

MEMORANDUM OF LAW

DATE: December 5, 1995

TO: Councilmember Harry Mathis, via Scott Tillson, Council
District 1

FROM: City Attorney

SUBJECT: Fay Avenue - Proposed Sale

I asked a legal intern to review the Fay Avenue issue, specifically with regard to whether or not the City, if it vacates the street, can require payment of full fair market value from the adjacent property owners if such owners proceed to acquire the fee interest. (See attached memorandum.)

As you know, the attached letter from Attorney Jerome Eggers concluded that the City has limited rights with regard to the fee interest based upon the language of the deed conveying the property to the City.

The legal intern concluded that the City does, in fact, own the fee without limitation. I agree with the intern's conclusion, having researched similar claims by property owners several times over the years.

Therefore, our conclusion is that the City: 1) may vacate the street; 2) may sell the fee interest in the vacated street to the adjacent property owners for fair market value; or 3) may sell the fee interest in the vacated street area on the open market.

The issue of access for emergency vehicles should, however, be addressed by the Fire Department in connection with the sale and any future development of the property. Also, even though the abutters' rights of access to the street area were clearly conveyed to the City by the deed, the City subsequently approved the Chateau Girard project with access to its parking facility across a portion of a dedicated street area. Therefore, the City should provide reasonable access across the vacated street area to the parking facility if it sells the property to anyone other than the Chateau Girard residents.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps:710.5

Attachments
cc Bob Collins
ML-95-86