

I. FINDINGS OF FACT:

LOCATION: The Northeast Couch Street right-of-way to be vacated, is the 425 feet east of Northeast 165th Avenue.

VACATION AREA: The area of right-of-way that will be subject to vacation, as described in Exhibit A, and shown in Exhibit B, is 12,756 square feet, or approximately 0.29 acres.

LAND USE DISTRICT: Station Center (SC) from the Northeast Couch Street centerline to the south. Transit Low Density Residential (TLDR) from the centerline to the north. There are no environmental overlays affecting the site.

SURROUNDING LAND USES: There are five single-family detached homes located north of the right-of-way, four single-family detached homes to the south, and two single family home lots located to the east of the right-of-way. The Northeast 165th Avenue improved right-of-way lies to the west.

SITE CONDITIONS: The right-of-way is unimproved. There is a partial barricade at the Northeast 165th Avenue intersection. Approximately 200 feet on the western side are unmaintained gravel. Otherwise, grass vegetation prevails together with areas of exposed dirt from tire wear. Neighboring properties to the south have utilized the site for driving onto their rear yards. There are no trees within the right-of-way, but there are several mature trees surrounding it. There are no City of Gresham water, sewer, or stormwater mains running along the right of way. Rockwood People's Utility District has been asked to confirm whether there are water mains running along the right-of-way.

PROPOSED USE OF VACATED RIGHT-OF-WAY: The vacation will result in disposition of property. The proposed use will be as private property yard for up to nine adjacent single family detached residential properties. Property south of the centerline may redevelop to uses as permissible in the Station Center (SC) district. Property to the north is developed with single family homes that are unlikely to redevelop in the near future.

PUBLIC NOTICE AND COMMENTS: The City of Gresham Development Planning Division sent notices of the proposed right-of-way vacation to the surrounding owners of record of property within 300 feet of the subject property, as shown on the most recent property tax assessment roll. A notice of the proposed right-of-way vacation was also posted on the site – one notice at the intersection of unimproved Northeast Couch Street and Northeast 165th Avenue and one at the east terminus of the unimproved street. Rockwood Neighborhood Association was notified by e-mail on January 6, 2020. No written comments were submitted at the time that this staff report was prepared. Comments, both orally and written are permitted up to and during the hearings with the Planning Commission and the City Council. Various City departments and Rockwood PUD were sent notices on December 31, 2019; their comments and recommendations

submitted up to the time of Planning Commission hearing will be attached to and made a part of this Review and Recommendation.

BACKGROUND:

Donovan and Sophie Dichter submitted a request for City Council to initiate vacation of this section of unimproved right of way. They detailed the basis of their request in a May 16, 2019 letter to the Mayor and Council. The land use designation of the Dichter properties to the south of the unimproved right of way were changed from TLDR (Transit Low Density Residential) to SC (Station Center) in late 2008 (PMA 08-26000188). The purpose of the plan map amendment was to facilitate multi-family development (88 units proposed) along the MAX line. In 2009, the Dichters had a pre-application meeting for the purposes of vacating the Northeast Couch Street right of way. They were one property owner shy of obtaining 100 percent of the abutting property owners' signatures on the right-of-way vacation petition, and therefore could not submit an applicant-initiated application for the vacation of the right-of-way.

In September of 2018, the Dichters had another pre-application meeting for the purposes of developing the adjacent property to the south. They were informed that development without a vacation of Northeast Couch Street would require an additional 26-feet of right-of-way dedication along that street and dedication of a 56-foot wide right-of-way to connect Northeast Couch Street to East Burnside Street to avoid a long permanent dead end street.

Following the pre-application meeting, the Dichters held an early neighborhood notification meeting and again attempted to obtain 100 percent of the abutting property owners' signatures, but were unsuccessful. During this attempt, they were unable to obtain signatures from four property owners. Of these four, two property owners were unresponsive, one was concerned about subsequent redevelopment, and one was unable to reach agreement with the co-property owner.

At the July 16, 2019 Council meeting, the Dichters presented their request that the City Council initiate the street vacation. On October 1, 2019, City Council voted by consent agenda in favor of initiating the review and consideration of the merits of vacating the unimproved right of way.

II. APPLICATION PROCESS FINDINGS:

11.0101 Development Permit Required. A development permit is being pursued in accordance with the Gresham Development Code standards and requirements. This staff report represents the review of the proposed vacation of right-of-way as it relates to the Gresham Development Code standards and requirements for street vacations.

This standard is met.

11.0204 Type IV Procedure - Administrative Procedures. This proposal is subject to the Type IV procedure because it is a request for vacating a right-of-way.

This standard is met.

11.0602 Type IV Procedure - Administrative Procedures. A notice of the proposed development was mailed to property owners within 300 feet of the proposed development. The Rockwood Neighborhood Association was sent notice by e-mail on January 6, 2020. The notice gave a brief description of the proposal, a list of the applicable development standards and criteria for decision, the location of the proposed development, and a contact person. The notice states that comments can be submitted or presented at the January 13, 2020 Planning Commission hearing. The notice was also posted on site on December 23, 2019. The notices provided an opportunity for persons to make written or oral comments which address relevant criteria and standards.

This standard is met.

III. FINDINGS:

The proposal must be found consistent with the Oregon Transportation Planning Rule, Metro Functional Plan, and Gresham Community Development Code Procedures and Standards.

- A. Oregon Transportation Planning Rule (OAR 660-012) - The Oregon Transportation Planning Rule (TPR) requires cities and counties to adopt Transportation System Plans (TSPs). Portland metropolitan area jurisdictions must ensure that their TSPs are consistent with a Regional Transportation System Plan (RTP).

Finding: The City's adopted TSP includes street classifications and land use regulations consistent with the TPR and RTP. This 425-foot segment of Northeast Couch Street is a local street. There is sufficient local street coverage in the area provided by Northeast Couch Court, an improved right of way located 89 feet to the north. There is also sufficient local street coverage in the area provided by East Burnside Street, an improved right of way located 155 feet to the south.

- B. Metro Regional Functional Plan (Section 3.07.600) – Title 6 of the Regional Framework Plan identifies Centers, Corridors, Main Streets and Station Communities throughout the region and recognizes them as the principal centers of urban life in the region. Title 6 calls for actions and investments by cities and counties, complemented by regional investments, to enhance this role. A regional investment is an investment in a new high-capacity transit line or designated a regional investment in a grant or funding program administered by Metro or subject to Metro's approval.

Finding: The City’s compliance with the “actions and investments” called out by this Title of the Metro Regional Functional Plan is incorporated into the City’s TSP. There are no specific connectivity standards or requirements provided by Section 3.07.600.

The area surrounding the right-of-way to be vacated is denoted in Title 6 as a station center community due to its proximity to the 162nd and East Burnside Max station. The SC and TLDR zoning that will apply to the respective southern and northern halves of the street to be vacated align with the density and uses envisioned of station center communities with transit-supportive development.

C. Gresham Community Development Code

1. Type IV Legislative Procedure (Section 11.0204) – This proposal is reviewed under Type IV legislative procedures (public hearings and determinations by the Planning Commission and City Council), as required to vacate public rights-of-way.
2. Vacation Criteria (Section A7.003) – This proposal is reviewed under Type IV legislative procedures (public hearings and determinations by the Planning Commission and City Council) as required to vacate public rights-of-way. Three vacation criteria apply:

a. **Whether the proposal is consistent with the Gresham Community Development Plan**

Plan Designations – The plan designations abutting the subject rights-of-way are Station Center (SC) and Transit Low Density Residential (TLDR). The proposed action will return approximately 6,375 square feet to private ownership subject to the SC plan district designation and approximately 6,375 square feet of property to private ownership subject to TLDR plan district designation. Development of that area will be subject to Gresham Community Development Plan zoning district designations.

Finding: The use of the proposed vacation area as residential detached homes is permissible in the TLDR district to the north. The use of the proposed vacation area to the south as apartments would be permissible in the SC district to the south. The existing single-family detached homes in the SC district may continue as legal non-conforming development until which time they are redeveloped.

Section 10.320 Transportation System:

GOAL 2: Ensure access and mobility by increasing multimodal travel options and providing a continuous, interconnected transportation system.

Finding: A continuous, interconnected transportation system that ensures access and mobility can be provided using the existing improved rights of way of East Burnside Street, Northeast 165th Avenue, and Northeast Couch Court. The only purpose the existing Northeast Couch Street provides in terms of access is if the adjacent property owner at 16635 E. Burnside Street (1N3E31CD -01900) desires to develop the back half of their property using the existing Northeast Couch Street access. This access has been proposed to be retained through an access easement. The Dichters have submitted a draft private access easement that is currently under City review for suitability. In order to comply with the provisions of A7.004, a deed restriction guaranteeing access will be required prior to vacation approval by City Council. Recordation of this deed restriction/covenant prior to City Council approval will ensure that the property at 16635 E. Burnside Street retains a second access point that will service its rear yard when it is redeveloped.

GOAL 3: Facilitate development of a transportation system that aligns with adopted local and regional land use plans, is responsive to the surrounding community and is cost effective to develop and maintain.

Finding: There is sufficient street access by way of East Burnside Street, Northeast 165th Avenue, and Northeast Couch Court to facilitate redevelopment of the area surrounding the right of way to be vacated without a need for it to be improved. Apartment development of the parcels to the south can be served using private drive aisles. Properties to the north can take access onto Northeast Couch Court. Construction of Northeast Couch Street would add to the City's cost of maintaining local streets without substantially improving connectivity and access goals.

Policy 3: Provide a transportation system that maximizes accessibility to and within regional centers, town centers, transit corridors, station areas, and employment centers.

Action Measure 1: Protect existing and planned transportation corridors from conflicts with adjacent land uses by the adoption of: Future street plans; Street design standards and

classifications that reflect adjacent land use designations; Access management standards; Appropriate land use designations; and Development requirements including setbacks, buffering and landscaping standards, building orientation, density transfer provisions, easements, and right-of-way dedication.

Finding: Removal of this unimproved right-of-way will not adversely impact accessibility of the surrounding neighborhood to the 162nd Max station. Road, bike, and pedestrian access from all developed properties can be fulfilled using existing rights of way of East Burnside Street, Northeast 165th Avenue and Northeast Couch Court. There are no adopted future street plans with alignments through or connecting to the dead-end right of way.

Section 10.320.1 Street System:

Policy 2: Develop a street system that meets current needs and anticipated future population growth and development.

Action Measure 5: Favor system improvements that: consider using existing roadway capacity, signals, and access more efficiently; reduce and manage single occupant vehicle travel demand or control travel demand growth through transportation-efficient land use and pricing incentives prior to adding roadway capacity in lanes and new facilities; provide safe and convenient travel options. Consider new roadway construction only where it would provide a complete network, enhance system efficiency, or where improvements to the existing street system are not feasible.

Finding: Construction of this dead-end right-of-way located only 90 feet away from Northeast Couch Court to the north, and 155 feet from East Burnside Street to the south is not necessary to achieve a complete street network. Additionally, extension of the road to the east is challenged by an unfeasible connection to an improved segment of Northeast Couch Street located over 1,000 feet to the east across 24 developed TLDR properties. These properties are mostly single family detached residential homes in fair condition. Future redevelopment of the 12 TLDR properties fronting East Burnside Street may be accomplished using the existing street system as infill development flag lots. Development of townhomes on these lots may be possible with construction of a targeted local street system if lots are assembled.

Policy 3: Provide a street system that maximizes accessibility and mobility within the community.

Action Measure 4: Implement the Future Street Plan and street connectivity standards to ensure the development and completion of logical and continuous local street patterns within residential and mixed-use areas as development occurs. Per the Future Street Plan and street connectivity standards, new development must provide for the continuation and inter-connection of existing streets and must avoid long dead-end street patterns.

Action Measure 5: Implement adopted City code standards for public streets and land division that reinforce the public street system as the City's essential framework for safe, convenient, and efficient neighborhood circulation, property access, emergency response, public facilities and utilities for all properties.

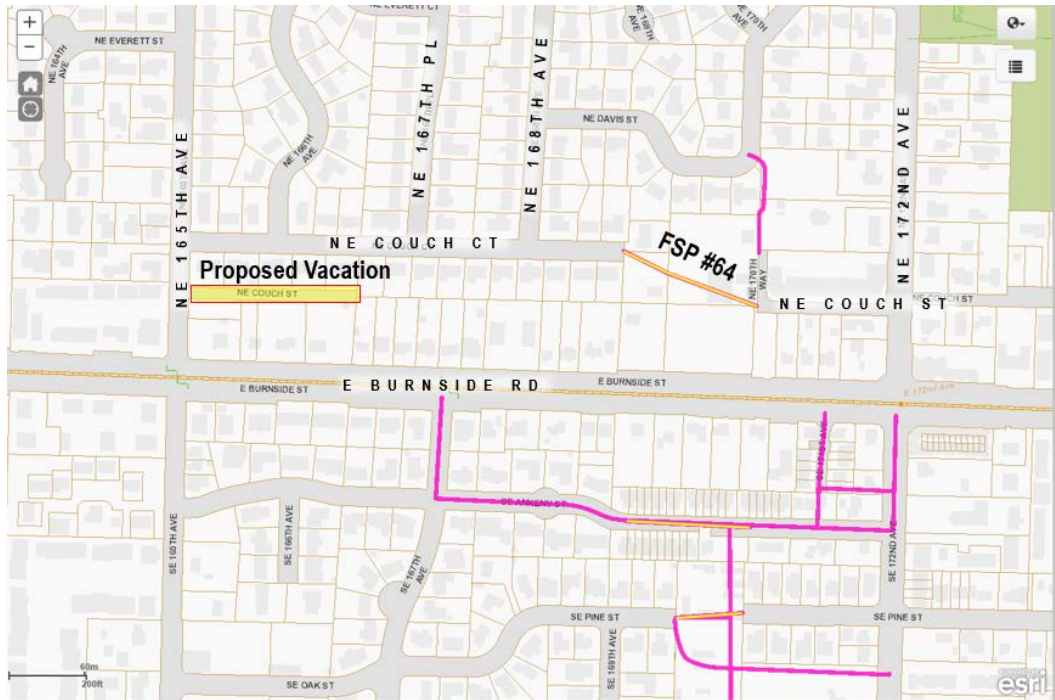
Finding: Accessibility and mobility for the areas east of the unimproved right of way can be provided by the existing street network for construction as infill development. Due to the proximity between East Burnside Street and Northeast Couch Court, an east/west street alignment is not needed to maximize accessibility and mobility through the area bounded by Northeast 165th Avenue to the west, Northeast Couch Court to the north, Northeast 172nd Avenue to the east, and East Burnside Street to the south. Southbound extensions of Northeast 167th Avenue or Northeast 168th Avenue would better maximize accessibility and mobility, but this is not feasible at this time due to existing residential development in fair condition located within both potential road extension alignments. The east/west Couch street alignment is not necessary to maximize accessibility and mobility of that area.

Future Street Plan #64 would complete an east/west connection of Northeast Couch Court to Northeast Couch Street without the need for this segment of NE Couch Street to be continued (Figure 1). Vacation of this street would remove an existing 425-foot long dead-end street pattern.

The only purpose the existing Northeast Couch Street provides in terms of access is if the adjacent property owner at 16635 E. Burnside S (1N3E31CD -01900) desires to develop the back half of their property using the existing Northeast Couch Street access. This access can be retained through an access easement or deed restriction. The Dichters have submitted a draft private access

easement that is currently under City review for suitability. In order to comply with the provisions of A7.004, a deed restriction/covenant guaranteeing access will be required prior to approval by City Council. The Dichters submitted a draft Declaration of Covenant on January 6, 2020.

Figure 1. Future Street Plan #64



- b. Whether the vacation will substantially reduce the market value of abutting property. This criterion need not be considered if the owners of the property affected consent to the vacation or provisions have been made to pay damages.**

Finding: Because this vacation was initiated by the City Council on October 1, 2019, a petition by abutting property owners is not required. The Dichters circulated a petition for an applicant-initiated vacation twice; once in 2009 and again in 2019. They report having had support of the Rockwood community and all but one abutting owner in 2009. This last owner requested that their signature on the petition be contingent on the Dichters purchasing the property. Later, in 2019, consent from owners of seven of the eleven abutting property owners was achieved.

Consent from 100 percent of abutting property owners has not been acquired and no provision is being made to pay damages. The proposal must therefore not substantially reduce the market value of abutting property.

The five abutting properties to the north are existing single family detached residential properties with structures that are in fair condition and with appropriate street access. The TLDR zoning permits for redevelopment of those properties with duplexes or townhomes. There is generally sufficient street access along the existing Northeast Couch Court frontage to serve future redevelopment of these properties. Removal of the undeveloped right of way is therefore not anticipated to substantially reduce the market value of these properties.

The four abutting properties to the south are owned by the Dichters doing business as Burnside Street LLC. Based on the pre-application meeting PAM 18-26000365 for a conceptual 88-unit apartment development, the Dichters have found that the property would be more feasible to develop as per the Station Center zoning without this segment of street. The Dichters submitted the petition to City Council to initiate the street vacation proceedings and consent to the vacation. Therefore, application of this provision does not apply to their lots.

The abutting property to the northeast of the unimproved street contains a single family detached residential home in fair condition. Similar to the neighboring properties to the west, the property is capable of redevelopment to TLDR uses utilizing the existing Northeast Couch Court right of way. It is not anticipated that vacation will result in a substantial reduction of the market value of that property.

The abutting property to the southeast of the unimproved street contains a single-family residential home located towards the front of the property, with access onto East Burnside Street. The lot is approximately 9,000 square feet in size and is subject to the TLDR zone district. Additional development of the ample and vacant rear yard of this property would likely benefit from direct street access since construction of a sufficiently wide driveway along the side yard to the existing home is impractical without partial demolition of that home.

To offset this potential impact of a vacated right of way, the Dichters have submitted a draft access easement that would ensure adequate access to the rear yard of this property is preserved. However, per A7.004, a private access easement cannot be a

condition or reservation of a vacation. Staff is pursuing alternatives such as a deed restriction or covenant that runs with the land that would be recorded prior to City Council approval of the vacation. The Dichters submitted a draft Declaration of Covenant on January 6, 2020.

c. Whether the public interest will be prejudiced by the vacation.

Finding: Findings in this staff report lead staff to conclude that the public interest for an interconnected street network and for adequate access to private property that allows development according to the base plan district standards will not be prejudiced by approval of this vacation.

The petitioners report that the current unimproved state of Couch Street has been subject to illegal dumping, camping and drug use. They find it is often littered with abandoned shopping carts, drug needles, and other refuse. Vacation of the unimproved and unmaintained right-of-way will not adversely affect the City's connectivity and street access goals, meanwhile it would lead to a reduction in nuisance activities.

3. Reservations and Conditions (Section A7.004) – The Council may attach the following reservations and conditions to the approval of a vacation:
 - A. That an easement for a public facility, publicly owned utility or other utility be reserved.
 - B. That a public facility, publicly owned utility or other utility be constructed, relocated or removed.
 - C. That a plat to be vacated be replatted.

Finding: There are no known public facilities or publicly owned utilities present within the right-of-way to be vacated. This was confirmed based on existing public facility as-built information in the City's Geographic Information System's database, as well as by Development Engineering staff in the preapplication meeting comments dated September 26, 2018 (PAM 18-26000365).

There are overhead power or communication lines present within the northern half of the area to be vacated. A minimum 10-foot franchise utility easement, or of a minimum width required by the private utility to access and maintain the overhead lines, is required as a condition of approval for this vacation. Staff will reach out to the appropriate franchise utilities to determine the need, and a draft easement will be presented at the City Council Hearing.

The applicant submitted a draft access easement to preserve access to the back half of the property at 16635 E. Burnside Rd. (1N3E31CD 01900). This is required to ensure no substantial reduction in that property's market value. City's Legal Counsel recommends that an alternative legal agreement, such as a deed covenant, be recorded prior to City Council approval. The Dichters submitted a draft Declaration of Covenant on January 6, 2020. This covenant describes their intent to provide a permanent easement for vehicular and pedestrian ingress and egress to the property at 16635 E Burnside Road within 90 days of its land division.

IV. STAFF & AGENCY COMMENTS

The comments and requirements submitted as of the date of this staff report from various City staff regarding compliance are incorporated in this staff report as Exhibit E. The City's Transportation, Sewer, Fire, and Stormwater departments all submitted comment. Additional comment from Rockwood PUD is expected by Friday, January 10 and will be presented at the Planning Commission hearing.

V. CONCLUSION:

The request by the City of Gresham to vacate for 425 feet east of Northeast 165th Avenue is consistent with the Gresham Community Development Plan, as stated in the findings above and may be approved.

VI. RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council approval of the proposed vacation of NE Couch Street for the 425 feet east of NE 165th Avenue. The approval shall be subject to the following condition of approval:

Condition of Approval

1. **Franchise Utility Easement.** A minimum 10-foot franchise utility easement, or of a minimum width required by the franchise utility to access and maintain the existing overhead lines, shall be recorded concurrently with the street vacation.

End of Staff Report