BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 19-07-09-08

IN THE MATTER OF VACATING A PUBLIC ALLEY LOCATED IN BLOCK 1 OF ZUMWALT’S ADDITION TO IRVING, AS PLATTED AND RECORDED IN VOLUME W, PAGE 396, LANE COUNTY OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING (17-04-33-33)

WHEREAS, the Surveyor’s Office of the Department of Public Works has received a valid a petition signed by Luke Rayborn, Gary R. and Cathy L. Kennedy, and Terry Ney, Fire Chief of Lane Fire Authority, requesting, under authority of ORS Chapter 368.341, the vacation of a public alley more particularly described as follows:

All that portion of a 12 foot wide alley located within Block 1 of Zumwalt’s Addition to Irving, as platted and recorded in Volume W, Page 396, Lane County Oregon Plat Records, Lane County, Oregon.

Except therefrom: Any of the above described alley that falls within the right of way of Hallett Street, County Road No. 1433.

WHEREAS, the petition, marked as Exhibit “A”, and made a part of this Order, complies with the provisions of ORS 368.351 in that the petitioners, who are the landowners of 100% of the property abutting the proposed vacation, request the vacation be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public roads and rights of way without a public hearing; and

WHEREAS, the City of Eugene, Xfinity, EWEB, Century Link, and other agencies such as Lane County Land Management, Transportation Planning, Lane Fire Authority, Bethel School District, State Fish and Wildlife, L-COG, and adjoining and nearby property owners were notified of this action by mail. The above listed agencies and landowners either had no objection to the vacation or did not respond to our referral; and

WHEREAS, NW Natural Gas responded to our referral and stated that they are unopposed to this vacation, as long as an easement for public utilities is retained; and

WHEREAS, an public utility easement will be reserved for all existing utilities; and

WHEREAS, the public alley proposed to be vacated is not improved or open for public travel; and

WHEREAS, ORS 368.331 states “A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner” and the owners have given consent by signing the petition; and

WHEREAS, no property will be denied legal access as a result of this vacation; and

WHEREAS, the public interest will be served by this vacation as it not being used by the motoring
public and will help convert the unimproved portion of right of way into taxable real property; and

WHEREAS, the Director of the Department of Public Works has provided a written report in support of the proposed vacation, as required by ORS 368.351, marked as Exhibit "B", attached, and made a part of this Order; and

WHEREAS, the Director of Lane County Public Works has provided a written report marked as Exhibit "C", determining the Special Benefit to the applicant is $3448, pursuant to Lane Manual 60.853, which has been paid in full by petitioner Luke Rayborn; and

WHEREAS, the petitioners have paid a vacation fee deposit of $3,400 and will pay actual costs incurred, including recording fees, upon final approval of the vacation; and

WHEREAS, all statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned for is in the best interest of the public.

NOW, THEREFORE, the Board of Commissioners of Lane County ORDERS as follows:

1. The above described public alley is hereby VACATED.

2. Pursuant to the petitioner's request, direct that title vest solely to those properties identified on Assessor's Map 17-04-03-33 as Taxlots 2900 and 3000, in accordance with ORS 368.366(2).

3. An easement is hereby retained for any and all existing public utilities to preserve, maintain, repair, replace, remove or reinstall any public utilities that may now exist within the bounds of the portion of the alleys herein described by these proceedings as vacated.

4. This Order be filed with the County Clerk and entered into the records of the Lane County Board of Commissioners Journal of Administration, and be further recorded in the Lane County, Oregon Deed Records.

ADOPTED this __th day of ___ July ____________, 2019

Pete Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date ___________
LANE COUNTY OFFICE OF LEGAL COUNSEL
BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

PETITION TO VACATE

IN THE MATTER OF VACATING A PUBLIC ALLEY
LOCATED IN BLOCK 1 OF ZUMWALT ADDITION
TO IRVING, AS PLATTED AND RECORDED IN
VOLUME W, PAGE 396; LANE COUNTY OREGON
DEED RECORDS (17-04-03-33)

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Luke Rayborn, Gary R. and Cathy L. Kennedy, husband and wife, and Irving Fire District, as owners of the adjacent real property hereby petition for the vacation of the alley more particularly described as follows:

All that portion of a 12 foot wide alley located within Block 1 of Zumwalt’s Addition to Irving, as platted and recorded in Volume W., Page 396, Lane County Oregon Deed Records, Lane County, Oregon.

WHEREAS, the undersigned petitioners are the owners of 100% of all the real property adjacent to the above described area to be vacated; and

WHEREAS, the undersigned petitioners allege as follows:

1. The purpose of this vacation is for use of additional parking and storage.
2. The area to be vacated is not currently being used for public purposes.
3. There are no known underground utilities.
4. There is one power and one communication line at the pole located at 90348 Prairie Road that serves an existing building owned by Lane Rural Fire District.

Necessary easements for all existing public and private utilities will be retained or otherwise provided for in conjunction with the vacation; and

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area, and will return a marginal portion of land to the tax rolls as real property; and

WHEREAS, petitioners, separately and collectively, acknowledge that the filing fee is a deposit and an estimate of the vacation fee, and that we accept responsibility for full payment of fees associated with the proceeding of this vacation in accordance with Lane Manual 60.853, regardless of whether this vacation is approved or denied; and

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation with or without a hearing; and

WHEREAS, no property will be denied legal access by this vacation; and

WHEREAS, the alley proposed to be vacated is not improved or open to public travel; and
Petitioners (continued):

Gary R. Kennedy  
17-04-03-33-02800  
90362 Prairie Rd.  
Eugene, OR. 97402

State of Oregon)  
County of Lane ) $

On April 16, 2019, personally appeared the above named Gary G. Kennedy, husband and wife, who acknowledged the foregoing instrument to be their voluntary act before me:

JULIE ALICE MERIWETHER  
OFFICIAL STAMP  
NOTARY PUBLIC-OREGON  
COMMISSION NO. 972863  
MY COMMISSION EXPIRES APRIL 03, 2022  

Terry Ney, Fire Chief  
Lawn Fire Authority  
17-04-03-33-02900  
17-04-03-33-02700  
29999 Hallett St.  
Eugene, OR. 97402

State of Oregon)  
County of Lane ) $

On April 16, 2019, personally appeared the above named Terry Ney and acknowledged the foregoing instrument to be a voluntary act before me:

JULIE ALICE MERIWETHER  
OFFICIAL STAMP  
NOTARY PUBLIC-OREGON  
COMMISSION NO. 972863  
MY COMMISSION EXPIRES APRIL 03, 2022
THEREFORE, the petitioners request the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above described alley, with or without a hearing pursuant to ORS Chapter 368.

2. Upon review of this matter, to order the vacation of the above described alley, and upon petitioner's request, direct that title vest solely to those properties identified on Assessor's Map 17-04-03-33 as Taxlots 2900 and 3000, in accordance with ORS 368.366(2).

DATED this 10th day of April, 2019.

Petitioners:

[Signature]
Luke Rayborn
17-04-03-33-03000
PO Box 41945
Eugene, OR. 97404

State of Oregon
County of Lane

On April 10, 2019, personally appeared the above named Luke Rayborn and acknowledged the foregoing instrument to be a voluntary act before me:

[Signature]
Notary Public for Oregon
My Commission Expires: 4.30.22
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

DIRECTOR'S REPORT

IN THE MATTER OF VACATING A PUBLIC ALLEY
LOCATED IN BLOCK 1 OF ZUMWALT'S ADDITION
TO IRVING, AS PLATTED AND RECORDED IN
VOLUME W, PAGE 396, LANE COUNTY OREGON
PLAT RECORDS, WITHOUT A PUBLIC HEARING
(17-04-03-33)

The Surveyor's Office of the Department of Public Works has received a valid petition signed by the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing. ORS 368.326 to 368.366 allows a county governing body to vacate a subdivision or part of a subdivision, a road or right-of-way, or public interest in property under the jurisdiction of the county, based upon the determination that the vacation is "in the public's interest".

The petitioners wish to vacate the unimproved, platted right of way to use for their personal use.

The alley proposed to be vacated was dedicated to the public in 1889 on the plat of Zumwalt's Addition to Irving, as platted in Volume W, Page 396 of the Lane County, Oregon Plat Records. The alley is 12 feet wide and approximately 280 feet in length.

The alley is unimproved and not open for public travel. There are no obvious building encroachments within the alley. Lane County staff has determined the alley is not needed for transportation purposes, and the alley only serves, but is not being used, as secondary access to the adjoining properties, all of which are owned by the petitioners of this vacation.

ORS 368.331 states "A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner". As stated above, the alley is unimproved and not used as access to the adjoining properties. All of the adjoining properties take access from either Prairie Road or Hallett Street.

The City of Eugene, Xfinity, EWEB, N.W. Natural Gas, and Century Link were sent referrals seeking comment on this proposed vacation. N.W. Natural Gas responded by email stating they were not opposed to this vacation, as long as an easement for public utilities was retained. The other utility companies did not respond to our referral. The petitioners request that an easement will be retained in the Final Order for any existing public utilities within the bounds of the right of way proposed to be vacated. The Surveyor's Office also notified various other agencies including Transportation Planning, Lane County Planning sections of the Lane County Department of Public Works, Lane Fire Authority, Bethel School District, State Fish and Wildlife, L-COG, and the adjoining and nearby property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.
A written report is provided, marked as Exhibit "C", determining the Special Benefit of the vacation of the public alley to the applicants is $3,448, which has been paid in full by petitioner Luke Rayborn.

It has been determined the alley is not needed by the Lane County Transportation System. It has also been concluded the vacation of the alley is in the public’s interest, as it is unimproved and not being used as a public utility. Therefore, Lane County staff recommends to approve the vacation of the alley located in Block 1 of Zumwalt’s Addition to Irving, as described in the Order. It is further recommended the vacation be allowed without a public hearing.

DATED this 25th day of June, 2019

[Signature]
Dan Hurley, Public Works Director
Department of Public Works
LANE COUNTY

Notification of Determination of Amount of Special Benefit Deposit in Connection with a Proposed Vacation of a Platted Public Alley Pursuant to Lane Manual 60.853(3)(a)

Pursuant to the provisions of Lane Manual 60.853(3)(a), my determination of the amount of "Special Benefit" and therefore the amount of deposit required in connection with the proposed vacation of a public alley located in Block 1 of Zumwalt Addition to Irving, as platted and recorded in Volume W, Page 396; all in Lane County, Oregon Plat Records, is $3,448.

My determination is based on the Staff Report and recommendation, a copy of which is attached hereto and marked as "Exhibit C".

Dated this 25th day of JUNE, 2019.

[Signature]
Dan Hurley, Director
Lane County Public Works
STAFF REPORT

Notification of Determination of Amount of Special Benefit Deposit
in Connection with a Proposed Vacation of a Platted Public Alley
Pursuant to Lane Manual 60.853(3)(a)

Date: May 2, 2019

Applicants: Gary R. and Cathy L. Kennedy, Terry Ney (Fire Chief of Lane Fire Authority), Luke Rayborn

PROPOSED VACATION OF A PLATTED PUBLIC ALLEY

The applicants are proposing to vacate a platted public alley between Lot’s 1 thru 10, Block 1 of Zumwalt’s Addition as platted and recorded in Volume W, Page 396; all in Lane County, Oregon Plat Records.

Upon the vacation of the platted road and alley, full property rights will proportionally revert to the adjoining land in accordance with the law and the final order.

NATURE OF BENEFIT TO BE RECEIVED IF THE PLATTED PUBLIC ALLEY IS VACATED

Lane Manual 60.853(3) “In addition to payment of the deposit and final fees referenced in subsections (1) and (2) above, a vacation of public property or public interest in property under the jurisdiction of the County governing body shall require payment by the petitioners of a deposit equal to the estimate of special benefit that results from the vacation and disposition of property to the benefitted property owners”. General benefits are not included within the special benefit determination.

1. Special Benefit Defined:

Lane Manual does not define the term “Special Benefit”; however, in appraising acquisitions for right of way, a special benefit is defined as “advantages arising from a public improvement for which property has been acquired under eminent domain accruing directly and solely to the advantage of the property remaining after the partial acquisition.” Conversely, a “general benefit” is defined as a benefit “accruing to the community at large, to the area adjacent to the improvement, or to other property similarly situated as that acquired but which is not acquired.” In Oregon, a “Special Benefit” is used to offset damages caused by the acquisition (See ODOT Right of Way Manual 4.310).

Although special and general benefit definitions apply to acquisitions through eminent domain, the Right of Way staff applies the same principles to the definition of a “Special Benefit” for the vacation of a platted road. When used in the context of a proposed vacation of a platted road, a practical definition follows:

“The advantages arising from the vacated portion of the platted road accruing directly and solely to the advantage of the adjacent property after the vacation.”
2. Special Benefit to Evaluate:

Upon the vacation of the platted public alley, full rights will revert back to the fee property owner of the property unburdened and unencumbered by the public easement. The alley is improved with fencing and used as parking and storage. It is added plottage to the adjoining properties. The alley was created in the 1889 and has no utility due to its size. The alley was dedicated by said Zumwalt and is considered an easement that encumbers the property and not fee ownership by the County. As an unconstructed alley, an owner may use the property consistent with applicable land use regulations until the area is used for its dedicated purpose. For these reasons, the rights that will be released back to the owners will be valued at 30% of fee ownership.

3. Special Benefit to Property Owner(s):

Upon the vacation of the platted public alley, the encumbrance is removed and the adjacent property owners receive full fee ownership of the alley in accordance with the law. Typically, ownership extends to the centerline of alley, so each adjacent property will be allocated a proportional share of the public alley. Those allocations are as follows:

Property 1 are Lots 1, 2, and 3, Block 1, of Zumwalt’s Addition, platted and recorded in Volume W, Page 396, Lane County, Oregon Plat Records, also known as Map and Tax Lot# 17-04-03-33-02900 and is approximately 0.46 acres outside the right of way, and 0.51 acres with the right of way. The amount of Public Alley Right of Way to be vacated is approximately 0.05 acres.

Property 2 are Lots 4 and 5, Block 1, of Zumwalt’s Addition, platted and recorded in Volume W, Page 396, Lane County, Oregon Plat Records, also known as Map and Tax Lot# 17-04-03-33-03000 and is approximately 0.39 acres outside the right of way, and 0.42 acres with the right of way. The amount of Public Alley Right of Way to be vacated is approximately 0.03 acres.

VALUE INDICATION(S) OF PROPERTIES TO BE BENEFITED

The test for estimating a special benefit must be specific and measurable, which can be justified through an increase in market value due to a change in a more profitable use. The most appropriate method for determining a “Special Benefit.” is using the “Highest and Best Use” concept in conjunction with the “Before and After” rule.

According to the easement valuation matrix produced by the International Right of Way Association (IRWA), 30% is within the range used when an easement location is along a property line.

4. Neighborhood Description and Subject; Properties Highest and Best Use Analysis

Neighborhood (Prairie Road, in the North Eugene Area) The neighborhood is zoned light to medium industrial (I-2) with industrial, commercial, and residential uses, with lots mostly ranging from 0.30 acres to 3 acres.

Property 1 (Map and Tax Lot# 17-04-03-33-02900) The existing use of this property is a single family dwelling owned by the Lane Fire Authority, and zoned Light-Medium Industrial (I-2). The added plottage from the public alley vacation will not increase in the property’s highest and best use, but will increase in any specific or measurable way.

Property 2 (Map and Tax Lot# 17-04-03-33-03000 The existing use of this property is a landscape business, and zoned Light-Medium Industrial (I-2). The added plottage from the public alley vacation will not increase in the property’s highest and best use in any specific or measurable way.
5. Sales Analysis (Before and After Method)

Using the “Before and After” method, Right of Way staff performed market research based on a recently comprised Data Book for the Prairie Rd. & Enid Rd., Pavement Preservation and Sidewalk Rehabilitation Project. Key No. 19914 (ROW No. 1533, and project number: 367347001) and bracketed the subject properties. Most sales shared the same Industrial zoning, were located in similar market areas, and all sales occurred in 2016, 2017, and 2018. The sale parcels ranged in size from 0.41 acres to 3.79 acres, and the price per square foot values were between $4.04 and $7.27. The price per square foot value used to value the subject properties was $5.80 square foot.

Based on a “Before and After” analysis of the comparable sales with each of the properties, the appraiser finds no advantage arising from the added plottage after the vacation of the platted public alley.

SUMMARY AND RECOMMENDATION OF SPECIAL BENEFIT

*Lane Manual 60.853(3)(a)* The estimated value of the special benefit and the amount of money to be deposited shall be determined by the Public Works Director. In the event of an estimated special benefit value of less than $2,500, it shall be considered de minimis and a payment of deposit for special benefit shall not be required.

The relevant factors used to determine a “Special Benefit” have been examined. There is no evidence that the proposed vacation will change any of the properties to a more profitable use. Based on the data and analysis contained in this report, the appraiser finds no special benefit applicable to the proposed vacation that would result from this action.

Pursuant to Lane Manual 60.853(3)(a), a “Special Benefit” must be determined. Based on the “Before and After” estimation of value and under the highest and best use premise of adjacent land, the “Special Benefit” to the adjacent properties is estimated not to be de minimus. The appraiser concludes payment of “Special Benefit” is warranted for this vacation.

**Property 1** (Map and Tax Lot# 17-04-03-33-02900) Pursuant to Lane Manual 60.853(3)(a), a “Special Benefit” must be determined. Based on the “Before and After” estimation of value and under the highest and best use premise of adjacent land, the “Special Benefit” to the adjacent property is estimated to be **$3,448.00**. The appraiser concludes payment of a “Special Benefit” is warranted for this vacation.

**Property 2** (Map and Tax Lot# 17-04-03-33-03000) Pursuant to Lane Manual 60.853(3)(a), a “Special Benefit” must be determined. Based on the “Before and After” estimation of value and under the highest and best use premise of adjacent land, the “Special Benefit” to the adjacent property is estimated to be $2,485 and therefore considered **De Minimis**. The appraiser concludes payment of a “Special Benefit” is not warranted for this vacation.

[Signature]
Mike Davis
Real Property Officer 2
“Attachment 1 of Exhibit C”

Aerial View of Subject Properties and Approximate Area to be Vacated
“Attachment 3 of Exhibit C”

Site View from Hallett Street Looking North, Approximate Area to be Vacated
Proposed to be Vacated
Alley in Block 1 of Zumwalt's Addition to Irving
SW 1/4 Section 3 T. 17 S. R. 4 W. W.M.
Lane County