



MEMORANDUM

TO: Coburg City Council

FROM: Henry Hearley, City Planner & Gary Darnielle, City Legal Counsel

RE: Update on Alley Encroachment and Vacation

DATE: May 26, 2021

SURVEY RESULTS: At the April City Council meeting, Council directed staff to conduct a survey of the alley in question to find out precisely how far the structures and fences in question encroach into the alleyway. The survey has been completed and is included in this memo as **Exhibit 1**.

As seen in **Exhibit 1**, the property located at 32803 East Lincoln Way has a shed that partially encroaches into the alleyway for 6.9 feet, and a wooden fence that encroaches 7.7 feet. The fence encompasses the shed, so if one were to traverse the alleyway, you would not come face-to-face with shed, but rather the fence.

Immediately to the east of 32803 East Lincoln Way, is 32811 East Lincoln Way. This property has a garage/shed combination that encroaches, 8.5 feet and 7.6 feet, into the alleyway.

The last property in question, 32883 East Lincoln Way, contains a chain link fence that, at its furthest point, encroaches into the alleyway 7.5 feet. This chain link fence runs nearly the entire length of the back property line.

LEGAL OPINION: The alley was created through the platting of the Coleman 2nd Addition Subdivision in 1902. It, and the streets within the plat, were “dedicated to the public.” The “public” cannot own land so that even though the City never formally accepted the plat (because it had no land division regulations), it became “trustee” of the public interest to assure that the land was used for its dedicated purpose. The common-law rule of dedication holds that the dedication becomes final with the sale of lots by reference to a plat.

Nonuse or misuse of the purpose of the dedication does not destroy the dedication although an affirmative action such as a vacation will. Thus, the fact that the alley has been used for private purposes does not terminate the dedication. Unless explicitly stated otherwise on the plat,

Oregon courts have assumed that dedication to the public is an easement. ORS 271.140 codifies this precedent by stating that the title to a vacated public area attaches to bordering lands.

The distinction between whether the alley is owned by the City in fee or whether it is an easement becomes important if it is vacated. If the alley was owned in fee by the City then it could sell or convey the property to whomever it chooses after a vacation. However, the alley is an easement for the public and the statute provides that the vacation would automatically transfer the ownership of the alley to adjacent property owners.

While not technically the City's problem, the vacation of the easement would result in the garage and shop on Tax Lot 600 and the shed on Tax Lot 700 trespassing on Tax Lot 401 and 400, respectively. The chain link fences would also be on their neighbor's property. If the property owners adjacent to the alley support the vacation, perhaps the City could negotiate an agreement between neighbors to alleviate any legal complications created by the vacation.

VACATION PROCESS: If vacation is pursued, per the Coburg Development Code, vacation is a TYPE IV application and process. A TYPE IV process requires a minimum of two public hearings, one before Planning Commission and one before City Council. Planning Commission would issue a recommendation onto City Council for final action. Vacation may be initiated by a Resolution by Council or by petition of the property owners, in accordance with ORS 271.080.

CONSIDERATIONS: If vacation is pursued, Council must determine whether it will be a City driven initiative or leave it up to the property owners to petition for the City for vacation. If the vacation is City driven, this means the City would likely bear all the costs associated with processing a TYPE IV vacation process. If the property owners petition the City, the affected property owners would be responsible for paying the required vacation fee and any related costs of the application.

An additional consideration is that, if vacated, there may be trespassing issues as presented above in the legal opinion. The garage and shop on Tax Lot 600 and the shed on Tax Lot 700 would trespass onto Tax Lot 401 and 400, respectively. This is because the land comprising the alley is split into half and returned to the adjacent property owners. The garage and shop and shed extend past the centerline of the alley and thus would fall onto the adjacent property owner's land. As stated above in the legal opinion, the City could perhaps negotiate an agreement between neighbors to alleviate any legal complications created by the vacation.

Lastly, staff would also recommend public works verify the city has no utilities underneath the alley or any reasons to get into the ground underneath the alley in the future. If the alley is vacated, it will no longer be city responsibility.

OPTIONS:

#1 - The City Council may choose to do nothing. Leave the situation as is.

#2 - The City Council may choose to initiate the vacation process on its own as a city sponsored vacation.

#3 - The City Council may choose to tell the property owners, with encroaching structures into the alley, that if they want to continue to use the alleyway, they must petition the City for vacation and submit a land use application and pay the vacation fee. The subject alley has four adjacent property owners, all of which would gain additional square footage to their property, if vacated.