

ORDINANCE NO. 2025

An Ordinance vacating an approximately 50 foot by 12 foot portion of the State Street public right-of-way not needed for right-of-way purposes. (Orzeck)

WHEREAS, in 1988, the City conveyed certain real property to the owner of Tax Lots 5501 and 5600 (3N 10E 25DC, street address: 115 State Street), owned by Randy Orzeck of the Big Horse Brew Pub (the "Property") including a portion of the State Street right-of-way, illustrated in Exhibit A, attached hereto and incorporated herein by this reference and more particularly described as follows:

"Commencing at the Northwest corner of Lot L, SOUTH ADDITION to the Town of Hood River, in the City of Hood River, County of Hood River, State of Oregon, thence West 10 feet; thence North 12 feet; thence East 50 feet; thence South 12 feet, more or less, to the North line of the said Lot L; thence West along said North line of Lot L to the true point of beginning."

(the "Vacation Area") However, the City did not also initiate a right-of-way vacation of this portion of State Street; and

WHEREAS, the owner of the Property seeks to construct an addition on the north side of the existing building on the Property; and

WHEREAS, prior to the construction of the building addition, it is necessary for the City to complete the vacation process for the portion of the State Street right-of-way where the building addition will be located, and for the owner to replat the Property into a single parcel that incorporates the Vacation Area and obtain a Site Plan Review permit for the addition; and

WHEREAS, Section 16.08.060(F) of the City of Hood River Municipal Code requires street vacations to comply with ORS Chapter 271, and authorizes vacation requests to be initiated by the property owner or the city's governing body; and

WHEREAS, The City Council initiated this vacation proceeding on its own motion pursuant to ORS 271.080 and ORS 271.130 without the need for a property owner petition by the adoption of Resolution 2016-17, a copy of which is attached hereto as Exhibit B, and incorporated herein by this reference; and

WHEREAS, the Planning Commission conducted a public hearing on the City's street vacation request on July 12, 2016 and recommended that the City Council approve the proposal as requested; and

WHEREAS, the City Council convened a duly noticed public hearing on the street vacation request at its regular meeting on July 25, 2016, at which time the Council accepted all form of written and verbal comment on the request; and

WHEREAS, the Council finds that the public interest will not be prejudiced by granting the vacation of the Vacation Area, which will be conveyed to the owner of the abutting property, which is the Property.

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated herein by this reference, the Hood River City Council ordains that the approximately 50 foot by 12 foot portion of the State Street right-of-way illustrated in Exhibit A, attached hereto and incorporated herein by this reference and more specifically described as:

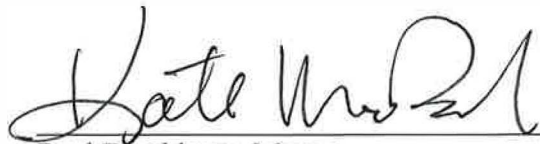
“Commencing at the Northwest corner of Lot L, SOUTH ADDITION to the Town of Hood River, in the City of Hood River, County of Hood River, State of Oregon, thence West 10 feet; thence North 12 feet; thence East 50 feet; thence South 12 feet, more or less, to the North line of the said Lot L; thence West along said North line of Lot L to the true point of beginning.”

(the “Vacation Area”), shall be vacated, subject to the following conditions:

1. The Vacation Area shall be subject to all of the assessments of the various taxing districts in which it is situated from this point forward.
2. In accordance with ORS 271.140 and except as expressly conditioned herein, title to the Vacation Area shall attach in equal portions to the Property (Tax Lots 5501 and 5600, 3N 10E 25DC), which are the lands directly bordering the Vacation Area and from which the dedication was originally made.
3. The City shall prepare and record a certified copy of this Ordinance and its attached Exhibits with the Hood River County Clerk and shall bear the costs of such recording.

Read for the first time on July 25, 2016;

Read for the second time and passed August 8, 2016, to become effective 30 days after the second reading.


~~Paul Blackburn, Mayor~~
Kate McBride, ^{Vice} Council President

ATTEST:


Jennifer Gray, City Recorder

880107

BARGAIN AND SALE DEED

The CITY OF HOOD RIVER, a municipal corporation, Grantor, conveys to PHILIP ORZECK and RANDY ORZECK, Grantees, the following described real property:

The East 10 feet of the North 75 feet of Lot 1, SOUTH ADDITION to the Town of Hood River, in the City of Hood River, County of Hood River, State of Oregon.

Commencing at the Northwest corner of Lot 1, SOUTH ADDITION to the Town of Hood River, in the City of Hood River, County of Hood River, State of Oregon; thence West 10 feet; thence North 12 feet; thence East 50 feet; thence South 12 feet, more or less, to the North line of the said Lot 1; thence West along said North line of Lot 1 to the true point of beginning.

The true and actual consideration for this transfer is not stated in terms of dollars but consists of a conveyance by Grantees of an easement to Grantor for use of certain property of Grantees.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Until a change is requested all tax statements should be sent to the following address of Grantees.

DATED this 12th day of January, 1982.

A. MICHAEL MAURER, Mayor of the CITY OF HOOD RIVER

STATE OF OREGON }
County of Hood River) ss.

SUBSCRIBED AND SWORN to before me this 12th day of January, 1982, by A. MICHAEL MAURER, Mayor of the CITY OF HOOD RIVER, a municipal corporation.

Notary Public for Oregon
My Commission Expires: 06/1/84

AFTER RECORDING RETURN TO:
PARKER, BOWE, BLANKLEY & S.
PO BOX 497
HOOD RIVER, OR 97031

ADDRESS OF GRANTEEES:
PHILIP & RANDY ORZECK
PO BOX 1022
WHITE SALMON, WA 98672

LAW OFFICE
PARKER, BOWE, BLANKLEY & S.
P.O. BOX 497
HOOD RIVER, OREGON 97031
PHONE (503) 325-1234

By: Howard M. Webber, Director of Records and
Assessment, and Es-Officio Recorder of Con-
veyances for said County.
Return to: [Signature] Deputy

I certify that this document was received and
recorded in the

STATE OF OREGON
COUNTY OF HOOD RIVER

JAN 20 4 25 PM '82

Microfilm No. 880107



RESOLUTION 2016-17

(A resolution initiating a street vacation pursuant to ORS 271.130)

WHEREAS, the City Council may initiate vacation proceedings authorized by Oregon Revised Statute (ORS) 271.080 and pursuant to ORS 271.130 without a petition or consent of the affected property owners;

WHEREAS, although the statute does not require a resolution to initiate the vacation; however, where a city's interest in land is involved, the City Attorney recommends a resolution prior to the public hearing process in order make the basis for the action clear;

WHEREAS, in 1988, the City conveyed property to Randy Orzeck of the Big Horse Brew Pub (115 State St.) including a portion of the State Street right-of-way (Bargain and Sale Deed 880107). However, the City did not initiate a right-of-way vacation described on Exhibit A;

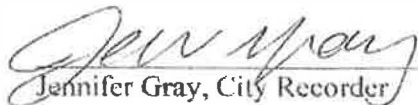
WHEREAS, it is in the best interests of the City of Hood River to vacate the right-of-way described on Exhibit A because the land is no longer needed for right-of-way and is in private ownership; and

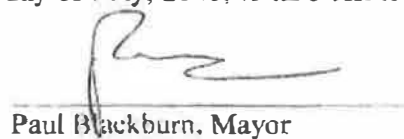
WHEREAS, the property owner seeks to construct an addition to the pub on the north side of the existing building and prior to construction of the building addition, it is necessary to vacate a portion of the State Street right-of-way, replat the property into a single parcel, and obtain a Site Plan Review permit.

NOW, THEREFORE, BE IT RESOLVED by the Hood River City Council that:

1. This Resolution shall constitute initiation of vacation proceedings pursuant to ORS 271.130 for the right-of-way shown on Exhibit A.
2. The City Manager shall set the date of the public hearing required pursuant to ORS 271.110 and notice shall be provided as required by ORS 271.110.

Approved by the Hood River City Council the 9th day of May, 2016, to take effect as provided above.


Jennifer Gray, City Recorder


Paul Blackburn, Mayor

July 5, 2016

To: Planning Commission
From: Cindy Walbridge
Request: A request by the City to vacate a 50' x 12' portion of the State Street right-of-way on the south side of State abutting Big Horse Brew Pub (**this area is the area between the face of the building and the first retaining wall – it is not part of the actual State Street.**) (See Exhibit "A").

I. BACKGROUND INFORMATION:

A. APPLICANT: City of Hood River

B. OWNER: City of Hood River

C. PROPERTY LOCATION: 115 State Street (southeast side of 2nd and State)

D. PROPERTY SIZE: approximately 12' x 50' (600 square feet)

E. SITE ZONING AND LAND USE: Big Horse Brew Pub (C-2)

F. SURROUNDING ZONING AND LAND USES:

North: City Hall Building (C-2)

South: Sherman Street and residences (C-1)

East: Vacant property owned by the City and several single family residences (C-2)

West: Vacant land owned by Hood River County and the Courthouse (OS/PF)

G. ORDINANCE CRITERIA:

1. HRMC, Section 16.08.060 – Replatting and Vacation of Plats
2. Goal 12 – Transportation and City of Hood River's Transportation System Plan
3. ORS 271 - Use and Disposition of Public Lands Generally; Easements
4. HRMC, Section 17.09.040 – Quasi-Judicial Actions

H. EXHIBITS:

"A" – Application materials and map

"B" – City Council Resolution 2016-17

II. FINDINGS OF FACT AND CONCLUSIONS

A. Hood River Municipal Code (HRMC), Chapter 16 – Land Divisions 16.08.060

1. **Replatting and Vacations.** Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners as appearing on the deed.

Findings:

- A. In 1988, the City conveyed property to Randy Orzeck of the Big Horse Brew Pub (115 State St.) including a portion of the State Street right-of-way (Bargain and Sale Deed 880107). However, the City did not initiate a right-of-way vacation described on Exhibit A;
 - B. The City initiated this vacation proceeding as authorized by Oregon Revised Statute (ORS) 271.080 and pursuant to ORS 271.130 without a petition or consent of the affected property owners;
 - C. Although the statute did not require a resolution to initiate the vacation; however, where a city's interest in land is involved, the City Attorney recommended a resolution prior to the public hearing process in order make the basis for the action clear. (See Exhibit "B").
2. **Procedure.** All applications for a replat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition. The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process.

Finding: This provision is complied with by processing the application in accordance with the criteria in Title 16 and as a quasi-judicial action.

- A. **General Approval Criteria.** *The City may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:*
- 1. *The proposed preliminary plat complies with all of the applicable Municipal Code sections and other applicable ordinances and regulations. At a minimum, the provisions of this Title, including Chapter 16.12, and the applicable sections of the Comprehensive Plan and Title 17 shall apply;*
 - a. *Corner lots shall have a minimum of thirty (30) feet of frontage on public dedicated roads;*
 - 2. *The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;*
 - 3. *The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction, and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;*
 - 4. *The location, width, and grade of streets and pedestrian walkways have been considered in relation to existing and planned streets, walkways, topographical conditions, public convenience and safety, and the proposed use of the land to be served by the streets and walkways. The street and walkway system proposes an adequate traffic circulation system, which is consistent with the Transportation System Plan and any approved Future Street Plans pursuant to 16.12.020(K);*

5. *All proposed private common areas and improvements (e.g., home owner association property) are identified on the preliminary plat;*
6. *Adequate capacity of public facilities for fire protection, streets, and sidewalks can be provided to the subject parcel. Development of on-site and off-site public facilities necessary to serve the proposed use are consistent with the Comprehensive Plan and any adopted public facilities plan(s).*
7. *All lots created shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems and these shall be located and constructed to prevent or minimize flood damage to the extent practicable;*
8. *All subdivision and partition proposals shall have adequate surface water drainage provided to minimize exposure to flood damage. Water quality or quantity control improvements may be required;*
9. *Underground utilities are provided;*
10. *Minimize flood damage. All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway. Development in a 100-year flood plain shall comply with Federal Emergency Management Agency (FEMA) requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before City approval of the final plat.*
11. *Determination of Base Flood Elevation. Where a development site is located in or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, it shall be prepared by a qualified professional, as determined by the City Engineer.*

Finding: This vacated strip of land will be added to the adjoining parcel through the replat process, and has all utilities and sidewalks as part of the State Street Urban Renewal project, and is not located in the floodplain. The vacation does not include an existing street surface. As such, these approval criteria are met.

3. **Basis for Denial.** A replat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.

Findings:

- A. It is in the best interests of the City of Hood River to vacate the right-of-way described on Exhibit "A" because the land is no longer needed for right-of-way and is in private ownership (since 1988); and
- B. The property owner seeks to construct an addition to the pub on the north side of the existing building and prior to construction of the building addition, it is necessary to vacate a portion of the State Street right-of-way, replat the property into a single parcel, and obtain a Site Plan Review permit.
- C. As such, it does not destroy any public right of way, improvements, or alleys, and meets the criteria.

4. **Recording of Vacations.** All approved plat vacations shall be recorded in accordance with the Filing and Recording requirements of this title (Section 16.08.040) and the following procedures:
- a. Once recorded, a replat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
 - b. Vacations shall also divest all public rights in the streets, alleys, and public grounds, and all dedications lay out or described on the plat.

Finding: This standard shall be complied with if the street vacation is approved by imposing a condition of approval requiring recording of the approved vacation plat. The decision approving the vacation shall have the effect described in this section.

5. **After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.

Finding: This is a street vacation to which this standard does not apply.

6. **Vacation of streets.** All street vacations shall comply with the procedures and standards set forth in ORS Chapter 271.

Finding: This street vacation complies with ORS Chapter 271 as demonstrated in Section C. of this report.

B. Goal 12 - Transportation and the Transportation System Plan (TSP)

Finding: State Street was completely rebuilt to City standard in 2014 and this street vacation does not affect its designation and complies with the TSP.

As such, this criterion is met.

C. ORS Chapter 271 - Use and Disposition of Public Lands Generally; Easements

ORS 271.080: Vacation in incorporated cities; petition; consent of property owners. This provision allows any person with any interest in any real property in the City desiring to vacate all or part of any street to submit a petition containing the request. This provision requires the petition to contain “the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby.”

Finding: 2/3rds of the property owners with an interest in real property were not required to sign the application, as it was City initiated.

ORS 271.090: Filing of petition; notice. This provision requires the petition to be filed with the City Recorder or other recording officer of the City. For purposes of

street vacations, the Planning Assistant is the recording officer.

Finding: The petition was filed with the Planning Department, who found the petition consistent (subject to the considerations set forth above) and notified the petitioner of the public hearing dates.

ORS 271.110: “Notice shall be given as provided in [.]” ORS 271.110 requires publication of notice once each week for two consecutive weeks prior to the hearing, and requires the notice to “**describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.**”

Finding: Notice was provided for two consecutive weeks before the Council hearing and the property was posted with notice. The subject area will be posted on in accordance with ORS 271.

ORS 271.120: Hearing; determination. “**At the time fixed . . . for hearing the petition and any objections filed thereto . . . the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such . . . street. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition.**”

Finding: The Planning Commission will hold a public hearing on July 12, 2016 and the Council will conduct a public hearing on July 25, 2016.

271.130 Vacation on city governing body’s own motion; appeal.

Finding: Not applicable.

271.140 Title to vacated areas. The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

Finding: The vacated lands will attach to the adjoining parcel.

271.150 Vacation records to be filed; costs. A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the

cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

Finding: Costs of filing will be incurred by the City.

271.160 Vacations for purposes of rededication.

Finding: Not applicable.

271.170 Nature and operation of statutes. The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

Finding: Not applicable, the City does not have its own street vacation provisions.

Based on the above findings of fact, staff finds that the requirements of ORS 271 are met.

D. HRMC 17.09.040 QUASI-JUDICIAL ACTIONS

This application has been processed as a quasi-judicial action pursuant 17.09.040 review procedures.

III. **RECOMMENDATION AND CONDITIONS:** Based on the above findings and conclusions, staff recommends approval of the proposed vacation with the following conditions of approval:

1. The vacation area shall be subject to all of the assessments of the various taxing districts in which it is situated from this point forward.
2. In accordance with ORS 271.140 and except as expressly conditioned herein, title to the vacation area shall attach in equal portions to the lands directly bordering the Vacation area and from which the dedication was originally made.
3. The City of Hood River shall prepare and record a certified copy of this Ordinance and its attached Exhibit with the Hood River County Clerk and shall bear the costs of such recording.

File No: 2016-13
Fee: _____
Date Submitted: _____

CITY OF HOOD RIVER STREET VACATION APPLICATION

Submit the completed application with twelve (12) additional complete copies, one electronic copy and appropriate fees to the City of Hood River Planning Department, 211 2nd St., Hood River, OR 97031. Please note the review criteria attached to this application. If you have any questions, please contact the Planning Department at (541) 387-5210.

APPLICANT:

Name: CITY OF HOOD RIVER

Address: 211 2ND ST. HOOD RIVER, OR 97031
(physical)

(mailing)

(email) S. WHEELER @ CI. HOOD-RIVER-OR-US

Telephone: 541-386-1488 Cell Phone: _____

Signature: Culabridge for Wheeler

STREET INFORMATION:

Township 3N Range 10E Section 25 DC Tax Lot(s) 5501, 5600

Current Zoning: C-2 (SOUTH OF RIGHT-OF-WAY TO BE VACATED)

Street Location (name and cross streets) STATE ST. @ 2ND ST. (SOUTH SIDE OF STATE ST.)



"Exhibit A"

[illegible]