
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: April 28, 2009

SUBJECT: Petition No. 400-07-14 – A request by Vera Novak to partially vacate the east/west portion of the alley located south of the property at 2553 South Dearborn Street.

STAFF REPORT BY: Jennifer Bruno, Policy Analyst

AFFECTED COUNCIL DISTRICTS: District 7

**ADMINISTRATIVE DEPT:
AND CONTACT PERSON:** Community Development
Katia Pace, Associate Planner

NOTICE REQUIREMENTS: Newspaper advertisement once a week for 4 weeks prior to the Public Hearing

POTENTIAL MOTIONS:

1. **["I move that the Council"]** Adopt an ordinance vacating the east/west portion of the alley located south of the property located at 2553 Dearborn Street.
or
2. **["I move that the Council"]** Adopt an ordinance vacating the east/west portion of the alley located south of the property located at 2553 Dearborn Street, with the requirement that **all** abutting property owners must agree to a private right-of-way/easement agreement, and that this agreement must be filed with the City before the City Recorder publishes or records the ordinance.
or
3. **["I move that the Council"]** Adopt an ordinance vacating the east/west portion of the alley located south of the property located at 2553 Dearborn Street, with the requirement that **a majority of** abutting property owners must agree to a private right-of-way/easement agreement, and that this agreement must be filed with the City before the City Recorder publishes or records the ordinance.
or
4. **["I move that the Council"]** Not adopt an ordinance vacating the east/west portion of the alley located south of the property located at 2553 Dearborn Street

Update: City Administrative Staff have further reviewed this issue and indicated that since the City does not have a public interest in the subject alleyway, the Council could certainly elect to vacate the public interest. They indicate that should the City Council vacate the alleyway, the City would not have a legal role in adjudicating or deciding an agreement over access among abutting property owners.

The petitioner and one abutting property owner have provided additional comment, which is attached to this staff report. In the comments the petitioner states that she would withdraw her petition if the Council supports Motion #2.

The following information was provided previously for the Council Work Session on April 21, 2009. It is provided again for your reference.

Update: The City attorney's office has provided a draft ordinance for Council consideration (**attached**) which includes reference to an exhibit, giving the Council flexibility as to how much or which part of the alleyway can be vacated. The Council may wish to note that the Attorney's Office advised Council Staff of a 2001 Utah Supreme Court Case (*Carrier v. Lindquist*) that has not been referenced in any previous Council or Planning Commission briefing. The opinion in this case (**attached**) implies that a property owner who purchases property adjacent to a platted alleyway holds an implied easement across that alleyway to the property, even if the City vacates the alley, and regardless of alternative means of access. *The Council may wish to discuss this issue further with the City Attorney's office in a work session briefing prior to voting on this petition. The Council may also wish to ask the Attorney's office why this case has not been referenced previously.*

Public Comment: Council Staff has also received written comment from the property owner at 2565 Dearborn Street (**attached**), who is not in favor of the petition. This property owner abuts the alleyway to the South of the petitioner's property. They write that they are concerned that if the Alleyway is closed that the property owners at 1477 Stratford (who now park in the alleyway) will begin to park in front of their house on Dearborn, as there is a fire hydrant in front of 1477 Stratford, and as the traffic volume is greater on Stratford than on Dearborn. They have indicated that they will attend the public hearing.

Process: The Council will hold a public hearing on this matter on April 21, 2009, and can refer a final decision to a future date.

The following information was provided previously for the Council Work Session on March 3, 2009. It is provided again for your reference.

Update: The Petitioner, Vera Novak, will be available at the Council's Work Session on March 3, 2009 to address the petition and answer any questions the Council may have.

The following information was provided previously for the Council Work Session on February 10, 2009. It is provided again for your reference.

KEY ELEMENTS:

A. Key points in the Administration's transmittal are the following:

1. The petitioner is requesting that Salt Lake City vacate the northern half of the east/west portion of the alley located adjacent to the property at 2553 Dearborn.
2. The petitioner is making this request in order to rebuild and expand an existing garage on this portion of the alley. The petitioner has not submitted plans for this new garage to the City for review.
3. There are 4 single-family residences that abut the alleyway, which is a dead-end. If the full width and length of the alleyway was vacated (*per Council policy – see Master Plans and Policy Considerations Item D*), that would deny access to the only off-street parking for the property located at 1469 Stratford, and would deny access to the secondary garage located at 1477 Stratford.
4. **See attached aerial photograph**/ diagram of the requested alley vacation.
5. The following are key points of history involved in this alley vacation request:
 - i. In 1985, the north/south portion of the alleyway and an east/west portion of the alleyway adjacent to 2553 Dearborn was vacated. However, the legal description for the alley vacation was recorded incorrectly. As such, there is a dispute over where the exact property line for 2553 Dearborn is located.

- ii. In that action, the City did not vacate the entirety of the east/west alleyway, because that is the only access to off-street parking for the property at 1469 Stratford (access from Dearborn through alleyway to garage facing alleyway).
 - iii. In 2004, the property owner at 1477 Stratford submitted plans for a building permit for a second garage with access from the alleyway (the other garage on the property has access from Stratford Avenue – however, that property owner indicated in the Planning Commission public hearing that the first garage is too small to fit their car). The property owners showed a diagram for the alleyway which indicated the access for the garage to be a full 12 feet (the minimum required for a garage permit is eight feet). However, after further review it was discovered that the access to the garage from the alleyway was only six feet, and the original diagram showed the alleyway in the incorrect location (*the diagram showed the alleyway on top of the property located at 1469 Stratford*). When the City discovered this error, the City changed the building permit from a garage to a permit for an accessory structure. Even though the structure is used as a garage, and the alleyway is needed for vehicular access to the structure, it is not recognized by the City as a garage.
6. The petitioner’s original application, submitted June 2007, requested the full width of the alleyway be vacated (25 feet by 12 feet). In the transportation Division’s review of the application, they recommended that the property at 1477 Stratford retain access to the accessory structure (*this could be achieved through a private right-of-way agreement*).
 7. The property owners at 2553 Dearborn and 1477 Stratford (Novak and Brady, respectively), attempted for some time and engaged attorneys to reach an agreement over actual property lines, access and easement issues. The property owner at 1477 Stratford indicated in the Planning Commission public hearing that they do not believe they will reach an amicable agreement over access with the property owner at 2553 Dearborn, and instead wish to have the alleyway remain in its current status (opposed to the petition), until/if such time as there is a different property owner at 2553 Dearborn. Additionally, depending on the configuration of the petitioner’s desired expanded garage, an easement across the subject portion of alleyway may interfere with plans for the petitioner’s proposed garage.
 8. As a result of the two property owners not reaching an agreement over easement/access issues, in June of 2008, the petitioner modified her request to vacate half of the width of the alleyway (six feet).
 9. If the requested portion of the alleyway is closed, there will six feet of access for the accessory structure (garage) at 1477 Stratford. The structure can currently only be accessed by approaching diagonally towards the structure, crossing into the portion of the alleyway that is requested to be closed. Therefore, in order for the accessory structure at 1477 to have practical vehicular access, more than six feet in width is necessary. **See attached photos for a view of the accessory structure in question.**
 10. Because the accessory structure permit was approved and built without sufficient legal vehicular access, the property owners at 1477 Stratford on occasion park in the alleyway (prohibited by City code), and cross over the property lines of both 1469 Stratford and 2553 Dearborn, in order to access the garage with their vehicles.
 11. The Planning staff report notes the following points of analysis and findings:
 - i. The Police Department, Fire Department, and Public Utilities Department had no objections to the proposed alley vacation. The Transportation Division did raise concerns regarding access to abutting properties and recommended denial (*see item F1 below*).

- ii. Planning staff finds that the requested alley vacation does not meet any of the policy considerations outlined below in item B. (*Planning Staff does not agree with the petitioner's assessment that it meets the "lack of use" criteria.*)
- iii. The disposition of the alley property will not result in a use which is contrary to the policies of the City.
- iv. Vacating this portion of the alley will not deny sole, required access to abutting properties (*because the City does not recognize the accessory structure at 1477 Stratford as a garage, even though it is used as a garage, there is no legal access required by the City.*)
- v. The applicant is requesting partial vacation of the alleyway instead of full vacation of the alleyway because there is not support from the abutting property owners at 1477 Stratford.
- vi. Closing the alley would not create any landlocked parcels.
- vii. The alley has not been designated for future use as a trail, pedestrian path, or other transportation use.

- B. Salt Lake City Code 14.52.020 defines that one of the following policy considerations must be met for closure, vacation, or abandonment of City-owned alleys:
 - 1. Lack of Use. The City's legal interest in the property appears of record or is reflected on an applicable plat; however, it is evident from an on-site inspection that the alley does not physically exist or has been materially blocked in a way that renders it unusable as a public right-of-way;
 - 2. Public Safety. The existence of the alley is substantially contributing to crime, unlawful activity, safe conditions, public health problems, or blight in the surrounding area;
 - 3. Urban Design. The continuation of the alley does not serve as a positive urban design element; or
 - 4. Community Purpose. The petitioners are proposing to restrict the general public from use of the alley in favor of a community use, such as neighborhood play area or garden.

Note: the petitioner has indicated that they have submitted this petition to vacate the subject portion of the alley based on the "Lack of Use" policy.
- C. The petitioner's property is zoned R-1-7,000 (Single Family Residential). All of the surrounding properties are also zoned R-1-7,000 (Single Family Residential). The surrounding land uses in all directions are single-family residential.
- D. The alley property requested for vacation is approximately 25 feet in length and 6 feet in width (150 Square Feet, .003 acres).
- E. While the Council's current alley closure policy does not prohibit the partial vacation/closure of an alleyway, it does state the following: "The City Council...is more likely to act favorably on a petition for disposition of an entire [alley] property rather than a small segment of it."
- F. All necessary City departments and divisions reviewed the petition. The department/division responses are as follows:
 - 1. Transportation - "The Division of Transportation review comments and recommendations for denial are as follows...The petition to vacate or close the alley needs to have approval from all abutting properties. The vacation from public ownership to private ownership will require cross access easements for all abutting properties to maintain current access rights..."

2. Fire – The Fire Department solicited feedback from Fire Station #3, and determined that the proposed alley vacation will not impede ability to provide emergency services.
 3. Public Utilities – Public utilities found no existing water, sewer, or storm drainage utilities within the subject portion of the alley and as such is not opposed to the proposed vacation.
- G. On April 4, 2007, the applicant presented her petition to the Sugar House Community Council (SHCC). The Chair of the SHCC sent a letter dated April 6, 2007 informing staff that the Council did not support either approval or denial of the applicants petition, but asked that the “responsible and property city agencies ensure the necessary steps are adhered to in consideration of the abandonment.” The applicant explained at the Planning Commission public hearing that the SHCC did not support her petition because they were not asked to take a position of support or denial. On August 28, 2007, Planning staff requested input from the SHCC, but since the applicant had already presented her request to the community council, the SHCC declined an additional presentation.
- H. On September 10, 2008, the Planning Commission held a public hearing.
1. The petitioner spoke in favor of the petition.
 2. The current chair of the Sugar House Community Council did not speak in favor nor in opposition of the proposal, but rather voiced a desire that any alley vacation or closure require compensation be paid to the City. *Current City policy only requires that abutting property owners pay the City fair market value and purchase the property if the alley closure abuts (and therefore benefits) a commercial property owner. Historically, residential abutting owners have not been required to pay.*
 3. The abutting property owner at 1477 Stratford spoke in opposition to the petition, citing their inability to resolve access issues with the petitioner (despite attorneys involved on both sides). They indicated to the commission that they do not believe it will be possible to reach an agreement with the current property owner/petitioner.
 4. Planning Commissioners voiced concerns over making a decision with conflicting legal claims to access. When commissioners asked the City’s Land Use attorney (present at the meeting) for an opinion, the attorney indicated that this situation represents a private property line dispute, and as such, should be resolved by the parties involved and not the City.
 5. Some Planning Commissioners voiced concern about further fragmenting the alley with a partial vacation.
 6. Planning Commissioners noted that approval of the garage at 1477 Stratford was the “first mistake.”
 7. The Vice Chair of the Planning Commission noted that the differing legal claims to the alley and access over the alley made it “impossible to grant the petition.”
- The Planning Commission adopted the following motion unanimously:**
“Regarding Petition 400-07-14...based on the findings of fact identified in the staff report and the public hearing, the Planning Commission transmit a negative recommendation to the City Council. The Planning Commission feels that it would be prudent for the property owners to sort out legal claims that both parties might have.”

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

1. The Administration’s transmittal does not contain an ordinance for Council consideration, due to the fact that the Planning Commission forwarded a negative recommendation to the City

Council. The Council may wish to request an ordinance for review (see “Potential Options” section).

2. Due to the history of the alleyway, and the history of the permitting approval of the accessory structure, it is not clear to staff if vehicular access (eight feet) to the accessory structure at 1477 Stratford should be guaranteed. From a policy perspective however, the Council has adopted the following policy statements that may be relevant –
“... The City Council:
 - a. *will not act favorably on a petition if an opposing abutting property owner intends to build a garage requiring access from the property, has made application for a building permit anytime before the Council acts favorably on the petition, and completes construction within 12 months of issuance of the building permit;*
 - b. *is more likely to act favorably on a petition for disposition of an entire property rather than a small segment of it;*
 - c. *will be sensitive to potential uses of the property for rear access to residences and for accessory uses;*
 - d. *will follow the requirements of applicable law with regard to any requirement for consideration”*
3. The Council may wish to ask the Attorney’s Office to weigh in on the issue of access rights for the various property owners.
4. The Planning Commission did not declare the subject portion of property as surplus. The Council may wish to clarify with the Administration how this will be handled should the Council vacate the subject portion of alleyway (considering the declaration of surplus property is an Administrative function).

POTENTIAL OPTIONS

The following are potential options for the Council moving forward (some may be combined):

1. Request an ordinance from the Attorney’s Office and hold a public hearing to consider the petition (*this would require confirmation from the Attorney’s Office that a right-of-way agreement is or is not required as a condition of alley vacation*);
2. Schedule and hold a public hearing without an ordinance;
3. Hold the petition open and ask that the property owners continue to work through attorneys on a private right-of-way agreement and schedule a public hearing when this is resolved;
4. Request the Attorney’s Office review the legal claims to access for the various property owners.

MASTER PLAN AND POLICY CONSIDERATIONS:

- A. The Sugar House Master Plan (2005) addresses alleyways with the following policy statements:
 - Incorporate alleyways in new residential development projects wherever feasible.
 - Discourage the use of alleyways for commercial access if the alleyway abuts residential property.
 - Encourage dedicated public streets in new development.
- B. The Sugar House Master Plan (2005) future land use map identifies the subject property (and surrounding block) as Low Density Residential.

- C. The purpose of the R-1/7,000 single-family residential district is to provide for conventional single-family residential neighborhoods with lots not less than seven thousand (7,000) square feet in size.
- D. The Open Space Master Plan identifies a system of non-motorized transportation corridors that could be developed to re-establish connections between urban and open spaces. This alleyway is not designated as a future trail in this plan.
- E. The Council's adopted alley closure policy (2003) states the following:
1. Modes of Disposition - The City may dispose of its entire legal interest in an alley by closure and sale or by vacation. It may dispose of less than its entire legal interest by, for example, revocable permit, license or joint use agreement (referred to as "partial disposition").
 2. Policy Considerations - The City will not consider disposing entirely or partially of its interest in an alley unless it receives a petition in writing which positively demonstrates that the disposition satisfies at least one of the following policy considerations:
 - i. *Lack of Use.* The City's legal interest in the property, for example, appears of record or is reflected on an applicable plat, but in fact it is evident from inspection that the alley does not exist.
 - ii. *Public Safety.* The property is contributing to crime, or unlawful activity or unsafe conditions.
 - iii. *Urban Design.* The property does not serve a positive urban design element.
 - iv. *Community Purpose.* The petitioners are proposing restricting the general public from use in favor of a community use such as a community play area or garden.
 3. Processing Petitions - There will be three phases for processing petitions under this section involving, respectively, the City Administration, the City Planning Commission, and the City Council.
 - v. Threshold Determination. The City Administration will determine whether or not the petition meets the following requirements:
 1. *procedural:* The petition must:
 - a. bear the signatures of no less than 80% of neighbors owning a fee simple interest in a property which abuts the subject property;
 - b. affirm that written notice has been given to all fee simple owners of property within and contiguous with the block or blocks within which the subject property is located;
 - c. provide documentation that the proposal has been reviewed by the appropriate Community Council or Neighborhood organization;
 - d. show that the necessary City processing fee has been paid.
 2. *substantive:* If the petition meets the procedural requirements, the Administration will determine that:
 - a. The City Police and Fire Departments and the City Transportation Division and all other relevant City Departments and Divisions have no objection to the disposition of the property;
 - b. The petition meets at least one of the stated policy considerations;
 - c. The petition must not deny sole access or required off-street parking to any property;
 - d. The petition will not result in any property being land locked; and

- e. The disposition will not result in a use which is otherwise contrary to the policies of the City, for example, applicable master plans and other adopted statements of policy which address, but are not limited to, mid-block walkways, pedestrian paths, trails, and alternative transportation uses.
- vi. City Administration.
 - 1. The Administration will deny the petition if it does not meet the requirements stated in Policy Considerations section; or
 - 2. The Administration:
 - a. may for appropriate consideration, grant a partial disposition if the petition meets the requirements stated in B 1 of this section; or
 - b. if it concludes that vacation or closure and sale is the appropriate disposition, refer the petition to the Planning Commission for review and recommendation to the City Council for final consideration.
- vii. City Council. **The City Council will consider petitions for vacation or closure and sale which have been referred to it by the Administration as required by law. In addition to the consideration set forth above, the City Council:**
 - 1. **will not act favorably on a petition if an opposing abutting property owner intends to build a garage requiring access from the property, has made application for a building permit anytime before the Council acts favorably on the petition, and completes construction within 12 months of issuance of the building permit;**
 - 2. **is more likely to act favorably on a petition for disposition of an entire property rather than a small segment of it;**
 - 3. **will be sensitive to potential uses of the property for rear access to residences and for accessory uses;**
 - 4. **will follow the requirements of applicable law with regard to any requirement for consideration**

- F. The Council’s adopted growth policy states: It is the policy of the Salt Lake City Council that growth in Salt Lake City will be deemed the most desirable if it meets the following criteria:
 - 1. is aesthetically pleasing;
 - 2. contributes to a livable community environment;
 - 3. yields no negative net fiscal impact unless an overriding public purpose is served; and
 - 4. Forestalls negative impacts associated with inactivity.

CHRONOLOGY:

Please refer to the Administration’s transmittal for a complete chronology of events relating to the proposed text amendment.

April 4, 2007	Applicant presents request to Sugar House Community Council
June 8, 2007	Application for full alley vacation (12 feet) submitted to City
June 22, 2007	Transportation Division recommends denial due to 1977 Stratford Ave access issues
January 17, 2008	Staff informed applicant that she needed to produce a right-of-way agreement addressing access issue for 1977 Stratford.
June 26, 2008	Applicant changes petition to vacate half the width of the alley (6 feet).
September 10, 2008	Planning Commission holds a public hearing and forwards a negative recommendation to the City Council

February 3, 2009

Corrected transmittal received by Council Office.

cc: David Everitt, Ed Rutan, Lynn Pace, Paul Nielson, Rick Graham, Jeff Neirmeyer, Tim Harpst, Max Peterson, Mary De La Mare Schaeffer, Cheri Coffey, Katia Pace, Janice Jardine

File Location: Community and Economic Development Dept., Planning Division, Alley Vacations - Street Closures, Vera Novak, East/West Alleyway abutting property at 2553 S. Dearborn Street

Additional Comments Provided to Council

(subsequent to Public Hearing)

From: Vera Novak [mailto:vrn@xmission.com]
Sent: Thursday, April 23, 2009 12:58 PM
To: Bruno, Jennifer
Subject: Re: Alley issue - Withdraw Petition

Jennifer -can you please forward to Councilmembers.

RE: Alley vacation 2553.

Councilmembers:

My comments are in response to the work session held after the public hearing on Tuesday. Frankly, I am amazed. There is a volume of information provided for review, but the discussion seemed to be based on two issues, neither of which should have any relevance to this case. Specifically:

1. The legal precedence cited is not applicable. It refers to a case in which the public had previous right of way and had no other practical access to their property. Also, the plaintiff in that case was addressing the loss of access to their property from the rear (directly into the alley)- not from the side. None of this applies to the Dearborn situation. There was clearly documented lack of use to 1477 (both at the time of current owners purchase and for years previous) and they have clear and usable access to their property from another source. Also, their property lies in line with the alley - they were not accessing the property from the rear. In other words, the cited case is not in the least bit relevant. Unless, of course, you want to claim that all of the property owners along this entire block still have easement over the alley - despite the city's abandoning their property. In this case - the garage at 1477 should be torn down - because it blocks the alley. The same would be true for all the garages which have been built since the abandonment.
2. The council discussion was obviously concerned with preserving the right of 1477 to their access. Is this access even a legal claim? There was no historical precedence to their alley access, prior to the seizure of property due to garage construction; a stop work order, based on no legal access, was issued prior to any construction; the garage was built in defiance of the stop work order and the staff notes that *because the City does not recognize the accessory structure at 1477 Stratford as a garage, even though it is used as a garage, there is no legal access required by the City.* So why is the council so focused on the access to 1477?

The first two alley abandonment options identified by the council are an insult. You know fully well that 1477 will never agree to ceding their purported "right of way." You also know fully well that the incompetency of both the building and planning departments have cause thousands of dollars in damages to both myself and 1469, in the resulting need to defend our properties against trespass. Frank Gray has fabricated this story of "accessory" building to protect the building dept, and a story about my changing my mind on the petition to protect the total incompetence of Katia Pace. However, the documentation does not support any of these defences, and would not stand up in court.

If you accept an alley adoption which requires consent of the "public" at 1477, then you will be burdening 1469 with additional taxes, the sole responsibility to maintain the alley (as the city would have washed its hands of the alley), and yet requiring her to maintain access for the "public" at 1477. This abandonment will also not serve my purposes, as I am certain there will be resistance from 1477 to allow me to build on my portion. You know this would result in either years of continued court battles, or Rose Novak just giving in and suffering the consequences. How can you even consider this? Neither Rose Novak nor I have done anything to deserve this treatment from the city. 1477, on the other hand, has a long history of

building without obtaining a permit, building in defiance of a stop work order, trespass and illegal parking. Why are you so keen on defending them?

To close, if the intent is to abandon the alley with the stipulation that 1477 be granted a right of way, then I withdraw my petition as it is not consistent with the intent of my original petition. If the proposed abandonment proposal goes forth anyway, then I will be forced to defend my rights and seek resolution for the damages incurred on us by city action.

An option was presented to you at the public hearing: The abutting property owners with legal claim to the alley (O'Connors, Novak, V and Novak, R) have agreed to an alley abandonment which preserves the right of way for access to 1469 garage. I would ask you to put to an end a 5 yr fiasco, and adopt this alley abandonment format. This will allow us all to put to rest the past issues and focus in making improvements to the neighborhood.



Vera

vrn@xmission.com

From: Ruzena Novak [mailto:ruz@xmission.com]
Sent: Wednesday, April 22, 2009 5:42 PM
To: Bruno, Jennifer
Subject: Unacceptable Resolution

Please Distribute to Councilmembers

Re: C-1, City Council Work Session 4/21/09

I would like to comment on some of the proceedings and statements made by several councilmen and participants.

1. The 6ft. by 25ft. access to Vera Novak should not be granted because the city would have only 6 feet to enter which is too narrow to take care of the alley. Really? In the 30 years of ownership of my property with garage accessed by the alley, NO SERVICE HAS EVER BEEN PROVIDED.
2. The legal precedent cited by the legal council was for a case where the owner purchased property with existing right of way. That does not apply in this case – as we have documented the lack of use in the alley by anyone other than myself since 1979. The owners of 1477 purchased their property sometime in the late 80's – and there was NO ACCESS to the alley.
3. The permit improperly granted to 1477 was a GARAGE PERMIT and all further notations in the building dept. record refer to a garage. There is no record of any change to an accessory building, and 1477 has always referred to it as a garage. This whole excuse of an “accessory” building is the invention of the permit/ building dept managers. Just look at the documents!
4. Several allusions were made to a dispute among the neighbors. We were friendly neighbors prior to this incident. This problem was caused by the City Permit Dept. issuing a garage permit based on false information which showed 20 ft wide alley. Did anyone ever hear of 20 foot alley in Sugarhouse? That certainly should have raised a

- red flag. Moreover, how could access be granted from a vacated portion of alley starting at the East edge of my property, enclosed by a fence prior to 1979, and officially vacated in 1985?
5. A mention was made of a STOP WORK ORDER, which was issued after I went to the city Building Dept. and questioned the validity of the permit. The building inspector agreed that the Garage permit should not have been issued and sent out an agent to issue the stop work order. At that time, only the foundation trench was started. The building continued in spite of the City order. Also, by then, I had a survey marker in place which clearly indicated that there was only a 6 foot access (half the alley) through the now breached fence. My neighbor's intention, stated to me, was to use the back of my property as access to her garage, since "I used it only as additional parking, and I could just as easily use the alley". At no time was there any attempt or offer made to discuss a possible amicable solution, only a threat at a later date to tear down the fence between our properties unless I agree their trespass. In fact, the neighbor did tear down the fence when I was gone on vacation, and I was forced to pay for a replacement fence.
 6. Some councilmen had a pretty accurate observation that the neighbors have never been able to solve this dispute in the past and therefore they most likely will not in the future. I have two comments: If there is a dispute, it was caused by the inexcusable wrong permit issued by the city. Moreover, it can hardly be classified as a dispute, when there was no discussion, only a very blatant desire to grab a piece of neighbor's property. Had you been in my position, councilmen, would you have been so generous as to say to your neighbor: "Sure, go ahead. By your driving over it, I will effectively lose its value as usable or salable property, but O.K."
 7. As I understood your conclusion, you want to wash your hands of it. You had to deal with it for over TWO YEARS. I understand. Or do I? For FIVE YEARS, I have been subjected to totally unnecessary expenses, increased traffic, alley overuse (will the city take care of it?), illegal parking, and lots unpleasantness from my neighbors, mad at me because I did not accede to their wishes. The reason for all of that: A building GARAGE permit, which should not have been issued.

In conclusion: If you abandon the alley without stipulation, or with the stipulation that the FOUR homeowners will have to sort out the access, as you seem inclined to do, please explain to me the logic or the legality of the abandonment or vacating the still open portion of the alley. Per precedent, the alley will be split in half, the whole northern portion given to Vera Novak; the southeastern 50 feet to me, and the southwestern 50 feet from Dearborn to O'Connors. We will be responsible for taxes for those newly acquired properties. In order to maintain access to my garage, I will probably get the the V. Novak and O'Connor portions by Quick Claim Deeds. The tax burden will become all mine. On the other hand, the owners of 1477 with illegal access from the previously vacated alley will have no new tax obligation. But according to most of you councilmen, you expect us to provide access for them. Show me a legal precedent for THAT MESS!

Respectfully,
Ruzena (Rose) Novak

Bruno, Jennifer

From: Bruno, Jennifer
Sent: Wednesday, April 15, 2009 4:17 PM
To: Bruno, Jennifer
Subject: FW: Follow-up to phone conversation re: Petition 400-07-14 Dearborn St
Categories: Program/Policy

From: Christiaan O'Connor <christiaan.oconnor@gmail.com>
Date: Thu, Apr 9, 2009 at 10:10 PM
Subject: Follow-up to phone conversation re: Petition 400-07-14 Dearborn St
To: jennifer.bruno@slcgov.com

Hello, Jennifer.

Thanks again for your time on the phone today. I am following up with this email to provide written documentation of our knowledge of the issues surrounding the proposed action, and of our concerns about the impact the proposed action would have on our property/residence, as well as that of other neighbors.

My wife and I live at 2565 S. Dearborn Street, which is the property abutting the alley to the SW on Dearborn Street. For clarity, we live between the property owned by the Proponent, Vera Novak (2553 Dearborn), and Vera's mother, Rose Novak (1469 Stratford).

We understand that we will not lose any of our property, but we are concerned about the impacts of the proposed action to our property resale value/residential quality (as a result of impacts to the current use of the alley). Currently, the neighbors at 1477 Stratford (i.e., just east of Rose Novak) consistently park at least two cars and one motorcycle in the alley because they have no access to their garage that faces the alley. Their access to their garage was cut off when Rose Novak built a fence to the edge of her property line in front of the garage. Per Vera, Rose Novak built this fence to prevent them from accessing their garage due to an ongoing dispute between the two neighbors over the construction of the garage. As a result, the neighbors at 1477 Stratford park in the alley.

We are friendly with the Novaks, and have been briefed by them (extensively) in the past about the ongoing dispute with Rose Novak's neighbors. While Vera Novak has indicated that her reason for requesting the proposed action by the city is to provide room for her to build a new garage on her property, we have not been provided any explanation about why the alley must be used for Vera Novak's planned garage. Her backyard area is sufficient. In fact, I failed to mention today on the phone that Vera owns the adjacent property at 2545 S. Dearborn, and is currently constructing a new, larger garage on the same size lot. Without understanding why the alley way is needed to build her garage, we are lead to believe that a larger part of the reason for proposing the action could be linked to the ongoing dispute between the Novak's and the neighbors at 1477 Stratford.

Regardless of Vera's primary motivation for the petition, our main concern is that the proposed action would adversely impact the resale value of our home. More specifically, as a direct result of the action, the neighbors now parking in the alley would park in front of our house, as they could not park in front of their own house on Stratford due to high volume traffic and presence of a fire hydrant. We believe this would force a secondary issue of "excessive vehicle parking" in front of our house, defined in City Code, 12.56.515 *Neighborhood Parking Limitations* as:

"B. Excessive Vehicle Prohibition: No person shall park or allow to be parked excessive vehicles upon any one or more street, alley, residential parking lot, public right of way or public easement."

We believe excessive vehicles consistently parked in front of our house (i.e., the street in front of our house would become a neighbor's primary parking area) would impact our ability to sell our property, by adversely impacting the aesthetics of our home, and by limiting street parking for our own vehicles or that of guests, when needed. We do not believe we should suffer these impacts so that a neighbor can preserve their own backyard space, extend their own property, build a larger garage, or (especially) settle the score in a neighborhood dispute.

4/15/2009

I hope this information and our perspective will be helpful. Additionally, when convenient, I would like to discuss further with you our recourse to address excessive vehicles in front of our home (related to this action), if the action is approved.

As I mentioned today, we do plan on attending the hearing. And because we'd like to preserve our friendly relationship with the Novaks, we plan to personally discuss our position with them prior to the 4/21 public hearing on the proposed action, once we've gathered all available information.

Thanks again for your time and attention.

Regards,
Christiaan O'Connor
2565 Dearborn St
SLC, UT 84106
Ph: 801-824-1486

SALT LAKE CITY ORDINANCE
No. _____ of 2009
(Closing and abandoning an unnamed alley adjacent to Dearborn Street
as an unimproved public right-of-way)

An ordinance closing and abandoning a portion of a City-owned alley adjacent to Dearborn Street pursuant to Petition No. 400-07-14.

WHEREAS, the Salt Lake City Planning Commission (“Planning Commission”) held a public hearing at its September 10, 2008 meeting on Petition No. 400-07-014 made by Vera Novak for the Salt Lake City Corporation (the “City”) to abandon a portion of an unnamed City-owned alley immediately adjacent to the petitioner’s property at 2553 South Dearborn Street; and

WHEREAS, at its September 10, 2008 public hearing, the Planning Commission voted in favor of forwarding a negative recommendation on said petition to the Salt Lake City Council (“City Council”)

WHEREAS, having considered the Planning Commission’s recommendation, the City Council finds after public hearings that the City’s interest in the portion of the City-owned alley described below is not necessary for use by the public as a right-of-way and that closure and abandonment of the portion of the street will not be adverse to the general public’s interest; and

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Closing and Abandoning Street. A portion of an unnamed City-owned alley adjacent to property at 2553 South Dearborn Street, which is the subject of Petition No. 400-07-14, and which is more particularly described on Exhibit “A” attached hereto, is hereby closed and abandoned and declared no longer needed or available for use as a public right-of-way.

SECTION 2. Reservations and Disclaimers. The above closure and abandonment is expressly made subject to all existing rights-of-way and easements of all public utilities of any and every description now located on and under or over the confines of this property, and also subject to the rights of entry thereon for the purposes of maintaining, altering, repairing, removing or rerouting said utilities, including the City's water and sewer facilities. Said closure and abandonment is also subject to any existing rights-of-way or easements of private third parties.

SECTION 3. Effective Date. This Ordinance shall become effective on the date of its first publication. The City Recorder is instructed not to publish or record this ordinance until the conditions identified above have been met, as certified by the Salt Lake City Property Manager.

SECTION 4. Time. If the conditions identified above have not been met within one year after adoption, this ordinance shall become null and void. The City Council may, for good cause shown, by resolution, extend the time period for satisfying the conditions identified above.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 2009.

CHAIRPERSON

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER

(SEAL)

Bill No. _____ of 2009.
Published: _____.

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date APRIL 8, 2009
By Paul C. Nielson
PAUL C. NIELSON, SR. CITY ATTORNEY

HB_ATT#7339-v2-Ordinance_Vacating_Portion_of_Alley_Adjacent_to_Dearborn_-_Novak

H

Supreme Court of Utah.

Scott C. CARRIER, Hilary Carrier, Barbara S. Carrier, and Sherman W. Clow, Plaintiffs and Appellees,

v.

A. Kent LINDQUIST and Trina Clayton, Defendants and Appellants.

No. 990836.

Dec. 14, 2001.

Southern landowners brought action against northern landowners after they built rock wall obstructing half of abutting alley. The Third District Court, Salt Lake Department, William A. Thorne, J., entered summary judgment in favor of southern landowners and issued mandatory injunction to remove the wall. Northern landowners appealed. The Supreme Court, Durham, J., held that: (1) the southern landowners had private **easements** over the width of the alley; (2) the alleged lack of a reasonable necessity to use the entire fifteen-foot width of the alley was irrelevant to abutting landowners' rights; (3) landowners did not lose their **easement** over alley when the city vacated it; (4) the obstruction caused irreparable injury; and (5) balancing of equities test did not apply to decision to grant the injunction.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ↻842(2)

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k838 Questions Considered

30k842 Review Dependent on Whether Questions Are of Law or of Fact

30k842(2) k. Findings of Fact and

Conclusions of Law. Most Cited Cases

The ultimate determination of whether an **easement** exists is a conclusion of law reviewed for correctness.

[2] Appeal and Error 30 ↻949

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k949 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases Supreme Court accords to the trial judge a measure of discretion when applying the correct legal standard to the facts and overturns a ruling concerning the existence of an **easement** only if the judge exceeded the discretion granted.

[3] Municipal Corporations 268 ↻663(1)

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(A) Streets and Other Public Ways

268k663 Title and Rights of Abutting Owners in General

268k663(1) k. In General. Most Cited Cases

Landowners whose property abuts public streets, alleys, and public ways that appear on a plat map are entitled to a private **easement** over those public ways.

[4] Municipal Corporations 268 ↻663(1)

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(A) Streets and Other Public Ways

268k663 Title and Rights of Abutting Owners in General

268k663(1) k. In General. Most Cited Cases

Southern abutting landowners' reliance on the plat map entitled them to private **easements** over the al-

ley abutting their properties as depicted on the plat map; even though the map erroneously showed that the alley was vacated, the ordinance vacating the alley never took effect since the landowners never reached an agreement on use, the northern landowners obstructed the alley after learning that the ordinance never took effect, and the alley had been open for public use for over a hundred years.

[5] Municipal Corporations 268 ↪663(1)

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(A) Streets and Other Public Ways

268k663 Title and Rights of Abutting Owners in General

268k663(1) k. In General. Most Cited Cases

A landowner whose property abuts a public road possesses, by operation of law, a private **easement** of access to that property across the public road.

[6] Municipal Corporations 268 ↪663(1)

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(A) Streets and Other Public Ways

268k663 Title and Rights of Abutting Owners in General

268k663(1) k. In General. Most Cited Cases

Landowners whose property abutted a public way possessed a private **easement** over the alley.

[7] Easements 141 ↪44(2)

141 Easements

141II Extent of Right, Use, and Obstruction

141k39 Extent of Right

141k44 Ways

141k44(2) k. Extent of Way. Most Cited Cases

The alleged lack of a reasonable necessity to use the entire fifteen-foot width of an alley was irrelevant

to abutting landowners' rights in dispute with private landowners; the landowners had a private **easement** over the entire width of the alley because their property abutted a former public alley, even if they did not need the entire width for access.

[8] Eminent Domain 148 ↪1

148 Eminent Domain

148I Nature, Extent, and Delegation of Power

148k1 k. Nature and Source of Power. Most

Cited Cases

There is no private right of condemnation.

[9] Easements 141 ↪57

141 Easements

141II Extent of Right, Use, and Obstruction

141k56 Obstruction or Disturbance

141k57 k. In General. Most Cited Cases

Property 315 ↪1

315 Property

315k1 k. Nature of Right of Property and Acquisition in General. Most Cited Cases

One citizen has no entitlement to another citizen's property or a right to obstruct another citizen's **easement**.

[10] Easements 141 ↪38

141 Easements

141II Extent of Right, Use, and Obstruction

141k38 k. Relation Between Owners of

Dominant and Servient Tenements in General. Most Cited Cases

A servient estate owner cannot unreasonably restrict or interfere with the proper use of an **easement**.

[11] Easements 141 ↪18(3)

141 Easements

141I Creation, Existence, and Termination

141k15 Implication

141k18 Ways of Necessity

37 P.3d 1112, 436 Utah Adv. Rep. 47, 2001 UT 105
(Cite as: 37 P.3d 1112)

141k18(3) k. Existence of Other Means of Access. Most Cited Cases

The reasonable necessity test is inapplicable to disputes over private **easements**; applying it would give to a servient estate owner the power to obstruct an **easement** and then extinguish or limit it by claiming that the **easement** was not reasonably necessary for the **easement** holder to access his or her property.

[12] **Municipal Corporations** 268 ↪663(2)

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(A) Streets and Other Public Ways

268k663 Title and Rights of Abutting Owners in General

268k663(2) k. Ownership on Vacation.

Most Cited Cases

Abutting landowners did not lose their **easement** over alley when the city vacated it; it did so subject to existing rights of way and **easements**, and statute prohibits impairment of private rights of way and **easements** over a public way when that way is vacated by the governing body. U.C.A.1953, 10-8-8.5.

[13] **Appeal and Error** 30 ↪954(1)

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k950 Provisional Remedies

30k954 Injunction

30k954(1) k. In General. Most

Cited Cases

On appellate review, an injunction is overturned only upon showing that the district court abused its discretion or that the decision is clearly against the weight of evidence.

[14] **Injunction** 212 ↪14

212 Injunction

212I Nature and Grounds in General

212I(B) Grounds of Relief

212k14 k. Irreparable Injury. Most Cited Cases

"Irreparable injury" justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money; it involves wrongs which have a repeated and continuing character or which occasion damages that are estimated only by conjecture and not by any accurate standard.

[15] **Easements** 141 ↪61(2)

141 **Easements**

141II Extent of Right, Use, and Obstruction

141k61 Actions for Establishment and Protection of **Easements**

141k61(2) k. Injunction. Most Cited Cases

Obstructing half of a fifteen-foot **easement** over alley caused "irreparable injury" to abutting landowners and supported injunction requiring removal, even though their real estate appraiser estimated that the obstruction caused a loss of about \$600 in property value; the landowners' only alternative access to their backyards was up a thirty-eight-foot vertical rise in the front and around the house through a narrow access way or through the house itself, and the landowners would suffer obvious inconvenience, extra cost, and hardship in order to proceed with plans such as repairing a roof, building a shed, storing a boat, or undertaking major landscaping.

[16] **Easements** 141 ↪61(2)

141 **Easements**

141II Extent of Right, Use, and Obstruction

141k61 Actions for Establishment and Protection of **Easements**

141k61(2) k. Injunction. Most Cited Cases

An injunction requiring northern landowners to remove rock wall from alley was not made inappropriate by their completion of the wall eighteen months before southern abutting landowners filed

suit and after the northern landowners had returned the remaining portion of the alley to productive use.

[17] Easements 141 ↪61(2)

141 Easements

141II Extent of Right, Use, and Obstruction

141k61 Actions for Establishment and Protection of Easements

141k61(2) k. Injunction. Most Cited Cases

An injunction is the appropriate remedy to prevent a private party from interfering with another private party's easement.

[18] Appeal and Error 30 ↪954(1)

30 Appeal and Error

30XVI Review

30XVI(H) Discretion of Lower Court

30k950 Provisional Remedies

30k954 Injunction

30k954(1) k. In General. Most Cited Cases

A district court's decision not to apply a balancing of equities test is reviewed for abuse of discretion on appeal from an injunction.

[19] Injunction 212 ↪50

212 Injunction

212II Subjects of Protection and Relief

212II(B) Matters Relating to Property

212k45 Trespass or Other Injury to Real Property

212k50 k. Encroachments by Buildings or Other Structures. Most Cited Cases

Under balancing of equities test, the district court may in its discretion elect not to grant an injunction only where an encroachment does not irreparably injure the plaintiff and was innocently made, the cost of removal would be disproportionate and oppressive compared to the benefits derived from it, and plaintiff can be compensated by damages.

[20] Injunction 212 ↪50

212 Injunction

212II Subjects of Protection and Relief

212II(B) Matters Relating to Property

212k45 Trespass or Other Injury to Real Property

212k50 k. Encroachments by Buildings or Other Structures. Most Cited Cases

The benefit of the injunction doctrine of balancing the equities is reserved for the innocent defendant who proceeds without knowledge or warning that he is encroaching upon another's property rights; if the defendant is not innocent, equity may require restoration of the property without regard to the relative inconveniences or hardships which may result from removal.

[21] Easements 141 ↪61(2)

141 Easements

141II Extent of Right, Use, and Obstruction

141k61 Actions for Establishment and Protection of Easements

141k61(2) k. Injunction. Most Cited Cases

Balancing of equities test did not apply to mandatory injunction requiring landowners to remove rock wall from alley; the landowners were not innocent in their encroachment where they had actual and repeated notification that the alley remained city property and that their neighbors openly and repeatedly protested obstruction of the alley before and during construction.

*1114 David J. Bird, Salt Lake City, for plaintiffs.

Craig G. Adamson, Craig A. Hoggan, Cameron S. Denning, Salt Lake City, for defendants.

DURHAM, Justice:

¶ 1 This case arises from a dispute between homeowners about whether a private easement exists in an alley between the homeowners' respective properties. Plaintiffs Scott, Hilary, and Barbara Carrier jointly own property abutting the south side of the alley, and plaintiff Sherman W. Clow owns

property next to the Carriers' property, also abutting the south side of the alley. Defendants A. Kent Lindquist and Trina Clayton jointly own a lot abutting the north side of the alley. Claiming ownership over the northern half of the alley, defendants extended their landscaping to that point, completely obstructing 7 1/2 feet of the 15-foot-wide alley. Plaintiffs protested defendants' obstruction of the alley because it inhibited plaintiffs' only access to their properties from the rear. After defendants refused to remove the obstructions, plaintiffs brought suit, claiming a private easement over the entire width of the alley. Both parties moved for summary judgment. The district court granted judgment in favor of plaintiffs and ordered defendants to remove the obstructions and restore the alley to its prior condition. We affirm.

BACKGROUND

¶ 2 The facts in this case are not in dispute. The alley at issue runs east and west, between and parallel to Eleventh Avenue on the south and Twelfth Avenue on the north, in Salt Lake City. It originally extended a distance of 330 feet, ending at K Street on the west and L Street on the east. The alley was platted and recorded with the city in 1890 as part of the Dunford's Subdivision, and was dedicated to the city for public use. In 1989, the northern portion of the original Dunford's Subdivision was replatted as the Twelfth Avenue Subdivision. The new plat shows the alley just south of the southern boundary of the new Twelfth Avenue Subdivision. A public easement over the entire alley existed from 1890 to 1990.

¶ 3 On August 14, 1990, before any of the parties purchased their respective lots, Salt Lake City passed Ordinance 72, which vacated the eastern 58 feet of the alley. This portion of the alley was subsequently blocked by a shed, preventing access to the eastern portion of the alley. Ordinance 72 also vacated the western 272 feet subject to all existing rights of way and easements. The vacation of the western 272 feet was *conditional*, however, upon

all abutting property owners reaching an agreement for joint use and access within one year. The ordinance provided that if an agreement was not reached within the time limit, the vacation of the western 272 feet would be void. Ordinance 72 was recorded, but the abutting landowners did not reach a joint use and access agreement, so the portion of Ordinance 72 that vacated the western 272 feet of the alley was void. Thus, although subsequent plat maps showed the entire alley as vacated on August 14, 1990, the western 272 feet of the alley remained city property.

¶ 4 In May 1992, the Carriers purchased their home on Eleventh Avenue after determining that the alley, as it appeared on the plat map abutting the back of their lot, was still dedicated public property from east of their property all the way west to K Street. In June 1993, Clow purchased his home next to the Carriers on Eleventh Avenue. Clow also purchased with reference to the plat map and understood that he acquired the right to use the alley to access the back of his lot. According to plaintiffs, they relied on having access through the alley because a retaining wall and garage built across the front of the Carriers' property on Eleventh Avenue, and a 38-foot vertical rise from the front to the back of both properties, made land delivery of heavy goods and vehicle access to both backyards impossible from the fronts of the homes. Both the Carriers' deed and Clow's deed refer to the plat map to describe the properties. Clow's deed further states that his property includes "one-half the vacated alley abutting on the north." *1115 After purchasing their lots, the Carriers and Clow openly and regularly used the alley to deliver goods and equipment, as well as for vehicular access to their backyards.

¶ 5 In May 1993, defendants Lindquist and Clayton purchased their lot on K Street. Defendants' side yard abuts the northern side of the alley and extends from K Street for 165 feet. Defendants' deed also referred to the plat map and stated that the property included "half the vacated alley abutting on the south."

¶ 6 In October 1993, defendants obstructed the alley with large mounds of debris from their lot. Plaintiff Clow protested the obstructions and consulted the Salt Lake City Attorney's Office about the alley's status. Assistant City Attorney Bruce R. Baird determined that the conditions of Ordinance 72 had not been met and that the alley was still dedicated city property. Baird informed Clow of his findings in a November 1993 letter. Clow placed a copy of Baird's letter and a copy of Ordinance 72 in defendants' mailbox along with a request to defendants to remove the obstructions. Defendants admit that in November 1993 they received these items. According to defendants, the trash was removed after two weeks.

¶ 7 Eight months later, in July 1994, defendants commenced work on a large rock wall that extended the 165-foot length of their property. The wall was placed down the center line of the alley, 7 1/2 feet from defendants' property line as it appeared on the plat map. Defendants covered the asphalt running down the alley with two to eight inches of soil and filled the northern half of the alley with large boulders, using the alley as a staging area for the wall.^{FN1} Plaintiffs again demanded that defendants remove the obstructions.

FN1. It is difficult from the record to determine the condition of the surface of the alley prior to the edification of the rock wall. Accordingly, we rely on the trial court's finding regarding this fact, namely that "defendants covered the asphalt running down the [a]lley with two to [eight] inches of soil, then caused numerous large boulders to be placed in the alley in preparation for construction of a large rock wall."

¶ 8 After plaintiffs protested the obstruction of the alley, both plaintiffs and defendants had numerous conversations with various Salt Lake City officials during July and August 1994. During these exchanges, both plaintiffs and defendants were given notice that the alley had not been vacated by Ordinance

72. Defendants therefore petitioned the city to vacate the western portion of the alley. Also during this period, plaintiffs asked the city to require removal of the obstructions, but city officials refused and advised plaintiffs not to file suit against the city until the matter of vacation was resolved. City Attorney Roger Cutler notified Scott Carrier by letter that if the alley was vacated, abutting owners would be free to enclose or use the alley as they pleased. City officials advised defendants that they need not remove the improvements from the alley until the city council had taken action on the petition to vacate the alley. Defendants were further informed that the alley would likely be vacated and that the only easement across the alley was in favor of a utility company. Defendants therefore continued construction of the rock wall, which was completed in August 1994. The rock wall entirely obstructed the northern half of the alley's width, thereby preventing plaintiffs from using the alley as they had previously. The rock wall's completion, therefore, occurred well before the city council took any action to vacate the alley.

¶ 9 Six months later, in February 1995, the city council passed Salt Lake City Ordinance 15, which vacated the western 272 feet of the alley. The vacation, however, remained subject to existing rights of way and easements of third parties. Plaintiffs filed suit in January 1996, claiming a private easement over the entire alley. The district court entered a summary judgment in favor of plaintiffs, granting plaintiffs an injunction requiring defendants to remove the obstructions from the alley and restore the alley to its prior condition. Defendants appeal.

¶ 10 Defendants set forth nine issues on appeal. Because their statement of the issues is duplicative, we address all of defendants' arguments in connection with the following three issues: (1) whether the district court erred in finding that plaintiffs have a private easement over the alley, (2) whether *1116 the district court abused its discretion in granting an injunction against defendants to remove the wall

and restore the alley, and (3) whether the district court abused its discretion in not applying a balancing of equities analysis and ruling in favor of defendants under that analysis.

ANALYSIS

I. EXISTENCE OF PRIVATE EASEMENT

[1][2] ¶ 11 Defendants claim that the district court erred in finding plaintiffs are entitled to a private **easement** over the alley. The ultimate determination of whether an **easement** exists is a conclusion of law, which we review for correctness. *Valcarce v. Fitzgerald*, 961 P.2d 305, 311 (Utah 1998). However, the existence of an **easement** is also a highly fact-dependent question; therefore, we accord the trial judge a measure of discretion when applying the correct legal standard to the facts, and overturn a ruling concerning the existence of an **easement** only if the judge exceeded the discretion granted. *Id.*

A. Private Easement Based on Plat Map

[3] ¶ 12 Under Utah law, landowners whose property abuts public streets, alleys, and public ways that appear on a plat map are entitled to a private **easement** over those public ways. In *Tuttle v. Sowadzki*, this court stated:

No doubt the law is to the effect that purchasers buying lots with reference to a map or plat which is authorized by the owner of the ground, and such map or plat shows that such lots abut upon a street or alley which also is shown on such map or plat to be a street or alley, then, and in such event, the purchasers acquire a right to have such street or alley maintained as such, and the owner of the ground is estopped from vacating or from obstructing the same.

41 Utah 501, 508, 126 P. 959, 962 (1912); *see also Boskovich v. Midvale City Corp.*, 121 Utah 445,

448, 243 P.2d 435, 437 (1952) (“[I]f the dedicated streets of a subdivision are laid out and right to the use thereof has arisen, a private **easement** arises therein which constitutes a vested proprietary interest in the lot owners...”) (Wolfe, C.J., concurring); 4 *Powell on Real Property* § 34.06, at pp. 34-42 (Michael Allen Wolfe ed., 2001) (“Where a conveyance of land ... refers to a map on which spaces for streets, parks, or other common uses are shown ... the conveyee of the land acquires an **easement** with respect to the street or the areas shown on the map.”(footnotes omitted)); 7 *Thompson on Real Property* § 60.03(a)(3)(iii), at p. 411 (David A. Thomas ed., 1994) (“[T]hose who have purchased in reliance on the roads shown in a plat or plan retain a private **easement**...”).

[4] ¶ 13 At the time the parties purchased their respective properties, the properties were recorded on a plat map, which showed the 15-foot wide alley running 330 feet from K Street to L Street.^{FN2} Plaintiffs' deeds refer to the recorded plat map in describing their properties. When plaintiffs purchased their properties, they relied on the plat map, which showed the alley running behind their lots. Before purchasing, plaintiffs determined that the alley would remain available to access their backyards.

FN2. As noted above, only the western 272 feet of the alley are at issue because the eastern 58 feet were legally vacated by Ordinance 72.

¶ 14 Defendants, whose deed also refers to the recorded plat map, argue that plaintiffs do not have an **easement** because the recorded plat map actually showed, albeit erroneously, that the alley was vacated before plaintiffs purchased their lots. In *Tuttle v. Sowadzki*, 41 Utah at 512-13, 126 P. at 965, this court held that a plaintiff did not have an **easement** across an adjoining landowner's property over a platted **avenue** that had been vacated at the time plaintiff purchased the property. Defendants therefore contend that plaintiffs are not entitled to a private **easement** because the plat map indicated

the public way was vacated at the time plaintiffs purchased their properties.

¶ 15 Unlike this case, however, the **avenue** in *Tuttle* had been fenced off and landscaped and did not exist as a road at the time plaintiff purchased his property. *See* 41 Utah at 507, 126 P. at 961. In fact, the *1117 **avenue** had never been used as a public highway and had been vacated and legally abandoned for over ten years. *See id.* In this case, by contrast, the alley had been open for public use for over a hundred years and had not been legally vacated at the time plaintiffs purchased their homes. At the time of defendants' purchase, and up until defendants obstructed the alley, plaintiffs openly and consistently used the alley to access their properties. Notwithstanding the indication on the plat map, defendants were notified in November 1993 that the alley had not been legally vacated—long before they began construction of the rock wall. Ordinance 72, a copy of which defendants admit they received in November 1993, clearly states that the alley would be vacated only *if* the abutting owners reached an agreement on joint use of the alley. Defendants were informed by city officials that no such agreement was ever reached and therefore that under Ordinance 72 the vacation of the western 272 feet of the alley was void. Because the alley had not been legally vacated at the time of plaintiffs' purchase, the trial court was correct in finding that plaintiffs' reliance on the plat map entitles them to private **easements** over the alley abutting their properties as depicted on the plat map.

B. Private Easement Over Abutting Public Ways

[5][6] ¶ 16 In addition to plaintiffs' right to an **easement** by reliance on the plat map, it is clear under Utah law that “a landowner whose property abuts a public road possesses, by operation of law, a private **easement** of access to that property across the public road.” *Gillmor v. Wright*, 850 P.2d 431, 437 (Utah 1993); *see also Mason v. State*, 656 P.2d 465, 468 (Utah 1982) (“[A]n abutting landowner has a private **easement** of ingress and egress to ex-

isting public highways.”). In the instant case, plaintiffs' land abutted a public alley, which they used to access their properties. Therefore, as landowners whose property abuts a public way, plaintiffs possess a private **easement** over the alley.

[7] ¶ 17 Defendants nevertheless contend that even if an **easement** exists over the alley, that **easement** should be limited to access that is “reasonably necessary” under the circumstances. Defendants rely on *Mason v. State*, in which this court held that a private **easement** over a road vacated and destroyed by the State extended only insofar as “the alternative access imposed measurable hardship that was unreasonable under the circumstances.” *Id.* at 469. Defendants argue that access to the entire 15 foot width of the alley is not reasonably necessary because plaintiffs have primary access to the front of their homes from Eleventh **Avenue** and because plaintiffs can still access their backyards through the unobstructed 7 1/2 -foot portion of the alley.^{FN3}

FN3. This fact is irrelevant to our analysis, however, because the reasonable necessity test is not appropriate here, as discussed hereafter. Moreover, it is undisputed that plaintiffs' homes cannot be accessed through the obstructed alley by the type of vehicles, equipment, and materials previously used by plaintiffs and which are necessary for plaintiffs to complete their planned improvements; nor can Scott Carrier use the alley to park his boat in his backyard as planned.

¶ 18 Defendants fail to note, however, a critical distinction between this case and *Mason*, which involved a conflict between private and public entities. In order for a government to be effective, it needs the power to establish or relocate public thoroughways, even at the expense of some individual citizens, for the convenience and safety of the general public. *See id.* (“The property owner's right to preserve the status quo on access to and over abutting highways must be qualified by the public

interest in relocating public highways for greater advantage at minimum possible cost and in facilitating the return of land to productive purposes.”) In fact, cities are vested with the statutory power to “lay out, establish, open, alter, widen, narrow, extend, grade, pave or otherwise improve streets, alleys, **avenues**, boulevards, sidewalks, ... and may vacate the same ... by ordinance.” Utah Code Ann. § 10-8-8 (1999).

[8][9][10] ¶ 19 No public entity is involved in this case. There is no private right of condemnation, nor is there a need for one. One citizen has no entitlement to another citizen's property or a right to obstruct another citizen's **easement**. It is a long-held tenet of property law that a servient estate cannot *1118 “ ‘unreasonably restrict or interfere with the proper use of ... [an] **easement**’ ”. *Wykoff v. Barton*, 646 P.2d 756, 759 (Utah 1982) (quoting *N. Union Canal Co. v. Newell*, 550 P.2d 178, 180 (Utah 1976)).

[11] ¶ 20 We believe that applying the reasonable necessity test to disputes over private **easements** would give a servient estate the power to obstruct an **easement**, and then extinguish or limit that **easement**, by claiming that the **easement** was not reasonably necessary for the **easement** holder to access his or her property. Such a result would in essence acknowledge and permit a private right of condemnation. Private **easement** holders should not be subjected to the burden of defending their existing **easements** as reasonably necessary.

¶ 21 Here, defendants obstructed the alley over plaintiffs' protests and with full knowledge that the alley remained city property at the time they constructed their rock wall. Defendants now ask the courts to condone their actions based on defendants' view that the alley is not reasonably necessary for plaintiffs' access to their properties. Defendants' actions should not be condoned, and there is no applicable rule of law affording them relief from the consequences of their actions. Accordingly, we conclude that the trial court was correct in finding that plaintiffs hold a private **easement** over the en-

tire width of the alley because their property abuts a former public alley.

C. *Survival of Private Easement Upon Vacation of Public Way*

[12] ¶ 22 Defendants next argue that even if a private **easement** existed over the alley, **Salt Lake City Ordinance 15** extinguished plaintiffs' rights when it vacated the alley in February 1995. Defendants assert that if this court allows plaintiffs to retain a private **easement** over the alley, it will weaken the government's power to act for the public good in vacating public ways and returning land to productive uses. However, in this case, Ordinance 15 clearly states that the alley would be vacated “*subject to*” existing rights of way and **easements** of private third parties, such as plaintiffs. Thus, according to the ordinance, the alley was vacated subject to plaintiffs' right to use and enjoy it without interference from defendants, and the Ordinance cannot be construed as extinguishing such rights.

¶ 23 Defendants argue, however, that vacating the alley subject to existing **easements** contradicts Utah law. Defendants fail to cite any controlling authority.^{FN4} In fact, Utah law clearly provides that private rights of way and **easements** over a public way shall not be impaired when that way is vacated by the governing body. See Utah Code Ann. § 10-8-8.5(1999);^{FN5} see also *Gillmor v. Wright*, 850 P.2d 431, 437-38 (Utah 1993) (“A subsequent abandonment of a public right-of-way over [a public] road has no effect on a private **easement** owned by an abutting landowner.”); *Mason*, 656 P.2d at 468 (“[A]n abutting landowner*1119 has a private **easement** of ingress and egress to existing public highways. This private **easement** of access has been held to survive the abandonment or vacation of the public highway.” (Citations omitted)).

FN4. In support of their contention, defendants cite case law from other jurisdictions, but even these cases are distinguishable from the instant case. First, in *Rexroat*

v. Thorell, 89 Ill.2d 221, 60 Ill.Dec. 438, 433 N.E.2d 235, 238-39 (1982), the court did not find an **easement** over a road that had been vacated and blocked eighteen years before the plaintiffs bought their land. This is clearly different from the instant case, where the alley was dedicated and open for use when plaintiffs purchased their properties. Second, in *Keer v. Shaw*, No. 74AP-503, 1975 Ohio App. LEXIS 7364, *3-4 (March 18, 1975), the plaintiff failed to establish that an **easement** existed before the vacation of the public way. If, however, plaintiff had established the existence of a private **easement**, it would not have been affected by vacation of the alley. *See id.* at *4 (stating relevant statutory authority providing that if a public way is vacated, a right of way or **easement** of an abutting landowner shall not be impaired). Finally, *City of San Antonio v. Olivares*, 505 S.W.2d 526, 527 (Tex.1974), involved a dispute between a public and a private entity, which as noted above is a critical distinction in this type of case. Furthermore, the plaintiffs' access in *Olivares* was not impaired as it is here. *See id.* at 530.

FN5. Section 10-8-8.5 provides:

The action of the governing body vacating or narrowing a street or alley which has been dedicated to public use by the proprietor shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance, as a revocation of the acceptance thereof, and the relinquishment of the city's fee therein by the governing body, *but the rights of way and easements therein if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby.* Utah Code Ann. § 10-8-8.5 (1999) (emphasis added).

¶ 24 Therefore, based on clearly established statutory and common law in Utah, the trial court was correct in holding that plaintiffs did not lose their **easement** when the city vacated the alley. Plaintiffs' **easement** survived the city's vacating ordinance and remains in force.

II. GRANTING OF INJUNCTION

¶ 25 Defendants next argue that an injunction is not the appropriate remedy for plaintiffs' damages because plaintiffs suffered no irreparable harm and can be compensated by money damages. Defendants request that this court remand the case to determine money damages instead of affirming the injunction. Defendants rely on the assertion that plaintiffs still have primary access to their homes from Eleventh Avenue and have lost only the ability to transport large equipment through the alley, and argue that this does not constitute irreparable harm warranting an injunction under our holding in *Strawberry Elec. Serv. Dist. v. Spanish Fork City*, 918 P.2d 870, 881 (Utah 1996) (stating that injunction is only appropriate "upon a showing of irreparable injury for which there is no adequate remedy at law").

[13][14][15] ¶ 26 On appellate review, a grant of injunction is overturned only upon showing that the district court abused its discretion or that the decision is clearly against the weight of evidence. *Id.*, This court has defined irreparable injury as "[w]rongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard.... Irreparable injury justifying an injunction is that which cannot be adequately compensated in damages or for which damages cannot be compensable in money." *System Concepts, Inc. v. Dixon*, 669 P.2d 421, 427-28 (Utah 1983) (quoting *Black's Law Dictionary* 707 (rev. 5th ed.1973)). Defendants point out that plaintiffs' real estate appraiser estimated that obstruction of the alley caused plaintiffs a loss of about \$600 in property value, which is easily compensable in money. ^{FN6} Defendants, however,

fail to recognize other harm that plaintiffs suffer, harm that clearly exists based on the undisputed facts in the record. For example, although plaintiffs relied on having access through the alley when they purchased their properties, plaintiffs are now restricted every time they wish to deliver heavy or large items to the rear of their homes. Plaintiffs' only alternative access to their backyards is up a 38 foot vertical rise in the front, and around the house through a narrow access way or through the house itself. Plaintiffs will suffer obvious inconvenience, extra cost, and hardship in order to proceed with plans such as repairing a roof, building a shed, storing a boat, or undertaking major landscaping. Plaintiff Scott Carrier would also be prevented from completing his planned backyard landscaping, which requires approximately twelve tons of large boulders to be delivered. It is clear that any amount to compensate plaintiffs for these losses would be based on conjecture of how plaintiffs may use the alley in the future and an estimate of how much money it would cost to carry out these conjectured plans without access through the alley. This harm is immeasurable in money damages and is of a continuing nature; therefore, it constitutes irreparable injury that qualifies for an injunction.

FN6. Although defendants refer to this appraisal in their pleadings below, they have not provided a citation to the record for it, nor have we been able to locate it. Therefore, we do not consider it on appeal. Moreover, even if the report was part of the record below, and its contents were accurate, its findings do not affect our analysis because it is undisputed that plaintiffs continue to suffer other harm not compensable in money.

[16] ¶ 27 Defendants assert, however, that an injunction is not appropriate because their rock wall was completed eighteen months before plaintiffs filed suit and because defendants returned the remaining portion of the alley to productive use. Defendants rely on *Barboglio v. Gibson*, 61 Utah 314,

213 P. 385 (1923), in which this court denied injunctive relief and awarded money damages to a landowner whose property abutted a public road which was blocked by a railroad. See 61 Utah at 323, 213 P. at 388. In *Barboglio*, however, this court did *1120 not deny injunctive relief because the railroad improvements were well under way when the plaintiff demanded relief, as defendants claim. Rather, this court denied the injunction because the railroad was exercising a statutory right when it obstructed the road. See 61 Utah at 324, 213 P. at 389. This court further noted that the statute granting railways the right to take over public highways rendered a public service because of the importance of railroads. See 61 Utah at 321, 213 P. at 387. In the instant case, defendants have no statutory right to obstruct plaintiffs' easement across the alley, and although the rock wall benefits defendants, it does not render a public service. Therefore, *Barboglio* is inapplicable.

[17] ¶ 28 Contrary to defendants' assertions, we have held that an injunction is the appropriate remedy to prevent a private party from interfering with another private party's easement. See *Gillmor*, 850 P.2d at 438. Here, defendants, private parties, have obstructed plaintiffs' private easement of access through the alley and have substantially impaired plaintiffs' use of their easement. As noted above, plaintiffs have suffered irreparable and continuing harm that cannot be restored by money damages. Therefore, the district court did not abuse its discretion in granting plaintiffs injunctive relief.

III. BALANCING OF EQUITIES

[18] ¶ 29 Defendants further argue that the district court should have applied a balancing of equities test, which requires a balancing of the parties' opposing interests. Under that test, defendants contend that their interest in keeping the wall far outweighs plaintiffs' interest in restoring the alley and thus any damages suffered by plaintiffs should be compensated by money.^{FN7} We review the district court's decision not to apply a balancing of equities

37 P.3d 1112, 436 Utah Adv. Rep. 47, 2001 UT 105
(Cite as: 37 P.3d 1112)

test for abuse of discretion. *Papanikolas Bros. Enters. v. Sugarhouse Shopping Ctr. Assocs.*, 535 P.2d 1256, 1259 (Utah 1975).

FN7. It is regrettable that defendants did not apply a similar equitable balancing approach when they were determining where to build their wall, since a matter of a few feet might have permitted plaintiffs access and secured their consent to a non-burdensome diminution of their access.

¶ 30 Defendants argue that this case is like *Penelko, Inc. v. John Price Assocs., Inc.*, 642 P.2d 1229 (Utah 1982), in which this court balanced the equities and found that an injunction was not appropriate. In *Penelko*, the defendant lessors violated a commercial lease by constructing a large driveway, landscaped island, and restaurant in a common parking area, causing a substantial reduction in revenue and patronage of the plaintiff's business. *Id.* at 1232. On appeal, this court held that it was not error to balance the equities in that case. *Id.* at 1235-36. We stated:

The burden to [defendant] in removing the restaurant and the improvements incidental thereto would involve substantial economic waste; money damages would appear to be adequate to compensate [plaintiff] for violations of its lease, particularly in light of the fact that [plaintiff] has since the trial sold its theater building and its lease rights. Except in extraordinary circumstances, injunctive relief should not be granted where events have rendered such relief unnecessary or ineffectual.

Id. at 1236. In *Penelko*, the harm caused by the defendant's actions was measurable in past lost profits and an injunction would benefit no one because plaintiff no longer had an interest in the property and thus no future losses were possible. *See id.* In contrast, in this case, injunction affords plaintiffs substantial benefit. They will be able to complete their landscaping and repair their roofs as planned, and they will be able to use the alley to deliver

heavy and awkwardly-sized items to their homes.

[19][20][21] ¶ 31 Moreover, the balancing of equities test is not appropriate here because the requirements for that test are not met. This court has set forth the circumstances in which a court may, at its discretion, apply a balancing of equities test instead of issuing a mandatory injunction. Under this test, the district court may *in its discretion* elect not to grant an injunction only "where an encroachment does not irreparably injure the plaintiff; was innocently made; the cost of removal would be disproportionate and oppressive compared to the benefits derived *1121 from it, and plaintiff can be compensated by damages." *Papanikolas Bros. Enters.*, 535 P.2d at 1259. Furthermore, "[t]he benefit of the doctrine of balancing the equities ...is reserved for the innocent defendant, who proceeds without knowledge or warning that he is encroaching upon another's property rights." *Id.* (emphasis added). If the defendant is not innocent, however, "equity may require [the property's] restoration, without regard for the relative inconveniences or hardships which may result from its removal." *Id.* In this case, it is undisputed that defendants did not innocently encroach on plaintiffs' property rights. Rather, defendants admit they had actual and repeated notification that the alley remained city property and that plaintiffs openly and repeatedly protested obstruction of the alley during the time of construction and long before the commencement of the construction of the wall. Even though defendants were informed they could use the property as they wished if and when the alley was vacated, they continued their construction and completed the rock wall six months before the vacation actually occurred. Thus, because defendants were not innocent in their encroachment, the district court did not abuse its discretion in declining to apply a balancing of equities test.^{FN8}

FN8. Defendants assert that an injunction against them is inequitable for various reasons, including that (1) Salt Lake City officials represented that they could con-

tinue to build the wall; (2) the 1990 vacating ordinance was only procedurally flawed and should be considered valid; (3) plaintiffs' delay in claiming a private **easement** until after the wall was complete caused the problem and estops injunctive relief; (4) the cost of removing the wall is excessive, while plaintiffs loss of property value is only \$600. We are unable to find support for many of these assertions in the record that was before the trial court. However, regardless of whether these facts are true, we do not consider them because we conclude that use of the balancing of equities test is not appropriate in this case.

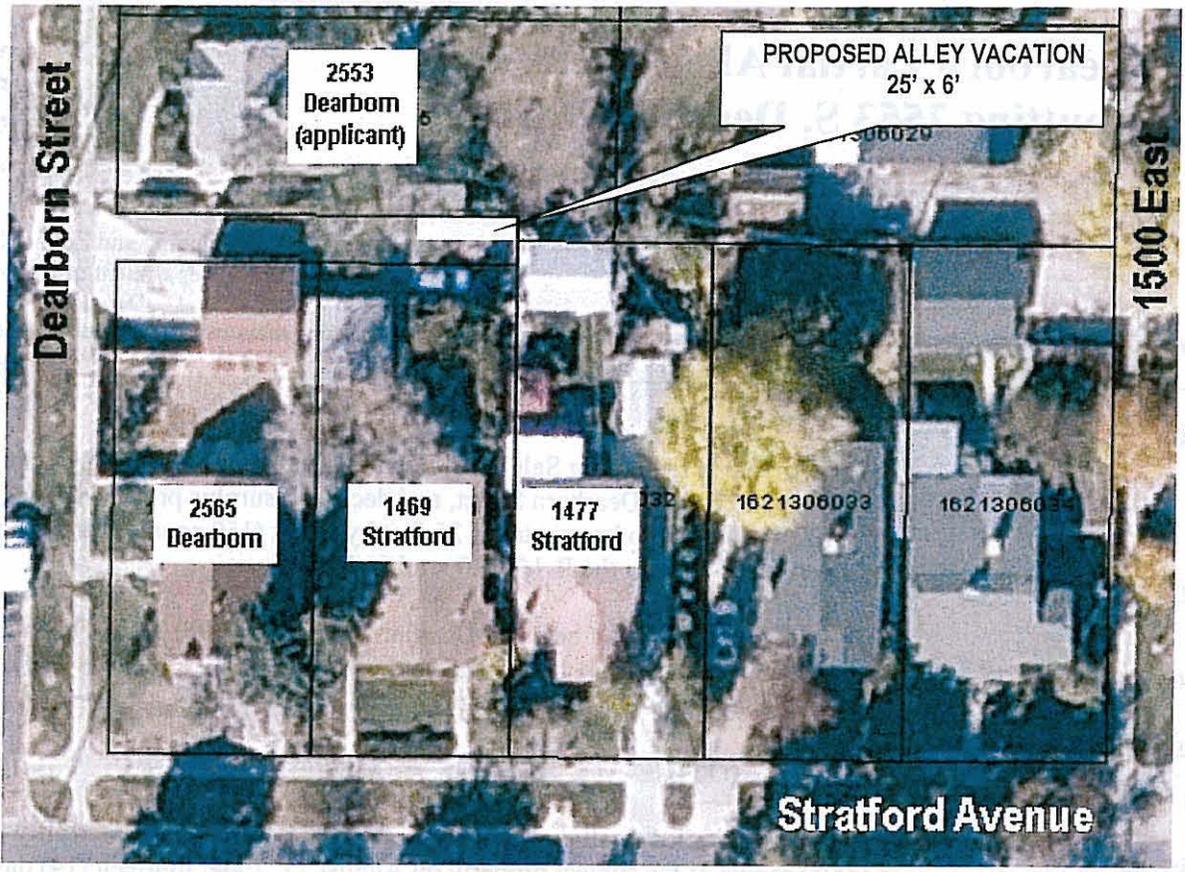
CONCLUSION

¶ 32 Defendants have failed to demonstrate that the district court erred in finding an **easement** in plaintiffs' favor over the entire width of the alley. Furthermore, defendants have not shown that the district court abused its discretion in granting an injunction ordering defendants to remove the obstructions from the alley. Finally, defendants have not shown that the district court abused its discretion in not applying a balancing of equities test and finding in defendants' favor. Therefore, the district court judgment is affirmed. Plaintiffs are entitled to a private **easement** over the entire 15 foot width of the western 272 feet of the alley. Defendants are ordered to remove their rock wall and other obstructions from the alley and to restore the alley to its prior condition.

¶ 33 Chief Justice HOWE, Associate Chief Justice RUSSON, Justice DURRANT, and Justice WILKINS concur in Justice DURHAM'S opinion.

Utah, 2001.
Carrier v. Lindquist
37 P.3d 1112, 436 Utah Adv. Rep. 47, 2001 UT 105

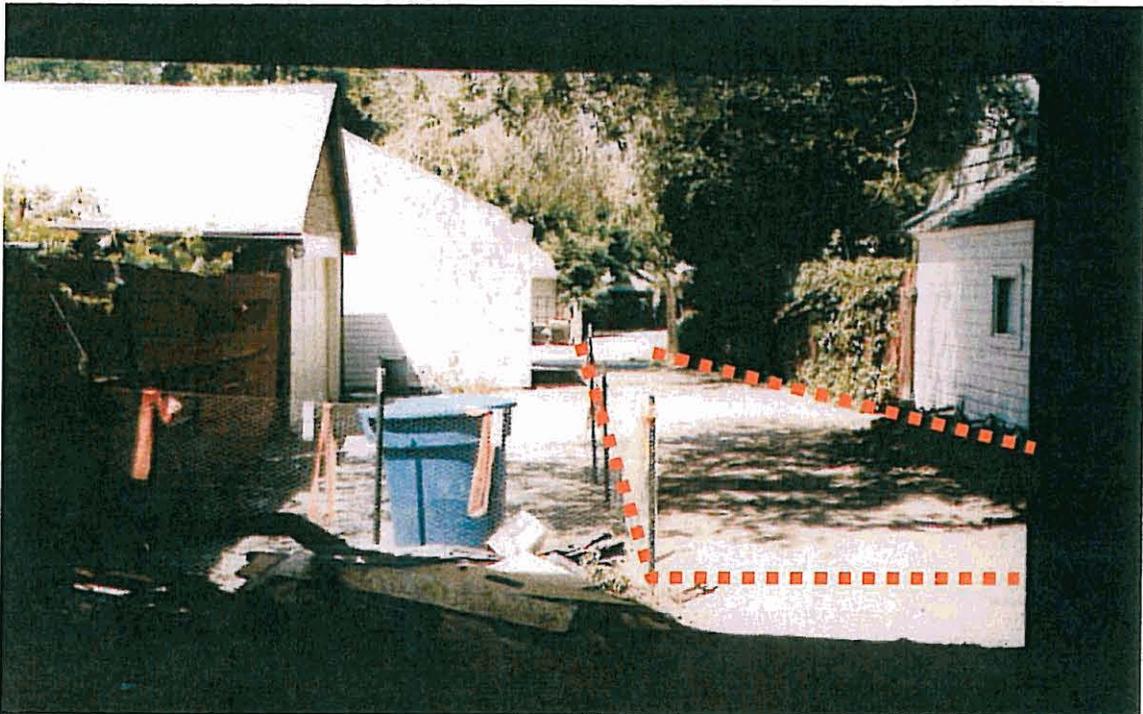
END OF DOCUMENT



Accessory Structure at 1477 Stratford Avenue



Alley looking towards East



Alley looking towards West
Photo taken from inside accessory structure at 1477 Stratford Avenue

SALT LAKE CITY CORPORATION

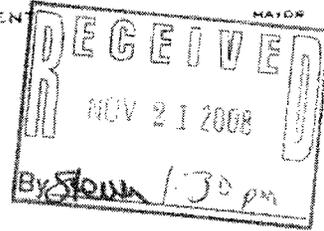
FRANK B. GRAY
DIRECTOR

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
OFFICE OF THE DIRECTOR

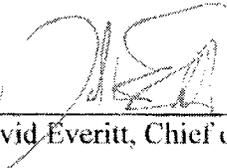
RALPH BECKER
MAYOR

MARY DE LA MARE-SCHAEFER
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.
DEPUTY DIRECTOR



CITY COUNCIL TRANSMITTAL


David Everitt, Chief of Staff

12/9/2008

Date Received: 12/21/2008

Date Sent to City Council: 12/10/2008

TO: Salt Lake City Council
Jill Remington-Love, Chair

DATE: November 20, 2008

FROM: Frank Gray, Community & Economic Development Director

RE: Petition 400-07-14 by Vera Novak requesting Salt Lake City to partially vacate the alley abutting her property at 2553 S. Dearborn Street and declare it surplus property

STAFF CONTACTS: Katia Pace, Associate Planner, at 535-6354 or
katia.pace@slcgov.com

RECOMMENDATION: That the City Council hold a briefing and schedule a Public Hearing

DOCUMENT TYPE: None

BUDGET IMPACT: None

DISCUSSION:

Issue Origin: Vera Novak is requesting that Salt Lake City partially vacate the alley abutting her property at 2553 S. Dearborn Street and declare it surplus property. The dimension of the alley proposed to be vacated is 25 feet by 6 feet (150 square feet.) The alley runs east/west between Dearborn Street and 1500 East. The applicant would like to vacate the alley and extend the property line to replace an existing garage.

In 1985, Salt Lake City vacated the alley running north/south and a portion of the alley running east/west adjacent to the applicant's property. The legal description for the alley vacation was recorded incorrectly, which has contributed some confusion concerning property lines. The east/west portion of this alley was not completely vacated because the alley provides the only access to off-street parking for the property at 1469 Stratford Avenue.

In 2004 the property owner at 1477 Stratford Avenue submitted plans for a building permit to build a second garage with access from the alley. This property already had a legal garage with access from Stratford Avenue. The information given for the permit incorrectly showed a 12 feet access to the alley from the property at 1477 Stratford Avenue. Six feet of the access shown on the building permit actually belongs to the property at 1469 Stratford Avenue. The City requires at least 8 feet 3 inches for access to a garage. The property owner received a building permit for an accessory structure, not a garage.

In 2007 the applicant submitted a request to vacate 25 feet of the alley abutting the eastern portion of her property. Planning Staff recommended vacating the entire alley, which would require an easement or a right-of-way agreement between the property owners abutting the alley. The applicant was unable to reach an agreement with the property owners. Consequently, the applicant modified her request to vacate 25 feet of half the width of the alley (6 feet.)

Analysis: The applicable City departments and divisions have reviewed this request. The Transportation and Building Services Divisions responded with concerns that the alley vacation should not deny access to properties at 1469 Stratford Avenue and 1477 Stratford Avenue. Planning discussed the access to 1477 Stratford Avenue with Transportation and Building Services and clarified their comments to say that the type of access to be retained is non-vehicular.

This request would not deny required access to off-street parking to any of the adjacent properties. Vehicular access to the property 1469 E. Stratford Avenue would be preserved, and the property at 1477 E. Stratford Avenue would retain a non-vehicular six foot access.

The property owners at 1477 Stratford Avenue oppose the alley vacation because they want to retain vehicular access to their accessory structure. The City does not recognize the accessory structure built in 2004 as a garage and therefore is not obligated to provide vehicular access. There is an existing garage on the property with access from Stratford Avenue.

Master Plan Considerations: The *Sugar House Community Master Plan adopted in 2005* states: “In Sugar House, alleys have traditionally been incorporated into development patterns and many alleyways currently serve both residential and commercial use. This is one of the factors that contribute to the pedestrian orientation that many of the well-established neighborhoods embody. However, due to maintenance issues, the abutting property owners to an alley frequently request that the City vacate the property. It has been the practice of the City that if approved, the alley is divided equally and ownership is transferred to the adjacent property owners. Transferring ownership of property that was once a City right-of-way, has been a source of concern for the community. Although expedient if the City’s responsibility for maintenance is relieved, the long-term loss of resources creates a cumulative impact upon the public access routes. Given these complex issues, the City Council is developing revisions to the existing alley vacation policy. This new policy will be used to evaluate each request for alley vacations in the future.” (See policy below.)

Salt Lake City Code Section 14.52.020 Policy Considerations for Closure, Vacation or Abandonment of City Owned Alleys:

The city will not consider disposing of its interest in an alley, in whole or in part, unless it receives a petition in writing which demonstrates that the disposition satisfies at least one of the following policy considerations:

- **Lack Of Use:** The city's legal interest in the property appears of record or is reflected on an applicable plat; however, it is evident from an on site inspection that the alley does not physically exist or has been materially blocked in a way that renders it unusable as a public right of way;
- **Public Safety:** The existence of the alley is substantially contributing to crime, unlawful activity, unsafe conditions, public health problems, or blight in the surrounding area;
- **Urban Design:** The continuation of the alley does not serve as a positive urban design element; or
- **Community Purpose:** The petitioners are proposing to restrict the general public from use of the alley in favor of a community use, such as a neighborhood play area or garden.

This request for vacating the alley does not substantially fall into any of these considerations.

PUBLIC PROCESS:

Notice was mailed to all property owners within a four hundred and fifty foot (450') radius of the subject property on August 27, 2008, fourteen (14) days prior to the scheduled public hearing. An announcement was also sent to all those on the City's Listserve and was posted on the City's website.

The applicant presented this request to the Sugar House Community Council on April 4, 2007, prior to submitting the application to the city. On April 6, 2007 Philip Carlson, the Chair of the Sugar House Community Council at the time, submitted the following comment: "The council (Sugar House Community Council) does not submit this letter as an endorsement for any property owner adjoining the portion of alley being considered for alley abandonment. Rather, it is recommended that the responsible and proper city agencies ensure the necessary steps are adhered to in consideration of the abandonment."

Staff contacted the abutting property owners for their input. The only formal response was from the property owners at 1477 Stratford Avenue who requested to be on record as being opposed to the alley vacation. They feel that the applicant's purpose for requesting the alley vacation is to block their access.

The Planning Commission held a Public Hearing on September 10, 2008. At this meeting, the Planning Commission voted unanimously against the request and forwarded a negative

recommendation to the City Council to vacate the alley. The Planning Commission did not declare the alley surplus property.

RELEVANT ORDINANCES:

Utah State Code, Title 10-9a-609.5 Vacating or altering a street or alley

Salt Lake City Code, Chapter 14.52 Disposition of City Owned Alleys

TABLE OF CONTENTS

- 1. CHRONOLOGY**
- 2. NOTICE OF CITY COUNCIL HEARING**
- 3. MAILING LABELS**
- 4. PLANNING COMMISSION**
 - A) Agenda Postmarked
August 27, 2008**
 - B) Staff Report
September 10, 2008**
 - C) Additional Information to the Planning Commission
September 5, 2008**
 - D) Planning Commission Minutes
September 10, 2008**
- 5. ORIGINAL PETITION**

1. CHRONOLOGY

PROJECT CHRONOLOGY

- April 4, 2007 Vera Novak presents the proposed alley vacation to the Sugar House Community Council before submitting the application to the City.
- June 8, 2007 Vera Novak submits application requesting Salt Lake City to vacate 25 feet by 12 feet of the alley abutting her property at 2553 S. Dearborn Street, and declare it surplus property.
- June 13, 2007 Petition assigned to Katia Pace.
- June 14, 2007 Staff recommends to the applicant that the alley should be vacated entirely for a better chance of approval.
- June 14, 2007 Staff request comments from the appropriate Salt Lake City Departments and Divisions.
- June 22, 2007 Transportation recommends denial because of access to 1477 Stratford Avenue.
- November 16, 2007 Staff met with property owner at 1477 Stratford Avenue.
- January 17, 2007 Staff contacted the applicant and informed her that the right-of-way agreement needed to include the property at 1477 Stratford Avenue.
- June 26, 2008 Applicant changes the request to vacate 6 feet by 25 feet of the alley.
- August 27, 2008 Planning Commission hearing notices sent via U.S. Mail and email.
- September 10, 2008 Planning Commission holds a public hearing and votes to forward a negative recommendation to the City Council.
- September 24, 2008 Minutes from Planning Commission are ratified.

2. NOTICE OF CITY COUNCIL HEARING

NOTICE OF PUBLIC HEARING

The Salt Lake City Council is considering Petition 400-07-14 by Vera Novak, requesting Salt Lake City to vacate 25 feet by 6 feet of the alley abutting her property at 2553 S. Dearborn Street, and declare it surplus property. Ms. Novak would like to vacate the alley and extend the property line to replace an existing garage. The property is located in the Single-Family Residential (R-1/7,000) zoning district.

The City Council will hold a public hearing to receive comments regarding this petition. During the hearing, anyone desiring to address the City Council concerning this issue will be given an opportunity to speak. The hearing will be held:

DATE:

TIME: 7:00 p.m.

PLACE: Room 315
City and County Building
451 South State Street
Salt Lake City, Utah

Salt Lake City complies with all ADA guidelines. People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance in order to attend this hearing. Accommodations may include alternate formats, interpreters, and other auxiliary aids. The City and County Building is an accessible facility. For questions or additional information, please contact the ADA Coordinator at 535-7971; or TDD 535-6021.

If you have any questions relating to this proposal, please contact Katia Pace at 535-6354 or via e-mail at katia.pace@slcgov.com.

3. MAILING LABELS

ANDERSON, ALLAN G
2504 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

APPLONIE, BRENT D & SIMONS,
JEAN; TC
2540 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

BAKER, BARBARA & KENT; JT
2627 S CHADWICK ST
SALT LAKE CITY, UT 84106 3506

BARNETT, ROBERT W
1462 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

BARRETT, DAVID L & JESSIE S; JT
2500 S FILMORE ST
SALT LAKE CITY, UT 84106

BELL, FLORENCE R; TR
2551 S 1500 E
SALT LAKE CITY, UT 84106 3533

BELL, RONALD O
2551 S 1500 E
SALT LAKE CITY, UT 84106 3533

BENNETT, GUNNIE L. P. & H.
DUWAINE
2545 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

BETENSON, TREVOR & AUDREY;
JT
2508 S 1500 E
SALT LAKE CITY, UT 84106 3533

BIRD, LOIS B
2516 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

BORTOLUSSI, BEVERLY A; TR
2525 S 1500 E
SALT LAKE CITY, UT 84106 3533

BRADY, JAN & PATRICIA; JT
1477 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

BROWN, MELVIN L; TR
2566 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

BUIRGY, ELINOR J; TR
2535 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

CABRAL, OSIRIS
2546 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

CARLISLE, CHRISTOPHER B
2265 E FARDOWN AVE
HOLLADAY, UT 84121 1410

CARLSON, KATHERINE L &
DUGAN, THOMAS A; TC
2540 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

CARR, ROLAN S; TR
2533 S 1500 E
SALT LAKE CITY, UT 84106 3533

COLEBY, RONALD S & CHRISTIANA
A; TRS
2504 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

COOK, SUSAN F
2495 S DEARBORN ST
SALT LAKE CITY, UT 84106

CORP OF PB OF CH JC OF LDS
50 E NORTHTEMPLE ST
SALT LAKE CITY, UT 84150 9704

CORP OF PB OF CH JC OF LDS
50 E NORTHTEMPLE ST
SALT LAKE CITY, UT 84150 9704

COULAM, CARMA M; TR ET AL
2624 S 1500 E
SALT LAKE CITY, UT 84106 3535

COULTER, LAWRENCE L & JANICE
M; JT
2527 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

CRAWFORD, CATHERINE
2532 S 1500 E
SALT LAKE CITY, UT 84106 3533

CUNNINGHAM, ALAN K & SMITH,
CONSTANCE E; TRS
2635 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

DAHLE, CINDY & MARSHA S (JT)
2510 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

DAHLGREN, ELAINE S
2568 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

DARNELL, LAURIE
2540 S 1500 E
SALT LAKE CITY, UT 84106 3533

DEAKIN, SYLVIA D & JOHN N (JT)
2631 S CHADWICK ST
SALT LAKE CITY, UT 84106 3506

DEWSNUP, MARY C & RALPH L; TRS
1407 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3528

DOUTRE, DAVID L & GRETA A; TRS
2516 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

ELLIS, GAYLE
1439 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

FAGERGREN, BRAD B & ELLEN M; JT
2512 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

FENTON, MARCUS & LORI; JT
2626 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

FITZPATRICK, MONICA M &
ARREDONDO, AURELIO S; JT
4240 S FORTUNA WY
SALT LAKE CITY, UT 84124 3318

FORSGREN, JANE H; TR
2868 E JENNIE LN
HOLLADAY, UT 84117

FOX, JASON P & PATRICIA L; JT
2636 S FILMORE ST
SALT LAKE CITY, UT 84106 3604

FREEMAN, LESLIE E
2533 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

GRAY, LELAND A & PETRA N; JT
1482 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

GREEN, THOMAS S & LAVETTA K;
TRS
2534 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

HABERSTOCK, WILLIAM F & DIANE
D; JT
25 N 3175 E
LAYTON, UT 84040

HABIB, ARSAIAN & SHABNAM; JT
2546 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

HARTMAN, IRA & STEVEN D &
THOMAS L; JT ET AL
2636 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

HAYS, PATRICK G & FRANCES M;
JT
1915 S 1000 E
SALT LAKE CITY, UT 84105 3335

HOJEM, MARITA E; TR
3622 E AURORA CIR
SALT LAKE CITY, UT 84124

HOLLOWAY, GEORGANNA
1515 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3529

HORSLEY, WYATT H & CHELSEA;
JT
2498 S DEARBORN ST
SALT LAKE CITY, UT 84106

HOSLER, TAMMY
2610 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

JOHANSON, CAREY
1470 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

JOHNSEN, JOSEPH F &
CATHERINE J; JT
2553 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

JOHNSON, CHARLES E
1434 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

KARTCHNER, STEVEN G
2546 S 1500 E
SALT LAKE CITY, UT 84106 3533

KASTELER, DARRELL L & JOAN W
(JT)
1424 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

KITCHENS, ELIZABETH
2625 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

KUSZAJ, MICHAEL S
2539 S 1500 E
SALT LAKE CITY, UT 84106 3533

LARSON, DOUGLAS R & ALISON L;
JT
2630 S 1500 E
SALT LAKE CITY, UT 84106 3535

LINDSTROM, SHERRI L B
224 W PORTER LANE
CENTERVILLE, UT 84014

LINGEN, PIET W & DOROTHY M; JT
1503 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3529

LUNT, STACEY & MARSHA; JT
2511 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

MACFARLANE, MICHAEL G & JENAE;
JT
2519 S 1500 E
SALT LAKE CITY, UT 84106 3533

MADSEN, CANDICE
2534 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

MAGNUSON, WILLIAM S
753 HARCOURT RD
BOISE, ID 83702 1815

MANWARING, JEREMY D & JODI H;
JT
2513 S 1500 E
SALT LAKE CITY, UT 84106 3533

MARLER, PATRICIA A & CHRISTIE
A; JT
1433 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

MAW, CYNTHIA E
2552 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

MCGIBBON, MELISSA & VAN DER
HAVE, VICKIE; TC
2501 S 1500 E
SALT LAKE CITY, UT 84106 3533

MILLER, SUSAN T
2528 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

MORGENEGG, WILLY A; TR ET AL
785 E THREE FTNS CIR #26
MURRAY, UT 84107 5063

NOVAK PROPERTIES LLC
2545 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

NOVAK, RUZENA S; TR
1469 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

NOVAK, VERA M
2545 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

O'CONNOR, AMANDA P &
CHRISTIAAN A; JT
2565 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

PARR, RICHARD D & BONNIE J (JT)
2635 S CHADWICK ST
SALT LAKE CITY, UT 84106 3506

PETERS, BRADEN M & MEAGAN C;
JT
2545 S 1500 E
SALT LAKE CITY, UT 84106 3533

PFUFF, DENNIS R & SANDY L; JT
1180 E 4020 S
SALT LAKE CITY, UT 84124 1225

PLATT, CHAD
2636 S 1500 E
SALT LAKE CITY, UT 84106 3535

PORTER, ROBERT W & NANCY P;
TRS
2541 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

REYNOLDS, DENNIS F & SHIRLEY;
TR
1430 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

RICHARDS, RENA E L
2500 S 1500 E
SALT LAKE CITY, UT 84106

ROMANO, EDNA M
2490 S DEARBORN ST
SALT LAKE CITY, UT 84106

SELDIN, ROBYN W; TR
1509 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3529

SERVICE, AMY J & LANCE G; JT
2550 S 1500 E
SALT LAKE CITY, UT 84106 3533

SMITH, ALLISON
2503 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

SMITH, DEREK T & FORSMAN,
ERICA M; JT
2524 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

SMITH, JACOB C & WESSMAN,
EMILY; JT
2520 S 1500 E
SALT LAKE CITY, UT 84106 3533

SOTO, BRITTON D
2515 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

STANCHFIELD, JAMES C & RAMIE A;
JT
2529 S CHADWICK ST
SALT LAKE CITY, UT 84106 3504

STETTLER, NANCY T
1476 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

STRATFORD CORP OF CH OF JC
LDS
50 E NORTHTEMPLE ST
SALT LAKE CITY, UT 84150 9704

SWARTZ, GRANT L & SHERRI A (JT)
2511 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

THIRIOT, TONI
2541 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

THOMAS, CHRISTOPHER S &
LAURA; TRS
2624 S DEARBORN ST
SALT LAKE CITY, UT 84106 3514

THOMPSON, SCOTT A
2507 S 1500 E
SALT LAKE CITY, UT 84106 3533

TODD, PHYLLIS J
2526 S 1500 E
SALT LAKE CITY, UT 84106 3533

TRUJILLO, STACEY L & CARLOS A;
JT
2618 S FILMORE ST
SALT LAKE CITY, UT 84106 3604

WADDOUPS, CLAUDIA R R
1487 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3561

WAGSTAFF, KIMBERLY A
2526 S FILMORE ST
SALT LAKE CITY, UT 84106 3518

WILCOX, ELIZABETH L
2514 S 1500 E
SALT LAKE CITY, UT 84106 3533

WILLIAMS, GRANT M & JONI K; JT
1444 E STRATFORD AVE
SALT LAKE CITY, UT 84106 3562

YOHO, BRIAN & HOLLI; JT
2521 S DEARBORN ST
SALT LAKE CITY, UT 84106 3512

KATIA PACE
2546 LAMBOURNE AVE.
SALT LAKE CITY, UT 84109

KATIA PACE
SLC PLANNING DIVISION
POBOX 145480
SALT LAKE CITY, UT 84114-5480

GRACE SPERRY
2660 HIGHLAND DRIVE
SALT LAKE CITY, UT 84106

4. PLANNING COMMISSION

A) Agenda Postmarked

August 27, 2008

**AGENDA FOR THE
SALT LAKE CITY PLANNING COMMISSION MEETING
In Room 315 of the City & County Building at 451 South State Street
Wednesday, September 10, 2008 at 5:45 p.m.**

The field trip is scheduled to leave at 4:00 p.m. Dinner will be served to the Planning Commissioners and Staff at 5:00 p.m., in Room 126. **Work Session**—the Planning Commission may discuss the Accela project tracking program, project updates and other minor administrative matters. This portion of the meeting is open to the public for observation

APPROVAL OF MINUTES FROM WEDNESDAY, August 13, 2008.

REPORT OF THE CHAIR AND VICE CHAIR

REPORT OF THE DIRECTOR

1. **Petitions 410-06-29 & 490-07-09, Request for Time Extension: Capitol View Conditional Use/Planned Development and Subdivision**—a request by Jeremy Jones for a twelve month time extension for the approvals granted for the Capitol View project. The Planning Commission approved the project on October 10, 2007. Section 21A.54.120 of the Zoning Ordinance limits the validity of approval for conditional uses to 12 months, unless a longer time period is requested and granted by the Planning Commission. The subject property is located at approximately 690 North West Capitol Street in City Council District three represented by Eric Jergensen (Staff Contact: Lex Traughber at 535-6184 or lex.traughber@slcgov.com).

PUBLIC HEARING

2. **Petition 400-07-35, Christus St. Joseph Villa Master Plan Amendments**—a request by Christus Health Utah represented by Galen Ewer, CEO/Administrator for Christus St. Joseph Villa, proposes to change the land use designation in the Future Land Use Map of the Central Community Master Plan for seven parcels located adjacent to the Christus St. Joseph Villa campus at 451 East Bishop Federal Lane. The addresses of the seven parcels according to County records are 1952, 1962, 1966 South 500 East and 455, 459, 465, 475 E. Hollywood Avenue. The applicant proposes to change the land use designation on these parcels from "Low Density Residential" to "Institutional" in order to facilitate redevelopment and expansion of the Christus St. Joseph Villa campus. The applicant also proposes to amend the Blocks 4 & 5 - East Waterloo Subdivision Small Area Master Plan that was adopted in 1992 to address the future expansion needs of Christus St. Joseph Villa. The subject properties are located in City Council District 5 represented by Jill Remington Love (Staff contact: Lex Traughber at 535-6184 or lex.traughber@slcgov.com).
3. **Petitions 400-07-15 and 400-07-16 Parleys Way Wal-Mart Rezoning and Master Plan Amendment**—a request by CLC Associates, Inc. on behalf of Wal-Mart for a zoning map amendment and a master plan amendment to the East Bench Master Plan located at approximately 2705 East Parleys Way. The parcel is currently zoned Community Business (CB) and the site is developed with a noncomplying use (supercenter) in a nonconforming structure. CLC Associates, Inc. is requesting that the property be rezoned to Community Shopping (CS) to allow for the construction of a new supercenter. The property is located in City Council District Seven represented by Council Member Søren Simonsen (Staff contact: Nick Britton at 801-535-6107 or nick.britton@slcgov.com).
4. **Petition 410-08-50 (PLNPCM2008-00196) Piper Down Private Club Conditional Use Expansion at approximately 1492 South State Street**—a request for approval to expand the existing private club structure and the rear outdoor dining. The private club was a previously approved conditional use in the CC zoning District). The site is located in Council District five Jill Remington-Love (Staff contact: Marilyn Lewis at 535-6049 or marilyn.lewis@slcgov.com).
5. **Petition 400-07-14, Declaration of Surplus Property and Alley Vacation**—a request by Vera Novak to vacate a portion of the alley abutting her property at approximately 2553 South Dearborn Street, and declare it as surplus property. The property is located in the R-1/7,000 – Single-family Residential Zoning District, and in Council District Seven, represented by Søren Simonsen (Staff contact: Katia Pace at 535-6354 or katia.pace@slcgov.com).
6. **Petition 410-08-39 Autozone Planned Development**—a request by The Boyer Co., represented by Nate Swain, to construct a new 6,000 square foot commercial building on a pad site located at approximately 1199 East 3300 South, at the south entrance of the Brickyard Plaza, in a Community Business (CB) district. The property is located in City Council District Seven, represented by Søren Simonsen (Staff contact: Casey Stewart at 535-6260 or casey.stewart@slcgov.com).
7. **Petition 490-08-23 Ehrich's Subdivision of Block 23 Amendment**— a request by Ed and Joy Hashimoto, represented by Jason Nichols (Parsons, Behle, & Latimer law firm), for a subdivision amendment to reconfigure existing residential Lots 19, 20, and 21, Block 23, located at approximately 305 and 315 South 1200 East. The property is located in the R-2 (residential) district. The property is located in City Council District Four, represented by Luke Garrott (Staff contact: Casey Stewart at 535-6260 or casey.stewart@slcgov.com).
8. **Petition 400-08-18, a legislative action initiated by the Salt Lake City Council**—a request by the City Council for the preparation of an ordinance that would restrict the distance between businesses in Salt Lake City that provide "payday-loan check cashing services," and consider expanding the ordinance to cover the ratio of businesses to the number of people served, and where those businesses should be allowed (Staff contact: Everett Joyce 535-7930 or everett.joyce@slcgov.com).

Visit the Planning and Zoning Enforcement Division's website at www.slcgov.com/CED/planning for copies of the Planning Commission agendas, staff reports, and minutes. Staff Reports will be posted the Friday prior to the meeting and minutes will be posted two days after they are ratified, which usually occurs at the next regularly scheduled meeting of the Planning Commission.

PUBLIC HEARING NOTICE

MAILED FROM ZIP CODE 84116
02 1A
0004632097 AUG 27 2008
\$ 00.42



FIRST CLASS

Salt Lake City Planning Division
451 South State Street, Room 406
PO Box 145480
Salt Lake City UT 84111

1. Fill out registration card and indicate if you wish to speak and which agenda item you will address.
2. After the staff and petitioner presentations, hearings will be opened for public comment. Community Councils will present their comments at the beginning of the hearing
3. In order to be considerate of everyone attending the meeting, public comments are limited to two (2) minutes per person, per item. A spokesperson who has already been asked by a group to summarize their concerns will be allowed five (5) minutes to speak. Written comments are welcome and will be provided to the Planning Commission in advance of the meeting if they are submitted to the Planning Division prior to noon the day before the meeting.
Written comments should be sent to:

Salt Lake City Planning Commission
451 South State Street, Room 406
Salt Lake City UT 84111
4. Speakers will be called by the Chair.
5. Please state your name and your affiliation to the petition or whom you represent at the beginning of your comments.
6. Speakers should address their comments to the Chair. Planning Commission members may have questions for the speaker. Speakers may not debate with other meeting attendees.
7. Speakers should focus their comments on the agenda item. Extraneous and repetitive comments should be avoided.
8. After those registered have spoken, the Chair will invite other comments. Prior speakers may be allowed to supplement their previous comments at this time.
9. After the hearing is closed, the discussion will be limited among Planning Commissioners and Staff. Under unique circumstances, the Planning Commission may choose to reopen the hearing to obtain additional information.
10. The Salt Lake City Corporation complies with all ADA guidelines. People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance in order to attend this meeting. Accommodations may include alternate formats, interpreters, and other auxiliary aids. This is an accessible facility. For questions, requests, or additional information, please contact the Planning Office at 535-7757; TDD 535-6220.

4. PLANNING COMMISSION
B) Staff Report
September 10, 2008

PLANNING COMMISSION STAFF REPORT

Dearborn Partial Alley Vacation Abutting 2553 S. Dearborn Street

Petition 400-07-14
September 10, 2008



Planning and Zoning Division
Department of Community
Development

Applicant:

Vera Novak

Staff:

Katia Pace, Associate Planner
535-6354
katia.pace@slcgov.com

Tax ID:

16-21-306-015

Surrounding Zoning:

R-1/7,000 – Single-family
Residential District

Council District:

Council District 7,
Councilmember Søren Simonsen

Acreage:

0.003 acre or 150 square feet

Surrounding Land Uses:

Single-family residential

Applicable Land Use Regulations:

Salt Lake City Code:

- Chapter 2.58
- Chapter 14.52

Utah Code:

- Section 10-9a-609.5

Master Plans:

The Sugar House Master Plan
designates the block where the alley
is Low Density Residential.

Attachments:

- A. Original and Current Request
- B. Department/Division Comments
- C. Photos
- D. Public Comments
- E. Original Application

REQUEST

Vera Novak, is requesting Salt Lake City to partially vacate the alley abutting her property at 2553 S. Dearborn Street, and declare it surplus property. The size of the alley proposed to be vacated is 25 feet by 6 feet (150 square feet.) The property is located in the R-1/7,000 zoning district.

The alley runs east/west between Dearborn Street and 1500 East. Other sections of the alley were vacated in 1985. The applicant would like to use the portion of the vacated alley to build a new garage.

PUBLIC NOTICE

Notice was mailed to all property owners within a four hundred and fifty foot (450') radius of the subject property on August 27, 2008, fourteen (14) days prior to the scheduled public hearing. An announcement was also sent to all those on the City's Listserve and was posted on the City's website.

ALTERNATIVE RECOMMENDATIONS

Approval

Based on the findings of fact identified at the public hearing, staff recommends that the Planning Commission transmit a favorable recommendation to the City Council to partially vacate the alley, and declare it surplus property.

Staff further recommends the following conditions of approval:

1. Final vacation is subject to approval of all utilities, and utility easements shall remain as required and approved by the entity concerned.
2. That the applicant purchases the surplus property according with Salt Lake City Code Chapter 2.58.

Denial

Based on the findings of fact identified at the public hearing, staff recommends that the Planning Commission transmit a negative recommendation to the City Council to partially vacate the subject alley. This request does not demonstrate that the disposition satisfies any of the policy considerations in Salt Lake City Code Chapter 14.52.020.



PROJECT HISTORY/DESCRIPTION

In 1985 the City vacated the alley running north/south and a portion of the alley running east/west adjacent to the applicant’s property. The legal description for the alley vacation was recorded incorrectly. The east/west portion of this alley was not completely vacated because the only access to off-street parking for the property at 1469 Stratford Avenue was from the alley.

In 2004 the property owner at 1477 Stratford Avenue submitted plans for a building permit for a second garage with access from the alley. There was already a legal garage on the property with driveway access from Stratford Avenue. The information given for the permit incorrectly showed part of the property at 1469 Stratford Avenue as the alley access to the proposed second garage. The actual width of the access from the alley to the property at 1477 Stratford Avenue is just six feet. Typical driveway access is a minimum of eight feet. Once the error was brought to the City’s attention, the property owner received a building permit for an accessory structure, not a garage. Although the structure is used as a garage and the alley is used for vehicular access to the structure, the City does not recognize the structure as a garage.

In 2007 the applicant submitted a request to vacate 25 feet of the alley. Planning staff recommended vacating the entire alley. The property at 1469 Stratford Avenue belongs to the applicant’s mother; this property needs access to off-street parking from the alley. The applicant was willing to deed the portion of the vacated alley to her mother to preserve access to her property. Also, the property at 2565 South Dearborn Street would need to deed their portion of the vacated alley or else enter into a private right-of-way agreement.

In the review process the Transportation Division recommended that the property at 1477 Stratford Avenue should retain the six foot access to the accessory structure. Thus requiring that a right-of-way agreement be reached between the property owners before the alley vacation request could be forwarded. The applicant was unable to reach an agreement with the property owners. Consequently, the applicant modified her request to vacate 25 feet of half the width of the alley which is 6 feet.

COMMENTS

Community Council Comments:

The applicant presented this request to the Sugar House Community Council on April 4, 2007, prior to submitting the application to the city. On April 6, 2007 Philip Carlson, the Chair of the Sugar House Community Council at the time, submitted the following comment: "The council (Sugar House Community Council) does not submit this letter as an endorsement for any property owner adjoining the portion of alley being considered for alley abandonment. Rather, it is recommended that the responsible and proper city agencies ensure the necessary steps are adhered to in consideration of the abandonment."

On August 28, 2007 the Planning staff requested input from the Sugar House Community Council but since the applicant had already presented her request to the Community Council prior to submitting the petition, the Sugar House Community Council declined an additional presentation.

City Department/Division Comments:

The application material was routed to the pertinent City Departments and Divisions on June 14, 2007. The Division of Transportation's comments and recommendations are for denial as follows:

The 12 foot wide alley abuts 2553 South and 2565 South Dearborn, 1469 East and 1477 East Stratford Avenue.

Per our field review and files we find that the alley currently services 2565 South Dearborn (*) as a shared driveway approach to a two car garage facing Dearborn (2001 Permit), 1469 East Stratford Avenue has a two car garage with its only access from the alley and 1477 East Stratford Avenue has a storage shed (2007 permit) with a 6 foot wide frontage access from the alley and a single car garage with access from Stratford. The property at 2553 South Dearborn has a driveway parallel to the alley to access a single car garage in the rear yard.

The petition to vacate or close the alley needs to have approval from all abutting properties. The vacation from public ownership to private ownership will require cross access easements for all abutting properties to maintain current access rights. Closure will also require approval from all utilities and emergency services as required.

(Subsequent review found that the property at 2565 Dearborn has a separate driveway approach from the alley, and would not be impacted by the alley vacation.)*

Upon receiving this recommendation, Planning staff discussed this matter with Transportation and Building Services and Licensing and understands their comments to say that the type of access to be retained is not vehicular, but access to the accessory structure.

This and other comments received from the pertinent City Departments and Divisions are found in Attachment B of this staff report.

Public Comments:

The property owners at 1477 Stratford Avenue are opposed to the alley vacation and feel that the applicant's purpose for requesting the alley vacation is to block their access. A note from Pamela Brady, a property owner at 1477 Stratford Avenue, and a letter from the applicant's attorney addressed to the Brady's attorney can be found in Attachment D.

STAFF ANALYSIS AND FINDINGS

Master Plan Discussion:

Sugar House Community Master Plan adopted in 2005.

"In Sugar House, alleys have traditionally been incorporated into development patterns and many alleyways currently serve both residential and commercial use. This is one of the factors that contribute to the pedestrian orientation that many of the well-established neighborhoods embody. However, due to maintenance issues, the abutting property owners to an alley frequently request that the City vacate the property. It has been the practice of the City that if approved, the alley is divided equally and ownership is transferred to the adjacent property owners. Transferring ownership of property that was once a City right-of-way, has been a source of concern for the community. Although expedient if the City's responsibility for maintenance is relieved, the long-term loss of resources creates a cumulative impact upon the public access routes. Given these complex issues, the City Council is developing revisions to the existing alley vacation policy. This new policy will be used to evaluate each request for alley vacations in the future." (See guidelines below.)

Alley Closure Guidelines:

Salt Lake City Code Section 14.52.020 Policy Considerations for Closure, Vacation or Abandonment of City Owned Alleys

The city will not consider disposing of its interest in an alley, in whole or in part, unless it receives a petition in writing which demonstrates that the disposition satisfies at least one of the following policy considerations:

- **Lack Of Use:** The city's legal interest in the property appears of record or is reflected on an applicable plat; however, it is evident from an on site inspection that the alley does not physically exist or has been materially blocked in a way that renders it unusable as a public right of way;
- **Public Safety:** The existence of the alley is substantially contributing to crime, unlawful activity, unsafe conditions, public health problems, or blight in the surrounding area;

- **Urban Design:** The continuation of the alley does not serve as a positive urban design element; or
- **Community Purpose:** The petitioners are proposing to restrict the general public from use of the alley in favor of a community use, such as a neighborhood play area or garden.

Salt Lake City Code Section 14.52.030 (B) Public Hearing and Recommendation from the Planning Commission

The Planning Commission shall make a report and recommendation to the City Council on the proposed disposition of the subject alley. A positive recommendation should include an analysis of the following factors:

1. The City police department, fire department, transportation division, and all other relevant City departments and divisions have no objection to the proposed disposition of the property.

Analysis: The applicable City departments and divisions have reviewed this request. The Transportation Division has concerns that the alley vacation should not deny access to properties at 1469 Stratford Avenue and 1477 Stratford Avenue.

Finding: Vehicular access to the property at 1469 Stratford Avenue would be preserved, and a six foot non-vehicular access to the property at 1477 Stratford Avenue would be retained (this property also has a driveway access from Stratford Avenue.)

2. The petition meets at least one of the policy considerations stated above (Section 14.52.020.)

Analysis: The reason for vacating this alley is not because of lack of use, public safety, or community purpose. It can be argued that the continuation of the alley does not serve an urban design element.

Finding: The request for vacating the alley does not substantially fall into any of these considerations.

3. The petition must not deny sole access or required off-street parking to any adjacent property.

Analysis: Vehicular access to the property 1469 E. Stratford Avenue would be preserved. The property at 1477 E. Stratford Avenue would retain the non-vehicular six foot access (this property also has a driveway access from Stratford Avenue.)

Finding: The alley vacation would not deny sole access or, required access to off-street parking to any adjacent property.

4. The petition will not result in any property being landlocked.

Finding: No landlocked parcels will be created. The partial alley vacation will ensure that there is still vehicular access to the property at 1469 Stratford Avenue.

5. **The disposition of the alley property will not result in a use which is otherwise contrary to the policies of the City, including applicable master plans and other adopted statements of policy which address, but which are not limited to, mid-block walkways, pedestrian paths, trails, and alternative transportation uses.**

Analysis: There are no midblock-walkways, pedestrian paths, or trails affected by the alley nor does the alley vacation affect alternative transportation uses.

Finding: The disposition of the alley property will not result in a use which is contrary to the policies of the City.

6. **No opposing abutting property owner intends to build a garage requiring access from the property, or has made application for a building permit, or if such a permit has been issued, construction has been completed within 12 months of issuance of the building permit.**

Analysis: The property owner at 1477 Stratford Avenue opposes the alley vacation. However, this property does not have legal vehicular access to the alley. The City does not recognize the accessory structure built in 2001 as a garage. There is an existing garage on the property with access from Stratford Avenue.

Finding: Vacating this portion of the alley will not deny access to the property at 1477 Stratford Avenue.

7. **The petition furthers the City preference for disposing of an entire alley, rather than a small segment of it.**

Analysis: At the time the applicant submitted this request, the Planning staff recommended to try to vacate the entire alley. Due to lack of support by all of the abutting property owners needing access to the alley, vacating the entire alley was not possible.

Finding: The applicant requested that a partial alley vacation be considered because there is not support from the abutting property owners to vacate the entire alley.

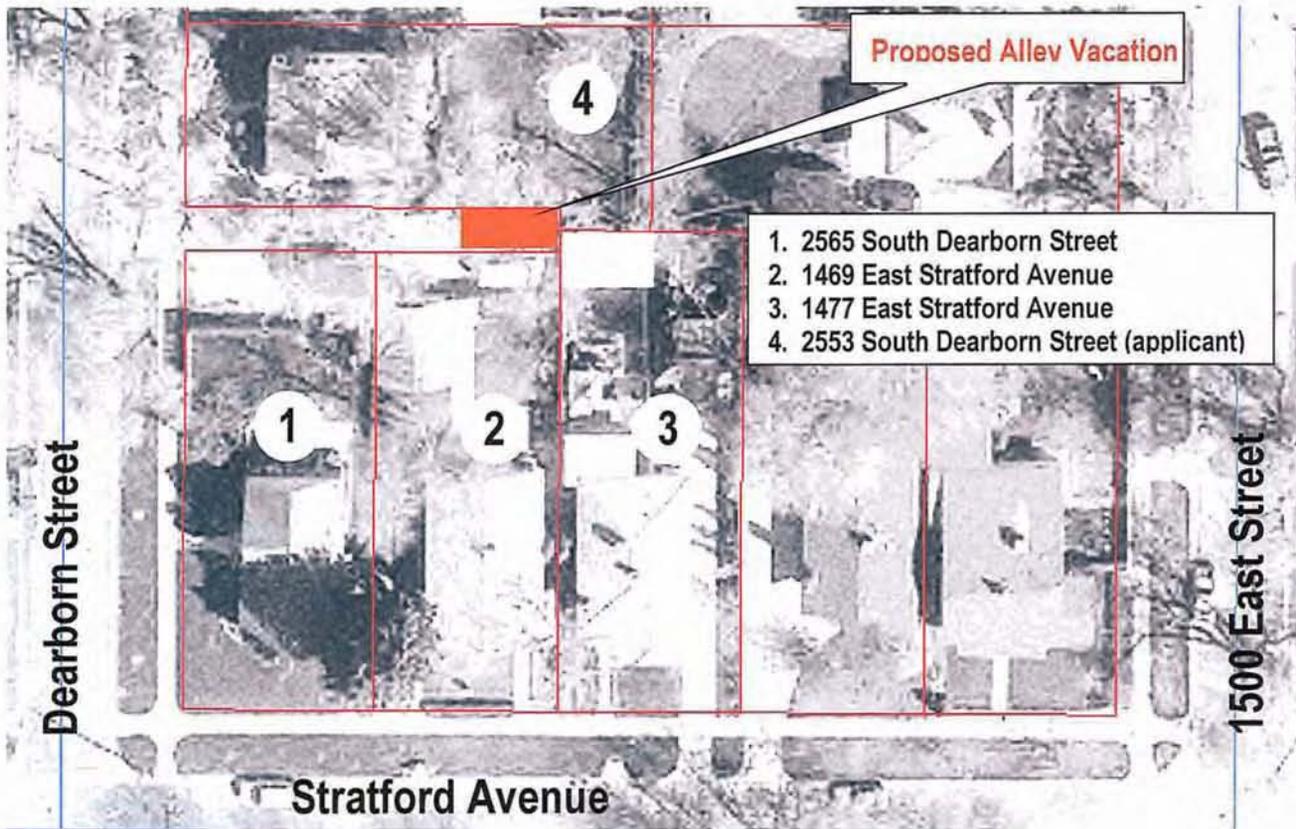
8. **The alley is not necessary for actual or potential rear access to residences or for accessory uses.**

Analysis: Vehicular access to property 1469 E. Stratford Avenue would be preserved. The property at 1477 E. Stratford Avenue would retain the six foot non-vehicular access.

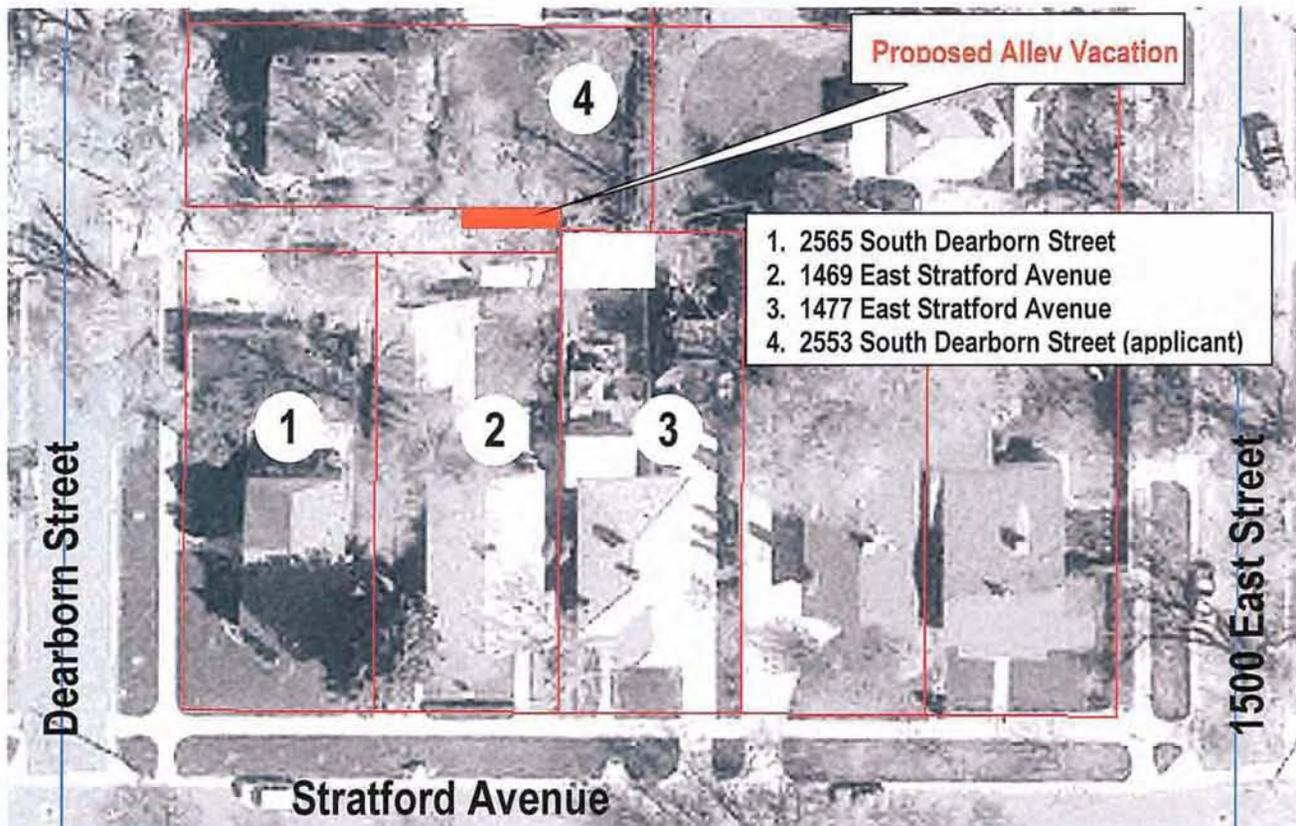
Finding: Actual or potential rear access to off-street parking and for accessory use is being retained.

Attachment A
Original and Current Request

Original Request



Current Request



Attachment B
Department/Division Comments

BUILDING SERVICES

From: Butcher, Larry

Sent: Saturday, June 23, 2007 7:40 AM

To: Pace, Katia

Cc: Goff, Orion

Subject: Alley Vacation / Vera Novak / 2553 S. Dearborn St. / 400-07-14

Categories: Program/Policy

Katia:

The property at 1469 Stratford appears to be the most affected by the vacation request since it does not have an existing driveway access from Stratford Avenue. The vacation may also require modification of the existing driveway access to the alley between Vera Novak's property and the property at 2565 S. Dearborn St. A shared driveway agreement may be the answer.

I have had previous contact with Vera regarding this alley access and the new accessory structure at 1477 E. Stratford. Please contact me at 706-0968 to discuss this issue.

Thanks,

Larry

TRANSPORTATION

From: Walsh, Barry
Sent: Friday, June 22, 2007 4:44 PM
To: Pace, Katia
Cc: Young, Kevin; Smith, Craig; Spencer, John; Nalder, Kevin; Stewart, Brad; Butcher, Larry; Askerlund, Dave
Subject: Pet 400-07-14 Alley closure

Categories: Program/Policy
June 22, 2007

Katia Pace, Planning

Re: Petition 400-07-14, to vacate the alley running east/west between Dearborn Street and 1500 East abutting 2553 South Dearborn Street.

The Division of transportation review comments and recommendations are for denial as follows:

The 12 foot wide alley abuts 2553 South and 2565 South Dearborn, 1469 East and 1477 East Stratford Avenue.

Per our field review and files we find that the alley currently services 2565 South Dearborn as a shared driveway approach to a two car garage facing Dearborn (2001 Permit), 1469 East Stratford Avenue has a two car garage with its only access from the alley and 1477 East Stratford Avenue has a storage shed (2007 permit) with a 6 foot wide frontage access from the alley and a single car garage with access from Stratford. The property at 2553 South Dearborn has a driveway parallel to the alley to access a single car garage in the rear yard.

The petition to vacate or close the alley needs to have approval from all abutting properties. The vacation from public ownership to private ownership will require cross access easements for all abutting properties to maintain current access rights. Closure will also require approval from all utilities and emergency services as required.

Sincerely,

Barry Walsh

PS. - The alley is currently gravel and should have a paved surface to access the 1469 East garage.

Cc Kevin Young, P.E.
Craig Smith, Engineering
John Spencer, property Management
Kevin Nalder, Fire
Brad Stewart, Public Utilities
Larry Butcher, permits
Dave Askerlund, Police

FIRE

From: Nalder, Kevin
Sent: Thursday, June 21, 2007 6:25 PM
To: Pace, Katia
Subject: Petition 400-07-14
Katia,

After soliciting input and receiving feedback from the Captains at fire station #3. It is determined that closure of the alley in petition # 400-07-14 will not impede the fire departments ability to provide emergency services. Approved

J Kevin Nalder

Battalion Chief - Fire Marshal
Salt Lake City Fire Department
305 East 200 South
Office: 801-799-4163
Fax: 801-799-4156
Email: kevin.nalder@slcgov.com

PUBLIC UTILITIES

From: Garcia, Peggy
Sent: Monday, June 18, 2007 10:35 AM
To: Pace, Katia
Subject: Petition #400-07-14 Vacate Alley

Categories: Program/Policy
Katia,

Salt Lake City Public Utilities has reviewed the request to vacate the alley running east/west between Dearborn Street and 1500 East abutting property on 2553 South Dearborn Street and find that there are no existing water, sewer or storm drainage utilities within the requested portion of the alley to be vacated.

If you need any further assistance please contact me at 483-6727.

Thank you,

Peggy Garcia

POLICE



MEMORANDUM

451 South State Street, Room 406
Salt Lake City, Utah 84111
(801) 535-7757

Planning and Zoning Division
Department of Community Development

Date: June 14, 2007

To: Property Management, John Spencer
Engineering, Craig Smith
Fire, Kevin Nalder
Public Utilities, Brad Stewart
Transportation, Barry Walsh
Building Services, Larry Butcher
Police, Dave Askerlund

From: Katia Pace, Associate Planner

Re: **Petition #400-07-14**, to vacate the alley running east/west between Dearborn Street and 1500 East Street abutting the property on 2553 South Dearborn Street.

The Planning Division is reviewing a request by Vera Novak to vacate the alley abutting her property at 2553 South Dearborn Street, and declare it surplus property. The alley runs east/west between Dearborn Street and 1500 East Street (please see map for details.) Other portions of the alley were vacated in 1985.

Please review the attachments and respond by June 28, 2007. If you have any questions, please contact me at 535-6354 or katia.pace@slcgov.com.

Thank you.

Katia,

I see no public safety concerns with this. Tell

Attachment C
Photos

Accessory Structure at 1477 Stratford Avenue



Alley looking towards East



Alley looking towards West
Photo taken from inside accessory structure at 1477 Stratford Avenue

Attachment D Public Comments

RESPONSE FROM THE SUGAR HOUSE COMMUNITY COUNCIL

April 6, 2007

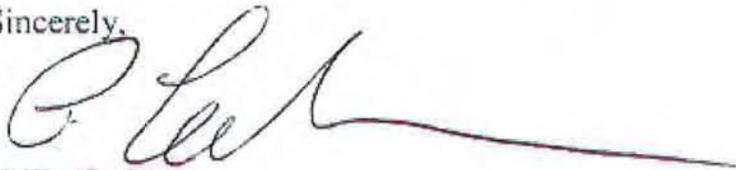
To Whom It May Concern:

This letter serves to notify your department of a recent alley abandonment presentation to the Sugar House Community Council by Vera Novak on April 4, 2007. Per the petition instructions (requirement 2) Ms. Novak was instructed to bring her petition before the neighborhood council in which the parcel of alley considered for abandonment exist.

The council does not submit this letter as an endorsement for any property owner adjoining the portion of alley being considered for alley abandonment. Rather, it is recommended that the responsible and proper city agencies ensure the necessary steps are adhered to in consideration of the abandonment.

It should be noted, that Vera Novak was thorough, prepared, forthcoming and helpful in helping the council understand her petition.

Sincerely,



Philip Carlson
Chair – Sugar House Community Council
1917 E. 2700 South
SLC, UT 84106
801-694-2478

SUGAR HOUSE COMMUNITY COUNCIL

Minutes for April 4, 2007

Trustees present: Russell Callister, Phil Carlson, Sarah Carlson, Barbara Green, Dave Holbrook, Mark Holland, Michael G. Kavanagh, Scott Kisling, Emil Kmet, Andrea Moesser, Dave Mulder, Cabot Nelson, Susan Petheram, Ray Pugsley, L. Rex Sears, Judi Short, Grace Sperry, Andrea Wargula, Steve Wilson, Rawlins Young (20)

Trustees excused: Su Armitage, Dolores Donohoo, Art Haddow, Derek Payne (4)

City/State Representatives: Michael Stott, SLC Mayor's Office; Soren Simonsen, SLC Council; Fred Ross, SLPD (3)

Others: Vera Novak, Jaelene V. Myrup, Jana Johnson, Sheila O'Driscoll, Robert Cheney, Joyce Cheney, David Muse, Wayne Ricks, Melissa Lichtenstein, Allison Stone, Amy Buchanan, Ramiro Flores, Danny Walz, Boyd Petersen, Ralph Becker (16)

Call to order, Minutes approval, Chair Report: Call to order, 7:03pm. Phil Carlson, chair. Treasurer Dolores Donohoo was out, but she's getting better every day. She's expecting to host the executive committee meeting on Wednesday at her home.

David Holbrook moved to approve minutes of last month's meeting. There were no objections.

SLC Council District 7 town meeting will be on April 26th at Dilworth Elementary. There is a quarter plan for Foothill and the small area plan for the apartments and WalMart/KMart near Parleys Way.

SLC Council District 6 meeting will be on Tuesday, April 24th at Indian Hills Elementary.

Crime Update: Officer Fred Ross, SLPD: desk number: 799-3669, cell: 301-1251, email: fred.ross@slcgov.com. In the middle to the end of last week, we had a round of graffiti. It happened at Smith Crown and other businesses. Call to get it removed: Graffiti hotline is 972-7885. Recent home burglaries have stopped. The SLPD has two in custody. The suspects may have hit in West Valley City also.

Property crimes are down, crime against persons is up. Auto thefts are down, as are car prowls. Security has been great at Pizza and Pasta. Sarah Carlson inquired where the recent burglaries were. One robbery at Formosa Grill on 2100 S in a series of restaurant robberies. A trustee asked about tonight's incident at Stratford and Imperial. Officer Ross has no info yet.

Chair Report, continued: Another announcement: Ralph Becker is here as a candidate. There is a thank-you card for Helen, who has resigned. Trustees were urged to sign and donate.

Alley Vacation, 2553 S. Dearborn St.: Alley vacation at 2553 S. Dearborn St., presented by Vera Novak & Steve Wilson. Steve Wilson took the issue. They handed out photocopies, color printouts of information. Most neighbors have signed the petition.

Ms. Novak went through the handouts page by page. 1477 E Stratford has a garage that was improperly permitted. Vacating alley will cut off access. The owner has been trespassing to access the garage.

Questions were for clarification.

Steve Wilson moved that the SHCC write a letter for Vera Novak indicating that she has complied with the alley vacation petition application by presenting her request to the council. The letter will take no position towards any property owner and recommends proper city agencies to further look into the matter. Judi Short seconded. Steve offered to draft the letter and email it to Phil.

Rex Sears added that it was good for the council to not take a position. Rex offered a friendly amendment: We note that Novak was thorough, prepared, forthcoming and helpful. The full amendment passed unanimously by voice vote.

Online resources: Yahoo! group for trustees: Cabot Nelson gave a computer presentation about the Yahoo! Group for the SHCC which offers an email forum and photo albums. It is a resource for trustees only. The URL is <http://groups.yahoo.com/group/SugarHouse>

Susan Petheram's new email is spetheram@earthlink.net.

Business Spotlight, Frost Books: Presented by Rich Frost, owner of Frost Books. Frost Books was started by Mr. Rich's mother in 1959. It's a family operation. They sell thousands of children's books at 50-70% off. There are occasional book signings. Andrea Moesser commented that Frost Books offered books to her book club at discount rates.

Merchant's Association Update: By Barbara Green. Phil Carlson took notes while Cabot Nelson was setting up.

Land Use & Zoning Committee: Helen is out. Cabot's motion to limit to five minutes failed for lack of a second. Judi presented the usual handout.

City Council Update: By Soren Simonsen. Mr. Simonsen also commented favorably about Frost Books.

Last night was busy. It was the closing of the public hearings for the redevelopment of City Creek center. The sky bridge was the main point. You can add your comments at council.comments@slcgov.com.

Come to the meeting on the 17th for some issues. Downtownrising.com is an envisioning plan for downtown with the SL Chamber. U of U's School of Arch + Planning helped produce graphics. The meeting is next Tuesday between 11am-1pm. More information at saltlakechamber.org. The plan incorporated urban design elements addressed especially favored by the American Planning Association, the Congress of New Urbanism, etc. They also advocate form-based zoning. Mayor Anderson wants formula-free business zoning which might help local business. The goal would be to maintain business incubation.

SLC Council's Small Business subcommittee has been organized at the Nibley meeting. Small business task force been implemented to help businesses impacted, especially by construction and public works. There is a town meeting on April 26th at Dilworth Elementary at 7:00pm. Two recent ordinances: infill ordinance and landscaping ordinance. Landscaping is pending. It would allow taking out sod in some instances.

PLANNING'S LETTER TO ABUTTING PROPERTY OWNERS

GEORGE G. SHAW, AICP
PLANNING DIRECTOR

DOUGLAS L. WHEELWRIGHT, AICP
DEPUTY PLANNING DIRECTOR

CHERI COFFEY, AICP
DEPUTY PLANNING DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF COMMUNITY DEVELOPMENT
PLANNING AND ZONING DIVISION

ROSS G. "ROCKY" ANDERSON
MAYOR

A. LOUIS ZUNGUZE
COMMUNITY DEVELOPMENT DIRECTOR

November 6, 2007

Jan & Patricia Brady
1477 Stratford Avenue
Salt Lake City, UT 84106-3561

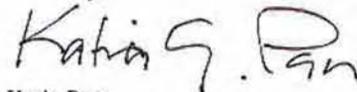
Re: Petition 400-07-14 to vacate the alley running east/west between Dearborn Street and 1500 East Street.

Jan & Patricia Brady:

Salt Lake City Planning Division is reviewing Petition 400-07-14 to vacate the alley running east/west between Dearborn Street and 1500 East Street. A map is attached for your information. As part of our review process, the Planning Staff is contacting all property owners affected by this request.

You will be notified of any public hearings related to this request. If you have any questions or comments, please feel free to call me at 535-6354 or e-mail me at katia.pace@slc.gov.

Sincerely,



Katia Pace
Associate Planner

RESPONSE FROM PROPERTY OWNER AT 1477 STRATFORD AVENUE

- 1- Petition 400-07-14 between Dearborn & 1500 E.?
- 2- Permit - Final approval 6-15-04
Mrs. Armstrong, Jim & Kathy Doot, Rose Novak approved project prior to receiving bids to construct the garage on lot 1020.
- 3- If alley is vacated, access to the garage on lot 1021 (Rose Novak) and lot 1020 (Brady's) would be blocked.
- 4- Ordinance reads - "thence W. 152' to NE corner of lot 1021 (Rose Novak) (from 1500 E) thence North 12' (to lot 1025 - Vera Novak), thence 23' to S E corner of lot 1025 - Vera Novak)
(this is where the survey cap for lot 1025 is located)
Ordinance includes right of ways & easements to all public utilities - (transformer is located on S E corner of lot 1025).
- 5- Aug. 1, 2005 Vera Novak took possession of lot 1025 from Mrs. Armstrong.
- 6- Nov. 17, 2006, Vera Novak moved the fence ^(wire) from survey cap # 172 901 6' South & concreted a post on this new location thus limiting the approved access to the garage on lot 1020.

Attachment E Original Application

ORIGINAL PETITION

Petition to Vacate or Close an Alley

Petitioner: Vera Novak
 Address: 2553 S. Dearborn St.
 Date: Feb 17, 2007

As an owner of property adjacent to the alley, I agree to the proposed vacation or closure. I understand that if my property is a commercial business or a rental property with more than three (3) dwelling units, I will be required to pay fair market value for my half of the alley.

Ruzena Novak
 Print Name and Address: 1469 E Stratford Ave, Salt Lake City UT 84106 LOT 1021
 Signature: Ruzena Novak
 Date: 2/17/07

Vera Novak
 Print Name and Address: 2553 Dearborn St SIC UT 84106
 Signature: Vera Novak
 Date: 2/17/07

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Print Name and Address _____
 Signature _____
 Date _____

Alley Vacation**Location: North of Lot 1021 - 12 ft wide alley , 25 foot long section****Applicant: Vera Novak****Reason for Petition**

Property Improvement for Lot 13-21-306-025/1026. Alley portion North of Lot 1021, to be vacated and property added to Lots 1021 and 1025, 6 ft each side.

I invested in Lot 1025/1026 to safeguard my own property next door, lot 1027/1028. Lot 1025/1026 had a small house in disrepair when it came up for sale in spring of 2006, and I was afraid that it would be torn down and developed into another "monster house" – as the neighborhood has dubbed the remodel directly across Dearborn St at Lot 1085/1086. I did not want to live in the shadow of another excessive development, and the new zoning requirements were not yet in effect at the time of the sale. I will be making significant improvements to my own property, and plan to do the same with Lot 1025/1026 prior to resell. My intent is to build a high energy efficient home, keeping the design within the historical character of Highland Park.

To this end, I would like to replace the current non-functional garage with a 2 car garage. The increased width of the yard would allow the garage to be shifted 6 ft south, leaving more of the backyard open. This property current has a 6ft bump-out in the back SE corner of the property, as a result of the alley abandonment per Salt Lake City Ordinance No. 72 of 1985. There were discrepancies in the total length of that bump-out from the Property Deed, and conflicting information in the Ordinance. My surveyor and I agreed to go with the intent of the Ordinance, which meant I gave up 6 ft from the original Deed. At the time of the Ordinance, the alley behind 1469 E. Stratford (Lots 1021/1022) was not abandoned, in order to give the homeowner access to the garage at lot 1021. Said homeowner is in agreement with the current proposal, as she retains the garage access. I am seeking the extra 25 x 6 ft in order to build the garage in the back corner. Note there is a power line in the SE corner, 6 ft in from each direction, at the edge of the old alley. I have spoken with Rocky Mt Power, who saw no problem with the garage, as long as I keep the garage roof 10ft below the powered lines.

City Policy Consideration:

Lack of use. This portion of the alley had not provided access to any property other than 1469 E Stratford since at least 1979, when the current owner purchased the property. The chain link fences around adjacent properties were already in place at that time, and apparently had been for some time. The home owner used this space for guest off-street parking, and a vegetable garden to occupy her aging mother since 1993.

4. PLANNING COMMISSION
C) Addition Information to the
Planning Commission
September 5, 2008

Sept. 5, 2008

Petition 400-07-14
Dearborn Partial Alley Vacation
Abutting 2553 S. Dearborn St.

Dear Planning Commission,

After reviewing the Planning Commission Staff Report, the documents & pictures I submitted Nov. 14, 2007 to Katia Pace have not been included in the report as requested.

I would like to submit the enclosed 3 pages to be included in this report.

Sincerely,
Patricia Brady
1477 Stratford Ave.
S LC Ut. 84106
Phone # 801-467-1763

5. Petition 400-0714

September 2, 2008

Dear Planning commission,

Following the meeting with Katia Pace on Nov. 16, 2007, you have in your possession information, permits, ordinances and pictures pertaining to petition 400-08-50. The property in question is in daily use by the residents of 2565 Dearborne Ave, 1469 Stratford Ave and 1477 Stratford Ave. The three garages for these homeowners are in compliance with all city codes, permits and ordinances. In having the alley declared "Surplus and Vacated" would revoke the approved access to these garages. This would force these residents to park on the street. There is a fire hydrant in front of 1477 Stratford Ave.(a busy street) inhibiting these residents from parking in front of their house.

As the enclosed pictures show, the alley is not "surplus property", but access to these three garages. Vera Novak's property on Dearborne Ave has a private driveway with a garage. The alley adjacent to this property in NO WAY infringes or encroaches on that driveway which is currently divided by a fence.

We ask your consideration in leaving this alley "as is" and reject this petition or any further changes to the status quo.

Sincerely,

Jan and Patricia Brady
1477 Stratford Ave
Salt Lake City, UT 84106

SALT LAKE CITY ZONING APPROVAL

Scope of work Second Detached garage
Address 1477 Stratford

Zone R(-)7000 Parking Required ---

SETBACKS FROM PROPERTY LINES
Front --- Sides 3' Rear 3' Height 17' MAX.

Conditions/Comments
Alley access.

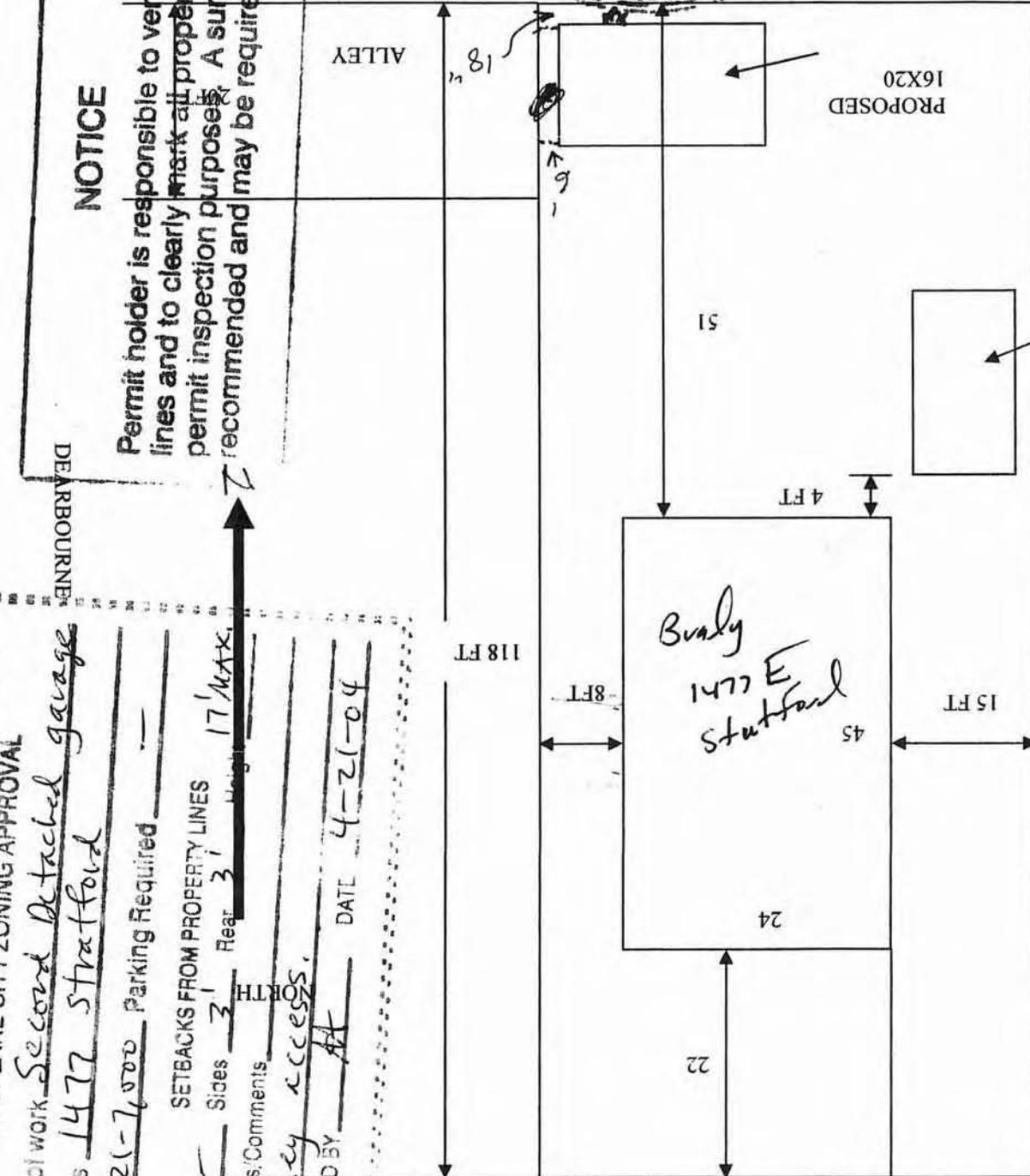
APPROVED BY [Signature] DATE 4-21-04

NOTICE

Permit holder is responsible to verify property lines and to clearly mark all property lines for permit inspection purposes. A survey is recommended and may be required.



BUILDING PERMIT ONLY
ANY PLUMBING, ELECTRICAL
AND MECHANICAL WORK
MUST BE AUTHORIZED BY
SEPARATE PERMIT



STRATFORD

SALT LAKE CITY CORPORATION — BUILDING PERMIT APPLICATION
451 South State Street, Room 215
Salt Lake City, Utah 84111
(801) 535-7752 Telephone (801) 535-7750 Fax
FOR INSPECTIONS, CALL THE AUTOMATED SYSTEM AT (801) 535-6436

Today's Date 04-21-04		Log Number:		Issued Date 4/21/04		Permit Valuation 5774. —		Permit Number 192424		
Property Address: 1477 E. St. Howard						Floor / Suite #		Building Permit Fee	\$ 117.75	
Address Certificate Number: (New Construction)				Tax Parcel ID Number: (New Construction)				Plan Review Fee	\$ 108.71	
Use of premises: (i.e. s/f dwelling, duplex, commercial structure, etc) S/F								1% State Fee	\$ 1.07	
Project Name: (i.e.: Property owner, business name, etc) Brady								Other Fee Due (Specify)	\$	
Project Contact Person: LAW Home						Contact Phone Number: 5577313		Adjustments	\$	
SqFt of area being worked in:		Bldg Total SqFt		# Of Stories 1	Type of Const.	Occ. Group U		Impact Fee	\$	
Finished bsmt SqFt.	Unfin. bsmt SqFt.	Garage Attached	Carport Detached	Garage/Carport SqFt.	# of residential units:		TOTAL	\$		
		220								
Permit Requester's Name: owner <input checked="" type="checkbox"/> contractor <input type="checkbox"/> other <input type="checkbox"/>								Method of payment: Cash <input type="checkbox"/> Check <input type="checkbox"/> Credit Card <input type="checkbox"/> Fee Waiver <input type="checkbox"/> Interdepartmental Billing		
Contractor's Business Name: Espinoza Const						State License Number 247416		Telephone Number 5577313		
Contractor/Requestor Mailing Address: 1474 S. 700 W SEC UT. 84101										
Description of work: new garage										
FOR OFFICE USE ONLY: Approval and Comments Fire Sprinkled <input type="checkbox"/> Yes <input type="checkbox"/> No										
Approvals		Date	IBC / IRC Comments:				Deferred Submittal: Yes No			
IBC/IRC		4/21/04	DITCHED GARAGE							
Zoning		A								
Historic										
Planning										
B of A										
Fire			Zoning Comments (including zone)							
Other (Specify)			R1-1000, Second detached garage with alley access. Both garages total 540 SF.							
Is Zoning Certificate needed? Yes No			Zoning Certificate #:			Impact Fee Area: Infill NW Quad Westside				
This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty of perjury.										
Owner		Contractor		Other, Specify						
(If a contractor is on this job, he must sign for and take out this permit, or sign and send in a notarized letter of authorization)										
Signature						Date 04-21-04				

INSPECTION REPORT

SALT LAKE CITY CORPORATION

Building Services & Licensing
451 SOUTH STATE STREET, ROOM 406 SALT LAKE CITY, UTAH 84111

Address 1477 E STRATFORD AVE B1		Unit No.	Date Jun/15/2004	Permit No. 198424		
Inspection Kind <input type="checkbox"/> Bldg. <input type="checkbox"/> Mech. <input type="checkbox"/> Sign <input type="checkbox"/> Special	<input type="checkbox"/> Elec. <input type="checkbox"/> Zoning <input type="checkbox"/> Fire	<input type="checkbox"/> Plbg. <input type="checkbox"/> Preinspection <input type="checkbox"/> Housing	Reason for Inspection <input type="checkbox"/> Called <input type="checkbox"/> Routine	Contractor SPIRIT CONSTRUCTION Phone No.		
			<table border="1"> <tr> <td> <input type="checkbox"/> Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee </td> <td> <input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections </td> <td> <input type="checkbox"/> Footing <input type="checkbox"/> Foundation <input type="checkbox"/> Frame <input type="checkbox"/> Insulation <input type="checkbox"/> Void </td> <td> <input type="checkbox"/> Underground <input type="checkbox"/> Rough <input type="checkbox"/> Clearance <input checked="" type="checkbox"/> Final <input type="checkbox"/> Consultation </td> <td> <input type="checkbox"/> Bond Beam <input type="checkbox"/> Concrete <input type="checkbox"/> Steel <input type="checkbox"/> Columns <input type="checkbox"/> Progress <input type="checkbox"/> Sheetrock </td> </tr> </table>		<input type="checkbox"/> Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee	<input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections
<input type="checkbox"/> Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee	<input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections	<input type="checkbox"/> Footing <input type="checkbox"/> Foundation <input type="checkbox"/> Frame <input type="checkbox"/> Insulation <input type="checkbox"/> Void	<input type="checkbox"/> Underground <input type="checkbox"/> Rough <input type="checkbox"/> Clearance <input checked="" type="checkbox"/> Final <input type="checkbox"/> Consultation	<input type="checkbox"/> Bond Beam <input type="checkbox"/> Concrete <input type="checkbox"/> Steel <input type="checkbox"/> Columns <input type="checkbox"/> Progress <input type="checkbox"/> Sheetrock		
<input type="checkbox"/> Unable to Make Inspection <input type="checkbox"/> This Inspection is Required. Call 535-6436 Mornings 7:00-8:00 to Schedule Inspections ***24 Hour Notice Required***		Certificate of Occupancy <input type="checkbox"/> Shell Only <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary <input type="checkbox"/> Not Required Days	Prior Violations Not Corrected Work Must Be Completed Within _____ Days <input type="checkbox"/> Reinspection Req.			

Time _____:Hrs. / Comments:

119 - FINAL

ANDERSON, GIL

(THANKS)
[Signature]

Signed:

Salt Lake City Inspector

INSPECTION REPORT

SALT LAKE CITY CORPORATION

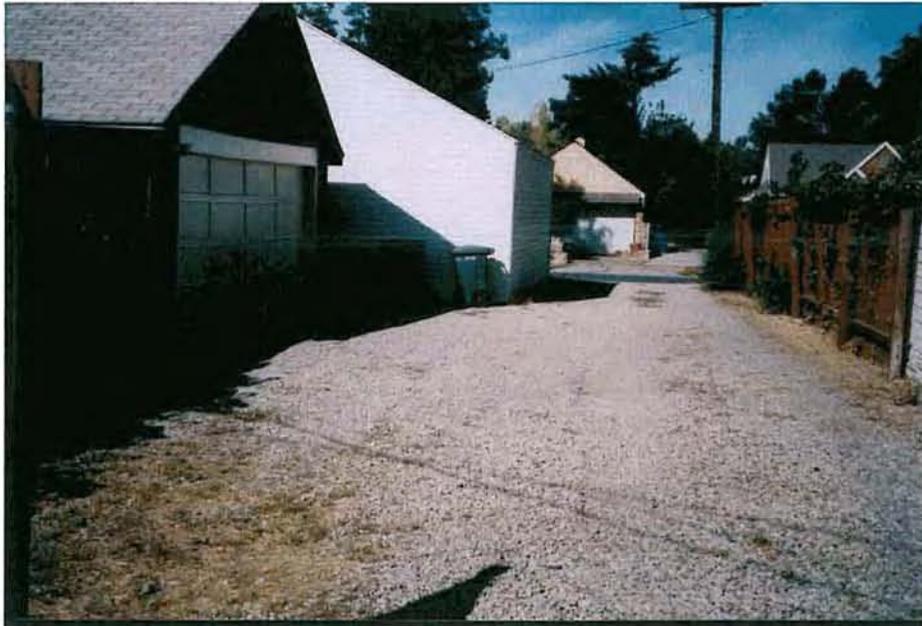
Building Services & Licensing
451 SOUTH STATE STREET, ROOM 406 SALT LAKE CITY, UTAH 84111

Address 1477 E STRATFORD AVE		Unit No.	Date Jun/10/2004	Permit No. 198825		
Inspection Kind <input type="checkbox"/> Bldg. <input type="checkbox"/> Mech. <input type="checkbox"/> Sign <input type="checkbox"/> Special	<input type="checkbox"/> Elec. <input type="checkbox"/> Zoning <input type="checkbox"/> Fire	<input type="checkbox"/> Plbg. <input type="checkbox"/> Preinspection <input type="checkbox"/> Housing	Reason for Inspection <input checked="" type="checkbox"/> Called <input type="checkbox"/> Routine	Contractor BIG CITY ELECTRIC Phone No.		
			<table border="1"> <tr> <td> <input checked="" type="checkbox"/> Partial <input type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee </td> <td> <input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections </td> <td> <input type="checkbox"/> Footing <input type="checkbox"/> Foundation <input type="checkbox"/> Frame <input type="checkbox"/> Insulation <input type="checkbox"/> Void </td> <td> <input type="checkbox"/> Underground <input type="checkbox"/> Rough <input type="checkbox"/> Clearance <input checked="" type="checkbox"/> Final <input type="checkbox"/> Consultation </td> <td> <input type="checkbox"/> Bond Beam <input type="checkbox"/> Concrete <input type="checkbox"/> Steel <input type="checkbox"/> Columns <input type="checkbox"/> Progress <input type="checkbox"/> Sheetrock </td> </tr> </table>		<input checked="" type="checkbox"/> Partial <input type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee	<input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections
<input checked="" type="checkbox"/> Partial <input type="checkbox"/> Complete <input type="checkbox"/> Issued Stop Card <input type="checkbox"/> Double Fee	<input checked="" type="checkbox"/> Work Approved <input type="checkbox"/> Work in Violation <input type="checkbox"/> Do not Proceed With Work <input type="checkbox"/> Make Necessary Corrections	<input type="checkbox"/> Footing <input type="checkbox"/> Foundation <input type="checkbox"/> Frame <input type="checkbox"/> Insulation <input type="checkbox"/> Void	<input type="checkbox"/> Underground <input type="checkbox"/> Rough <input type="checkbox"/> Clearance <input checked="" type="checkbox"/> Final <input type="checkbox"/> Consultation	<input type="checkbox"/> Bond Beam <input type="checkbox"/> Concrete <input type="checkbox"/> Steel <input type="checkbox"/> Columns <input type="checkbox"/> Progress <input type="checkbox"/> Sheetrock		
<input type="checkbox"/> Unable to Make Inspection <input type="checkbox"/> This Inspection is Required. Call 535-6436 Mornings 7:00-8:00 to Schedule Inspections ***24 Hour Notice Required***		Certificate of Occupancy <input type="checkbox"/> Shell Only <input type="checkbox"/> Permanent <input type="checkbox"/> Temporary <input type="checkbox"/> Not Required Days	Prior Violations Not Corrected Work Must Be Completed Within _____ Days <input type="checkbox"/> Reinspection Req.			

Time 10:47:Hrs. / Comments:

ROUGH TO GARAGE IN AM

Finish O.K. -- Final





4. PLANNING COMMISSION
D) Planning Commission Minutes
September 10, 2008

Both proposals are based on the comments made by Commissioners, letters from the public, public comment, and other information presented through out the course of the public hearing.

Commissioner McHugh seconded the motion.

All in favor voted, "Aye", the motion to deny passed unanimously.

Chair Wirthlin announced a small break at 11:16 p.m.

Chair Wirthlin reconvened the meeting at 11:19 p.m.

11:19:35 PM **Petition 410-08-50 (PLNPCM2008-00196) Piper Down Private Club Conditional Use Expansion at approximately 1492 South State Street**—a request for approval to expand the existing private club structure and the rear outdoor dining. The private club was a previously approved conditional use in the CC zoning District). The site is located in Council District five Jill Remington-Love. View: [Staff Report](#)

Chair Wirthlin recognized Joel Paterson as staff representative.

11:30:16 PM **Public Hearing**

The following person spoke or submitted a hearing card in opposition of proposed petition: **L. Neil Rasmussen** (7988 S-Circle).

11:37:42 PM **Commissioner Algarin made a motion regarding Petition 410-08-50, regarding the Piper Down private club expansion, located at 1492 South State Street, that the Commission approve the request based on staff recommendation with the following condition:**

1. **The applicant shall record a lease agreement to provide thirteen (13) off-site parking stalls (which includes one accessible stall) on the lot at 1522 South Major Street, for the expansion of the Piper Down private club.**

Commissioner Forbis seconded the motion.

All in favor voted, "Aye", the motion carried unanimously.

11:38:21 PM **Petition 400-07-14, Declaration of Surplus Property and Alley Vacation**—a request by Vera Novak to vacate a portion of the alley abutting her property at approximately 2553 South Dearborn Street, and declare it as surplus property. The property is located in the R-1/7,000 – Single-family Residential Zoning District, and in Council District Seven, represented by Søren Simonsen. View: [Staff Report](#) View: [Public Comment](#)

Chair Wirthlin recognized Katia Pace as staff representative.

11:57:39 PM **Public Hearing**

The following people spoke or submitted hearing cards in *opposition* of proposed petition: **Grace Sperry, Sugar House Community Council Chair** (2660 South Highland Drive), and **Patricia Brady** (1477 Stratford Avenue).

12:12:43 AM **Commissioner Scott made a motion regarding Petition 400-07-14, the declaration of surplus property and alley vacation, based on the findings of fact identified in the staff report and the public hearing, the Planning Commission transmit a negative recommendation to the City Council. This request does not demonstrate that the disposition satisfies any of the policy considerations in the Salt Lake City Code Chapter 14.52.020. The Planning**

Commission feels that it would be prudent for the property owners to sort out legal claims that both parties might have.

Commissioner Chambless seconded the motion.

Discussion of the motion

Vice Chair Woodhead noted that she was going to vote in favor of the motion, but had a problem with the rationale. She noted that this petition was not completely contrary to what was set forth in the code. She noted that the urban design guideline was met, but the differing legal claims to the alley and to access over the alley made it impossible to grant this petition.

Commissioner Scott stated that she would like to remove the following last sentence of the motion, *This request does not demonstrate that the disposition satisfies and of the policy considerations in the Salt Lake City Code Chapter 14.52.020.*, and would like to replace it with, *The Planning Commission feels that it would be prudent for the property owners to sort out legal claims that both parties might have.*

Commissioner Chambless seconded the amendment to the motion.

All in favor voted, "Aye", the motion carried unanimously.

12:15:19 AM **Petition 410-08-39 AutoZone Planned Development**—a request by The Boyer Co., represented by Nate Swain, to construct a new 6,000 square foot commercial building on a pad site located at approximately 1199 East 3300 South, at the south entrance of the Brickyard Plaza, in a Community Business (CB) district. The property is located in City Council District Seven, represented by Søren Simonsen. View: Staff Report

Commissioner Wirthlin recognized Casey Stewart as staff representative.

Mr. Paul Neilson noted that he might have a conflict of interest because the president of the company making the request was a personal acquaintance, and inquired of the Commission if they felt he needed to recuse himself.

The Commissioners agreed that there was no conflict of interest and Mr. Neilson should stay for the final petition.

12:35:15 AM **Public Hearing**

The following person spoke or submitted hearing card in support of the proposed petition: **Grace Sperry, Sugar House Community Council Chair** (2660 South Highland Drive).

12:43:28 AM **Vice Chair Woodhead made a motion regarding Petition 410-08-39, the Autozone planned development, a request for preliminary planned development approval, based on the staff report, testimony and discussion before the Commission, the Planning Commission recommends approval of the planned development and finds that it satisfies the standards for approval subject to the following conditions:**

- 1. Compliance with the departmental comments as outlined in the staff report.**
- 2. Final approval is hereby delegated to the Planning Director subject to certification by the planning director that the final development plan is in conformance with the preliminary development plan approved by the planning commission; and**
- 3. The metal trellises as shown on the front facade, marked as figure twenty-one (21), are increased to the maximum extent possible and planters provided in front from which to grow ivy intended to climb the trellises; with final approval by the Planning Director.**

allowed modifications:

5. ORIGINAL PETITION

Petition No. 400-07-14

By Vera Novak

Alley Vacation

Date Filed 06/08/2007

Address 2553 S Dearborn Street



Alley Vacation or Closure

Petition No.	<u>400-07-14</u>	
Receipt No.	<u>062005572</u>	Amount \$ <u>100-</u>
Date Received	<u>6-8-07</u>	
Reviewed by	<u>note w.</u>	

SALT LAKE CITY PLANNING

Date _____

Location of the subject alley North of Lot 1021

Name of Applicant Vera Novak Phone/ 801.484.2042

Address of Applicant 2553rd Dearborn St.

Email Address of Applicant VRN@XMISSION.COM Cell / Fax 801.484.2043

Are there any multi-family residential uses (three or more dwelling units) or non residential uses which abut the alley? Yes No

If yes, have the property owners been notified about the City's "close and sell" method of disposition"? (As defined in the attached process information sheet) Yes No

Please include with the application:

1. A response to the questions on the back of this form. If the applicant does not own property adjacent to the alley, please include the applicant's interest in the request.
2. A signed statement that the applicant has met with and explained the request to the appropriate Neighborhood Organization and/or Community Council(s). A letter from the Chairperson may be substituted.
3. The name, address and Sidwell number of all property owners on the block must be typed or clearly printed on gummed mailing labels. Please include yourself and the appropriate Community Council Chair. **Payment in the amount to cover first class postage for each address for two mailings is due at time of application.**
4. The name, address and signatures of all owners of property abutting the subject alley who support the petition. You may use the sample petition accompanying this application or provide your own. **Please note that the property owners must sign (not occupants who rent) and the petition must include the signatures of no less than 80 percent of the abutting property owners.**
5. A property ownership map (known as a Sidwell map) showing the area of the subject alley. On the map, please:
 - a. Highlight the subject alley.
 - b. Indicate with a colored circle or dot the property owners who support the petition.
6. A legal description of the subject alley may be required.
7. **Filing fee of \$100.00, due at time of application.**

If you have any questions regarding the requirements of this petition, please contact a member of the Salt Lake City Planning staff (535-7757) prior to submitting the petition.

Sidwell maps and names of property owners are available at:
 Salt Lake County Recorder
 2001 South State Street, Room N1600
 Salt Lake City, UT 84190-1051
 Telephone: (801) 468-3391

File the complete application at:
 Salt Lake City Planning
 451 South State Street, Room 406
 Salt Lake City, UT 84111
 Telephone: (801) 535-7757

Signature of Applicant *Vera Novak* Title of agent _____
or authorized agent

Petition to Vacate or Close an Alley

Petitioner: Vera Novak

Address: 2553 S. Dearborn St.

Date: Feb 17, 2007

As an owner of property adjacent to the alley, I agree to the proposed vacation or closure. I understand that if my property is a commercial business or a rental property with more than three (3) dwelling units, I will be required to pay fair market value for my half of the alley.

RUZENA NOVAK Ruzena Novak 2/17/07
Print Name and Address Signature Date
1469 E Stratford Ave, Salt Lake City UT 84106 LOT 1021

Vera Novak Vera Novak 2/17/07
Print Name and Address Signature Date
2553 Dearborn St SLC UT 84106

Print Name and Address Signature Date

PARKWAY AVE
(2577 SOUTH)

FOUND S.L.C. MON.
BRASS V/X IN
HAND HOLE



1" = 10'

LEGEND:

- M/L - MONUMENT LINE
- R/L - RIGHT OF WAY LINE
- P/L - PROPERTY LINE
- (M) - MEASURED
- (C) - CALCULATED
- (A) - ATLAS
- TBC - TOP BACK OF CURB
- X-X-X- - EXIST. FENCE

PROPERTY DESCRIPTION:

(ENTRY # 9684409 BK 9276 PG 3023)
LOT 1025 AND 1026, HIGHLAND PARK PLAT A, ACCORDING TO THE
OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE
COUNTY RECORDERS OFFICE.

TOGETHER WITH 1/2 VACATED ALLEY ABUTTING ON THE EAST AND 1/2
VACATED ALLEY ABUTTING ON THE EAST 25 FEET OF LOT 1025 ON
THE SOUTH.

(AS SURVEYED)
LOT 1025 AND 1026, HIGHLAND PARK PLAT A, ACCORDING TO THE
OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE
COUNTY RECORDERS OFFICE.

TOGETHER WITH 1/2 VACATED ALLEY ABUTTING ON THE EAST AND 1/2
VACATED ALLEY ABUTTING ON THE EAST 19 FEET OF LOT 1025 PLUS
THE EAST 6 FEET FROM THE SOUTHEAST CORNER OF LOT 1025 ON
THE SOUTH.

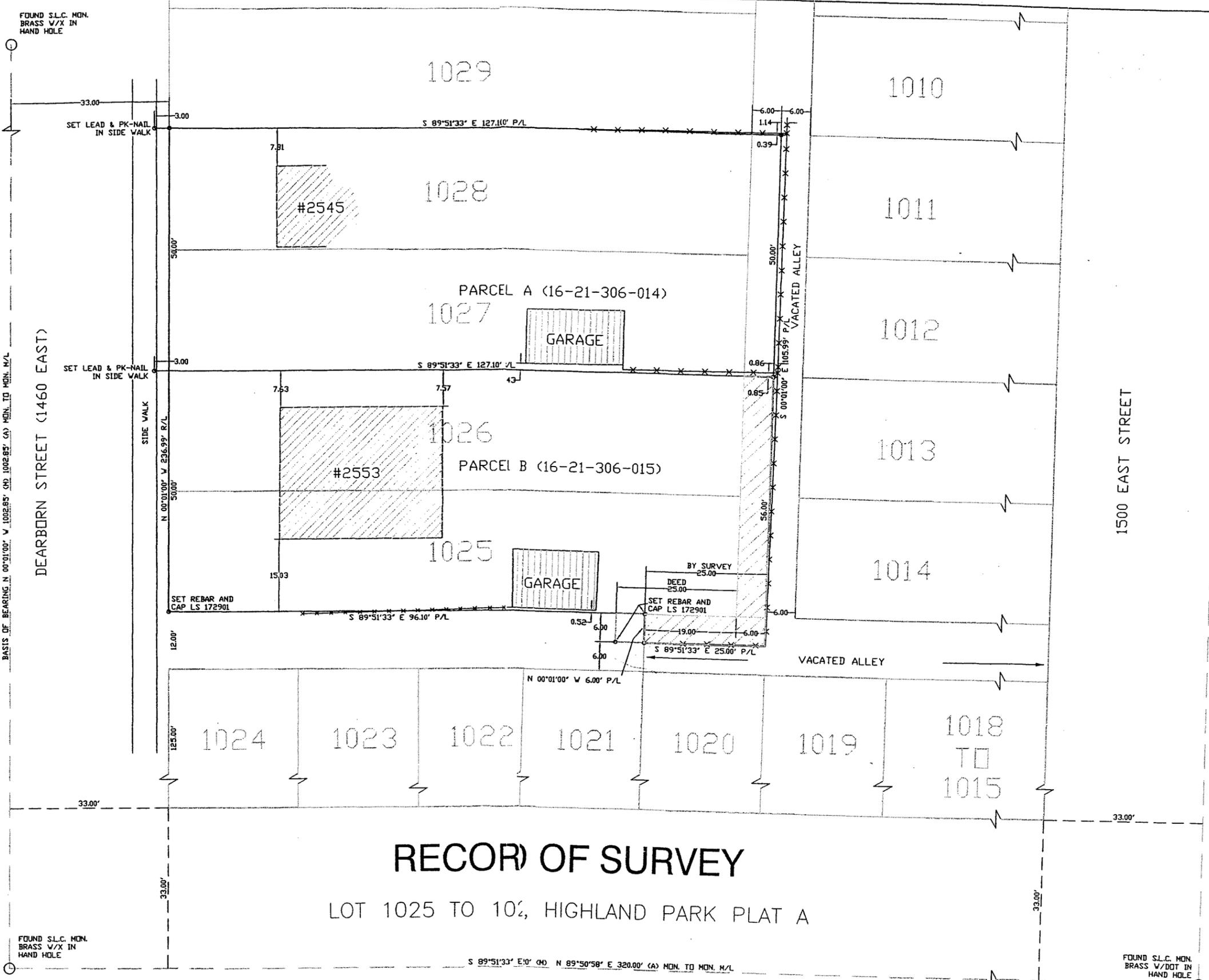
NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO IDENTIFY THE BOUNDARY LINES
OF THE ABOVE DESCRIBED PARCEL AND STAKE THE CORNERS AT THE
REQUEST OF MY CLIENT VERA M. NOVAK. BASIS OF BEARING WAS
ESTABLISHED BETWEEN MONUMENTS FOUND ON DEARBORN STREET
BETWEEN STRATFORD AVE AND PARKWAY AVE AS SHOWN ON THIS
PLAT.

SURVEYORS CERTIFICATE:

I MANFRED GULLA, A REGISTERED LAND SURVEYOR AS PRESCRIBED BY
THE LAWS OF THE STATE OF UTAH, AND HOLDING LICENSE NO.
172901 DO HEREBY CERTIFY THAT I HAVE MADE A SURVEY OF THE
ABOVE DESCRIBED PROPERTY AND THAT THE PLAT HEREON IS A TRUE
AND CORRECT REPRESENTATION OF SAID SURVEY.

DATE: 05-02-2004 SIGNED: _____



RECORD OF SURVEY
 LOT 1025 TO 1029, HIGHLAND PARK PLAT A

S 89°51'33" E 10' (M) N 89°50'58" E 320.00' (A) MON. TO MON. M/L

STRATRD AVE (2577 SOUTH)

FOUND S.L.C. MON.
BRASS V/X IN
HAND HOLE

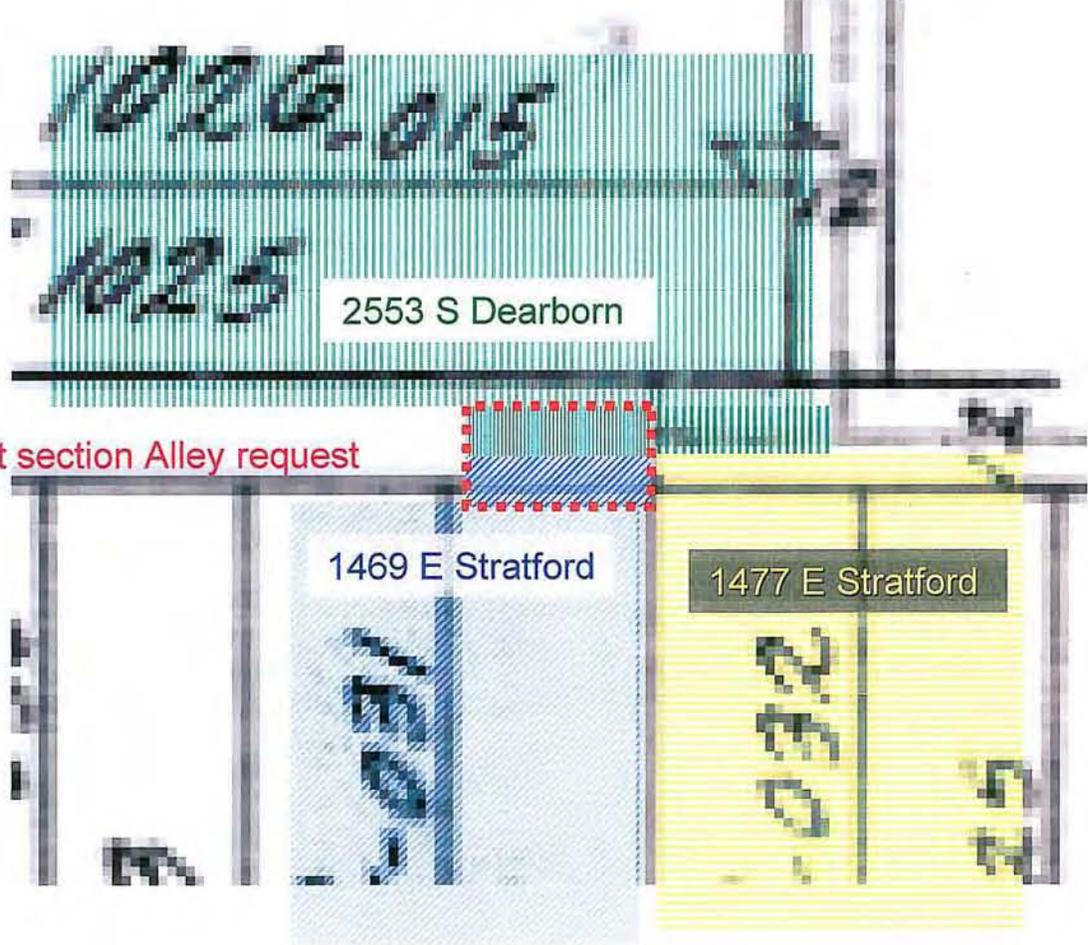
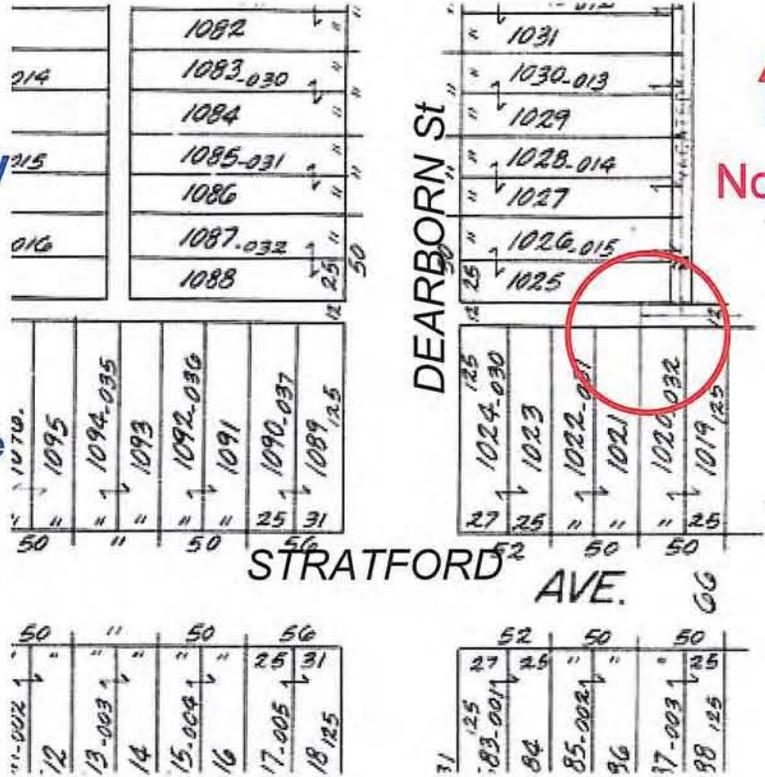
FOUND S.L.C. MON.
BRASS V/DOT IN
HAND HOLE

DRAWN BY: MANFRED GULLA	SURVEYED FOR: VERA M. NOVAK	SURVEY LOCATION: 2545 & 2553 SOUTH DEARBORN STREET, SALT LAKE CITY, UTAH	MANFRED GULLA, COUNTY OF SALT LAKE, RECORDED AND FILED AT THE REQUEST OF MANFRED GULLA L.S. 172901 DATE: _____ TIME: _____ FEE: _____ BOOK: _____ PAGE: _____ COUNTY FOR: _____ COUNTY RECORDER _____	GEODETTIC SURVEYS 394 NORTH MAIN STREET SALT LAKE CITY, UTAH 84103 PHONE 801-521-2150, FAX 801-596-3057	
	DATE: 06.14.2006	2545 SOUTH DEARBORN STREET			STANDARD FORM NO. 7 (REV. 11-20-83)
	DWG. NO.: 10400	SALT LAKE CITY, UTAH 84106			LOCATED IN THE WEST HALF OF THE SOUTHWEST QUARTER SECTION 21, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN



Petition for Alley Abandonment

Reason: Lack of Use for access to any property other than 1469 E Stratford Ave



History of use of the alley

Adjacent to properties 1469 E Stratford and 2553 S. Dearborn.

1979 - - August - Rose Novak buys the property at 1469 E Stratford. The chain link fence which outlines the abandoned alley as of the eastern edge of Rose's property is already in place, and is old – as evidenced by missing and broken slats. Note that the NW back corner of 1477 East Stratford is fenced off from the alley.

1984 – Easter – Photo of Novak, R daughter's car on her back property. Note the tree and big pile of brush at the back of this property.

1985 – Sept - Alley is officially abandoned per Salt Lake City Ordinance #72 of 1985. Existing fence is accurate, within .94'. The actual property lines were not surveyed until later, with the trouble over the garage permit.

1993 – 1997 - Novak, R's brothers truck / camper is parked in the alley, from around March – September of each year, while they were back in the Czech Republic. This truck is seen on the aerial photo of the property which is currently on file with Salt Lake City.

1993 – Spring - Novak, R's sister-in-law & mother build a vegetable garden across the back 25 feet of the alley, complete with fence and sprinkler. (see photo) This is the same section of alley under review in the current petition.

History of Alley Use

Key Points

- Alley areas taken up by neighboring properties at least 38 years ago
- Alley portion NOT vacated to east edge of Lot 1021 to provide access to garage and property of 1469 E Stratford
- 1985 Ordinance officially declared alley to "no longer be public property for use as a street, alley, or pedestrian way."
- Neither 2553 S Dearborn nor 1477 E Stratford ever sought access via the alley for at least past 38 years

Documentation:

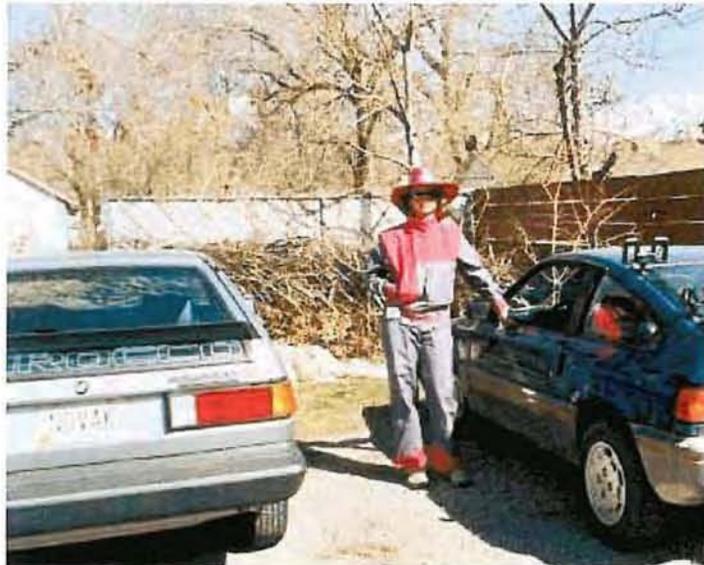
Alley abandoned and fences in place **prior to 1968** - see letter from 2553 previous owner's daughter.

1477 E. Stratford had claimed their portion of the vacated alley by fencing it in. There was no gate to provide access to the alley, and no alley access was sought.

1979 - - August - Rose Novak buys the property at 1469 E Stratford. The chain link fence which outlines the abandoned alley as of the eastern edge of Rose's property is already in place, and is old - as evidenced by missing and broken slats.

1984 - Easter - Car on the right is parked on extra parking spot of 1469 E Stratford.

Note the tree and big pile of brush at the back of this property up against the fence of 1477 E Stratford. Clearly there was no access to 1477 E Stratford from the alley.



1985 – Sept - Alley is **officially abandoned** per Salt Lake City Ordinance #72 of 1985.

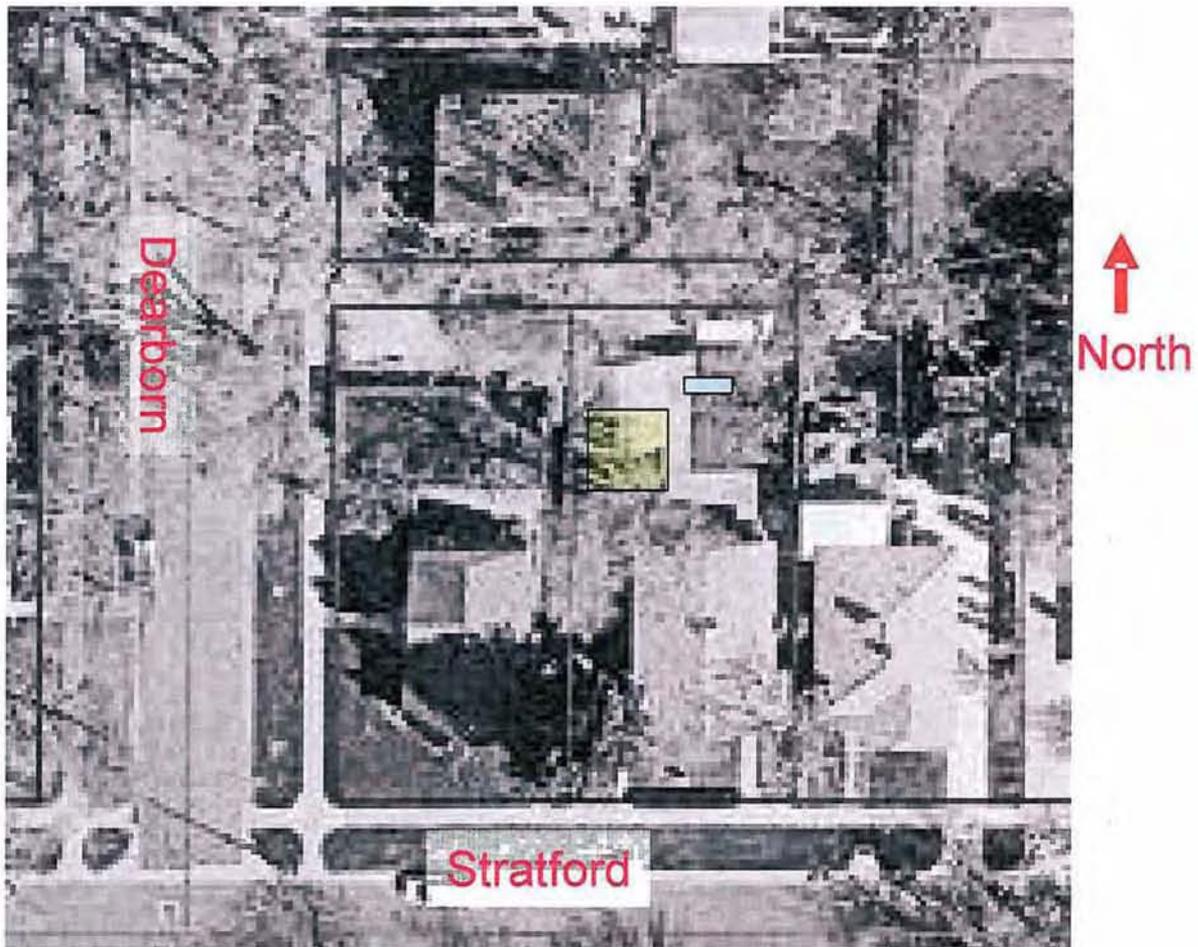
to “ no longer be public property for use as a street, alley, or pedestrian way. ”

Existing fences are accurate, within .94'. The actual property lines were not surveyed until 2004.

The vacated alley portion relative to this issue is:

*... thence West 152.0 feet to the northeast corner of Lot 1021, thence North 12.0 feet;
thence East 23.0 feet to the southeast corner of Lot 1025.*

1993 – 1997 - Novak, R's has truck / camper  parked in the alley, from around March – September of each year. This truck is seen on the aerial photo of the property which is currently on file with Salt Lake City. Alley use by 1469 E Stratford also established by use of garage  which is accessed only via alley.



1993 – Spring - 1469 E Stratford build a vegetable garden across the back 25 feet of the alley, complete with fence and sprinkler. This garden was in place at the time the Brady's sought a building permit for their garage. Certainly the alley was not used for access to any other properties at this time.



1993 – 2004. The garden is in place until the time for the Brady Garage construction.

The Portion of the Alley which is under consideration for abandonment is the approximately the same as the area which was a garden from 1993 to 2004

History of Second Garage for 1477 E Stratford

Key Points

- 1477 E Stratford has been using existing garage with access from Stratford Ave for at least 38 years
- No alley access sought in past 38 years
- Garage permit sought based on incorrect information
- Alley and property only adjoii for 6 ft – not 20 ft as per permit
- 1477 E Stratford property owner notified of error prior to construction

Documentation

Status Quo

Spring 2004 - . There had been NO access from the alley to this property for the past 36 years. The fence was in place the entire time, with brush/ trucks/ trees/ gardens in front of this fence.

1477 E Stratford has an existing Garage with access from Stratford Ave. (since at least 1979)

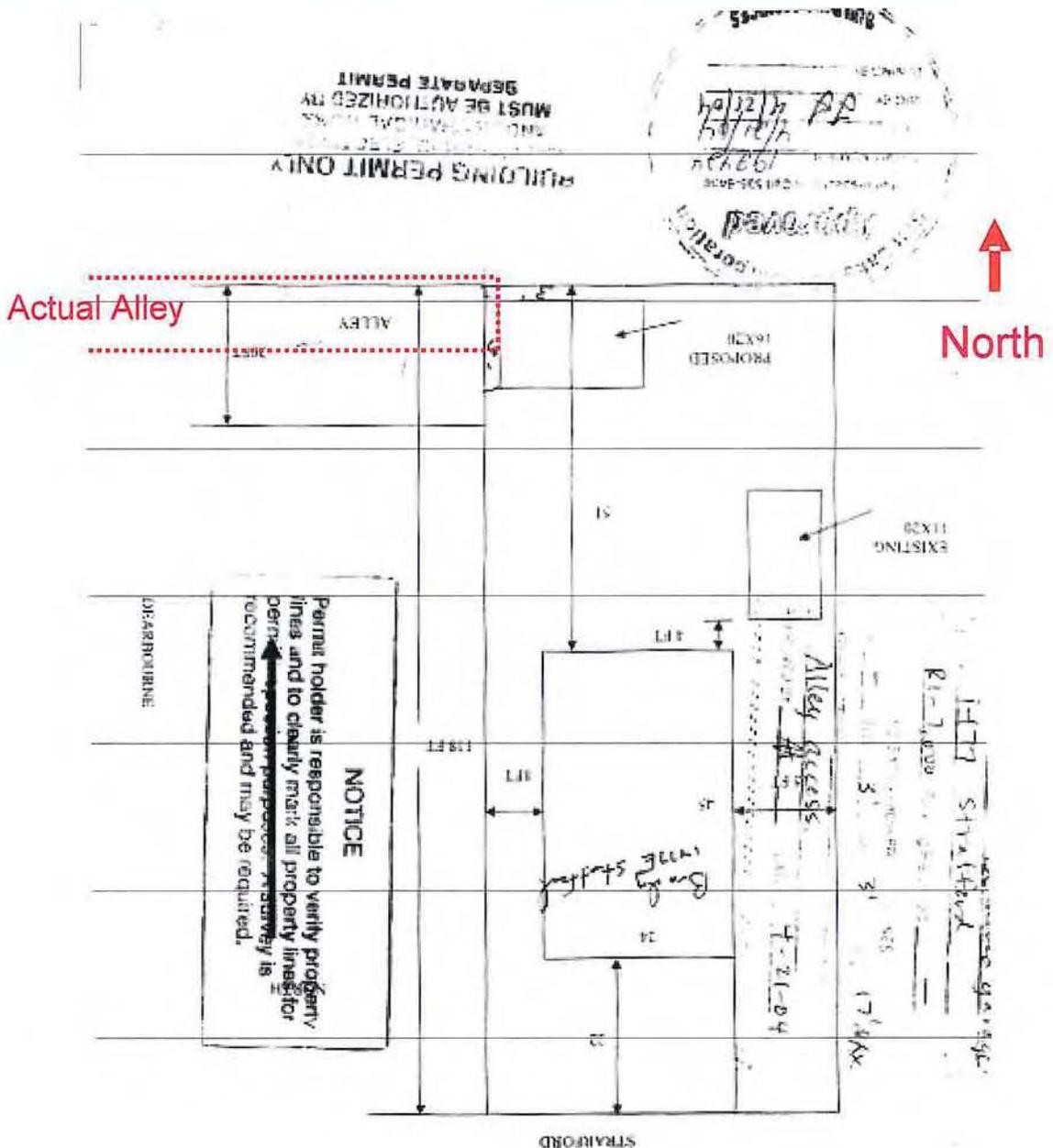


Existing 1477 E Stratford Ave 1 car Garage
Access from Stratford

Building Permit

04/21/04 – Building permit is issued to Brady, 1477 E Stratford, for a garage with access from the alley. Alley access is incorrectly shown to be 20 ft wide, when there is only a 6 ft point of contact with the alley. There is **no right of way**, as per the alley abandonment document. Permit states:

Permit holder is responsible to verify property lines and to clearly mark all property lines for permit inspection purposes. A survey is recommended and may be required.



Notification about Problem with Access & Property Line

04/27/04 – Novak, R visits the City Permit Offices, reviews the plat map and is told that the **permit should not have been issued** on the basis of the incorrect information that was submitted. The City Permit Agent indicated that a city inspector would deliver a Stop Work Order. Novak **communicated this information to Brady.**

05/02/04 – Novak, R pays for a survey of her property. Survey markers are put in place which clearly indicate Brady only has 6 ft of property adjacent to the alley. At that point, Brady had **only removed a portion of lawn** – no further construction had been done.

05/03/04 – Novak, R returns to SLC Permit Offices. Inspector Mike Harry was dispatched to see the building site. He proceeded to fill out a **Stop Work Order** in Novak's presence, and **served on Bradys** at 11:45 am. At 12:30, a contractor showed up with foundation forming - and construction proceeded on garage.

05/03/04 14:45 SLC Building Inspection Listing shows **"NEED Cert of Survey to Establish Property Lines. Property Line provided by Contractor, pour @ own risk."** Inspector: 08

05/03/04 11:58 SLC Building Inspection Listing: **"You need to bring in your plans and have access to your garage addressed."** Inspector: 15

06/22/04 – SLC Building Inspection Listing: Neighbor complaint – Encroachment onto her property – Ruzena Novak 487-6034. Inspector: Larry Wiley

June 2004 – NOTE: Novak, R was busy care-taking of her 97 yr old mother who had just suffered a severe stroke. She trusted the SL Building Department to adhere to their Stop Work Order, and did not feel there was any more that she could do, as they were not driving on her property. She had paid for a permanent fence to be built to demark her parking spot (ie the NE corner of her property) to protect herself from the intended trespass.

1477 E STRATFORD

Permit Number: 5010967	Issue Date: 01/17/2007	Flag
Contractor: Not on File		Inspector: LARRY BUTCHER
Job Type: ADDRESS FLAG		Job Status: ACTIVE
Duration: 50.00	Fee:	
Inspector:		
Last Update: 01/17/2007	Updated By: wh2459	

Comments:

BASED UPON CURRENT INFORMATION, THE ALLEY ACCESS IS INCORRECTLY SHOWN ON GARAGE PERMIT #192424. ACCESS TO GARAGE IS ONLY 6' IN WIDTH WHICH DOES NOT MEET TRANSPORTATION DIVISION STANDARDS FOR PASSENGER VEHICLE ACCESS.

Trespass on 2553 S Dearborn

Summer 2004 – Garage NOT built according to permit. Location changed to 1 ft of north fence. This was done because BRADY could not access the garage through the 6 ft alley piece and needed to trespass on 2553 in order to drive into the garage.

NOTE: According to Code, combustible construction must be a minimum of 3 ft from property line, as per original permit. This Garage is out of compliance.

BRADY cut the T-post holding up the wire fencing for 2553 S. Dearborn, pushed the fence aside, and poured part of the concrete pad on 2553 S. Dearborn. The owner of this property was 97 yr old at the time, and not aware of what was happening on her back property. See Letter from Previous Property Owner



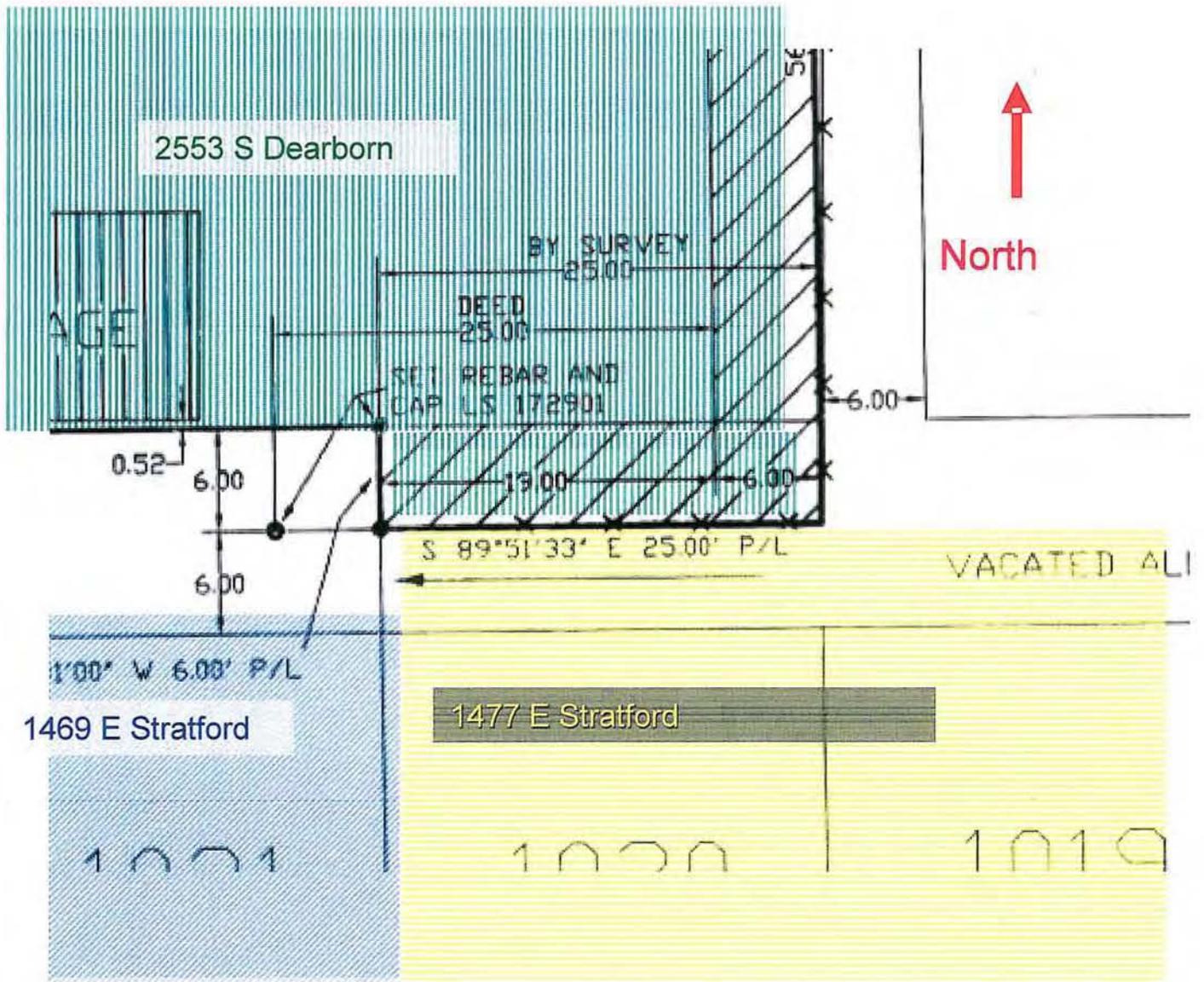
Metal post of fence from 2553 S Dearborn cut and fence pushed aside.



Defence against Trespass

April 2006 - 2553 S. Dearborn is purchased by a new owner, Novak, Vera. In attempting to reclaim the alley corner of the property, she is threatened and harassed by Brady.

Novak, V pays for a survey. As there is conflicting information on the property deed, and two references of the letter of the alley abandonment document, the surveyor and Novak, V agree to the intent of the abandonment document, in which Novak, V **cedes 6 ft of property**.



11/13/06 – Brady’s lawyers, Van Cott, Bagley, Cornwall & McCarthy concede that the survey is accurate and the BRADY’s were trespassing.

Novak, V. re-establishes the fence line. 6 ft is not enough to access their garage, and they are now parking in the alley. (SL Ordinance 12.56.390)



Cars belonging to BRADY are currently parked in the alley , in Violation of SL Ordinance 12.56.390.

Total Cost to Protect Property Rights

Cost to Novak, R to protect her property and privacy:

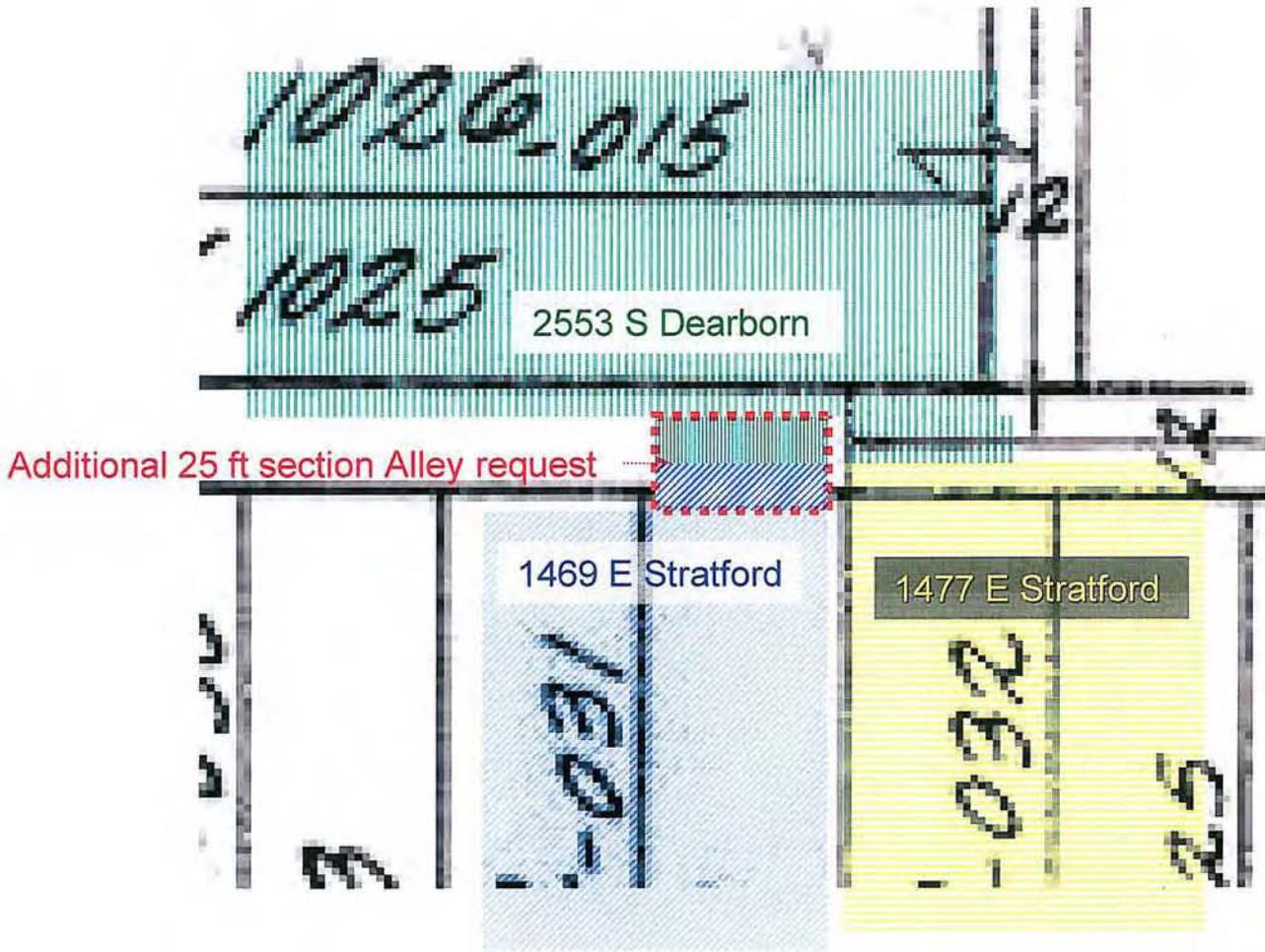
Survey	\$800.00
Fence to establish corner	\$300.00
Replacement Fence:	\$750.00

Cost to Novak, V to protect her property

Survey	\$850.00
Legal:	\$900.00
Fence:	\$90.00

TOTAL COST	\$3,690.00
PERSONAL TIME	???

Requested Alley Abandonment



Alley abandonment requested area.



**COMMUNITY DEVELOPMENT DEPARTMENT
COUNCIL SUBMITTAL CHECKLIST**

Petition No and Basic Information:

Petition 400-07-14 by Vera Novak, requesting Salt Lake City to partially vacate the alley abutting her property at 2553 S. Dearborn Street, and declare it surplus property.

Date: October 7, 2008

Supervisor Approval: _____

Division Director Approval: _____

Contact Person: Katia Pace

Phone No. 535-6354

- Initiated by
- City Council Member
 - Property Owner
 - Board / Commission
 - Mayor
 - Other

Contact Person

Vera Novak

Completed Check List attached:

- Alley Vacation
- Planning / Zoning
- Federal Funding
- Condominium Conversion
- Plat Amendment
- Other

Public Process:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Community Council (s) | <input checked="" type="checkbox"/> City Web Site |
| <input checked="" type="checkbox"/> Public Hearings | <input type="checkbox"/> Flyers |
| <input checked="" type="checkbox"/> Planning Commission | <input checked="" type="checkbox"/> Formal Notice |
| <input type="checkbox"/> Historic Landmark Commission | <input type="checkbox"/> Newspaper Advertisement |
| <input type="checkbox"/> HAAB review | <input type="checkbox"/> City Television Station |
| <input type="checkbox"/> Board of Adjustment | <input type="checkbox"/> On Location Sign |
| <input type="checkbox"/> City Kiosk | <input type="checkbox"/> City Newsletter |
| <input type="checkbox"/> Open House | <input type="checkbox"/> Administrative Hearing |
| <input type="checkbox"/> Other | |

Compatible with ordinance:

Specific Citations:

- Utah State Code, Title 10-9a-609.5: Vacating or altering a street or alley
- Salt Lake City Code, Chapter 14.52 Disposition of City Owned Alleys

Modifications to Ordinance:

N/A

Approvals / Input from Other Departments / Divisions

<u>Division</u>	<u>Contact Person</u>
<input type="checkbox"/> Airport:	
<input type="checkbox"/> Attorney:	
<input type="checkbox"/> Business Licensing:	
<input checked="" type="checkbox"/> Engineering:	Craig Smith
<input checked="" type="checkbox"/> Fire:	Kevin Nalder
<input type="checkbox"/> HAND:	
<input type="checkbox"/> Management Services:	
<input type="checkbox"/> Mayor:	
<input type="checkbox"/> Parks:	
<input checked="" type="checkbox"/> Permits / Zoning:	Larry Butcher
<input checked="" type="checkbox"/> Police:	Dave Askerlund
<input checked="" type="checkbox"/> Property Management:	John Spencer
<input type="checkbox"/> Public Services:	
<input checked="" type="checkbox"/> Public Utilities:	Brad Stewart
<input checked="" type="checkbox"/> Transportation:	Barry Walsh
<input type="checkbox"/> RDA :	
<input type="checkbox"/> Zoning Enforcement:	

PETITION CHECKLIST

Date	Planner Initials	Sup. Initials	Dep. Initials	Dir. Initials	Action Required
2007 4/11	SYM	AMP	WST	PC	Petition Delivered to Planning
4/13		AMP KP	WST	PC	Petition Assigned to <u>K. PACE</u>
9/10/08	KP	AMP	WST	PC	Planning Staff or Planning Commission Action Date
	KP	AMP	WST	PC	Transmittal Cover Letter Followed Template (margins, headings, returns etc)
	KP	AMP	WST	PC	Table of Contents
	KP	AMP	WST	PC	Chronology
		Not Applicable		PC	Ordinance Prepared by the Attorney's Office Include general purpose statement of petition (top of ordinance) Include Strike and Bold -(Legislative Copy) (where applicable) Include Clean Copy (Ensure stamped by Attorney) Include Sidwell Numbers (where applicable) Include Legal Description-review, date and initial (where applicable) Ensure most recent ordinance used Ensure Exhibits (tables etc) are attached <i>No Ordinance Enclosed - PC recommended Denial</i>
		AMP	WST	PC	Council Hearing Notice Include Purpose of Request Include zones affected (where applicable) Include address of property (where applicable) Include TDD Language
	KP	AMP	WST	PC	Mailing List of Petition and Labels, (include appropriate Community Councils, applicant and project planner) (include photocopy of labels)
	KP	AMP	WST	PC	Planning Commission Notice Mailing Postmark Date Verification (on agenda) Newspaper Notice for Rezoning and Master Plan Amendments (proof of publication or actual publication)
	KP	AMP	WST	PC	Planning Commission Staff Report
		AMP	WST	PC	Planning Commission Minutes and Agenda
	KP	AMP	WST	PC	Yellow Petition Cover and Paperwork Initiating Petition (Include application, Legislative Intent memo from Council, PC memo and minutes or Mayor's Letter initiating petition.)
				PC	Date Set for City Council Action: _____ Petition filed with City Recorder's Office