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Legal Opinion 2018-010

TO: City Council: Mayor John Engen; Dale Bickell; Mike Haynes; Mary McCrea; Drew Larson; John Wilson; Kevin Slovarp; Troy Monroe; Marty Rehbein; Kirsten Hands; Kelly Elam

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE March 30, 2018

RE: Plats may be vacated either in whole or in part. Title to platted streets and alleys that are vacated generally revert to property owners adjacent to the street or alley vacation. Any utilities present in the street or alley continue to have an easement for operation and maintenance of public utility facility.

FACTS:

During a city council committee discussion Wednesday March 28, 2018, a question arose as to whether the City Council could consider vacating only a portion of the public right-of-way being requested to be vacated.

ISSUE(S):

Is it possible for the City Council to only vacate a portion of plat dedicated public right-of-way for a street or alley?

CONCLUSION(S):

Yes, a City council may vacate only a portion of a plat dedicated street or alley public right-of-way.

LEGAL DISCUSSION:

Section 7-14-4114, MCA, is entitled, "PROCEDURE TO DISCONTINUE STREETS", empowers a city council to discontinue a street or alley or any part of a street or alley located within the city. Section 7-14-4114, MCA, states as follows:

7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part of a street or alley in a city or town, if it can be done without detriment to the public interest, upon:

- (a) a petition in writing of all owners of lots on the street or alley; or
- (b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and
- (ii) approval by a majority vote of the council.
- (2) Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.
- (3) Before acting upon the petition, a notice must be published, stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated. The notice must be published as provided in **7-1-4127**.

Section 7-14-4115, MCA, is entitled, “DISCONTINUANCE OF STREET NOT TO AFFECT UTILITY EASEMENTS”. Section 7-14-4115, MCA, provides as follows:

7-14-4115. Discontinuance of street not to affect utility easements. The vacation authorized by **7-14-4114** shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

A provision of the Montana Subdivision and Platting Act also recognizes that it is legally possible to vacate only a portion of plat. Section 76-3-305, MCA, is entitled “VACATION OF PLATS----UTILITY EASEMENTS”. This provision of Montana state law states that a subdivision plat “may be vacated either in whole or in part”. Further, section 76-3-305, MCA, also provides that any public utility facility located within any plat dedicated public right-of-way “has an easement over the vacated land to continue the operation and maintenance of the public utility facility”.

Section 76-3-305, MCA, states as follows:

76-3-305. Vacation of plats -- utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by **7-5-2501**, **7-5-2502**, **7-14-2616**(1) and (2), **7-14-2617**, **7-14-4114**(1) and (2), and **7-14-4115**. Upon vacation, the governing body or the district court, as provided in **7-5-2502**, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in **7-5-2502**, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

It should also be noted that generally the owner of land bounded by a dedicated public right-of-way for a street, road or alley is presumed to be the owner to the center of the dedicated public right-of-way. See MONT. CODE ANN. § 70-16-202 and 70-20-307.

Sections 70-16-202 and 70-2-307 MCA state:

“70-16-202. OWNER OF LAND BOUNDED BY ROAD. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.”

“70-20-307. TRANSFER OF LAND BOUNDED BY HIGHWAY-WHAT PASSES. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant.

CONCLUSION(S):

Yes, a City council may vacate only a portion of a plat dedicated street or alley public right-of-way.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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