



CITY OF OLYMPIA

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OLYMPIA, WASHINGTON 98507

MEMORANDUM

TO: Bob Murray, City Manager

FROM: Mark O. Erickson, City Attorney *M.O.E.*

DATE: May 2, 1983

RE: Streets Vacated by Operation of Law

A question which arises fairly frequently is whether the City can assess one half of the appraised value of street vacations covering streets vacated by operation of law pursuant to Washington law 1889-90. That old law provides as follows:

"Section 32. Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopen for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and with the authority for building the same barred by lapse of time."

That law was subsequently amended by the laws of 1909 by adding the following proviso to the above language:

"Provided, however, that the provisions of this section shall not apply to any highway, street, alley or other public place dedicated as such in any plat, whether the land included in said plat be within or without the limits of any incorporated city or town, or to any land conveyed by deed to the state or to any town, city or county for roads, streets, alleys or other public places."

The effect of the two provisions is to vacate, by operation of law, any street or alley located within a plat and remaining unopened for at least five years between the effective dates of the two enactments.

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Although these old streets and alleys are vacated by operation of law, some type of formal proceeding is necessary to clear record ownership in the abutting owners. This can be done either by filing a petition for street vacation in the normal manner or to file a quiet title action in Superior Court. In each case the City Council or Superior Court formalizes the vacation to complete the record.

The question has arisen whether in the case of a petition for street vacation before the City Council the one half appraised value need be assessed in these cases. Given that the old law essentially accomplishes the vacation in those cases which fit within its purview, and given that the City Council is only formally affirming that fact, it is my opinion that the City is without authority to assess the one half appraised value as it does in normal street vacation cases. This follows from the fact that the City is not really giving up anything of value in the vacation process since the City's rights were extinguished years ago. This should not be read to imply, however, that the City cannot assess the normal filing fee for street vacations. The normal fee set out in the City ordinance should be assessed in these cases.

If you have any questions or comments, please let me know.

MOE:mb