

AGENDA
MASSILLON PLANNING COMMISSION
SEPTEMBER 11, 1996 **4:00 P.M. ****
MASSILLON CITY COUNCIL CHAMBERS

***Note the Time Change*

1. *Approval of the Minutes for the Commission Meeting of August 14, 1996.*

2. *Petitions and Requests*

Re-Plat

Location: Lots No. 10531, 14265, 14266, 14267, 2618 - 2624, 2652, 2653, 9729, and Part of Out Lot 80, located on the west side of Third Street, N.W., north of State Avenue, N.W. The request is to replat these parcels into four lots, zoned I-2 General Industrial. This request has been submitted by the Ohio Water Development Authority.

Re-Plat

Location: Lot No. 12868 and Part of Out Lot 435, located at 1526 Merino Circle, N.E. The request is to rezone these two parcels into one lot zoned R-3 Single Family Residential. This request has been submitted by Cooper and Associates for P.R. Development Ltd.

Re-Plat

Location: A 6.019 acre parcel, Part of Out Lot 84, located on the north side of Cherry Road, N.W., west of the K of C. The request is to replat this parcel into a separate. This request has been submitted by Wallick Construction for the National Church Residences Senior Housing Project.

3. *Other Business*

Street and Alley Vacations

City Engineer James Benekos to discuss proposed changes to the City's policies and procedures for processing street and alley vacation requests.

The Massillon Planning Commission met in regular session on August 14, 1996, at 7:30 P.M., in Massillon City Council Chambers. The following were present:

COMMISSION MEMBERS

Chairman Fred Wilson
Rev. David Dodson
Jeanette Holloway
Moe Rickett
Thomas Wilson

STAFF

James Benekos
Aane Aaby
Marilyn Frazier

The first item of business was the minutes of the Commission meeting of July 10, 1996. Rev. David Dodson moved for approval, seconded by Moe Rickett, motion carried.

The next item under Petitions and Requests was a rezoning request.

Rezoning Request

Location: 1114 Wallace Avenue, S.E., consisting of Lot No. 1482 and part of Lot No. 1481. The request is to rezone this property from R-1 Single Family Residential to P-1 Vehicular Parking. This request has been submitted by Daniel E. Evans, D.V.M., and Mark A. Christine, D.V.M., of Massillon Animal Hospital who wish to demolish the dwelling on this property and construct an off-street parking facility for their business, which is located at 1107 Lincoln Way East.

Aane Aaby presented the request. He commented that a map of the area was submitted with the agenda. The area is mostly comprised of business.

The animal hospital proposes to purchase a house on Wallace and tear it down to provide parking. In the past, they have had an agreement with Mr. Oser, who owns the shopping center, for their patrons to park in the shopping center lot. Due to the proposed Arby's, this agreement will soon end and parking will be needed. The petitions contain the signatures of all the owner-occupants in the area. The only signatures that are not on the petition are those of rental property when the landlord does not live in the area. Tom Wilson moved for approval, seconded by Rev. Dodson, motion carried.

The next item was a re-plat.

Re-Plat

Location: Lots No. 14860, 14861, and 14862, located on the north side of Trillium Circle, N.E., west of Fallen Oak Circle, N.E. The request is to replat these parcels into two lots, zoned R-3 Single Family Residential. This request has been submitted by MDS Development Corporation.

Aane Aaby presented this request. This property is a part of the Colonial Hills subdivision. The middle lot isn't appropriate for development, therefore, this action would eliminate it and increase the size of the other two lots. After a brief discussion, Moe Rickett moved for approval, seconded by Jeanette Holloway, motion carried.

The next item was also a replat.

Re-Plat

Location: Lots No. 3412 and 3413, located on the south side of Walnut Road, S.E., west of 16th Street, S.E. The request is to replat these parcels into three lots, zoned R-1 Single Family Residential. This request has been submitted by Neighborhood Housing Services (NHS) of Massillon, Inc.

Aane Aaby presented this request. The lots are owned by NHS of Massillon. They intend to build houses and sell them to First Time Homebuyers. Lot 3413 was recently zoned from Business to Single Family Residential. The agency had planned to build four houses on this site but the surveyor determined that the improvements needed would make that proposal cost prohibitive. He is recommending that the houses all face Walnut with the area being platted into three parcels. The plat isn't complete, but Phyllis Lemon of NHS, was present and provided a plan of the homes.

After review of the plans, Tom Wilson, moved for approval, seconded by Rev. Dodson, motion carried.

The next item on the agenda was also a re-plat but it was withdrawn prior to the meeting. It will be on next month's agenda.

The last item was under other business.

Other Business

Street and Alley Vacations

City Engineer James Benekos to discuss proposed changes to the City's policies and procedures for processing street and alley vacation requests.

James Benekos presented a proposal to change the procedure for Street and Alley Vacations. He distributed copies of Chapter 909 - Streets (information attached), the proposed procedure and a section of the Ohio Revised Code. Basically, at present, the City is charging a \$75 filing fee which doesn't adequately cover the costs associated with procedure.

The Ohio Revised Code states the City may charge the property owner for their time and costs associated with the procedure. In the past, Massillon hasn't done this but street and alley vacations have been low priority items also. He is proposing that the abutting property owners hire a private surveyor to prepare the vacation plat as opposed to the City doing the work. The surveyor would also do the surveying. There are other minor changes in the procedure also. The Commission was asked to review the procedures and be prepared to vote on it at the next meeting. There were questions and a discussion about the present and proposed procedures and costs to the citizens.

There being no further business, the meeting adjourned at 8:15 P.M.

Respectfully submitted,


Marilyn E. Frazier, Clerk

MEF/ky

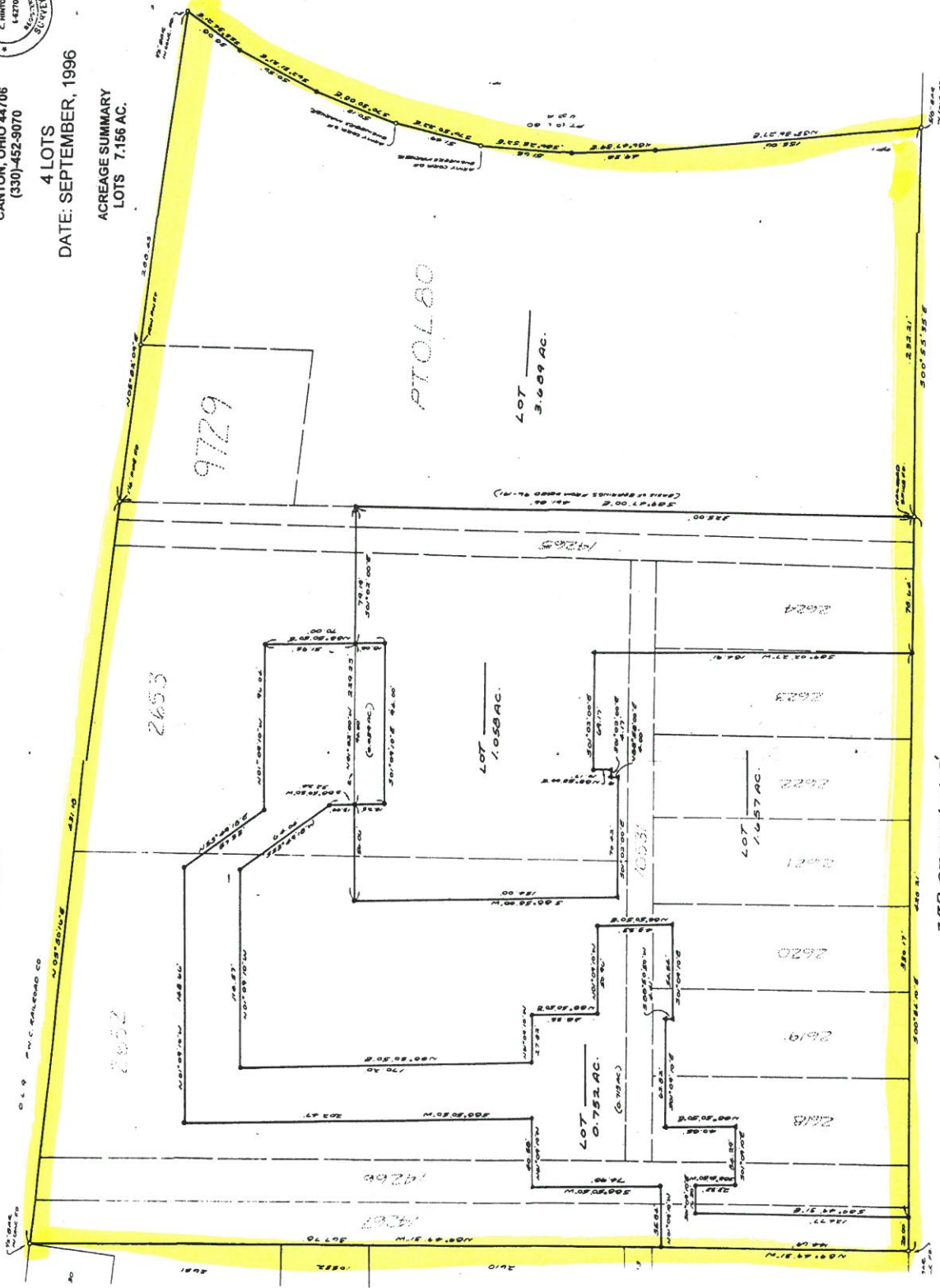
REPLAT OF LOTS 14267, 14268, 14269, 14270, 14271, 14272, 14273, 14274, 14275, 14276, 14277, 14278, 14279, 14280, 14281, 14282, 14283, 14284, 14285, 14286, 14287, 14288, 14289, 14290, 14291, 14292, 14293, 14294, 14295, 14296, 14297, 14298, 14299, 14300, 14301, 14302, 14303, 14304, 14305, 14306, 14307, 14308, 14309, 14310, 14311, 14312, 14313, 14314, 14315, 14316, 14317, 14318, 14319, 14320, 14321, 14322, 14323, 14324, 14325, 14326, 14327, 14328, 14329, 14330, 14331, 14332, 14333, 14334, 14335, 14336, 14337, 14338, 14339, 14340, 14341, 14342, 14343, 14344, 14345, 14346, 14347, 14348, 14349, 14350, 14351, 14352, 14353, 14354, 14355, 14356, 14357, 14358, 14359, 14360, 14361, 14362, 14363, 14364, 14365, 14366, 14367, 14368, 14369, 14370, 14371, 14372, 14373, 14374, 14375, 14376, 14377, 14378, 14379, 14380, 14381, 14382, 14383, 14384, 14385, 14386, 14387, 14388, 14389, 14390, 14391, 14392, 14393, 14394, 14395, 14396, 14397, 14398, 14399, 14400, 14401, 14402, 14403, 14404, 14405, 14406, 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BY:
HINTON SURVEYING
1315 GREENFIELD S.W.
CANTON, OHIO 44706
(330) 452-9070

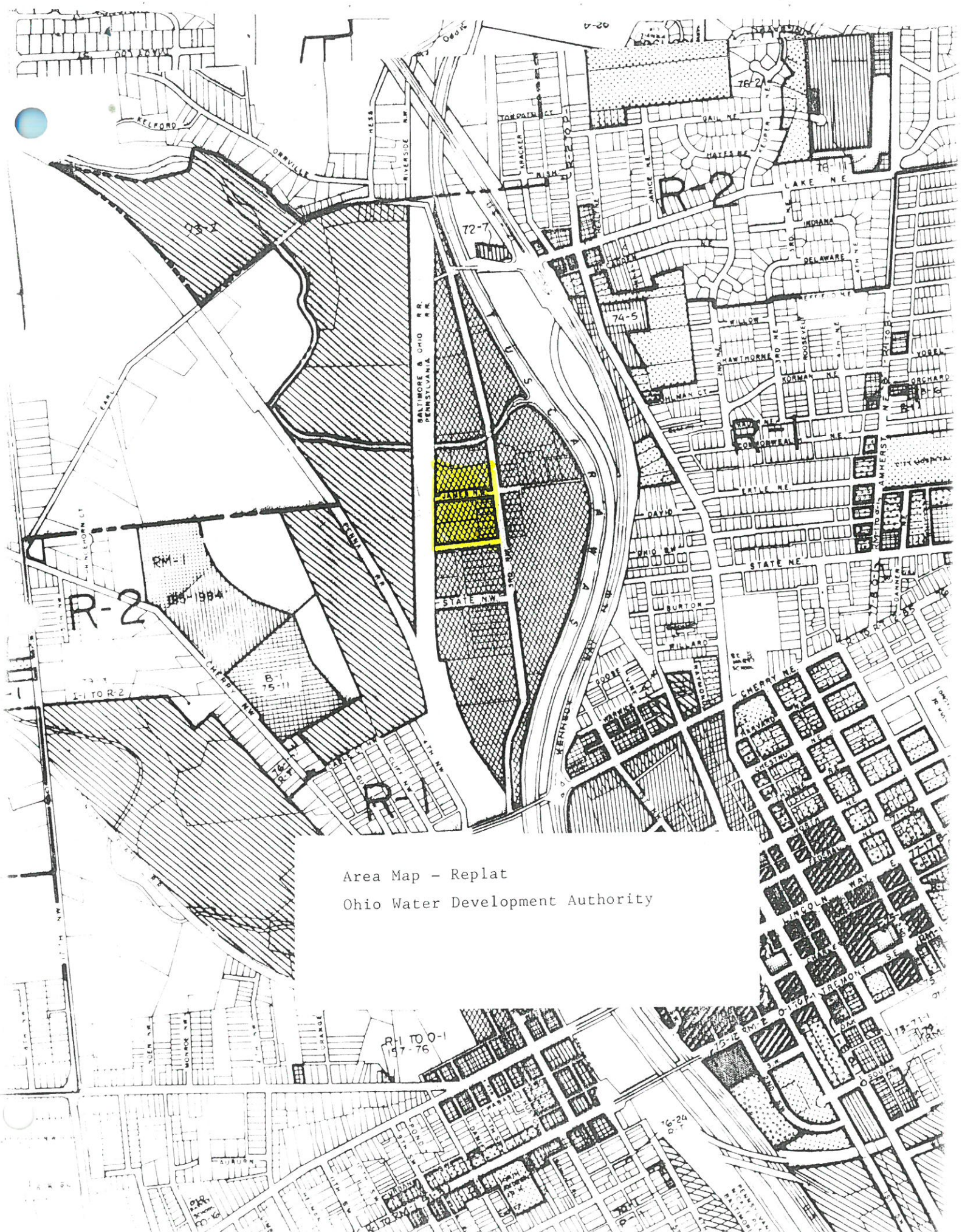
4 LOTS
DATE: SEPTEMBER, 1996

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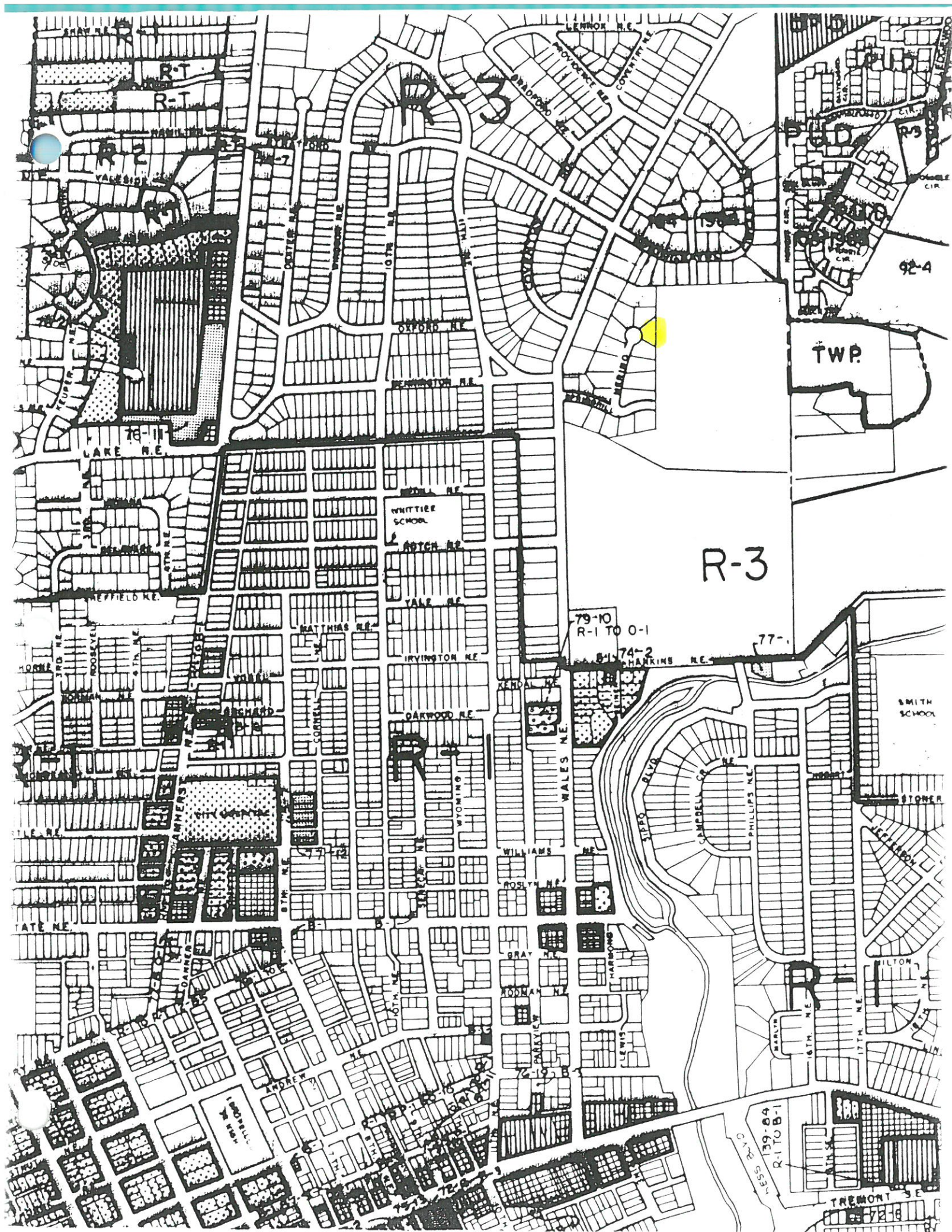


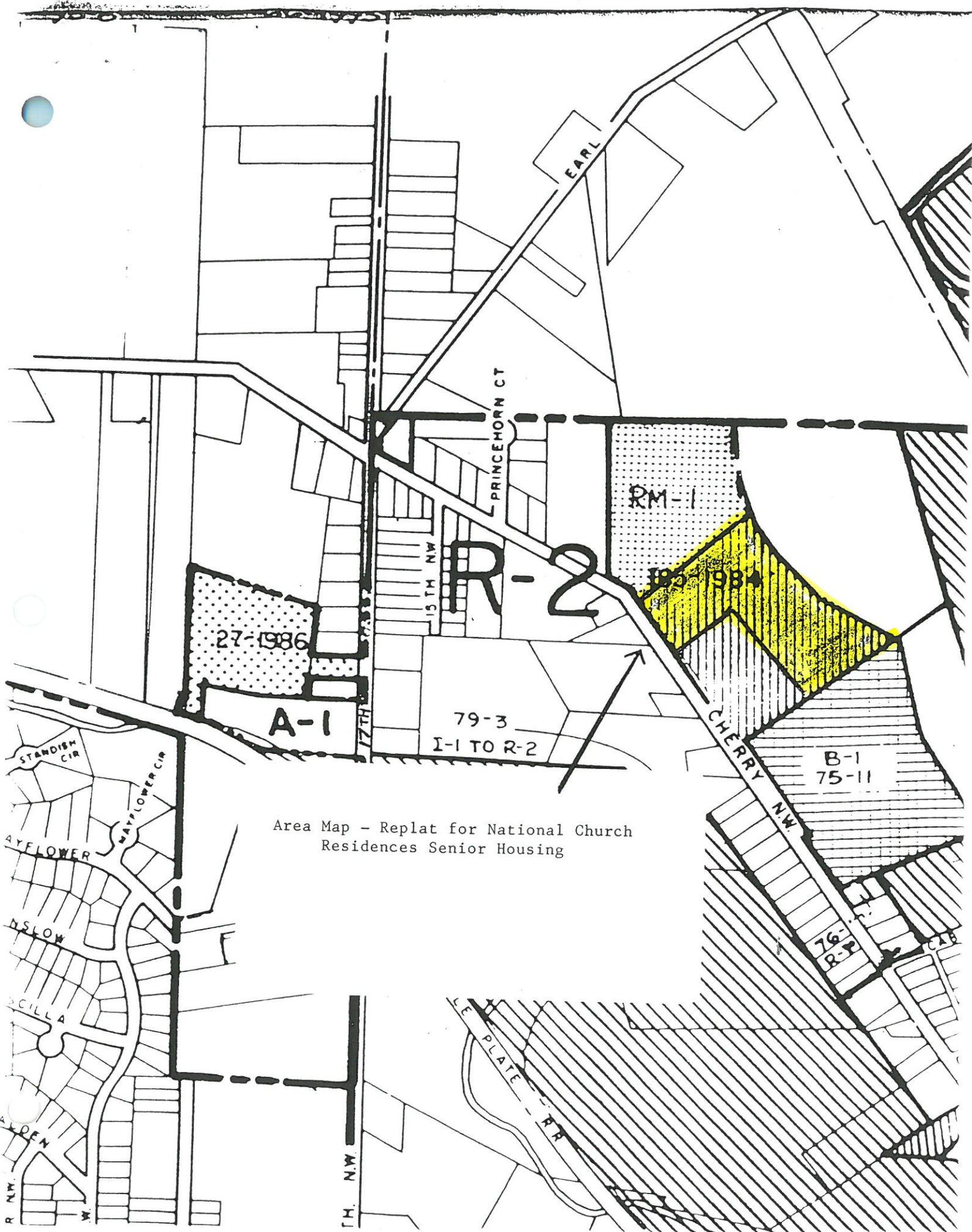
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350 ST N.W. - 60'



Area Map - Replat
Ohio Water Development Authority





Area Map - Replat for National Church
Residences Senior Housing

CHAPTER 909 Streets

- | | |
|---|-----------------|
| 909.01 Petition for vacating public streets and alleys. | 909.03 Process. |
| 909.02 Fees. | 909.99 Penalty. |

CROSS REFERENCES

Assessments – see Ohio R.C. 701.05, Ch. 727
 Power to establish and care for streets – see
 Ohio R.C. 715.19, 717.01, 723.01
 Openings by the Municipality – see Ohio R.C. 723.02
 Dedication and acceptance – see Ohio R.C. 723.03
 Sprinkling – see Ohio R.C. 723.16 et seq.
 Surface treatment – see Ohio R.C. 723.23, 723.31
 Excavation liability – see Ohio R.C. 723.49 et seq.
 Changing established grade – see Ohio R.C. 727.07
 Compulsory service connections – see Ohio R.C. 729.06,
 743.37
 Digging, excavating and piling earth on streets –
 see Ohio R.C. 5589.10

909.01 PETITION FOR VACATING PUBLIC STREETS AND ALLEYS.

(a) The Petitioner shall first make application to petition a street or alley to be vacated in the City Engineer's office.

(b) At the time the petition is returned to the City Engineer's office it must be accompanied by the appropriate fee.
 (Ord. 214-1993. Passed 12-20-93.)

909.02 FEES.

(a) The fee should be a sum that the City Engineer determines to pay the expense of preparing the needed plat, advertising, transfer and recording fees with Stark County. The City Engineer will return to the petitioner any funds remaining in his possession after paying the costs incurred.

(b) Any money received by the City Engineer for the making of any plats or any other work the Department might perform shall be deposited to the credit of the service fund.
 (Ord. 214-1993. Passed 12-20-93.)

909.03 PROCESS.

(a) After the application for the petition to vacate is received, the City Engineer's office will research and prepare such petition.

(b) The applicant will be notified to pick up the petition from the City Engineer's office and return upon completion.

(c) Upon the return of the petition it will be reviewed by the Planning Commission and Council. If approved, the City Engineer's office will prepare the plat and have it recorded with Stark County.

(d) The applicant will be notified by the City Engineer's office upon the final completion of the vacation.
(Ord. 214-1993. Passed 12-20-93.)

909.99 PENALTY.

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree. Each day in which a violation occurs or continues shall be a separate offense.
(Ord. 214-1993. Passed 12-20-93.)

19. (1915) To show a statutory dedication it is necessary to prove that the land was conveyed to the public for road or street purposes by deed or plat duly recorded and accepted by the proper authorities, or that proper proceedings were taken by the township trustees of the proper township, the county commissioners or the council of the city, to appropriate the land for road or street purposes. A failure to comply with the steps made necessary by the statute in any essential particular would show that there was no statutory dedication: *Oberhelman v. Allen*, 7 OApp 251, 26 CC(NS) 305, 29 CD 596.

20. (1915) Dedication of land to a municipal corporation for a street is a matter of good faith; and the covenants contained in the dedication which had been accepted by the municipal corporation will be enforced as far as such covenants are not inconsistent with a settled public policy and as far as good faith requires the parties to perform such covenants: *Vrooman v. Toledo*, 5 OApp 230, 26 CC(NS) 135.

21. (1914) This section was enacted to protect the city against liability for the care and maintenance of a street rather than for perfecting its title therein; and under former statutes (RS §§ 2626 and 2639), the action of the platting commission in accepting such plat would constitute a complete acceptance of the street, if such acceptance were necessary to pass title to such street as against third persons, who claimed an interest therein by adverse possession: *Hermann v. Spitzmiller*, 24 CC(NS) 20, 34 CD 453.

22. (1907) A valid dedication cannot be made to a municipal corporation before it is incorporated; and if the owner of realty attempts to make such a dedication, he may revoke the same before such municipal corporation is formed and accepts such dedication. His conveyance of such realty to another by an ordinary deed without any exceptions in favor of the municipal corporation operates as such revocation: *Drucker v. Home City*, 12 CC(NS) 309, 21 CD 466 [affirmed, without report, *Home City v. Drucker*, 81 OS 507].

23. (1966) Former GC § 3723, now RC § 723.03, does not apply to plats and the recording thereof in a municipality, but it does apply particularly to the owner of the ground who undertakes to dedicate a street or alley to public use in a municipality other than by means of a plat: *Fondriest v. Dennison*, 8 OMisc 75, 37 OO2d 97, 219 NE2d 322 (CP).

24. (1945) A right of way in a municipal corporation may become a public street if dedicated to public use provided such dedication is accepted by an ordinance passed by the council of said municipal corporation as provided by this section: *Cramer v. New Philadelphia Brewery, Inc.*, 31 OO 369, 43 OLA 599, 16 OSupp 140 (CP).

25. (1974) An owner of real estate cannot be required to dedicate a portion of it as a public street if the owner is unwilling to do so; the city must resort to appropriation procedures: OAG No. 74-070.

26. (1974) If the owner of a tract of land in a city desires to develop it, the city planning commission need not approve the plat of such proposed subdivision unless it is consistent with a duly adopted city plan, and the legislative authority of the city may, by reasonable regulations, require the developer to construct streets, curbs, gutters, and sidewalks: OAG No. 74-070.

27. (1920) The platting of lands within a municipal corporation and the use by the public of streets and alleys within the platted area has not the effect of a taking over of such streets for care and control in absence of an acceptance under this section: 1920 OAG, vol. 1, p. 782.

[VACATION]

§ 723.04 Change of name, vacating, or narrowing streets on petition.

The legislative authority of a municipal corporation, on petition by a person owning a lot in the municipal corporation praying that a street or alley in the immediate vicinity of such lot be vacated or narrowed, or the name thereof changed, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation, or narrowing, that it will not be detrimental to the general interest, and that it should be made, may, by ordinance, declare such street or alley vacated, narrowed, or the name thereof changed. The legislative authority may include in one ordinance the change of name, vacation, or narrowing of more than one street, avenue, or alley.

HISTORY: RS § 2652; Bates § 1536-145; S&C 1531; 67 v 78, § 491; 90 v 350; 98 v 202; GC § 3725; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Approval of planning commission required before vacating street, RC § 713.02.

Notice of application to be published, RC § 723.07.

Recording vacation of plat, RC § 711.39.

Vacation or establishment of street or alley by court, RC § 723.09.

Research Aids

Vacating, narrowing, or changing name of street or alley:

O-Jur3d: Highways §§ 74, 240

C.J.S.: Mun Corp §§ 1045, 1664

West Key No. Reference

Mun Corp 655

Law Review

Municipal home rule in Ohio (chapters III & XII). George D. Vaubel. 3 ONorthLRev 11 (1975).

CASE NOTES AND OAG

INDEX

Abandonment, what constitutes. 5
Constitutionality. 4
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Effect of abandonment. 1, 9, 10, 13, 14
Power to vacate. 7, 8, 12
Scope and construction. 2, 3, 11, 15

1. (1934) Where a duly dedicated and accepted east-and-west street of a city is vacated by the city some distance from its eastern terminus and completely closed to travel, the owner of property abutting upon such street, but not upon the vacated portion thereof, has no right of action for damages because of such vacation, so long as his access to the city street system to the west is not impaired. Under such circumstances, the abutting property owner's damage, if any, differs in degree but not in kind from that of the general public, and his legal status falls within the category of *damnum absque injuria*. *New York, C. & R. Co. v. Bush*, 128 OS 134, 190 NE 562, 93 ALR 632 [distin-

guishing *Schimmelman v. Lake Shore &c. R. Co.*, 83 OS 356 (1935)].

2. (1933) Statute providing for vacation of streets held not in conflict with or impliedly repealed by provision for planning commission, nor superseded by Cincinnati city charter: *Cincinnati v. Wess*, 127 OS 99, 186 NE 855.

3. (1933) Statute providing for vacation of streets on petition applies to streets in cities: *Cincinnati v. Wess*, 127 OS 99, 186 NE 855.

4. (1933) Statute providing for vacation of streets on petition held not violative of due process clause, in view of succeeding sections providing for damages: *Cincinnati v. Wess*, 127 OS 99, 186 NE 855.

5. (1889) Under a claim of abandonment of a road in a municipal corporation, proof that no work had been done on the road by the public authorities for fifteen years; that the road was at times in bad condition and impassable; that it passed over a steep hill; was difficult to use; that a new road had been established in the vicinity intended to take its place; that for eleven years before suit was brought, travel had been substantially diverted to the new road, and that portions of the old road had been fenced in, are not sufficient to show abandonment by the public: *Nail & Iron Co. v. Furnace Co.*, 46 OS 544, 22 NE 639, 5 LRA 652.

6. (1974) County commissioners have no authority to vacate a street, or a part thereof, which is within the corporate limits of a municipality and is a part of its street system: *Sparrow v. Columbus*, 40 OApp2d 453, 69 OO2d 405, 320 NE2d 297.

7. (1953) Under the statutes of Ohio, the council of a village or city is authorized to vacate a street or a portion thereof whenever, in the exercise of its sound discretion, such action will not be detrimental to the public interest: *Zetzer v. Lundgard*, 95 OApp 51, 52 OO 407, 117 NE2d 445.

8. (1916) The council of a municipal corporation has no power to vacate part of a public street so as to narrow it and to obstruct traffic, in order to enable the trustees of an adjoining hospital to increase the strip of the street thus vacated and to make it a part of the grounds of the hospital, at least if it was not shown that there was any public necessity for so doing; on the suit of a taxpayer, a permanent injunction will be allowed against such encroachment upon the street and against such obstruction thereof: *Dreidame v. Cincinnati*, 25 CC(NS) 607, 35 CD 311 [motion to certify record overruled, *Cincinnati v. Dreidame*, 14 OLR 209].

9. (1915) If a road or street is dedicated, and land is taken equally from adjoining proprietors on each side of the center line of such street, such land, upon the vacation of such road or street, reverts to the owners of abutting land at the time of such vacation: *Oberhelman v. Allen*, 7 OApp 251, 26 CC(NS) 305, 29 CD 596.

10. (1911) Any disused portion of the highway, if utterly abandoned, becomes vacated by operation of law, but the state or county road, as such, persists despite the new route of travel: *State ex rel. Howell v. Commissioners Cuyahoga Co.*, 14 CC(NS) 577, 17 CC(NS) 331, 25 CD 18 [affirmed, without opinion, 84 OS 503].

11. (1906) A municipality has the right to determine the width of its streets which shall be devoted to lawful public uses, devoting a part to sidewalks, a part to lawn and shade trees, a part to necessary poles for public lighting, etc., a part to drainage, gutters, etc., and a part to vehicles and street cars, and it is not an unlawful use if the part of a street which is usually devoted to drainage be occupied in part by poles supporting street lights. Norwalk

v. Jacobs, 9 CC(NS) 153, 19 CD 123.

12. (1897) A municipal corporation can abandon streets and alleys in the manner prescribed by statute, and in no other way: *Lake Shore &c. R. Co. v. Elyria*, 14 CC 48, 7 CD 312; see also *Louisville & N.R. Co. v. Cincinnati*, 76 OS 481, 81 NE 983 (1907).

13. (1911) Where in the elimination of a grade crossing a part of a street is vacated and blocked with a fill, an action for damages by an abutting owner on that part of the street not vacated does not lie on a complaint of less convenient means of ingress and egress, where the same inconvenience is suffered, though perhaps in less degree, by the general public: *Columbus Plow Co. v. P., C., &c. R. Co.*, 12 NP(NS) 81.

14. (1961) Where, under this section, a petition is made to the legislative authority of a municipal corporation for the vacation of a street or alley, the petition must contain a plat showing the public way to be vacated; and upon vacation, the legislative authority should record said plat in the office of the county recorder under RC § 711.39. The fee for such recording as prescribed by RC § 317.32 must be paid by said legislative authority: 1961 OAG No.2509.

15. (1926) A municipality may demand a fee from the board of education for the payment of publication of notices and the necessary engineering connected with the proceedings to vacate a street or alley in connection with the purchase of a school site and the board of education may legally pay such fee: 1926 OAG p.443.

[§ 723.04.1] § 723.041 Permanent easement to public utility in vacated street.

When any street, alley, or public highway, or a portion thereof, is vacated or narrowed by a municipality pursuant to the provisions of any section of Chapter 723. of the Revised Code, and the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any railroad or public utility, whether owned privately or by any governmental authority, located on, over, or under the portion of the street, alley, or highway affected by such vacation or narrowing, is not required for purposes of the municipality, including urban renewal, any affected railroad or public utility shall be deemed to have a permanent easement in such vacated portion or excess portion of such street, alley, or highway for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities.

HISTORY: 129 v 452. Eff 10-16-61.

Research Aids

Permanent easement to public utility:
O-Jur3d: Highways § 343

§ 723.05 Change of name, vacating, or narrowing streets without petition.

The legislative authority of a municipal corporation may, when there are two or more streets, avenues, or alleys of the same name in the municipal corporation, by ordinance and without petition

therefor, change the name of any such street, avenue, or alley so as to leave only one to be designated by the original name.

When, in the opinion of the legislative authority, there is good cause for vacating or narrowing a street or alley, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance and without petition therefor, vacate or narrow such street or alley or any part thereof.

HISTORY: RS § 2652; Bates § 1536-145; S&C 1531; 67 v 78, § 491; 90 v 350; 98 v 202; GC § 3726; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Approval of planning commission required before vacating street, RC § 713.02.

Recording vacation of plat, RC § 711.39.

Vacation or establishment of street or alley by court, RC § 723.09.

Research Aids

Vacating, narrowing, or changing name of street or alley without petition:

O-Jur3d: Highways § 74, 240

C.J.S.: Mun Corp § 1045, 1664

West Key No. Reference

Mun Corp 655

Law Review

Vacation and abandonment of streets and highways in Ohio. John L. Grecol. 12 ClevMarLRev 549 (1963).

CASE NOTES AND OAC

1. (1983) Property owner may not enjoin vacation of a street or receive damages unless his property abuts the street. "Abutting" means sharing a common border. "Good cause" for vacation construed: Eastland Woods v. Tallmadge, 2 OS3d 185, 2 OBR 726, 443 NE2d 972.

2. (1933) Statute providing for vacating streets held not in conflict with or impliedly repealed by provision for planning commission, nor superseded by Cincinnati city charter: Cincinnati v. Wess, 127 OS 99, 186 NE 855.

3. (1962) A village council has authority to determine when a street shall be vacated and its discretion will not be reviewed by a court of appeals in the absence of fraud or abuse of discretion: Smith v. Wintersville, 26 OO2d 40, 90 OLA 47, 187 NE2d 511 (App).

4. (1889) A municipal corporation has no power to change the established name of a street at will, if no good reason therefor exists, except upon petition of the abutting property owners: Miller v. Cincinnati, 10 DecRep 423, 21 Bull (editorial) 121.

§ 723.06 Notice not required.

Notice of the intention of the legislative authority of a municipal corporation to vacate any street, alley, avenue, or part thereof shall be given as provided in section 723.07 of the Revised Code, except when written consent to such vacation is filed with the legislative authority by the owners of the property abutting the part of the street or alley proposed

to be vacated, in which case such notice shall not be required.

HISTORY: RS § 2652; Bates § 1536-145; S&C 1531; 67 v 78, § 491; 90 v 350; 98 v 202; GC § 3727; Bureau of Code Revision. Eff 10-1-53.

Research Aids

When notice of intention to vacate street not required:

O-Jur3d: Highways § 240

C.J.S.: Mun Corp § 1672

West Key No. Reference

Mun Corp 657(4-6)

Law Review

Municipal home rule in Ohio (chapter XII). George D. Vaubel. 3 ONorthLRev 11 (1975).

CASE NOTES AND OAC

1. (1973) Abutting owners on south side of street were not entitled to notice of city's intent to vacate under RC § 723.06 where the vacated portion of the street was not the traveled portion but was limited to the north sidewalk: Gibson & Perin Co. v. Cincinnati, 480 F2d 936 (6th Cir. 1973).

2. (1945) When there is no physical connection between a person's property and an alley intended to be vacated by city council, such property does not abut upon such alley and the owner is not entitled to notice of the intended vacation under the provisions of this section: Bulen v. Moody, 77 OApp 61, 32 OO 325, 63 NE2d 916.

3. (1932) Portion of alley in municipality having been vacated by city council on petition of abutting owners and this section, having been fully complied with, portion of alley so vacated reverts to the owners of the land abutting thereon, and such abutting owners may close such portion of such alley against any use whatsoever subject only to such rights as other property owners on such alley may have therein as a necessary means of access to their property: Caraway v. Feigley, 12 OLA 690 (App).

4. (1930) Publication of ordinance to vacate must be made unless all owners waive notice by filing written consent to the vacation; such publication is not waived by appearance of a landowner in council to protest against its passage: Messinger v. Cincinnati, 36 OApp 337, 173 NE 260, 31 OLR 271.

5. (1930) Property at the end of an abutting street sought to be vacated is abutting property, requiring publication where consent of owner is not filed: Messinger v. Cincinnati, 36 OApp 337, 173 NE 260, 31 OLR 271.

§ 723.07 Notice of application to be published.

No street or alley shall be vacated or narrowed unless notice of the pendency and prayer of the petition under section 723.04 of the Revised Code is given by publishing, in a newspaper published or of general circulation in such municipal corporation, for six consecutive weeks preceding action on such petition, or, where no newspaper is published in the municipal corporation, by posting the notice in three public places therein six weeks preceding such

action. Action thereon shall take place within three months after the completion of the notice.

HISTORY: RS § 2653; Bates § 1536-146; S&C 1531; 67 v 78, § 492; GC § 3728; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Notice not required, RC § 723.06.

Research Aids

Notice of application to vacate street to be published:

O-Jur3d: Highways § 240

C.J.S.: Mun Corp § 1672

West Key No. Reference
Mun Corp 657(4-6)

Law Review

Municipal home rule in Ohio (chapter XII). George D. Vaubel. 3 ONorthLRev 11 (1975).

CASE NOTES AND OAG

1. (1930) Written consent or published notice is prerequisite to valid ordinance to vacate street and this cannot be waived by property owners' appearance in council opposing ordinance: *Messinger v. Cincinnati*, 36 OApp 337, 173 NE 260, 31 OLR 271.

2. (1930) Publication of ordinance to vacate must be made unless all owners waive notice by filing written consent to the vacation; such publication is not waived by appearance of a landowner in council to protest against its passage: *Messinger v. Cincinnati*, 36 OApp 337, 173 NE 260, 31 OLR 271.

3. (1930) City cannot vacate street except under statutes, and power cannot be delegated nor statutes waived: *Messinger v. Cincinnati*, 36 OApp 337, 173 NE 260, 31 OLR 271.

4. (1930) Property at the end of an abutting street sought to be vacated is abutting property, requiring publication where consent of owner is not filed: *Messinger v. Cincinnati*, 36 OApp 337, 173 NE 260, 31 OLR 271.

5. (1926) A municipality may demand a fee from the board of education for the payment of publication of notices and the necessary engineering connected with the proceedings to vacate a street or alley in connection with the purchase of a school site and the board of education may legally pay such fee: 1926 OAG p.443.

6. (1908) Notice of the intention to vacate a street may be given by publication and such notice is sufficient to confer jurisdiction: *Vacation of Sherman Ave.*, 19 OD(NP) 863, 6 OLR 558.

§ 723.08 Effect of order of vacation.

The order of a legislative authority of a municipal corporation vacating or narrowing a street or alley which has been dedicated to public use by the proprietor thereof, shall, to the extent to which it is vacated or narrowed, operate as a revocation of the acceptance thereof by the legislative authority, but the right of way and easement therein of any lot owner shall not be impaired by such order.

HISTORY: RS § 2654; Bates § 1536-147; 66 v 232, § 493; GC § 3729; Bureau of Code Revision. Eff 10-1-53.

Cross-References to Related Sections

Vacation or establishment of street or alley by court, RC § 723.09.

Research Aids

Effect of order of vacation:

O-Jur3d: Dedic § 92; Highways § 342

C.J.S.: Mun Corp §§ 1671, 1672

West Key No. Reference

Mun Corp 657(4-6)

CASE NOTES AND OAG

INDEX

Damages, 7, 25

Easements, 10, 12, 17, 23, 24

Rights of abutting property owner, 1-3, 6, 9, 14, 15, 17, 19, 20, 22

Scope and construction, 4, 14, 21

To whom property reverts on vacation, 1, 5, 8, 11, 13, 16, 18

1. (1976) Upon vacation of an alley by a city, abutting lot owners, as to that portion of the alley abutting their properties, are vested with a fee simple interest in one-half of the width of the strip of land which formerly comprised the alley, irrespective of the fact that the original owner and dedicant of the land was not the predecessor in title to all such abutting lot owners; subject, however, to those rights which other owners may have in the alley as a necessary means of access to their properties: *Taylor v. Carpenter*, 45 OS2d 137, 74 OO2d 257, 341 NE2d 843 (1976).

2. (1934) Where a duly dedicated and accepted east-and-west street of a city is vacated by the city some distance from its eastern terminus and completely closed to travel, the owner of property abutting upon such street, but not upon the vacated portion thereof, has no right of action for damages because of such vacation, so long as his access to the city street system to the west is not impaired. Under such circumstances, the abutting property owner's damage, if any, differs in degree but not in kind from that of the general public, and his legal status falls within the category of *damnum absque injuria*: *New York C. & C. R. Co. v. Bucci*, 128 OS 134, 190 NE 562, 93 ALR 632 [distinguishing *Schimmelman v. Lake Shore & C. R. Co.*, 83 OS 356].

3. (1919) Where the vacation of a street, the appropriation of land for a street adjacent thereto and the appropriation of such vacated street for the construction of a railroad elevated above the grade of the street are simultaneous transactions, said lands abut upon the vacated street for the purpose of fixing compensation and damages for the appropriation of the incorporeal hereditament of the abutting landholder therein: *Port Clinton v. Fall*, 99 OS 153, 124 NE 189.

4. (1901) The provision of this section, that when a street or alley is vacated by a city council, "the right of any lot owner shall not be impaired thereby," simply preserves such rights as the lot owner had in the street or alley by existing law. It creates no new rights: *Kinnear Mfg. Co. v. Beatty*, 65 OS 264, 62 NE 341, 87 AmSt 600 (1905).

5. (1901) Where a street or alley is vacated by a municipal corporation, the vacated portion reverts to the abutting lot owners, subject, however, to such rights as other property owners on the street or alley may have therein, as a necessary means of access to their property: *Kinnear*

THE CITY OF MASSILLON, OHIO

Francis H. Cicchinelli, Jr.
Mayor

Phone (330) 830-1700
Fax (330) 830-1764

Director of Public Safety & Service
Alan W. Climer — 830-1702

Public Service
830-1701

City Engineer/Planning Director
James J. Benekos — 830-1722

**Community/
Economic Development Director**
Aane Aaby — 830-1721

Golf Course Superintendent
Martin A. Young — 830-4653

Chief Building Official
Starr Surbey — 830-1724

Housing Director
Marifyn Frazier — 830-1717

**Wastewater Treatment Department
Manager/Superintendent**
Ronald L. Halter — 833-3304

Collections Department Chief
Linda S. McGill — 830-1705

Chief of Police
Mark D. Weldon — 830-1762

Fire Chief
Tommy R. Matthews — 833-1053

**Equal Employment Opportunity/
Minority Business/Drug Coordinator**
Edward W. Grier — 830-1716

Health Commissioner
Richard J. Kaserman — 830-1710

Parks & Recreation Department
830-1791

Youth Director
Constance Ledwell — 837-3137

Senior Citizens Director
Nancy A. Johnson — 837-2784

Data Center Chief
Keith Wires — 830-3647

Income Tax Department
830-1709

PROCEDURES FOR STREET/ALLEY VACATIONS

1. Applicant hires a surveyor in private practice to prepare a vacation plat (sample attached).
2. Applicant or the surveyor provides a list of all abutting property owners names and mailing addresses, along with signatures of each property owner. The alley vacation form provides a page for this information.
3. Surveyor will have the property split pre-approved by the Stark County Auditor's Office.
4. Applicant describes the reasons for the request, which is also part of the application form.
5. Applicant files the application form, five copies of the plat and the appropriate fee with City Engineer's office.
6. The Engineer's office will review the application package for completeness and submit it to the Planning Commission.
7. The Engineer's office will circulate copies of the request to the Police Chief, the Fire Chief, all adjacent property owners, and to the affected utility companies.
8. Street/Alley will be posted as "Under Study for Closing".
9. Planning staff presents a report and recommendation to the Planning Commission.
10. The Commission sends its recommendation to City Council.
11. City Council schedules a public hearing and has final action on the request. If the "Waiver of Notice of Public Hearing" (part of application) is not signed by all abutting owners, then the date and purpose of the public hearing must be published for six consecutive weeks in the Independent at the applicant's expense.

Massillon Municipal Government Center
One James Duncan Plaza
Massillon, Ohio 44646

CERTIFICATION

I HERBY CERTIFY THAT THIS IS A CORRECT PLAT OF THE VACATION OF PART OF ORANGE AVE. S.W. IN THE CITY OF MASSILLON, STARK COUNTY, OHIO. CERTIFICATION OF OWNERSHIP OF PROPERTIES TO BE MADE BY PARTIES OTHER THAN SURVEYOR.

JOE SURVEYOR, P.S. No. 1234

CITY COUNCIL

ACCEPTED BY CITY COUNCIL BY ORDINANCE NO. _____

PASSED _____

PRESIDENT _____

CLERK OF COUNCIL _____

PLANNING COMMISSION

APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MASSILLON AT A MEETING HELD _____

SECRETARY _____

CHAIRMAN _____

CITY ENGINEER

VACATED PORTIONS GIVEN CITY LOT NO.'S _____

CITY AUDITOR

ENTERED FOR TRANSFER THIS _____ DAY OF _____, 199____

JAMES J. BENEKOS, P.E., P.S.
CITY ENGINEER

STARK COUNTY AUDITOR _____

COUNTY RECORDER

RECEIVED FOR RECORD THIS _____ DAY OF _____, 199____

RECORDED IN PLAT BOOK _____, PAGE _____

STARK COUNTY RECORDER _____

THE BASIS OF BEARING FOR THIS SURVEY WAS THE SOUTH LINE OF THE 15 FOOT ALLEY AND THE BEARING OF N 74° 38' 49" W WAS TAKEN FROM PLAT BOOK _____, PAGE _____

SCALE: 1" = 50'

DATE: _____ FIELD BOOK: _____ REFERENCES: _____

PLAT BOOK _____, PAGE _____

PREPARED BY:

JOE & ASSOCIATES

P.O. BOX 123

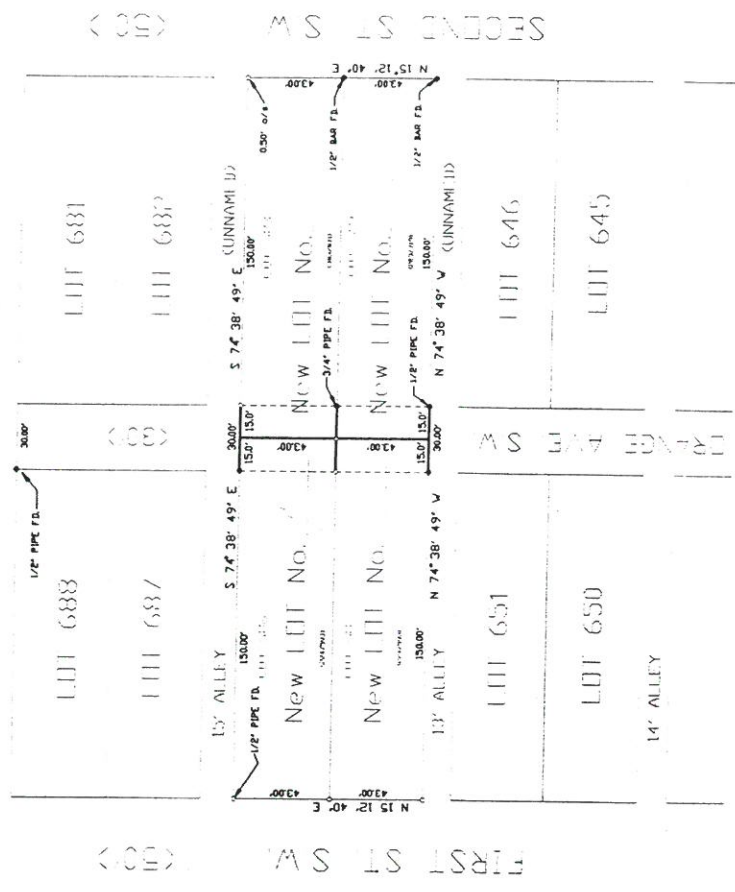
MASSILLON, OHIO 44646

330-555-1234

SAMPLE VACATION AND REPLAT

OF ORANGE AVENUE S.W. RUNNING BETWEEN LOTS 683 & 684 ON THE EAST AND LOTS 685 & 686 ON THE WEST FROM THE NORTH OF A 13' ALLEY (UNNAMED) TO THE SOUTH LINE OF A 15' ALLEY (UNNAMED) IN THE CITY OF MASSILLON, COUNTY OF STARK, AND STATE OF OHIO.

APPLE AVE. S.W.



SCALE IN FEET

(REDUCED SCALE)

LEGEND

- IRON PIN FOUND
- o IRON PIN SET w/CAP

VACATION APPLICATION

Massillon City Council
Massillon Municipal Center
One James Duncan Plaza
Massillon, Ohio 44646

Dear President and Honorable Members:

I hereby make application and petition the Massillon City Planning Commission and
Massillon City Council to vacate a portion of _____,
a _____ foot wide street/alley, briefly described as follows:

Reason(s) for requesting the vacation are:

_____ The street/alley has never been constructed, and therefore does not serve the public.

_____ The street/alley does not serve the public because _____

_____ If the street/alley were to be vacated, my land holding could be consolidated into a more
useful configuration for the purpose of: _____

Other _____

OWNER NAME & ADDRESSThis image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be from a notebook or a standard ruled sheet of paper. There is no handwriting or other markings on the page.

WAIVER OF NOTICE OF PUBLIC HEARING*

The undersigned persons, being sole owners of property abutting the vacation of:

(Street/Alley name and limits)

do hereby waive our right to a Legal Notice of the intention of the City of Massillon to vacate said street/alley as set forth in Section 723.07 of the Ohio Revised Code and are hereby in favor of/or opposed to said vacation:

<u>LOT #</u>	<u>NAME (typed or printed)</u>	<u>SIGNATURE</u>	<u>FOR</u>	<u>AGAINST</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*Note: If the waiver is not signed by all abutting owners, then a public hearing notice must be published in the newspaper for six (6) consecutive weeks at the applicant's expense.

UTILITIES OCCUPYING STREET/ALLEY VACATION OF

(Street/Alley Name)

UTILITY NAME

ADDRESS[illegible]This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears slightly aged or off-white. There is no handwriting or other markings on the page.

Accompanying this application are:

- _____ Filing fee: **No charge** if all abutting property owners sign waiver.
Or **\$10.00 plus cost of legal advertisement** if all abutting property owners do not sign waiver.
- _____ Vacation Plat: Properly prepared by a registered surveyor. (Original tracing and five (5) prints.
- _____ Legal description of the vacated portion.
- _____ List of abutting property owners and mailing addresses and the signatures of those owners who agree to waive the right to legal notice of the vacation.
- _____ List of utilities occupying existing street/alley.

To the best of my knowledge, the information contained in this application and any attachment is true and correct.

Applicant's signature

Name - typed or printed

Company name - typed or printed (if applicable)

Address - typed or printed

City, State, Zip Code

Telephone Number

NOTES:

- ◆ The process takes about three months from the time the plat is received in the Planning Office.
- ◆ Surveying fees will vary, depending on the size of the alley and the surveyor used.
- ◆ When vacated the alley is divided among all abutting property owners.
- ◆ When vacated the alley must be made to look as though it is no longer a public alley.
- ◆ Any utilities occupying the existing right-of-way will retain an easement per 723.041 of The Ohio Revised Code.

PROPOSED

CHAPTER 909

Streets

- | | | | |
|--------|--|--------|---------|
| 909.01 | Petition for vacating public streets and alleys. | 909.03 | Process |
| 909.02 | Fees. | 909.99 | Penalty |

CROSS REFERENCES

Assessments - see Ohio R.C. 701.05, Ch 727
Power to establish and care for streets - see Ohio R.C. 715.19, 717.01, 723.01
Openings by the Municipality - see Ohio R.C. 723.02
Dedication and acceptance - see Ohio R.C. 723.03
Sprinkling - see Ohio R.C. 723.16 et seq.
Surface treatment - see Ohio R.C. 723.23, 723.31
Excavation liability - see Ohio R.C. 723.49 et seq.
Changing established grade - see Ohio R.C. 727.07
Compulsory service connections - see Ohio R.C. 729.06, 743.37
Digging, excavating and piling earthy on streets - see Ohio R.C. 5589.10

909.01 PETITION FOR VACATING PUBLIC STREETS AND ALLEYS.

(a) The Petitioner shall submit petition to vacate a street or alley in the City Engineer's office.

(b) At the time the petition is submitted to the Engineer's office it must be accompanied by the appropriate fee.

909.02 FEES

(a) The fee should be a sum that the City Engineer determines to pay the expense of administration, advertising, transfer and recording fees with Stark County.

(b) Any money received by the City Engineer shall be deposited to the credit of the service fund.

909.03 PROCESS

(a) Applicant submits petition to vacate and vacation plat to the City Engineer's Office.

(b) The petition and plat will be reviewed by the City Engineer's office and submitted to the Planning Commission for recommendation.

(c) The Planning Commission will submit its recommendation to Council.

(d) Council will schedule a public hearing and take action to approve or disapprove the request.

(e) The Engineer's office will have the plat recorded with Stark County and notify the applicant.

909.00 PENALTY

Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the fourth degree. Each day in which a violation occurs or continues shall be a separate offense.