

SPECIAL LAUDERDALE CITY COUNCIL MEETING
5:30 P.M. WEDNESDAY, MAY 29, 2019
LAUDERDALE CITY HALL, 1891 WALNUT STREET

The City Council is meeting as a legislative body to conduct the business of the City according to Robert's Rules of Order and the Standing Rules of Order and Business of the City Council. Unless so ordered by the Mayor, citizen participation is limited to the times indicated and always within the prescribed rules of conduct for public input at meetings.

1. **CALL TO ORDER THE LAUDERDALE CITY COUNCIL MEETING**
2. **ROLL CALL**
3. **APPROVALS**
 - a. Agenda
4. **DISCUSSION / ACTION ITEM**
 - a. Alley Vacation Request by Residents of Malvern Street and Eustis Street
5. **ADDITIONAL ITEMS**
6. **ADJOURNMENT**

**LAUDERDALE COUNCIL
ACTION FORM**

Action Requested

Consent _____
Public Hearing _____
Discussion _____ X _____
Action _____
Resolution _____
Work Session _____

Meeting Date May 29, 2019
ITEM NUMBER Alley Vacation Request
STAFF INITIAL AB
APPROVED BY ADMINISTRATOR _____

DESCRIPTION OF ISSUE AND PAST COUNCIL ACTION:

At the last meeting, residents from Malvern Street and Eustis Street that abut the planned alley improvements submitted an alley vacation request to the City Council. As the City Council hasn't received an alley vacation request in decades, the city attorney was invited to explain the legal context of alley vacations and answer questions. He provided the following memo with background information in advance of the meeting.

OPTIONS:

STAFF RECOMMENDATION:

Kennedy

&

Graven

CHARTERED

Ronald H. Batty
470 US Bank Plaza
200 South Sixth Street
Minneapolis MN 55402

(612) 337-9262 telephone
(612) 337-9310 fax
rbatty@kennedy-graven.com
<http://www.kennedy-graven.com>

MEMORANDUM

To: Lauderdale City Council
Heather Butkowski, city administrator

From: Ron Batty, city attorney
David Anderson, assistant city attorney

Date: May 22, 2019

Re: Petition to Vacate Unimproved Alley

I. Introduction

The city of Lauderdale (the “City”) recently entered into a contract for the City’s 2019 Infrastructure Improvement Project (the “Project”). While the Project consists primarily of street and utility improvements along Eustis Street and Roselawn Avenue, it also includes improvements to the two existing gaps in the City’s alley system (the “Alley Improvements”). Due to their opposition to the Alley Improvements, approximately 12 property owners recently signed and submitted a petition requesting that the City vacate a 500-foot portion of the unimproved alley that is subject to said improvements. This memorandum outlines the procedural requirements for responding to the petition and outlines the legal standard that must be applied when considering the requested vacation.

II. Background

The Alley Improvements were carefully detailed in the Project’s feasibility study that was prepared and presented to the city council at its regular meeting on December 11, 2018. The Alley Improvements will complete the city’s alley system by improving approximately 650 feet of platted alley between Malvern Street and Eustis Street. Of the 650 feet, roughly 500 feet lies between Spring Street and Summer Street, and the remaining 150 feet is located just north of Summer Street. The Alley Improvements were included as part of the Project because paving these alleys will, in part, help the city address recurring maintenance issues, improve garbage and snowplowing routes, limit the need for front yard parking in the City, and provide additional access for residents and their guests.

On May 15, 2019, the City received a petition signed by 12 property owners requesting the vacation of the 500 feet of unimproved alley between Spring Street and Summer Street that is scheduled to be paved as part of the Project (the “Subject Alley”). The petition seeks vacation because, according to the petitioners, improving the Subject Alley is “not necessary for traffic circulation.”

III. Vacation Procedure and Legal Standard

a. Public Hearing Requirement

Vacating an alley is an official act that permanently divests the City of its right to utilize dedicated right-of-way for the public benefit. Alley vacations are subject to the procedural requirements contained in Minnesota Statutes, section 412.851. After receiving a petition to vacate, the City is required to hold a public hearing. Notice of the public hearing must be posted and published in the City’s official newspaper at least two weeks before the hearing. Furthermore, at least ten days before the hearing, notice needs to be mailed to all affected property owners with a copy of the petition or the proposed vacation resolution. The statute does not specifically define “affected property owner” but in this case, notice of the hearing and a copy of the petition should be mailed to all owners of real property on both Eustis Street and Malvern Street, north of Spring Street and south of Summer Street. Finally, because more than half of the owners abutting the Subject Alley signed the petition, vacation requires a simple majority vote of the city council.¹

b. Legal Standard

Dedicated right-of-way, including platted streets and alleys, is not owned in fee by the City. Rather, platted right-of-way is dedicated to the public and held in trust by the City.² Therefore, under state law, an alley can only be vacated if the city council finds that it is “in the interest of the public to do so.”³ Courts have likewise held that public right-of-way can be vacated only when such vacation “will prove beneficial to the public interests.”⁴

The Minnesota Attorney General has also opined that vacation “is a question of fact which the council alone must determine in the exercise of reasonable discretion” and that in making its determination, “the council is performing a legislative function, which unless the decision is arbitrary or the result of an abuse of discretion, is beyond judicial control.”⁵ Therefore, the city council’s decision whether to vacate an alley is legislative in character and will only be set aside if it appears that the council applied an incorrect standard or acted arbitrarily and capriciously against the best interests of the public.

¹ If less than a majority of abutting property owners petition for a vacation, the city council can still vacate but a 4/5 vote is required.

² See *Schurmeier v. St. Paul & P. R. Co.*, 10 Minn. 82, 105 (Minn. 1865).

³ Minn. Stat. § 412.851.

⁴ *Petition of Krebs*, 6 N.W.2d 803, 804 (Minn. 1942).

⁵ Minn.Ag.Op. 396g-16 (Sept. 18, 1958); see also Minn.Ag.Op. 396g-16 (May 4, 1954).

There is a presumption against vacations and in favor of retaining the public's interest in property. The default position is not to vacate. A vacation should occur only if a majority of the city council makes an affirmative finding that the vacation is in the public interest.

c. Application of Legal Standard to the Subject Alley

In the present case, vacating the Subject Alley is likely not in the interest of the public. Not only will construction of the Alley Improvements finally complete paving of the City's entire platted alley system, but the City recently determined that improving the Subject Alley was necessary to accomplish a public purpose. Specifically, the city council previously approved the Alley Improvements based on staff's determination that they will address recurring maintenance issues, improve garbage and snowplowing routes in the area, limit the need for front yard parking on Eustis Street and Malvern Street, and provide additional access for residents. To now find that vacating the Subject Alley is in the public interest would not only be inconsistent with those previous council actions, but it would also contradict the numerous benefits that the public will receive if the Subject Alley is improved as part of the Project. Therefore, it is unlikely that the legal standard required to vacate the Subject Alley is supported by the facts.

Although there are very few cases in Minnesota that examine whether the vacation of public right-of-way was in the interest of the public, the Minnesota Supreme Court has suggested that the mere fact that one or a few select individuals may have an individual interest to serve by the vacation must have no weight one way or another in a city council's decision to vacate.⁶ Rather, when determining whether to vacate right-of-way, a city council should keep in mind that the public consists of more than just "those in the immediate vicinity."⁷

IV. Conclusion

After holding a duly noticed public hearing on the vacation petition, the city council should determine whether vacating the Subject Alley is in the best interests of not one or a few residents in the City but rather whether it is in the interest of the public as a whole. Based on the above discussion and the underlying facts and circumstances, it is highly unlikely that vacating the Subject Alley is in the public interest.

I plan to attend the special city council meeting of May 29, 2019 to answer any questions you may have about this matter.

⁶ See *In re Hull*, 204 N.W. 534, 537 (Minn. 1925).

⁷ *Krebs*, 6 N.W.2d at 805.