

AGENDA ITEM NO.	1	F
COUNCIL MEETING	4/23/2009	

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

April 23, 2009

FROM: PATRICK N. WIEMILLER, Director 
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer/Assistant Director 
Public Works Department, Engineering Division

SUBJECT: ADOPT A RESOLUTION APPROVING THE SUMMARY VACATION OF A PORTION OF VERBA AVENUE NORTHEAST OF FIGARDEN DRIVE (LOCATED IN COUNCIL DISTRICT NO. 2)

KEY RESULT AREA

Customer Satisfaction

RECOMMENDATIONS

Staff recommends that the Council approve this vacation.

EXECUTIVE SUMMARY

John Allen Company, LLC and D.R. Horton are developing approximately 38.5 acres on the east side of Figarden Drive between Barstow and Bullard Avenues in accordance with Parcel Map No. 2006-20. The parcels within the map will be developed for community commercial uses as designated by the Bullard Community Plan and the 2025 Fresno General Plan. There are portions of seven dedicated rights-of-way that are to be vacated within the boundaries of the map and these vacations will be completed with the recordation of the map. A portion of Verba Avenue adjacent to the southeasterly side of the map, as shown on Exhibit "A" of the attached Resolution, must also be vacated because Verba has been relocated northwesterly to accommodate the proposed development. This relocation makes the area proposed to be vacated by the attached resolution excess right-of-way that is no longer needed for public purposes. The public utilities in Verba have also been reconstructed and relocated to the new Verba alignment.

KEY OBJECTIVE BALANCE

The proposed vacation balances the three key objectives of Customer and Employee Satisfaction, and Financial Management. Customer Service is achieved by satisfying a condition of approval for the vacation of the dedicated rights-of-way within Parcel Map No. 2006-20. Financial Management is achieved when the Customer who requested the vacation pays the City to process it, which relieves the City from incurring any future costs by initiating the vacation itself.

BACKGROUND

John Allen Company, LLC and D.R. Horton are developing approximately 38.5 acres on the east side of Figarden Drive between Barstow and Bullard Avenues in accordance with Parcel Map No. 2006-20. The parcels within the map will be developed for community commercial uses as designated by the Bullard Community Plan and the 2025 Fresno General Plan. There are portions of seven dedicated rights-of-way that are to be vacated within the boundaries of the map and these vacations will be completed with the recordation of the map. A portion of Verba Avenue adjacent to the southeasterly side of the map, as shown on Exhibit "A" of the attached Resolution, must also be vacated because Verba has been relocated northwesterly to accommodate the proposed development. This relocation makes the area proposed to be vacated by the attached resolution excess right-of-way that is no longer needed for public purposes. The public utilities in Verba have also been reconstructed and relocated to the new Verba alignment.

The European Grove at Fig Garden North Homeowner's Association for Tract No. 5433, which lies adjacent to the northeasterly side of Parcel Map No. 2006-20, has the responsibility to maintain certain areas both within and outside of the boundaries of Tract No. 5433 per the Declaration of Covenants, Conditions & Restrictions for The European Grove at Fig Garden recorded October 6, 2005 as Document No. 2005-0236599, Official Records of Fresno County. One of the areas to be maintained includes the portion of Verba proposed to be vacated by this Resolution. In order to ensure that no potential City ownership rights should interfere with the Homeowner's Association's maintenance responsibility, the City should execute a quitclaim deed in favor of the Homeowner's Association for the underlying fee to the area proposed to be vacated. The attached Resolution authorizes and directs the Public Works Director to execute such a quitclaim deed, as approved by the City Attorney's Office.

The provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public street easement that has been determined to be in excess of the City's needs and there are no public utility facilities within the easement. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required.

Environmental Assessment No. Vesting Tentative Parcel Map No. 2006-20 shows with certainty that the project is in conformance with the Master Environmental Impact Report No. 10130, which was prepared for the 2025 Fresno General Plan and Bullard Community Plan. It has been further determined that all applicable mitigation measures of MEIR No. 10130 have been applied to the project as proposed by Parcel Map No. 2006-20 necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts, or irreversible significant effects beyond those identified by MEIR No. 10130 as provided by CEQA Section 15178(a).

The City Attorney's Office has reviewed and approved the attached Resolution as to form.

FISCAL IMPACT OF RECOMMENDATION

There will be no impact to the City's General Fund.

Recording Requested By:
Public Works Department
City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

When Recorded, Mail To:
City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA. 93721-3623

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESOLUTION NO. _____

**ADOPT A RESOLUTION APPROVING THE SUMMARY VACATION OF
A PORTION OF VERBA AVENUE NORTHEAST OF FIGARDEN DRIVE**

WHEREAS, the Council has elected to proceed under the provisions of the Public Streets, Highways, and Service Easements Vacation Law (Division 9, Part 3 of the California Streets and Highways Code), and specifically Chapter 4 (commencing with Section 8330) thereof, to summarily vacate a portion of Verba Avenue northeast of Figarden Drive, located exclusively within the City of Fresno; and

WHEREAS, the portion of the easement proposed to be vacated is shown on Exhibit "A", which is attached and incorporated in this Resolution; and

WHEREAS, John Allen Company, LLC and D.R. Horton are developing approximately 38.5 acres on the east side of Figarden Drive between Barstow and Bullard Avenues in accordance with Parcel Map No. 2006-20; and

WHEREAS, there are portions of seven dedicated public rights-of-way that are to be vacated within the boundaries of the map and these vacations will be completed with the recordation of the map; and

WHEREAS, a portion of Verba Avenue adjacent to the southeasterly side of the map, as shown on Exhibit "A", must also be vacated because Verba has been relocated northwesterly to accommodate the proposed development. This relocation makes the area

proposed to be vacated by the attached resolution excess right-of-way that is no longer needed for public purposes. The public utilities in the portion of Verba Avenue proposed to be vacated have also been reconstructed and relocated to the new Verba alignment; and

WHEREAS, there are no public utility facilities located within the portion of Verba Avenue proposed to be vacated; and

WHEREAS, the provisions of Chapter 4, commencing with Section 8330 of the California Streets and Highways Code, authorize the Council to summarily vacate a public service easement that has been determined to be in excess of the City's needs and there are no public facilities located within the portion of the easement to be vacated. Under these provisions, only one Council action is necessary and a published notice, posting and public hearing are not required; and

WHEREAS, Environmental Assessment No. Vesting Tentative Parcel Map No. 2006-20 shows with certainty that the project is in conformance with the Master Environmental Impact No. 10130, which was prepared for the 2025 Fresno General Plan and Bullard Community Plan. It has been further determined that all applicable mitigation measures of MEIR No. 10130 have been applied to the project as proposed by Parcel Map No. 2006-20 necessary to assure that the project will not cause significant adverse cumulative impacts, growth inducing impacts, or irreversible significant effects beyond those identified by MEIR No. 10130 as provided by CEQA Section 15178(a); and

WHEREAS, the Homeowner's Association of Tract No. 5433, which lies adjacent to the northeasterly side of Parcel Map No. 2006-20, has the responsibility to maintain certain areas both within and outside of the boundaries of Tract No. 5433 per the Declaration of Covenants, Conditions & Restrictions for The European Grove at Fig Garden recorded October 6, 2005 as Document No. 2005-0236599, Official Records of Fresno County and one of the areas to be maintained includes the portion of Verba proposed to be vacated by this Resolution; and

WHEREAS, in order to ensure that no potential City ownership rights should interfere with the Homeowner's Association's maintenance responsibility, the City should execute a quitclaim deed in favor of the Homeowner's Association for the underlying fee to the area proposed to be vacated; and

WHEREAS, Public Works requests authorization for Public Works Director to execute such a quitclaim deed, as approved by the City Attorney's Office; and

WHEREAS, the Council desires to summarily vacate the portion of Verba Avenue proposed to be vacated as shown on Exhibit "A".

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY AS FOLLOWS:

1. That portion of Verba Avenue northeast of Figarden Drive as shown on Exhibit "A" is hereby vacated.
2. The City Clerk of the City of Fresno shall certify to the passage of this Resolution and shall cause a certified copy, attested by the Clerk under the seal of the City of Fresno, to be recorded in the Office of the County Recorder of the County of Fresno, State of California.
3. This vacation shall become effective on the date this resolution is recorded.
4. From and after the date this resolution is recorded, that portion of Verba Avenue northeast of Figarden Drive and as shown on Exhibit "A" shall no longer constitute a public street easement.
5. The Council authorizes and directs the Public Works Director to execute on behalf of the City of Fresno a quitclaim deed for the vacated area in favor of the European Grove at Fig Garden North Homeowner's Association. The quitclaim deed shall be in a form approved by the City Attorney's Office.

P.W. File 11074

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the _____ day of _____, 2009.

AYES:
NOES:
ABSTAIN:
ABSENT:

Mayor Approval: _____, 2009
Mayor Approval/No Return: _____, 2009
Mayor Veto: _____, 2009
Council Override Vote: _____, 2009

REBECCA E. KLISCH
City Clerk

BY: _____, Deputy

APPROVED AS TO FORM:

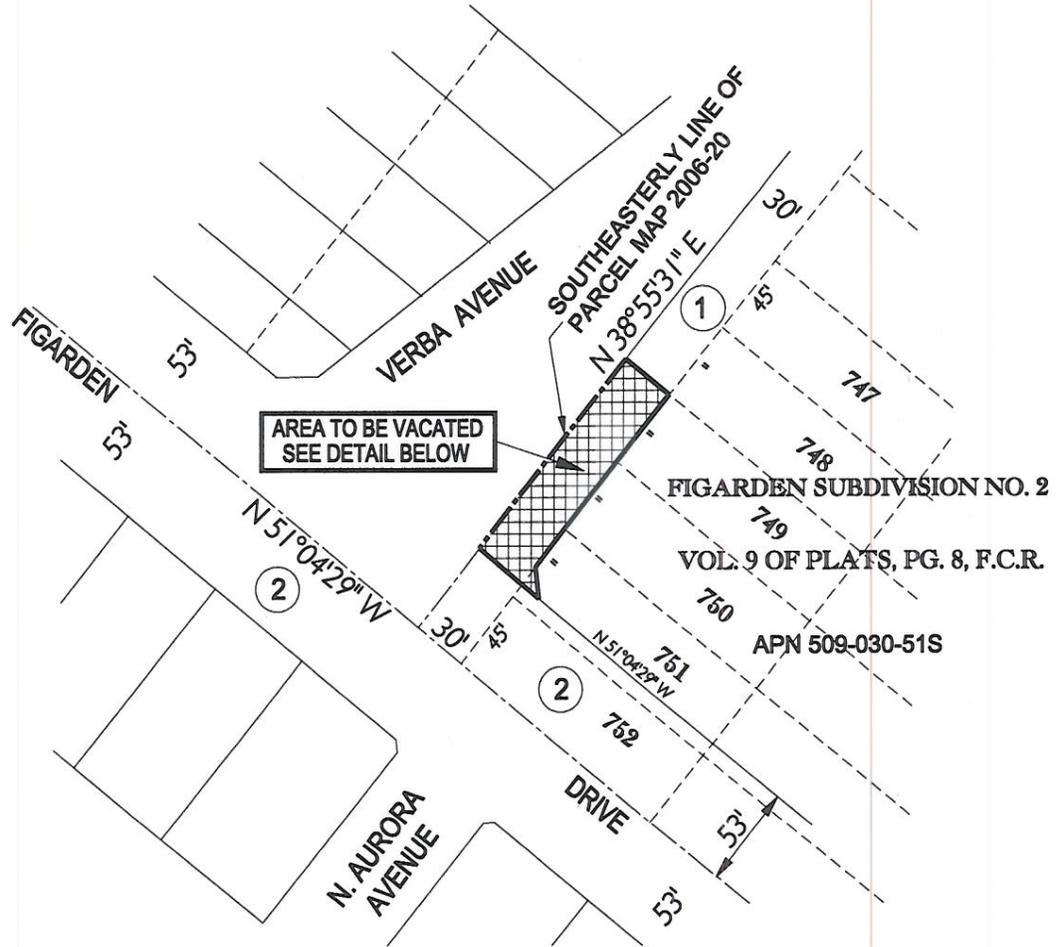
JAMES C. SANCHEZ
CITY ATTORNEY

By:  _____
Deputy

Reso Apprv Sum Vac Verba Ave NE o Figarden Dr

PW File No. 11074

EXHIBIT "A"



 INDICATES AREA TO BE VACATED

- ① -- PORTION OF VERBA AVENUE VACATED BY CITY OF FRESNO RESOLUTION NO. 94-250 RECORDED JAN. 26, 1995 AS DOCUMENT NO 95011094, OFFICIAL RECORDS OF FRESNO COUNTY
- ② -- PARCEL DEDICATED FOR PUBLIC STREET PURPOSES BY DEED RECORDED NOV. 29, 1979 IN BOOK 7421 AT PAGES 282-285, OFFICIAL RECORDS OF FRESNO COUNTY

DETAIL

NO SCALE

