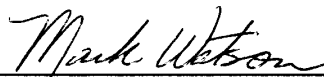

ADMINISTRATIVE ORDER NO. 56

Pursuant to Administrative Order, the following procedure is hereby established for determining the valuation of public rights-of-way proposed for vacation.

1. If the City of Billings and the petitioner mutually agree that vacating a public right-of-way is appropriate, and the public has no cost basis in the right-of-way, staff may recommend to the City Council that the right-of-way be returned to the adjacent property from which it was originally dedicated at no cost. This will generally be limited to rights-of-way within platted but undeveloped subdivisions. It would not generally apply to unimproved rights-of-way within otherwise developed parts of the city.
2. In all other cases, the value of public right-of-way to be vacated shall be established in accordance with City Ordinance #90-4922, except the following administrative procedure may be used in lieu of the preparation of a formal appraisal with the mutual agreement of the petitioner and the City.
 - a. The value of public right-of-way to be vacated shall generally be considered to have a value equivalent to the adjacent property to which it would become attached. Costs associated with making the right-of-way whole for development (i.e., relocation of utilities, etc.) will be considered a cost of development and will not generally be deducted from the real property value.
 - b. The petitioner may elect to submit comparable sales data from recent property transactions within a reasonable proximity of the proposed right-of-way vacation area. The petitioner and the City may mutually agree to a property value based upon comparable sales data in lieu of the preparation of a formal appraisal.
 - c. On a case-by-case basis, the petitioner and the City may agree to a lesser value of the vacated right-of-way based upon the proposed use of the acquired land. This would generally involve proposed developments where the vacated right-of-way would be converted to open green space, park area, or other such use that could be construed as an overall public benefit.

This Administrative Order is intended to recognize the stewardship aspect of administering public assets while acknowledging the equity issues associated with vacation of right-of-way within previously undeveloped areas. It is also intended to recognize that public rights-of-way could be vacated for less than appraised value in those cases where the proposed use would reflect a general benefit to the public.

Dated this 25 day of January 1999



Mark Watson, City Administrator



CITY OF BILLINGS

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TO: Development Process Advisory Review Board (DPARB)
FROM: Mark Watson, City Administrator
DATE: January 25, 1999

**SUBJECT: ADMINISTRATIVE ORDER
PUBLIC RIGHT-OF-WAY VACATIONS**

Thank you for your patience in allowing me to consider the recommendations you forwarded several months ago regarding the City's right-of-way vacation policy and procedures. Attached is a copy of the Administrative Order I executed following a careful review of DPARB's recommendation. I sincerely appreciate the time and effort you devoted to considering this issue and would like to take this opportunity to describe for you the differences between the Administrative Order and your specific recommendations.

Section 1 of the Administrative Order provides a basis for the City to return unimproved right-of-way to adjacent properties at no cost in certain specific instances. It is my opinion that City staff should continue to review these on a case-by-case basis. In general, it is my feeling that if someone wished to pursue replatting of lots and realignment of streets within a platted but undeveloped subdivision (like parts of the High Sierra Subdivision, for example), there would be no particular rationale for calculating the square footage difference between public rights-of-way and asking the developer to contribute some corresponding amount to the City. The subdivision would still be developed into residential units, with public streets, which is in line with its original intent. However, in other cases where some amount of public right-of-way is to be attached to an adjacent property for the sole and exclusive use and enjoyment of the adjacent property owner, I believe there is an additional benefit being made available to that property owner so the City should reserve the opportunity to address it in conjunction with the right-of-way vacation proceedings.

I also appreciate your interest and concern in providing a streamlined method for establishing the value of right-of-way to be vacated. However, I cannot agree that we should establish an across-the-board procedure for valuing such right-of-way on the same basis as park land, unless the property to be vacated is expected to be converted to some type of similar use and/or public benefit like park land. Please recognize that the public (i.e., all Billings citizens) is the collective owner of public right-of-way. As stewards of these assets, I must lean toward conducting these proceedings similar to any other business transaction, regardless of how the public might have come into ownership of that particular asset. Please understand, however, that there is room within the Administrative Order to allow for such evaluation, but it would not be mandatory. It would instead be reviewed on a case-by-case basis.

*Billings Pride:
City-wide*

DPARB / R-O-W Vacation Administrative Order

January 25, 1999

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In further regard to streamlining the process of evaluating properties, I am advised that staff already utilizes various less formal methods than specified by current City Ordinance (i.e., formal property appraisal). The Administrative Order formalizes the intent to allow staff to remain flexible in negotiating the value of vacated right-of-way, however, it leaves open the possibility of a formal appraisal, if it becomes necessary.

Thank you again for your time and effort in providing your recommendations.

MSW:tlr

Attachment

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