



Board Agenda Item 14

DATE: March 1, 2016

TO: Board of Supervisors

SUBMITTED BY: Bernard Jimenez, Interim Director
Department of Public Works and Planning

SUBJECT: Conduct a Public Hearing to Consider Dissolving Zone CA of County Service Area No. 35 and Conduct a Public Hearing to Consider Vacating W. Melrose Avenue Public Road Right-of-Way (Vacation Application No. V14-01)

RECOMMENDED ACTION(S):

1. **Accept certified voter count on file with the Clerk to the Board, dated January 25, 2016, provided by the Fresno County Clerk/Registrar of Voters, showing that there are zero registered voters residing in Zone CA of County Service Area No. 35.**
2. **Conduct public protest hearing to consider all objections or protests, if any, to the proposed dissolution of Zone CA of County Service Area No. 35.**
3. **Close the public protest hearing and direct the Clerk to the Board to tabulate timely-submitted written objections to the dissolution of Zone CA of County Service Area No. 35; and, depending on the circumstances, approve action item A or B:**
 - A. **If more than 50 percent of the property owners who own more than 50 percent of the assessed value of all taxable property in Zone CA have filed written objections to the dissolution, abandon these dissolution proceedings, as well as the vacation proceeding.**
 - B. **If no majority protest exists as described in action 3A, adopt Resolution approving dissolution of Zone CA and terminating assessments on real property for road maintenance.**
4. **If there is no majority protest in the dissolution hearing, adopt required findings and a Resolution approving the vacation of public road Right-of-Way of W. Melrose Avenue from Cornelia Avenue westerly approximately 1020 feet to the end of the cul-de-sac. The Board finds that:**
 - A. **The vacation is determined to meet the criteria for general vacation, pursuant to Division 9, Part 3, Chapter 3 of the California Streets and Highways Code.**
 - B. **The right-of-way is not useful as a non-motorized transportation facility, pursuant to Section 892 of the California Streets and Highway Code.**
 - C. **The vacation is consistent with the County General Plan.**

The first recommended action allows your Board to establish that Zone CA of County Service Area No. 35 (CSA 35-CA) has no registered voters residing within CSA 35-CA, which determines the method by which a majority protest is calculated for purposes of the second recommended action. The second recommended action allows

your Board to conduct a public protest hearing concerning the dissolution of CSA 35-CA in accordance with Title 3, Division 2, Part 2, Chapter 2.5, Article 8 of the California Government Code (County Service Area Law). The third recommended action, if there is no majority protest will dissolve CSA 35-CA and transfer the responsibility of road maintenance of West Melrose Avenue located within CSA 35-CA to the Melrose Lane Homeowners Association. The fourth recommended action will allow your Board to declare the required findings listed in action 4, items A through C and approve a Resolution to vacate the West Melrose Avenue public right-of-way, as requested by the property owners in Vacation Application No. V14-014. Both resolutions must be adopted in order to complete both proceedings, but the vacation hearing should only occur if the Board determines to dissolve CSA 35-CA.

ALTERNATIVE ACTION(S):

The Board may choose not to approve the recommended actions, reject the property owners' request for dissolution of CSA 35-CA, and decline to vacate the Melrose Avenue public road right-of-way.

FISCAL IMPACT:

There is no net County cost associated with the recommended actions. All costs for the dissolution processes will be funded through the CSA 35-CA. Once all reserves have been depleted from the CSA 35-CA account, any remaining County costs associated with the dissolution will be funded through a reimbursement agreement.

The reimbursement agreement (attached as Exhibit A) was executed on October 16, 2015, pursuant to Master Schedule of Fees Section 2580.2(d), and allows the County to recover the costs of project implementation related to road maintenance services within a County Service Area, including the dissolution of a County Service Area zone. On March 3, 2009, the Board adopted Resolution 09-079, which authorized the Director of the Department of Public Works and Planning to execute reimbursement agreements relating to County Service Areas and Waterworks District with applicants on behalf of the County.

Additionally, the applicant has paid the required fee pursuant to Master Schedule of Fees Section 2500.14(a) to cover the cost incurred to process the vacation of Melrose Avenue road right-of-way. Approximately 1.17 acres may be placed on the County tax rolls by the vacation of this right-of-way.

DISCUSSION:

CSA 35-CA was formed by the Board on November 25, 2003, to provide for the maintenance of West Melrose Avenue, which serves parcels within Parcel Map No. 7873 (PM 7873), located on the west side of Cornelia Avenue, 1/8th mile south of Olive Avenue. Melrose Avenue is a public road dedicated with PM 7873 in 2004. It has a 50-foot wide right-of-way that provides access to four parcels (Parcels 1, 2, 3 & 4). Parcels 1 & 2 are corner parcels accessible from Melrose and Cornelia Avenues, and parcels 3 & 4 are accessible from Melrose Avenue only. The property owners have requested dissolution of CSA 35-CA. A copy of the request, in the form of a petition, is attached to this item as Exhibit B. A map showing the proposed vacation of public road right-of-way is attached to this item as Exhibit C.

The applicant applied for a Variance (Variance Application No. 3956) to waive the public road frontage requirement for Parcels 3 and 4 in order to restrict public access by installing a security gate at the entrance of Melrose Avenue at Cornelia Avenue. The gated entrance is intended to improve safety and security, and to prevent illegal activity along Melrose Avenue. Variance Application No. 3956 was approved by the Fresno County Planning Commission with conditions on February 6, 2014. Approval of the variance waives the public road frontage requirement for Parcels 3 & 4. However, prior to the installation of a security gate at Melrose and Cornelia Avenues, it is required that Melrose Avenue be vacated and CSA 35-CA dissolved. The applicant shall provide an alternate entity, namely the Melrose Lane Homeowners Association, to maintain Melrose Avenue as a private road. The proceedings will be presented before the Board simultaneously, and are mutually dependent.

Title 3, Division 2, Part 2, Chapter 2.5, Article 8 of the Government Code provides the procedures for dissolving a zone within a CSA. In accordance with Article 8, the Board must hold a public hearing to hear and consider protests to the dissolution of CSA 35-CA, and at the close of that hearing, determine whether there is a majority protest to the dissolution of CSA 35-CA, as provided in Government Code section 25217.1. If there is no majority protest, the Board may dissolve CSA 35-CA.

The existing right-of-way can be vacated pursuant to Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code if CSA 35-CA is first dissolved, and if the Board determines and finds that it is no longer necessary for present or prospective motorized or non-motorized use and that the vacation is consistent with the County's General Plan. A public hearing is required as part of the process to vacate public right-of-way.

Comments were solicited and received from County staff, various agencies and neighboring property owners. There were no comments received opposing the vacation. Pacific Gas and Electric Company and Fresno Irrigation District have facilities within the area to be vacated. A public service easement would be retained through exceptions and reservations in the legal description of the right-of-way, for the benefit of these facilities.

North Central Fire District requires a minimum 20-foot clear opening in vehicle gates for emergency access, and an approved police/fire bypass lock. Construction of a gate over seven feet in height would require plans, permits and inspections from the Development Services Division of the Department of Public Works and Planning.

Notice of Hearing for Dissolution

A notice concerning the dissolution of CSA 35-CA was published one time in a newspaper of general circulation published in the County, mailed to all owners of property within CSA 35-CA, mailed to each city and special district that contains, or whose sphere of influence contains CSA 35-CA, namely the City of Fresno, and posted in at least three public places within CSA 35-CA. All noticing was done in accordance with section 25217.1, subdivision (b) (2), of the California Government Code as follows:

1. The notice stated that the proposal to dissolve CSA 35-CA was made pursuant to Title 3, Division 2, Part 2, Chapter 2.5, Article 8 of the California Government Code.
2. The notice set forth a description of the boundaries of the territory included in CSA 35-CA.
3. The notice stated the reasons for dissolution, namely that the owners of the property in CSA 35-CA have applied to the County for dissolution of CSA 35-CA and vacation of West Melrose Avenue by the County because they wish to build a security gate to close West Melrose Avenue to public traffic.
4. The notice stated the different authorized services, different levels of service, different authorized facilities, or additional revenues that are currently provided by CSA 35-CA, namely road maintenance, and how those services or facilities would be provided upon the dissolution of CSA 35-CA, namely by the Melrose Lane Homeowners Association.
5. The notice set forth the methods by which those authorized services, levels of service, or authorized facilities have been performed and financed, namely benefit assessments on real property with CSA 35-CA.
6. The notice stated the date, time, and location of the public hearing on the proposed dissolution of CSA 35-CA.

Public Protest Hearing for Dissolution

Any registered voter residing within CSA 35-CA or owner of property within CSA 35-CA may submit a written protest. Each protest against the dissolution must be in writing and must contain a description of the property in

which the signer is interested that is sufficient to identify that property. Written protests may be withdrawn at any time before the conclusion of the public protest hearing.

Any protests pertaining to the regularity or sufficiency of the proceeding must be in writing, clearly setting forth the irregularities and defects to which objections are made, and all written protests must be filed with the Clerk to the Board at or before the time fixed for the Public Protest Hearing.

The Board will determine whether there is a majority protest against the proposed dissolution by applying the standard established in section 25217.1 of the Government Code.

Notice of Hearing for Vacation of West Melrose Avenue

The notice concerning the vacation of West Melrose Avenue was published for two successive weeks in a newspaper of general circulation in the County and posted conspicuously notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices were posted not more than 300 feet apart, but at least three notices were to be posted.

The notice concerning the vacation of West Melrose Avenue was posted and published by the Clerk to the Board. The notice contained the following:

1. The notice gave a description of the street, highway, or public service easement proposed to be vacated and a reference to a map or plan, that showed the portion or area to be vacated and included a statement that the vacation proceeding is conducted under Chapter 3 of Part 3 of Division 9 of the Streets and Highways Code. In the case of a street or highway, the description shall include its general location, its lawful or official name or the name by which it is commonly known, and the extent to which it is to be vacated. In the case of a public service easement, the description shall identify it with common certainty. The map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this paragraph.
2. The notice stated the date, time, and location of a public hearing to hear and consider the proposed vacation.

OTHER REVIEWING AGENCIES:

Agencies notified of this vacation request were the Fresno Irrigation District, Fresno County Fire Protection District, Pacific Gas & Electric Company, Fresno Metropolitan Flood Control District, and AT&T.

REFERENCE MATERIAL:

BAI #52, September 30, 2003

BAI #10, November 25, 2003

BAI #44, March 3, 2009

Planning Commission Agenda Item #2, February 6, 2014

BAI #26, February 2, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map

Exhibit A - C

On file with Clerk - Resolution of Dissolution

On file with Clerk - Resolution of Vacation

On file with Clerk - CSA 35-CA Voter Count Certification

CAO ANALYST:

John Hays