

RESOLUTION NUMBER R- 312686

DATE OF FINAL PASSAGE OCT 07 2019

ITEM # 203  
10/7/19

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO VACATING A PORTION OF STATE STREET, NORTH OF CHALMERS STREET, RIGHT-OF-WAY VACATION NO. 2154449 - PROJECT NO. 609382.

WHEREAS, California Streets and Highways Code section 8320 *et seq.* and San Diego Municipal Code section 125.0901 *et seq.* provide a procedure for the vacation of public rights-of-way by City Council resolution; and

WHEREAS, Scott Taylor Case filed an application to vacate a 0.015-acre (662.9 square-foot) portion of State Street, located northeast of Interstate 5, southwest of Linwood Street, southeast of W. Washington Street and northwest of Chalmers Street between Block 165 of Middletown SC-1-1874 and Block 19 of Middletown SCC 5014, being described as Right-of-Way Vacation No. 2154449; and

WHEREAS, Right-of-Way Vacation No. 2154449 is located on property owned by the City of San Diego; and

WHEREAS, on March 15, 2019, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*) under CEQA Guideline Section 15305 (Minor Alteration in Land Use Limitations) and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520; 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, a public

hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on October 7, 2019, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that with respect to Right-of-Way Vacation No. 2154449, the Council finds that:

**(a) 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 project proposes to vacate a portion of an unimproved right-of-way along State Street, located north of Chalmers Street. The unimproved right-of-way portion of State Street proposed to be vacated does not serve as a vehicular or pedestrian access for any properties within the area, nor does it contain any public utilities within the proposed vacation. The area to be vacated is a triangular portion of State Street that is adjacent to three parcels, of which all three are owned by the same owner. All three parcels are conditioned to be consolidated and maintain frontage access off Linwood Street.

The Mobility Element of the Uptown Community Plan does not identify this segment of State Street as a needed pedestrian route, bicycle network, transit facility, needed road or as a key component of access and circulation in the community. The unimproved portion of State Street proposed to be vacated is a dead-end paper street section that has no connectivity to any other street. The portion of the right-of-way proposed to be vacated is vacant and unimproved. This

section could not be improved for vehicular travel and it provides no pedestrian access.

Therefore, 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.

**(b) The public will benefit from the action through improved use of the land made available by the vacation.**

The project proposes to vacate a portion of an unimproved right-of-way along State Street, located north of Chalmers Street. As public right-of-way, the use of this land is limited to circulation and public utility. However, due to location and site condition, the project site cannot feasibly be used for these purposes. Therefore, the City controls and is liable for an area that cannot be used for public purposes. The three properties adjacent to the right-of way will benefit from the vacation because they will control, maintain and be responsible for this area. The City of San Diego and the County of San Diego will benefit from the increase in property value by increasing the area of privately owned land subject to property tax. With an increase of tax revenue, the general public will benefit by the vacation of the exiting right-of-way by the increase of available public funds. The public will also benefit by the reduction of liability to the City of San Diego from land it controls yet gains no benefit or use from.

The Uptown Community Plan designates the site for residential development. Because the land has never been used as right-of-way, it is in the public's interest to vacate the right-of-way and transfer responsibility of it to the adjacent property owner. Therefore, the public will benefit from the action through improvement use of the land made available by the vacation.

**(c) The vacation does not adversely affect any applicable land use plan.**

The portion of right-of-way proposed to be vacated is not identified in the Land Use Element nor the Mobility Element of the Uptown Community Plans as a needed park, recreation facility, open space, pedestrian route, bicycle network, transit facility, needed road or as a key component of access and circulation in the community.

The Uptown Community Plan designates the project site medium residential, for 16-29 dwelling units per acre (per Uptown Community Plan figure 2-4, pg. 35). The project site currently has a single-dwelling unit on-site, the vacation will allow future development of residential dwelling units in compliance with the Uptown Community Plan and the San Diego Land Development Code. Therefore, the vacation does not adversely affect any applicable land use plan.

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

State Street was originally dedicated per Middletown Superior Court Case 1-1874 for public use. However, because of the location and size, the right-of-way proposed to be vacation does not comply with current street design standards and could not be improved for vehicular travel and it provides not pedestrian access, therefore the project site cannot be used for public street purposes. The public right-of-way has remained unimproved since its acquisition and does not contain any underground franchise facilities, public water or sewer improvements. In that the purpose for which the land was acquired for public right-of-way purposes has never materialized and no improvements for public purposes installed within the right-of-way, there are not public facilities within the right-of-way to be negatively affected by the vacation. Therefore, the facility

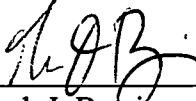
for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

BE IT FURTHER RESOLVED, that Right-of-Way Vacation No. 2154449, as more particularly described in the legal description marked as Exhibit "A" and shown on Drawing No. 40841-B, marked as Exhibit "B," which are by this reference incorporated herein and made a part hereof, is ordered vacated subject to the following condition which is made a part of this resolution:

1. Prior to the recordation of the right-of-way vacation, Owner/Permittee shall consolidate the fractional Lot 24 in fractional Block 19 of Middletown according to partition map by action of Superior Court Case No. 5014, portions of Fremont and State Streets, and portions of Lots 9 and 10 of fractional Block 165 of Middletown, according to partition map by Jackson, on file as SCC 1-1874 in the office of the County Clerk of San Diego County.

BE IT FURTHER RESOLVED, that the Development Services Department shall record a certified copy of this resolution with attached exhibits, attested by the City Clerk under seal, in the Office of the County Recorder.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
\_\_\_\_\_  
Noah J. Brazier  
Deputy City Attorney

NJB:als  
09/19/2019  
Or.Dept: DSD  
Doc. No.: 2173694

Attachments: Exhibit A and Exhibit B

EXHIBIT 'A'

LEGAL DESCRIPTION

PUBLIC STREET VACATION

THAT PORTION OF RIGHT OF WAY DEDICATED AS STATE STREET OF MIDDLETOWN, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF MADE BY J.E. JACKSON, ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF LOT 24, BLOCK 19 OF MIDDLETOWN, ACCORDING TO PARTITION MAP BY SUPERIOR COURT CASE NO. 5014, THENCE SOUTH 54°15'11" EAST 50.03 FEET TO THE EASTERLY CORNER OF THAT PORTION OF FREMONT STREET VACATED BY CITY OF SAN DIEGO COUNCIL RESOLUTION NO. 65808 DATED APRIL 13, 1937; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID VACATION, SOUTH 36°06'27" WEST 64.31 FEET TO A POINT OF INTERSECTION WITH THE TRACT LINE COMMON TO THE ABOVE MENTIONED MIDDLETOWN S.C.C. NO. 5014 AND PARTITION MAP OF MIDDLETOWN BY JACKSON, PER MAP S.C. 1-1874, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH 36°06'27" WEST 27.70 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY-LINE OF STATE STREET; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 36°34'29" WEST 50.15 FEET TO A POINT OF INTERSECTION WITH THE ABOVE AFOREMENTIONED TRACT LINE; THENCE RETURNING ALONG SAID COMMON TRACT LINE SOUTH 68°49'42" EAST 49.55 FEET TO THE TRUE POINT OF BEGINNING. SAID PARCEL CONTAINING 662.9 SQUARE FEET (0.015 ACRES) MORE OR LESS.

ATTACHED HEREON IS DRAWING 40841-B LABELED EXHIBIT 'B' AND BY THIS REFERENCE MADE A PART THEREOF.



1-25-2019

DAVID EISENBERG

DATE

I.O. NO. 24007891

PTS NO. 609382

DWG. NO. 40841-B

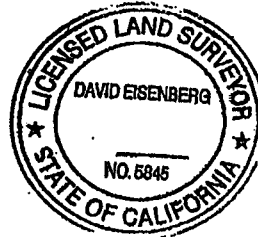
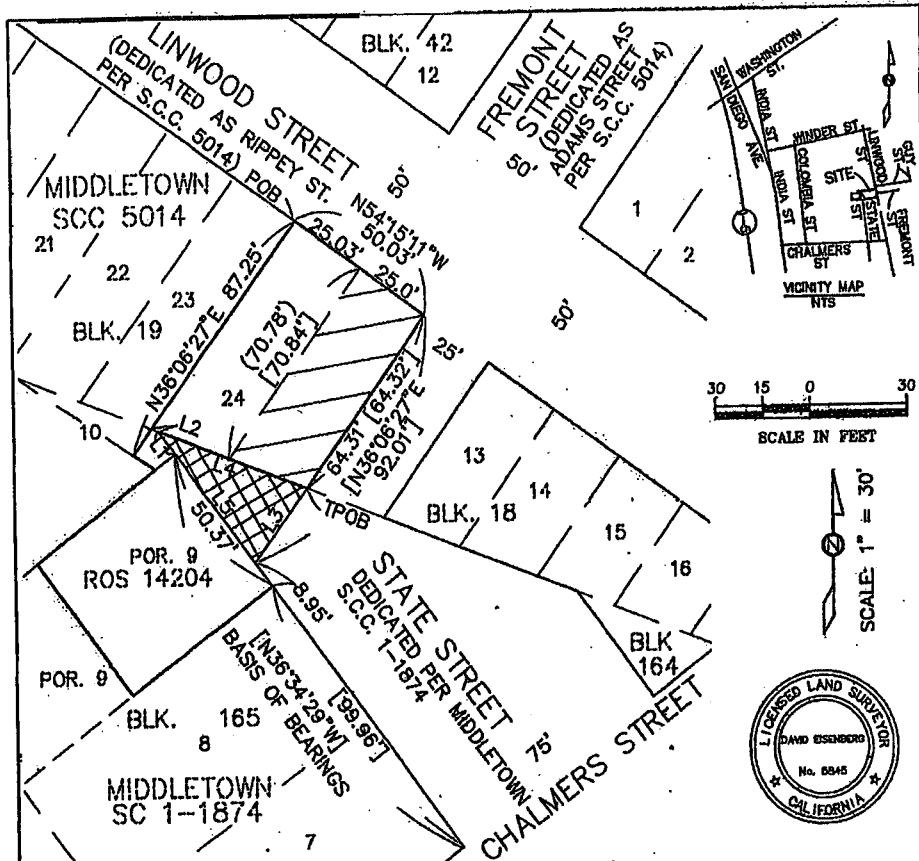


EXHIBIT B



**LEGEND**  
 { } INDICATES RECORD DATA PER ROS 14204  
 [ ] INDICATES DATA PER TIE SH. 480  
 POB INDICATES POINT OF BEGINNING  
 TPOB INDICATES TRUE POINT OF BEGINNING  
 INDICATES POR. FREMONT ST. CLOSED PER RES. NO. 65808 DATED 4-13-1937  
 INDICATES POR. STATE STREET VACATED HEREON. AREA= 682.93 SQ.FT.

BASIS OF BEARINGS: A PORTION OF THE SOUTHWESTERLY RIGHT OF WAY OF STATE STREET PER R.O.S. 14204, I.E., N36°34'29"W

TABULATED DATA	RS 14204
L1 N36°34'29"W 8.72'	(8.72')
L2 N68°48'42"W 2.23'	(2.23')
L3 N36°08'27"E 27.70'	(27.69')
L4 N68°48'42"W 49.55'	(49.54')
L5 S56°34'29"E 50.15'	---

MAP REFERENCES: R.O.S. 14204, CITY OF SAN DIEGO TIE SH. 480, A.P.N. 451-234-10,11

2/10/2019  
 RESOLUTION NO. \_\_\_\_\_  
 ADOPTED: \_\_\_\_\_  
 DOC. NO. \_\_\_\_\_  
 RECORDED: \_\_\_\_\_  
 DAVID EISENBERG LS 5845 DATE \_\_\_\_\_

**STREET VACATION**  
 OF A PORTION OF STATE STREET EASTERLY OF CHALMERS STREET  
 BETWEEN BLK. 165 OF MIDDLETOWN SC 1-1874 AND BLK 19 OF MIDDLETOWN SCC 5014

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	P.T.S. NO. 608382
ORIGINAL					SHEET 1 OF 1 SHEET	I.O.NO. 24007891
					<i>J. L. R. P.</i> 2/10/19	1850-6273
					FOR LAND SURVEYOR DATE	NAD-83 COORDINATES
						210-1713
						LAMBERT COORDINATES
						DWG NO. 40841-B

Passed by the Council of The City of San Diego on OCT 07 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 07 2019.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

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

By *Hy Beady*, Deputy

Office of the City Clerk, San Diego, California

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