

DATE ISSUED: November 3, 2004

REPORT NO. 04-232

ATTENTION: Honorable Mayor and City Council
Docket of November 9, 2004

SUBJECT: **TUBEROSE ALLEY PUBLIC RIGHT-OF-WAY VACATION,
PROJECT NO. 12624.** Council District Three, Process Five.

OWNER/
APPLICANT: Katherine Eaton and Kim Herbstritt

SUMMARY

Issues - 1) Should the City Council approve a public right-of-way vacation for a portion of an unimproved dedicated alley between Tuberose Street and Snowdrop Street in the City Heights neighborhood of the Mid-City Communities Plan area?

Staff's Recommendation:

1. **APPROVE** Public Right-of-Way Vacation No. 34996.

Planning Commission Recommendation – None, the proposed right-of-way vacation has been determined to qualify as a summary vacation pursuant to the Land Development Code Section 129.0940(c) and as such, does not require a recommendation from the Planning Commission.

Community Planning Group Recommendation – On November 3, 2003, the City Heights Planning Committee voted 13-2-0 recommending approval of the proposed public right-of-way vacation.

Environmental Review - This activity is Exempt from CEQA pursuant to Section 15060(c)(3) of the State CEQA Guidelines (the activity is Not a Project as defined in Section 15378).

Fiscal Impact - The adopted fee schedule identifies this as a 'flat fee' project. There is a fiscal impact associated with the processing of this project and the costs are not fully recoverable.

Code Enforcement Impact - None

Housing Impact Statement – None. The proposed public right-of-way vacation action would not affect existing or proposed housing stock within the community.

BACKGROUND

The requested public right-of-way action proposes the partial vacation of an unimproved dedicated alley located between Tuberoso Street and Snowdrop Street within the City Heights neighborhood of the Mid-City Communities Plan Area (Attachment 3). Subdivision records indicate that the alley was dedicated as part of the re-subdivision of the City Heights area in 1917 in conjunction with the Lexington Park Subdivision as described on Map No. 1696. The application is requesting the partial alley vacation to address public and private safety issues including excessive criminal activities and the ongoing erosion of the unimproved alley and adjacent properties.

DISCUSSION

Project Description

The Land Development Code establishes a process for approving applications to vacate public rights-of-ways and includes the applicable findings that a decision maker must make to approve the requested vacation (Attachment 6). The findings generally establish that there is no present or prospective use for the right-of-way, either for the use for which it was intended, or a public use of a similar nature; that the public will benefit from the vacation by the improved use of the land; that the vacation will not adversely affect the applicable land use plan; and that the public facility for which the right-of-way was originally acquired will not be detrimentally affected by the vacation.

The application to vacate a portion of the Tuberoso Street alley right-of-way was initiated by private property owners with the Development Services Department on September 9, 2003. The requested vacation is an attempt to alleviate what several neighbors and the San Diego Police Department consider to be excessive criminal activities taking place within the confines of the alley and; to address the problem of constant erosion of both the unimproved right-of-way and the abutting private properties.

The existing alley is 15 feet wide and 275 feet in length running more or less north and south connecting Tuberoso Street and Snowdrop Street. The portion of the alley proposed to be vacated includes the entire 15-foot width and the southern 175 feet starting from the Tuberoso Street opening. The remaining 100 feet would remain open from the Snowdrop Street side to allow two existing garages to maintain existing access rights (Attachment 4).

If approved, the portion of the vacated right-of-way would revert to the private property owners on either side of the alley. It is anticipated that fencing would be constructed on each side of the vacated alley in a fashion meant to preclude public access through the property. A general utility easement and access agreement would be included with the vacation action to allow City personnel (primarily Streets Division) access to a public storm drain for the purpose of periodic maintenance and reparations as needed. A condition of the vacation would require the closure of the Tuberosa Street alley opening with the installation of a new curb, gutter and sidewalk.

Community Plan

The Urban Element of the Mid-City Communities 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, the proposed alley vacation does not adversely impact the recommendations in found in the community plan.

The proposed alley vacation meets the goals within the Draft Azalea Park-Hollywood Park Revitalization Action Program (RAP) for improving neighborhood canyons by preventing dumping and the spread of litter, and reducing fire hazards in canyons.

Improving access to neighborhood canyons is also a goal expressed in the RAP. The neighborhood canyon most affected by the proposed alley vacation is Snowdrop Canyon. Although improving access to neighborhood canyons is encouraged as one of the broad goals of the RAP, it was meant to highlight the most well traveled and utilized canyon in the neighborhood - Manzanita Canyon. Currently, the RAP only contains recommendations for improving access to Manzanita Canyon through the creation of pedestrian and bike pathways, the installation map placards at entryways, and by improving ADA accessibility.

Project Analysis

The existing right-of-way is an unimproved (dirt) alley that is substandard (15 foot width) by the current City of San Diego Street Design Manual. A large portion of the right-of-way has been lost to extensive erosion over the years to the point that it is virtually impassible. A small foot path is all that remains traversable in certain sections between Tuberosa Street and Snowdrop Street. The alley right-of-way connects with another paper alley that includes a narrow canyon area leading down to Hollywood Park approximately one-eighth of a mile to the south. This portion of the alley is seriously eroded and overgrown with dense, non-native plant material typical of a riparian area. Consequently, the area is concealed from public view and surveillance to the extent the area has become a source of criminal activities including drug sales and drug use, prostitution, arson, vagrancy and public lewdness. In addition, several police pursuits have culminated at this location and at least one suspect eluded capture by proceeding on foot down into the canyon.

The San Diego Police Department has provided a recommendation supporting the proposed vacation based on the criminal activity and the safety of the officers. In a letter from Police Chief William Lansdowne to Councilmember Toni Atkins via City Manager P. Lamont Ewell,

dated July 30, 2004, the Chief states that in the last year, 39 calls for police service were dispatched to beat officers in the immediate area and that approximately one third of those calls were directly related to the subject alleyway (Attachment 10). Additionally, the Mid-City Division of the Police Department has voiced concerns regarding the safety of their officers when responding to service calls involving the alley in that officers are required to leave the protection of their vehicles in order to investigate the alley. This is due to the fact that the erosion and resulting topography make it impossible for police vehicles to access the alley and illuminate the scene with a car-mounted spot light (Attachment 10).

In addition to the public safety and property value concerns, staff determined that the purpose and intent for which the public right-of-way was originally dedicated is no longer 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 is not required to provide access to any of the abutting properties. Additionally, pedestrian travel through this area could pose potential hazards both to foot traffic and bicyclist due to the steepness of the terrain and the narrowness of the remnant path.

Conclusion

The proposed partial vacation of the Tuberosa Street alley meets all of the criteria that would allow a decision maker to affirm all of the required findings. As discussed above, the portion of the alley proposed to be vacated does not provide access to any of the abutting properties due to the severe erosion that has occurred over the last several years. Additionally, due to the extent of the erosion it is unlikely that the alley would be repaired or improved in the future to a degree that would facilitate vehicular access. The general public would benefit from the vacation because the area could be closed off and criminal activity in the area would be lessened. The abutting property owners would benefit from the closure by regaining the vacated portion of the right-of-way and the ability to effect repairs to their property. The proposed vacation would not adversely affect the Mid-City Communities Plan or the Draft Azalea Park-Hollywood Park RAP in that the land adjacent to the right-of-way is not designated open space and the alley vacation would prevent dumping, litter and fires within the canyons. Lastly, the proposed vacation would not affect existing access to properties from Snowdrop Street, therefore the purpose of the original facility is maintained within the area.

ALTERNATIVES:

1. Approve Public Right-of-Way Vacation No. 34996, with modifications; or
2. Deny Public Right-of-Way Vacation No. 34996, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Gary Halbert
Development Services Director

Approved: George I. Loveland
Assistant City Manager

ESCOBAR-ECK/JPH

Note: Attachment 6 is available in electronic format. A complete copy for review is available in the Office of the City Clerk.

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Vacation Exhibits: B-Sheet and Legal Description
5. Project Data Sheet
6. [Draft Resolution with Findings](#)
7. Community Planning Group Recommendation
8. Ownership Disclosure Statement
9. Project Chronology
10. Correspondence