

## **STAFF REPORT FOR COUNCIL MEETING**

IN CONSIDERATION OF RESOLUTION NO. 19-4962, FOR THE PURPOSE OF  
AUTHORIZING THE CHIEF OPERATING OFFICER TO TRANSFER AN INTEREST IN  
REAL PROPERTY TO D.J. RICHARDSON PROPERTIES LIMITED PARTNERSHIP

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Date: January 17, 2019

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Department: Parks and Nature

Presenter: n/a

Meeting date: January 31, 2019

Length:

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### **ISSUE STATEMENT**

This matter involves a request by a private property owner – D.J. Richardson Properties Limited Partnership (Richardson) – to vacate SE Grand Avenue public right of way in the City of Portland. The subject section of right of way is adjacent to the Richardson property as well as Metro property. As such, under Oregon law (ORS 271.080 et seq.), Metro is both an affected and abutting property owner, and its consent to the vacation petition is required. Richardson approached Metro seeking its consent to the vacation petition.

### **ACTION REQUESTED**

Through this resolution, staff respectfully requests that the Metro Council authorize the Chief Operating Office to consent to the vacation petition and execute an agreement and other documents necessary to transfer Metro's statutory interest in the vacated right of way to Richardson for fair market value compensation. All terms and conditions will be negotiated or approved by the Office of Metro Attorney.

Richardson intends on filing the vacation petition with the City of Portland promptly upon receiving Council authorization and executing an agreement with Metro. The vacation proceeding is anticipated to take four to six months.

### **IDENTIFIED POLICY OUTCOMES**

Metro Code 2.04.050 requires Metro Council authorization for the Chief Operator to transfer interests in real property.

This is a request to transfer an interest in real property, specifically Metro's statutory interest in the right of way to be vacated. Metro does not currently own the right of way at issue.

As provided for by ORS 271.080 et seq. (state vacation law), the statutory interest in a vacated right of way is a real property interest associated with Metro's property. Under Oregon Law (ORS 271.140), when right of way is vacated, title to the area vacated is attached to the lands bordering the area vacated in equal portions.

## **POLICY QUESTION(S)**

This request is to ensure compliance with Metro Code.

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Under state law, Metro may consent or withhold consent to the vacation petition. There are three options for the Council to consider: withholding consent to the vacation petition, authorizing Metro's consent to the vacation petition, or authorizing Metro's consent with an agreement to transfer Metro's statutory interest for fair market value compensation.

### Option 1 - Withholding consent:

Withholding consent would maintain the status quo. The vacant right of way would remain undeveloped and underutilized. Richardson would not be able to proceed with its vacation petition and could not include the land in future development plans. The Richardson property is zoned to support residential and commercial uses. Metro would be forgoing receipt of fair market value compensation for its statutory interest in public right of way.

### Option 2 – Consent without transferring interest:

Consenting to the vacation petition without transferring an interest in the property would result in Metro owning a very small piece of land that would remain vacant and undeveloped. That is not a desired outcome.

As depicted on *Exhibit A*, the subject right of way is east of the Springwater Corridor. The Springwater corridor is developed with the Springwater Trail. However, the subject SE Grand Avenue right of way is isolated and disconnected from the corridor by the rail line and steep slopes east of the rail line.

If Metro took ownership and possession of the vacated right of way, it would present management difficulties and serve no public use or benefit. Ownership would also take time and resources away from necessary park and natural area operations and needs elsewhere.

### Option 3 – Consent and transfer interest:

Consenting to the vacation petition and executing an agreement to transfer Metro's statutory interest to Richardson would result in Richardson owning the small piece of land and Metro receiving fair market value as compensation. The piece of land would be incorporated into Richardson's interest in the vacated right of way and thereafter associated with the larger piece of property owned by Richardson.

The right of way is currently undeveloped and is not intended or needed for public right of way purposes. The best use of the right of way is to incorporate it into the development of the Richardson property.

### **STAFF RECOMMENDATIONS**

Parks and Nature recommends that Metro consent to the vacation *only if* Metro conveys its interest in the vacated section of right of way to Richardson. Metro intends to receive fair market value compensation for conveying its statutory interest in the real property. Fair market value will be determined by a professional appraisal.

Metro Parks and Nature Department seeks permission for Metro staff to execute an agreement with Richardson with terms and conditions negotiated by the Office of Metro Attorney. The agreement will include, among other terms and conditions:

- Metro consenting to the City of Portland SE Grand Avenue vacation petition;
- Metro conveying its statutory interest in its portion of the vacated right of way to Richardson;
- Richardson paying fair market value to Metro based on a professional appraisal;
- Richardson undertaking all costs and efforts associated with filing and finalizing the vacation proceeding; and
- Metro not owning, managing, or possessing the right of way proposed for vacation at any time.

### **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

Consenting to the vacation and conveying Metro's interest to Richardson would result in a one-time payment to Metro at no cost to Metro. Additional revenue could be used to support department programs and operations elsewhere.

- Known Opposition/Support/Community Feedback
  - *None.*
- Legal Antecedents
  - *Metro Code 2.04.050 (requires Metro Council authorization for the Chief Operator to transfer interests in real property) and ORS 271.080 et seq. (State vacation law).*
- Anticipated Effects

- *Receipt of fair market consideration for statutory interest in real property that Metro is forgoing.*
- Financial Implications (current year and ongoing)
  - *None; Richardson will bear all expenses for vacation.*

## **BACKGROUND**

Metro owns real property in Southeast Portland that is developed with the Springwater Corridor Regional Trail and railroad corridor, and other portions which are vacant. Richardson owns real property east of Metro Property. A portion of undeveloped, vacant City of Portland right of way known as SE Grand Avenue, is located between Metro Property and Richardson Property. *See Exhibit A (Aerial Map)*. It is immediately south of the Sellwood Bridge.

The portion of vacated right of way that Metro is statutorily entitled to is depicted in Exhibit A. The land area is approximately 2,000 – 3,000 square feet. The land area is not a legal lot of record and is only of use or value to the Richardson Property.

Metro does not want to obstruct Richardson's development efforts.

Metro Parks and Nature Department has reviewed the right of way parcel and determined it: is not needed to fulfill the mission of the Department, would be difficult to manage, would not benefit the adjacent Metro holding or uses occurring thereon, and would take time and resources away from necessary park and natural area operations and needs. In sum, the portion of vacated right of way that Metro would otherwise receive is of no public benefit and would serve no public purpose.

## **ATTACHMENTS**

*See Exhibit A (Aerial Map).*