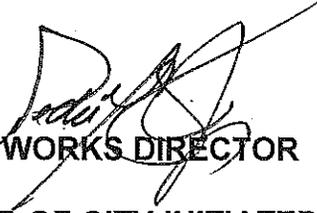


FOR COUNCIL MEETING OF:
 AGENDA ITEM NO.:
 PUBLIC WORKS FILE NO.:

June 25, 2012
 4 (a)

TO: MAYOR AND CITY COUNCIL

THROUGH:  LINDA NORRIS, CITY MANAGER

FROM: PETER FERNANDEZ, P.E., PUBLIC WORKS DIRECTOR 

SUBJECT: PUBLIC HEARING ON THE REMAND OF CITY-INITIATED VACATION OF
 RIGHT-OF-WAY FOR A PORTION OF ALLEY LOCATED ALONG THE
 NORTH PROPERTY LINE OF PIONEER AND CITY VIEW CEMETERIES

ISSUE:

Shall Council approve the vacation of alley right-of-way located along the north property line of Pioneer and City View Cemeteries on remand from the Land Use Board of Appeals? (See Attachment A, Exhibit Map, Area of Proposed Vacation.)

RECOMMENDATION:

Staff recommends Council approve the vacation of alley right-of-way located along the north property line of Pioneer and City View Cemeteries on remand from the Land Use Board of Appeals.

BACKGROUND:

The City received a request from Dave Moss, Pioneer Alley LLC, for the City to initiate the vacation of a remnant of the east-west alley right-of-way located along the north property line of the Pioneer and City View Cemeteries, abutting the property located at 490 Rural Avenue S. (See Attachment 2 of the September 26, 2011, staff report.) The letter provides background on this issue dating back to 1985, when the majority of this alley right-of-way extending east to Commercial Street SE was vacated. On April 11, 2011, Council initiated the vacation of alley right-of-way as allowed by *Oregon Revised Statute* (ORS) Chapter 271.130.

On September 26, 2011, Council held a hearing on the proposed vacation of the alley right-of-way located along the north property line of Pioneer and City View Cemeteries. Upon the close of the hearing, Council voted to approve the vacation. On October 24, 2011, second reading was conducted for Ordinance No. 32-11, which vacated the right-of-way.

Ordinance No. 32-11 was appealed to the Land Use Board of Appeals (LUBA), and on April 18, 2012, LUBA remanded the decision to the City. On June 4, 2012, Council, at the request of Mr. Moss and Pioneer Alley, LLC, set a public hearing on this vacation, with the scope of the hearing limited to the issues raised on remand by LUBA.

LUBA's final order held that the decision was not supported by adequate findings addressing the *Salem Transportation System Plan* (Salem TSP) Policy 2.10(b), (d), and (e).

At LUBA, the City argued that Policy 2.10 contains factors that, while they must be addressed by City when vacating right-of-way, they may be weighed appropriately as the City Council determines. The City Council retains the authority to place more weight on one particular factor, and may approve a vacation, notwithstanding that one or more of the factors are not fully satisfied. LUBA held that the City's argument was plausible under the Policy, but because the decision lacked express findings regarding this interpretation, the findings were inadequate to support the decision. LUBA stated:

[E]ven if the criteria set out in Policy 2.10(a) through (e) are criteria that must be considered, that does not necessarily mean that each of those criteria are rigid, mandatory criteria in the sense a proposed vacation must be denied if it does not satisfy or comply with each of those criteria. The individual considerations in Policy 2.10(a) through (e) are in many cases worded as 'should,' rather than 'shalls.' That wording likely would permit the city to adopt a sustainable interpretation that while the individual considerations in Policy 2.10(a) through (e) are mandatory consideration, vacations may be approved even if they are inconsistent with one or more of those considerations.

The facts and findings below contain findings consistent with LUBA's decision, which expressly interpret the factors in Policy 2.10 to allow Council to approve a vacation upon consideration of the factors in Policy 2.10, even if Council finds that each factor is not fully satisfied. The facts and findings in this staff report only address the three issues remanded by LUBA. The September 26, 2011, staff report addresses the requirements of *Salem Revised Code* (SRC) Chapter 76 and ORS Chapter 271, and is attached as Attachment B, and is incorporated herein by reference.

FACTS AND FINDINGS:

Scope of Hearing

This public hearing is a continuation of the hearing previously held by Council on September 26, 2011. The hearing on remand from LUBA is limited to consideration of whether the proposed vacation complies with the Salem TSP, Street System Element, Policy 2.10(b), (d), and (e), which were the only three issues raised by LUBA in its remand of the City's decision. Testimony and evidence will only be accepted and considered on these three issues. All written testimony submitted to date is available for public review in the case file at the Public Works Department, 555 Liberty Street SE, Room 325. This includes material from the September 26, 2011, public hearing, written communication from Kathleen Dewoina dated May 29, 2012, and an article from the Statesman Journal dated May 27, 2012.

Public Notice

Notice of the continued public hearing was provided consistent with the requirements of SRC Chapter 76 and ORS Chapters 197 and 271, including mailed notice, posting of the property proposed for vacation, and publication in the newspaper.

Policy 2.10 Criteria for Evaluating Proposed Vacation of Rights-of-way

Right-of-way vacations may be initiated by Council or by private citizen petition. Vacations of public rights-of-way in the City of Salem are governed by State law (ORS Chapter 271) and SRC 76.130 to 76.144.

The factors set forth in Salem TSP Policy 2.10 are mandatory considerations that must be addressed when determining whether to vacate City right-of-way; however, those factors may be balanced as the Council deems appropriate. No one factor is determinative when deciding whether or not to vacate a particular section of right-of-way, and each proposal to vacate City right-of-way must be decided based on the specific facts of the case. To the extent that a vacation proposal does not fully conform to one or more of the factors set forth in Policy 2.10, Council may still decide to proceed with a vacation if Council deems the vacation to be in the best interest of the City upon consideration of all the factors in Policy 2.10.

The five factors required for evaluating a proposed right-of-way vacation are itemized below:

- a. *Is the right-of-way proposed for vacation actively used for transportation purposes? Many public rights-of-way, while platted, are either not open or not actively used by the public. Actively used rights-of-way may be considered for vacation conditioned upon the provision of nearby facilities for the existing users and if there is not a significant degradation in transportation services and accessibility in the surrounding neighborhood.*

Finding: The right-of-way proposed for vacation is not actively used for public transportation purposes. The alley right-of-way is incorporated into the driveway access for private residential units in the Pioneer Alley Planned Unit Development. Portland General Electric has underground utilities within this portion of right-of-way. An easement for public utilities will be reserved through this vacation that will protect PGE facilities and allow for other public utilities in the future. (See Attachment 3 of the September 26, 2011, staff report).

- b. *Does the proposed vacation restrict the City's compliance with the State Transportation Planning Rule (TPR) and the Salem Transportation System Plan's policies on transportation system connectivity? A proposed vacation should not limit, nor make more difficult, safe, and convenient pedestrian and bicycle access to community activity centers such as schools, parks, shopping, and transit stops. Additionally, local street connectivity, traffic circulation, emergency vehicle access, and accessibility to transit service should be maintained within and between neighborhoods.*

Finding: The Salem TSP is a detail plan and a “policy guide” of the Salem Area Comprehensive Plan (SACP) (SRC 64.230 & 64.235), and is deemed consistent with the State TPR, and Statewide Planning Goal 11. The proposed vacation is consistent with the Salem TSP, and therefore is, as a matter of law, consistent with the State TPR, and no individual findings of compliance with the State TPR or Statewide Planning Goal 11 are required. There are no approved or adopted plans in the Salem TSP, or any other planning document adopted by Council, for use of this section of alley right-of-way for public vehicle, bicycle or pedestrian access to community activity centers, nor any approved or adopted plans to use this section of right-of-way as part of the City’s compliance with the State TPR or the City’s TSP. Because the right-of-way proposed for vacation is not used for any public transportation purpose, and is not part of any approved or adopted plan for any public transportation purpose, the proposed vacation will not restrict the City’s ability to comply with the State TPR and the Salem TSP policies on transportation system connectivity.

- c. *Is the right-of-way proposed for vacation improved or unimproved to urban standards? While right-of-way in either condition may be vacated, an improved right-of-way is an indication of use and should be more closely scrutinized before recommended for vacation.*

Finding: The section of right-of-way is improved to urban standards; however, it is an alley that abuts private development and serves exclusively as private access to that development, and is not used for any public transportation purpose. Therefore, the fact that the right-of-way is improved does not prohibit the proposed vacation.

- d. *Is the right-of-way proposed for vacation part of or near a planned transportation improvement? Rights-of-way that have the potential to be used for a future transportation project should not be vacated.*

Finding: The section of right-of-way proposed for vacation is not part of, or near, a planned transportation improvement. Council has considered this section of right-of-way as part of a potential bike and pedestrian trail through the abutting public cemetery and determined that the right-of-way is not necessary for that trail in the event it is ever planned or constructed, and the benefits of vacating the right-of-way outweigh preserving it for a trail that may not be planned for or constructed at this location.

- e. *Does the vacation of the right-of-way satisfy a compelling public need? Issues that address health and safety concerns may outweigh the transportation criteria listed above and should be given proper consideration.*

Finding: The proposed vacation of right-of-way satisfies a compelling public need for the following reasons;

- (1) The vacation of the unused alley right-of-way makes the lot lines for the abutting properties consistent with the neighboring lots. The alley in question previously extended from Commercial Street SE along the full length of the cemeteries. The majority of the alley was vacated in 1985, with the exception of this section causing irregular lot lines in this area. The proposed vacation of the remaining portion of the alley will correct the irregular lot lines in this area.
- (2) The vacation will return unused public right-of-way to the tax rolls, generating property tax revenue for the various taxing jurisdictions.
- (3) The vacation will eliminate the City's jurisdiction over this section as right-of-way and the City's duty to maintain it.

SRC Chapter 76 and ORS Chapter 271. Facts and Findings addressing the criteria contained in SRC Chapter 76 and ORS Chapter 271 are contained in the September 26, 2011, staff report, including its attachments, which is incorporated herein as Attachment B.



Robert D. Chandler, Ph.D., P.E.
Assistant Public Works Director

Attachments:

- A. Exhibit Map, Area of Proposed Vacation
- B. September 26, 2011, Staff Report
 1. Legal Description and Vicinity Map
 2. Letter from Mr. Dave Moss
 3. Email from Portland General Electric
 4. Planning Commission Action Sheet
 5. Real Estate Division Estimate of Value

Ward: 7
June 14, 2012

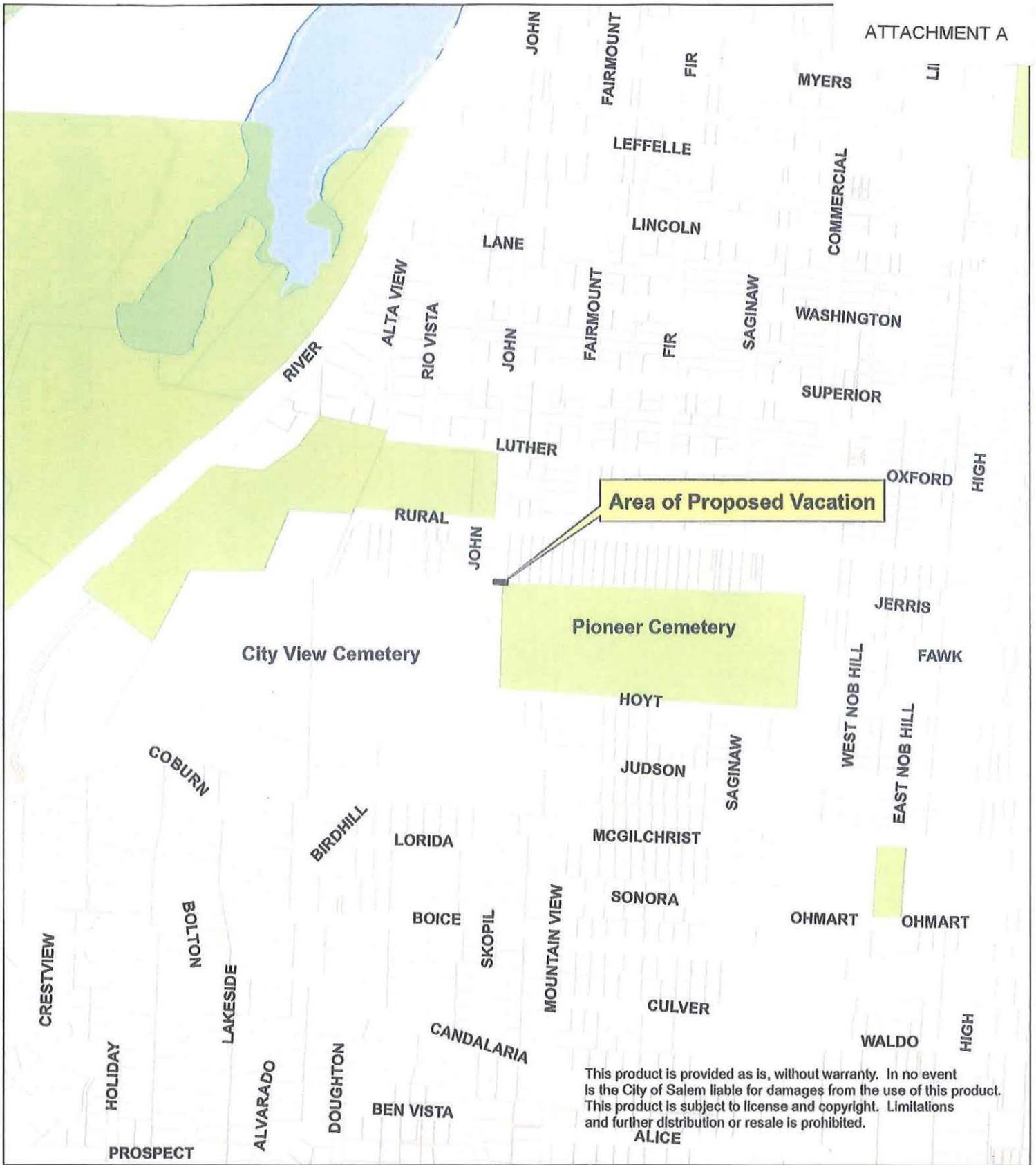
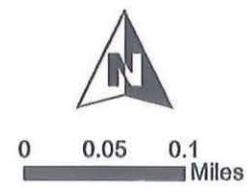


Exhibit Map
Area of Proposed Vacation

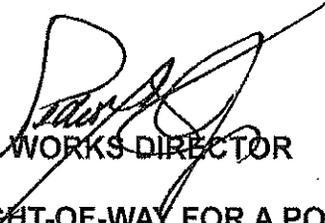


FOR COUNCIL MEETING OF:
 AGENDA ITEM NO.:
 PUBLIC WORKS FILE NO.:

September 26, 2011 _____
 8 (b) _____

TO: MAYOR AND CITY COUNCIL

THROUGH:  LINDA NORRIS, CITY MANAGER

FROM: PETER FERNANDEZ, P.E., PUBLIC WORKS DIRECTOR 

SUBJECT: CITY INITIATED VACATION OF RIGHT-OF-WAY FOR A PORTION OF
 ALLEY LOCATED ALONG THE NORTH PROPERTY LINE OF PIONEER
 AND CITY VIEW CEMETERIES

ISSUE:

Shall Council approve the vacation of alley right-of-way located along the north line of Pioneer and City View Cemeteries? (See Attachment 1, Legal Description and Vicinity Map.)

RECOMMENDATION:

Staff recommends that Council approve the vacation of the right-of-way for a remnant portion of the alley along the north property line of Pioneer and City View Cemeteries, as shown in Attachment 1, with a condition to reserve a public utility easement over the entire area.

BACKGROUND:

The City received a request from Dave Moss, Pioneer Alley LLC, for the City to initiate the vacation of a remnant of the east-west alley right-of-way located along the north property line of the Pioneer and City View Cemeteries, abutting the property located at 490 Rural Avenue S. (See Attachment 2, Letter from Mr. Dave Moss.) The request from Mr. Moss provides background on this issue dating back to 1985, when the majority of this alley right-of-way extending east to Commercial Street SE was vacated. On April 11, 2011, the City Council initiated the vacation of alley right-of-way as allowed by *Oregon Revised Statute (ORS) Chapter 271.130*.

Three policy-related points of view have been brought to the attention of staff regarding this right-of-way vacation request.

- Several community members have requested a pedestrian and bicycle connection between the Fairmount and Candalaria neighborhoods, which are currently separated by Pioneer and City View Cemeteries. Some believe that this remnant portion of the alley could be used as part of a path between Rural Avenue S and Hoyt Street S. If this alley portion is vacated, the City may be required in the future to acquire additional right-of-way to provide a path between the two neighborhoods.

- Mr. Moss is owner of the Pioneer Alley Planned Unit Development, which currently uses the alley right-of-way for private residential access. The initial development plans for this property allowed for a bicycle and pedestrian path. However, when a public hearing was held in January 2005 on the proposal to put the bicycle and pedestrian path concept into the *Salem Transportation System Plan* (Salem TSP), there was opposition from several parties. The City Council voted against the proposal and Mr. Moss subsequently redesigned his development without a path. Vacating this right-of-way would be consistent with the earlier Council action.
- The Friends of Pioneer Cemetery have expressed a concern regarding a path connection through the cemetery. At issue is whether a bicycle and pedestrian path is an appropriate use of the cemetery, and if there may be an increased risk of damage to Pioneer Cemetery from additional people being attracted to the area as a result of a new path connection.

The Public Works Department is nearing completion of a comprehensive review and update to the bicycle and pedestrian elements of the Salem TSP. Referred to as "Bike and Walk Salem," this update is scheduled to be presented to the Planning Commission and City Council at a joint work session in late October 2011, with public hearings to follow.

During this update process, staff received approximately ten comments through an on-line questionnaire and at public meetings that noted the gap in connectivity between Rural Avenue S and Hoyt Street S, west of Commercial Street SE. This gap arises from the absence of any connection through the Pioneer or City View Cemeteries, which together form a barrier that is more than 3,000 feet in length.

The current *draft* Bicycle and Pedestrian Master Plan Update shows a connection from Rural Avenue S to Hoyt Street S through Pioneer Cemetery, although the exact alignment and design options are not part of this planning effort. As it stands today, the City could provide a 12-foot-wide path from Rural Avenue S to Hoyt Street S through Pioneer Cemetery without purchasing additional right-of-way. This path could make use of the alley proposed for vacation together with the north-south alley that connects to Rural Avenue S. If the property is vacated and the new path connection is still included in the Salem TSP, the City would be required to acquire the right-of-way to provide a bicycle and pedestrian connection. Alternatively, access could be made from the south end of John Street S with the acquisition of a public access easement over the western 62 feet of the driveway for the Pioneer Alley Planned Unit Development.

On July 27, 2011, the Friends of the Pioneer Cemetery hosted a tour of the cemetery for the Bike and Walk Salem Advisory Committee and other interested parties. Approximately 30 people were in attendance, including members of the Friends of the Pioneer Cemetery, residents of the Candalaria and Fairmount neighborhoods, and members of the Bike and Walk Salem Advisory Committee. Several opinions were expressed along the tour. One attendee noted that a connection between the Fairmount neighborhood and Pioneer Cemetery could result in additional volunteers

interested in working with the Friends of the Pioneer Cemetery. Several reiterated the need for a bicycle/pedestrian connection across the cemetery, while others present noted the risk of potential damage to Pioneer Cemetery from additional people being attracted to the area as a result of a new path connection.

FACTS AND FINDINGS:

On April 11, 2011, the City Council initiated the vacation of an alley right-of-way located along the north property line of Pioneer and City View Cemeteries as allowed by ORS 271.130.

The area proposed for vacation is approximately 56 feet long by 12 feet wide and contains approximately 672 square feet of land. The area proposed for vacation is currently improved as a driveway that provides access to three residential units in the Pioneer Alley Planned Unit Development.

All utilities have been notified of these proceedings. PGE has existing underground facilities in the right-of-way proposed for vacation and has requested that the City retain an easement to protect these facilities. (See Attachment 3, Email from PGE.) As a condition of approving this vacation, staff recommends reserving a public utility easement over the entire area.

The Planning Commission reviewed the proposed vacation on August 16, 2011, and supported the staff recommendation to vacate this portion of alley right-of-way. (See Attachment 4, Planning Commission Action Sheet.)

SALEM TRANSPORTATION SYSTEM PLAN

The Salem transportation system represents the community's single largest investment in public infrastructure. The system consists of highways, arterial, collector, local streets, alleyways, and bicycle, transit, and pedestrian facilities. The Salem TSP provides a framework of goals, objectives, and policies that guides the design of the City's transportation system. Policy 2.10 of the Salem TSP, entitled Criteria for Evaluating Proposed Vacation of Rights-of-way, is intended to guide policy makers in the decision making process.

Policy 2.10 Criteria for Evaluating Proposed Vacation of Rights-of-way

Right-of-way vacations may be initiated by Council or by private citizen petition.

Vacations of public rights-of-way in the City of Salem are governed by ORS Chapter 271 and SRC 76.130 to 76.144. The five criteria required for evaluating a proposed right-of-way vacation are itemized below:

- a. *Is the right-of-way proposed for vacation actively used for transportation purposes? Many public rights-of-way, while platted, are either not open or not actively used by the public. Actively used rights-of-way may be considered for vacation conditioned upon the provision of nearby facilities for the existing users and if there is not a*

significant degradation in transportation services and accessibility in the surrounding neighborhood.

Finding: No, the right-of-way proposed for vacation is not actively used for public transportation purposes. This alley right-of-way is currently incorporated into the driveway access for private residential units in the Pioneer Alley Planned Unit Development. PGE has underground utilities within this portion of right-of-way. (See Attachment 3.)

- b. *Does the proposed vacation restrict the City's compliance with the State Transportation Planning Rule (TPR) and the Salem Transportation System Plan's policies on transportation system connectivity? A proposed vacation should not limit, nor make more difficult, safe, and convenient pedestrian and bicycle access to community activity centers such as schools, parks, shopping, and transit stops. Additionally, local street connectivity, traffic circulation, emergency vehicle access, and accessibility to transit service should be maintained within and between neighborhoods.*

Finding: No, the proposed vacation does not restrict the City's ability to comply with the State TPR and the Salem TSP policies regarding transportation system connectivity. There are no approved or adopted plans for using this right-of-way as part of the City's compliance with the State TPR or Salem TSP policies. The proposed vacation does not limit or make more difficult existing pedestrian and bicycle access to community activity centers. The proposed vacation does not affect local street connectivity, traffic circulation, emergency vehicle access, or the accessibility to transit services.

- c. *Is the right-of-way proposed for vacation improved or unimproved to urban standards? While right-of-way in either condition may be vacated, an improved right-of-way is an indication of use and should be more closely scrutinized before recommended for vacation.*

Finding: The right-of-way proposed for vacation is improved and serves as private access for residential units in the Pioneer Alley Planned Unit Development.

- d. *Is the right-of-way proposed for vacation part of or near a planned transportation improvement? Rights-of-way that have the potential to be used for a future transportation project should not be vacated.*

Finding: No, the right-of-way proposed for vacation is not part of or near a planned transportation improvement. Council voted in January 2005 against a proposal to include a bicycle path at this location in the Salem TSP. The adopted Salem TSP does not propose a bicycle or pedestrian connection from Rural Avenue S to Hoyt Street S through Pioneer Cemetery.

- e. *Does the vacation of the right-of-way satisfy a compelling public need? Issues that address health and safety concerns may outweigh the transportation criteria listed above and should be given proper consideration.*

Finding: There is no compelling public need to retain this portion of right-of-way.

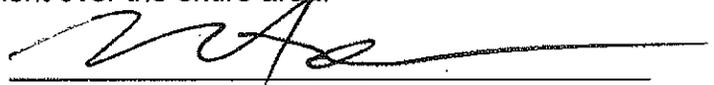
Assessment of Special Benefit

The *Salem Revised Code* (SRC) Chapter 76 does not authorize Council to charge an assessment of special benefit for City-initiated vacations. The Real Estate Division of the Urban Development Department estimates the value of the right-of-way for this vacation at \$2,826. (Attachment 5, Real Estate Division Estimate of Value.)

Salem Revised Code and Oregon Revised Statute

SRC 76.140(a) and ORS 271.120 allow the Council to approve or deny, in whole or in part, a vacation of right-of-way, or approve a vacation of right-of-way with such conditions or reservations as would appear to be in the public interest. A vacation may not be recorded or become effective until all conditions are satisfied.

Staff finds that approval of this vacation will not prejudice the public interest with a condition to reserve a public utility easement over the entire area.



Robert Chandler, Ph.D., P.E.
Assistant Public Works Director

Prepared by: Julie Warncke, Transportation Planning Manager, September 16, 2011

Revised: September 21, 2011

Ward 7

Attachments:

1. Legal Description and Vicinity Map
2. Letter from Mr. Dave Moss
3. Email from PGE
4. Planning Commission Action Sheet
5. Real Estate Division Estimate of Value

12-foot-wide Alley to be Vacated

Beginning at a point on the North Line of the Odd Fellows Rural Cemetery as recorded in Volume 10, Page 162, Book of Town Plats, City of Salem, Marion County, Oregon, now known as Salem Pioneer Cemetery, adopted by Common Council November 8, 1954, Ordinance No. 4693; said point being in Section 34, Township 7 South, Range 3 West of the Willamette Meridian, City of Salem, Marion County, Oregon; said point being the point of intersection of the North Line of said Salem Pioneer Cemetery and the East Line of that tract of land described in that instrument recorded in Reel 2588, Page 292, Marion County Records; said point being 1448.00 feet South 88° 22' 00" West and 241.89 feet South 01° 22' 46" East from the Center Line intersection of Rural Street SE and Commercial Street SE; and running thence,
Along the North Line of said Odd Fellows Rural Cemetery South 86° 00' 28" West 56.02 feet to a point of intersection with the southerly extension of the East Line of a 12-foot-wide alley as recorded in Volume 314, Pages 8 and 9, Marion County Records;
thence North 01° 23' 22" West 12.01 feet along the East Line of said Alley to a point that is 12.00 feet northerly and perpendicular to the North Line of said Salem Pioneer Cemetery;
thence North 86° 00' 28" East 56.06 feet to a point on the East Line of said Reel 2588, Page 292;
thence South 01° 22' 46" East 12.01 feet to the Point of Beginning.

Containing 673 square feet or 0.0154 acres of land, more or less.

Bearings and distances used for this description are from Marion County Survey Record No. 37387

Checked By: 

July 8, 2011

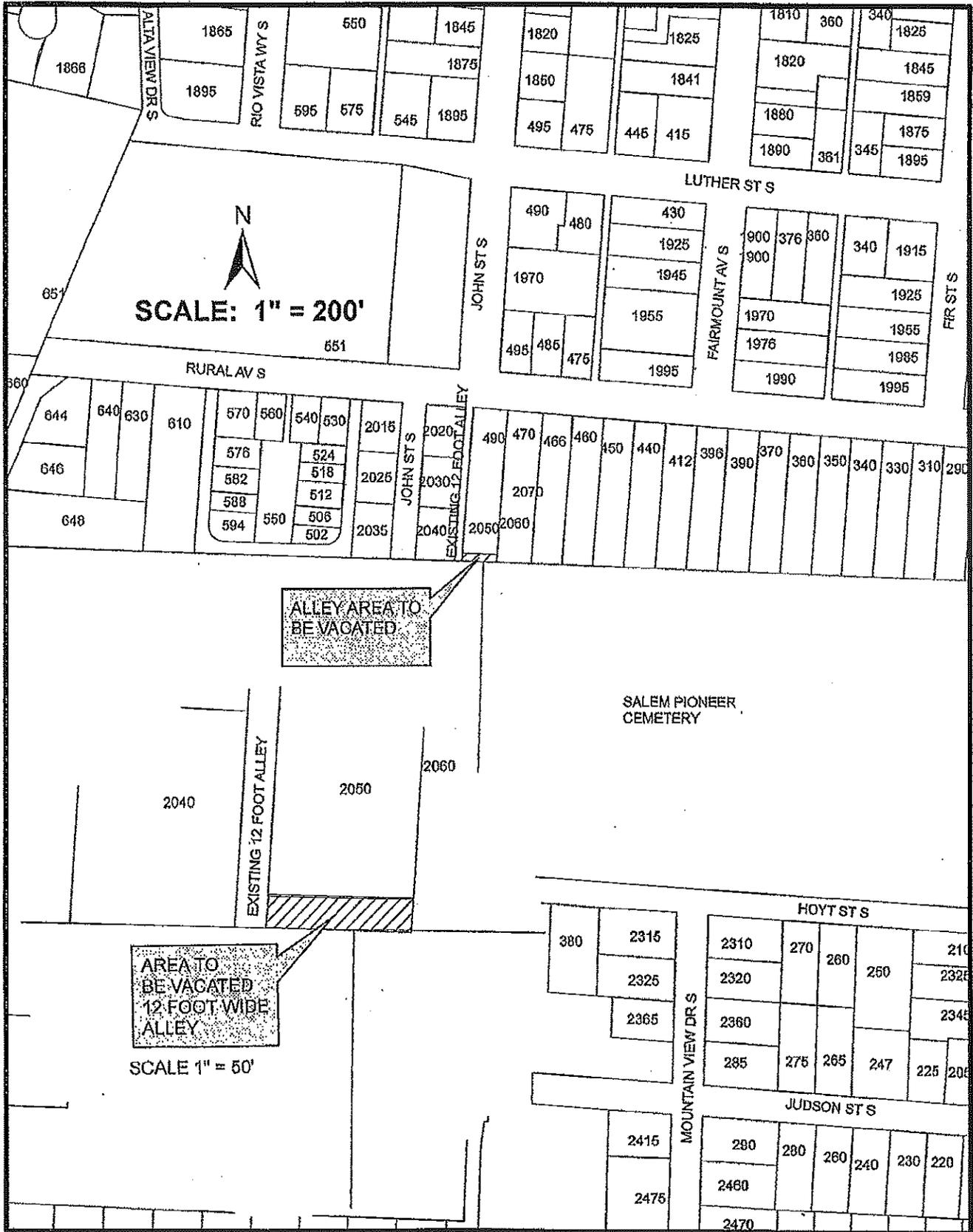


EXHIBIT MAP

October 21, 2010

TO: Mayor & City Council

FR: Dave Moss
Pioneer Alley LLC

RECEIVED
OCT 21 2010
MAYOR-CITY MANAGERS OFFICE

ISSUE:

Request for a City-initiated vacation of the remnant of alley right-of-way abutting property at 490 Rural Avenue S

BACKGROUND:

In 1985, the owner of property at the corner of Commercial Street SE and Rural Avenue S requested the City of Salem vacate the alley running west from Commercial along the north boundary of the Oddfellows Cemetery (now Salem Pioneer Cemetery). Due to the impossibility of assembling signatures for a citizen-initiated vacation petition from the interests represented by all the graves in the cemetery, the City agreed to initiate the vacation.

With the exception of the portion of the alley abutting 490 Rural Avenue, the entire alley right-of-way was vacated and the property assigned to the individual residential properties along Rural Avenue S. The portion of the alley abutting 490 Rural Avenue S was retained by the City. At the time, there was a concept in the Salem Transportation Plan for a bike path connecting Hoyt Street with Rural Avenue through the Oddfellows Cemetery and along the alley remnant (Alley #1 on schematic) and another alley running north/south between Rural Avenue and City View Cemetery along the west boundary of 490 Rural Avenue (Alley #2 on schematic).

In 2004, the partners of Pioneer Alley LLC proposed a small planned unit development on the combined properties of 470 Rural Avenue S and 490 Rural Avenue S, using the Alley #2 as an access to the south end of the properties. In designing the proposal, the partners consulted with City staff regarding the possibility of Pioneer Alley LLC building the bike path concept into the access, if the City would build the cemetery link to Hoyt Street. Staff discovered the bike path concept had been deleted from the transportation plan at some point in the

intervening years and suggested that Pioneer Alley LLC request a plan amendment to revive the concept.

In January 2005, the City Council held a hearing on the proposal to re-insert the bike path concept into the Salem Transportation Plan. Many local neighbors opposed the proposal; the owners of City View Cemetery opposed the proposal; the SCAN Board of Directors opposed the proposal; and the SCAN Bike Advisory Committee opposed the proposal. The Friends of Pioneer Cemetery expressed reluctance about the proposal (a position that has subsequently turned to opposition). The City Council voted against the proposal in no uncertain terms.

Subsequent to the definitive rejection of the bike path through the cemetery by the City Council, thus ending the bike path concept in any form, the partners of Pioneer Alley LLC redesigned the PUD to increase the open space significantly, to provide better off-street parking, to reduce the overall paved surface area, and to save all the trees. We would now like to clear up the property lines as we consolidate the original properties.

The requested vacation will provide no increased buildable area in the PUD. There are no City utilities in Alley #1. There is a ten inch water line in Alley #2.

REQUEST:

The partners of Pioneer Alley LLC now request that the City initiate a vacation of the remnant of the old east/west alley (Alley #1). The issue of a bike path along the alley/cemetery route has been definitively rejected by the City Council. It is a matter of fairness and equity to resolve the remaining remnant of alley right-of-way, and to do so in the same manner and under the same conditions as the City did in 1985 for all the other twenty-six property owners along Rural Avenue.

Attachments:

- Staff Report for 1985 alley vacation
- Schematic of Pioneer Alley PUD and alley parcels

For Council Meeting Of: April 8, 1988
Agenda Item No.: 3.6

TO: MAYOR AND CITY COUNCIL
THRU: *R. E. Abolt*
R. E. ABOLT, CITY MANAGER
FROM: *Ronald J. Merry*
RONALD J. MERRY, DIRECTOR OF PUBLIC WORKS
SUBJECT: VACATION OF RIGHT-OF-WAY
NORTH OF ODD FELLOWS RURAL CEMETERY

ISSUE

The City of Salem has initiated the vacation of a 12-foot strip of right-of-way abutting and immediately to the north of Odd Fellows Rural Cemetery.

This particular vacation is being pursued at this time because of the impending development of the parcel at the corner of Rural and Commercial Streets. The developer wishes to include that portion of the alley that abuts his property into his development plans. Staff has no objection, but was considering requiring the developer to initiate right-of-way vacation proceedings as a condition of development approval.

Two-thirds of the abutting property owners are required to sign a vacation petition to initiate a vacation. Because the cemetery property is an abutting property and it is considered as one lot all the persons with an interest in that property would have to sign the petition. This is of course not possible.

Staff has concluded that the only way to vacate the property is for the City to initiate the proceedings. This eliminates the need for the aforementioned petition.

BACKGROUND

The City of Salem is initiating the vacation of a 12-foot wide strip of right-of-way running west from South Commercial Street and lying between the Odd Fellows Rural Cemetery and those lots to the north created in an unrecorded plat by Sol Taylor (see attached map). The right-of-way to be vacated is currently covered with brush and trees and has been incorporated into the back yards of those lots which front on Rural Street.

Staff Report
Vacation/Odd Fellows Cemetery
April 8, 1985
Page 2

FACTS AND FINDINGS

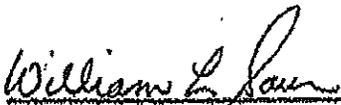
The strip of right-of-way proposed to be vacated is not currently used for roadway or alley purposes nor is it anticipated that it will be needed in the future. The continuation of this 12-foot parcel to the west is not being vacated at this time because of the possibility that it might be incorporated into the proposed Cemetery Bikeway which would provide bicycle/pedestrian access through the cemetery between Rural and Hoyt Streets. Utilities have been contacted and it will not be necessary to retain any easements.

POLICY ANALYSIS

Council has the authority to vacate right-of-way after considering the needs of the community. It is Department of Public Works Policy GM-4-2 to initiate vacations to put unneeded property on the tax rolls and discontinue City responsibility for maintenance.

RECOMMENDATION

It is recommended that Council approve the vacation.

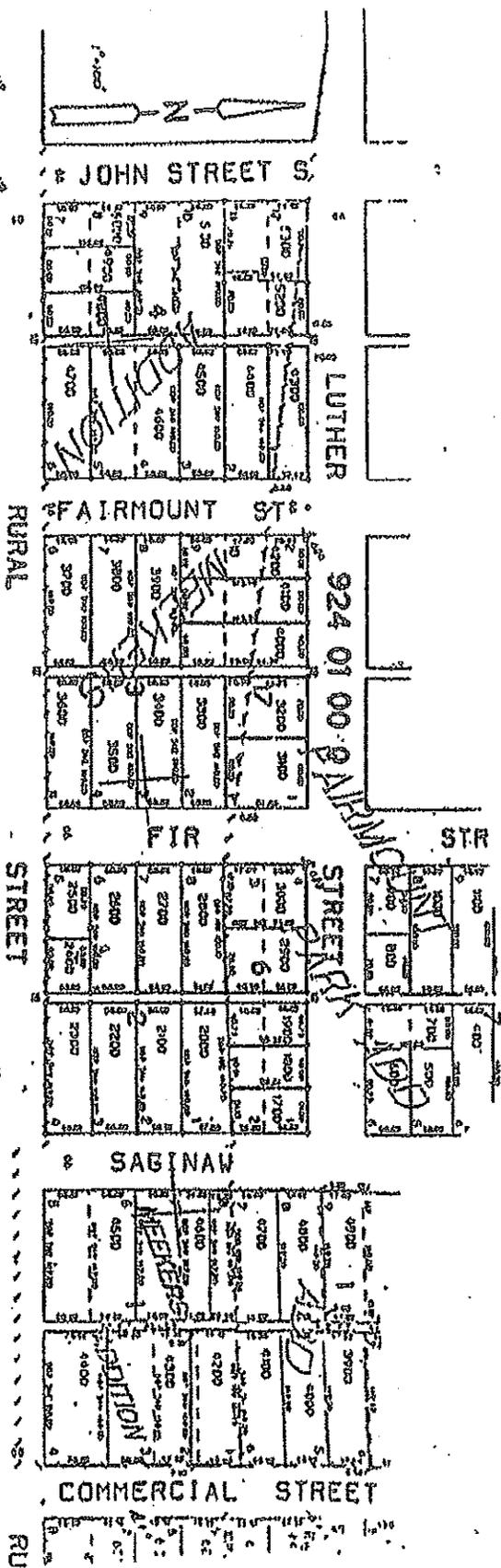
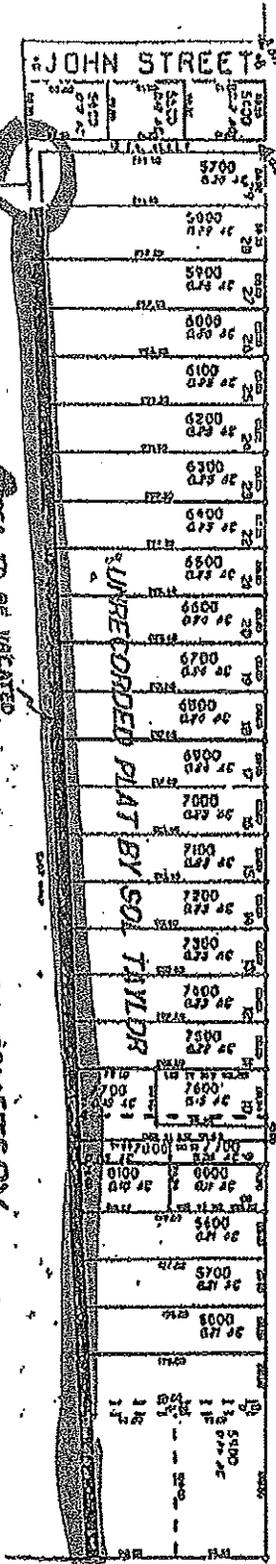
for 
David M. Siegel, AICP
Principal Planner

WS:vb
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Ward 7
rowofvac.stf

ALLEY & REMNANT

1877-1919

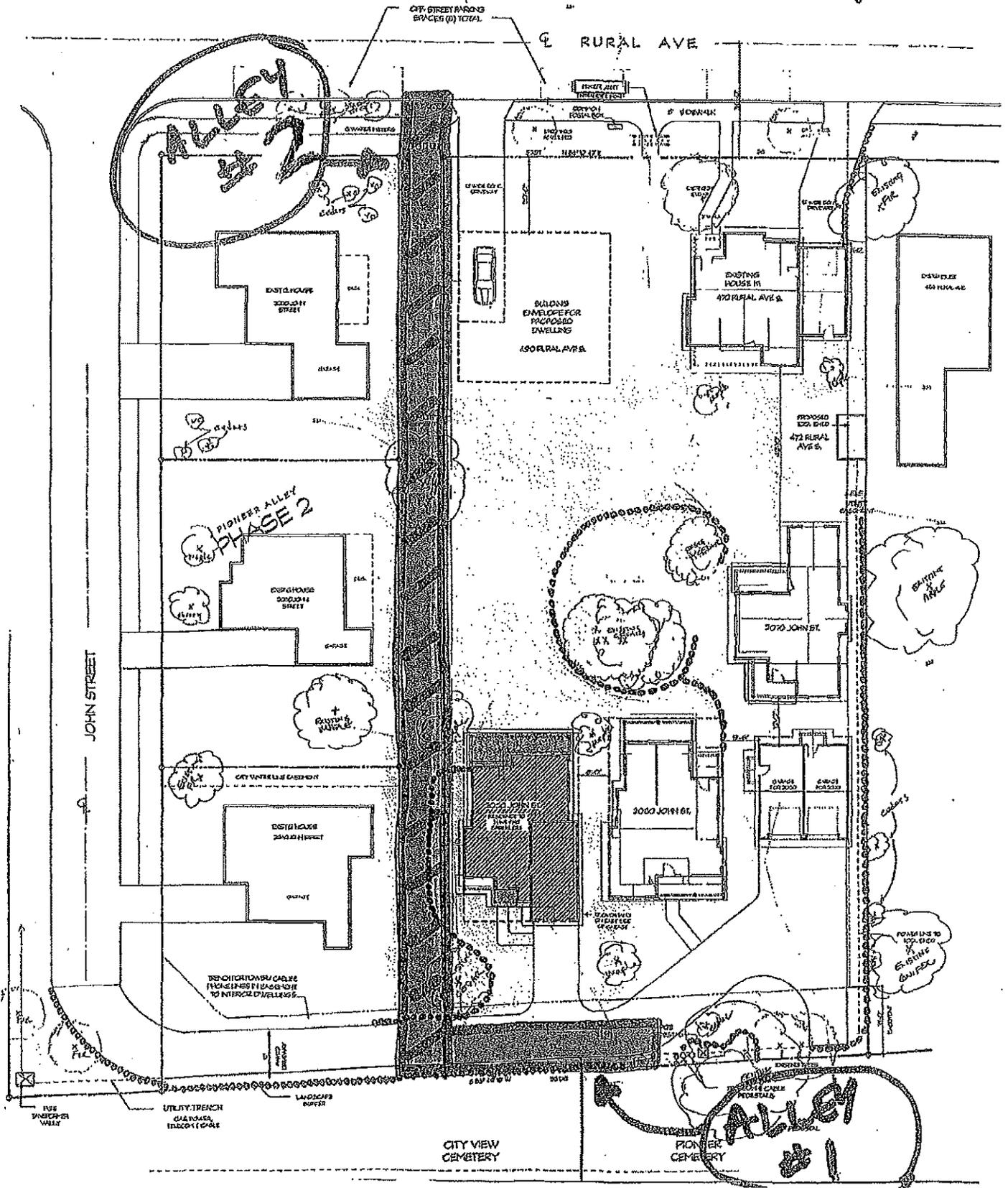
*AREA TO BE VACATED
ODD FELLOWS CEMETERY*



| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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CORRECTED

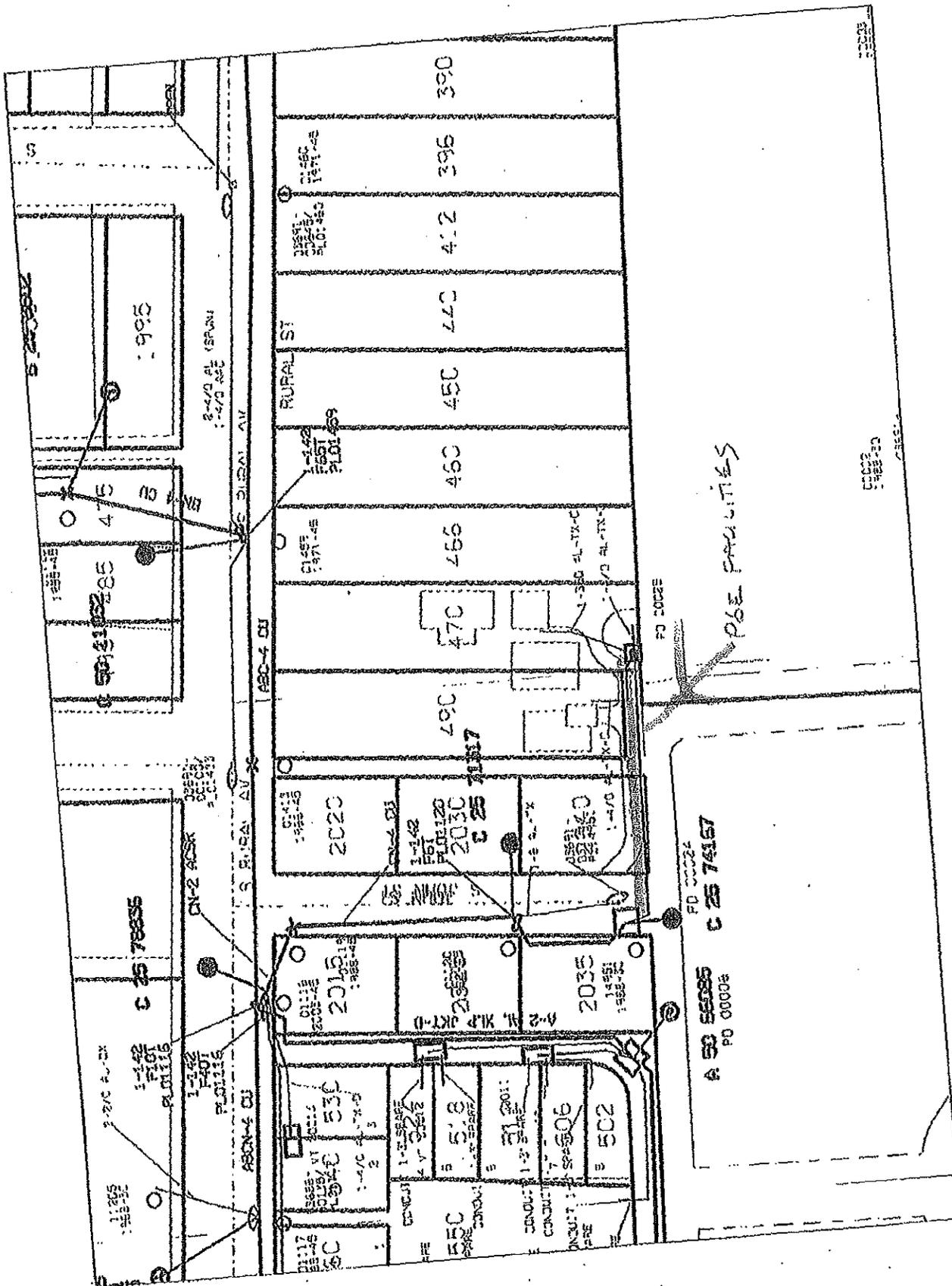
PIONEER ALLEY RD



ATTACHMENT 3

From: Bruce Carroll <Bruce.Carroll@pgn.com>
To: "jjohnduff@cityofsalem.net" <jjohnduff@cityofsalem.net>
CC: Mark Young <Mark.Young@pgn.com>
Date: 7/27/2011 6:34 AM
Subject: City initiated vacation of Pioneer Alley
Attachments: 20110727063047027.pdf

Attached is a drawing of existing PGE underground facilities that PGE would like an easement to protect.
Questions please contact me at 503-463-6121



Scale: 1 in = 78.5 ft
Field View

PLANNING COMMISSION

PLANNING DIVISION
555 LIBERTY ST. SE/ROOM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



ISSUE: City-initiated Vacation of Right-of-way for a portion of the alley located along the north property line of Pioneer and City View Cemeteries

DATE OF DECISION: August 16, 2011

APPLICANT: City of Salem.

PURPOSE OF REQUEST:

To recommend to City Council the approval of the city-initiated vacation of right-of-way for a portion of the alley located along the north property line of Pioneer and City View Cemeteries.

ACTION:

The Planning Commission recommends City Council approve the vacation of right-of-way for a portion of the alley located along the north property line of Pioneer and City View Cemeteries, with a condition to reserve a public utility easement over the entire area.

PLANNING COMMISSION VOTE

4 YES 0 NO 3 ABSENT (Goss, Levin, Schmidtke)

MEMORANDUM*Urban Development Department*

TO: Julie Warncke,
Transportation Planning Manager

FROM: John Gibson
Real Property Services Specialist

DATE: July 27, 2011

SUBJECT: VALUE OF LAND IN CITY- INITIATED VACATION OF A REMNANT
ALLEY RIGHT-OF-WAY BORDERING SOUTH LINE OF 490 RURAL
AVE. S IN SALEM.

Assumptions: Reservation for Utilities in Alley to be vacated.

Waiver: ORS 674.100 (h) Valuation is performed by a salaried employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee;

The subject property that would benefit from the right-of-way vacation of 673 square feet (Attachment A), resulting in an increase in size, to 490 Rural Ave S. being under the ownership of Pioneer Alley LLC. This adjoining parcel consists of a residential lot that is approximately .30 acres prior to the alley vacation. This lot is Residential (RS) with characteristics suitable for development in accordance with RS zoning criteria. The land value is based upon research of comparable sales of RS zoned properties in the surrounding area of Salem. Research of comparable sites in the subject's market indicates a sales range from \$4.00 to \$8.75 per square foot for RS zoned land. The appropriate unit of comparison for this analysis is the price per square foot. In estimating the land value of the subject parcel, consideration is given to property rights conveyed, market conditions, location, terrain, utility, availability, parcel size, configuration, zoning, and offsite improvements.

The assessment of special benefits value is computed using the value per square foot method utilizing the value of the parcel that the vacated right-of-way will inure too sometimes referred to as the across the fence value. The assessment of the special benefit if it were imposed for this property is concluded to be a value of \$7.00 per square foot, or \$4,711 (\$7.00 x 673 s.f.), for full fee value due to the parcel's location, being somewhat close to downtown. However, with the added encumbrance of a blanket utility easement to be retained from sale, the value is concluded to be reduced by 40% to arrive at a final value determination of \$4.20 per square foot X 673 square feet = \$2,826 (\$2,800 rounded).

Prepared by John A. Gibson

June 25, 2012
4 (a)

DOCUMENT FILED

MAY 22 2012

CITY OF SALEM
CITY RECORDER

To: Robert D. Chandler, Interim Director
Public Works Department, City of Salem
555 Liberty St SE
Salem, OR 97301

May 22, 2012

RE: LUBA Remand of City Initiated Vacation of Right-Of-Way

This letter concerns your report for the May 14, 2012 Council meeting, Agenda 5(a)). The Oregon Land Use Board of Appeals has remanded a city-initiated vacation of a public right-of-way for a portion of an alley located along the north property line of Pioneer and City View Cemeteries. We note that 125 neighbors were opposed to the public right-of-way vacation and that LUBA found that the City decision *"did not directly address the difficulty of travelling between the Fairmount and Candalaria neighborhoods."*

At its regularly scheduled meeting on May 17, 2012, the board of the Sunnyslope Neighborhood Association voted to oppose any further City efforts to vacate this public right of way, at least until such time as the City has completed its transportation planning process and developed both a plan and funding for a pedestrian and bike path connecting Hoyt Street and Rural Street. Nine board members were present at this meeting and the vote was unanimous.

We have an interest in this issue because the two cemeteries present a 3,000 foot barrier to the members of our neighborhood who want a safe and pleasant way to walk or bike to and from downtown. As noted in the LUBA decision *"Commercial Avenue is a busy north-south arterial street that is auto oriented and not particularly pedestrian or bicycle friendly."*

Vacation of this public right of way might make it more expensive and difficult to develop a bike/pedestrian pathway that could be used by the members of our neighborhood. Vacation of this public right-of-way at this time does not satisfy a compelling public need. Continued staff efforts to vacate this right of way would not be a productive use of limited budget resources. The City has already spent a lot of money on this issue without providing a useful public service.

Please place this letter in the file of any future proceedings on this matter, and provide any future staff reports if this matter is again presented to City Council.

Sincerely,



Evan D. White

Land Use Chair,
Sunnyslope Neighborhood Association
4553 Brock Loop S.
Salem, OR 97302
epwhitehouse@comcast.net

Copy: City Legal Department

DOCUMENT FILED

**Comments of Sunnyslope Neighborhood Association
On LUBA Remand of City Initiated Vacation of Public Right-Of-Way at Pioneer Cemetery**

JUN 13 2012
CITY OF SALEM
CITY RECORDER

My name is Evan White, and I live at 4553 Brock Loop S., just north of Sprague High School. I am Land Use Chair of the Sunnyslope Neighborhood Association. At its regularly scheduled meeting on May 17, 2012, our board voted to oppose any further City efforts to vacate this public right of way, at least until such time as the City has completed its transportation planning and developed both a plan and funding for a pedestrian and bike path connecting Hoyt Street and Rural Street. Nine board members were present and the vote was unanimous.

A bike/pedestrian path through Pioneer Cemetery will help Council achieve one of its most important goals. It will also reduce accidents, discourage potentially lethal bike travel, enhance property values, and improve the physical and financial health of city residents.

1) Help achieve better connectivity, one of Council's most important goals. Council has clearly stated that it seeks better bike and pedestrian connectivity.¹ Pioneer and Mt. Crest cemeteries share a fence that is 3,000 foot long, severing bike or pedestrian connectivity between the Candalaria and Fairmount neighborhoods, or between the Sunnyslope neighborhood and downtown. This tall barbed-wire tipped fence is the only significant barrier to north-south connectivity for Sunnyslope neighbors who want to bike or walk to or from downtown.

2) Reduce accidents. Lack of a path through Pioneer Cemetery forces cyclists (and pedestrians) to divert to Commercial Street. As noted in the decision of the Oregon Land Use Board of Appeals (LUBA), "*Commercial Avenue is a busy north-south arterial street that is auto oriented and not particularly pedestrian or bicycle friendly.*"² Two of my former co-workers have had bicycle accidents on Commercial Street. Dave Astle was able to transport himself to the Emergency Room, thankful that he was not run over by a car. Tom Riordan had his arm broken.³ And my former wife, Kaaren Hawkes, had her collar bone broken. All three feel fortunate to be alive and still living in Salem.

3) Liberty is lethal. Lack of a pathway through Pioneer Cemetery encourages my neighbors to use Liberty Street when bicycling to and from downtown. But there are no bike lanes along Liberty between Hansen and Browning. Riding on sidewalks is both prohibited and unsafe because mailboxes are set into the sidewalks on both sides of the street. The posted speed limit is 35 mph, but traffic generally moves at about 40 mph. A slight "hump" at one road section creates a risk that an automobile might quickly be "on top of" a bicyclist, especially at night.

4) Improve property values. "*Walkable neighborhoods have become hot commodities across the country. According to a 2011 survey conducted by the National Association of Realtors, nearly 80 percent of respondents look for homes in pedestrian-friendly areas.. At least two large*

¹ Council Goals, July 11, 2011; "Vision 2020 Principles," Council Agenda item 4.2C, January 9, 2012.

² Oregon Land Use Board of Appeals, LUBA No. 2011-2012, page2, emphasis added.

³ Portland is generally considered more bicycle friendly than Salem. However, it was in Portland that the daughter of another former co-worker, a recent graduate of West Salem High School, was killed while riding her bicycle.

brokerages with offices in the Portland area – Windermere and John L. Scott – are routinely using Walk Score [www.walkscore.com] as a marketing tool on their listings.”⁴ Salem depends on property tax revenue for its fiscal health. Mayor Anna Peterson and other community leaders are concerned that only 66 percent of the Salem workforce choose to live here.⁵

5) Improve resident financial and physical health. The benefits of physical exercise need no explanation, but there is a synergy with the Salem-Keizer Transit District. Some residents may want to walk one way, and take the bus home or vice versa. Improved connectivity would help families who struggle with higher gasoline costs, or who are stranded because (unlike Portland, Corvallis and Eugene) Salem lacks weekend bus service. Gasoline prices tripled from 1970 (36 cents per gallon) to 1990 (\$1.16 per gallon) and tripled again by 2010 (\$3.05 per gallon).⁶ Currently, the price of gas at the South Salem Shell Station is \$4.06.

Sunnyslope Shows The Way

The Sunnyslope Neighborhood has bike/pedestrian paths which link streets and provide a safe and pleasant way to walk or bike. (See attached photos) These paths can be compared to a potential path through the Pioneer Cemetery, which I’ve measured to be approximately 448 feet. I will discuss five of these paths.

Two paths let me walk to Roths or to a location from which I could catch the bus. From Sunnyslope Park I can use a path between two houses that is approximately 161 feet long and connects to Kurth. After a short walk, I can then enter another path, 197 feet long, that goes between four houses and connects Boston Court S. to Redinger Ct. These paths let me (and school children) avoid a section of Cunningham that does not have sidewalks.

Another path, approximately 367 feet long, connects 12th Place S. to Skyline Boulevard, and helps neighbors and school children avoid walking along Skyline, which has no sidewalks.

Two paths with a combined distance of about 416 feet connect Rock Creek to Maplewood. The first section goes from Rock Creek to Red Leaf (214 feet), then, crossing Red Leaf (30 feet), a second path connects to Maplewood (172 feet). These paths help children walk safely to Secor Park and Crossler Middle School.

Conclusion

It is unclear why the city would initiate a proceeding to give away a valuable public right of way that is needed for an important bicycle or pedestrian connection between the Sunnyslope, Candalaria and Fairmount neighborhoods.

Attachment: Photo of Cemetery & photos of bike/foot paths in Sunnyslope Neighborhood

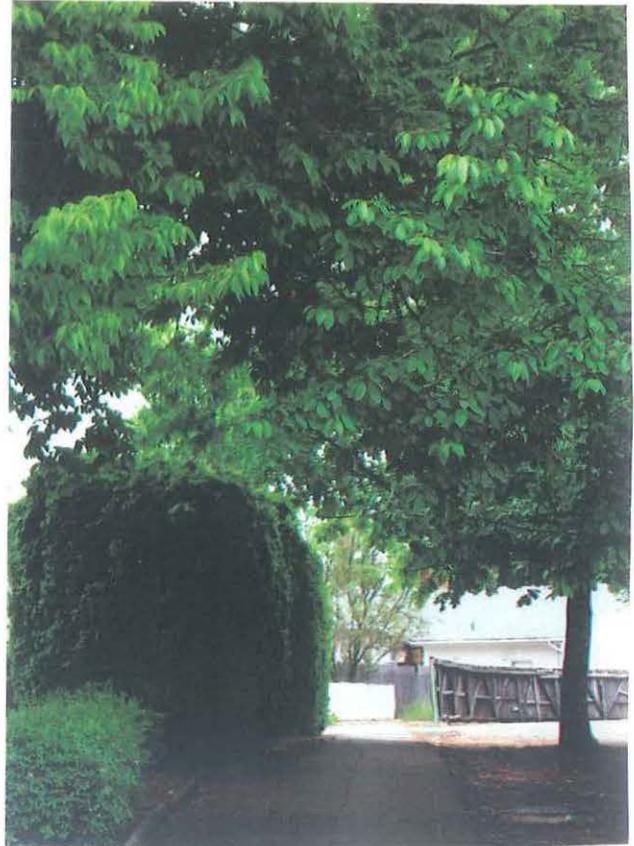
⁴ “Walkability ranks high among buyer desires,” [Oregonian](#), April 2, 2012.

⁵ “Which way are commuters headed?” [Statesman Journal](#), April 10, 2012.

⁶ [Statistical Abstract of the United States](#), 1977 and 2012.



Pioneer Cemetery Path – 448 feet



20th Pl. S. to Skyline – 367 feet



Maplewood to Red Leaf – 172 feet



Red Leaf to Rock Creek – 214 feet

June 25, 2012
4 (a)

DOCUMENT FILED

DATE: June 19, 2012
TO: The Honorable Anna Peterson, Mayor, and
Members of the Salem City Council

JUN 19 2012
CITY OF SALEM
CITY RECORDER

REGARDING: Public Hearing, June 25, 2012: Consideration of City-initiated vacation of a remnant of east-west alley right-of-way located on the north line of Pioneer and City View cemeteries on remand from the Land Use Board of Appeals.

FROM: Elisabeth Potter
2655 Skopil Avenue S
Salem OR 97302

Ladies and Gentlemen:

On behalf of the Friends of Pioneer Cemetery, the citizens' voluntary organization which very materially supports the City of Salem in its stewardship obligations concerning the historic Odd Fellows Rural Cemetery, I submit the following for your consideration.

Transportation System Plan criterion 2.10(b) states that "a proposed vacation should not limit, nor make more difficult, safe and convenient pedestrian and bicycle access to community activity centers such as schools, parks, shopping, and transit stops." In the final opinion and order of the Land Use Board of Appeals, the petitioner is reported to have claimed that "the barrier that the two cemeteries currently pose for pedestrian, bicycle and vehicular traffic" makes "travel between the Fairmount and Candalaria neighborhoods inconvenient and in some cases unsafe."

South Commercial Street has served as the vehicle connector between the neighborhoods since the neighborhoods were developed. Today, vehicles can safely enter and leave traffic flow on the arterial at intersections regulated by street lights at Rural Avenue, Hoyt Street, and Boise Street. A bicycle lane on the Commercial Street road bed continues an extended course past the 542-foot street-front of Salem Pioneer Cemetery. A paved sidewalk of standard width in good condition adjacent to the Commercial Street curb serves pedestrians walking between Fairmount and Candalaria neighborhoods. It is well used and poses no apparent hazards. A designated bus stop is available to public transit riders on the sidewalk at the corner of Commercial and Hoyt Streets SE.

After a period of joint stewardship with Marion County under State legislative authorization that began in 1953, the City of Salem accepted full responsibility for maintaining and protecting Salem Pioneer Cemetery in 1966. Subsequently, the City formally assumed title to the 17-acre property from Chemeketa Lodge No. 1, Independent Order of Odd Fellows on February 3, 1986. The cemetery has been a consecrated community burial ground since 1854. The privately-owned and operated City View Cemetery, which adjoins the Pioneer Cemetery on the west, was incorporated in 1893. Over time, residential subdivisions were developed around these precincts. In the late 1980s, mounting pressure from inappropriate use and waves of vandalism prompted stewards of Pioneer Cemetery to install chain link perimeter fencing as a means of controlling but by no means preventing public access except at night. The adjoining cemeteries

were not *created* as barriers to neighborhood connectivity. In our opinion, they should be accorded grandfather status as long-pre-existing funerary landscapes not to be manipulated for a way of convenience when the stewards of the cemeteries have pointed out limited tolerance in terms of ground space for a shared-use bicycle-pedestrian pathway. The perimeter fencing which bars free north-south through foot traffic for the length of the adjoined properties is an essential part of the public-private strategy for reducing risk to monuments and curtailing liability in the event of harms to the public from inappropriate activity.

Transportation System Plan criterion 2.10(e) asks, "Does the vacation of the right-of-way satisfy a compelling public need? Issues that address health and safety concerns may outweigh the transportation criteria listed above and should be given proper consideration."

We maintain that this sound policy question can, or at least *should* be interpreted broadly so that proper consideration can be given to cultural values as well as public health and safety. The rules and policies on transportation system connectivity should in this case be weighed in the balance with the City's landmark preservation ordinance (Salem Revised Code, chapter 230) along with the goals of a comprehensive master plan for maintenance and restoration adopted in 2004 by the Parks and Recreation agency, which is now a division of the Department of Public Works along with Transportation Services. Pioneer Cemetery is a City of Salem Historic Landmark, so designated in 1990. Since 1981, the property has been recognized under Section 106 of the National Historic Preservation Act as one officially declared *eligible* for inclusion in the National Register of Historic Places. The latter declaration requires review and compliance with federal regulations when federal funding is involved in an undertaking that will affect the Register-eligible property. In none of the recitals which have accompanied public proceedings affecting Pioneer Cemetery to date have these important facts about the Pioneer Cemetery's City landmark status and National Register eligibility been acknowledged except by the Friends of Pioneer Cemetery.

Our constituency includes descendants of the interred pioneers, those who regularly walk with their dogs in the cemetery and other members of the public at large who have contacted us with their concerns. Our view is this: vacation of the remnant right-of-way would satisfy a compelling public need if it eliminated a point of entry for a way of convenience that could compromise the security we have been able to establish thus far and force unwanted alteration of a recognized historic cultural landscape.

###

June 25, 2012
4 (a)

Kathy Hall - Vacation of alley near pioneer cemetery

From: Mark Wigg <mark_wigg@hotmail.com>
To: salem city council <citycouncil@cityofsalem.net>
Date: 6/19/2012 1:14 PM
Subject: Vacation of alley near pioneer cemetery

DOCUMENT FILED

JUN 19 2012

CITY OF SALEM
CITY RECORDER

Dear Councilors,

I request that you oppose the vacation of the alley near Pioneer Cemetery. The City's policy is to not vacate public r/w if there is a potential for using it for transportation purposes. Hundreds of people would like a path connecting the Fairmont and Candalaria neighborhoods. We are trying to develop a plan for that path that would be acceptable to all parties. Vacating the alley is premature.

Thank you for your service.

Mark Wigg
p 503 588-2524
c 971 600-6607
POBox 831
Salem OR 97308

June 25, 2012
4 (a)

June 18, 2012

DOCUMENT FILED

JUN 20 2012
CITY OF SALEM
CITY RECORDER

City Recorder

City of Salem

555 Liberty Street SE Room 205

Salem OR 97301

Re: Consideration of City-initiated vacation of a remnant of the east-west alley right-of-way located along the north line of the Pioneer and City View cemeteries, abutting 490 Rural Avenue S on remand from the Land Use Board of Appeals.

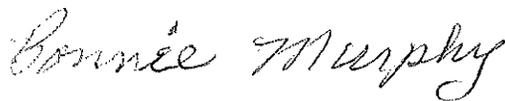
Dear City Recorder:

When I received your letter in the mail last week about vacating such a small piece of land, I immediately thought about the large amount of problems that could come to those of use that live on John Street South. Two major concerns are the increased pedestrian traffic and automobile traffic.

I am a widow and live alone. I have always felt very safe here. The neighbors all know each other and know the cars that each drive. So, to have strange people walking or driving, and parking, on John Street South would be a constant worry and concern for the neighborhood's safety.

I am totally against any changes.

Sincerely,



Bonnie Murphy

DOCUMENT FILED

JUN 20 2012

CITY OF SALEM
CITY RECORDER

Debbie Kees - City-Initiated Vacation of Alley

From: Susan Powers <spotto4@gmail.com>
To: <dkees@cityofsalem.net>
Date: 6/20/2012 11:29 AM
Subject: City-Initiated Vacation of Alley

Dear Councilors for the City of Salem,

I am writing with my concerns for the city-initiated vacation of the east-west alley right-of-way located in the north corner of Pioneer City Cemetery.

As a resident of Ward 7 living in the Fairmount neighborhood, I have been trying to understand why the city itself initiated this vacation? In my attempt to understand why the city would benefit from this and therefore initiate a vacation has not made sense. I went so far as to review the record for the appeal LUBA no. 2011-105 and I was not able to find a substantial reason why the city decided to initiate this vacation. I do understand that the lower part of the alley was vacated in 1986, but at that time the record shows on page 248 that the last 12 foot alley section (the same one the city is currently initiating to vacate) was specifically NOT vacated because it clearly stated in city records that it would remain city property for the critical reason that it was the single remaining piece of property to connect City Cemetery to the Fairmount neighborhood. This small piece of alley way was clearly kept as city property for the possibility it held of being incorporated into a future bike and pedestrian path. For this reason, the city DID NOT vacate the alley. The City of Salem itself intended for the potential of a future connection to be made.

But now, the city is doing a complete 180 on the issue and has itself initiated the vacation and has not provided significant reasons why this is the case. To be witnessing what is the current thought about the vacation is confusing to me and many others. Why is the city removing any possibility of a connection in the future? And why is the city giving away their right to have access to the City owned cemetery from the Fairmount neighborhood? As City Councilors, I would hope that you keep the potential access available to the residents of Salem however the future may unfold.

Please consider that if you do vacate, you as City Councilors can *move to retain an easement upon right-of-way for pedestrian and bike access* in the future. You can grant the vacation and preserve an easement. This would keep the potential for a connection to the neighborhoods of Fairmount and Candalaria a possibility for the future.

As an elected group of officials, I would hope that you are keeping the future of Salem in your best interests and for the city to preserve land that they already own. To be giving this alley away needs more justification because they do not support a more livable Salem for all and goes against what the city has previously preserved the alley for: a possible future pedestrian connection between Candalaria and Fairmount.

I hope that you will take in full consideration the option to **retain an easement**. It would be a huge set-back for our neighborhoods to lose the piece of critical land that has the potential in the future to connect Fairmount and Candalaria neighborhoods in a clear and logical way.

Thank you for your time and consideration.

Sincerely,
Susan Powers