COUNCIL AGENDA: 12/05/17
FILE: 17-396
ITEM: 4.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: November 13, 2017

Approved D-DSyL Date 11/21/17

COUNCIL DISTRICT: 9

SUBJECT: VACATION OF A 25-FOOT SETBACK EASEMENT AT 5159 AND 5181 BREWSTER AVENUE

RECOMMENDATION

Conduct a Public Hearing and adopt a resolution:

(a) Approving the report of the Director of Public Works setting forth the facts justifying the vacation of a 25-foot light and air easement ("setback easement") located at 5159 and 5181 Brewster Avenue;

(b) Vacating the 25-foot setback easement located at 5159 and 5181 Brewster Avenue; and

(c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

OUTCOME

Upon recordation of the resolution of vacation, the 25-foot setback easement located at 5159 and 5181 Brewster Avenue will be vacated.

BACKGROUND

Meghan Goss, property owner of 5159 Brewster Avenue, and Garrett Akahoshi, property owner of 5181 Brewster Avenue, have submitted an application for the vacation of a 25-foot setback easement located on both of their properties (see attached map). The setback easement on each property is 1,500 square feet in size, was created by dedication on the map of Tract No. 1714, recorded on June 29, 1956 in Book 71 of Maps at Pages 1-3, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all 79 properties created by the subdivision.

Both property owners have indicated their desire to construct future improvements to their properties that would encroach into the setback easement. The setback easement prohibits buildings from encroaching into these areas.

On October 17, 2017, the City Council adopted a resolution which declared the Council's intention to vacate the setback easement. The resolution also approved a map showing the setback easement to be vacated, set a public hearing for November 14, 2017 at 1:30 p.m., directed the City Clerk to file the vacation map and advertise said public hearing, and directed the Director of Public Works to post the site with a Notice of Vacation.

After City Council approval on October 17, 2017, staff proposed to defer the November 14, 2017 public hearing and consequently did not post either site with a Notice of Vacation. In lieu of deferral by the City Council, staff is recommending Council drop the original November 14, 2017 public hearing for the proposal vacation and restart the vacation proceedings. If approved, a public hearing will be set for December 5, 2017 at 1:30 p.m., which is subject of this memorandum.

ANALYSIS

Staff has reviewed the vacation application and has determined that the setback easement can be vacated because it is not necessary for current or prospective use. Ordinance No. 29821 "An Ordinance of the City of San Jose Amending Title 20 of the Municipal Code to Amend Various Sections of Chapter 20.30...." effective on December 30, 2016 amended the front setback requirement of single family residence in zoning district R1-8 from 25-feet to 20-feet. This reduction in setbacks was found consistent with the goals of the Envision San Jose 2040 General Plan ("General Plan") to encourage additional density and parking in conventional Residential Zoning Districts.

Consequently, upon review of the vacation application by Planning staff, it was determined that the setback easement on the subject properties is no longer necessary for public purposes in favor of the more appropriate current zoning setback. In light of this, staff recommends vacating the entire 25-foot setback easement as it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through a setback easement.

Because zoning district R1-8 applies to all of Tract No. 1714, if proposed, the 25-foot setback easement may be vacated for the entire tract, as all properties in the subdivision could be required to comply with the current 20-foot front setback for single family residence in zoning area R1-8 (Municipal Code 20.30.200). However, only the two property owners at 5159 and 5181 Brewster Avenue have applied for vacation of the setback easement. In the future, the other properties in the subdivision may seek a vacation of the setback easement.

As this proposed vacation will remove a setback easement that conflicts with the 2016 Council-approved reduced setback requirement in the City's zoning code for these properties, staff finds

that this proposed vacation is consistent with and will facilitate a General Plan goal to allow additional density and parking within the zoning district R1-8. According to the title report issued by Fidelity National Title Company, Michael C. & Meghan R. Goss hold fee ownership to the area being proposed for vacation at 5159 Brewster Avenue. Additionally, according to the title report issued by Chicago Title Company, Garrett K. Akahoshi holds fee ownership to the area being proposed for vacation at 5181 Brewster Avenue.

In addition, there are other existing easements on both properties that will remain. At 5159 Brewster Avenue, there is an existing 5-foot public utility easement at the rear and an existing 1-foot by 30-foot anchor easement at the eastern side of the property that will remain. At 5181 Brewster Avenue, there is an existing 5-foot public utility easement at the rear of the property that will remain.

EVALUATION AND FOLLOW-UP

If Council approves the resolution vacating the 25-foot setback easement at the subject properties, no further action by City Council will be required. The City Clerk will record the resolution of vacation at which time the vacation will be complete.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the December 5, 2017, Council agenda. Additionally, staff will post the site with a Notice of Vacation, file the vacation maps and advertise said public hearing, which alerts the public to the hearing date, location and time.

COORDINATION

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement and the City Manager's Budget Office. The vacation and resolution have been reviewed by the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Vacating the setback easement is in alignment with the November 2016 Council approval of Ordinance No. 29821 which lowered the front setback requirement for single family residences in zoning district R1-8 from 25-feet to 20-feet.

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees on July 17, 2017, during fiscal year 2017-2018, of $4,612 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Exempt, File No. PP17-054 & PP17-055, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

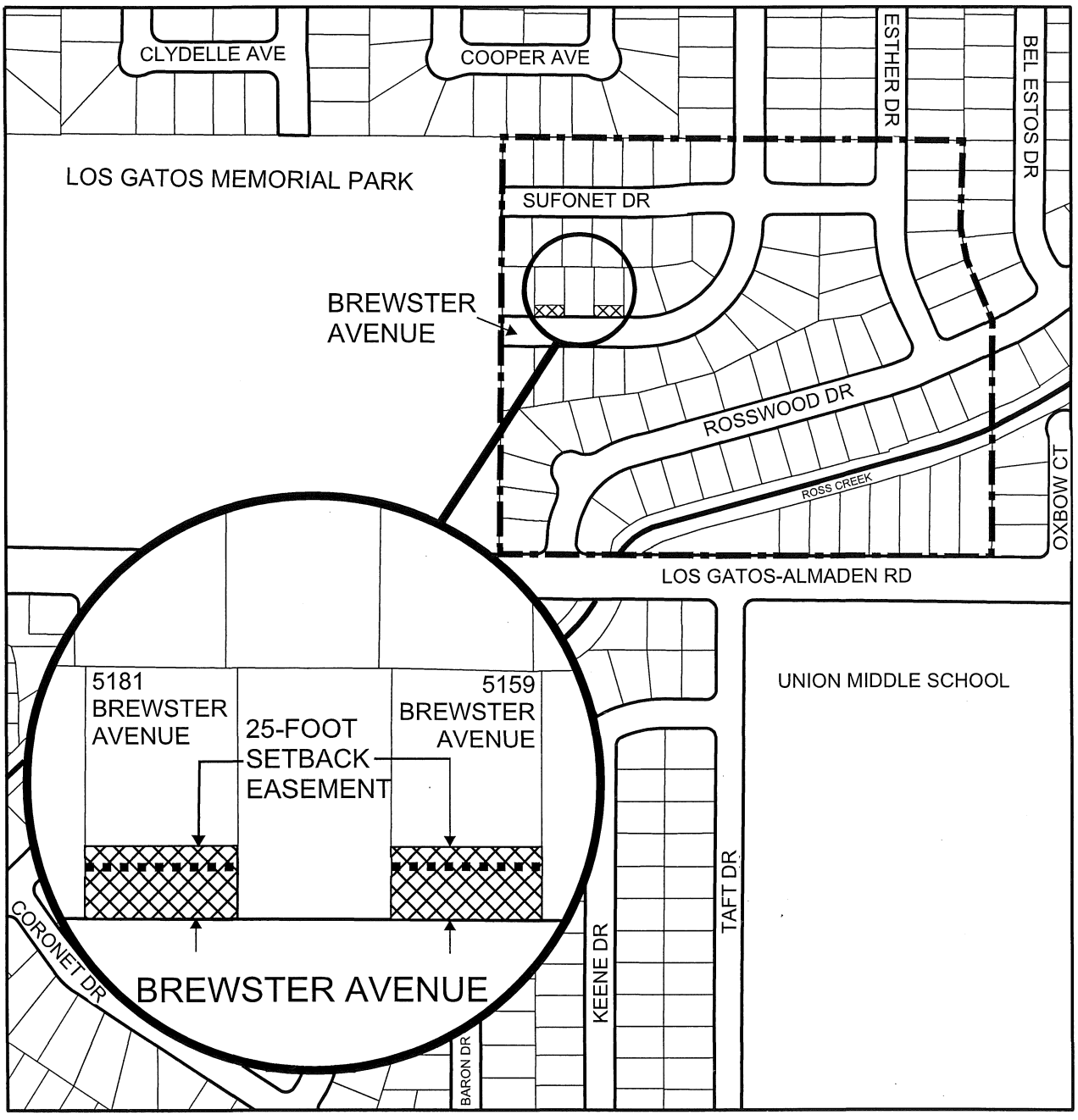
/s/
BARRY NG
Director of Public Works

Attachment: Location Map

For questions please contact Michael Liw, Deputy Director, at (408) 535-6835.

LOCATION MAP

SHOWING THE 25-FOOT SETBACK EASEMENT
AT 5159 & 5181 BREWSTER AVENUE TO BE VACATED



AREAS TO BE VACATED
(1,500 S.F. PER LOT)

20-FOOT ZONING DISTRICT
R1-8 SETBACK

BOUNDARY OF TRACT 1714

N