

CITY OF FLORENCE
ORDINANCE NO. 5, SERIES 2014

AN ORDINANCE FOR THE VACATION OF THE 10-FOOT WIDE ALLEY EXTENDING THE LENGTH OF BLOCK 45 OF FRASIER & BERRY'S PLAT PART OF THE CITY OF FLORENCE AS PLATTED AND RECORDED IN BOOK 2, PAGE 1, LANE COUNTY, OREGON PLAT RECORDS, LYING EAST OF THE EASTERLY RIGHT OF WAY LINE OF OAK (HOWARD) STREET AND WEST OF THE WESTERLY RIGHT OF WAY LINE OF VACATED PINE (FRASIER) STREET, IN LANE COUNTY, OREGON.

WHEREAS, Theodore and Patricia Wiemer have presented a petition for the vacation of the alley in Block 45 of Frasier & Berry's Plat Part of the City of Florence between 26th and 27th Streets east of Oak Street and west of the vacated Pine Street; and

WHEREAS, such petition contained the required number of consents; and

WHEREAS, the City Council has the authority, after requesting the recommendation of the Planning Commission, and after proper notice and public hearing, to approve petitions for vacations of alleys; and

WHEREAS, the Florence City Council received a recommendation from the Planning Commission for approval, and having received no testimony in opposition, finds that the requested vacation is in the public interest, and should be approved.

NOW THEREFORE, THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

Section 1. The alley located between 26th and 27th Streets east of Oak Street and west of the vacated Pine Street as shown on the map attached as Exhibit "C," is hereby vacated.

Section 2. The Findings of Fact as shown in Exhibit A are hereby adopted;

APPROVED BY THE FLORNECE CITY COUNCIL this 6th day of October, 2014.

AYES: 4 – Councilor Jagoe, Henry, Greene and Mayor Xavier

NAYS: 0

ABSTAIN: 0

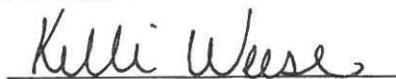
ABSENT: 1 – Councilor Roberts

APPROVED BY THE MAYOR, this 6th day of October, 2014.



Nola Xavier, MAYOR

ATTEST:



Kelli Weese, City Recorder

**STAFF REPORT AND FINDINGS
FLORENCE COMMUNITY DEVELOPMENT DEPARTMENT
City Council
Exhibit "A"**

Public Hearing Date:	October 6, 2014	Planning Technician:
Date of Report:	September 29, 2014	Glen Southerland
Application:	CC 14 05 VAC 02 PC 14 10 VAC 01	

I. PROPOSAL DESCRIPTION

Proposal: An application for vacation of an alleyway traversing east to west in Block 45 of Frasier & Berry's Plat Part of the City of Florence between 26th and 27th Streets, east of Oak Street & west of vacated Pine Street.

Applicant: Ted & Patricia Wiemer, Owners of Ocean Breeze Mobile Court

Property Owner: City of Florence

Location: East-west alley in Block 45, Frasier & Berry's Plat Part of the City of Florence
Mid-block between 26th and 27th Streets, east of Oak Street, west of vacated Pine

Comprehensive Plan Map Designation: High Density Residential

Zone Map Classification: Multi-Family Residential

Surrounding Land Use / Zoning:

Site:	Undeveloped Alley / Multi-Family Residential
North:	Ocean Breeze Mobile Court / Multi-Family Residential
South:	Single-Family, Parking Lot & Vacant/ Multi-Family Residential
East:	Holiday Bowl & Siuslaw Valley Fire and Rescue Station 1/ Highway
West:	Siuslaw Middle School / Multi-Family Residential

Streets / Classification:

West – Oak Street / Collector; North – 27th Street / Local; East – None; South – 26th Street / Local

II. NARRATIVE:

The Ocean Breeze Mobile Court was first established as Cox's Mobile Home Court at some point prior to 1975, when a number of permits to place homes on the site were obtained by the owner of record, Alva Cox.

At the time it was established, the mobile home court had 24 lots. A 25th lot was added when Pine Street was vacated south of 27th Street, west of Holiday Bowl. The

east-west alley in Block 44 of Frasier and Berry's Plat Part of the City of Florence north of 27th Street was also vacated, but the section of Pine Street adjacent to this block was not.

Ted and Patricia Wiemer, owners of Ocean Breeze Mobile Court, have petitioned to have the alley mid-block of Block 45 of Frasier and Berry's Plat Part of the City of Florence vacated. They applied for the vacation on June 30, 2014. City Council initiated the vacation on July 21, 2014 following a hearing to consider public interest in the vacation.

The applicant has obtained approval from Public Works to begin work in the alley and remove vegetation. The applicant intends to remove a Central Lincoln PUD utility pole and install underground electrical utilities from the alley to the lots north of the alley.

The applicant has also indicated that he intends to obtain all vacated portions of the alley granted to the property owner to the south, Ed Scarberry, and to the southeast, Siuslaw Valley Fire & Rescue.

The Planning Commission held a duly-advertised public hearing on August 26, 2014 regarding this application. The Planning Commission established three conditions of approval that needed to be met prior to the final City Council hearing on the proposed vacation. The Planning Commission recommended that the City Council complete the requested vacation and allow the alley to be transferred to the surrounding property owners at their August 26, 2014 meeting as Resolution PC 14 10 VAC 01. At the time of report writing, the applicant had met two of the three conditions issued by the Planning Commission.

III. NOTICES & REFERRALS:

Notice: On August 7, 2014 notice was mailed to surrounding property owners within 200 feet north and south of the area to be vacated and 400 feet east and west of the area to be vacated. Notice was published in the Siuslaw News on August 20, 2014.

Prior to the City Council hearing regarding this request, notice was published for three consecutive weeks in the Siuslaw News on the following dates: September 17, 2014; September 24, 2014; and October 1, 2014.

The property was posted on September 11, 2014. Notices regarding the vacation were posted at both ends of the alley and at two points between the east and west ends of the alley spaced closer than required by City Code.

Prior to the October 6, 2014 City Council meeting regarding the proposed vacation, notices were mailed on September 11, 2014 to surrounding property owners within 200 feet north and south of the area to be vacated and 400 feet east and west of the area to be vacated.

At the time of this report, the City had received written comments from Ed Scarberry, directing staff to refer to his June 18, 2014 letter regarding the alley vacation (included as Exhibit F).

Referrals: On August 7, 2014 referrals were sent to the Florence Building Department, Florence Public Works, Central Lincoln PUD and Siuslaw Valley Fire and Rescue.

At the time of this report, the City has only received comments from PWD Miller concerning an easement being needed for the underground electric utilities which the Mobile Court owner and applicant will be placing to replace the utility pole currently in the alley.

Prior to the October 6, 2014 City Council hearing regarding the request, referrals were sent once more to the Florence Building Department, Florence Public Works, Central Lincoln PUD, and Siuslaw Valley Fire and Rescue.

The City received comments from Robin Hicks of Central Lincoln PUD, who had comments regarding the easement to be retained by the applicant and Sean Barrett of Siuslaw Valley Fire and Rescue, who stated that their agency had no concerns.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 8:

Chapter 3: Property Vacations, Sections 3-3, 3-4-1 thru 3-4-3, 3-5-1, 3-5-2, 3-6-1 and 3-6-2

Florence City Code, Title 10:

Chapter 36: Public Facilities, Section 2-1-A

Oregon Revised Statutes:

ORS 271.160: Vacations for purposes of rededication

Florence Realization 2020 Comprehensive Plan:

Chapter 8: Parks, Recreation and Open Space, Recommendation 9

V. PROPOSED FINDINGS

FLORENCE CITY CODE

TITLE 8: CHAPTER 3: PROPERTY VACATIONS

8-3-3: INITIATION: Proceedings for the vacation of a public way or part thereof, may be initiated upon petition of the abutting owner(s) or upon the majority vote of the Council. The petition of the abutting owner(s) shall be accompanied by an application fee set by resolution. The fee is to cover administrative costs and the costs of publication and notice, and is not refundable.

The applicant applied for vacation of the alley on June 30, 2014. At their July 21, 2014 meeting, the Florence City Council initiated the vacation of the alley. The applicant has obtained 100% approval of abutting property owners and 100% of affected property owners.

By the definition of "Affected Property" included in FCC 8-3-2: Definitions, no others besides the five listed affected property owners: Ted and Pat Wiemer, Ed Scarberry, Siuslaw Valley Fire and Rescue, Siuslaw School District 97J, and Florence Coastal Hardware Co, are affected properties. The definition of an affected property is as follows (From FCC 8-3-2):

The land lying on either side of the public way or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the public way for 400 feet along its course beyond each terminus of the part proposed to be vacated to its termini, the land embraced in an extension of the public way for a distance of 400 feet beyond each terminus shall also be included.

For these purposes, only signatures were collected from property owners extending 400 feet east and west of the area to be vacated and to the next parallel streets to the north and south, rather than the full 200 feet. All parties within the 200'x400' area were noticed by mail.

8-3-4: DETERMINATION OF VALUE:

8-3-4-1: COUNCIL HEARING ON INITIATION: Upon receiving the petition for vacation the City Manager shall set a public hearing before the Council to make a preliminary determination of the public interest in the vacation, if any, and to determine the value of the public way to be vacated if the vacation appears to be in the public interest. Not less than five days prior written notice of the hearing shall be given to the petitioners and the owner(s) of affected property. Such notice shall be by first class U.S. Mail to such property owners as shown in the latest Lane County tax assessment roll or upon the City's utility records.

Notice was mailed to affected property owners on July 15, 2014 prior to the initiating City Council meeting on July 21, 2014.

8-3-4-2: CRITERIA: In determining the value of the public way to be vacated other than an alley, the Council shall consider any relevant appraisals the City possesses and the public information in the files of the Lane County Assessment and Taxation Department or its successor agency. Except for direct uses by a public body supported by local property taxes, in the absence of more relevant information the Council shall calculate the value based on the square foot value of abutting real property as shown on the current Lane County assessment roll, less a percentage for easements retained for public use. The abutting owner(s) may request the Council to obtain other evidence

of value from a licensed real estate appraiser hired by the City. All such appraisal costs shall be borne by the requesting abutting property owner(s). The Council may consider this evidence and adjust its determination of value as the Council may find to be just and equitable. The basis for any such adjustment shall be stated on the record at the time the Council takes action. No determination of value shall be made or assessed to abutting property owners hereunder if the public way being vacated is an alley. (Ordinance No. 11, Series 1996)

Because the area to be vacated is an alley, no determination of value was made or assessed for the vacation of the alley.

8-3-4-3: ACTION: After the hearing is closed, the Council may deny the petition or may forward the petition to the Planning Commission for its recommendation and shall set the amount of the assessment.

The City Council initiated vacation of the alley on July 21, 2014 and forwarded the petition to the Planning Commission for recommendations. No value will be set for the assessment of the alley.

8-3-5-1: PLANNING COMMISSION HEARING: Upon referral of vacation proceedings from the Council, the City Manager shall set a public hearing before the Planning Commission. Notice shall be given at least seven days before the public hearing by mailing the notice to the petitioner(s), affected property owners and others appearing on the matter before the Council in its hearing under subsection 8-3-4-1.

Notice was mailed to the applicant, affected property owners, and others within the 200'x400' area of effect. These notices were mailed on August 7, 2014, more than 7 days prior to the Planning Commission public hearing on the subject.

8-3-5-2: ACTION: After the hearing is closed, the Planning Commission shall determine whether the public interest will be served or prejudiced by the vacation of the public way or part thereof. In determining whether the public interest will be served or prejudiced, the Planning Commission shall consider the goals of the Florence Comprehensive Plan and Section 10-1-1-3 of this Code. The Planning Commission's decision shall be in the form of a recommendation to the Council.

The Planning Commission determined that there was no public interest served by retaining the alley and no public interest prejudiced by vacation of the public way. There were no applicable sections of the Florence Comprehensive Plan or the Parks and Recreation Master Plan. Florence City Code 10-1-1-3 is addressed below.

8-3-6-1: COUNCIL HEARING: Following the Planning Commission's recommendation, the City Manager shall set a public hearing before the Council.

A. Commencing at least 20 days before the hearing the notice required by this subsection shall be:

1. **Published for three consecutive weeks in a newspaper of general circulation in the City;**
2. **Posted at each end of the public way proposed for vacation and if the length of the public way exceeds 150 feet, within the area to be vacated in a conspicuous place at least once every 150 feet of length;**
3. **Mailed to the petitioner(s), the owners of affected property and any other person appearing before the Council and Planning Commission in the earlier hearings.**

Notice of the requested vacation was published for three consecutive weeks in the Siuslaw News on September 17, 2014; September 24, 2014; and October 1, 2014.

Notices were posted at both ends of the alley which met the criteria prescribed by FCC 8-3-6-1-B and at two other points in the alley less more frequently than required by FCC 8-3-6-1-A-2.

Public Hearing Notices were also mailed to the petitioners and the owners of affected property. There were no other persons appearing before the City Council or Planning Commission at earlier hearings regarding this matter.

B. The notice required by this subsection shall:

1. **Describe the public way proposed to be vacated;**
2. **Identify the name of at least one petitioner;**
3. **Identify the date the Council initiated the proceedings and, if appropriate, the cost to be assessed abutting property;**
4. **The date, time and place by which any written remonstrance must be filed;**
5. **The date, time and place of the public hearing before the Council; and**
6. **Where people may telephone or write for additional information.**

The notice posted in the right-of-way met all requirements of this code.

8-3-6-2: COUNCIL ACTION:

- A. **After the hearing is closed, the Council shall determine whether the consent of the abutting owners has been obtained, whether notice has been duly given, and whether the public interest will be served or prejudiced by the vacation of the public way or part thereof. In determining whether the public interest will be served or prejudiced, the Council shall consider the goals of the Florence Comprehensive Plan, Section 10-1-1-3 of this Code, and whether the public way to be vacated**

may be needed for future public use. The Council may grant the petition in whole or in part, with such reservations as would appear to be for the public interest, including reservations pertaining to the public use of any easements retained by the City in the portion vacated.

- B. If such matters are determined in favor of the petition, the Council shall direct that an ordinance be prepared that would make such determination a matter of record and vacate the public way or part thereof. After the abutting owner(s) has paid or agreed to pay the value of the public way to be vacated, as provided in Section 8-3-6-3 of this chapter, the Council may take final action on the ordinance. If the abutting owner(s) has not done so or taken reasonable steps to do so within 30 days after the Council has directed that an ordinance be prepared, the petition shall be deemed withdrawn and the Council shall take no further action.
- C. Denial of the petition shall be by resolution setting forth the reasons for the denial.

At their meeting of October 6, 2014, the City Council shall determine if the application has met the requirements of City Code and the Florence Comprehensive Plan. Approval of the request will be in the form of an Ordinance, while a denial of the request will be in the form of a resolution stating the reasons for the denial.

TITLE 10: CHAPTER 36: PUBLIC FACILITIES

10-36-2-1: Development Standards. The following standards shall be met for all new uses and developments:

- A. All new lots created, consolidated, or modified through a land division, lot line adjustment, lot consolidation, or street vacation must have street frontage and approved access to a street.

The lots abutting this alley have approved access to surrounding streets and the vacation of the alley will have no effect on street frontage. The applicant intends to use the alley for access to Ocean Breeze Mobile Court, moving the side lot line and driveway away from the existing homes, as well as eliminating an area that was previously unmaintained by adjacent property owners.

The mobile homes located on the applicant's property currently have street access from 27th Street. Each home in the Mobile Court south of 27th Street has a driveway with curb cut on 27th Street. Homes north of 27th Street gain access from a private driveway where no backing onto the street is required.

OREGON REVISED STATUTES

CHAPTER 271 – USE AND DISPOSITION OF PUBLIC LANDS GENERALLY; EASEMENTS

271.160 Vacations for purposes of rededication. No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

The applicant has indicated that he intends to acquire all portions of the vacated alley of Block 45 of Frasier and Berry's Plat Part of the City of Florence from abutting landowners after the completion of the vacation procedure. The applicant has been made aware that this requires a lot line adjustment and permission from the abutting property owners. The applicant shall provide documentation indicating the lot lines of his property and those of property owners to the south of the alley prior to approval by the City for a lot line adjustment.

The vacation of the alley will not be conditioned upon the agreement of abutting land owners to a lot line adjustment. The vacation of the alley shall be final and any other property adjustments shall require a separate application and review.

FLORENCE REALIZATION 2020 COMPREHENSIVE PLAN

CHAPTER 8: PARKS, RECREATION AND OPEN SPACE

RECOMMENDATIONS:

9. The City should review the listing of rights-of-way suitable for recreation use prior to vacating public rights-of-way.

The right-of-way proposed for vacation is not listed in Table 13: Inventory of Lands Important to Park System – Road Rights-of-way of Appendix C of the Florence Parks and Recreation Master Plan, 2011 (Park System Master Plan – Part 2, 1986). Pine Street from 25th to 29th Streets was included as part of this inventory, but was vacated regardless. With the vacation of Pine Street, the alley does not traverse the full length of the block nor does the alley have an outlet. The alley is generally unsuitable for any public recreational uses.

VI. ALTERNATIVES

- 1. Approve the application based on the findings of compliance with City regulations and the Florence Realization 2020 Comprehensive Plan.**
- 2. Modify the findings, reasons or conditions, and approve the request as modified.**

3. Deny the application based on the Council's findings and provide a reason for the denial through Resolution.
 4. Continue the Public Hearing to a date certain if more information is needed.
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VII. CONCLUSIONS AND RECOMMENDATIONS

Staff finds that the proposed application meets the requirements of City Code with conditions, and recommends that the Planning Commission provide a recommendation of approval of the vacation to the City Council subject to the conditions listed below.

VIII. CONDITIONS OF APPROVAL

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

1. Approval shall be shown on:

"A" *Findings of Fact*

"B" Petition for Alley Vacation

"C" Map of Area to be Vacated

"E" Referral Comments Received

Findings of Fact attached as Exhibit "A" are incorporated by reference and adopted in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.

2. Regardless of the content of material presented for this Planning Commission, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to filing of the City Council Ordinance approving the vacation.
 3. The applicant shall retain an easement for the placement of electric utilities and provide this information to Central Lincoln PUD for recording with Lane County Deeds and Records.
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IX. EXHIBITS

"A" Findings of Fact
"B" Petition for Alley Vacation
"C" Map of Area to be Vacated
"D" Applicant Correspondences with Abutting Property Owners
"E" Referral Comments Received from PWD Miller, CLPUD, and SVFR
"F" Testimony submitted by Ed Scarberry, Abutting Property Owner

Exhibit C

