



## Staff Report

---

**File #:** 17-224

**Version:** 1

**Date:** 5/22/2017

**Item #:** 7.2c.

---

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Peter Fernandez, PE, Public Works Director

**SUBJECT:**

Vacating a Portion of Rose Garden Way NE and Declaring an Emergency

Ward(s): 5

Councilor(s): Ausec

Neighborhood(s): Northgate

**ISSUE:**

Shall City Council conduct second reading of Ordinance Bill No. 12-17, which vacates a portion of Rose Garden Way NE, and declare an emergency?

**RECOMMENDATION:**

Conduct second reading of Ordinance Bill No. 12-17, which vacates a portion of Rose Garden Way NE, and declare an emergency.

**SUMMARY AND BACKGROUND:**

Ordinance Bill No. 12-17 (Attachment 1) vacates a portion of Rose Garden Way NE and declares an emergency. The City of Salem received a petition from the Larry and Jeanette Epping Family Foundation (Petitioner) to vacate the easterly 159-foot portion of Rose Garden Way NE as shown in Attachment 2.

The Petitioner plans to include the vacated property in a proposed affordable housing project. The right-of-way requested to be vacated is an unimproved dead end with no plans or capacity to be extended (see Attachment 3). The vacation is needed to develop the site effectively without causing the site to be divided into two parts by the current right-of-way (see Attachment 4). Furthermore, the entirety of Rose Garden Way NE currently serves only one undeveloped property. The vacation, along with the already submitted subdivision, will allow the remaining portion of Rose Garden Way NE to be fully developed and provide access to several properties. This vacation is an important step in the development of an affordable housing project and the continued revitalization of the Portland

Road NE corridor.

## **FACTS AND FINDINGS:**

On March 14, 2017, the Larry and Jeanette Epping Family Foundation submitted a petition to vacate a portion of Rose Garden Way NE. Public Works staff reviewed the petition and have determined it contains all the submittal requirements and owner consents as required by Salem Revised Code (SRC) 255.065(b)(2)-(3) and Oregon Revised Statutes (ORS) 271.080-271.230.

The right-of-way to be vacated is 159 feet long by 45 feet wide and encompasses approximately 7,155 square feet.

On April 24, 2017, City Council directed staff to set a date for the public hearing in compliance with ORS 271.080-271.230 and SRC 255.065. The public hearing was scheduled for May 8, 2017.

On May 8, 2017, City Council held a public hearing and conducted first reading on Ordinance Bill No. 12-17, which vacates the right-of-way in question.

## **Criteria for Evaluating Proposed Vacation of Rights-of-Way**

The *Salem Transportation System Plan* (TSP) establishes the goals, policies, and objectives for planning, development, and operation of its street system. SRC 255.065(6) implements these goals, policies, and objectives by establishing the criteria for approving the vacation of public right-of-way. The eight criteria are listed below along with findings that detail how each criterion is met.

**(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: The unimproved right-of-way proposed to be vacated is not currently used for public transportation purposes nor is it needed for public transportation in the future. Because it is not needed for public transportation, it complies with this criterion.

Utilities: Staff forwarded the petition to the relevant City Departments and Public Utilities for their review. There are no existing utilities within the area proposed for vacation. Because there are no existing utilities within it, the proposed right-of-way vacation complies with this criterion.

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

### **FINDING:**

There are no adopted plans that call for the extension of new public services, facilities, or utilities, in addition to those utilities provided for in (A) above, through the proposed area to be vacated. The

proposed vacation will have no effect on the provision of public utilities, services, or facilities and will not degrade transportation services or accessibility in the area. Therefore, the proposed vacation complies with this criterion.

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

**FINDING:**

The proposed vacation provides the opportunity for the land to be developed for use as part of an affordable housing project. The proposed vacation will have no effect on the provision of services or facilities and will not degrade transportation services or accessibility in the area. Therefore, the proposed vacation complies with this criterion.

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

**FINDING:**

The right-of-way proposed for vacation is needed to develop the site effectively without causing the site to be divided into two parts by the current right-of-way. The right-of-way requested to be vacated is an unimproved dead end with no plans or capacity to be extended. All of the abutting properties will have access to the planned public street network. Therefore, the proposed vacation complies with this criterion.

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

**FINDING:**

The proposed vacation does not conflict with the provisions of the UDC regarding street connectivity and block lengths. The proposed vacation does not interfere in any way with the function of either Rose Garden Way NE or Portland Road NE. Therefore, the proposed vacation complies with this criterion.

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

**FINDING:**

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

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

**FINDING:**

Notice of this public hearing was provided as required by ORS 271.080-271.030. Notice was published in the Statesman Journal and posted on the right-of-way for vacation. Therefore, the proposed vacation complies with this criterion.

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

**FINDING:**

Approval of this vacation with the recommended condition is compatible and consistent with the intent, goals, and policies of the Salem TSP and the Salem Revised Code. In addition, this vacation supports the public interest by releasing unneeded property for future development. Therefore, the proposed vacation complies with this criterion.

Assessment of Special Benefit

In accordance with SRC 255.065(b)(7)(C), the Council may, at its discretion, require the petitioner to pay an assessment of special benefit in an amount deemed by Council to be just and equitable. The amount of the assessment is generally determined by computing the square-foot value of property in the vicinity of the vacation and multiplying it by the square footage of the area to be vacated.

The Real Property Services Division of the Urban Development Department estimated the value of the right-of-way for this vacation at \$4 per square foot. Applying the value of \$4 per square foot to the 7,155 square feet of the vacation yields a total of \$28,620.

Staff recommends that the Assessment of Special Benefit be waived because this project is supporting multiple City and Urban Renewal objectives, including affordable housing and continued revitalization of the Portland Road NE corridor.

Request to Declare an Emergency

The Petitioner has requested that Council declare an emergency, making the ordinance effective upon second reading of the Ordinance Bill. The request is to address requirements associated with coordinating multiple funding sources. Enactment of the ordinance constitutes a land use decision and is subject to appeal to the Land Use Board of Appeals (LUBA). If the decision is appealed, LUBA could impose a stay on the decision, effectively suspending the vacation until the appeal is resolved.

Robert D. Chandler, PhD, PE  
Assistant Public Works Director

Attachments:

1. Ordinance Bill No. 12-17
2. Surveyor's Map of Area to be vacated
3. Rose Garden Vicinity Map
4. Portland Road Apartment Complex Site Plan

