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I, Dana W. Jenkins, County Clerk, do hereby certify that the within instrument was recorded in the Lincoln County Book of Records on the above date and time. WITNESS my hand and seal of said office affixed.

Dana W. Jenkins, Lincoln County Clerk



After Recording Return to:

Margaret Hawker
City Recorder
City of Newport
169 SW Coast Hwy
Newport, OR 97365

CITY OF NEWPORT

ORDINANCE NO. 2014

AN ORDINANCE VACATING APPROXIMATELY 90 FEET OF ALLEY RIGHT-OF-WAY BETWEEN NW GROVE STREET AND NW NYE STREET, SOUTH OF NW 11TH STREET AND RESERVING AN EASEMENT FOR MAINTENANCE OF A STORM DRAINAGE LINE

Summary of Findings:

1. A street vacation of approximately 90 feet of undeveloped alley right-of-way between NW Grove Street and NW Nye Street, immediately south of NW 11th Street (Newport File No. 1-SV-11), was initiated by Dean Coppag  on March 15, 2011 at the request of the Newport Church of the Nazarene.
2. The Planning Commission of the City of Newport held a public hearing on April 11, 2011, for the purpose of reviewing the proposed request and providing a recommendation to the City Council. Notice of the hearing was provided in the Newport News-Times on April 1, 2011 and April 6, 2011. Affected property owners received mail notice of the hearing on March 21, 2011. The Planning Commission public hearing was held in accordance with the appropriate provisions of the Newport Zoning Ordinance, and, after due deliberation and consideration of the proposed vacation, the Planning Commission, by a unanimous vote, recommended that the proposed street vacation be approved provided an easement is retained in the vacated area for the purpose of maintaining existing storm drainage infrastructure.
3. It has been determined that, at the present time, no City liens are existing or unpaid against the property to be vacated and, by virtue of the fact that it is a dedicated right-of-way, no taxes are unpaid thereon.
4. The City Council fixed May 16, 2011, at 7 p.m. at the Newport City Hall, 169 SW Coast Highway, Newport, Oregon, as the time and place for a formal public hearing regarding the vacation.
5. The City Recorder gave notice of the public hearing by publishing a notice in the Newport News-Times newspaper once each week for two consecutive weeks on April 29, 2011 and May 6, 2011 which notice described the ground proposed to be vacated, the date the petition was filed, the name of at least one of the petitioners, the date of the public hearing, and the

requirement that written objections or remonstrances must be filed with the City Recorder for the City of Newport prior to the time of the hearing, in accordance with ORS 271.110(1).

6. Within five (5) days after the first day of publication of said notice in the newspaper and not less than fourteen (14) days before the hearing date, the City Recorder caused a copy of the notice to be posted in at least two (2) conspicuous places at or near each end of the proposed vacation, in accordance with ORS 271.110(2).

7. On May 16, 2011 at 7 p.m. at the Newport City Hall, the City Council held a public hearing in the Council Chambers on the vacation of the area described above and heard any written objections filed thereto, and heard oral testimony from members of the public in favor of and/or in opposition to said vacation.

8. The owners of the majority of the area affected, computed on the basis provided in ORS 271.080, have not objected in writing to the proposed vacation.

9. The City Council made a determination after considering the recommendation of the Planning Commission, the Planning Staff Report, and the evidence and argument presented at the public hearings and in the record, that the request is in compliance with the applicable criteria and voted to approve the street vacation.

10. The Newport City Council finds the public interest will not be prejudiced by the proposed vacation.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Street portions to be vacated. Except as provided in Section 2 of this ordinance, that portion of an alley located between NW Grove Street and NW Nye Street, south of NW 11th street, as more particularly described below is hereby vacated, and title shall vest in the owners of the land bordering the vacated right-of-way in equal portions, in accordance with ORS 271.140:

Commencing at the Northwest corner of Block 16, Plat of OCEANVIEW, as recorded in Book 1, Page 36, Lincoln County Plat Records, located in the Southwest one-quarter of Section 5, Township 11 South, Range 11 West, Willamette Meridian in Lincoln County, Oregon; thence South 89°51'27" East, along the north line of said Block 16 to the westerly right-of-way of a 20 foot wide alley, a distance of 125.10 feet and the True point of Beginning; thence South 00°17'15" West, along said westerly right-of-way to the Northeast corner of a tract of land as described in Document No. 200708779, Lincoln County Film Records, a distance of 90.12 feet; thence South 89°51'27" East to the easterly right-of-way of said 20 foot wide alley, a distance of 20.00 feet; thence North 00°17'15" East, parallel to the westerly right-of-way of said alley to the north line of Block 16, a distance of 90.12 feet; thence North 89°51'27" West, along said north line, a distance of 20.00 feet to the point of beginning.

Section 2. Storm drainage utility easement to be retained. The City of Newport hereby

reserves to and for the benefit of the City of Newport a permanent non-exclusive easement over, across, and under the area described in Section 1 of this ordinance for the installation, use, repair, replacement and maintenance of storm drainage infrastructure, including but not limited to the right to excavate, fill, clear and perform other acts necessary or convenient to the City's use and enjoyment of the easement area, and the owner of the property affected by the easement shall not use the same in any manner as would unreasonably interfere with such easement.

The City further reserves to itself all rights and privileges of ownership in the existing storm drainage infrastructure located within the area described in Section 1 of this ordinance.

Section 3. Findings. The findings attached as Exhibit "A" are hereby adopted as supporting the requested vacation.

Section 4. Recording. The City Recorder is directed to file certified copies of this ordinance for recording with the Lincoln County Clerk's Office, the County Assessor, and the County Surveyor.

Section 4. Effective Date. The effective date of this ordinance shall be 30 days after the date the ordinance is adopted.

Date adopted and read by title only: June 6, 2011

Signed by the Mayor on June 20, 2011.



Mark McConnell, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

EXHIBIT "A"

FINDINGS OF FACT AND CONCLUSIONS
FILE NO. 1-SV-11

FINDINGS OF FACT

1. The applicant, Dean R. Coppage, on behalf of the owner Newport Church of the Nazarene, requests to vacate approximately 90 feet of undeveloped 20-foot wide alley right-of-way between NW Grove Street and NW Nye Street immediately south of NW 11th Street. The request was made as a petition pursuant to Oregon Revised Statute (ORS) 271.080 et. seq. on March 15, 2011.
2. Properties abutting the subject right-of-way are identified as Tax Lots 2100 and 2700 of Assessor's Tax Map 11-11-05-CA.
3. The Planning Commission held a duly noticed public hearing on the proposed street vacation on April 11, 2011. Testimony was received from the applicant, who explained that they are looking to vacate the alley right-of-way so that they can construct a parking lot that is to serve a new outreach/recreation facility. The Planning Commission voted unanimously in favor of forwarding a recommendation to the City Council to approve the street vacation with a condition that a storm drainage easement be reserved over the vacated portion of the alley so that the City can maintain an existing 24" concrete storm drainage line.
4. A Planning Staff Report with attachments was prepared for the Planning Commission and City Council public hearings. The Planning Staff Report and attachments are hereby incorporated by reference into the findings. The Planning Staff Report contained the following attachments:

- Attachment "A" – Application Form
- Attachment "A-1" – Applicant's Letter Requesting Vacation
- Attachment "A-2" – Legal Description for Area to be Vacated
- Attachment "A-3" – Title Report
- Attachment "A-4" – Proposed Vacation Area Map
- Attachment "A-5" – Map of Consenting Properties
- Attachment "A-6" – List of Property Owners Receiving Notice
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area
- Attachment "D" – Aerial Map of the Property

5. The Planning Staff Report contained the following facts in regard to the proposed street vacation:

- A. **Plan Designation:** Low Density Residential.
- B. **Zone Designation:** R-2/"Medium Density Single-Family Residential".

- C. **Surrounding Land Uses:** Surrounding uses include residential uses, and the property abuts heavy commercial uses. The Newport Fire Station is situated southwest of the subject site.
- D. **Topography and Vegetation:** The applicant notes that the property is cleared and slopes gently from north to south.
- E. **Existing Structures:** None.
- F. **Utilities:** All are available to the site.
- G. **Development Constraints:** None known.
- H. **Past Land Use Actions:** File No. 11-CUP-10, approval of a request for construction of a new building on the church property located in a residential zone. Final Order adopted January 13, 2011.

File No. 1-SV-02, a request to vacate the alley was submitted by the Nazarene Church, but was not granted. From the record, it appears that the Church received direction from the City to prepare an easement for a storm drainage line that is located in the alley. The easement agreement and street vacation were not completed.

- I. **Notification:** Notification to surrounding property owners, to City departments, and to public/private utilities/agencies was mailed on March 21, 2011. See Planning Staff Report Attachment "B" (Public Hearing Notice and Map). Notification distance is as specified in ORS 271.080(2) for street vacations. The notice of Planning Commission public hearing for the request was also published in the Newport News-Times on April 1, 2011, and April 6, 2011. Notice was also posted at or near each end of the proposed vacation consistent with ORS 271.110(2).

6. Written comments received prior to the April 11, 2011 public hearing included the following:

- A. On April 5th, Greg Schaecher with the Public Works Department commented that a 24" concrete storm drain pipe is located within the alley right-of-way and that an easement should be reserved for maintenance of this facility.

7. The City Council opened the public hearing on May 16, 2011. The City Council heard a report from staff, and heard testimony from Dean Coppage in support of the vacation. The Council voted unanimously in favor of vacating the area as proposed with the condition that a storm drainage easement be reserved. The minutes of the May 16, 2011 City Council meeting are hereby incorporated by reference into the findings.

8. The City Council finds that ORS 271.120 sets out three criteria for granting or denying a street vacation petition. Those criteria are as follows:

- A. Whether the consent of the owners of the requisite area *[as defined in ORS 271.080 (2)]* has been obtained;
- B. Whether notice has been duly given *[for the public hearing before the City Council]*; and
- C. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof.

The statute further notes that the governing body may, upon hearing, grant the petition in part and deny in part, and make such reservations, or either, as appear to be for the public interest.

CONCLUSIONS

1. Whether the consent of the owners of the requisite area *[as defined in ORS 271.080(2)]* have been obtained; and,

On March 15, 2011, the applicant submitted the names and addresses of abutting property owners along with their original, notarized signatures indicating consent for the street vacation. These documents are available in the case file. For Approval of the vacation, ORS 271.080 (2) requires “the consent of the owners of the abutting property and not less than two-thirds in area of the real property affected thereby.” Written notarized consents were submitted from property owners as follows:

Assessor's Map 11-11-05-CA

<u>TAX LOT</u>	<u>OWNER</u>
00300	Newport Church of the Nazarene
02100	Newport Church of the Nazarene
02300	Newport Church of the Nazarene
02400	Newport Church of the Nazarene
02500	Newport Church of the Nazarene
02600	Newport Church of the Nazarene
02700	Newport Church of the Nazarene
02800	Sacred Heart Catholic Church
03200	Sacred Heart Catholic Church
03300	Sacred Heart Catholic Church
03303	City of Newport
03400	Sacred Heart Catholic Church

Assessor's Map 11-11-05-BD

<u>TAX LOT</u>	<u>OWNER</u>
04800	G & G Investments
05002	Newport Church of the Nazarene

The notification area under ORS 271.080 extends 200 feet to either side of the right-of-way being vacated, and a distance of 400 feet from the terminal ends of the right of way being vacated. This creates a rectangular shaped notification area (see Planning Staff Report Attachment "A-4"). As noted, consent must be obtained from the owners of two-thirds of the

real property (excluding right-of-way) within the notice boundary. In the subject circumstances, consent has been obtained for almost all of the property (Staff report Attachment "A-5"). The only properties where consent was not obtained are Tax Lot 2200, and small portions of along the perimeter of the notification boundary. The City Council concludes that this information is adequate to establish that the required level of ownership consent has been obtained.

2. Whether notice has been duly given [for the public hearing before the City Council]; and,

Notice of the April 11, 2011 Planning Commission hearing was provided via direct mail and newspaper notice advising the public and utilities of the petition request. The same notice was provided for the City Council meeting, along with notices posted on the property pursuant to the requirements of ORS 271.110. Copies of the notices were included in the packets for the May 16, 2011 City Council hearing. The City Council concludes that this information is adequate to establish that the required notice was provided.

3. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof.

The existing alley right-of-way is not improved. The applicant in the proposed findings contends that the public interest will not be prejudiced given that this is the case, and that the area was a deep canyon drainage area until the Church acquired the adjoining properties and filled the area. As noted earlier, the Church intends to develop a parking lot at this location consistent with plans approved by the City for an outreach/recreation facility (Permit #11-CUP-10). The City approval noted that a street vacation would be required in order for the parking area to be completed as proposed.

City staff reviewed the Newport Transportation System Plan (1997), North Side Local Street Plan (2008) and Newport Bicycle and Pedestrian Plan (2008) and advised the Council that the plans do not identify specific improvements for the alley. There are also no projects planned for the alley that the City is collecting System Development Charges to complete.

The Public Works Department has noted, and utility plans submitted by the petitioner with Permit #11-CUP-10 show, a 24" concrete storm drainage line within the right-of-way that is to be vacated. Public Works recommends that an easement be reserved to the benefit of the City for maintenance purposes. This can be accomplished as part of a Street Vacation Order, and ensures that the public interest in using the line is preserved. For these reasons the City Council concludes that the public interest will not be prejudiced by vacating the right-of-way as long as an easement is reserved to maintain the existing concrete storm drainage line.

OVERALL CONCLUSION

Based on the staff report and other evidence and testimony in the record, the City Council concludes that the requested vacation complies with the criteria established for approval of a vacation under the applicable ORS requirements and approves the street vacation with the following conditions of approval:

1. A storm drainage utility easement shall be retained over the portion of the alley to be vacated for the purpose of maintaining an existing 24" concrete drainage line.