

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: July 17, 2017

Approved

D. D. S. L.

Date

7/26/17

COUNCIL DISTRICT: 9

**SUBJECT: VACATION OF A 25-FOOT SETBACK EASEMENT AT 4886
KINGWOOD WAY**

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 4886 Kingwood Way;
- (b) Vacating the 25-foot setback easement located at 4886 Kingwood Way; 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 4886 Kingwood Way will be vacated.

BACKGROUND

Myron Duell has submitted an application for the vacation of the 25-foot setback easement located at 4886 Kingwood Way (see attached map). The setback easement is 1,500 square feet in size, was created by dedication on the map of Tract No. 1754, recorded on May 27, 1957 in Book 81 of Maps at Page 45, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all 65 properties created by the subdivision.

July 17, 2017

Subject: Vacation of a 25-Foot Setback Easement at 4886 Kingwood Way

Page 2

On November 14, 2016, the City approved a building permit for the construction of an addition to the existing single family residence at the subject property. On February 9, 2017, the property owner submitted a proposed building permit plan revision to the City to include a front porch that would encroach five feet into the setback easement. The setback easement prohibits buildings from encroaching into these areas. The proposed vacation would allow the construction of the porch.

On June 27, 2017, the City Council adopted a resolution which declared the Council's intention to vacate the setback easement. The resolution approved a map showing the subject easement proposed to be vacated, set a public hearing for August 8, 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.

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 a single family residence in zoning district R1-8 from 25-feet to 20-feet. Consequently, upon review of this vacation application by Planning staff, it was determined that the setback easement on the subject property 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 setback easements.

Because zoning district R1-8 applies to all of Tract 1754, 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 nine single family residence in zoning area R1-8 (Municipal Code 20.30.200). However, only this property owner has applied for a vacation of the setback easement. In the future, the other properties in the subdivision may seek a vacation of the setback easement.

The proposed vacation is consistent with the General Plan and according to the title report issued by North American Title Company, Myron Duell and Mitra S. Duell hold fee ownership to the area being proposed for vacation. Additionally, there is an existing 10-foot public utility easement at the rear of the subject property that will remain. Upon recordation of this vacation, the subject property will no longer be encumbered by the 25-foot sidewalk easement, and no further action by the City will be required.

No new information regarding this vacation has been received since the June 27, 2017, Council meeting.

July 17, 2017

Subject: Vacation of a 25-Foot Setback Easement at 4886 Kingwood Way

Page 3

EVALUATION AND FOLLOW-UP

If Council adopts the resolution vacating the 25-foot setback easement at the subject property, 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 to the City's website for the August 8, 2017 Council agenda. Additionally, staff posted the site with a Notice of Vacation 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

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 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 April 21, 2017, during the fiscal year 2016-2017, of \$4,612 to process the subject vacation. These fees were deposited into the Public Works Development Fee Program appropriation in the General Fund (Fund 001).

HONORABLE MAYOR AND CITY COUNCIL

July 17, 2017

Subject: Vacation of a 25-Foot Setback Easement at 4886 Kingwood Way

Page 4

CEQA

Exempt, File No. PP17-036, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/

BARRY NG

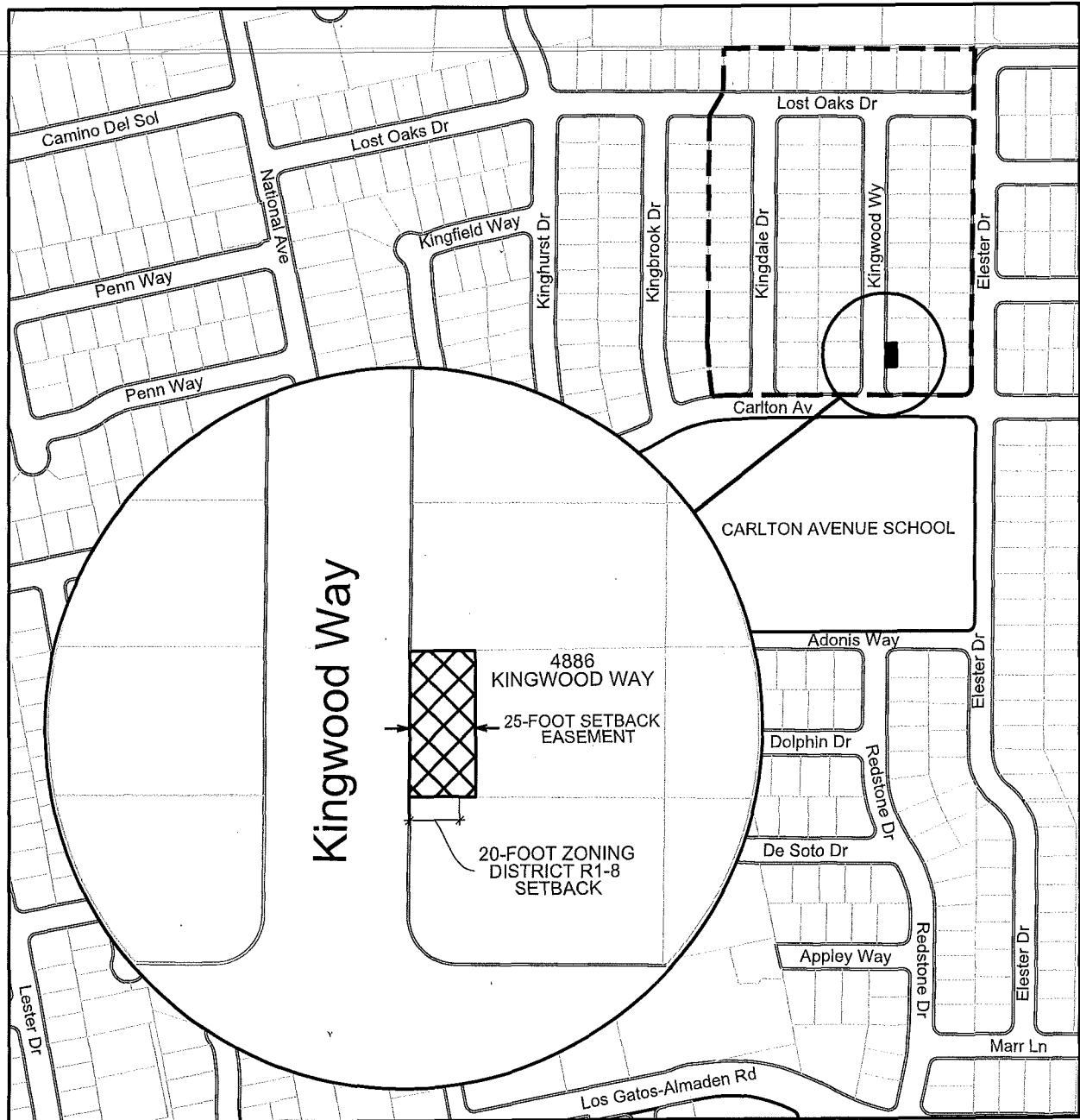
Director, Public Works Department

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

Attachment: Location Map

LOCATION MAP

SHOWING THE 25-FOOT SETBACK EASEMENT
AT 4886 KINGWOOD WAY TO BE VACATED



AREA TO BE VACATED
(1,500 S.F.)



BOUNDARY OF TRACT 1784

