

ORDINANCE NO. 5679

AN ORDINANCE VACATING A PORTION OF 24TH AVENUE SW (WEST OF ELM STREET SW) AND ADOPTING FINDINGS.

WHEREAS, on March 25, 2004, the City of Albany received an application from Patrick and Stephanie Hagerty to vacate a portion of 24th Avenue SW; and

WHEREAS, notices of public hearings were mailed, posted, and published; and

WHEREAS, the Albany Hearings Board held a public hearing on October 7, 2004, and recommended that the City Council approve the proposed vacation of 24th Avenue SW; and

WHEREAS, the Albany Hearings Board recommended that the City Council pass this ordinance on first reading only until two of the conditions of approval are met; and

WHEREAS, it was discovered that one of the required signatures of an abutting property owner had not been obtained by the applicant; and

WHEREAS, the City Council opened the public hearing on October 27, 2004, and continued it to give the applicant time to obtain the required signature; and

WHEREAS, the applicant obtained all of the signature of abutting and neighboring property owners as required in ORS 271.080; and

WHEREAS, the Albany City Council held the public hearing on December 1, 2004; and

WHEREAS, the Albany City Council continued the public hearing on January 12, 2005, and took first reading on the vacation ordinance; and

WHEREAS, the applicants submitted documentation in 2007 to show that they have satisfied the conditions of approval that needed to be met before this ordinance is adopted.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Subject Property. A portion of 24th Avenue SW, west of Elm Street is hereby vacated. (See legal description on attached Exhibit A.)

Section 2: Findings. The Findings, Conclusions, and Conditions in the Staff Report attached as Exhibit B are hereby adopted in support of this decision.

Section 3: Easements Retained. All existing public utility easements in the area are being retained and the City is retaining a public utility easement over the right-of-way being vacated.

Passed by Council: July 11, 2007

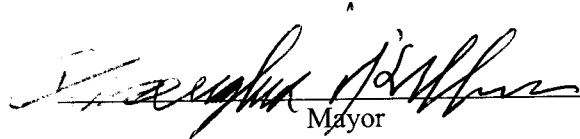
Approved by Mayor: July 11, 2007

Effective Date: August 10, 2007

ATTEST:



City Clerk



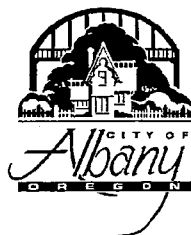
Mayor

EXHIBIT A

(Legal Description of Area to be Vacated)

VACATION OF PORTION OF 24TH AVENUE SW

Beginning at the northeast corner of Lot 1, Block 2 of "HOUCK'S ADDITION TO THE CITY OF ALBANY", a subdivision of record in Linn County, Oregon, which point being on the southerly right-of-way line of 24th Avenue; thence South 88°50'00" West, along said southerly right-of-way line, 258.27 feet; thence along the arc of a 288.56 foot radius curve to the left (chord bears North 73°50'00" East 149.37 feet) a distance of 151.09 feet; thence along the arc of a 228.56 foot radius curve to the right (chord bears North 73°49'49" East 118.29 feet) a distance of 119.65 feet to a point on the northerly extension of the east line of said Block 2 of "HOUCK'S ADDITION TO THE CITY OF ALBANY"; thence South 00°46'00" East 69.28 feet to the Point of Beginning. Containing 8,580 square feet of land, more or less.



Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT Vacation

<u>HEARING BODY</u>	HEARINGS BOARD	CITY COUNCIL
<u>HEARING DATE</u>	Thursday, October 7, 2004	Wednesday, December 1, 2004
<u>HEARING TIME</u>	4:00 p.m.	7:15 p.m.
<u>HEARING LOCATION</u>	Council Chambers, Albany City Hall, 333 Broadalbin Street SW	

GENERAL INFORMATION

DATE OF REPORT:	November 23, 2004
FILE:	VC-01-03
TYPE OF APPLICATION:	Vacation of a portion of 24th Avenue SW and a portion of Elm Street SW at the intersection of 24th & Elm
REVIEW BODIES:	Hearings Board and City Council
APPLICANT:	Patrick and Stephanie Hagerty; 1070 24th Avenue SW; Albany, OR 97321
APPLICANT REP:	Jack Burrell, K & D Engineering; 276 Hickory Street NW; Albany, OR 97321
ADDRESS/LOCATION:	24th Avenue and Elm Street (see Exhibit A)
MAP/TAX LOT:	Linn County Assessor's Map No. 11S-04W-13AB
ZONING:	Adjacent zoning is Office Professional (OP); the zoning of the vacated area would also become OP (see Exhibit B).
TOTAL LAND AREA:	23,848 square feet
PURPOSE OF REQUEST:	The applicants have indicated they wish to own the land around their existing parcel so they can assure that landscaping and beautification is done to complement any development on their parcel.
EXISTING LAND USE:	Public right-of-way; improved street; landscaped island
NEIGHBORHOOD:	West Albany
SURROUNDING ZONING:	North: RS-6.5 (Residential Single-Family) South and West: OP (Office Professional) East: LI (Light Industrial) Northeast: CC (Community Commercial)
SURROUNDING USES:	North: Schools South and West: Motor rebuilding (Light Industrial) East: Manufacturing and vacant industrial buildings West: Vacant parcels (Office Professional)
BACKGROUND:	The applicants have been considering the proposed vacation from as far back as 1996. The applicants have been communicating with the school district and ODOT for the purchase of property that would initially revert to those entities if the vacation is approved.

NOTICE INFORMATION

A Notice of Public Hearing was mailed to surrounding property owners on September 20, 2004. The site was posted on September 21, 2004, in accordance with Section 1.410 of the Albany Development Code. Two legal notices have been published in the *Albany Democrat-Herald* on September 22, and September 29, in accordance with ORS 271.110. At the time this staff report was prepared (November 23, 2004), the Albany Planning Division had received no written comments. Staff did receive a phone call from a property owner in this area expressing a desire to preserve the existing trees within the landscape island.

HEARINGS BOARD DELIBERATION/RECOMMENDATION

The Albany Hearings Board met on October 7, 2004, to consider the proposed vacation. After hearing the Staff Report, a presentation from the applicants (and representative), and comments from one citizen, the Hearings Board deliberated. They recommended one modification to the conditions in the Staff Report. That recommendation was to include a one-year deadline on the curb and gutter improvements needed on 24th Avenue (see Conditions 1.2 and 2.1).

The Albany Hearings Board recommends APPROVAL with CONDITIONS of this Vacation application for a portion of 24th Avenue SW and a portion of Elm Street SW at the intersection of 24th & Elm (File VC-01-03). The proposed conditions are found in this staff report.

SUGGESTED CITY COUNCIL MOTION

MOTION TO PASS THE ORDINANCE ON FIRST READING ONLY

In order to assure that certain conditions (see Conditions 1.2, 2.1, and 4.1) are met before the final approval of the proposed vacation, it is recommended that the ordinance be read a first time only at this meeting. Then, after the conditions are met, the issue would be scheduled for another City Council meeting, at which the ordinance would be read a second time. The second reading of the ordinance would likely take place sometime in early 2005, depending on when the applicant meets the conditions..

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STAFF ANALYSIS
Vacation File VC-01-03

The Albany Development Code (ADC) contains the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

Criterion (1): The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.

FINDINGS OF FACT

1.1 The following Comprehensive Plan policies have been identified as relevant to this review criterion.

GOAL 11: Public Facilities and Services

- a. Prohibit the construction of structures over public water lines and easements.
- b. Prohibit the construction of structures over drainage improvements and easements.
- c. Prohibit the construction of structures over public wastewater lines and easements.

GOAL 5: Open Spaces, Scenic and Historic Areas, and Natural Resources

- 6. Preserve and enhance desirable and distinctive neighborhood features which satisfy the following criteria:
 - a. Are commonly recognized features by neighborhood residents as desirable and distinctive.
 - b. Are features which can be preserved and enhance without significantly impairing development or redevelopment opportunities in conformance with other Comprehensive Plan and Development Code provisions.
 - c. Are features which can be preserved and enhanced through consideration of design alternatives in development and redevelopment projects.

1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that no public sanitary sewer mains exist within the area to be vacated. Based on the arrangement of the properties and rights-of-way in this area, there is no need for future public sanitary sewers within the area to be vacated.

1.3 Water. Water utility maps indicate that public water in this vicinity consists of a 24-inch main in Elm Street, and an 8-inch main in 24th Avenue. These public water mains run along the full length of the area to be vacated. In addition to the water mains, other appurtenances (such as hydrants, water meters, service lines, etc.) exist within the area to be vacated. Public water mains and appurtenances must be protected by public utility easements at least 15 feet wide. These easements allow for access to public utilities for maintenance and/or replacement.

1.4 Storm Drainage. Storm drainage utility maps indicate that public storm sewer facilities in this vicinity consist of a 24-inch main in Elm Street and a 12-inch main in 24th Avenue. These public mains run along the full length of the area to be vacated. In addition to the mains, catch basins and connecting pipes also exist in the area to be vacated. Public storm drainage mains and appurtenances must be protected by public utility easements at least 15 feet wide. These easements allow for access to public utilities for maintenance and/or replacement.

1.5 Storm Drainage. As a condition of the proposed vacation, the applicant must construct curb and gutter along the south side of 24th Avenue at the entrance to the single eastbound lane (see Finding 2.2). This

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work will create the need to make some modifications to the existing public storm drainage facilities in this area. The extent of the modifications will be determined when the applicant submits engineered plans for the curb and gutter work to the Engineering Division.

- 1.6 Other Utilities. City staff has contacted the various other utility providers about this proposed right-of-way vacation. Based on information gathered from these private utilities and other as-built drawings, it has been determined that a variety of other utilities (such as natural gas, phone, etc.) exist within the area to be vacated.
- 1.7 Distinctive Neighborhood Features. The existing landscape island within the area proposed for vacation includes five mature trees. This intersection is the entry to the neighborhood around Liberty Elementary School, Memorial Middle School, and West Albany High School. The trees within this island provide the most significant landscape feature in the vicinity of this intersection. Because the trees lie within an area that will be covered by a public utility easement, preserving the trees and/or enhancing the area is unlikely to unduly impair development opportunities for the adjoining property.

CONCLUSIONS

- 1.1 There are a number of public and private utilities that exist within the area proposed for vacation. All of these utilities require easements to allow access for maintenance purposes. Due to the location and number of utilities within this area, Staff recommends that a public utility easement be maintained over the entire area proposed for vacation (see Exhibit C).
- 1.2 The trees that currently exist within the landscape island at the intersection of 24th Avenue and Elm Street constitute a desirable and distinctive feature for the surrounding neighborhood. Based on the Comprehensive Plan, it is a City goal to preserve such features. Staff recommends that the trees should remain at least until a development proposal is submitted for the area, at which time a more thorough review of the landscaping requirements will be made, and preservation of the existing trees or planting of adequate replacement trees will be considered.

CONDITIONS

- 1.1 The City will retain a public utility easement over the entire area proposed for vacation. This easement will allow legal access to the area for maintenance of the utilities.
- 1.2 **Before the second reading of the vacation ordinance**, the applicant must either construct approved curb and gutter and storm drainage improvements in the area southwest of the existing landscape island in 24th Avenue, or provide appropriate financial assurances for the work. If the applicant chooses to provide the financial assurances (as approved by the City of Albany Engineering Division), the work must be completed within one year of the second reading of the ordinance vacating the right-of-way. After the one-year period, if the work is not completed, the City can use the financial assurances provided by the applicant to have the work done.
- 1.3 The applicant must preserve the existing trees in the landscape island at least until a development proposal for the site has been approved by the City. As part of the site plan review for the site, staff will review the landscaping proposed in the site plan and decide whether to incorporate the trees into the landscaping plan or allow for suitable replacement of some or all of the existing trees.

Criterion (2): The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.

FINDINGS OF FACT

- 2.1 The area proposed for vacation is at the intersection of 24th Avenue and Elm Street, just west of Pacific Boulevard. Twenty-Fourth Avenue is the main entrance off of Pacific Boulevard to the neighborhood

that includes Liberty Elementary School, Memorial Middle School, and West Albany High School. The intersection of 24th Avenue and Pacific Boulevard is currently unsignalized. It has been determined by the Public Works Engineering Division that, in the event that a future signal is warranted at this intersection, the remaining right-of-way after the proposed vacation would provide sufficient area for lane modifications for a traffic signal.

- 2.2 Twenty-Fourth Avenue was improved from Liberty Street to Elm Street in 1956. In 1964, 24th Avenue was modified to its current configuration, probably to create a safer intersection with Pacific Boulevard. It is unknown why the southern lane of 24th Avenue was maintained, as it is only 18 feet wide, and is marked for a single lane of east-bound traffic. In practicality, this lane is used only as a second way to access the portion of Elm Street south of 24th Avenue (i.e. Schoens Motor, Inc.; Tax Lot 1200). Limiting public traffic to the northern lanes of 24th Avenue would lessen potential traffic conflicts in this area.
- 2.3 The portion of Elm Street south of 24th Avenue appears to drivers to be a private access, as it is delineated by a commercial driveway approach at its intersection with the south side of the main lanes of 24th Avenue. In order to distinguish between public streets and private property, curb and gutter construction would be required where the single east-bound lane of 24th Avenue would be vacated. The construction of curb and gutter will necessitate some work on the existing storm drainage system in this area. If the applicant chooses, a driveway approach would be allowed at this location to continue to provide access. These improvements would be a clear indication to drivers that this is no longer public right-of-way, but is private property.
- 2.4 The applicants are proposing to provide a shared reciprocal easement for access over the vacated portion of Elm Street for the benefit of Tax Lot 1200. This would assure access rights to this existing lot (and any lots created from it by a land division). The applicants are unable to grant such an easement until the vacation is approved and they obtain ownership of the land. Staff is proposing that the City retain a public access easement over a portion of Elm Street until the applicant obtains ownership of the property and can provide an adequate private access easement, at which time the public access easement will be eliminated in favor of the private access easement.

CONCLUSIONS

- 2.1 The proposed vacation will not have a negative impact on the traffic circulation in this area. Elimination of the southern portion of 24th Avenue will decrease traffic conflict points around this intersection. The right-of-way remaining at the intersection of 24th Avenue and Pacific Boulevard after the proposed vacation will be sufficient to allow for lane modifications in the event that a traffic signal is needed in the future.
- 2.2 The area proposed for vacation is not needed for connectivity between public rights-of-way. The area proposed for vacation is currently used only as a means of accessing properties on the west side of Elm Street and south of 24th Avenue. Access for these parcels would be maintained by the creation of a shared reciprocal access easement over the portion of Elm Street being vacated. The City will retain a public access easement over a portion of Elm Street until the applicant obtains ownership of the area and provides an adequate private access easement.
- 2.3 The construction of curb and gutter along the south side of 24th Avenue where the single east-bound lane currently exists will distinguish the vacated area as private property and no longer a public street. The City would allow the construction of a driveway approach where the eastbound lane is currently located. Construction of curb and gutter (and driveway) will require that the applicant also make some modifications to the existing public storm drainage system in this area.

CONDITIONS

- 2.1 **Before the second reading of the vacation ordinance**, the applicant must either construct approved curb and gutter and storm drainage improvements in the area southwest of the existing landscape island in 24th Avenue, or provide appropriate financial assurances for the work. If the applicant chooses to provide the financial assurances (as approved by the City of Albany Engineering Division), the work must be completed within one year of the second reading of the ordinance vacating the right-of-way. After the one-year period, if the work is not completed, the City can use the financial assurances provided by the applicant to have the work done.
- 2.2 The City will retain a public access easement over a portion of Elm Street to provide a means of accessing Tax Lot 1200 from 24th Avenue. When the applicant obtains ownership of the portion of Elm Street to be vacated, the applicant must grant a shared reciprocal access easement for the benefit of Tax Lot 1200. When the private access easement is granted, the City will eliminate the public access easement.
- (3) ***The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

FINDINGS

- 3.1 The portion of Elm Street being proposed for vacation is generally used only for access to the parcel owned by Schoens Motor, Inc. (Tax Lot 1200). The applicants are proposing to provide a shared reciprocal easement for private access over the vacated portion of Elm Street for the benefit of Tax Lot 1200. This easement would ensure that access is available for private use as well as for emergency vehicles. As mentioned in the above section, until the vacation is approved and the applicant takes ownership of the property, the applicant cannot provide an access easement. Staff recommends the City retain a public access easement over a portion of the Elm Street area to be vacated until an appropriate private access easement is provided by the applicant.
- 3.2 As indicated in the previous section, the elimination of the southern (single) lane of 24th Avenue would likely create a safer traffic pattern for public traffic by minimizing vehicular conflicts at this intersection.

CONCLUSIONS

- 3.1 The vacation of these portions of 24th Avenue and Elm Street will have no adverse impact on traffic circulation in this area. A shared reciprocal access easement over the portion of Elm Street to be vacated will allow for continued private and emergency vehicle access to the impacted properties.
- (4) ***The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.***

FINDINGS

- 4.1 The right-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owner of the property from which the right-of-way was dedicated. Elm Street used to be the alignment of the old Pacific Highway, before the new alignment for Pacific Boulevard (Highway 99E) was created. The applicant consulted with the Linn County Assessment and Taxation office to help determine who would gain control of the rights-of-way if vacated. Based on research done by the applicant and Linn County, title to the area to be vacated would be distributed as follows (see Exhibit D):

The portion of 24th Avenue west of the center line of Elm Street would go to the school district (GAPS);

The west half of Elm Street abutting Tax Lot 1100 would go to the State (ODOT);

The west half of Elm Street abutting Tax Lot 1200 would be incorporated into Tax Lot 1200; and

The east half of Elm Street would go to the State (ODOT).

Typically, the County Assessor will incorporate the vacated right-of-way into the abutting parcel, if it reverts back to that owner. In this case, the portion of 24th Avenue that will go to GAPS would become a distinct tax lot because it does not abut the school district property. It is not desirable to create a distinct tax lot out of this area because the new lot would not be developable on its own, due to its size and shape. It is the intent of the applicant to purchase this area from the school district and incorporate the area into Tax Lot 1100. The very small portion adjacent to the Howerton parcel (Tax Lot 1103) is intended to become part of the Howerton parcel. While a portion of the Elm Street right-of-way to be vacated would become a separate tax lot under the ownership of ODOT, the City would be notified prior to any sale of that surplus property by ODOT. The applicant has also indicated that they have been in discussions with ODOT to purchase much of the area that will revert to ODOT ownership, which would, in turn, be incorporated into Tax Lot 1100.

- 4.2 The area to be vacated currently functions as public streets that access a limited number of parcels, and will remain as a private driveway access. The majority of the traffic median (island) in 24th Avenue will be included in the proposed area to be vacated. The property owner who will gain ownership of that area (Tax Lot 1100) will be responsible for maintaining the landscaping.
- 4.3 There are currently five mature trees growing within the median area. These trees provide an attractive entry feature to this neighborhood. It is a Comprehensive Plan Goal of the City to preserve desirable and distinctive neighborhood features, when possible.
- 4.4 At the time the properties are further developed, landscaping requirements will be considered for the new development(s).

CONCLUSIONS

- 4.1 Upon development of the property adjacent to the area to be vacated, the landscaping requirements (as specified in the Development Code) for the development proposal will be attached to the development approval. Staff recommends the existing trees remain until a development proposal for the site is submitted and approved. At the time of submission, a review of the landscaping requirements for the development will determine whether the existing trees will be preserved and incorporated into the landscape plan for the development, or if suitable replacement trees will be allowed.
- 4.2 So that no undevelopable lots are created by the proposed vacation, the applicant must make arrangements with the Greater Albany Public School District to obtain ownership of the portion of the right-of-way that will go to the school district. Such an agreement must be in a format acceptable to the City Attorney. As part of this agreement, or a separate agreement, the portion of the GAPS area adjacent to the Howerton parcel must be incorporated into the Howerton parcel.

CONDITIONS

- 4.1 **Before the second reading of the vacation ordinance by the City Council**, the applicant must provide documentation (in a form acceptable to the City Attorney) showing that an agreement with the Greater Albany Public School District has been made for obtaining ownership of the portion of the proposed vacation that will initially revert to the school district. As part of this agreement, or in a separate agreement, the portion of the GAPS area that is adjacent to the Howerton parcel must be incorporated into the Howerton parcel.

- (5) *The public interest, present and future, will be best served by approval of the proposed vacation.*

FINDINGS

- 5.1 The area proposed for vacation is made up of paved streets and a landscaped traffic median. The streets in the area to be vacated provide access to only two parcels. By providing a shared reciprocal access easement over the portion of Elm Street to be vacated, access to these affected parcels will remain available.
- 5.2 Vacating this area will eliminate some potential traffic conflict points around the intersection of 24th & Elm.

CONCLUSIONS

- 5.1 Vacating the proposed area will release the City from maintenance responsibility for this area.
- 5.2 The proposed vacation will make this intersection safer for vehicular traffic by eliminating some potential conflict points.

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VC-01-03
EXHIBIT C
Public Utilities

24TH AVE.

ELM ST.

AREA TO BE
VACATED

PACIFIC BLVD.

WATER
MAIN
STORM
SEWER

1"=60'

