

RESOLUTION NUMBER R- 301395
DATE OF FINAL PASSAGE MAY 01 2006

WHEREAS, Section 8334(a) of the California Streets and Highways Code provides that a legislative body may summarily vacate an excess right of way of a street or highway not required for street or highway purposes; and

WHEREAS, the right of way has never been used for street purposes and would not provide a logical connection to any other street; and

WHEREAS, the City no longer requires the right of way for street purposes; and

WHEREAS, the affected property owners have requested the vacation of the unimproved portion of Thorn Street located just east of Falcon Street and west of Reynard Way, to unencumber this property; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Public Right-of-Way Vacation Permit No. 45365:

125.0941 Findings for Public Right-of-Way Vacation Approval:

- 1. There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated;**

The portion of the public right-of-way proposed to be vacated has never been utilized as a street and would not provide a logical connection to any other street or property. Additionally, the section of the Thorn Street right-of-way located immediately east of the site has already been vacated due to the presence of steep

slopes which prohibits street development. The portion of Thorn Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties or rights-of-way. Additionally, the Uptown Community Plan recommends that public rights-of-way be maintained where they abut property that is designated for open space preservation. No portion of the proposed alley vacation or adjacent properties has been so designated. Therefore, it is not anticipated that the portion of the right-of-way proposed to be vacated would provide a public use of a similar nature.

2. The public will benefit from the action through improvised use of the land made available by vacation;

The abutting property owners would benefit in that the vacation would revert the dedicated portion of the right-of-way back to private ownership. Additionally, allowing the vacation of this portion of right-of-way which could not be practically improved would reduce City liability.

3. The vacation does not adversely affect any applicable land use plan or;

The Uptown Community Plan recommends that public rights-of-way be maintained where they abut property that is designated for open space preservation. No portion of the proposed alley vacation or adjacent properties has been so designated. Additionally, the area proposed for vacation is zoned for single-family development, and the land would revert to the abutting single-family property owners. Therefore, the proposed alley vacation does not adversely impact the recommendations found in the community plan.

4. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

The 20-foot by 130-foot area proposed for vacation was originally dedicated as an 80-foot wide right-of-way which would have extended Thorn Street through to Reynard Way. In 1956, 30 feet of this dedicated right-of-way was vacated and granted to the abutting property at 3305 Falcon Street. In 1949, 30 feet of the dedicated right-of-way was vacated and granted to the abutting property at 3275 Falcon Street, which left a 20-foot right-of-way, which is the subject of this vacation request. After granting these two vacations, the potential use of the right-of-way was limited to alley access, due to the 20-foot width of the right-of-way.

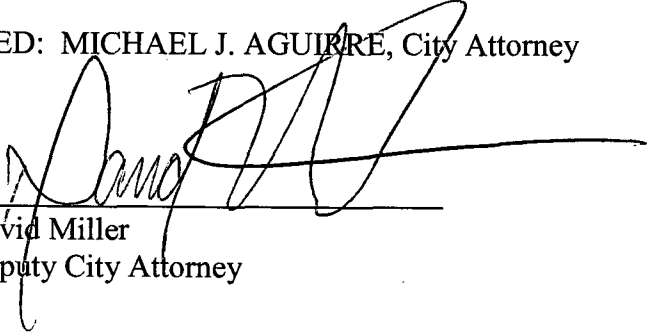
The purpose and intent for which the public right-of-way was originally dedicated no longer is in effect. The California Vehicle Code [2001] defines an alley as a roadway less than 25 feet wide primarily used for access to the rear or side entrances of abutting properties. The portion of the alley proposed to be vacated is impassable to vehicle traffic and does not provide access to any of the abutting properties, which take their access from the existing Falcon street frontage. The remaining portion of the Thorn Street right-of-way located between the subject portion and Reynard Way

was previously vacated in 1980, as the sloping topography of the area made development of this portion impractical. Therefore, the public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the proposed vacation.

BE IT FURTHER RESOLVED, that this activity is exempt from CEQA pursuant to Section 15305(c)(3) of the State CEQA Guidelines (Minor Alterations in Land Use Alterations).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



David Miller
Deputy City Attorney

DM:cfq
04/11/06
Or.Dept:DSD
R-2006-869
MMS#3216

R-301395

Passed by the Council of The City of San Diego on MAY 01 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 01 2006

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

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