

**WEST LINN CITY COUNCIL  
FINAL DECISION AND ORDER  
MISC-17-06**

**IN THE MATTER OF THE VACATION OF PORTIONS OF  
RIGHT-OF-WAY (ROW) ON THIRD AVENUE AND TENTH STREET**

**I. Overview**

The applicant, Emery Smith DBA Encore Homes LLC (Roy Marvin), proposed to vacate undeveloped portions of Third Avenue and Tenth Street ROW, located in the City of West Linn, Clackamas County, Oregon, adjacent to tax lots 300 and 800 of Assessor's Map 31E2AC, as more particularly described in the Staff Report to the Council for November 13, 2017 including Exhibits A1 and A2 (legal descriptions) and Exhibits B1 and B2 (maps).

Street ROW vacations are reviewed and decided by City Council by the authority of Community Development Code (CDC) 92.010(A) and Oregon Revised Statute (ORS) Chapter 271 and acting as the City's "Governing Body" (ORS 271.005 (1)). Street ROW vacations are a two-step quasi-judicial process which encompass and require findings that: 1.) there is consent of the owners of all abutting property and of not less than two-thirds in the area of the real property affected, 2) notice was proper, and 3) the vacation is in the public interest. (ORS 271.120).

At the meeting on November 13, 2017, the Council held a public hearing conducted under the procedures of Community Development Code (CDC) Chapter 99. The hearing commenced with a staff report presented by Peter Spir, Associate Planner. The applicant was represented by Zach Pelz of AKS Engineering. There was no public testimony. The hearing was closed.

After deliberations, the Council approved a motion to approve the application by a 5-0 vote with the addition of two amendments to the ordinance as proposed by Mayor Axelrod as follows:

**"WHEREAS**, by not vacating the right-of-ways the viability and health of the parks wetland and associated habitat conservation areas could be adversely impacted; and,

**WHEREAS**, by vacating the right-of-ways the public interest of resource protection will be served."

**II. Applicable Approval Criteria**

The Council finds that the approval criteria of ORS 271.120 applies.

**III. Findings**

The City Council made the following findings which address the approval criteria:

1. The applicants obtained the requisite signatures of consent. The proposed street ROW vacation has the consent of 100 percent of the abutting property owners as required by ORS 271.080(2). The "affected area" was measured out by staff and is shown in Exhibit C. The "affected area" comprises 772,728 square feet. The square footage of properties supporting the vacation totals 579,720 square feet which represents 75 percent. This amount exceeds the minimum two-thirds or 66.6 percent. All property owner signatures were notarized and validated.

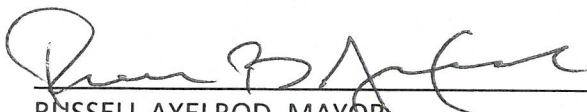
2. The notice was complete. Notice was published in the West Linn Tidings newspaper once each week for the two consecutive weeks prior to the hearing. Staff posted a "Notice of Street Vacation" at each end of the ROWs 14 days prior to the hearing date.

3. The public interest will not be prejudiced by the vacation because: (a) the right-of-ways do not serve any current or future purposes with the exception of a public utility easement to be established on these right-of-ways; (b) by not vacating the right-of-ways, the viability and health of the park's wetland and associated habitat conservation areas could be adversely impacted; and, (c) by vacating the right-of-ways, the public interest of resource protection will be served.

The Council also accepts, adopts, and incorporates, by reference, the Staff Report to the Council for November 13, 2017, in its entirety, as findings demonstrating that the approval criteria for these applications are met.

#### IV. Order

Based upon these findings of fact and the above-referenced evidence, the Council concludes that the application satisfies all applicable approval criteria. Accordingly, the Council approves the application for Case No. MISC-17-06 and the adoption of Ordinance No. 1665 as amended.

  
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RUSSELL AXELROD, MAYOR

11/20/17  
\_\_\_\_\_  
DATE

This decision may be appealed to the Land Use Board of Appeals in accordance with the applicable rules and statutes.

Mailed this 21<sup>st</sup> day of November, 2017.

Therefore, this decision becomes effective 21 days from the date of approval at 5 p.m., December 11, 2017.