

ORDINANCE BILL NO. 28-17

AN ORDINANCE VACATING FRONTAGE ROAD NW AND PARADISE COURT NW

The City of Salem ordains as follows:

Section 1. Findings.

(a) On October 9, 2017, Council accepted a petition from Capital Manor to vacate Frontage Road NW and Paradise Court NW, more particularly described and shown in Exhibit A, attached hereto and by this reference incorporated herein.

(b) A public hearing before the City Council to consider the vacation of the right-of-way was set for November 13, 2017, and notice of the hearing was provided as required by Oregon Revised Statutes (ORS) 271.110 and Salem Revised Code (SRC) 255.065.

(c) A public hearing before the City Council was held on November 13, 2017, at which time interested persons were afforded the opportunity to present evidence and provide testimony in favor of, or in opposition to, the proposed vacation, and upon consideration of such evidence and testimony and after due deliberation, the City Council finds as follows:

(1) The vacation will not substantially impact the market value of abutting properties such that damages would be required to be paid pursuant to ORS 271.130; any impact would be to increase the market value of abutting properties.

(2) The vacation is consistent with SRC 255.065 and complies with Section 255.065(b)(6) which establishes the criteria listed below for approving a right-of-way vacation:

(A) *The area proposed to be vacated is not presently, or will not in the future be needed for public services, facilities, or utilities;*

FINDING:

Transportation: Capital Manor plans to redesign the community's circulation system to provide a single point of entry, with a second controlled access for emergency and maintenance vehicles from Rosewood Drive NW. Implementation of this revised circulation system includes reconfiguring and consolidating the existing lots into three larger lots. This reconfiguration is in process through the Capital Manor Partition Plat. Once this partition plat has received final approval, the right-of-way proposed for vacation will no longer be needed to provide

1 transportation access and circulation.

2 *Utilities:* Staff forwarded the petition to the relevant City Departments and Public Utilities for
3 their review. Public water, sewer, and storm facilities exist within the right-of-way to be vacated
4 (excluding that portion previously vacated by Ordinance No. 26-81) and, as such, the petitioner
5 must provide an easement over the vacated area. If the utilities are relocated as part of future
6 development, the easement would be released.

7 **(B)** *The vacation does not prevent the extension of, or the retention of public services, facilities,*
8 *or utilities;*

9 **FINDING:**

10 The vacation is part of a larger process for the total redevelopment of properties owned by
11 Capital Manor. This vacation is the first step in that process. While an easement for utilities will
12 be reserved over the area being vacated (excluding that portion previously vacated by Ordinance
13 No. 26-81) , the long term plans include abandonment or relocation of some public utilities and
14 construction of new private utilities. In addition, Capital Manor will be required to take over
15 maintenance and costs of the three streetlights on Paradise Court NW.

16 **(C)** *Public services, facilities, or utilities can be extended in an orderly and efficient manner in*
17 *an alternate location;*

18 **FINDING:**

19 The vacation is part of a larger process to completely redevelop the properties owned by Capital
20 Manor in a way that will allow it to function in a more orderly and efficient manner.

21 **(D)** *The vacation does not impede the future best use, development of, or access to abutting*
22 *property;*

23 **FINDING:**

24 The property abutting the proposed vacation is wholly owned by Capital Manor. Subject to final
25 approval of the Capital Manor Partition Plat, the area proposed for vacation will no longer be
26 needed to provide access to abutting properties. The vacation is intended to help the abutting
27 property develop to its future best use.

28 **(E)** *The vacation does not conflict with provisions of the Unified Development Code (UDC),*
29 *including the street connectivity standards and block lengths;*

30 **FINDING:**

1 The properties owned by Capital Manor will be redeveloped in a manner that is consistent with
2 the provisions of the UDC.

3 *(F) All required consents have been obtained;*

4 **FINDING:**

5 Petition-initiated vacations require the consent of 100 percent of the abutting real property
6 owners and two-thirds of the property owners within the affected area, which is defined in ORS
7 271.080. The applicant has submitted the signed consent of abutting and affected property
8 owners and staff has determined that all of the required consents have been obtained. Therefore,
9 the proposed vacation complies with this criterion.

10 *(G) Notices required by ORS 271.080-271.130 have been duly given;*

11 **FINDING:**

12 Notice of Public Hearing was provided as required by ORS 271.080-271.030. Notice was
13 published in the *Statesman Journal* and posted on the right-of-way for vacation. Therefore, the
14 proposed vacation complies with this criterion.

15 *(H) The public interest would not be prejudiced by the vacation;*

16 **FINDING:**

17 Approval of this vacation with the recommended conditions is compatible and consistent with
18 the intent, goals, and policies of the Salem TSP and the *Salem Revised Code*. In addition, this
19 vacation supports the public interest by releasing property for future improvement and
20 development. Therefore, the proposed vacation complies with this criterion.

21 **Section 2. Assessment of Special Benefit.** In accordance with SRC 255.065(b)(7)(C), the
22 Council may, in its discretion, require the petitioner to pay an assessment of special benefit in an
23 amount deemed by Council to be just and equitable. The Real Property Services Division of the
24 Urban Development Department estimated the value of the property described in Section 1(a) of
25 this Ordinance, excluding the portion previously vacated by Ordinance No. 26-81, to be \$3.00
26 per square foot for Frontage Road NW and \$3.88 per square foot for Paradise Court NW.
27 Applying these values to the area being vacated results in a recommended assessment of
28 \$240,969.16. Notice of the proposed assessment of special benefit was provided to Capital
29 Manor on November 9, 2017.

Section 3. Vacation. That certain property more particularly described in Section 1(a) of this Ordinance is hereby vacated, subject to the following conditions:

- (a) Final approval of the Capital Manor Partition Plat;
- (b) Easements are provided for the construction, maintenance, repair, and replacement of existing municipal and public utilities within the current right-of-way in a form and location acceptable to the City, excluding that portion previously vacated by Ordinance No. 26-81;
- (c) Petitioner to maintain and pay on-going expenses for the three streetlights on Paradise Court NW; and
- (d) Payment of an assesement of special benefit in the amount of \$240,969.16.

Section 4. Vacation Effective Date. Pursuant to SRC 255.065(c)(3), this vacation shall not be effective until:

- (a) All fees have been satisfied.
- (b) All required legal documents have been signed, filed, and if required, recorded.
- (c) The petition has complied with all conditions attached to the vacation.
- (d) A certified copy of this ordinance is recorded with the Polk County Clerk.

Section 5. Codification. In preparing this ordinance for publication and distribution, the City Recorder shall not alter the sense, meeting, effect, or substance of this ordinance, but within such limitations, may:

- (a) Renumber sections and parts of sections of the ordinance;
- (b) Rearrange sections;
- (c) Change reference numbers to agree with renumbered chapters, sections, or other parts;
- (d) Delete references to repealed sections;
- (e) Substitute the property subsection, section, or chapter, or other division numbers;
- (f) Change capitalization and spelling for the purpose of uniformity;
- (g) Add headings for purposes of grouping like sections together for ease of reference; and
- (h) Correct manifest clerical, grammatical, or typographical errors.

PASSED by the City Council this _____ day of _____, 2017.

ATTEST:

City Recorder

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Approved by City Attorney:_____

Checked by: Julie Warncke