

**CITY OF ST. HELENS PLANNING DEPARTMENT
STAFF REPORT
VAC.3.22**

DATE: December 28, 2022
To: City Council
FROM: Jennifer Dimsho, AICP, Associate Planner
Jacob A. Graichen, AICP, City Planner

PETITIONER: Murphy Family Trust & Kylie Bellar

PROPOSAL: Vacation of public right-of-way described as follows:

The east 40' of the North 9th Street right-of-way abutting Lots 5, 6, 7 and 8 of Block 76 of the St. Helens Subdivision, City of St. Helens, Columbia County, Oregon.

The purpose of this vacation is for increased parking area per the petitioner's petition.

PUBLIC HEARING & NOTICE

Hearing date: January 4, 2023 before the City Council

Notice of this proposed street vacation was Published in the Chronicle on December 21, 2022 and December 28, 2022. Staff posted a copy of the notice at or near each end of the proposed street vacation areas on December 16, 2022.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 2.08.080 - Planning Commission Powers and Duties

Discussion: There are several listed duties and powers that include recommendations to the City Council with regards to property acquisition/disposition, public facility proposals, right-of-way plans, plats or deeds dedicating land to public use, and street design for example. Street vacation proposals can be construed as falling within one or more of these.

As such, at their December 13, 2022 meeting, the Commission considered this request. **Based on a unanimous vote, the Commission recommended denial to the City Council based on two main concerns:**

1. The definition of “abutting” per SHMC 17.16.010 applies. Not all abutting property owners have given consent as required by ORS 271.080(2). The property owner at 125 N. 8th Street touches the area to be vacated by a point.
2. Engineering Staff report stated concerns about the natural drainageway which runs through the proposed street to be vacated.

Since the Planning Commission reviewed the proposal, the applicant submitted a letter on December 14, 2022 which states that they would reduce their request by 30' along the southern proposed area to be vacated to alleviate public utility concerns and the abutting property owner consent issue brought forth by the Planning Commission.

SHMC 17.32.030(5): Whenever any street is lawfully vacated, and when the lands within the boundaries thereof attach to and become a part of lands adjoining such street, the lands formerly within the vacated street shall automatically be subject to the same zoning district designation that is applicable to lands to which the street attaches.

SHMC 17.136.220 - Vacation of Streets: All street vacations shall comply with the procedures and standards set forth in ORS Chapter 271 and applicable local regulations.

Discussion: The above two excerpts are the only places where vacations are specifically mentioned in the St. Helens Municipal Code. The Municipal Code does not set forth any additional approval criteria other than those per State law below.

Oregon Revised Statutes, ORS 271.120 – Street Vacation Approval Criteria

... the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

Findings:

- **Have there been any objections or other comments submitted regarding this request?**

Notice was sent to utilities on November 10, 2022. There have been no comments from the Columbia River PUD, Comcast/Centurylink, or NW Natural.

City Public Works/Engineering: **Recommendation is to not vacate the public right-of-way because an existing unimproved natural drainageway runs through the center of the proposed area to be vacated.** Contour lines show this to be a natural drainage path for this area. In addition, a waterline easement is required for future extension of the water main coming from N. 8th Street. **See attached referral staff report and map.**

A sanitary sewer easement and a storm drain easement is required for the existing sewer trunk line which runs through the south end of the proposed area to be vacated. **With the reduction of the street vacation request by 30', a public utility easement is no longer needed for this area.**

- **Has the consent of the owners of the requisite area been obtained?**

Pursuant to ORS 271.080(2), the consent of the owners of all abutting property and not less than two-thirds in area of the real property affected area (i.e. an area 200 feet parallel to and on both sides of the portion of street right-of-way to be vacated and 400 feet along its course beyond each terminus of the portion of street right-of-way to be vacated) is required. **The applicant submitted documentation showing 100% consent of all property owners abutting the portion of street right-of-way to be vacated and 67.8% of the affected area.**

The Planning Commission disagreed with this based on the original area proposed to be vacated touching a non-consent property at a point only. Staff has inquired with legal counsel previously on this matter in June 2022 for another vacation proposal. City's legal disagreed that touching by a point constitutes abutting for the purpose of right-of-way vacations. Further, this issue has not been before the city council (the legislative body of the city) for interpretation on this matter and the applicant provided written request to reduce the requested area so it does not touch the non-consenting property in question. See attached memo from City Planner dated December 20, 2022.

- **Has notice been duly given?**

Notice requirements are set forth by ORS 271.110. This requires published notice to occur once each week for two consecutive weeks prior to the hearing and posted notice within five days after the first date of published notice. The posting and first day of publication notice is required to be at least 14 days before the hearing. The notice requirements have been met (see PUBLIC HEARING & NOTICE above).

- **Will the public interest be prejudiced by the proposed street vacation?**

Streets – This section of N. 9th Street is an undeveloped right-of-way at 80' in width. It is classified as a local street according to the City's Transportation Systems Plan (TSP). According to SHMC 17.152.030, local streets have a minimum right-of-way width of 50'. However, there are multiple reasons why it is unlikely that a roadway will ever be built that connect Columbia Boulevard to Wyeth Street.

- Approximately 180' north of the proposed vacation, there is a large basalt cliff of about 25' to 30' in height, which resulted in a similar 40' wide street vacation of N. 9th Street (VAC.1.18) on the upper part of N. 9th Street.
- Approximately 200' south of the proposed vacation, there is another rock bluff wall of about 40' in height (near Spain's Hill).
- Approximately 40 feet south of the proposed vacation, there is a large locally significant Type I wetland with a 75' upland protection zone.
- The angle that the N. 9th Street right-of-way connects to Columbia Blvd. right-of-way is very challenging for intersection configuration and safe sight distance.



Taken in the N. 9th St. right-of-way looking south towards basalt bluff near Spain's Hill/Columbia Blvd.



Taken in the N. 9th St. right-of-way looking north towards Wyeth St./basalt bluff. Note the small indentation in the grass.



Taken looking west from the N. 9th St. right-of-way. Pictured is the public storm system/ditch which runs east/west about 130' south from the proposed vacation. Type I wetland with a 75' upland protection zone pictured to the right of the public stormwater ditch.

Fire Access - The applicants of this street vacation share access from N. 8th Street along a 20' wide shared driveway. The area proposed for vacation currently functions as a gravel turnaround for the private driveway, although it is not formally developed. The fire code requires an approved turnaround if the distance from the roadway to the structure is over 150'. There is about 175' from the edge of the developed roadway at N. 8th Street to the dwelling at 144 N. 9th Street. If this structure were to be built today or if the dwelling is re-built, a fire turnaround or fire sprinkling of the new structure would be considered. See the attached *Page 5 from the Fire Code Application Guidelines*

Fire turnarounds can be built on private property or within public rights-of-way. However, given the large footprint, if a fire turnaround were built entirely on private property in this case, it would require cooperation of both private property owners to draft and record a shared access and maintenance easement. It would also take up a significant portion of both lots, reducing potential building envelopes significantly. This could be a barrier. **By vacating the proposed area, it eliminates the flexibility to utilize public right-of-way to provide an adequate fire turnaround in the future.**

There are two potential fire turnaround options (cul-de-sac and hammerhead) staff contemplated as shown on the Aerial & Utilities Map. If fire turnaround option A were retained as public right-of-way, additional right-of-way would need to be retained or a public easement would need to be granted through the shared private driveway to ensure that there would not be an “island” of public right-of-way with no way to access it.

Trees – Tree within rights-of-way are subject to public protection. There are trees within the proposed vacation area that would no longer be subject to public protection.



Taken looking south from the N. 9th St. right-of-way. Some trees pictured would no longer be subject to public protection if vacated.

Utilities – There is a water line which terminates in the private drive. In addition to ensuring there is public utility easement over the existing water main, a 15' wide waterline easement which runs east/west through the proposed vacation would be required for future extension of the mainline to serve infill lots. There is also an unimproved drainageway which runs north/south through the entire section of proposed right-of-way to be vacated. It is unimproved for the length, except a section where it is piped for about 30-40 feet near the informal gravel turnaround. Additional photos of the natural drainageway are included below.

Taken looking north from the N. 9th Street right-of-way. Storm outfall (not identified as public) daylights as shown in the background and a ditch runs north/south through the entire proposed right-of-way to be vacated until it reaches the public storm ditch that runs east/west about 130' south of the proposed vacation.



Taken looking south from the N. 9th Street right-of-way. The natural drainageway is piped under the informal gravel turnaround located in the N 9th Street right-of-way..



Taken further south from where the piped section of the drainageway returns to a natural drainage. Notice the active water standing/flowing.

Summary - Retaining the public right-of-way promotes protection of the natural drainageway and allows crews access for maintenance. Engineering has expressed that it is difficult to require an easement to capture the extent of the natural drainageway because it meanders through the entire right-of-way to be vacated (as opposed to perfectly parallel). Also, natural drainageways can change over time and require different maintenance than piped stormwater systems. If the applicant were to improve the natural drainageway to a public improvement standard, an easement over the new improvements could work in lieu of retaining right-of-way for the natural drainageway.

If the drainageway were improved by the applicant and an easement were recorded, vacating this right-of-way still would result in a reduction of options to comply with fire code for redevelopment in the future and reduces options to extend the water main line / loop the water system in the future. **If the Council is considering approval, there are two other considerations that must be decided:**

1. Do we retain public right-of-way for a future fire turnaround?
2. Do we require a water line easement to accommodate future waterline extension?

CONCLUSION & RECOMMENDATION

The Planning Commission recommended denial of the entire street vacation.

If the City Council wants to approve the street vacation as reduced by the applicant, staff recommends the following condition of approval:

1. The applicant shall coordinate with the City on a public storm line improvement that connects the natural drainageway into the public system. Construction of the storm line and legal description for a public storm easement by a surveyor licensed in the state of Oregon shall be completed at the applicant's expense prior to the ordinance for this vacation. This shall be completed within one year from the date of the Council's decision.
2. A legal description shall be provided by a surveyor licensed in the state of Oregon for a 15' wide public waterline easement over the existing water main and through the proposed street vacation for future extension. This shall be completed at the applicant's expense prior to the ordinance for this vacation. This shall be completed within one year from the date of the Council's decision.
3. **If Council wants to retain public right-of-way for a fire turnaround, this is the placeholder condition of approval.**

Staff also requests the Council consider the "abutting" issue as recommended by the Planning Commission and detailed in the attached memo from the City Planner dated December 20, 20022.

Attachments

Aerial & Utilities Map

Consent Map

City Engineering Referral Comment dated December 1, 2022

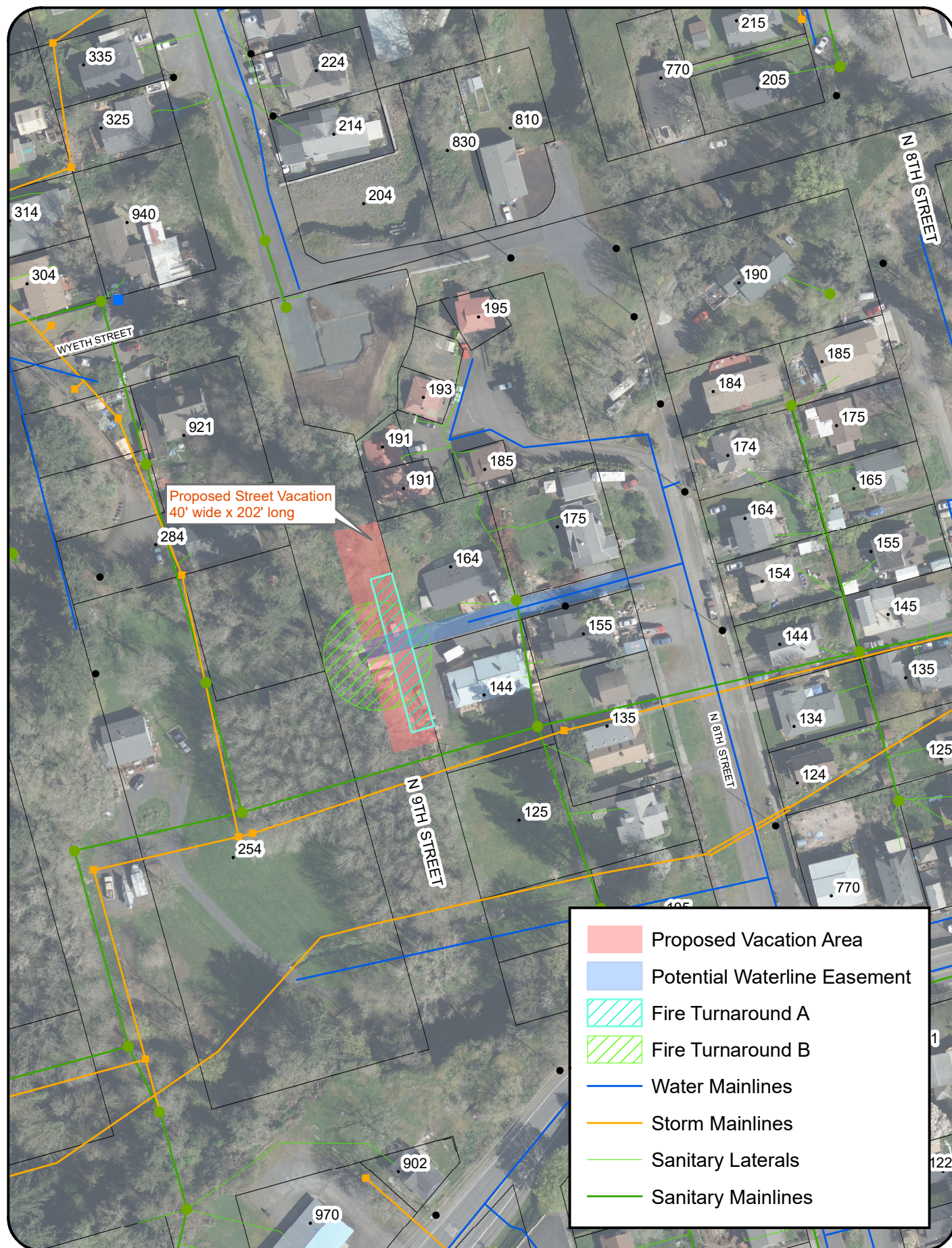
Page 5 from the Fire Code Application Guidelines

Applicant Letter dated December 14, 2022

Applicant photos dated December 12, 2022 (4)

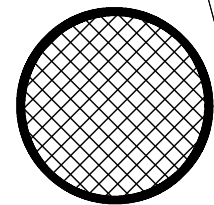
Memo from the City Planner dated December 20, 2022

VAC.3.22 Murphy & Bellar Overview

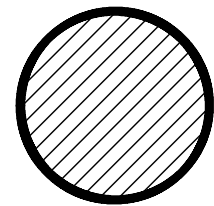


FILE: VAC.3.22

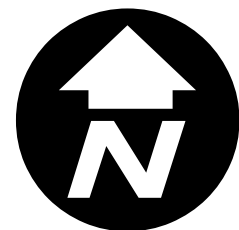
November 2022



Affected Property - Consent
67.8% of all Affected Properties



Affected Property - No Consent



NOT TO SCALE

Proposed Vacation Area

AFFECTED AREA

WYETH STREET

N. 7TH STREET

N. 6TH STREET

COLUMBIA BOULEVARD

N. 8TH STREET

N. 9TH STREET

N. 10TH STREET

N. 11TH STREET

COLUMBIA BOULEVARD



ENGINEERING STAFF REPORT

PROJECT/SITE: VACATION OF N 9TH ST SOUTH IF WYETH ST

REPORT DATE	PROJECT NAME	PREPARED BY
12/01/2022	Bellar Murphy N 9th St Vacation	Sharon Darroux Engineering Manager

EVALUATION

STREETS

- Minimum ROW width for local streets is 50 feet. Vacation of the ROW would reduce the ROW to 40 feet which may potentially degrade access to public utilities, and to the installation of future utilities.

WATER

- Waterline easement required for future extension of the water main coming off N 8th St.

SEWER

- Sanitary sewer easement required for the existing sewer trunk line which runs through south end of the area proposed to be vacated.

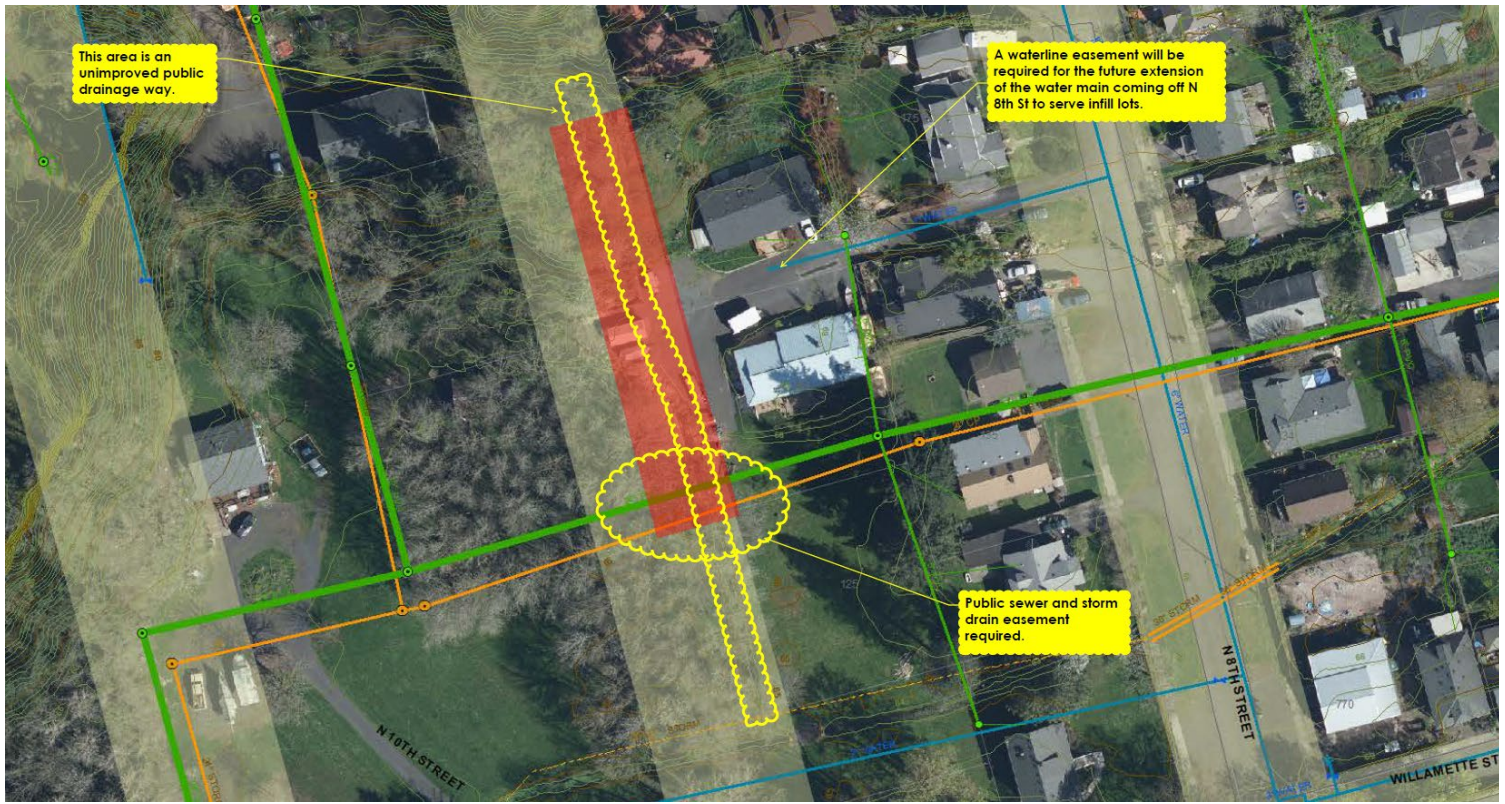
STORM

- Storm drain easement required for the existing storm drain which runs through south end of the area proposed to be vacated.
- A mostly unimproved public drainageway runs through the center of the area proposed to be vacated.



RECOMMENDATIONS

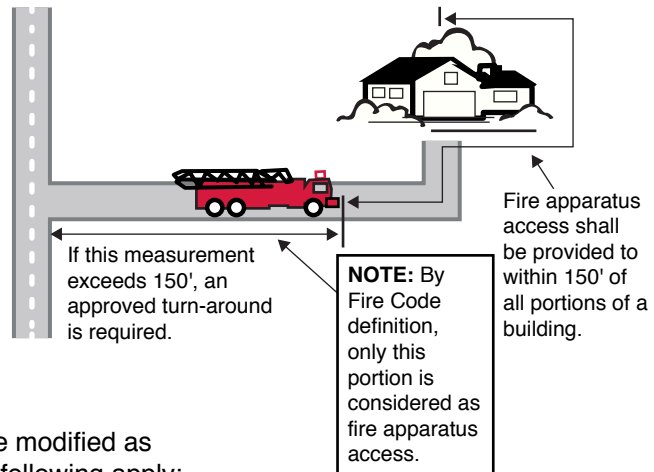
Recommendation is to not vacate the public right of way because an existing unimproved natural drainageway runs through the center of the proposed area to be vacated as shown on the map. Contour lines show this to be a natural drainage path for this area.



FIRE DEPARTMENT ACCESS

FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDINGS AND FACILITIES:

Access roads shall be within 150 feet of all portions of the exterior wall of the first story of the building. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. (OFC 503.1.1)



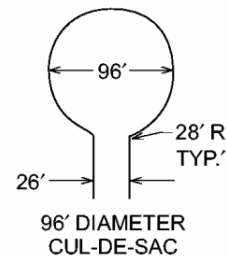
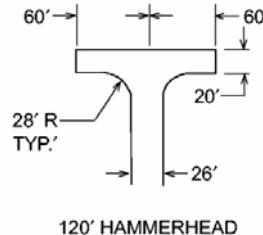
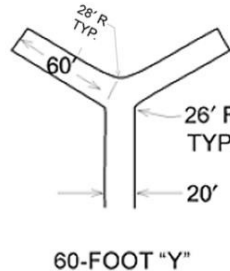
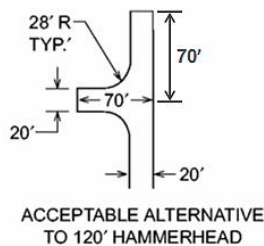
ACCESS ROAD EXCEPTIONS:

The requirements for fire apparatus access may be modified as approved by the fire code official where any of the following apply: (OFC 503.1.1 Exception)

1. Buildings are equipped throughout with an approved automatic fire sprinkler system (the approval of this alternate method of construction shall be accomplished in accordance with the provisions of ORS 455.610(5)).
2. Fire apparatus access roads cannot be installed because of location on property, topography, waterways, non-negotiable grades, or other similar conditions, and an approved alternative means of fire protection is provided.

DEAD END ROADS AND TURNAROUNDS:

Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround. Diagrams of approved turnarounds are shown below: (OFC 503.2.5 & Figure D103.1 in the OFC)



TURNING RADIUS:

The inside turning radius and outside turning radius shall not be less than 28 feet and 48 feet respectively, measured from the same center point. The greatest turning radius that needs to be accommodated for our fire apparatus is 240". That is axle to axle. Angle of approach and departure is to be no greater than less than 9 percent. (OFC 503.2.4 & D103.3)

December 14, 2022

To: St. Helens City Council
Jenny Dimsho, Associate Planner, City of St. Helens

From: Ron and Christine Murphy, Murphy Family Trust

Re: Street Vacation Request
144 N. 9th Street, St Helens, OR 97051

Regarding our Street Vacation request, we are requesting you reduce our property south border request by 30 feet to alleviate public utilities concerns and the abutting property consent issue.

Thank you for your consideration of our request,



Ronald and Christine Murphy
Murphy Family Trust

RECEIVED
DEC 15 2022
CITY OF ST. HELENS

①

11/12

12-12-2022

Drainage
Ditch

Looking
South



(2)

12-12-2022
upper side
of culvert

Home for
SK-wks

Dry



3

12-12-2022

Exit side

of culvert

Feeding

Damage

Ditch

Day



(4)

12-12-2022

Area
East of
Ditch
No standing
water
No running
water



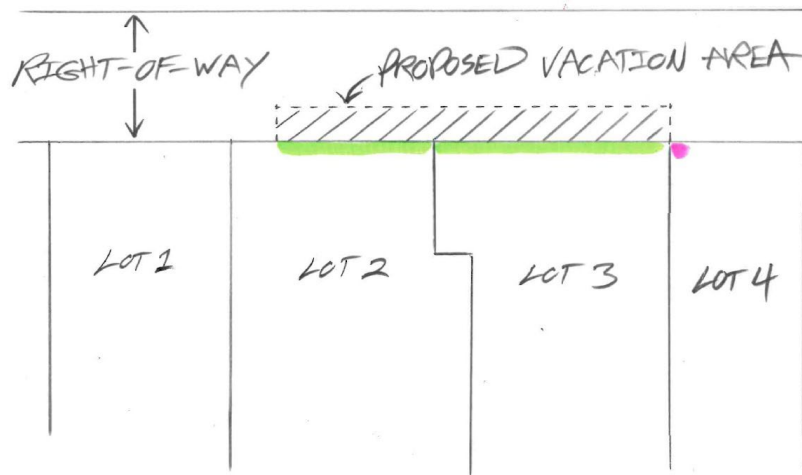


CITY OF ST. HELENS PLANNING DEPARTMENT

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!!!*

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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