

## **Summary of research into ownership of the unopened 12-foot-wide alley right-of-way abutting the north boundary of Pioneer Cemetery**

### **OVERVIEW**

For years, the City and many others believed there was an unopened, dedicated 12-foot-wide alley right-of-way abutting the northern property line of Pioneer Cemetery from Commercial Street SE to approximately 470 Rural Avenue S. In fact, in 1985 the City Council approved an ordinance vacating much of this perceived right-of-way, retaining a 56-foot long by 12-foot wide section adjacent to 490 Rural Avenue S because it could potentially be incorporated into a pedestrian/bicycle access through Pioneer Cemetery at some point in the future. Additionally, between 2004 and 2012, the City and the Pioneer Alley Planned Unit Development (PUD), LLC, quarreled over competing interests in how this alley remnant should be utilized. Ultimately, on November 5, 2012, Council approved vacating this alley right-of-way, subject to a reservation of a public utility easement and a pedestrian easement over the area. (See Ordinance Bill No. 15-12.)

More recently, Public Works staff submitted reports to Council in June 2020 and January 2021 regarding a potential path through Pioneer Cemetery connecting the Candalaria and Fairmount neighborhoods. Both of these reports identified a 12-foot by 56-foot area as property over which the City had reserved a public access easement. Testimony and a formal legal opinion submitted in January 2021 by Pioneer Alley PUD contested our assertion that the City had rights over this property.

### **KEY DATES**

To evaluate the dispute over property ownership, the City Surveyor researched the history of the property and the alleged alleyway located at 490 Rural Ave S. The results of his work were conveyed in an email that provided the following timeline of events.

#### **August 26, 1908 (V.102, P.489)**

- The State Land Board of the State of Oregon conveys to C. A. Wallace and T. B. Kay, portions of the N. W. Caldwell and David Leslie Donation Land Claims. This is the Parent Tract of land.

#### **February 1, 1909 (V.104, P.577)**

- C. A. Wallace and E. J. Wallace, his wife, conveys to S. J. Hofma and Florence S. Hofma all of the land lying south of Rural, North of the cemetery and lying between the west right-of-way of Commercial and the west line of Tax Lot 300, on Tax Map 073W33AD. (See Figure 1.)

#### **June 6, 1910 (V.105, P.631)**

- C. A. Wallace and E. J. Wallace, his wife, conveys to the City, present day Rural Avenue, lying west of Commercial Street.

**March 1, 1912** (V.129, P.475)

- C. A. Wallace and E. J. Wallace, his wife, conveys to the City, present day Rural Avenue, lying west of Commercial Street.

**December 29, 1914** (V. 134, P. 456)

- S. J. Hofma and Florence S. Hofma convey to Everette Rutherford and Isabelle E. Rutherford Tax Lots 5700 & 5800 on Tax Map 073W34BC (see Figure 1) not including the proposed alleyways being the southerly 12 feet of said tax lots and the westerly 12 feet of Tax Lot 5700.
  - Staff's assumption is Hofma was responsible for the proposed land division noted as "unrecorded plat by Sol Taylor" on said tax map.
  - All deed calls from Hofma in this area call from the south line of rural, a distance south to the alley, thence along the north line of said alley
  - A perpetual right to use said alleyways is also written into each conveyance.

**August 16, 1920** (V.157, P.562)

- Everette Rutherford and Isabelle E. Rutherford, convey to Franklin S. Grosvenor and Ruby Grosvenor Tax Lots 5700 & 5800 on Tax Map 073W34BC not including the proposed alleyways being the southerly 12 feet of said tax lots and the westerly 12 feet of Tax Lot 5700.
  - A perpetual right to use said alleyways is included with this conveyance.

**August 19, 1920** (V.157, P.580)

- Franklin S. Grosvenor and Ruby Grosvenor convey to P. W. Reyelts Tax Lots 5700 & 5800 on Tax Map 073W34BC not including the proposed alleyways being the southerly 12 feet of said tax lots and the westerly 12 feet of Tax Lot 5700.
  - A perpetual right to use said alleyways is included with this conveyance.

**September 30, 1921** (V.162, P.359)

- P. W. Reyelts conveys to F. J. Goodenough in what appears to be a bargain and sale agreement Tax Lots 5700 & 5800 on Tax Map 073W34BC not including the proposed alleyways being the southerly 12 feet of said tax lots and the westerly 12 feet of Tax Lot 5700.
  - A perpetual right to use said alleyways is included with this conveyance.
  - December 1923, F. J. Goodenough fulfills sales agreement and is conveyed said land (V.175, P.540)

**February 27, 1925** (V.181, P.207)

- S. J. Hofma and Florence S. Hofma convey to F. J. Goodenough the land that makes up the 12-foot-wide alleyways lying on the west side of Tax Lot 5700 and the south sides of Tax Lots 5700 & 5800.
  - Assumption is the proposed land development fell through, which could explain with why the plat by Sol Taylor was never recorded. Hofma decided to sell off the excess land that consisted of the alleyways not dedicated.

**February 27, 1925** (V.181, P.209)

- F. J. Goodenough and Helen I. Goodenough convey to O. B. Goodenough and Ellen M. Goodenough the land that makes up the 12-foot-wide alleyway along the south and west lines of Tax Lot 5700.

**February 27, 1925** (Bottom of V.581, P.210)

- F. J. Goodenough and Helen I. Goodenough convey to O. B. Goodenough and Ellen M. Goodenough Tax Lot 5700 not including the land covered by the alleyways.

**September 29, 1929** (V.204, P.200)

- O. B. Goodenough and Ellen M. Goodenough convey to Portland Electric Power Company an eight-foot-wide easement/right-of-way that is described traversing diagonally across the property from approximately the NW corner to approximately the SW corner of Tax Lot 5700.

**February 9, 1942** (V.267, P.563)

- O. B. Goodenough and Ellen M. Goodenough convey to Kenneth L. Pugh and Alice I. Pugh all of Tax Lot 5700 except the land that made up the alleyway along the south and west side.
  - Document also reserves the easement granted to Portland Electric Power Company in September 1929, V.204, P.200

**February 9, 1942** (V.267, P.565)

- O. B. Goodenough and Ellen M. Goodenough convey to Kenneth L. Pugh and Alice I. Pugh the land that makes up the 12-foot-wide alleyway along the south and west lines of Tax Lot 5700.

February 1942 to July 1944 – Kenneth and Alice Pugh get a divorce

**July 3, 1944** (V.305, P.28)

- Kenneth L. Pugh conveys to Alice I. Pugh all of the land that makes up Tax Lot 5700
  - Easement granted to Portland Electric Power Company was not noted.

July 1944 to July 1951 – Alice Pugh is married to Delmar R. Russell

**July 24, 1951** (V.430, P.729)

- Alice Pugh Russell and Delmar R. Russell convey to Ralph W. Toler and Florence E. Toler Tax Lot 5700.
  - Easement granted to Portland Electric Power Company was not noted.

**August 23, 1951** (V.431, P.725)

- Ralph W. Toler and Florence E. Toler convey to A. A. Larsen and Mary Helen Larsen Tax Lot 5700.
  - Easement granted to Portland Electric Power Company was not noted.

**June 16, 1952** (V.440, P.667)

- A. Larsen and Mary Helen Larsen convey to Everett Lee Odle and Betty Ruth Odle Tax Lot 5700.
  - Easement granted to Portland Electric Power Company was not noted.

**June 1952 to July 1977 – Everett Lee Odle passes**

**July 12, 1977** (R.88, P.219)

- Betty Ruth Odle conveys to John M. Carraher and Maria A. Carraher Tax Lot 5700.
  - Conveyed free of all encumbrances except any and all rights in and to the alley along the westerly and southerly sides of the Tax Lot 5700; and the easement and right-of-way to Portland Electric Power Company recorded in V.204, P.200.
  - The right to the alleyways is referring to the 12-foot strips on the west and south edge of property never dedicated.
  - After the alleyways were conveyed to F. J. Goodenough February 27, 1925, nothing was found indicting reserved rights across the alleyways.

**September 14, 1988** (R.644, P.71)

- John M. Carraher and Maria A. Carraher convey to Betsy M. Stuller Tax Lot 5700.
  - Except a reservation to the rights of the public in and to alleyway along the westerly and southerly lines
  - Except the Portland Electric Power Company easement recorded in V.204, P.200

**August 3, 1990** (R.789, P.142)

- Betsy M. Stuller enters into a Real Estate Contract with Rick Evan Flory and Shelley Lee Flory Tax Lot 5700.
  - No exceptions were noted.

**July 29, 2002 (R.1976, P.50)**

- Betsy M. Stuller conveys to Rick Evan Flory and Shelley Lee Flory Tax Lot 5700 as fulfillment of the previously stated contract.
  - Subject to and excepting any liens or encumbrances suffered or permitted by the grantee subsequent to August 1, 1990.
  - No other exceptions noted.

**July 29, 2002 (R.1976, P.51)**

- Rick Evan Flory and Shelley Lee Flory convey to J. Davidson Moss and Patricia G. Moss and Kathleen Dewoina as a one-half undivided interest, Tax Lot 5700.
  - No other exceptions noted.

**February 24, 2005 (R.2443, P.40)**

- J. Davidson Moss and Patricia G. Moss and Kathleen Dewoina as a one-half undivided interest convey to the Moss Living Trust as to an undivided one-half interest.
  - Noted the conveyance was to redefine and clarify the legal description and correct the vesting deed.
    - Staff was unable to locate an interim document, if there is one. If anything, the description is more confusing, and again, no exceptions noted.

**December 30, 2005 (R.2588, P.291)**

- Moss Living Trust conveys to Pioneer Alley, LLC, Tax Lot 5700.
  - No exceptions noted.

**December 30, 2005 (R.2588, P.292)**

- Moss Living Trust conveys to Pioneer Alley, LLC, Tax Lot 5700.
  - Appears this is a correction deed. The description was reverted back to that used in R.1976, P.50, and also added any portion of the vacated alleyways per Ordinance 52-85 recorded May 17, 1985 in R.392, P.333, that would attach to the subject property.

**SUMMARY**

Based on the deed history, the City's Surveyor determined the Hofmas apparently tried to subdivide their land into lots and alleyways sometime after February 1909. That proposed subdivision fell through and the surplus property, which included the land referred to as alleyways, was conveyed to F.J. Goodenough by 1925. References to rights of the alleyways noted in conveyances in 1977 and 1988 were only biproducts of individuals conveying property based on tax maps that refer to an unrecorded plat.

In summary, after researching land records spanning over 110 years, the City Surveyor was unable to find any documents that granted the alleged alleyways to the public or to the City, or

any records that conveyed the property in fee to the City. His conclusion was the alleyway vacated by the City in 1985 and contested between the City and Pioneer Alley PUD between 2004 and the present has been in private ownership since at least August 26, 1908. The City Surveyor noted that his statements were his professional opinions based on the facts determined to date and were not intended to be a legal determination of this case.

The City Attorney's Office requested a peer review of the City Surveyor's work by a title company, a private firm that has specialized in escrow and title services for over 35 years. The title company had no objections to the City Surveyor's conclusions and found nothing in their review that was not already identified in the City Surveyor's research. A legal opinion by the Portland-based law firm Beery Elsner & Hammond, LLP, confirmed the determination of the City Surveyor.

