



MEMORANDUM

July 15, 2010

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*
Vernon Gerth, ACA Community Development
Eric Gardner, Engineering Director
Kelly Dannenfelser, Part-Time Planner, AICP

SUBJECT: **London Lane and the Unused City Right-of-Way Recommendation Framework**

Purpose

To further inform the Board of Mayor and Aldermen as to how the unused City right-of-way policy framework would work in current applications, this memo outlines how the staff would use the policy framework to make a recommendation to the Board as it relates to London Lane.

Background

A street stub is located off London Lane between Royal Oaks Subdivision and the Alexander Ford property. Residents have approached the City with a request to vacate this right-of-way. Because of this and other examples, the Board asked the staff to create a framework to assist the Board in formulating a policy to address unused city right-of-way. Below is an analysis as it relates to the London Lane property. *Italicized text throughout this memo is excerpted from the policy document previously reviewed by the Board.*

PART ONE: DECIDING WHETHER TO DECLARE SURPLUS

Declaring surplus is not recommended when:

- A. *It is reasonable that the right-of-way could be extended in the future for public use;*
- B. *It is adjacent to undeveloped property, since a determination of whether it will ultimately be needed for public use purposes can best be made only when the nature and intensity of development of the adjacent parcels are known;*
- C. *There is potential for redevelopment or further development of the area;*
- D. *It serves as public access to parkland or permanent open space;*
- E. *One or more adjacent properties would become landlocked, unless access easements can be secured;*
- F. *It is shown in the Major Thoroughfare Plan's, or any City approved Local Street Plan's, Recommended Improvements.*

It is possible that the London Lane unused right-of-way could be extended or be used for emergency access in the future. The right-of-way is adjacent to an undeveloped parcel. While the parcel may not be buildable by itself, when combined with other parcels the Land Use Plan calls for this Special Area to be redeveloped pursuant to a comprehensive land use and economic strategy to be a quality gateway from I-65. In addition, the adjacent internal parcel would become "landlocked" if the right-of-way were declared surplus without securing access easements. Case law points to the legal need to maintain public access to parcels.



PART TWO: CHOOSING HOW TO DISPOSE OF IT

If the Board should decide to declare this right-of-way surplus (contrary to staff recommendation), then the next step would be to determine how to dispose of it. Although the options for disposing of this right-of-way do not fully translate because the policy framework recommendation would be to keep it, here is an analysis:

- 1. If the property does not exceed \$25,000 in value, then the property may be sold or disposed of by negotiated contract, or by other means that will adequately protect the public interest (Franklin Municipal Code Sec. 5-802 (3)).*

This property (unused right-of-way after declaration of surplus) is likely to be worth less than \$25,000, allowing for several options for disposal. The three main options are as follows:

- i. Vacate the surplus property equally (50/50) to property owners adjacent to both sides of the City right-of-way;*
- ii. Vacate the surplus property equally (50/50) to property owners adjacent to both sides of the City right-of-way with the creation of the easements;*
- iii. Vacate 100% to one adjacent property owner when the City right-of-way serves as the existing driveway access to a single developed property that is located internally to the adjoining street.*

Because there is a parcel internal to the adjoining street (London Lane) with no other adjoining right-of-way, public access to it must be preserved. Although the internal parcel in this instance is not developed, disposing of the right-of-way would effectively land-lock it. At a minimum, a portion (e.g. adequate width of a driveway) should be vacated to the internal property owner to maintain public access to a street. The Board could choose to vacate all of the property to the internal property owner or, as an alternative, divide it amongst all three adjacent property owners, making certain to preserve minimum driveway width for the internal property.

Financial Impact

No direct costs are associated with continuing to hold the right-of-way. Some costs are associated with vacating the property, including a property boundary survey and legal description. Costs to vacate would probably not exceed \$5,000.

In order to defray the initial costs, the following is recommended:

- 1. If a property owner(s) initiates the disposal request, the benefitting property owner(s) should pay for and provide a current survey and may be required to reimburse the City for an appraisal.*

Recommendation

The policy framework recommends taking the conservative approach. In this instance, four of the six criteria apply in favor of continuing to hold the right-of-way. If there is any chance of future use of the right-of-way, it should be kept. More importantly, eliminating the right-of-way would take away public access to a parcel, thus a parcel becoming “land-locked.” Therefore, the staff recommendation in this instance would be to retain the London Lane right-of-way.

UNUSED CITY RIGHT-OF-WAY STAFF RECOMMENDATION FRAMEWORK
City of Franklin
Revised June 8, 2010

PURPOSE:

The purposes of this policy are to:

1. Provide criteria for determining whether or not to dispose of unused City of Franklin (City) right-of-way; and
2. Once the unused right-of-way has been declared surplus, to provide options for the disposal of the unused right-of-way in a fair and consistent manner.

PROCESS:

The public process to dispose of unused right-of-way involves two components. First, the Board of Mayor and Aldermen (Board) must pass a resolution to declare the property surplus. Second, the Board decides how to allow for the disposal of the property. If its value exceeds \$25,000, then the property must be sold by sealed bid in accordance with the Franklin Municipal Code. If the value is less than \$25,000, then the property may be sold or disposed of by negotiated contract, usually by vacating the property to adjacent property owners. Several options for disposal are available and discussed within the Policy section.

Requests for the disposal of unused right-of-way should be submitted to the Director of Engineering. The Director, or his/her designee, will coordinate the inter-departmental review and communicate with outside utility providers. The internal review should include a departmental sign-off form to accompany the staff recommendation to the Board. The process may include a neighborhood meeting prior to Board review. Applicants shall be required to contact adjacent property owners and provide proof of such contact.

Each unused right-of-way in the city is unique with regard to its conditions, including the lot configuration of adjacent properties, surrounding ownership, driveway placement and location of existing structures. Each situation should be reviewed individually with regard to the criteria below, with emphasis placed on reasons the City may desire to retain the right-of-way.

CRITERIA:

Criteria to determine whether or not to dispose of unused City right-of-way

The Board of Mayor and Aldermen may declare surplus, in whole or in part, a public right-of-way when:

1. There is currently no public transportation infrastructure within the right-of-way, such as streets, alleys, bicycle paths or pedestrian walkways;
2. The right-of-way is not needed for future public transportation infrastructure;
 - a. The Board may dispose of right-of-way with the creation of easements as needed when there are existing or foreseeable future public utilities, emergency access, drainage areas, private driveways, or other uses within the existing right-of-way;
3. The right-of-way disposal serves the public interest through improved utilization of land made possible by this action;
4. The disposal reduces the City's maintenance liability on unused right-of-way not needed for public purpose.

Conversely, the Board should not declare surplus, an unused City right-of-way when:

- A. It is reasonable that the right-of-way could be extended in the future for public use;
- B. It is adjacent to undeveloped property, since a determination of whether it will ultimately be needed for public use purposes can best be made only when the nature and intensity of development of the adjacent parcels are known;
- C. There is potential for redevelopment or further development of the area;
- D. It serves as public access to parkland or permanent open space;
- E. One or more adjacent properties would become landlocked, unless access easements can be secured;
- F. It is shown in the Major Thoroughfare Plan's, or any City approved Local Street Plan's, Recommended Improvements.

Options for disposal of surplus City right-of-way

Once the Board of Mayor and Aldermen has declared a right-of-way surplus, the property may be sold, leased or abandoned with consideration of the following options:

- 1. If the value of the property is reasonably likely to be greater than \$25,000, then the property shall be sold by sealed bid (Franklin Municipal Code Sec. 5-802 (2)).
 - a. The Board's determination of value shall be based upon tax records, comparable sales, advice from real estate professionals, or other suitable criteria. The Board may, in its sole discretion, also employ an independent certified appraiser (Franklin Municipal Code Sec. 5-802 (2)).
 - b. In general, it is expected that a property will be worth more than \$25,000 if it is determined that the property has development potential supporting a primary structure or use according to current zoning and development standards.
 - c. The property should not be subdivided into smaller parcels that would alter the valuation and sealed bidding process.
- 2. If the property does not exceed \$25,000 in value, then the property may be sold or disposed of by negotiated contract, or by other means that will adequately protect the public interest (Franklin Municipal Code Sec. 5-802 (3)).
 - a. In order to fairly and consistently handle the disposal of surplus City right-of-way, several options should be considered based upon the situation:
 - i. Vacate the surplus property equally (50/50) to property owners adjacent to both sides of the City right-of-way;
 - 1. When the right-of-way is not being used for access; or
 - 2. When a street was realigned elsewhere.
 - ii. Vacate the surplus property equally (50/50) to property owners adjacent to both sides of the City right-of-way with the creation of the easements;
 - 1. When the City right-of-way contains private driveways or has properties using it for access; or
 - 2. When the City right-of-way contains public utilities, emergency access, drainage areas or other public uses.
 - iii. Vacate 100% to one adjacent property owner;
 - 1. When there is the same ownership on both sides of the City right-of-way; or
 - 2. When the City right-of-way serves as the existing driveway access to a single developed property that is located internally to the adjoining street; or

3. When it can be found that prior to the dedication of the City right-of-way, the property originally belonged to one of the adjacent properties.
 - b. The Board may choose to disperse the surplus City right-of-way in an alternate manner if there is a determination made that the alternative better achieves the City's goals e.g. property swaps, consideration of proposals from collective property owners.
3. Abandonment of the City right-of-way property is not a recommended approach to the disposal of the City right-of-way because the end result is that there is no clear ownership of the abandoned City right-of-way between the adjacent property owners.

COSTS

Certain costs will be associated with the disposal of City right-of-way property. These costs include, but may not be limited to, property boundary surveys, property appraisals, public notification, and staff time. The conveyance of public property to private hands will not generate significant property tax revenues e.g. \$3-8 per year for residential and \$10-15 per year for nonresidential. However, eliminating the property from the City's current and future maintenance liability may result in a cost savings over time e.g. \$5,000 to remove a tree in an unused, inaccessible alley.

In order to defray the initial costs, the following is recommended:

1. If a property owner(s) initiates the disposal request, the benefitting property owner(s) should pay for and provide a current survey and may be required to reimburse the City for an appraisal.
2. If the Board initiates the disposal, the City should provide the current survey and may provide an appraisal.

PRIVATE IMPROVEMENTS WITHIN THE CITY RIGHT-OF-WAY

Although adjacent property owners have possibly used, maintained or improved the City right-of-way over time, the right-of-way is public and owned by the City. It is not the City's responsibility to remove or relocate existing improvements or structures that have been constructed within the City right-of-way.

London Lane Unused Right-of-Way
City of Franklin, TN
June 15, 2010

Unused Right-of-Way

Property
Internal
to the
Street

Legend

- Unused ROW
- Parcel Lines
- ROW Lines
- Street CenterLines

