

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.

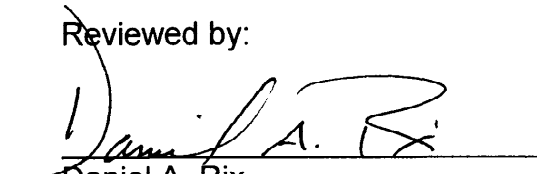
Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

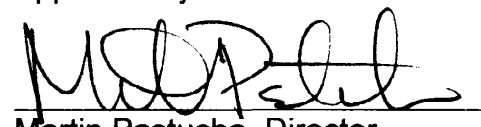
Prepared by:


Bonnie L. Hopkins
Principal Engineer

Reviewed by:


Daniel A. Rix
City Engineer

Approved by:


Martin Pastucha, Director
Department of Public Works

Attachments