

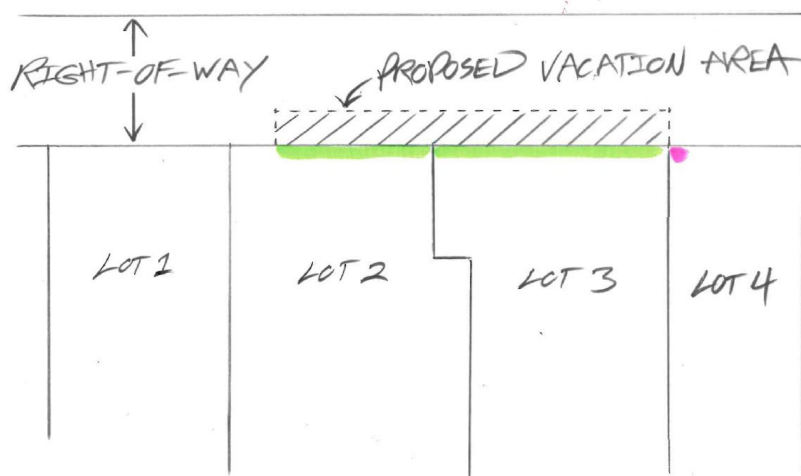


CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: City Council
FROM: Jacob A. Graichen, AICP, City Planner
RE: “Abutting” for the purpose of right-of-way vacations
DATE: December 20, 2022

The main question of this memo is if touching by a point alone should constitute abutting for the purposes of processing and deciding on right-of-way vacations per ORS Chapter 271.



This is illustrated above. The traditional way of using abutting is the green area, or along the sides (abutting the side). In this example, Lots 2 and 3 would abut. The question is if Lot 4 should be abutting based on touching the vacation area by a point (red area).

For a vacation request by petition per ORS 271.080, the consent of all abutting owners is one of the prerequisites to file with the city per ORS 271.090 and one of the factors to include is the city’s determination or decision on the request per ORS 271.120.

For vacation requests by City Council motion per ORS 271.130, abutting properties matter as consent is required from an abutting property owner if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages.

The ORS does not define “abutting” for the purpose of right-of-way vacations. Traditionally, this has been lots that are adjacent to the *side* of the proposed area to be vacated. This issue was contested as part of the Vacation VAC.2.22 (at the Columbia Boulevard / N&S 1st Street intersection) file. The Planning Commission considered VAC.2.22 at their June 14, 2022 meeting and recommended denial to the Council. The hearing for this matter before the Council was on August 3, 2022, but the applicant withdrew the application, so the Council did not have the opportunity to weigh in on anything pertaining to this case including the abutting question.

The Commission reviewed the latest vacation request—file VAC.3.22—at their December 13, 2022 meeting. The Commission raised this issue again and in their recommendation to Council, included reference to SHMC 17.16.010, where abutting is defined as:

“Abut/abutting” means adjacent/adjoining or contiguous; to physically touch or border upon; or to share a common property line.

So, does the local definition, which says physical touching is sufficient to abut, apply to right-of-way vacations under state law?

Per ORS 271.120 the standards that the city applies to determine whether to grant a vacation or not includes:

1. whether the consent of the owners of the requisite area has been obtained
2. whether notice has been duly given
3. whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof

The St. Helens Municipal Code references vacations sparingly. It is referenced under SHMC 17.32.030(5) explaining how zoning applies following vacation and per SHMC 17.136.220 as follows:

All street vacations shall comply with the procedures and standards set forth in ORS Chapter 271 and applicable local regulations.

So SHMC 17.136.220 says follow the procedures and standards of the ORS and any applicable local regulations. Since vacations are only referenced as in the SHMC described, there are not necessarily explicit local regulations that pertain.

Staff reached out to our legal counsel about this topic in June (see attached), who agreed with staff's initial impression of this (that the touching side is what matters for the purpose of abutting). They also note no specific case law on the matter. Per a letter to Steve Toschi from Grayson Law, LLP dated August 18, 2022 (attached), there are some cases where the Courts' have interpreted abutting, though the cited cases are not right-of-way vacations.

We are not necessarily obligated to consider that touching by a point alone constitutes abutting for the purpose of a vacation. However, the **Council could find that based on its own definition in the city's code, that the public interest would be prejudiced if the city applied “abut/abutting” contrary to how the city council intended it to be for St. Helens as the city's legislative body, and thus, touching by a point would count as abutting for the purpose of right-of-way vacations.** In other words, the council would find that the local definition applies.

Staff is requesting determination of this as part of the Council's review and decision of VAC.3.22 at the January 4, 2023 regular session.

From: [William A. Monahan](#)
To: [Jacob Graichen](#)
Cc: [Kelly Burgess](#); [Darlene Ferretti](#)
Subject: RE: [External] Street ROW Vacation and "abutting" question
Date: Thursday, June 16, 2022 5:16:40 PM

Hi Jacob,

We have analyzed your questions and performed some research. The statute does not define abut or abutting. So, we looked at case law and could not find any case where a parcel of land that only touches by a point is considered to be abutting.

The city code, section 17.16.010 has a definition for Abut/abutting which states: "adjacent/adjoining or contiguous; to physically touch or border upon; or to share a common property line." While the words "to physically touch" might be construed to include just a point, to make such an interpretation in the context of a ROW vacation would be a stretch. The purpose of a street vacation or ROW vacation proceeding is to make a determination whether a street or ROW should be vacated back to the properties from which the land was obtained. A property that merely has a point of contact would not obtain any of the vacated property.

There is language in the statutes that apply to county roads (ORS 368.336) which applies to abutting owners in vacation proceedings. Here reference is made to "a person owning property that abuts either side of the road is an abutting property owner for purposes of ORS 368.326 to 368.366". It appears the common usage of the term is associated with a "side" of the road meaning adjacent to or running along the property line.

In my opinion, the language of ORS Chapter 271 as it applies to abutting a street or ROW is intended to involve those property owners that have an interest due to the fact their property borders on a side of the area under consideration for vacation. A property that merely touches by a point may be within the area noted in the statute as "in area of the real property affected thereby".

An interpretation of abut other than to require more than a point of touch would be stretching the intent of the statute to provide the consent of properties which have less of an interest in the street or ROW under consideration for vacation. From our research it appears that the state and the courts have presumed that the meaning of abut and abutting is well understood and further clarification is not needed.

Please let me know if you have any questions.

Bill

From: Jacob Graichen <jgraichen@sthelensoregon.gov>
Sent: Wednesday, June 15, 2022 11:14 AM
To: William A. Monahan <William.Monahan@jordanramis.com>
Subject: Street ROW Vacation and "abutting" question

Bill,

Per ORS 271.080(2) a petition for right-of-way vacation requires “the consent of all owners of **abutting** property.” ORS 271.090 says we are supposed to make sure a petition is sufficient before consideration by the governing body.

I have always considered “abutting” to be along the side of an area proposed to be vacated and not necessarily touching by only a point because a property only touching by a point will not attain any vacated right-of-way. Our Planning Commission made note of this on a potentially controversial vacation and thus this question. Please see attached map. The yellow highlighted properties are ones that have not provided consent and only touch by a point in this case. Is touching by a point enough to be “abutting” for the purposes of right-of-way vacations?

The second question is, if touching by a point qualifies as “abutting,” is it ok to amend the request at the City Council hearing, say for 1’ less (to eliminate the point connection) or would that be poor practice because technically the petition is not sufficient in light of ORS 271.090?

Jacob A. Graichen, AICP, City Planner

City of St. Helens

jgraichen@sthelensoregon.gov ← *new e-address!!!*

(503) 397-6272

GRAYSON LAW LLP
ATTORNEYS AT LAW

JOEL GRAYSON, P.C. +*
JANET L. GRAYSON, P.C. +*
JAMES P. LOSK

OF COUNSEL
MARK PASSANNANTE*
JOSEPH W. MAYLIE**
DOUGLAS B. GORDON**

+ PARTNER
* ADMITTED IN OREGON AND WASHINGTON
** RETIRED

7959 SE Foster Road
Portland, Oregon 97206-4241
(503) 771-7929
Fax: (503) 775-1765
info@graysonlawllp.com

August 18, 2022

Steve Toschi
Toschi Collins & Doyle
5145 Johnson Drive
Pleasanton, CA 94588

Re: Petitioners Locke, *et al.* Petition to Vacate

Dear Mr. Toschi:

You requested that this office review Oregon case law regarding the Courts' interpretation of "abut" or "abutting" with regard to parcels, such as yours at 215 N. River St., St. Helens, OR, which are near lots being proposed to be vacated and transferred to private owners.

There are several cases that confirm your parcel abuts the proposed vacated area:

Oregon's Supreme Court discussed this issue in *Cooke v. City of Portland*, 136 Or 233, 298 P 900 (1931). The Plaintiff challenged the vacation of a city street in order to create a school playground, claiming that the vacation was a 'taking' of property without just compensation. There was a 60-foot wide street between Plaintiff's property and the property to be vacated, but the playground interfered with his normal driving route. The Court cited *Kemp v. City of Seattle*, 149 Wash 197 (1928) in its ruling against Plaintiff. The Court held that property was deemed to "abut" the street only if there was "no intervening land" between them. Since in this case Plaintiff's property was 60 feet from the area to be vacated, his property did not abut, and his claim failed.

Another Oregon Supreme Court case discussing this issue is *Valenti v. Hopkins*, 324 OR 324 (1996). Although this case dealt with the interpretation of homeowner association rules and procedures, the dissenting opinion addressed the issue of what were considered to be 'adjacent' or 'adjoining' properties. Black's Law Dictionary was cited for the proposition that properties are 'adjoining' if they are in contact with each other, or "abut upon" each other.

August 18, 2022

Page 2

Burton v. City of Cannon Beach, LUBA Case No. 2011-008, dealt with setbacks from property boundaries and their effects on views of the Pacific Ocean. The Board agreed with the city's interpretation of "abutting properties" in the city Ordinance "to include lots with shared property lines and to exclude lots that are separated from intervenors' lot by a 40-foot right of way is consistent with the dictionary definition of "abut." A footnote recited Webster's Third New Int'l Dictionary definition: *Abut... 1. to border on; reach or touch with an end <two lots that [abut] each other...*

Based on these interpretations, your property clearly abuts the lot proposed to be vacated, as it touches (is in contact with) the subject property. This opinion is consistent with the Black's and Webster's definitions of 'adjoining' and 'abut' which have been applied by Oregon's Supreme Court and LUBA in their rulings. We further conclude that since you own abutting property, your objection prohibits governmental approval of the vacation, pursuant to ORS 271.080(2), which requires consent of "all abutting property owners..."

Please do not hesitate to contact this office if you have other questions on this or related matters.

Very truly yours,

Joel Grayson

Joel Grayson