BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 20-06-02-04

IN THE MATTER OF THE VACATION OF COMMERCIAL STREET LOCATED ADJACENT TO LOTS 9 AND 10, BLOCK 64 OF THE SECOND AMENDED PLAT OF FERN RIDGE, AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE COUNTY OREGON PLAT RECORDS, LANE COUNTY, OREGON, WITHOUT A PUBLIC HEARING. (16-05-35-34)

WHEREAS, the Surveyor's Office of the Department of Public Works has received a valid petition signed by Judy Rue-Kethcart, Steven Lee Kethcart, Nancy Lee Whiddon, and Ronald L. Mortensen, requesting, under authority of ORS Chapter 368.341, the vacation of a public street more particularly described as follows:

All that portion of Commercial Street, a 60 foot wide road, lying adjacent to Lots 9 and 10 of Block 64 of the Second Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28, Lane County Oregon Plat Records, Lane County, Oregon.

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, Emerald PUD, Comcast, Century Link, and other agencies such as Lane County Land Management, Transportation Planning, Road Maintenance, Lane Fire Authority, Bethel School District, LCOG, Lane ESD, 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, petitioners request a public utility easement will be reserved for all existing public utilities; and

WHEREAS, the public street 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, no other areas of public interest that would necessitate retaining this public right of way have been identified; 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 $14,800, pursuant to Lane Manual 60.854, which has been paid in full by petitioners Kethcart; 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 will not be a detriment to public interest; and

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

1. The above described portion of Commercial Street is hereby VACATED.

2. Pursuant to the petitioner's request and by the authority of ORS 368.366(2), direct that title vest solely to that property identified on Assessor’s Map 16-05-35-34 as Tax Lot 2001, and further described as Lots 9 and 10, Block 64, Second Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28, Lane County Oregon Plat Records, Lane County, Oregon.

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 Commercial Street 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 2nd day of June, 2020

Heather Buch, Chair
Lane County Board of Commissioners
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON.

IN THE MATTER OF THE VACATION OF A PORTION OF COMMERCIAL STREET LOCATED ADJACENT TO LOTS 9 AND 10, BLOCK 64 OF THE 2ND AMENDED PLAT OF FERN RIDGE, AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE COUNTY OREGON PLAT RECORDS, LANE COUNTY, OREGON. (16-05-35-34)

Pursuant to the procedures set forth in ORS Chapter 368, we the undersigned Steven L. Kethcart & Judy Rue- Kethcart, Nancy Lee Whiddon, and Ronald L Mortensen, representing 100% property owners adjoining this vacation petition, hereby petition for the vacation of a portion of Commercial Street, said portion to be vacated being more particularly described as follows:

All that portion of Commercial Street, a 60 foot wide road, lying adjacent to Lots 9 and 10 of Block 64 of the 2nd Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28, Lane County Oregon Plat Records, Lane County, Oregon.

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

WHEREAS, ORS 368.366(2) provides that "a governing body may determine the vesting of property vacated under ORS 368.326 to 368.366 in the order or resolution that vacates the property”. We the petitioners, Steven L. Kethcart and Judy Rue- Kethcart, owners of Tax Lot 2001 are in agreement with Nancy Lee Whiddon, owner of Tax Lot 700 and Ronald L. Mortensen, owner of Tax Lot 2100 to have the entire 60 feet by 100 feet of the vacated property revert to us, Steven L. Kethcart and Judy Rue-Kethcart, owners of Tax Lot 2001, and respectfully request that vesting be ordered as such if these proceedings are approved; and

WHEREAS, the purpose of this vacation is for space for a septic drain field due to the placement of surrounding wells and other property lines. Judy Rue-Kethcart was diagnosed with stage 4 cancer and husband Steven L. Kethcart had a stroke recently. The approval of this request would allow son Michael Peterson to be on the property in order to help manage and assist with our needs and property upkeep; and

WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area, as the right of way is not currently being used for public purposes and approving these proceedings will return a marginal portion of land to the tax rolls as real property; and

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

WHEREAS, There are no known public utilities located in the area to be vacated, but we agree that an easement will be retained for any existing public utilities if any are discovered; and

WHEREAS, no portion of the area to be vacated has been used by the public and is currently unimproved; 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 processing 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 public hearing; and

THEREFORE, the petitioners request the Board of Commissioners of Lane County:

1. Set a date to consider the vacation of the above described portion of road, with or without a public hearing pursuant to ORS Chapter 368.

2. Upon review of this matter, to order the vacation of the above described road, and direct that title to the vacated area revert and vest per our wishes in accordance with ORS 368.366(2).

PETITIONERS:

JUDY RUE KETHCART
16-05-35-35-02001
27467 5th St.
Junction City, OR 97448

STEVEN LEE KETHCART
16-05-35-35-02001
27467 5th St
Junction City, OR 97448

State of Oregon)
County of Lane)

On March 12, 2020, personally appeared the above named Judy Rue-Kethcart and Steven Lee Kethcart, and acknowledged the foregoing instrument to be their voluntary act before me:

[Stamp]
JILL CHRISTINE BUSBY
Notary Public for Oregon
My Commission Expires: 6-13-2020
NANCY LEE WHIDDON
16-05-35-34-00700
27485 5th St
Junction City, OR 97448

State of Oregon)
County of Lane)

On March 12th, 2020, personally appeared the above named Nancy Lee Whiddon, and acknowledged the foregoing instrument to be their voluntary act before me:

[Signature]
Notary Public for Oregon
My Commission Expires: June 04, 2023

RONALD L. MORTENSEN
16-05-35-34-02100
91000 Commercial St.
Junction City, OR 97448

State of Oregon)
County of Lane)

On March 12, 2020, personally appeared the above named Ronald L. Mortensen, and acknowledged the foregoing instrument to be their voluntary act before me:

[Signature]
Notary Public for Oregon
My Commission Expires: 6.13.2020
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 for the purpose of acquiring additional acreage needed to construct a septic system to facilitate further development of the property for residential use. The petitioner's request the Board, if approved and by the authority of ORS 368.366(2), order title of the vacated right of way to vest entirely to that property identified on Assessor's Map No. 16-05-35-34 as Tax Lot 2001.

Commercial Street was dedicated to the public in 1913 on the Second Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28 of the Lane County, Oregon Plat Records. The street is 60 feet wide and approximately 100 feet in length.

The street is unimproved and not open for public travel. There are no obvious building encroachments or other improvements within the public right of way. Lane County Staff has determined the street is not needed for transportation purposes. Additionally, Lane County Staff has not identified any area of public interest that would necessitate retaining this right of way for public use.

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, Commercial Street is unimproved and not used as access to the adjoining properties. All of the adjoining properties take access from other public access points.

Lane County Department of Public Works sections such as Transportation Planning, Road Maintenance, and Land Management Planning have determined the right of way is not needed for transportation purposes and have no objections to the vacation of this public right of way.

Lane Fire Authority, Bethel School District, Lane ESD, and LCOG were notified by mail regarding these proceedings and did not respond to the Surveyor's Office's referral.
Utility companies such as Emerald PUD, Comcast, and Century Link, all of which were identified as service providers in the area, were sent referrals seeking comment on this proposed vacation. As of this date, the aforementioned utility companies did not respond to the referral. The petitioners have requested an easement 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 by mail all adjoining and nearby property owners. As of this date, no nearby property owner has responded to their referral.

A written report is provided, marked as Exhibit “C”, determining the Special Benefit of the vacation of the public street to the applicants is $14,800, which has been paid in full.

It has been determined the portion of Commercial Street as described in the Order is not needed by the Lane County Transportation System. It has also been concluded the vacation of the street is in the public’s interest, as it is unimproved and not being used as a transportation facility and will help convert the unimproved portion of right of way into taxable real property and will return a marginal portion of land to the County tax rolls. Therefore, Lane County Staff recommends the Board to approve the vacation of the portion of Commercial Street as described in the Order. It is further recommended the vacation be allowed without a public hearing.

DATED this ______ day of ______________, 2020

____________________________________
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 Street
Pursuant to Lane Manual 60.854(3)

Pursuant to the provisions of Lane Manual 60.854(3), my determination of the amount of "Special Benefit" and therefore the amount of deposit required in connection with the proposed vacation of a public street located in Block 64 of 2nd Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28; all in Lane County, Oregon Plat Records, is $14,800.

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

Dated this _______ day of __________________, 2020.

__________________________
Dan Hurley, Director
Lane County Public Works
"Exhibit C"

STAFF REPORT

Notification of Determination of Amount of Special Benefit Deposit in Connection with a Proposed Vacation of A Public Platted Street Pursuant to Lane Manual 60.854(3)

Date: March 30, 2020

Applicants: Judy Rue Kethcart and Steven Lee Kethcart

PROPOSED VACATION OF A PLATTED STREET

The applicants propose vacating a portion of Commercial Street located adjacent to Lot’s 9 and 10, Block 64 of the 2nd Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28; Lane County, Oregon Plat Records.

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

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

Lane Manual 60.854(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 5.460).

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 street, full rights will revert back to the fee property owners of the property unburdened and unencumbered by the public street. The street is unimproved. It is added plottage to the adjoining property. The street was created in the 1912 and has no utility due the street never being constructed. The platted street was dedicated by W. C. and Nancy J. Hembree (2nd Amended Fern Ridge) and is considered an unimproved platted street that encumbers the property and not fee ownership by the County. As an unconstrated street, an owner may use the property consistent with applicable land use regulations until the area is needed 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 street, the encumbrance is removed and the adjacent property owners receive full fee ownership of the street in accordance with the law. Typically, ownership extends to the centerline of street, so each adjacent property will be allocated a proportional share of the public street. In this vacation full fee ownership will be allocated to Map and Tax lot 16-05-35-34-02001. This allocation is as follows:

**Property 1** are Lots 9 and 10, Block 64, of Amended Plat of Fern Ridge, as platted and recorded in Book 6, Page 28, Lane County, Oregon Plat Records, also known as Map and Tax Lot# 16-05-35-34-02001 and is approximately 0.23 acres outside the right of way, and 0.37 acres with the right of way. The amount of Public Street Right of Way to be vacated is approximately 0.14 acres.

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** (Fern Ridge Rural Residential Neighborhood Area) The neighborhood is zoned Rural Residential (RR1) with mostly residential uses, with lots mostly ranging from 0.12 acres to 5 acres in the immediate area.

**Property 1** (Map and Tax Lot# 16-05-35-34-02001) The existing use of this property is vacant and adjacent to their other property to the south that is improved with a single family residential dwelling and zoned Rural Residential (RR1). The added plottage from the public street vacation will increase in the property’s highest and best use. Adding this plottage (0.14 acres) to TL 2001 could make parcel buildable, thus increasing the value of said parcel.
5. Sales Analysis (Before and After Method)

Using the “Before and After” method, Right of Way staff performed market research based on a recently sold comparables and bracketed the subject property. Most sales shared the same Residential zoning, were located in similar market areas, and all sales occurred in 2018 and 2019. The sale parcels ranged in size from 0.12 acres to 0.20 acres, and the price per square foot values were between $6.38 and $9.57. The price per square foot value used to value the subject property is $6.67 square foot.

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<td>10/30/2019</td>
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</table>

Based on a “Before and After” and “across the fence” analysis of the comparable sales with each of the properties, the appraiser finds an advantage arising from the added plottage after the vacation of the platted public street.

**Property 1:** Map and Tax Lot# 16-05-35-34-02001): Based on a site value of $91,947, the price per square foot is $9.18 ($91,947/0.23 Acre (10,019 sq. ft.)) before the vacation. After the vacation, the price per square foot is $8.24 ($131,947/0.37 Acre (16,019 sq. ft.)). The special benefit attributed to the property from the vacated street is estimated at $14,800 (R) ($8.24 sq. ft X 0.14 acre (6,000 sq. ft.) X 30% of fee).

**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 evidence that the proposed vacation will change the property to a more profitable use. Based on the data and analysis contained in this report, the appraiser finds a 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 minimis. The appraiser concludes payment of “Special Benefit” is warranted for this vacation.

**Property 1** (Map and Tax Lot# 16-05-35-34-02001) 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 **$14,800.00**. The appraiser concludes payment of a “Special Benefit” is warranted for this vacation.

Mike Davis
Right of Way Agent
“Attachment 1 of Exhibit C”

Aerial View of Subject Properties and Approximate Area to be Vacated
Lots 9 and 10, block 64 of 2nd AMENDED PLAT OF FERN RIDGE
and Approximate Area to be Vacated
“Attachment 3 of Exhibit C”

Site View from 5th Street Looking North, Approximate Area to be Vacated
EXHIBIT "D"
PORTION OF COMMERCIAL STREET PROPOSED TO BE VACATED

SECOND AMENDED PLAT OF FERN RIDGE, SW 1/4 SECTION 35, T. 16S. R. 5W. W.M. LANE COUNTY, OREGON

PORTION OF ROAD TO BE VACATED