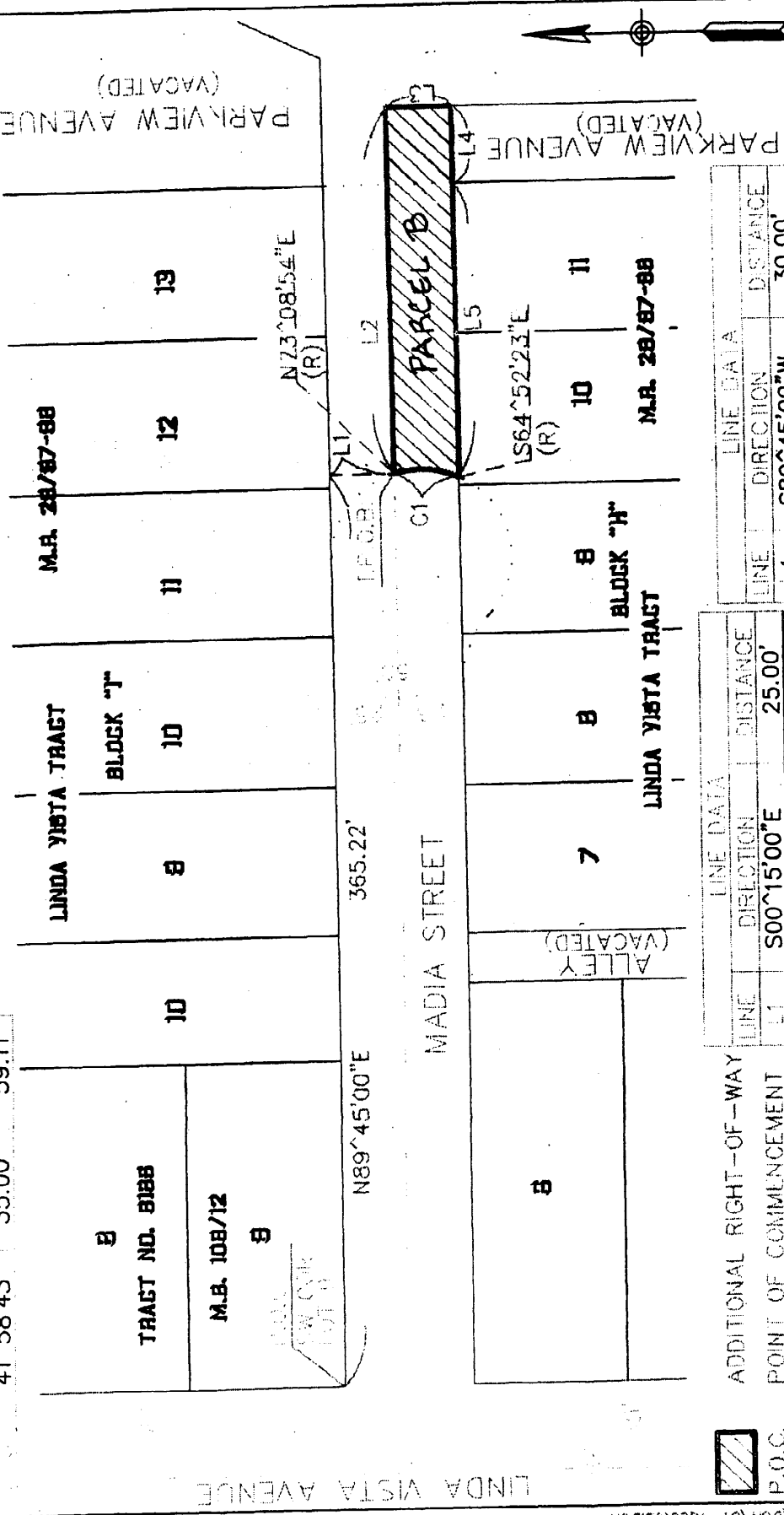
ADDITIONAL RIGHT-OF-WAY
 MADIA STREET
 CITY OF PASADENA
 COUNTY OF LOS ANGELES
 STATE OF CALIFORNIA

EXHIBIT "B"

**DAVID EVANS
 AND ASSOCIATES INC**
 800 WEST 10TH AVENUE, SUITE 200
 PASADENA, CALIFORNIA 91104
 TEL: 626-791-1100



KURVE DATA	RADIUS	LENGTH
41°58'43"	35.00'	59.11'



LINE DATA		
LINE	DIRECTION	DISTANCE
L1	S89°45'00"W	30.00'
L5	S89°45'00"W	116.73'

LINE DATA		
LINE	DIRECTION	DISTANCE
L1	S00°15'00"E	25.00'
L2	N89°45'00"E	144.81'
L3	S00°15'00"E	25.00'

ADDITIONAL RIGHT-OF-WAY
 P.O.C. POINT OF COMMENCEMENT
 T.P.O.B. TRUE POINT OF BEGINNING
 (R) RADIAL BEARING
 EASEMENT AREA = 3,605 S.F.

SCALE 1"=60'

SHEET NO:	1 OF 1
JOB NO:	SQUN0001
DRAWN BY:	RXSI
DATE:	08/10/05
SCALE:	1"=60'

ADDITIONAL RIGHT-OF-WAY
 MADIA STREET
 CITY OF PASADENA
 COUNTY OF LOS ANGELES
 STATE OF CALIFORNIA

EXHIBIT "B"

DAVID EVANS AND ASSOCIATES INC
 800 WEST 10TH AVENUE, SUITE 200
 CORONA, CALIFORNIA 92626
 TEL: 949.261.1100



EXHIBIT "C"

MEMORANDUM - CITY OF PASADENA
Department of PUBLIC WORKS

DATE: September 8, 2005

TO: Richard Bruckner, Director
Department of Planning and Permitting

FROM: Daniel A. Rix, City Engineer
Department of Public Works

RE: **Vacation of a Portion of Madia Street from Approximately 380 Feet East of Linda Vista Avenue to the East End of Madia Street**

RECOMMENDATION:

In accordance with the authority conferred upon the Planning Commission by Section 2.105.110(B)(4)(a) of the Pasadena Municipal Code, the Department of Public Works recommends that the Planning Commission recommend that the City Council:

1. Take the appropriate action and make the appropriate findings to vacate the subject portion of Madia Street from approximately 380 feet east of Linda Vista Avenue to the east end of Madia Street, in accordance with the requirements and recommendations contained in this report and subject to the conditions herein;
2. Find that the subject portion of Madia Street proposed for vacation is consistent with the General Plan Mobility Element and is unnecessary for present or prospective public use for traffic purposes;
3. Declare that the City's interest in the proposed vacated portion of Madia Street is an easement only with a market value of less than \$1,000. Therefore, the City's interest in the proposed vacation is not subject to the provisions of Chapter 4.02 of the Pasadena Municipal Code as indicated in Section 4.02.040(A) of this chapter;
4. Adopt a resolution vacating the subject portion of Madia Street in accordance with the requirements and recommendations contained in this report and subject to the conditions described herein;

Richard Bruckner, Director
Department of Planning and Development
September 8, 2005
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BACKGROUND:

The property owner of 1165 Madia Street purchased the property across the street located at 1164 Madia Street. Now owning the properties on both sides of the street, the property owner has requested the vacation of a portion of Madia Street from approximately 380 feet east of Linda Vista Avenue to the east end of Madia Street. The proposed portion of Madia Street is directly adjacent to 1164 and 1165 Madia Street and is approximately 150 feet in length and 50 feet wide.

The existing roadway width of Madia Street is 30 feet and dead ends at the east end. With the vacation of this portion of Madia Street, the property owners will be required to provide easements to the City for the construction of a standard cul-de-sac including a ten-foot wide parkway around the cul-de-sac. The cul-de-sac will improve safety for residents and their guests by providing a safe area to turn around and return to Linda Vista Avenue. In addition, it will improve turn around movements for emergency vehicles and trash collection vehicles. Finally, maintenance costs will be reduced in that the city will no longer need to maintain a dead end street that only serves two properties, but will be able to maintain a cul-de-sac that will benefit all those that live on Madia Street.

The only properties with access from the proposed portion of Madia Street are 1164 and 1165 Madia Street. The property owner plans to improve the area with a garden like setting between their two properties. No construction of the proposed portion of Madia Street is planned. The proposed vacation would eliminate on-street parking that is directly adjacent to the applicant's properties and is not anticipated to impact any parking adjacent to other properties on the street.

The City's interest in the subject portion of Madia Street is in easement, only, for public purposes. The vacation will convey all rights to the abutting property owners except for public utility easements required as described below and private ingress/egress easements. As a result, no structures will be allowed on the subject portion that is reserved for easements.

The subject portion of the Madia Street to be vacated is legally described in Exhibit "A" and is shown on Exhibit "B", both attached hereto. These are currently in draft form and will be finalized once the final configuration of the cul-de-sac has been determined.

Richard Bruckner, Director
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OTHER CITY DEPARTMENTS, PUBLIC AGENCIES, AND OTHERS:

The street vacation has been reviewed by other City departments, County Agencies, various utilities, and the California Department of Transportation (Caltrans). The following have no specific comments or objections to the proposed street vacation:

SBC
Southern California Edison
California American Water Company
County Sanitation Districts of Los Angeles County
Metropolitan Water District
Altrio/Champion
Charter Communications
Verizon
City of Pasadena Departments and Divisions:
 Police Department
 Fire Department

The following have comments and requirements:

1. **City of Pasadena:**

Prior to the recordation of the vacation, if approved by the City Council, the applicants are required to provide proof of interest in fee to the proposed vacation area. In addition, if the proposed vacation is approved by the City Council, the applicants will not be allowed to commence any work within the proposed vacation area until such proof is provided, unless otherwise approved by the City of Pasadena.

2. **Water and Power Department – Water Division:**

The Water Division has a four-inch water main located 15 feet north of the south property line of Madia Street, including a blow-off valve which is located within the proposed vacation of Madia Street. A ten-foot wide easement will be required for complete access over the main and blow-off valve. If the applicant chooses to abandon the existing water service in the proposed vacation area, they will be required to reconfigure their laterals and install a new blow-off valve in the new cul-de-sac in a manner acceptable to the Department of Water and Power.

3. **Water and Power Department – Power Division:**

The Power Division has an existing main line located 20 feet south of the north property line of Madia Street, including a power vault which is located within the proposed vacation of Madia Street. A public utility easement shall be required for complete access to the main and power vault. If the applicant chooses to abandon the existing power service and power vault in the proposed vacation area, the applicant will be required to reconfigure their laterals and install a new power vault in the new cul-de-sac in a manner acceptable to the Department of Water and Power.

4. **Gas Company**

The Gas Company has an existing 4-inch main line located 16 feet south of the north property line of Madia Street within the proposed vacation area. A public utility easement shall be required for complete access to their facility. If the applicant chooses to abandon the existing gas service in the proposed vacation area, they will be required to reconfigure their laterals and the mainline in a manner acceptable to the Gas Company.

5. **Department of Public Works:**

- A. **Street:** The installation of new PCC curb, gutter, sidewalk and standard cul-de-sac shall be constructed at the new east end of Madia Street, unless otherwise approved by the City Engineer. In addition, only standard driveway approaches may be installed along the new cul-de-sac, unless otherwise approved by the City Engineer.
- B. **Storm Drain:** There are no storm drain facilities located within the proposed vacation of Madia Street.
- C. **Drainage:** The applicant will not be allowed to discharge water from the vacated portion of the street to the remaining portion of Madia Street.
- D. **Sewer:** There is an existing 8-inch sewer main line and a terminal manhole in the proposed vacation of Madia Street. A public utility easement is required if the sewer line and manhole remain in the place. If the applicants choose to abandon the existing sewer in the proposed vacation area, they

will be required to reconfigure their laterals and install a new terminal manhole in the new cul-de-sac.

E. Street Lights:

- (1) There are four existing street lights within the proposed vacation area of Madia Street. The applicant shall relocate a maximum of two (2) street light and remove/salvage the remaining street lights. The relocation of the street light consists of new foundation construction, conduit, street light conductors, pull boxes and miscellaneous appurtenant work in a manner that complies with the requirements of the Department of Public Works. The removal and salvage of the street lights consists of removal and delivery of the salvaged street lights to the City yards.
- (2) The existing lighting system on Madia Street is a series system. Modification to the existing system is required to maintain existing lighting operation by means of a new conduit crossing Madia Street. The applicant is responsible for the modification work which includes new conduit, conductors, pull boxes and miscellaneous appurtenant work in a manner that complies with the requirements of the Department of Public Works. The crossing location is to be determined by the Department of Public Works.

- F. Plans, Design, Review, and Construction Costs: The applicant is responsible for design, preparation of plans, specifications, and any supporting documents and reports. The applicant is also responsible for construction of all required public improvements that arise as a result of all conditions noted in this report. Plans, supporting documents, reports, and specifications for the above improvements shall be prepared by an engineer registered with the State of California and shall be approved by the Department of Public Works. Plans must be submitted in AutoCAD format with the City standard borders.

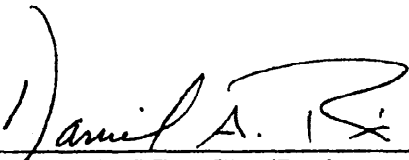
Upon submission of improvement plans, specifications, reports, and supporting documents to the Department of Public Works for review and checking, the applicant shall be required to place a deposit with the

Department to cover these costs. Prior to construction of the improvements, the applicant shall be required to place a deposit with the Department to cover construction inspection.

- G. Condition Satisfaction Contract between the City and the Applicant: A condition satisfaction contract ("contract") between the City and the applicant will be reviewed, approved and executed by both parties. The contract shall outline the applicant's obligations to provide security for performance of the conditions listed in this report. The request for approval of the City entering into a contract with the applicant will be included with the recommendations to the City Council to vacate the subject portion of Madia Street.

Recordation of the vacation resolution will occur only after the conditions of the contract and all conditions in this report have been met to the satisfaction of the Department of Public Works.

- H. The applicant shall be responsible for all costs associated with these conditions. Unless otherwise noted in this memo, all costs will be determined when submissions are received and will be based upon the estimated cost to the Department for the work and on the General Fee Schedule that is in affect at the time these conditions are met.



DANIEL A. RIX, City Engineer
Department of Public Works

DAR:BH
Attachments

EXHIBIT "D"

QUINN GARDEN COVENANT

KEY PROVISIONS

1. Record a covenant that runs with the land which grants to each Madia Street property owner access to and use of the vacated street space (the "Space"); the Space will be gated and locked, with each Madia Street property owner given a key.
2. The covenant shall provide indemnity by covenantor against claims arising from covenantee's use of the Space.
3. The covenant shall specify reasonable usage rules, including, without limitation: rules regarding days and hours of usage; group size and number of guests; limitations on use of tobacco, alcohol and food consumption; no firearms, pets, littering, amplified sound or unsupervised children; and other reasonable rules to be included in a written agreement with each property owner.
4. The covenant shall specify that landscaping shall be done in such a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street.

ATTACHMENT C

APPROVAL OF AN AMENDMENT TO THE EMPLOYMENT AGREEMENT WITH CITY ATTORNEY MICHELE BEAL BAGNERIS

Recommendation of Mayor: Approve the Amendment to Contract No. 17,080, the Employment Agreement between the City of Pasadena and City Attorney Michele Beal Bagneris, effective October 3, 2005. (Agreement Amendment No. 17,080-4)

MINUTES APPROVED

December 5, 2005

CLAIM RECEIVED AND FILED

Claim No. 9989 Interinsurance Exchange of \$9,794.48
the Automobile Club
subrogee for Nadine Bugarin

PUBLIC HEARINGS SET

February 27, 2006, 8:00 p.m. - Zoning Map Amendments

February 27, 2006, 8:00 p.m. - Zoning Code Amendment to Modify Density Bonus Provisions

It was moved by Councilmember Gordo, seconded by Councilmember Haderlein, to approve all items on the Consent Calendar. (Motion unanimously carried) (Absent: Vice Mayor Madison)

OLD BUSINESS

PROPOSED VACATION OF A PORTION OF MADIA STREET

Recommendation of City Manager: Adopt the revised resolution ordering the vacation of a portion of Madia Street from 380 feet east of Linda Vista Avenue to the east end of Madia Street. (Resolution No. 8550)

The Mayor provided an overview of previous discussion on this matter.

The City Manager introduced the agenda item; and responded to questions regarding the valuation of the property, the proposed vacation, and the area of the applicants' property vs. City property.

The City Attorney noted the revised resolution reflects Council's directions to staff regarding the additional language and conditions agreed to by the applicant, and that Exhibit D to the revised resolution contains the applicants' proposed conditions; and responded to questions.

Mr. Martin Pastucha, Director of Public Works Department, responded to questions regarding safety issues in the area and the valuation of the property.

Ms. Bonnie Hopkins, Principal Engineer, described the applicants' property lines.

The Mayor suggested staff provide Council with a summary of the facts for all vacations approved within the past 10 years in order to assist Council in formulating policy for future transactions.

Councilmember Tyler suggested staff also provide information on the guidelines used by staff to determine the value in vacating a street and the public benefit involved.

The following persons spoke in support of the vacation:

Mr. Scott Jenkins, Hahn & Hahn LLP, representing the applicants
Ms. Shannon Quinn, applicant

The following persons spoke in opposition to the vacation:

Ms. Ann Higginbotham, counsel representing eight Madia Street neighbors (families)
Mr. Craig Miller, Pasadena resident
Mr. Robert Bishop, Pasadena resident

Discussion followed on public benefit issues related to the vacation, the neighbors' initial and current positions regarding the vacation, the need to review the guidelines for vacating streets, possible impacts of this vacation on the neighbors, and issues involving access for the neighbors to the vacated property.

Councilmember Haderlein expressed opposition to the vacation as proposed by staff.

Councilmember Tyler expressed concerns regarding, in his opinion, an apparent lack of the establishment of an overriding public benefit in this transaction and the apparent discretionary nature of the proposed conditions on the part of the applicants; and suggested that access to the vacated property and preservation of the view be a right of the neighbors who are property owners on the street, rather than at the discretion of the applicants.

FAILED MOTION

It was moved by Councilmember Streater, seconded by Councilmember Gordo, to approve the City Manager's recommendation.

AYES: Councilmembers Gordo, Streater

NOES: Councilmembers Haderlein, Holden, Tyler, Mayor Bogaard

ABSENT: Vice Mayor Madison

ABSTAIN: Councilmember Little

(Motion failed)

The City Attorney responded to questions regarding the key provisions proposed by the applicants vs. the provisions

proposed by the neighbors, clarified that the holders of the covenants would indemnify the property owners against claims arising from the covenant holders' use of the vacated land, and offered alternative language for the resolution as cited below.

MOTION

Following brief discussion, it was moved by Councilmember Haderlein, seconded by Councilmember Tyler, to approve the City Manager's recommendation, with Exhibit D of the resolution (as presented by staff) to be titled "Quinn Garden Covenant Key Provisions"; with the incorporation of an additional provision into Exhibit D that landscaping shall be done in such a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street; with page 3, paragraph (e) of the resolution amended to read: "applicant shall enter into separate and binding covenants with every property owner with frontage on Madia Street to the east of Linda Vista Avenue with, essentially, all of the key provisions set forth on Exhibit "D", attached hereto and incorporated hereat by this reference as modified throughout to provide a covenant that is recorded and runs with the land and in a form approved by the City Attorney."; and with the understanding that the attorneys for the applicants and neighbors will work out the provisions of the covenant. (Motion unanimously carried) (Absent: Vice Mayor Madison)

The City Attorney confirmed that the street vacation would not occur if the applicants and the neighbors could not reach agreement on the covenants.

**REPORTS AND
COMMENTS FROM
COUNCIL COMMITTEES**

**ECONOMIC
DEVELOPMENT AND
TECHNOLOGY COMMITTEE**

GREEN BUILDING ORDINANCE AND PROGRAM

Recommendation of City Manager:

- (1) Acknowledge that the Green Building Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines General Rule, Section 15061(b)(3);
- (2) Direct the City Clerk to file a Notice of Exemption with the Los Angeles County Recorder;
- (3) Direct the City Attorney to prepare an ordinance within 60 days amending Title 14 of the Pasadena Municipal Code to implement a Green Building Ordinance as described within the agenda report; and
- (4) Establish a construction tax rebate of \$1,000 for each affordable housing unit provided on-site for projects that meet the requirements of the Green Building Ordinance, effective with the adoption of the 2006-2007 Schedule of Taxes, Fees and Charges.

Councilmember Gordo, Chair of the Economic Development and Technology Committee, summarized the agenda report, noted the Committee had requested that the construction tax rebate program for on-site affordable housing units and ordinance be reviewed by the Committee in 18 months, and responded to questions.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

John B. and M. Shannon Quinn
c/o Quinn Emanuel Urquhart Oliver &
Hedges, LLP
865 South Figueroa Street
Tenth Floor
Los Angeles, California 90017-2543

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND ESTABLISHMENT OF EASEMENT AFFECTING LAND**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AFFECTING LAND (the "Agreement") is made as of April 14, 2006 by and between John and Shannon Quinn (jointly, "Grantor"), on the one hand, and Robert C. Bishop and Susan E. Bishop (jointly, "Grantee"), on the other hand.

RECITALS

This Agreement is entered into with reference to the following facts:

A. Grantor is the fee simple owner of that certain area of land located in the City of Pasadena, County of Los Angeles, State of California, as legally described in Exhibit A attached hereto and incorporated herein by reference (the "Vacated Property"). The Vacated Property is a private, gated garden at the cul-de-sac on the eastern end of Madia Street.

B. Grantee is the fee simple owner of that certain real property located at 1199 Madia Street in the City of Pasadena, County of Los Angeles, State of California, as legally described in Exhibit B attached hereto and incorporated herein by reference (the "Grantee Property").

C. Grantor and Grantee have established a non-exclusive easement for access to and use of the Vacated Property by Grantee in accordance with the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants and conditions contained herein and intending to be legally bound hereby, Grantor and Grantee agree as follows:

1. **Landscaping.** The Vacated Property will be landscaped by Grantor at Grantor's expense and in accordance with Grantor's discretion, except that Grantor shall landscape the

Vacated Property (including the placement of any plants or objects) in such a way as to preserve and enhance the view of the mountains and Arroyo Seco from the remaining portion of Madia Street.

2. **Easement.** Subject to the terms, conditions and rules set forth below, Grantor hereby grants to Grantee a non-exclusive easement for pedestrian ingress and egress into the Vacated Property and use of the Vacated Property for scenic viewing (the "Easement").

3. **Locked Gate.** The Vacated Property will be gated and locked. Grantor shall provide Grantee a key to the gate. Grantee shall not duplicate the key, nor shall Grantee provide the key to any person who is not a member of Grantee's household. Grantee may request a replacement key from Grantor if the key is lost.

4. **No Interference With Grantor's Use and Enjoyment.** Grantee shall not interfere with Grantor's use or enjoyment of the Vacated Property. Grantee shall adhere to the following rules (the "Vacated Property Rules"):

Vacated Property Rules

- **Access Hours.** The Vacated Property shall be available to Grantee for Grantee's use in accordance with the Easement between sunrise and sunset Monday through Saturday and when there are fireworks at the Rose Bowl. Outside of those hours and days, Grantee shall not have any access to the Vacated Property nor any right to use the Vacated Property.
- **Group Size and Number of Guests.** Except when there are fireworks at the Rose Bowl, no more than ten (10) persons in the aggregate (including all Grantees having access to the Vacated Property) shall be permitted to enter the Vacated Property at any time. Grantee may bring guests with Grantee on the Vacated Property, but only so long as Grantee or a member of Grantee's family is present at all times.
- **Grantor's Usage for Events.** In the event that Grantor has a party, gathering or other event on the Vacated Property, and that Grantee is given one week's prior written notice thereof, Grantee shall not have access to the Vacated Property during such event. In no event shall Grantee's access be prohibited when there are fireworks at the Rose Bowl. Grantor's usage of the Vacated Property for events to the exclusion of Grantee shall not occur more than once a month.
- **No Food, Drink or Smoking.** Grantee is prohibited from possessing or consuming alcoholic beverages, illegal drugs, tobacco and food within the Vacated Property.
- **No Pets.** Grantee is prohibited from bringing any dogs or other pets into the Vacated Property, except for service dogs for the disabled.

- **No Firearms, Hunting or Abusive Language or Conduct.** Grantor and Grantee are prohibited within the Vacated Property from (a) possessing any firearm or other weapon of any type, whether concealed or unconcealed, (b) hunting, (c) using loud or abusive language and (d) engaging in unruly, disturbing or abusive conduct.
- **Trash.** Trash receptacles are not provided for Grantee within the Vacated Property. Every time Grantee uses the Vacated Property, Grantee shall leave nothing behind and, upon departing, shall remove from the Vacated Property all trash and objects brought into the Vacated Property. No littering is allowed.
- **No Amplified Sound.** Grantee is not permitted to produce any amplified sound within the Vacated Property.
- **No Unsupervised Children.** Grantee may not have children under the age of fourteen (14) in the Vacated Property without adult supervision present in the Vacated Property with the children at all times.
- **No Solicitation or Sign-Posting.** Grantee shall not solicit, sell or advertise any good or service within the Vacated Property and shall not post any sign in the Vacated Property.
- **Rules Subject to Change.** Grantor and Grantee and their respective successors and assigns may, upon their mutual agreement, make reasonable changes to the Vacated Property Rules from time to time as necessary to maintain Grantor's right to use and enjoy the Vacated Property and/or to maintain Grantee's right to access the Vacated Property in accordance with the Easement. In the event the parties do not mutually agree on a rule change, the dispute shall be resolved by arbitration before the American Arbitration Association.

5. **Termination for Material Breach of Rules.** In the event of a material breach by Grantee of any of the Vacated Property Rules, Grantee's right of access to the Vacated Property shall be subject to termination by Grantor. The procedure for declaring a material breach and terminating Grantee's right of access shall be as follows:

- **Written Warning.** Upon the occurrence of a first violation by Grantee of any of the Vacated Property Rules, Grantor shall issue a written warning to Grantee. Such first violation is automatically cured in the event that no subsequent violations occur within six (6) months of the date of the written warning.
- **Second Violation Within Six (6) Months.** A material breach shall not occur unless and until Grantee commits a second violation of the same Vacated Property Rule that was the subject of the written warning within

six (6) months of the date of the written warning. Upon the occurrence of a second violation within a six (6) month period, Grantor may declare Grantee to be in material breach and terminate Grantee's right of access to the Vacated Property.

- **Arbitration.** In the event Grantee disputes Grantor's declaration that Grantee is in material breach, the dispute shall be resolved by arbitration before the American Arbitration Association.
- **Covenant Continues to Run With the Land.** Notwithstanding Grantor's declaration of a material breach and revocation of Grantee's right of access to the Vacated Property, the Easement shall continue to run with the land for the benefit of future owners of the Grantee Property.

6. **Financial Responsibility and Indemnity.** Grantee shall be financially responsible for any damage caused by Grantee or Grantee's guest to the Vacated Property or any fixtures or appurtenances. Grantee hereby agrees to and shall indemnify, defend and hold harmless Grantor and Grantor's agents, employees, successors or assigns from and against any and all claims, losses, costs, liabilities, actions, causes of action, damages, injuries and expenses (including, without limitation, reasonable attorneys' fees and other expenses) of every kind, nature or description whatsoever incurred or sustained by Grantee or Grantee's guests, which arise out of, relate to, or result from Grantee's or Grantee's guests' use of the Vacated Property.

7. **No Interference With Grantee's Right of Access.** Except as provided in paragraph 5 above, Grantor shall not interfere with Grantee's rights of access to the Vacated Property and to enjoy the view of the mountains and Arroyo Seco, as provided by the Easement. In the event that Grantor does interfere with Grantee's right of access, such right of access shall be restored immediately and Grantor shall recover any damages incurred as a result of such interference. In the event the parties dispute whether Grantor has interfered with Grantee's right of access or whether or to what extent Grantee has incurred damages as a result of any such interference, the dispute shall be resolved by arbitration before the American Arbitration Association.

8. **Waivers.** No waiver by either party of any of the terms, conditions or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter nor of any other term, condition or covenant, nor of the strict performance thereof and adherence thereto by the other party. Any waiver by either party must be in writing.

9. **Covenants Run With the Land.** This Agreement is intended to be and shall be a covenant running with the land pursuant to California Civil Code section 1648. Any conveyance, transfer, sale, assignment or lease, made by Grantor of the Vacated Property or any portion thereof or interest therein, or by Grantee of the Grantee Property or any portion thereof or interest therein, will, and is hereby deemed to, incorporate by reference the provisions of this Agreement and the Easement and all covenants, conditions and restrictions set forth herein. The Easement, covenants, conditions and restrictions set forth in this Agreement;

- a) burden and run with both (i) the Vacated Property and any portion thereof or interest therein, and (ii) the Grantee Property and any portion thereof or interest therein;
- b) bind (i) all parties having or acquiring any right, title or interest in the Vacated Property or any portion thereof or interest therein, and (ii) all parties having or acquiring any right, title or interest in the Grantee Property or any portion thereof or interest therein;
- c) shall be expressly and exclusively for the benefit of (i) Grantor and Grantor's successors and assigns, and (ii) Grantee and Grantee's successors and assigns; and
- d) shall inure to the benefit of the successors and assigns of both (i) Grantor, and (ii) Grantee, and all such successors and assigns are expressly bound by this Agreement for the benefit of the other party

10. **Non-Exclusive.** The Easement is not exclusive.

11. **No Public Declaration.** The Easement is not a public easement, but is a private easement for the use and benefit of Grantee and its successors and assigns only. The Easement is not intended to create, and shall not be construed as creating, any dedication to or benefits for the general public.

12. **Amendment of Agreement.** This Agreement may be amended only by an instrument in writing mutually executed by Grantor or Grantor's successors or assigns and Grantee or Grantee's successors or assigns and recorded in the Official Records of Los Angeles County.

13. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

14. **Non-Binding Arbitration.** Grantor and Grantee reserve the right to challenge the outcome of any arbitration before the American Arbitration Association which occurs pursuant to the provisions of this Agreement in a court of competent jurisdiction in the County of Los Angeles.

15. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties regarding the Easement and supersedes any prior oral or written agreement between the parties regarding the Easement. There are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the Easement other than those set forth in this Agreement.

16. **No Third Party Beneficiaries.** Notwithstanding anything to the contrary in this Agreement, no person other than Grantor, Grantee and their respective successors and assigns

shall be beneficiaries of any term or provision of this Agreement, except that the Indemnity provision shall be for the benefit of Grantor's agents and employees.

17. **Interpretation.** If any provision of this Agreement is, or is adjudged to be, unenforceable or invalid, the remainder shall continue in full force and effect. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any party. The headings contained in this Agreement are for the purpose of reference only, and are not an aid in the construction or interpretation of any provision hereof.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]