

AGENDA COVER MEMO

DATE: April 19, 2004
TO: Lane County Board of Commissioners
FROM: Bill Robinson, Lane County Surveyor *BR*
DEPARTMENT: Public Works/Land Management Division

AGENDA ITEM TITLE: IN THE MATTER OF VACATING A PORTION OF SECOND STREET, IN THE SECOND AMENDED PLAT OF FERN RIDGE, AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (16-05-35-31)

I. MOTION:

TO APPROVE THE ORDER VACATING A PORTION OF SECOND STREET, IN THE SECOND AMENDED PLAT OF FERN RIDGE AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT.

II. ISSUE:

To decide whether the portion of Second Street east of Commercial Street between Blocks 120 and 121 in the Second Amended Plat of Fern Ridge as recorded in 1913 in Book 6, Page 28, Lane County, Oregon Plat Records, should be vacated as petitioned for.

III. DISCUSSION:

A. Background:

The Surveyor's Office of the Department of Public Works has received a valid petition signed by Don A. and Judith A. Lohff, Danny D. and Lacie K. Holt, Sean T. and Tracy J. Coffey and Donald D. Cole and Carol Candler-Cole, husbands and wives, and Peggy Anderson-Huey, the owners of 100% of the property abutting the proposed vacation requesting, by the authority of ORS 368.351, a vacation without a public hearing.

The purpose of the proposed vacation is to reduce the fire hazard potential by distributing maintenance responsibilities to adjoining landowners for this unconstructed and unused portion of Second Street. The petitioners state that this area becomes tinder dry with

grasses and weeds during the spring and summer months. Without the vacation as proposed, it may be necessary for the abutting landowners to go through the process of obtaining facility permits to remove vegetation which poses such fire hazards.

The Second Amended Plat of Fern Ridge was platted in 1913 and recorded in Book 6, Page 28 of the Lane County, Oregon Plat Records. Like this portion of Second Street proposed to be vacated, large portions of the original plat, including many lots, roads and alleys have been vacated over the years. Many of the roads and alleys have never been constructed.

The Surveyors Office notified Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjoining property owners regarding the vacation. The agencies and landowners either had no objection to the vacation or did not respond to the referral.

B. Analysis:

The portion of Second Street proposed to be vacated is approximately 305 feet in length, with a width of 60 feet. Vacating this portion of Second Street in the Second Amended Plat of Fern Ridge would allow for use of the vacated right-of-way by the petitioners, and allow them maintenance responsibilities, thus reducing the fire hazard danger, which is especially critical in the dry summer months.

This portion of Second Street is no longer needed by the Lane County Transportation System, and no property will be denied legal access as a result of the vacation. The public interest will be served, as vacating this portion of unused right-of-way will allow the property owners to more fully maintain the property, thereby reducing fire danger.

C. Alternatives/Options:

The Board of County Commissioners has the options to:

1. Approve the vacation of this portion of Second Street east of Commercial Street between blocks 120 and 121 of the Second Amended Plat of Fern Ridge.
2. Deny the vacation of this portion of Second Street east of Commercial Street between Blocks 120 and 121 of the Second Amended Plat of Fern Ridge.
3. Continue the matter of vacating this portion of Second Street east of Commercial Street between Blocks 120 and 121 of the Second Amended Plat of Fern Ridge for further consideration.

D. Recommendations:

No property will be denied legal access by this vacation. The vacation is in the public's interest as vacating this portion of the described right-of-way will allow the adjacent property owners to more effectively maintain the property, thereby reducing fire danger.

The Public Works Director's Report therefore recommends that the Board support Option Number 1, approving the vacation of this portion of Second Street as petitioned for.

All statutory procedures necessary for the vacation without a public hearing of the above mentioned portion of Second Street in the Second Amended Plat of Fern Ridge have been complied with, including a report by the Director of Public Works who recommends the approval of the vacation as described in the petition.

E. Timing:

Timing of this matter is not critical.

IV. IMPLEMENTATION/FOLLOW-UP:

If the Board of County Commissioners approves the Order of Vacation it is to be forwarded to the Lane County Clerk for filing and recording, after which copies are to be forwarded to the County Surveyor and County Assessor for appropriate action. If the vacation is denied, an Order to Deny the Vacation will be presented to the Board at a later regularly scheduled meeting.

V. ATTACHMENTS:

Order w/attachments:

Petition

Director's Report - Exhibit "A"

Findings of Fact - Exhibit "B"

Attachment "A" - Vicinity Map

Contact Person: Bill Robinson, x4198

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON

IN THE MATTER OF VACATING A PORTION OF SECOND STREET, IN THE SECOND AMENDED PLAT OF FERN RIDGE, AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT (16-05-35-31) **ORDER NO.**

WHEREAS, this matter now coming before the Board upon a petition received by the Surveyor's Office of the Lane County Department of Public Works requesting, under authority of ORS Chapter 368.341, the vacation of a portion of Second Street east of Commercial Street between Blocks 120 and 121 of the Second Amended Plat of Fern Ridge as platted and recorded in Book 6, Page 28, Lane County, Oregon Plat Records. Said portion of Second Street being more particularly described as follows:

All that portion of Second Street lying between the easterly right-of-way of Commercial Street and the centerline of Commercial Place (now vacated), and between the northerly lines of lots 1 through 11 in Block 120 and the southerly lines of lots 12 through 22 in Block 121, as platted in the 2nd Amended Plat of Fern Ridge and recorded in Book 6, Page 28 of the Lane County, Oregon Plat Records, all in the Southwest One Quarter (SW1/4) of Section 35, Township 16 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon.

WHEREAS, the petition complies with the provisions of ORS 368.351 in that the petitioners, who are the landowners of 100% of the property abutting the proposed vacation, request that the vacation be approved as proposed; and

WHEREAS, ORS Chapter 368.351 provides for the vacation of public roads and right-of-ways without a public hearing; and

WHEREAS, Qwest Communications, Emerald Peoples Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjacent landowners were notified by mail regarding the proposed vacation and either had no objection or did not respond to the referral; and

WHEREAS, no property will be denied legal access by this vacation; and

WHEREAS, the petitioners have paid a vacation fee of \$650 and will pay recording fees upon final approval of the vacation; and

WHEREAS, the petitioners are requesting this vacation in order to reduce the fire hazard potential by distributing maintenance responsibilities to adjoining landowners for this unconstructed and unused portion of Second Street, an area which petitioners state becomes tinder dry with grasses and weeds during the spring and summer months; and

WHEREAS, without the vacation as proposed, it may be necessary for the abutting landowners to go through the process of obtaining facility permits to remove vegetation which poses such fire hazards; and

WHEREAS, a large part of the streets, alleys and lots in the Second Amended Plat of Fern Ridge have previously been vacated; and

WHEREAS, the Director of the Department of Public Works has provided a written report in support of the proposed vacation, as required by ORS 368.351, marked as Exhibit "A", attached hereto and made a part hereof, by this Order; and

WHEREAS, all statutory procedures under ORS 368.351 necessary for this vacation have been complied with; and

WHEREAS, the Board is of the opinion that approving the vacation as petitioned for is in the best interest of the public; now, therefore, it is hereby

ORDERED, that the above described portion of Second Street east of Commercial Street between Blocks 120 and 121 of the Second Amended Plat of Fern Ridge is hereby vacated; and it is further

ORDERED, that in support of this action, the Board hereby adopts the Findings of Fact, marked as Exhibit "B", attached hereto and made a part hereof by this Order; and it is further

ORDERED, that this Order be entered into the Lane County Board of Commissioners Journal of Administration, and be further recorded in the Lane County, Oregon Deed Records.

DATED this _____ day of _____, 2004.

Chair
LANE COUNTY BOARD OF COMMISSIONERS

Attachment: Attachment "A"—Vicinity Map

APPROVED AS TO FORM

Date: 4-30-04 Lane County
Mr. [Signature]
CLERK

IN THE MATTER OF VACATING A PORTION OF SECOND)
STREET, IN THE SECOND AMENDED PLAT OF FERN RIDGE,)
AS PLATTED AND RECORDED IN BOOK 6, PAGE 28, LANE)
COUNTY, OREGON PLAT RECORDS, WITHOUT A PUBLIC) **DIRECTOR'S REPORT**
HEARING, AND ADOPTING FINDINGS OF FACT (16-05-35-31))
)
)

Vacation, Director's Report - Page 1 of 1
Portion of Second Street between Blocks 120 and 121, Second Amended Plat of Fern Ridge (16-05-35-31)
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EXHIBIT "B"**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

**IN THE MATTER OF VACATING A PORTION OF SECOND)
STREET, IN THE SECOND AMENDED PLAT OF FERN)
RIDGE, AS PLATTED AND RECORDED IN BOOK 6, PAGE)
28, LANE COUNTY, OREGON PLAT RECORDS, WITHOUT) FINDINGS OF FACT
A PUBLIC HEARING, AND ADOPTING FINDINGS OF FACT)
(16-05-35-31))
)**

The Department of Public Works has received a valid petition, signed by the owners of 100% of the property abutting the proposed vacation, requesting that a portion of Second Street east of Commercial Street between Blocks 120 and 121 of the Second Amended Plat of Fern Ridge as platted and recorded in 1913 in Book 6, Page 28, Lane County, Oregon Plat Records, and as described in the Order, be vacated as petitioned for. The petitioners are requesting the vacation in order to reduce the fire hazard potential by distributing maintenance responsibilities to adjoining landowners.

Findings of Fact (Public Interest)

The Board takes notice and finds:

1. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or easements based upon the determination that the vacation is "in the public interest."
2. That, pursuant to ORS 197.175 (2) (d), after acknowledgment of a county's comprehensive plan and implementing ordinances, the plan and ordinances, not the Statewide Planning Goals, control land use decisions.
3. That, Lane County's Rural Comprehensive Plan and implementing ordinances were originally acknowledged to be in compliance with the Statewide Planning Goals on September 13, 1984, and reacknowledged on February 14, 1992.
4. That, neither the Lane County Comprehensive Plan nor any land use regulation within the Lane Code establish mandatory standards for the vacation of public easements.

Conclusion of Law (Public Interest)

Based upon the above findings of fact, the Board concludes, as a matter of law, that neither the Statewide Planning Goals nor the Lane County Rural Comprehensive Plan and related land use regulations are an applicable measure of the "public interest", as it pertains to this vacation.

Findings of Fact (Impacts and Process of Vacation)

The Board takes notice and finds as follows:

1. That, the petitioners own property abutting the proposed vacation. Said property is further identified as Tax Lots 300, 301, 600, 601 and 700 of Assessor's Map 16-05-35-31.
2. That, pursuant to ORS 368.326 to 368.366, a county governing body may vacate roads or easements based upon the determination that the vacation is "in the public interest".
3. That, Qwest Communications, Emerald People's Utility District, Northwest Natural Gas, various other agencies including Transportation Planning and Lane County Planning sections of the Lane County Department of Public Works, and the adjoining property owners were notified by mail regarding the proposed vacation and either had no objection or did not respond to the referral.
4. That, vacating this portion of Second Street in the Second Amended Plat of Fern Ridge as described in the Order will not deny any landowners legal road access to a public road.
5. That, pursuant to ORS 368.351, a county governing body may make a determination about a vacation of property without a public hearing if:
 - (1) The county road official files a written report stating that the vacation is in the public interest.
 - (2) The proceedings were initiated by petition indicating the approval of 100% of the adjoining property owners.

Items (1) and (2) have been complied with.

Conclusions of Law (Impacts and Process of Vacation)

Based on the above findings of fact, the Board concludes, as a matter of law, that this vacation will not have any predictable negative impact on present or future land use, either in terms of allowable uses or actual development. The Board further concludes that statutory procedures necessary for making a determination on this vacation, without a public hearing, have been met.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

File No.

IN THE MATTER OF THE VACATION OF A PORTION)
 OF 2ND STREET IN 2ND AMENDED PLAT OF FERN RIDGE)
 IN SECTION 35 TOWNSHIP 16 SOUTH, RANGE 05 WEST) PETITION TO VACATE
 OF THE WILLAMETTE MERIDIAN IN LANE COUNTY,)
 OREGON

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned Don A. & Judith A. Lohff, Danny D. & Lacie K. Holt, Sean T. & Tracy J. Coffey and Donald D. Cole & Carol Candler-Cole husbands and wives and Peggy Anderson-Huey as owners of the adjacent real property hereby petition for the vacation of a portion of Second Street, which area to be vacated is described as follows:

"All that portion of Second Street lying between the easterly right-of-way of Commercial Street and the centerline of Commercial Place and between the northerly lines of lots 1 through 11 in block 120 and the southerly lines of lots 12 through 22 in block 121, as platted in the 2nd Amended Plat of Fern Ridge and recorded in Book 6, Page 28 of the Lane County, Oregon Plat Records, all in the Southwest One Quarter (SW 1/4) of Section 35, Township 16 South, Range 5 West of the Willamette Meridian, in Lane County, Oregon."

WHEREAS, the undersigned petitioners are the owners of 100% of the real property adjacent to the above described area to be vacated; and

WHEREAS, the petitioners allege as follows:

- I. The purpose of this vacation request is as follows:

Second Street represents a potential fire hazard for our rural area. Much of the area is behind fences, thus making it "out-of-sight, out-of-mind." And during the spring/summer months, this area becomes tinder-dry with grasses and weeds. It is our understanding that this area has been vacant for 40 years, and that the County has no plans for it.

Should a fire occur, the surrounding residents would bear the financial responsibility of replacing any wooden fences or houses that were damaged or destroyed. If the Second Street area was vacated, it would become part of the Second Place/First Street residents' backyards, and be automatically maintained, thus reducing/removing the fire hazard.

2. We are unaware of any utilities or powerlines located in the area to be vacated.

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town;

WHEREAS, the public interest will be served and not prejudiced by vacation of the above described area of Second Street;

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation without a hearing; and

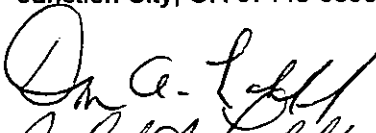
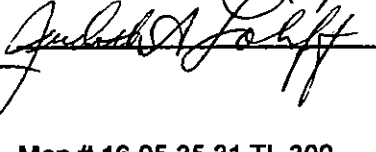
THEREFORE, the petitioners request an Order of the Board of Commissioners for Lane County as follows:

1. Setting a date for vacation of the above-described portion of road, with or without a hearing before the Board of Commissioners of Lane County, pursuant to ORS Chapter 368.
2. Upon review of this matter, to direct the vacation of the above-described road, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.


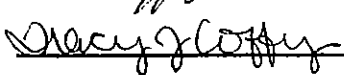
Dated this 18 day of MARCH, 2004

PETITIONERS:


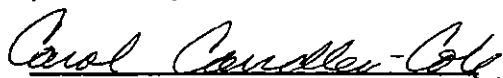
Map # 16 05 35 31 TL 301
Don A. & Judith A. Lohff
27506 1st Street
Junction City, OR 97448-9590

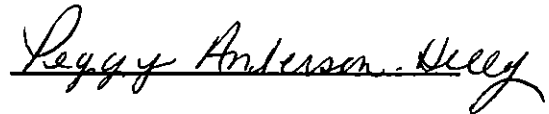
Map # 16 05 35 31 TL 300
Sean T. & Tracy J. Coffey
27494 1st Street
Junction City, OR 97448-9590

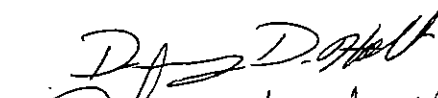
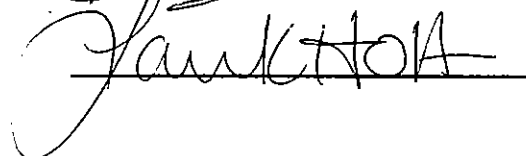
Map # 16 05 35 31 TL 600
Donald D. Cole & Carol Candler-Cole
POB 8546
Coburg, OR 97408

Map # 16 05 35 31 TL 700
Peggy Anderson-Huey
27501 2nd Place
Junction City, OR 97448-9590

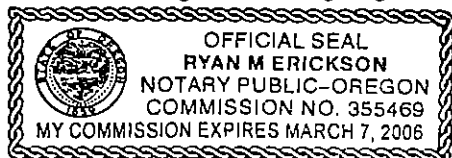


Map # 16 05 35 31 TL 601
Danny D. & Lacie K. Holt
855 Linn Way
Brownsville, OR 97327

State of Oregon)
County of Lane)

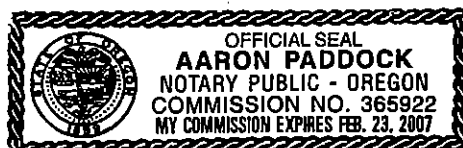
On 18 March, 2004 personally appeared the above named Don A. & Judith A. Lohff and acknowledged the foregoing instrument to be a voluntary act before me.



Ryan M. Erickson
Notary Public for Oregon
My Commission Expires _____

State of Oregon)
County of Lane)

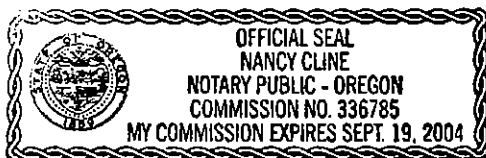
On March 18, 2004 personally appeared the above named Sean T. & Tracy J. Coffey and acknowledged the foregoing instrument to be a voluntary act before me.



A. Paddock
Notary Public for Oregon
My Commission Expires Feb. 23, 2007

State of Oregon)
County of Lane)

On March 18, 2004 personally appeared the above named Peggy Anderson-Huey and acknowledged the foregoing instrument to be a voluntary act before me.



Nancy Cline
Notary Public for Oregon
My Commission Expires 9.14.2004

State of Oregon)
County of ~~Lane~~)
Linn

On 3-17-04, 2004 personally appeared the above named Danny D. & Lacie K. Holt and acknowledged the foregoing instrument to be a voluntary act before me.

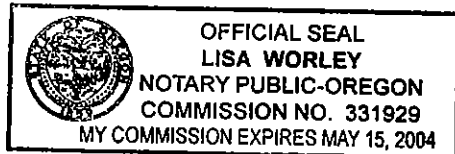


Kathleen S. Nida
Notary Public for Oregon
My Commission Expires 4-18-2006

ORIGINAL

State of Oregon)
County of Lane)

On March 29, 2004 personally appeared the above named Donald D. Cole & Carol Candler-Cole and acknowledged the foregoing instrument to be a voluntary act before me.



Lisa Worley
Notary Public for Oregon
My Commission Expires MAY 15, 2004



NO SCALE

